

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAXIMO DELMO Y ISLA, EDMUND DELMO Y VELASQUEZ, FRANCISCO LAPIZ Y REYES, AND DANILO LAPIZ Y REYES, ACCUSED-APPELLANTS.

G.R. Nos. 130078-82. October 04, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the consolidated decision[1] of the Regional Trial Court of Biñan, Laguna, Branch 24, dated March 20, 1997, in Criminal Cases Nos. 9453-B to 9456-B for murder and Criminal Case No. 9457-B for frustrated murder, which decreed as follows:

WHEREFORE, finding the accused Maximo Delmo, Francisco “Kit” Lapiz and Edmon[2] Delmo GUILTY beyond reasonable doubt as principals in the crimes of murder on four (4) counts and frustrated murder on one (1) count, they are hereby sentenced to suffer death penalty each in Criminal Cases Nos. 9453-B to 9456-B for murder and a penalty of reclusion perpetua in Criminal Case No. 9457-B for frustrated murder, with the accessory penalties set by law, to pay a civil indemnity in the amount of P50,000.00 each in the murder cases and to pay jointly and severally actual damages in the total amount of P426,458.34 to the legal heirs of the dead victims and Helen Grace Payumo.

Likewise, finding the accused Danilo Lapiz GUILTY beyond reasonable doubt as accomplice in the crimes of murder on four (4) counts and frustrated murder on One (1) count, (a) he is hereby sentenced to suffer a penalty of reclusion perpetua each in Criminal Cases Nos. 9453-B to 9456-B for murder, (b) and applying the Indeterminate Sentence Law, he is further sentenced to suffer an indeterminate penalty ranging from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum in Criminal Case No. 9457-B for frustrated murder, with the accessory penalties set by law and to pay jointly with the other accused actual damages in the total amount of P426,458.34 to the legal heirs of the dead victims and Helen Grace Payumo.

While the penalty of reclusion perpetua imposed against the accused Danilo Lapiz might be too harsh and cruel considering that he did not participate directly in the commission of the crimes of murder and frustrated murder, courts are not the forum to plead for sympathy. The duty of courts is to apply the law, disregarding their feeling of sympathy or pity for an accused. DURA LEX SED LEX. The remedy is elsewhere- clemency from the executive or an amendment of the law by the legislative, but surely, at this point, this court can but apply the law. (People v. Amigo, G.R. No. 116719, January 18, 1996).

Let the complete records of these cases be forwarded to the Honorable Supreme Court within twenty (20) days but not earlier than fifteen (15) days after promulgation of this decision pursuant to Sec. 10, Rule 122 of the Rules of Court.

SO ORDERED.[3]

These cases stemmed from the brutal slaying of several members of the family of Angelito Payumo at their residence in Sta. Rosa, Laguna. In the afternoon of September 9, 1995, the bodies of Angelito’s estranged wife,

Nancy Payumo, 40 years of age, her daughters Joanna Rose,[4] 17 years of age, and Maria Angela,[5] 15 years old, and son John Anton,[6] 13 years old, were found lying in pools of blood inside their house. Nancy had been blindfolded, gagged, and hogtied. Joanna Rose was gagged and so was Maria Angela, whose feet were also tied. All had died from multiple stab wounds inflicted upon them early in the morning of September 9, 1995. Lying with them, unconscious from three stab wounds, likewise tied up, blindfolded, and gagged, was the youngest daughter, Helen Grace,[7] 11 years of age. Prompt and able medical attention saved her from the fate of her mother and siblings. She was the only survivor of what local media bannered as the “Payumo Massacre.”

The public outcry that ensued saw various law enforcement agencies rush to solve the murders. Acting on a tip received from an unnamed informant,[8] elements of the Philippine National Police (PNP) brought in appellant Danilo Lapiz[9] for questioning on September 16, 1995. Three days earlier, PNP investigators had already picked up appellant Francisco “Kit” Lapiz, the brother of Danilo, for questioning about the slayings.[10] On September 17, 1995, appellants Edmund Delmo and Maximo Delmo (no relation to each other) were separately invited by the police for investigation regarding the massacre.[11]

On September 18, 1995, while still in police custody, Danilo Lapiz made an extrajudicial confession naming the two Delmos and his elder brother Francisco “Kit” Lapiz as the culprits.[12] As a result, the police filed on September 19, 1995 a complaint for murder, docketed as Criminal Case No. 7369,[13] and another for frustrated murder, docketed as Criminal Case No. 7370,[14] with the Municipal Trial Court (MTC) of Sta. Rosa, Laguna, against Maximo Delmo, Edmund Delmo, and Francisco Lapiz. That same day, MTC Judge Estanislao Belan, who was handling the preliminary investigation of the cases, ordered the detention of appellants.

On September 20, 1995, the police amended the complaints to include Danilo Lapiz, who refused to turn state witness.

On September 25, 1995, Danilo formally retracted his extrajudicial confession before the MTC judge. Danilo claimed that he had been tortured by the police into making a confession.

On the same day, Helen Grace Payumo recovered from coma at the Makati Medical Center. She was pronounced fit by her doctors for questioning by the investigators. Under questioning, she pointed to three teenagers, namely, Jessie “Jojo” Ramos, Allan Cruzata, and Bernabe Ibañez[15] as the persons responsible for the slaying of her family. She picked out their photos[16] from the 38 photographs shown her by the investigators and executed a sworn statement[17] naming them as the authors of the crime and reciting their acts in detail.

