THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIO CONCORCIO @ JUN, EDWIN YUNGOT, ROMMEL MAGPATOC AND JOSEL AYALA @ DODONG LANAY, ACCUSED.EDWIN YUNGOT AND ROMMEL MAGPATO...

G.R. Nos. 121201-02. October 19, 2001

Ponente: BUENA, J.

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BUENA, J.:

SECOND DIVISIONThis is an appeal from the joint decision[1] dated March 28, 1995, of the Regional Trial Court of Davao City, Branch 16,[2] finding accused-appellants, Edwin Yungot and Rommel Magpatoc guilty of two counts of murder and imposing upon them two terms of reclusion perpetua. Accused-appellants were ordered to reimburse the heirs of the victims, Jernie Sumagaysay and Oscar Celis, of actual expenses, and to pay compensatory and moral damages, and costs.[3]

The antecedent facts are as follows:

The two informations[4] charging accused Gio Concorcio @ Jun, Edwin Yungot, Rommel Magpatoc and Josel Ayala @ Dodong Lanay, with two counts of murder read:

> "Criminal Case No. 15,377-87
>
> "That on or about May 24, 1987, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a knife, conspiring, confederating together and helping one another, with intent to kill, did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation, and during nighttime, suddenly attacked, assaulted and stabbed one Jernie Sumagaysay, with the use of said bladed instrument, thereby afflicting [upon] the latter stabbed (sic) wounds which directly caused his immediate death.
>
> "CONTRARY TO LAW."[5]
>
> "Criminal Case No. 15,378-87.
>
> "That on or about May 24, 1987, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a knife, conspiring, confederating together and helping one another, with intent to kill, did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation, and during nighttime, suddenly attacked, assaulted and stabbed one Oscar Celis, with the use of said bladed instrument, thereby afflicting [upon] the latter stabbed (sic) wounds which directly caused his immediate death.
>
> "CONTRARY TO LAW."[6]

Accused-appellants, Edwin Yungot and Rommel Magpatoc were arrested on September, 1991[7] and February, 1993,[8] respectively. The two (2) other accused remained at large.

When arraigned on October 21, 1991, Yungot pleaded not guilty to both charges. Immediately, a joint trial for the two counts of murder ensued against him. On the other hand, subsequent to his arrest in 1993, Magpatoc also pleaded not guilty to both charges upon his arraignment.[9] An urgent motion for bail was filed by Magpatoc on March 1, 1993. After the hearing[10] on the said motion, the trial court issued an Order dated June 16, 1993, denying the motion for bail.[11] Since the prosecution had already finished presenting its evidence-in-chief against Yungot, and had rested its case against Yungot at the time of Magpatoc's arrest, Magpatoc was given a separate trial whereupon the prosecution presented its evidence-in-chief against Magpatoc. After the prosecution rested its case against Magpatoc, a joint trial was conducted for the defense, rebuttal and surrebuttal.

The prosecution presented the following witnesses against Yungot: Delilah Celis Banderado, Sgt. Virgilio Jaranilla, Romeo Sumagaysay, SPO4 Leonor Sonza, P/Cpl. Dionisio Erispe, Jonathan Abellana, Jose Lagamon, Jr. and Dr. Jose Pagsaligan. The following witnesses testified against Magpatoc: Jose Oyson and Jose Lagamon, Jr.,[12] SPO4 Leonor Sonza, P/Cpl. Dionisio Erispe, Sgt. Virgilio Jaranilla, Delilah Celis Banderado and Dr. Jose Pagsaligan. Notably, except for Jose Oyson, the foregoing witnesses also testified against Yungot. On rebuttal, the prosecution recalled witnesses Jose Oyson and Sgt. Virgilio Jaranilla, and in addition, presented Ruth Dionson and Democrito Madiclum as witnesses. On surrebuttal, Yungot's defense counsel presented Lorna Surbito as a witness.

On the other hand, in his defense, Magpatoc presented Allen Ledesma, Noel Cahiwat, Ysmael Cahiwat and himself as witnesses; while Yungot, along with Bernardo Bajenteng and Leovigildo Bautista testified in court.

The prosecution adduced the following evidence against Yungot during his trial. Prosecution witness Jose Lagamon, Jr. testified that he knew the deceased Oscar Celis, who was his former classmate and the other deceased, Jernie Sumagaysay,[13] whom he had met at school. According to Lagamon, Jr., on May 24, 1987, he had a drinking spree with Oscar Celis, Jernie Sumagaysay and Ben Hur Barol at the Davao Fiesta.[14] Around 9 or 10 p.m.,[15] after consuming four (4) or five (5) bottles of beer, Lagamon, Jr. and his companions paid their bill and proceeded home. While walking along Claveria St., Lagamon, Jr., who was walking alongside Ben Hur Barol some five (5) to six (6) meters ahead of Oscar Celis and Jernie Sumagaysay, heard a commotion at his back.[16] He immediately turned around and saw accused-appellant Edwin Yungot stab Oscar Celis two (2) or three (3) times at the left side of his chest, while three (3) or four (4) other persons were holding Celis.[17] He also saw "another person" thrust a knife at the right side of the chest of Jernie Sumagaysay while riding at the latter's back.[18] He tried to assist his "friend" but the latter's assailant threatened to stab him as well.[19] His companion, Ben Hur Barol did nothing because he was in shock. In his estimation, about five (5) to six (6) persons were involved in the stabbing incident, three (3) or four (4) of whom were armed.[20] He was then about a meter away from Celis and Sumagaysay. He further testified that the place was well-lighted. After the incident, the assailants scampered away. Lagamon, Jr. and Barol flagged down a jeepney and brought Celis to the Davao Doctors Hospital.[21] Lagamon, Jr. did not notice where Jernie Sumagaysay had gone after the latter was stabbed. On cross-examination, he testified that he is a member of the Philippine National Police (PNP) and that he joined the Philippine Constabulary in 1988; but in 1987, when the stabbing incident occurred, he was a "bet-taker."[22] He insisted that he saw the assailants of Celis and Sumagaysay because the place where the stabbing incident occurred was well-lighted with fluorescent lamps.[23] He could not remember what kind of knife was used by Yungot in stabbing Celis but recalled that it was about six (6) to seven (7) inches long.[24] He was not summoned by the police authorities for an investigation; neither did he report what he had witnessed to the police authorities.

Jonathan Abellana, who was serving sentence for murder,[25] testified that on May 24, 1987, at around 9 p.m., he was at a dance in Roxas St., in front of the Holy Child School, and between Roxas and Claveria Sts., with Dodong Lanay, Allen Ledesma, Jun-jun Oyson, Edwin Yungot and Omi Magpatoc.[26] They proceeded to Barrio Fiesta

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for a drinking spree upon the invitation of a certain Jun. After the group consumed two (2) cases of beer, Abellana went back to the dance. Later, the rest of the group[27] also returned to the dance.