On September 26, 1995, Judge Belan went to the Makati Medical Center and interviewed Helen Grace regarding her sworn statement.[18] As a result, Judge Belan amended the complaints in Criminal Cases Nos. 7369-70, to include Ramos, Cruzata, and Ibañez as suspects.[19]

On October 27, 1995, Judge Belan issued a resolution[20] finding probable cause against all the six accused and forwarded his findings in Criminal cases Nos. 7369-70 to the Provincial Prosecutor of Laguna for review. The latter formed a panel of prosecutors to go over the findings of Judge Belan.

On November 22, 1995, the panel ordered a reinvestigation of the case.

On January 18, 1996, Helen Grace executed another sworn statement, this time retracting her accusations against Ramos, Cruzata, and Ibañez. Instead, she named Maximo Delmo, Edmund Delmo, and Francisco Lapiz as the perpetrators of her family’s slaying.[21]

On February 27, 1996, the review panel dismissed the charges against Ramos, Cruzata, and Ibañez. It ordered the filing of charge sheets for multiple murder and frustrated murder against Maximo, Edmund, Francisco, and

Danilo.

All the accusatory sheets for murder were similarly worded except for the names of the victims. Thus, in Criminal Case No. 9453-B, the information averred:

That on or about September 9, 1995, in the Municipality of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Maximo Delmo y Isla, Edmund Delmo y Velasquez, Francisco Lapiz y Reyes and Danilo Lapiz y Reyes, conspiring, confederating together and mutually helping one another, with intent to kill, while conveniently armed with a bladed weapon, sharp objects and wooden replica of [a] rifle with cruelty and treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, hit and stab JOANA ROSE PAYUMO y IBARDOLAZA with the said weapon thereby inflicting her multiple stab wounds on the different parts of her body which directly caused her death to the damage and prejudice of her surviving heirs.

CONTRARY TO LAW.[22]

The information in Criminal Case No. 9454-B charged appellants with the murder of John Anton Payumo.[23] In Criminal Case No. 9455-B, appellants were charged with the murder of Maria Angela Payumo,[24] and in Criminal Case No. 9456-B, the information accused appellants of the murder of Nancy Payumo.[25]

In addition, appellants were likewise charged in Criminal Case No. 9457-B with the frustrated murder of Helen Grace in an information which reads:

That on or about September 9, 1995, in the Municipality of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Maximo Delmo y Isla, Edmund Delmo y Velasquez, Francisco Lapiz y Reyes and Danilo Lapiz y Reyes, conspiring, confederating together and mutually helping one another, with intent to kill, while conveniently armed with a bladed weapon, sharp objects and wooden replica of [a] rifle with cruelty and treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, hit and stab HELEN GRACE “Sweet” PAYUMO y IBARDOLAZA with the said weapon thereby inflicting her wounds on the different parts of her body, thus performing all the acts of execution which would have produced the crime of murder as consequence, that nevertheless did not produce it by reason of cause independent of their will, that is, by the timely and able medical assistance rendered to Helen Grace Payumo y Ibardolaza, to her damage and prejudice.

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CONTRARY TO LAW.[26]

On arraignment, appellants pleaded “not guilty” to the charges. Trial then ensued.

The prosecution heavily relied upon the lone survivor’s testimony. The Office of the Solicitor General (OSG) summed up the prosecution’s version as follows:

Early in the morning of September 9, 1995, while 11-year-old Helen Grace “sweet” Payumo was sleeping inside her room at their house in Panorama Ville Subdivision, Dita, Sta. Rosa, Laguna, she was awakened by some noise in the living room. Her sister, Maan, who was sleeping with her, was also awakened. Despite Sweet’s protestations, Maan went out of the room when they heard their other sister, Joan, screaming. Worried, Sweet also went out a little while after. There, she saw their mother, Nancy, lying beside the bathroom door, gagged, blindfolded, and hogtied. Standing beside her was appellant Maximo Delmo whom Sweet knew as “Tito Imoy,” her father’s friend. She also saw Edmund Delmo by the dining table guarding her Ate Maan who was lying on the floor. Another man, whom she did not recognize, (Later found to be Francisco Lapiz) was kneeling and tying the hands of her brother, John Anton, who was lying face down near the T.V. set. Joan, on the other hand, was lying on the sofa, already blindfolded, gagged, and hogtied. When Francisco

saw Sweet, he gagged and hogtied and blindfolded her with a soft and thin fabric “malambot na manipis.” Then, the appellants entered the master’s bedroom. When they came out a few minutes later, Sweet, Nancy, Joan and Maan were dragged to the same room by Maximo and Francisco. John Anton was left outside with Edmund.

Unnoticed by the appellants, Sweet’s loosely tied blindfold slipped while she was being dragged into the room.

Although the lights in the room were off, Sweet, through the street lamppost light shining through the window, saw Maximo rummaging through the closets there.

It was then when Lapiz started stabbing all of them. Doon na po kami pinagsasaksak. Nancy was first, then Joan and Maan. Meanwhile, Sweet heard the screams of her Kuya John Anton from outside saying, “Aray-aray, huwag na po.” When it was her turn, Lapiz hit Sweet with a piece of wood on the face and legs. After that, he stabbed her at the left side of the neck, “Dito po sa leeg (witness pointing to the left side of her neck).” “Bago po niya tanggalin, inikot-ikot pa po niya iyong patalim.” Then, another thrust was made at the left waistline just above the hipbone. Extreme pain made her lose consciousness thereafter.

Early in the morning of September 9, 1995, Ellen Marjes, next door neighbor of the Payumos, heard a faint woman’s voice coming from the Payumo residence saying, “Diyos ko po, Diyos ko po.” She did not hear the voice again. About 10:00 o’clock that same morning, Ellen’s daughter, Maay, passed by the Payumo residence for Sweet on her way to St. Anne School where they were schoolmates. Failing to get a response after knocking and shouting for Sweet at their front door, Maay went on her way. A little while after, Ellen and her “El Shaddai” “sister” went next door to look for Nancy. Failing to see her or get a response, the two went back to Ellen’s house and just decided to come back at 1:00 o’clock that afternoon. But at 1:00 o’clock, none responded from the Payumo house. Later, another of Nancy’s friends, Neddy Banag, came to Ellen and asked where Nancy was. When Ellen and Neddy proceeded next door, they still got no answer. Worried, they fetched Coney Salazar and started calling at the Payumo residence. When nobody answered, Coney pushed one of the bedroom windows, parted the curtain and peeped inside. She saw bodies and thought “they were all asleep.”

After knocking and calling some more without getting any answer, they called Homeowner Association President Willie Candelario. Candelario had the roof of the Payumo residence scaled. When the front door was opened, Coney was able to go into the house. Inside, she started shouting “Patay na, patay na ang kumare ko.” Candelario also entered and he saw the bloodied living room floor. Inside the master’s bedroom, he saw Joan lying on the bed face down, Maan was lying on her right side on the cement floor, Nancy also on the floor at the side of the bed, all gagged, bound, bloodied, and lifeless. Then, he saw Sweet seated on the floor leaning on the wall and the corner of the cabinet. Although bloodied, she was still breathing. Together with Danilo Guevara, they rushed Sweet to the St. James Hospital about 500 meters away. (Citations omitted.)[27]

Appellants raised the defense of denial and alibi. All claimed to be fall guys who merely framed by the investigators and prosecutors.

As to appellant Maximo Delmo, the trial court summed up his defense as follows:

...In a nutshell, he testified that he was at home on the date and time in question; that he went to the house of the Payumos in the afternoon of September 9 and assisted the NBI and police authorities in their investigation and likewise assisted Lito Payumo up to the time of burial on September 16, 1995; that on September 17, 1995, he was picked up by the CIC and thereafter investigated and framed up by the authorities; and that he was never involved in the Payumo massacre.[28]

Maximo’s alibi was corroborated by the testimonies of his wife, Evangeline Delmo, and their helper, Sheila Ramos. Evangeline declared in open court that:

...Maximo Delmo stayed at their house located at Lot 5, Block 6, Panorama Village Subdivision, Sta. Rosa, Laguna, from the moment he arrived at 8:00 o'clock in the evening of September 8 until past 7:00 o'clock in the morning of September 9, 1995 when he rose from his bedroom to take a bath, take his breakfast and proceed to their store in Cabuyao, Laguna...[29]

Edmund Delmo likewise denied any involvement in the slayings. As found by the trial court:

...[He] put up the defense of alibi alleging that in the early morning of September 9, 1995, between 12:00 o'clock midnight and 6:00 o'clock in the morning, he was at the residence of a certain Celina located at Barangay Dita, Sta. Rosa, Laguna, playing mahjong. He further alleged that subsequent to the killing of the members of the Payumo family, he was just picked up by the police and detained and found himself ending up as one of the accused in these cases.[30]

Edmund presented a fellow mahjong player, one Venancio Reyes Reformo, to corroborate his account

Francisco Lapiz alleged in his defense that:

...[O]n the date and time of the tragic incident, he was at home; that he was arrested without any warrant of arrest; and that he was charged in the instant case, apart from two other cases, because he did not cooperate with the authorities who implicated him.[31]

Francisco presented a mason, Florencio P. Reyes, as well as his wife, Rosie Lapiz, to buttress his alibi.

The trial court synthesized Florencio's testimony as follows:

...[H]e is a mason-carpenter hired by the accused Francisco "Kit" Lapiz to remove the wall of his house and construct an additional room; that on September 8, 1995, he was alone with Francisco Lapiz in his house and that the latter never went out of his house on the evening of September 8 until the morning of September 9, 1995.[32]

Anent Rosie Lapiz, the trial court summed up the relevant portions of her testimony in this manner:

...[O]n September 8, 1995, she left for Pasig City to borrow money from her sister and returned the following morning of September 9, 1995 at about 5:00 a.m.; when she arrived at home, she found her husband Kit and their mason Florencio still sleeping; Kit was still sleeping at the sofa located at the sala while Florencio was sleeping at the new room being constructed.[33]

With respect to appellant Danilo Lapiz, the gist of his testimony was that:

...[O]n the date and time in question, he was working at the San Miguel Foods, Inc. as borne out by his time card (Exh. "59") and corroborated by his foreman, Dante Esporlas. Likewise, he alleged that on September 16, 1995, he was forcibly taken at gunpoint by seven (7) armed men without any warrant of arrest and subsequently taken to a safehouse somewhere in San Antonio, Sta. Rosa, Laguna. He was interrogated without the assistance of counsel of his own choice starting from September 16, 1995 and was subjected to undue pressure and violence...Except [for] his brother, Francisco Lapiz, he does not know his co-accused. He came to know Edmond Delmo at the PNP, Cabuyao, Laguna, whereas Maximo Delmo was seen by him at Camp Vicente Lim, Canlubang, Laguna, where he was ordered to pinpoint Maximo Delmo. He was the last one to sign an alleged confession he never read and without the assistance of a counsel of his own choice. In fact, State Prosecutor Lamberto de Vera and Atty. Demetrio Hilberto signed the confession ahead of him.[34]

The trial court found the prosecution's evidence more than ample to establish with moral certainty the guilt of all the appellants and convicted them of the charges.

Hence, this appeal, with appellants individually submitting their separate appeal briefs.