P/Cpl. Dionisio Erispe, a member of the Philippine National Police (PNP), assigned at the Homicide and Arson Section of the San Pedro Patrol Station, testified that on May 24, 1987, at around 12 midnight, he received information regarding a stabbing incident which took place at Claveria St. Together with the members of the Mobile Patrol, he went to the San Pedro Hospital and Davao Doctors Hospital, where the stabbed victims were brought, and conducted an investigation. From the said hospitals, they proceeded to the scene of the crimes and continued with the investigation. Based on his investigation, P/Cpl. Erispe learned that one (1) of the victims was stabbed near RCBC while the other victim was able to run towards the Martinez Pawnshop. From the hospital records, he was able to identify the stabbed victims as Oscar Celis and Jernie Sumagaysay.[28]

SPO4 Leonor Sonza, of the Criminal Record Branch, Metrodiscom, PNP, brought the Record of Events of the San Pedro Patrol Station, dated May 24, 1987,[29] showing the entry of the stabbing incident involving Celis and Sumagaysay.

Dr. Jose Pagsaligan, Medical Specialist II, Regional Health Office No. XI, Department of Health (DOH), Davao City, performed the autopsy on the victims' cadavers on May 25, 1987 and issued Autopsy Report Nos. N-039-87 and N-040-87, showing the following findings:

> "Autopsy Report No. N-039-87[30]
>
> "POSTMORTEM FINDINGS
>
> " 1. STABBED WOUND - 3.5 cm. long, gaping, running medially and slightly upward, edges cleancut, sharp edge inferiorly, located in the left chest, 10 cm. from the anterior median line, 4 cm. from the left nipple at the level of the 3[rd] intercostal space, penetrating the skin and muscles and the heart through and through.
>
> " 2. Contusion-abrasion - 3 cm. x 1.5 cm. in diameter below the right eye along the outer canthus of the right eye, 7 cm. from the anterior median line and 6 cm. from the right ear.
>
> " 3. Contusion-abrasion - 3 cm. x 1.5 cm. in diameter, slightly above the right mandible, 2 cm. from the anterior median line and 10 cm. from the right ear.
>
> "CAUSE OF DEATH: SHOCK SECONDARY TO SEVERE HEMORRHAGE DUE TO STAB WOUND, CHEST, LEFT."[31]
>
> "Autopsy Report No. N-040-87[32]
>
> "POSTMORTEM FINDINGS
>
> " 1. STABBED WOUND - 1.5 cm. long, gaping, running medially downward, edges cleancut, sharp edge inferiorly medially, located in the right side of the chest, 4 cm. from the anterior median line, 12 cm. from the right nipple, penetrating the skin and muscles in the 2[nd] intercostal space, right, cutting the pulmonary artery.
>
> "CAUSE OF DEATH: SHOCK SECONDARY TO SEVERE HEMORRHAGE DUE TO STAB WOUND, CHEST, RIGHT."[33]

In Dr. Pagsaligan's opinion, each stab wound which caused the death of Celis and Sumagaysay was inflicted using a single-bladed weapon.[34] He further opined that the assailants might have used two (2) weapons.[35]

Delilah Celis Banderado, sister of Oscar Celis, presented the death certificate of Celis[36] and testified on the actual expenses amounting to P13,990.00, which they incurred due to the death of Celis.[37] She further testified that at the time of his death, her brother was 24 years old and had just graduated from an Electrical Engineering

course at the University of Mindanao.[38]

Romeo Sumagaysay, father of Jernie Sumagaysay, proffered the death certificate of Jernie,[39] and testified that he incurred P12,000.00 as funeral and burial expenses arising from the death of Jernie. He also testified that at the time of Jernie's death, Jernie was a second year college student at the University of Mindanao.[40]

As pointed out earlier, after the prosecution rested its case against Yungot, the other accused, Rommel Magpatoc was arrested and given a separate trial only insofar as the presentation of the prosecution's evidence-in-chief against him. A joint trial, however, was subsequently conducted for the defense of both accused-appellants as well as for rebuttal and surrebuttal.

Subsequent to his arrest and arraignment, accused-appellant Rommel Magpatoc filed a motion for bail dated March 1, 1993.[41] At the hearing[42] on the said motion, the prosecution presented as witnesses, Jose Oyson and Jose Lagamon, Jr. The defense, however, did not present any evidence.[43]

At the said hearing, Lagamon, Jr. claimed that he came to know Sumagaysay at the Davao Fiesta where they started drinking at around 8 p.m., on May 24, 1987.[44] He was with Celis, Sumagaysay and Ben Hur. He reiterated his testimony at Yungot's trial that they left Davao Fiesta between 9 and 10 p.m.; and walked towards RCBC, with himself and Ben Hur about two (2) meters ahead of Celis and Sumagaysay. Upon hearing footsteps behind them, he turned around and saw Celis being stabbed.[45] When asked by the trial judge if he knew the person who stabbed Celis, Lagamon, Jr. answered that he "...could not recognize the person who stabbed Celis because it happened so suddenly."[46] But when asked by the prosecutor if he could identify the assailants if he were to see them again, he answered, "I could recognize them by face."[47] He further recalled that about four (4) persons attacked his companions, two (2) or three (3) of whom were armed with knives. He also declared that Sumagaysay was stabbed in the same manner that Celis was stabbed, i.e., the assailant's left hand was placed on the victim's shoulder, while the former's right hand stabbed the victim.[48] He admitted that he could not clearly recognize Sumagaysay's assailant because the incident happened suddenly;[49] however, he maintained that Magpatoc was one of those who killed his companions.[50] On cross-examination and upon query by the trial court, Lagamon, Jr. pointed to Magpatoc as the person who stabbed Celis,[51] contrary to his testimony during Yungot's trial that Yungot was the one who stabbed Celis. When asked if he could recognize the person who attacked Sumagaysay if in court, he replied, "[h] e is not here."[52]

The prosecution also presented Jose Oyson as a witness at the hearing on Magpatoc's motion for bail.[53] Oyson testified that on May 24, 1987, at about 8:30 p.m., he was drinking at the Davao Fiesta in Claveria St., along with Jun Concorcio, Jun Laos, Edwin Yungot, Omie Magpatoc,[54] Allen Ledesma, Joe Dalman alias Idi, Jun Suaner alias Siquio and Jose Dodong Cahiwat.[55] He recounted that Jun Concorcio pointed at the group of Celis, Sumagaysay and two (2) others, who were laughing at him.[56] Corsiga[57] told them to "birahan" (to do some harm to) Celis, Sumagaysay and the two (2) others.[58] At about 10 p.m., when Celis, Sumagaysay and their two (2) companions left Barrio Fiesta, Oyson's group followed them.[59] Celis, Sumagaysay and their two (2) companions went towards Land Bank in Claveria St. Celis and Sumagaysay were walking behind their two (2) companions. Edwin Yungot, Josel Ayala alias Bobong Lanay[60] and Omie Magpatoc rushed towards Celis and Sumagaysay. Edwin Yungot stabbed Oscar Celis.[61] Oyson could not ascertain who between Magpatoc and Ayala actually stabbed Jernie Sumagaysay.[62] Yungot, Ayala and Magpatoc were armed with knives.[63] One (1) of the stabbed victims fell on the ground while the other victim was able to run away. Oyson was about seven (7) meters away from the place where the stabbing incident occurred. The said place was lighted with a fluorescent bulb. After the incident, Oyson and his companions ran away and proceeded to the dance on Roxas Avenue.[64] On cross-examination, Oyson testified that the group which followed Celis, Sumagaysay and their two (2) companions from Barrio Fiesta, included himself, accused-appellants, Edwin Yungot and Omie