Appellant Maximo Delmo assigns the following errors:

I

THE TRIAL COURT ERRED IN CONVICTING MAXIMO WHOSE GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT — TO A MORAL CERTAINTY

II

THE TRIAL COURT ERRED IN DISREGARDING MAXIMO'S DEFENSE OF ALIBI AND DENIAL.[35]

For his part, Edmund Delmo submits for our consideration the following issues:

I

WHETHER OR NOT SWEET PAYUMO WAS WORTHY OF BELIEF AND THAT HER TESTIMONY WAS OF SUCH CHARACTER AS TO SPUR CREDENCE TO SERVE AS BASIS TO CONVICT ACCUSED-APPELLANTS AS CHARGED BEYOND REASONABLE DOUBT; and

II

WHETHER OR NOT THE EXTRA-JUDICIAL (CONFESSION) OF ACCUSED-APPELLANT IS ADMISSIBLE IN COURT.[36]

Appellant Francisco Lapiz, in turn, submits that the trial court erred:

I

IN DISREGARDING THE CONSTITUTIONAL AND LEGAL PRESUMPTION OF INNOCENCE WHICH THE ACCUSED ENJOYS IN OUR LEGAL SYSTEM;

II

IN RELYING MERELY ON THE TESTIMONY OF A LONE REHEARSED AND INCREDIBLE WITNESS WITHOUT CORROBORATING EVIDENCE;

III

IN DISREGARDING THE INCONSISTENCIES OF THE TESTIMONY OF THE LONE WITNESS NOT ONLY ON HER STATEMENTS IN THE COURT AND HER TWO (2) SWORN AFFIDAVITS BUT ALSO IN THEIR RELATIONS (sic) WITH THE ACTUAL OCULAR INSPECTIONS MADE AND CONDUCTED BY THE COURT ON (sic) THE PLACE WHERE THE CRIME WAS COMMITTED;

IV

IN DISREGARDING THE CLEAR REASONABLE DOUBT BASED ON THE FOLLOWING CIRCUMSTANCES:

A] THE TIME AND PLACE OF THE COMMISSION OF THE CRIME AS WELL AS THE HEAVY RAIN IN THE PLACE THAT WILL FORESTALL THE POSSIBILITY OF IDENTIFYING THE SUSPECTS BY THE LONE WITNESS WHO WAS JUST SUDDENLY AWAKENED BY THE TROUBLE AND MURDEROUS INCIDENT IN HER HOUSEHOLD;

B] THE ABSENCE OF THE MOTIVE ON THE PART OF THE APPELLANT;

C] THE FACT THAT THE APPELLANT HAD ALREADY BEEN ARRESTED WITHOUT WARRANT BY THE ASSIGNED POLICE OFFICERS EVEN BEFORE ACTUALLY CONDUCTING ANY SERIOUS INVESTIGATION ON THE CASE IN VIOLATION OF LAW AND PROCEDURE BY DISREGARDING

HIS CONSTITUTIONAL RIGHTS;

D) THE FACT THAT THE LONE WITNESS IMMEDIATELY AFTER REGAINING CONSCIOUSNESS FROM THE SHOCK, AND BEFORE BEING ABLE TO TALK TO ANYONE OF HER FRIENDS, RELATIVES OR THE MEDIA, DIRECTLY POINTED TO THE TEENAGERS AS THE PERSONS WHO KILLED HER MOTHER, BROTHER AND TWO (2) SISTERS INCLUDING HERSELF (sic) BEFORE THE AGENTS OF THE NATIONAL BUREAU OF INVESTIGATION (NBI) [THE LEAD AGENCY OF THE TASK FORCE PAYUMO MASSACRE];

E) DESPITE HER TESTIMONY AGAINST THESE TEENAGERS, THE POLICE INSISTED WITHOUT BASIS TO PIN DOWN THE APPELLANT IN THIS CASE. CONTINUED TO DETAIN AND EVEN FILED BASELESS CASES AGAINST HIM FOR DRUGS AND ILLEGAL POSSESSION OF FIREARMS, MERELY TO JUSTIFY HIS DETENTION UNTIL THE SAID POLICE OFFICERS AND THE DEPARTMENT OF JUSTICE WERE ABLE TO PRODUCE THE CHANGED AND REVISED STATEMENT (“SALAYSAY”) FROM THE LONE SURVIVOR FOUR (4) MONTHS THEREAFTER WITHOUT THE KNOWLEDGE OF THE NBI AGENTS, AND INSTEAD ON THE HEREIN APPELLANTS;

F) THE ACCUSED (APPELLANT HEREIN) WAS NOT AT THE SCENE OF THE CRIME. HE NEVER LEFT HIS RESIDENCE THE WHOLE DAY AND NIGHT WHEN THE CRIME WAS COMMITTED;

G) THE CHANGE OF MIND BY THE LONE WITNESS POINTING TO THE APPELLANT WAS MADE FOUR (4) MONTHS AFTER SHE HAD POINTED VERY CLEARLY TO THE HIP-HOP BOYS, AFTER SHE BECAME CONTROLLED AND PROTECTED BY AND UNDER THE WITNESS PROTECTION PROGRAM, SUPERVISED AND CONTROLLED BY THE D.O.J. AND THE POLICE INVESTIGATORS WHO, FROM THE BEGINNING, WANTED TO PIN DOWN THE APPELLANT FOR THIS PARTICULAR CRIME;

H) THE ACCUSED IN THIS CASE DID NOT HAVE CLOSE ASSOCIATION WITH EACH OTHER BEFORE, DURING AND AFTER THE COMMISSION OF THE CRIME CHARGED EXCEPT FOR FRANCISCO LAPIZ AND DANILO LAPIZ WHO ARE BROTHERS;