Magpatoc, Joe Dalman, Allen Ledesma, Josel Ayala, Jun Laos, Edic, Jun Suaner alias Siquio, and Dodong Cahiwat.[65] They were all members of the Looban Young Killer (LYK) gang.[66] Oyson recalled that three (3) among his companions on the night of May 24, 1987, were armed with knives, namely, Yungot, Ayala and Magpatoc, because "they were [walking] ahead" of the group.[67] They followed Celis, Sumagaysay and their two (2) companions in order to "do harm to them."[68]

As pointed earlier, the prosecution adopted the foregoing testimonies of Jose Oyson and Jose Lagamon, Jr. during the hearing on Magpatoc's motion for bail, as part of its evidence-in-chief against Magpatoc. In addition to the foregoing testimonies, the prosecution presented anew five (5) witnesses, namely, P/Cpl. Dionisio Erispe, SPO4 Leonor Sonza, Sgt. Virgilio Jaranilla, Dr. Jose Pagsaligan and Delilah Celis Banderado, whom it had earlier presented during Yungot's trial. These five (5) witnesses' respective testimonies at Magpatoc's trial were substantially identical with their testimonies at Yungot's trial.

At Magpatoc's trial, P/Cpl. Dionisio Erispe further testified that while he was at the Davao Doctors Hospital, he was able to talk with the two (2) companions of the stabbed victim who was brought there. He identified these two (2) companions as Ben Hur and Joe Lagamon.[69] At the San Pedro Hospital, hospital employees gave him two (2) identification cards of Jernie Sumagaysay for safekeeping, which he subsequently turned over to the desk officer at the station.[70]

Dr. Jose Pagsaligan, the medical specialist from the Regional Health Office No. XI of the Department of Health (DOH), Davao City, who performed the autopsy on the two victims' cadavers on May 25, 1987, and issued Autopsy Report Nos. N-039-87 and N-040-87, also testified that because of the trajectory of the wound which Sumagaysay sustained, his assailant was most probably at his back, holding the bladed weapon.[71]

Delilah Celis Banderado, sister of Oscar Celis, testified anew on the actual expenses amounting to P13,990.00, which they incurred due to the death of Celis.

With leave of court, accused-appellants, Yungot and Magpatoc filed their respective Demurrers to Evidence,[72] which, however, were denied by the trial court in an Order dated November 10, 1993.[73]

Subsequently, a joint trial was conducted for the presentation of evidence for the defense. Rommel Magpatoc, in his defense, testified along with Allen Ledesma, Noel Cahiwat and Ysmael Cahiwat; while Edwin Yungot, also in his defense, presented Bernardo Bajenteng, Leovigildo Bautista and himself as witnesses.

According to accused-appellant Magpatoc, on May 24, 1987, at about 7:30-8:00 p.m., he went with his girlfriend to the dance held at the back of the Aldevinco building.[74] Together with three (3) others, namely, his girlfriend, Noel Cahiwag and the latter's friend, Magpatoc left the dance at around 11 p.m. and went home.[75] He denied having gone to Barrio Fiesta on that night.[76]

Allen Ledesma, a friend of Magpatoc, testified that on May 24, 1987, at 10 p.m., he was "inside the disco house" at Aldevinco Shopping Center with Magpatoc and Dodong Abellana.[77] At around 10:30 p.m., he went to the Davao Fiesta with Dodong Abellana upon the latter's invitation, leaving behind Rommel Magpatoc, who stayed in the "disco house."[78] Ledesma and Abellana joined six (6) others at the Davao Fiesta. After consuming three (3) bottles of beer, Ledesma left Davao Fiesta with a certain Anak,[79] bought some cigarettes and went back to the "disco house." Among the six (6) persons left behind at the Davao Fiesta were Dodong Cahiwat, a certain Caloy and a certain Lanay.[80] Jose Oyson was later identified as one of the six (6) persons,[81] whom Ledesma and Abellana joined at the Davao Fiesta. Likewise, Edwin Yungot was at the Davao Fiesta when they arrived there.[82]

Noel Cahiwat testified that on the night of May 24, 1987, he was at the dance held behind the Aldevinco

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Shopping Center, with Rommel Magpatoc, Allen Ledesma and several others. At about 9:30 p.m., a certain Jun Driver invited them to drink at the Davao Fiesta. He went to the Davao Fiesta with Dodong Siquio and another person whose name he could not remember.[83] Rommel Magpatoc and the others were left at the "disco house."[84] At 10 p.m., Noel Cahiwat left the Davao Fiesta with a companion and went back to the "dance hall."[85] At the "dance hall," Dodong Lanay told him that Jun Driver stabbed somebody.[86] On cross-examination, he admitted that in the evening of May 24, 1987, Jose Oyson was at the Barrio Fiesta with his group.

Ysmael Cahiwat, barangay captain of 33-B Poblacion, Davao City, testified to prove the good moral character of accused-appellant Magpatoc. He stated that Magpatoc had been active in community activities and had demonstrated leadership in the youth activities for the "IKP" chapel. According to Cahiwat, at the time of Magpatoc's arrest, the latter was an elected Sangguniang Kabataan member.

On the other hand, in his defense, Edwin Yungot testified that in the evening of May 24, 1987, he operated the "radio phono" at the benefit dance held at the back of the Aldevinco Center.[87] He operated the said "radio phono," without anybody's assistance, until the benefit dance ended at 1 a.m. of the following day. He confirmed that Magpatoc was at the benefit dance and that Magpatoc left when the dance ended at 1 a.m.[88]

Bernardo Bajenteng, a neighbor of Yungot and former president of the Pag-asa Youth Movement, corroborated Yungot's testimony that on May 24, 1987, he (Yungot) operated the sound system from 8 p.m. until 1 a.m. of the following day.[89] However, according to Bajenteng, Yungot was assisted by the son of the owner of the sound system. Furthermore, Bajenteng insisted, on cross-examination, that Yungot did not leave the benefit dance from 8 p.m. until 1 a.m. of the following day, except at one instance, that is, at about 9 p.m., Yungot left, but after five minutes, he returned back to the dance.[90] Bajenteng acted as the emcee at the dance.

Leovigildo Bautista,[91] a youth organizer associated with the Department of Social Welfare and Development (DSWD), issued a certification confirming that Yungot was a bonafide member of the Pag-asa Youth Movement.

On rebuttal, the prosecution presented Jose Oyson, who refuted Yungot's testimony that he was the operator of the "phonograph system" used at the benefit dance held on the night of May 24, 1987; and declared that it was Ruth Dionson, granddaughter of the owner of the "phonograph system," who operated the said system.[92] Oyson further claimed that Yungot and Magpatoc were at the Davao Fiesta in the evening of May 24, 1987.[93] He maintained that he saw Yungot, Magpatoc and Ayala stab Celis and Sumagaysay.[94] On cross-examination, he asserted that at 7:30 p.m., on May 24, 1987, he left the dance and went to the Davao Barrio Fiesta with accused-appellants, Edwin Yungot and Rommel Magpatoc, Jossel Ayala, Jun Laos, Allen Ledesma, Jun Suaner, Edi (Edic in footnote 65), Jose Dalman and Dodong Cajiwat.[95] After three (3) hours, all of them left the Barrio Fiesta, and returned to the dance after the stabbing incident had occurred.[96]

Still on rebuttal, Ruth Dionson disputed Yungot's testimony that he operated the sound system at the benefit dance held on May 24, 1987, and claimed she operated the said sound system with her aunt, Melanie Guinagao.[97]

The prosecution also recalled Sgt. Virgilio Jaranilla who testified that a week after May 24, 1987, as investigator, he went to the house of Yungot but failed to find Yungot.

On April 17, 1995, the trial court promulgated its joint decision dated March 28, 1995, finding both Yungot and Magpatoc guilty beyond reasonable doubt of murder in both Criminal Cases Nos. 15,377-87 and 15,378-87, imposing upon them two terms of reclusion perpetua, and the payment of actual, compensatory and moral damages, and costs. The dispositive part of the said decision reads:

"WHEREFORE, in Criminal Case No. 15,377-87, finding the accused Rommel (Umi) Magpatoc and Edwin

> Yungot guilty beyond reasonable doubt of the crime of MURDER punishable under Article 248 of the Revised Penal Code with no attendant circumstance, both are hereby sentenced to a penalty of reclusion perpetua, and to pay the cost; to pay the offended party jointly and severally the amount of P12,000.00 as actual damages; each to indemnify the offended party the amount of P50,000.00 as compensatory damages and P50,000.00 as moral damages.
>
> In Criminal Case no. 15,378-87, finding the two (2) accused Rommel (Umi) Magpatoc and Edwin Yungot guilty beyond reasonable doubt of the crime of MURDER punishable under Article 248 of the Revised Penal Code with no attendant circumstance, both are hereby sentenced to a penalty of reclusion perpetua, and to pay the cost; to pay the offended party jointly and severally the amount of P13,990.00 as actual damages; each to indemnify the offended party the amount of P50,000.00 as compensatory damages and P50,000.00 as moral damages."[98]

Hence, this appeal. Accused-appellant Edwin Yungot raises the following assignment of errors:[99]

> "I
>
> THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT YUNGOT GUILTY OF THE CRIME OF MURDER DESPITE THE FACT THAT HIS GUILT THEREOF WAS NOT DETERMINED BEYOND REASONABLE DOUBT.
>
> II
>
> AT ANY RATE, THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE THE FACT THAT THE SAME WAS NOT PROVEN DURING THE PROCEEDINGS THEREIN."

Accused-appellant Rommel Magpatoc, on the other hand, raises the following assignment of errors:

> "I
>
> THE TRIAL COURT HAD PREJUDGED THE GUILT OF THE ACCUSED BY REASON OF HIS DEFENSE OF ALIBI.
>
> II
>
> THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE PROSECUTION WITNESSES' TESTIMONIES DESPITE MATERIAL AND SUBSTANTIAL INCONSISTENCIES.
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> III
>
> THE TRIAL COURT ERRED IN NOT APPRECIATING THE CHARACTER EVIDENCE PRESENTED BY THE ACCUSED.
>
> IV
>
> THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED DESPITE THE STRENGTH OF THE DEFENSE OF ALIBI."

This Court is not persuaded.

Accused-appellant Edwin Yungot's arguments, in fine, revolve on the matter of credibility of the prosecution witnesses. In particular, Yungot cites several instances of inconsistencies in the testimony of prosecution witness Jose Lagamon, Jr. For instance, on direct examination at Yungot's trial, Lagamon, Jr. claimed that Yungot stabbed Celis. However, during the hearing on Magpatoc's motion for bail at Magpatoc's trial, Lagamon, Jr. asserted on both direct and cross-examinations that he could not recognize the person who stabbed Celis because the incident

happened suddenly; but immediately thereafter, he declared that he could recognize Celis' assailants only by face,[100] and in open court pointed at accused-appellant Rommel Magpatoc as the person who stabbed Celis.[101] Yungot argues that the "[s] aid inconsistencies in the testimony of Jose Lagamon, Jr. should not have been overlooked by the trial court, for it not only puts to doubt the identity of the assailant[s] in the crime[s] but likewise casts doubt as to the credibility of the said witness, the very foundation of the crime for which ... [he] stand[s] to lose his liberty."[102]

The argument is plainly unmeritorious. Well-settled to the point of being elementary is the rule of procedure that in rendering its judgment, the court must consider only such evidence, duly presented during the trial, for or against any party to the action, and made the sole basis of the decision therein.[103] Thus, Lagamon, Jr.'s testimony in the separate trial of Magpatoc cannot, at this stage, be used by Yungot to exculpate himself. Under Section 1(f), Rule 115 of the Rules of Court, "xxx xxx. [e] ither party may utilize as part of its evidence the testimony of a witness who is deceased, out of, or cannot, with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross-examine him. Thus, the only instance when Lagamon, Jr.'s testimony at the separate trial of Magpatoc could have been utilized as part of Yungot's evidence was if the said witness was deceased, out of or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, which was not proved at all in this case.