I) THAT THE HEREIN APPELLANT AND ALL THE ACCUSED NEVER LEFT THEIR HOUSES AND FAMILIES, NOR EVEN ATTEMPTED TO RUN IN HIDING, BUT WERE ARRESTED AND TORTURED IN VIOLATION OF THEIR CONSTITUTIONAL RIGHTS WITHOUT WARRANT OF ARREST EVEN BEFORE THE LONE SURVIVOR “EYE WITNESS COULD SPEAK”;

J) ON THE REVISED STATEMENT KNOWN AS “SALAYSAY,” IT WAS IMPOSSIBLE FOR THE LONE WITNESS TO IDENTIFY THE APPELLANT AS THE SUSPECT OF THE CRIME IN THE DARK ROOM, NO LIGHT AT ALL IN THE HOUSE AND NOT HAVING SEEN HIM YET IN HER LIFETIME BEFORE THE CRIME WAS COMMITTED, ESPECIALLY THAT THE SAID LONE WITNESS WAS IN THE STATE OF SHOCK; THERE WERE DOUBLE CURTAINS IN ALL THE WINDOWS, AND THE ONLY AVAILABLE LIGHT WAS THE REFLECTION OF LIGHT COMING FROM A MERALCO POST, ALMOST 200 METERS AWAY WITH SOME TREES AND HIGH WALL IN BETWEEN;

K) THE TESTIMONY OF THE LONE WITNESS THAT THE HOUSE WAS LOCKED FROM INSIDE BOTH FROM THE BACKDOOR AND THE MAIN DOOR WHICH HAD A BARREL BOLT AND WHICH CAN ONLY BE OPENED BY A PERSON WHO HAD A KEY TO THE HOUSE. SO THE REAL SUSPECT MUST BE THE ONE WHO HAD THE KEY TO THE HOUSE OF THE VICTIMS;

L) IN DISREGARDING THE DOUBTFUL CONDUCTS AND STRATEGIES OF THE POLICE INVESTIGATORS AND THE PROSECUTORS IN THEIR EFFORTS TO CHANGE THE STATEMENT OF THE LONE WITNESS TO MAKE IT APPEAR THAT THE APPELLANTS HEREIN HAD A HAND IN

THE CRIME CHARGED;

M) IN DISREGARDING THE TESTIMONY OF THE LONE WITNESS THAT PRIOR TO THE INCIDENT/COMMISSION OF THE CRIME, HER MOTHER, ONE OF THE VICTIMS IN THIS CASE, HAD A SERIOUS FAMILY PROBLEM WITH HER FATHER WHO WAS LIVING WITH HIS GIRLFRIEND IN ANOTHER HOUSE AND AT ONE TIME HER MOTHER RIDDLED THE CAR OF HIS (sic) FATHER WITH BULLETS;

N) THERE WAS NO EVIDENCE PRESENTED BY THE PROSECUTION TO DESTROY THE STRONG EVIDENCE OF THE ACCUSED (APPELLANT HEREIN) THAT HE WAS NEVER IN THE PLACE OF THE COMMISSION OF THE CRIME; SO IT WAS IMPOSSIBLE FOR HIM TO COMMIT THE CRIME CHARGED;

O) THERE WAS NO PROOF NOR ANY WITNESS PRESENTED TO PROVE BEYOND REASONABLE DOUBT THAT THE APPELLANT TOGETHER WITH ALL THE ACCUSED HEREIN WERE SEEN AT THE TIME AND PLACE OF THE COMMISSION OF THE CRIME — NOT EVEN BEFORE THE COMMISSION;

P) THERE WAS NO EVIDENCE PRESENTED TO PROVE THAT THE APPELLANT EVER WENT TO THE HOUSE OF THE VICTIM EVEN ON A SINGLE OCCASION BEFORE THIS INCIDENT HAPPENED;

Q) FINALLY, THE COURT'S FINDINGS WERE NOT SUPPORTED BY CONVINCING EVIDENCE SUFFICIENT TO OVERCOME THE LEGAL PRESUMPTION OF INNOCENCE OF THE ACCUSED, AND THAT THE CONVICTION WAS PURELY BASED ON THE UNCORROBORATED TESTIMONY AND THE ILLEGAL AND BASELESS EXTRAJUDICIAL CONFESSION OF ACCUSED DANILO R. LAPIZ WHICH WAS IMMEDIATELY RECANTED ON THE GROUND THAT THE CONTENTS THEREOF WERE NOT TRUE AND NOT OF HIS MAKING OR VOLITION SO THAT HE WAS FORCED TO MERELY AFFIX HIS SIGNATURE UNDER THREATS AND INTIMIDATION.[37]

In his brief, appellant Danilo Lapid imputes to the trial court the following errors:

I

THE TRIAL COURT A QUO ERRED WHEN IT DID NOT FIND ANY CONTINUING IRREGULARITIES AND VIOLATIONS OF THE CONSTITUTIONAL RIGHTS OF THE ACCUSED AND IN THE CONDUCT OF THE ARRESTS WITHOUT ANY WARRANT; THE IRREGULARITIES WHICH ARE CLEAR VIOLATIONS OF ARTICLE 125 R.P.C.; & IN THE CUSTODIAL INVESTIGATION, WHICH COULD HAVE RENDERED THE EXTRA-JUDICIAL CONFESSION AS INADMISSIBLE IN EVIDENCE

II

THE TRIAL COURT A QUO ERRED WHEN IT RULED THE EXTRA JUDICIAL CONFESSION AS ADMISSIBLE IN EVIDENCE DESPITE THE PATENT VIOLATIONS OF HUMAN AND CONSTITUTIONAL RIGHTS OF DANILO R. LAPIZ