The trial court found Lagamon, Jr.'s testimony to be "clear, straightforward, convincing and rigning (sic) with sincerity."[104] According to the trial court:

> "There were two prosecution's witnesses, namely, Jose Lagamon, Jr. and Jose Oyson who were in the scene of the crime when it happened and actually witnessed the stabbing incident and saw who were the perpetrator[s] .
>
> "Jose Lagamon, Jr. testified twice, during the presentation of the prosecution's evidence against Edwin Yungot and in the hearing of the petition for bail of Rommel Magpatoc.
>
> "Jose Lagamon, Jr. was a classmate of the victim Oscar Celis, both graduated from the same school. On that night of September (should have been May) 24, 1987, he went to the Davao Barrio Fiesta place at Claveria St. to drink beer and found inside Oscar Celis and Jermie Sumagaysay and Ben Hur. Ben Hur was his former classmate and Jermie Sumagaysay was also known to him for they already met in the school.
>
> "After paying for the beers they drank, they proceeded home along the Claveria St., he and Ben Hur were walking a few meters ahead of Oscar Celis and Jermie Sumagaysay who were trailing closed (sic) behind. He heard a commotion at his back and when he turned around, he saw Celis and Sumagaysay were being stabbed. Three persons ganged up at Celis, the two holding Celis while the third one stabbed Celis at his breast while Celis was facing the assailant sidewise. He pointed to the accused Edwin Yungot as the person who stabbed Oscar Celis. The place where the stabbing incident occured (sic) was well lighted by [f] luorescent light so that he could fully recognized (sic) the faces of the assaillants (sic). The person who stabbed Sumagaysay was different from the person who stabbed Celis and he could also identify the assaillant (sic) of Sum[a] gaysay. He looked around the [c] ourtroom when asked to identify the assaillant (sic) of Sumagaysay and answered that he is (sic) not in the [c] ourt room. [L] et it be noted that he testified before the arrest of Rommel Magpatoc. xxx xxx."[105]

The above findings of the trial court are fully supported by the records. As shown by the transcripts, Lagamon, Jr. testified as follows:

> "PROSECUTOR DAYANGHIRANG III:

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"xxx xxx.

"Q:

Who were with you walking?

"A:

Ben Hur, myself, Sumagaysay and Celis.

"Q:

How far were Celis and Sumagaysay?

"A:

About 5 to 6 meters.

"xxx xxx.

"Q:

What happened while you were walking?

A:

"We were walking towards the direction of Land Bank when suddenly there was a commotion at the back.

"Q:

What did you do when you heard the commotion?

"INTERPRETER:

Witness demonstrating that Ben Hur's arm was around him at the back and when a commotion ensued he turned immediately his back and that he saw somebody thrust a knife.

"PROSECUTOR DAYANGHIRANG III:

"Q:

You said you turned your back, what did you see?

A:

"When I turned my back I saw the commotion at the back and somebody was stabbing Celis and Sumagaysay.

"Q:

How far were you when you turned your back from Celis and Sumagaysay?

"A:

Very near.

"Q:

Can you estimate?

"COURT:

The distance between?

"A:

Between me and Sumagaysay, about a meter away.

"PROSECUTOR DAYANGHIRANG III:

"xxx xxx.

"Q:

How about Celis? Did you see and demonstrate?

Please demonstrate how he was stabbed?

"A:

Celis was pushed and he turned around and 3 persons were ganging up on Celis and stabbed him.

"COURT:

"Q:

The persons whom you saw stabbed Sumagaysay also stabbed Celis?

"A:

No, sir, different persons.

"PROSECUTOR DAYANGHIRANG III:

"Q:

But that happened at the same time?

"A:

Yes, simultaneous.

"Q:

Will you be able to identify the assailants?

"A:

Yes, sir.

"xxx xxx.

"Q:

You said you can identify the assailants. With regard to Celis, can you identify the persons who stabbed him?

"A:

Yes, because the place was well lighted.

"Q:

Look around this courtroom and see if any of the assailants is in Court?

"INTERPRETER:

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The witness is looking around the courtroom and after looking for a while pointed to a person wearing a t-shirt with a print "Free" and when asked his name answered that he is Edwin Yungot.

"xxx xxx.

"Q:

Earlier, you pointed to a person who answered by the name of Edwin Yungot. What is his participation in the stabbing of Celis.

"A:

He was the one who stabbed first.

"Q:

What do you mean by "bira"?

"A:

He was the one who stabbed first. The other persons were holding on (sic) Celis.

"COURT:

"Q:

Who were the other persons? How many were they?

"A:

3 or 4 persons held Celis.

"Q:

And so, while those 3 or 4 persons held Celis this Edwin Yungot stabbed Celis from the back?

"A:

From the back.

"PROSECUTOR DAYANGHIRANG III:

"Q:

Please demonstrate how Edwin Yungot stabbed Celis?

"INTERPRETER:

The witness is demonstrating that Celis was stabbed at the left side of the body.

"COURT:

"Q:

You mean the body of Celis was facing sidewise Edwin Yungot when the latter stabbed Celis at his breast?

"A:

Yes, sir.

"Q:

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So the one who stabbed Celis was Yungot?

"A:

Yes, sir.

"Q:

How many times did you see Celis hit by Yungot?

"A:

About 2 or 3 times.

"Q:

While Yungot was stabbing Celis, the 3 or 4 companions of Yungot were holding Celis?

"INTERPRETER:

The witness demonstrating that 2 or 3 persons held the backside of the deceased Celis and he was twisted so that his left side was facing the assailant Edwin Yungot.

"xxx xxx." (emphasis supplied)[106]

Even assuming arguendo that Lagamon, Jr.'s testimony at Magpatoc's trial could be considered as part of Yungot's evidence, we have previously ruled that "[c] ourts are not bound to accept or reject the whole of the testimony of a witness. They may believe one part and disbelieve the other part of the testimony. If there are conflicts in the testimony which cannot be so reconciled as to admit every witness swearing the truth, the Court adopts that testimony which it believes to be true, taking into consideration the general character of the witness, his manner and demeanor on the stand while testifying, the consistency or inconsistency of his statements, their probability or improbability, his ability and willingness to speak the truth, his intelligence and means of knowledge, his motive to speak the truth or swear a falsehood."[107] As it were, the trial court aptly found the testimony of Lagamon, Jr. to be clear, straightforward, convincing and ringing with sincerity.

Nonetheless, even if we were to consider Lagamon, Jr.'s entire testimony as unreliable, unworthy of belief and undeserving of credence because of some inconsistency in his testimony, particularly regarding the identity of Celis' assailant, Yungot's active participation in the crimes charged was positively asserted by another eyewitness for the prosecution, Jose Oyson. In other words, Yungot's conviction was based not only on Lagamon, Jr.'s testimony but also on the testimony of another eyewitness, Jose Oyson, who categorically testified that:

"PROSECUTOR DAYANGHIRANG III:

"xxx xxx.

"Q:

Accused Yungot also declared before this court that on said date May 24, 1987 during the benefit dance held at the back of Aldevinco Shopping Center, he did not leave the dancing place during the duration of the dance party. What can you say to that declaration?

"A:

That is not true.

"Q:

If you know, where did Yungot go on the said date?

"A:

They were at the Davao Fiesta.

"Q:

What time did he go to the Davao Fiesta? On May 24, 1987?

"A:

About 8:30.

"Q:

8:30 in the evening?

"A:

Yes, sir.

"Q:

When you said "we," who were your companions who went to the Davao Fiesta on May 24, 1987 at 8:30 in the evening?

"A:

Alias Jun Driver, Edwin Yungot, Rommel Magpatoc, Jun Laos, Joe Dalman, Jun Suaner, Edi, Allen Ledesma, Dodong Cahiwat and me.

"COURT:

"Q:

What time was it when you and the group you mentioned left the dancing place in order to go to the Barrio Fiesta?

"A:

About 7:30.

"COURT:

Proceed.

"PROSECUTOR DAYANGHIRANG III:

"Q:

7:30 in the evening?

"A:

Yes, sir.

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"Q:

So the declaration of the other accused Magpatoc that they never left the dancing (sic) party during the whole duation (sic) of May 24, 1987 in the evening is also not true?

"A:

Not true.

"Q:

The 2 accused Yungot and Magpatoc declared before the Court that they have no participation in the stabbing incident on the evening of May 24, 1987 which resulted to (sic) the death of Oscar Celis and Gernie Sumagaysay which incident is now subject of these 2 criminal cases. What can you say to that?

"ATTY. MONTEJO:

It is not covered by the offer. The offer is only to rebut the testimony that they never left the dancing place.

"PROSECUTOR DAYANGHIRANG III:

It is in the record, Your Honor.

"STENOGRAPHER:

(Reading back the offer of testimony by the Public Prosecutor and the last question propounded by the Public Prosecutor.)

"COURT:

It is there.

"A:

That is not true.

"PROSECUTOR DAYANGHIRANG III:

"Q:

You said the declaration of the 2 accused is not true. What is the participation of Edwin Yungot to that stabbing incident which resulted to (sic) the death of Oscar Celis and Jernie Sumagaysay?

"A:

They were really the ones who stabbed. The three (3) of them.

"Q:

Who were the three (3) who stabbed?

"A:

Edwin Yungot, Rommel Magpatoc and Josel Ayala.

"Q:

Did you see these three (3) stab the victims?

"A:

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Yes, sir.

"Q:

How far were you from the stabbing of the 2 victims?

"A:

About seven (7) meters.

"Q:

The scene of the stabbing incident, was it well-lighted?

"A:

Yes, sir.

"xxx xxx." (emphasis supplied)[108]

Furthermore, the following circumstances, duly established by the evidence for the prosecution, which Yungot's defense of alibi could not surmount, proved that Yungot was one of those who participated in the killing of Celis and Sumagaysay and is, therefore, guilty beyond reasonable doubt:

"1. Yungot was positively identified by his companions on the night of May 24, 1987, Jonathan Abellana and Jose Oyson, as one of those who were drinking with them at the Davao Barrio Fiesta; and by Jose Lagamon, Jr. who was also drinking at the Davao Barrio Fiesta with Celis and Sumagaysay.

2. Yungot and his companions left the Davao Barrio Fiesta after three hours.

3. Celis, Sumagaysay, Lagamon, Jr. and Barol left the Davao Barrio Fiesta and walked towards Claveria St.

4. Yungot was one of the five or six persons involved in the stabbing incident, three or four of whom were armed.

5. Celis and Sumagaysay each died of a stab wound inflicted using a single-bladed weapon.

6. Immediately after the commission of the crimes, Yungot and Magpatoc resorted to flight.

7. Prosecution witnesses Jose Oyson, Jose Lagamon, Jr. and Jonathan Abellana were not shown to have any cause to testify falsely against Yungot."

The inconsistencies between the testimony of Lagamon, Jr. and Jose Oyson's testimony, particularly, the manner how Celis and Sumagaysay were attacked,[109] and the number of persons involved in the stabbing incident,[110] as further pointed out by Yungot, are more apparent than real, if not altogether immaterial and insignificant. Concededly, some inconsistencies may be noted; they are, however, not so material and substantial as to affect the credibility of the said witnesses; thus there is no compelling reason to disturb the findings of the trial court in this regard.

We now tackle the issue of whether treachery and conspiracy attended the commission of the crimes. Yungot's allegation that the trial court erred in appreciating the presence of treachery and conspiracy, is not supported by the records.

In People vs. Rivera,[111] we held that:

"There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without

> risk to himself arising from the defense which the offended party might make. Thus, for treachery or alevosia to be appreciated as a qualifying circumstance, the prosecution must establish the concurrence of two (2) conditions: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method or form of attack employed by him...."[112]

Indeed, the foregoing requisites were evidently present in the case at bar. Accused-appellant Yungot's attack, coming from behind, on the unarmed Oscar Celis, was sudden, unprovoked, unexpected and deliberate. To ensure or afford impunity, three (3) other persons were holding Celis while he was being stabbed by Yungot. Clearly, under these circumstances, Celis was in no position and without any means to defend himself. The attack was done in a manner which directly and specially insured the execution of the act without any risk to Yungot arising from the defense which Celis might have made. Thus, as correctly held by the trial court, treachery was present in this case, qualifying the crime to murder.

We are also in agreement with the trial court's finding that there was conspiracy between the accused-appellants, as alleged in the informations. As enunciated by the trial court:

> "xxx xxx.-
>
> Conspiracy of both the two accused and the others who participated in the stabbing was clearly proven by the evidence independent of the crime itself. It was shown that there was a unity of purpose of the two (2) accused and the others and the intention to stab the two victims simultaneously. When the two accused left the Davao Barrio Fiesta with the others immediately after the two victims and their two companions left said place, there was already the intention and plan to inflict injury upon the two victims. xxx xxx."[113]

Conspiracy, as alleged in the informations, was convincingly established. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[114] Conspiracy may be deduced from the mode and manner by which the offense was perpetrated, or inferred from acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.[115] In this case, the prosecution established that accused-appellants, Yungot and Magpatoc, and their companions left the Davao Barrio Fiesta right after Celis, Sumagaysay and their companions left the said place, with the intention "to do harm" to Celis, Sumagaysay and their two (2) companions. Coming from behind, Yungot stabbed Celis while three (3) others held and restrained him; and simultaneously or almost at the same time, Magpatoc rode on Sumagaysay's back and stabbed him. Yungot and Magpatoc each inflicted one fatal stab wound which caused the death of the victims. These concerted actions of accused-appellants reveal their common intent to harm Celis and Sumagaysay, if not cause them death.

In sum, we find no reason to disturb the findings of the trial court that the prosecution witnesses are more credible, that their testimonies were "clear, straightforward, convincing and rigning (sic) with sincerity" and that there was, as well, no reason for them to testify falsely against the accused-appellants, specially since the trial court had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, hence, its assessment of the credibility of the witnesses, is entitled to great respect. It may not be amiss to reiterate that on the issue of credibility of witnesses, appellate courts will not disturb the findings arrived at by the trial court, which was certainly in a better position to rate the credibility of the witnesses after hearing them and observing their deportment and manner of testifying during the trial. This rule stands absent any showing that certain facts and circumstances of weight and value have been overlooked, misinterpreted or misapplied by the trial court which, if considered, would affect the result or outcome of the case.[116] There is no such showing in this case, notwithstanding the valiant efforts of counsels for accused-appellants to create such an impression.