III

A COUNSEL WHO HAVE (sic) ESTABLISHED UNQUESTIONABLE RAPORT (sic) WITH THE PNP-CIC REGION IV CANNOT BE CONSIDERED AS COMPETENT AND INDEPENDENT COUNSEL WITHIN THE PURVIEW OF THE CONSTITUTIONAL MANDATE. THE COURT A QUO THEREFORE ERRED WHEN IT FOUND ATTY. DEMETRIO HILBERO AS COMPETENT AND INDEPENDENT COUNSEL WHEN HE ADMITTEDLY HAVE ESTABLISHED GOOD RAPORT (sic) WITH THE SAME POLICE AUTHORITIES

IV

THE COURT A QUO ERRED WHEN IT DID NOT FIND MERIT IN THE DEFENSE OF ALIBI BY DANILO R. LAPIZ WHEN IT IS COMPLETELY SUBSTANTIATED BY DOCUMENTS AND NEUTRAL TESTIMONIES OF HIS SUPERIOR

V

THE LOWER COURT A QUO ERRED WHEN IT DECIDED TO CONVICT DANILO R. LAPIZ AS ACCOMPLICE, ONLY ON THE BASIS OF THE QUESTIONED EXTRA-JUDICIAL CONFESSION

VI

THE TRIAL COURT ERRED WHEN IT DECIDED TO CONVICT THE ACCUSED AND IGNORED THE PATENT INCONSISTENCIES IN THE STATEMENTS OF THE WITNESSES, PARTICULARLY THAT OF THE PRINCIPAL WITNESS[38]

Considering the aforecited assignments of errors, we find that the main issues in these cases concern: (a) the credibility of the lone eyewitness, Helen Grace Payumo; (b) the admissibility of the extrajudicial confession of appellant Danilo Lapiz; (c) the sufficiency of the prosecution's evidence to sustain the conviction of appellants; and (4) the propriety of the penalties imposed on them by the trial court.

A. ON THE CREDIBILITY OF LONE PROSECUTION EYEWITNESS HELEN GRACE PAYUMO

Before us, appellants contend that Helen Grace Payumo is neither a credible nor a reliable witness, hence the trial court erred in relying upon her identification of the appellants as the perpetrators of the crime.

First, appellants point out that on September 25, 1995 or a mere 16 days after the incident, Helen Grace executed a Sinumpaang Salaysay before the NBI and police investigators. Her Salaysay was made in the presence of numerous witnesses including her relatives and attending physicians. In that Salaysay, she categorically pointed to Ramos, Cruzata, and Ibañez as the assailants. Her account of the slaying incident was remarkably detailed.

The following day, Judge Estanislao Belan of the MTC of Sta. Rosa, Laguna, who was conducting the preliminary investigation in Criminal Cases Nos. 73 69-70, interviewed her regarding her Salaysay. She affirmed her identification of Ramos, Cruzata, and Ibañez as the culprits. Appellants contend that with this development, the complaints filed against them by the police before the MTC in connection with the Payumo slayings should have been dismissed outright.

Appellants next stress that four months later, Helen Grace inexplicably changed her story. She recanted her previous account and named appellants herein, save for Danilo Lapiz, as the real assailants. Appellants argue that this sudden reversal defies reason and belief. The natural reaction of one who witnesses a crime is to reveal the identity of the perpetrators. Here it took Helen Grace 132 days to pinpoint appellants. That she was confused and fearful for her life when she made her first statement and was afraid her father might be implicated cast grave doubts on her statement's veracity.

The OSG counters that the change in the testimony of Helen Grace regarding the identities of the assailants was sufficiently explained. First, at the time she executed her Sinumpaang Salaysay on September 25, 1995, she was far from being well. She had just emerged from her 10-day coma. She was still recovering from traumatic and serious stab wounds in her neck and waist. She was so weak that when Judge Belan interviewed her, she requested that the questioning be brief. Definitely her physical condition was such that she could not give an unsullied statement. Second, Helen Grace saw how her mother and siblings were viciously stabbed to death. She heard her brother pleading for his very life. All the while, she knew she would be next. The Solicitor General asks

that we consider the psychological effect of this terrible experience on the mind of an 11-year-old child. Moreover, Helen Grace was terrified of appellant Maximo Delmo whom she knew as one of her father's best friends. She was confused and puzzled why her father's good friend could commit such a dastardly act against her family. She was also afraid that Maximo and his cohorts might get back at her to finish the job, so to speak. The OSG contends that the workings of the human mind under great emotional and psychological stress are both unpredictable and inexplicable. But the shock from the harrowing ordeal that Helen Grace went through should not detract attention from her credibility as a witness. That she initially erred in pointing out the culprits does not make her testimony in court a falsity.

We find appellants' focus upon Helen Grace's Sinumpaang Salaysay of September 25, 1995 to demolish her credibility on the witness stand misplaced. This Court has consistently ruled that contradictions between the contents of an affidavit and declarations on the witness stand do not always militate against the witness' credibility.[39] An affidavit is not an entirely reliable evidence in court due to the inaccuracies and outright errors that may have occurred in its formulation.[40] Affidavits are oftentimes executed when an affiant's mental faculties are not in such a state as to afford the affiant a fair opportunity to narrate in full the incident that has transpired.[41] At the time Helen Grace Payumo executed her first Sinumpaang Salaysay, she had just emerged from 10 days of intensive care. Her stab wounds, one at the left side of the neck and one at the waistline, either of which could incapacitate a grown-up, were still fresh and festering. As correctly pointed out by the Solicitor General, she was far from well, both physically and mentally. The observations of Judge Belan, who interviewed her on September 26, 1995, are most revealing, thus:

Court:

Now, did you notice from the physical condition of Helen Grace Payumo whether she was ready to be examined as a witness in the Payumo cases?

A:

Your Honor, there was this go ahead signal from the psychiatrist and doctor. Now if this court meant to ask her physical condition, she was a little troubled. She was sporting a big black eye, which was bluish in color.

Court:

Will you repeat your last sentence?

A:

I said, Your Honor, she was a sporting a big black eye.

Court:

Before that.

A:

She was certified to as being physical and mentally able, but I noticed that...

Court:

You mentioned something about her being a bit troubled?

Atty. Balinado:

You mentioned that she was a bit troubled?

A:

She was a bit troubled. She was stuttering. When she answered my questions, she was stuttering.

Court:

Was she sleepy at that time?

A:

The fact is, she even mentioned to me, she even told me to ask her only a few questions. I told her this was not on record. She told me: “Maikli lamang po.” She did this by the use of her two fingers.

Court:

I noticed from her first statement that she declined to answer further questions because she was already sleepy. Did you notice whether she was sleepy at the time you investigated her?

A:

Yes, Your Honor, even at the start of my interrogation, she was sleepy-eyed and she told me: “Kapisaso lang.” She gestured with her two fingers “Kapisaso lang.” [42]

Regardless of whether she was in a state of shock or in deep grief over the untimely and violent deaths of her mother and siblings or both, Helen Grace’s reaction at the time she made her Sinumpaang Salaysay on September 25, 1995 was far from a normal state. Helen Grace, then only 11 years old, saw her mother stabbed to death. She also saw her sisters Joan and Maan mercilessly slain. She heard the plaintive cry of her brother in his death throes. She saw the assailant who stabbed her, and she barely escaped with her life. Appellant Maximo Delmo was known to her as “Tito Imoy,” someone she knew as her father’s close friend. How her father’s friend could treat them so cruelly was beyond her ken. Fear took hold of her mind. She was afraid that in view of the close relationship between “Tito Imoy” and her father, the latter might be implicated in the crime. This was borne out during her cross-examination, to wit:

Atty. Sto. Domingo:

On page 19 of your statement dated January 18, 1996, you said and I quote: No. 19, “Hindi ko agad sinabi ang katotohanan dahil natatakot ako dahil sa alam ko na si Tito Emoy ay kaibigan matalik ng aking daddy.”

Now, why did you say that you were afraid to tell the truth because Tito Emoy was a good friend of your daddy? I am handing the statement to the witness. No. 19 of the statement for her to read.

xxx xxx xxx

A:

Because my father might be implicated. “Kasi po baka madamay ang daddy ko.”[43]

On re-direct examination, she again admitted her fears:

Atty. Balinado:

Q: What was that?

A: I was afraid of my father, sir.

Q: Why are you afraid of your father?

A: Because he might get angry because I pointed to his good friend.

Q: Who was (sic) that good friend of your father you are referring to?

Atty. Sto. Domingo:

May I request, Your Honor, that the answer be quoted in the vernacular, Your Honor, “Matalik na kaibigan.”

Court: Quote that “matalik na kaibigan.”

Atty. Balinado:

Who was that “matalik na kaibigan?”

A: Tito Imoy, sir.[44]

The harrowing experience that Helen Grace underwent can unsettle even a mature person. Moreover, her disturbed state of mind and her anxiety to avoid implicating her father, caused her to privately confide to the trial court, “Parang natuwa siya nang ituro ko ang tatlong teenagers ngunit ayaw niya nang ituro ko si Tito Imoy at ang kaniyang grupo.”[45] In another murder case, this Court has recognized the effects of a shocking experience, thus:

The Court considers that the initial errors committed by Milagros at the police line-up must be viewed in the context of the deeply traumatic experience to which she had been subjected just five (5) days earlier. At the time that she was asked to confront the accused, she had barely undergone treatment for shock.

Understandably, she was not yet in full control of herself...[46]

What Helen Grace experienced upon her young and immature psyche defies description. Understandably, she was terrified of Maximo Delmo and feared for her life. She admitted in open court, “I was scared of Imoy Delmo.. .because they have already killed my mother, my sisters and brother and I am still alive and they can still kill me, sir.”[47] Fear for one’s life is a valid explanation for a witness’ failure to immediately identify the culprits. But such failure does not necessarily impair the credibility[48] of her testimony in open court. Since she clearly was not her normal self at the time she made her first Salaysay, it is her testimony in open court that we must concentrate on and scrutinize in detail to determine her credibility as a witness.

Second, appellants maintain that, because of the prevailing conditions inside the Payumo home at the time of the incident, Helen Grace’s identification of appellants is highly doubtful. Appellants aver that in her testimony, she said that the Payumo house was devoid of lighting. This was corroborated by the testimony of defense witness Wilfredo Candelario, who declared that the main switch had been turned off. Appellants also capitalize on Helen Grace’s admission, corroborated by Candelario, that curtains covered the windows in the room where the killings occurred. Appellants contend that it is highly improbable for Helen Grace to have identified the assailants, in view of the fact that the only light in the Payumo residence at the time was from an electric post some 49 feet away. They claim that this illumination was obstructed and diffused by several verdant trees and a concrete wall at the back of the Payumo house. Appellants now insist that it would have been improbable, if not impossible, for a blindfolded girl in a dark room, on a rainy night, to have categorically identified them as the killers. Appellants further argue that the fluorescent light referred to by Helen Grace in her redirect examination was a mere afterthought, a calculated detail designed to remedy a serious shortcoming in the prosecution’s case.

The OSG points out, however, that an ocular inspection conducted by the trial court showed that the light from the fluorescent bulb at the back of the Payumo house and the Meralco lamp post was adequate for purposes of identification.