In like manner, accused-appellant Rommel Magpatoc, in his defense, submits that the credibility of prosecution witnesses, Jose Lagamon, Jr. and Jose Oyson, are suspect, pointing out several "material and substantial"

inconsistencies in their respective testimonies which were "simply overlooked" and "not considered" by the trial court.

As to Lagamon, Jr.'s testimony, Magpatoc cites the following inconsistencies: first, the distance between Lagamon, Jr. and the two victims at the time of the stabbing incident; second, the number of persons who attacked the victims; third, the number of assailants who were armed with knives; fourth, the act of the person who pointed a knife at Lagamon, Jr.; fifth, the identity of the person who stabbed Oscar Celis; and sixth, Lagamon, Jr.'s reaction when he was threatened by one of the assailants.[117] As to Jose Oyson's testimony, Magpatoc points out the following inconsistencies: first, the identity of the assailants; second, the number of assailants; third, the "unusual incident or conversation" at the Barrio Fiesta; and fourth, the activities/purpose of the Looban Young Killers group.[118] Magpatoc likewise cites the inconsistency between Oyson's testimony and that of Dr. Pagsaligan as to the relative positions of the victims and their assailants at the time of the stabbing incident.[119]

After a careful and thorough review of the evidence on record, particularly the testimonies of the witnesses, the Court notes that these alleged inconsistencies refer, at best, only to trivial, minor, and insignificant details and slight variations. In People vs. Alolod,[120] we held that:

> "xxx xxx. Recollection of different witnesses with respect to time, place and other circumstances of a criminal event would naturally differ in various details. Not all persons who witness an incident are impressed in the same manner and it is but natural that in relating their impressions, they disagree on the minor details and that there be contradictions in their testimonies. Witnesses cannot be expected to recollect with exactitude every minute detail of an event. This is especially true when the witnesses testify as to facts which transpired in rapid succession, attended by flurry and excitement. The testimony of each witness should not be expected to be identical to and coinciding with each other. It is enough that the principal points covered by their testimonies are established although they do not dovetail in all details which would even prove well-rehearsed and studied declarations. If witnesses should agree as to every detail of a transaction which occupied a considerable space of time, and should undertake to tell all that occurred in precisely the same order, each giving the same incident as the other in precisely the same words, that fact would be of itself a suspicious circumstance."[121]

The alleged inconsistencies bear no materiality to the commission of the crimes imputed against accused-appellants. As pointed out by the Solicitor General, "xxx xxx. [t] hese [seeming] discrepancies may be attributed to the fact that the witnesses were called to relate the incident almost five years after it transpired. It is not unusual for a witness to a startling occurrence, not to vividly and exactly remember minute details of the occurrence, such as [the] number and location of the wounds inflicted on the victim[s] especially, when he was called to testify only after a lapse of almost five years. xxx xxx."[122] Trivial incongruities within a testimony and between testimonies likewise do not impair the credibility of the witness/witnesses. Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall. In fact, the discordance in the testimonies of witnesses on minor matters heightens their credibility and shows that their testimonies were not coached or rehearsed, especially where there is consistency in relating the principal occurrence and positive identification of the assailant.[123]

Moreover, accused-appellant Magpatoc bewails the supposed failure of prosecution witness Jose Lagamon, Jr. to promptly report the crimes to the authorities; and assails the delay of prosecution witness Jose Oyson in testifying before the trial court.

The contention is untenable.

This Court has already taken judicial notice of the actuality that witnesses in this country are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations.[124] The initial reluctance to volunteer information about a criminal case and/or the unwillingness

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to be involved in a criminal investigation due to fear of reprisal are common and have been judicially declared to have no effect on credibility.[125]

Finally, Magpatoc alleges that the trial court erred in disregarding evidence of his good moral character. The allegation has no merit. In People vs. Cerelegia,[126] we ruled that "xxx xxx. [i] t is true that the good moral character of an accused having reference to the moral trait involved in the offense charged may be proven by him. But an accused is not entitled to an acquittal simply because of his previous good moral character and exemplary conduct if the Court believes he is guilty beyond reasonable doubt of the crime charged. The affirmance or reversal of his conviction must be resolved on the basic issue of whether the prosecution had discharged its duty of proving his guilt beyond peradventure of doubt."[127] After reviewing the evidence in this case, we are convinced that the prosecution has satisfactorily overcome the presumption of innocence accorded to every accused and that accused-appellants, Yungot and Magpatoc are guilty beyond reasonable doubt of the crime charged; thus, evidence of good moral character will not prevail.

Regarding accused-appellants' mutual defense of alibi, we rule that the trial court correctly rejected their alibi since it was not physically impossible for both accused-appellants to be at the scene of the crime at the time of its commission. We have ruled, time and again, that alibi is the weakest of all defenses and cannot stand against strong and positive identification, as in this case.[128]

WHEREFORE, premises considered, the appealed judgment of the Regional Trial Court of Davao City, Branch 16, in Criminal Case Nos. 15,377-87 and 15,378-87, finding accused-appellants, Edwin Yungot and Rommel Magpatoc guilty beyond reasonable doubt of murder on two counts, and sentencing each of them to reclusion perpetua for each count, and ordering them to pay the offended partly, jointly and severally, the amount of P50,000.00 as indemnity, and P50,000.00 as moral damages in each case and the amount of P12,000.00 and P13,990.00 as actual damages in Criminal Cases Nos. 15,377-87 and 15,378-87, respectively, is hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 40-55.

[2] Presided by Judge Romeo D. Marasigan.

[3] Rollo, pp. 54-55.

[4] Both informations were later amended to include the name of accused-appellant Rommel Magpatoc, a.k.a Umi Magpato whose alias was erroneously written as the alias of accused-appellant Edwin Yungot. The information in Criminal Case No. 15,377-87 was also subsequently amended to reflect the real name of accused Joel Ayala @ Dodong Lanay, which is Josel Ayala. Records, pp. 1, 8. See also TSN, March 8, 1993, p. 7.

[5] Records, p. 1.

[6] Ibid. at p. 8.

[7] Ibid. at pp. 19-20.

[8] Ibid. at p. 66.

[9] Ibid. at p. 82.

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[10] The prosecution presented two (2) witnesses, Jose Oyson and Jose Lagamon, Jr. at the hearing on Magpatoc's motion for bail.

[11] Records, pp. 90-91.

[12] Jose Oyson and Jose Lagamon, Jr. testified for the prosecution at the hearing on Magpatoc's motion for bail. Their testimonies were adopted by the prosecution as part of its evidence-in-chief against Magpatoc. See TSN, June 15, 1993, pp. 7-8.

[13] Sometimes referred to as Gernie Sumagaysay.

[14] Sometimes referred to as the Fiesta, Davao Fiesta, Davao Barrio Fiesta or Barrio Fiesta.

[15] TSN, February 25, 1992, pp. 18-19.

[16] TSN, February 25, 1992, pp. 16-17.

[17] TSN, February 25, 1992, p. 21.

[18] TSN, February 25, 1992, pp. 17, 22.

[19] TSN, February 25, 1992, p. 18.

[20] TSN, February 25, 1992, p. 19.

[21] TSN, February 25, 1992, p. 24.

[22] TSN, February 25, 1992, pp. 25-26.

[23] TSN, February 25, 1992, pp. 31, 34.

[24] TSN, February 25, 1992, p. 34.

[25] TSN, February 25, 1992, p. 11.

[26] Referring to accused-appellant Rommel Magpatoc.

[27] Referring to Allen Ledesma, Jun-jun Oyson, Jun, Josel Ayala, Edwin Yungot and Omi Magpatoc. TSN, February 25, 1992, p. 7.

[28] TSN, January 30, 1992, pp. 7-11.

[29] Exhibits M and N, Records, pp. 697-698.

[30] Involving Oscar Celis.

[31] Exhibit O, Records, p. 699.

[32] Involving Jernie Sumagaysay.

[33] Exhibit P, Records, p. 700.

[34] TSN, November 25, 1992, pp. 6-7.

[35] TSN, November 25, 1992, p. 10.

[36] Exhibit A, Records, p. 684.

[37] Exhibits B-G, Records, pp. 685-690.

[38] TSN, January 10, 1992, p. 11.

[39] Exhibit L, Records, p. 696.

[40] TSN, January 13, 1992, p. 15. Incidentally, unlike Delia Celis Banderado, Romeo Sumagaysay was not presented anew at Magpatoc's trial.

[41] Records, pp. 66-68.

[42] The prosecution adopted, as part of its evidence-in-chief against Magpatoc, the testimonies of the two (2) witnesses - Jose Oyson and Jose Lagamon, Jr., which it presented during the hearing on Magpatoc's motion for bail.

[43] TSN, March 8, 1993, p. 48.

[44] TSN, March 8, 1993, pp. 27-30.

[45] TSN, March 8, 1993, p. 33.

[46] TSN, March 8, 1993, p. 34.

[47] TSN, March 8, 1993, p. 34.

[48] TSN, March 8, 1993, p. 35.

[49] TSN, March 8, 1993, p. 36.

[50] TSN, March 8, 1993, p. 37.

[51] TSN, March 8, 1993, p. 43.

[52] TSN, March 8, 1993, p. 44.

[53] Incidentally, the prosecution failed to present the testimony of this witness as part of its evidence-in-chief against Yungot due to its failure to locate this witness inspite of several warrants of arrest issued by the trial court.

[54] Referring to accused-appellant Rommel Magpatoc.

[55] TSN, March 8, 1993, pp. 4-5.

[56] TSN, March 8, 1993, p. 6.

[57] Referring to Jun Concorcio.

[58] TSN, March 8, 1993, pp. 7-8.

[59] TSN, March 8, 1993, p. 8.

[60] Sometimes referred to as Dodong Lanay.

[61] TSN, March 8, 1993, p. 9.

[62] TSN, March 8, 1993, pp. 10-11.

[63] TSN, March 8, 1993, p. 11.

[64] TSN, March 8, 1993, p. 12.

[65] TSN, March 8, 1993, p. 20.

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[66] TSN, March 8, 1993, p. 16.

[67] TSN, March 8, 1993, p. 21.

[68] TSN, March 8, 1993, pp. 21-22.

[69] TSN, June 15, 1993, pp. 16-17.

[70] TSN, June 15, 1993, p. 27.

[71] TSN, July 13, 1993, pp. 11-12.

[72] Records, pp. 113, 148.

[73] Ibid. at p. 162.

[74] TSN, March 25, 1994, p. 6.

[75] TSN, March 25, 1994, pp. 10, 13-14.

[76] TSN, March 25, 1994, p. 10.

[77] TSN, January 10, 1994, pp. 4-5.

[78] TSN, January 10, 1994, pp. 5-6, 8.

[79] Later identified as Jude Dalman. TSN, January 10, 1994, p. 20.

[80] TSN, January 10, 1994, p. 15.

[81] TSN, January 10, 1994, p. 22.

[82] TSN, January 10, 1994, p. 23.

[83] TSN, January 10, 1994, p. 30.

[84] TSN, January 10, 1994, p. 31.

[85] TSN, January 10, 1994, pp. 32-33.

[86] TSN, January 10, 1994, p. 33.

[87] TSN, September 2, 1994, pp. 13-14.

[88] TSN, September 2, 1994, pp. 17, 33.

[89] TSN, April 21, 1994, pp 6-8

[90] TSN, April 21, 1994, pp. 15, 17.

[91] Also referred to as Evigildo Bautista.

[92] TSN, November 24, 1994, pp. 3-4.

[93] TSN, November 24, 1994, pp. 4-5.

[94] TSN, November 24, 1994, p. 6.

[95] TSN, November 24, 1994, p. 10.

[96] TSN, November 24, 1994, pp. 12-13.

[97] TSN, November 24, 1994, pp. 18-19.

[98] Rollo, pp. 54-55.

[99] Ibid. at p. 179.

[100] Ibid. at pp. 183-184.

[101] Ibid. at pp. 184-185.

[102] Ibid. at p. 185.

[103] People vs. Guevarra, 94 SCRA 642, 652 (1979).

[104] Rollo, p. 52.

[105] Ibid. at p. 51.

[106] TSN, February 25, 1992, pp. 16-22.

[107] People vs. Tabadero, 115 SCRA 756, 762-763 (1982).

[108] TSN, November 24, 1994, pp. 4-6.

[109] Rollo, pp. 191-194.

[110] Ibid. at pp. 195-196.

[111] 295 SCRA 99 (1998).

[112] People vs. Rivera, 295 SCRA 99, 113 (1998), citing People vs. Magallanes.

[113] Rollo, p. 54.

[114] Article 8, paragraph 2, Revised Penal Code.

[115] People vs. Galapin, 293 SCRA 474, 490 (1998).

[116] People vs. Lacatan, 295 SCRA 203, 210-211 (1998).

[117] Rollo, pp. 84-85.

[118] Ibid. at p. 85.

[119] Ibid. at p. 86.

[120] 266 SCRA 154 (1997).

[121] People vs. Alolod, 266 SCRA 154, 161-162 (1997).

[122] Rollo, pp. 159-160.

[123] People vs. Crisostomo, 293 SCRA 65, 73 (1998).

[124] People vs. Pallarco, 288 SCRA 151, 165 (1998).

[125] People vs. Santos, 270 SCRA 650, 668 (1997).

[126] 147 SCRA 538 (1987).

[127] People vs. Cerelegia, 147 SCRA 538, 550 (1987).

[128] People vs. Violin, 266 SCRA 224, 230 (1997).

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