Questions of visibility and lighting conditions are factual ones and on these matters, the trial court made the following observations:

...It will not escape the attention of this Court that in the course of the testimony of Sweet Payumo, she stated that on the early morning of the tragic incident, there was a light at the back of their house near the kitchen (TSN, July 17, 1996, p. 18) which turned out to be a fluorescent lamp during the ocular inspection, and the back door at the kitchen was opened as testified to by Willie Candelario, a witness for the defense (TSN, August 6, 1996, p. 15), thereby illuminating further the lights coming from the Meralco posts in front of and at the back of the house of the Payumos. Significantly, the result of the third ocular inspection shows that it was possible for Sweet Payumo to have recognized anybody near her inside the Payumo residence on the early morning of September 9, 1995...[49]

Findings of fact by the trial court are accorded great weight and the highest degree of respect by the reviewing court, unless there is a clear showing that the lower court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that could have materially affected the case.[50] In the present cases, the disputed fluorescent lamp was found to be existent during the ocular inspection. As to the main switch, there is no showing whatsoever that it had been turned off at the time of the incident. That it was on cannot be discounted. But even assuming *arguendo* that it had indeed been turned off at the time of the incident, this Court has previously held in a number of cases that illumination from a lamppost is sufficient for purposes of identification.[51] Appellants failed to show that the trial court’s findings as a result of its ocular inspection and appreciation of the testimonial evidence were arbitrary or that certain facts of substance and significance were ignored or overlooked. Absent this showing, this Court is bound by the factual findings of the trial court.

Appellants, however, contend that Helen Grace could not have identified her and her family's assailants nor witnessed the stabbing incidents since she was blindfolded by the killers. They insist that her story about her blindfold being loose is both studied and calculated. Appellants harp on the fact that during the trial, the blindfold was replicated according to its exact dimensions as testified to by Helen Grace. She was then blindfolded and asked to identify the persons standing in front of her. On the three occasions that she was blindfolded, she failed to identify even one of those persons. Appellants now submit that the foregoing shows reasonable doubt in her testimony.

The OSG points out, however, that appellants' arguments entirely miss the point. Helen Grace had already seen them when she came out of her room and before she was gagged, hogtied, and blindfolded. Appellants likewise conveniently ignore her declaration that the blindfold was loosely tied and slipped down when she was dragged into the master's bedroom, thus enabling her to see her and her family's assailants clearly.

The Solicitor General's observations are well taken. The fact that the culprits had blindfolded Helen Grace is a secondary matter. We have gone through some 1,500 pages of Helen Grace's testimony. Nowhere was a showing that she was immediately blindfolded when she followed her sister, Maan, out of their bedroom. Instead, she had full opportunity to take a good look at the three men inside their house just before her mother and siblings were murdered.[52] On this point, moreover, the defense failed to present any evidence to contradict her claim that her blindfold slipped down when she was dragged into the master bedroom. The defense did not rebut her claim that as a result of her blindfold slipping down, she was able to see the person who stabbed her mother and sisters, the same person whose face she was looking at when she herself was stabbed.[53]

While previously she knew well only appellant Maximo Delmo, Helen Grace during the trial unhesitatingly pointed to appellants Edmund Delmo and Francisco "Kit" Lapiz as the two men present with Maximo on that fateful night of the massacre. She unerringly identified Francisco Lapiz as the person who stabbed her, her mother, and her sisters.[54] Rigorous and lengthy cross-examination by the four defense lawyers failed to shake her story. She was consistent in her claim that her blindfold slipped down, thus enabling her to positively identify the culprits. Appellants insist that it is highly unnatural and contrary to human experience for a person being stabbed to look into his or her assailant's eyes. On the contrary, however, the most natural reaction of the victim of criminal violence is to see and focus on the looks and faces of the assailants.[55] The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind.[56] Helen Grace's concentration on her assailant's face is not contrary to reason or experience.

The defense valiantly strove to shake Helen Grace's identification of appellants. According to the defense, the descriptions she made in her Salaysay of January 18, 1996, do not match the actual appearances of appellants. She described Edmund Delmo as "matangkad na payat, maitim at may bigote" while Francisco Lapiz was portrayed as "medyo mataba, medyo maitim, may bigote at kulot ang buhok." Appellants now ask this Court to take judicial notice of their physical features and note the discrepancies between the descriptions made by the prosecution's principal witness and the actual physical appearances of appellants. Appellant Francisco Lapiz, in particular, assails Helen Grace's identification of him as the actual killer of her mother and two sisters. He points out that while she claimed that she directly looked at his face while he was stabbing her, she could not even mention a single prominent feature of his, such as his prominent facial nodes.

The trial court, on this point, observed:

...[T]he same may be explained by the fact that the accused themselves have purposely undergone changes in their physical appearances. The mustache and/or beard of the accused Francisco Lapiz and Edmon Delmo as seen in their photographs at the time of their apprehension (Exhs. "PP," "PP-1" and "PP-2" and "WW,"

“WW-1” and “WW-2”) were no longer there during the trial proper as the same were already shaven. Edmon Delmo appeared thin at his photographs when he was apprehended (Exhs. “V V,” “V V-1” and “V V-2”) but he is now even fatter than Francisco Lapiz perhaps upon legal advice. The description given by Sweet Payumo that they appeared dark when seen on the early morning or dawn of September 9, 1995, jibes with the results of the ocular inspections because at that time all the lights inside the house were off and any person appeared dark from a distance of about five (5) meters or more inside the Payumo residence.[57]

On cross-examination, Helen Grace stood pat on her identification of appellants as the malefactors, despite efforts of defense counsel to confuse her. Notwithstanding changes in the physical appearances of Edmund Delmo and Francisco Lapiz, Helen Grace could not be shaken in her identification as the offenders. On re-direct examination, her testimony was straightforward:

COURT:

Q: Do you have distinguishing marks on Edmund Delmo?

A: None, sir.

Q: How were you able to recall or recognize him?

A:

Because of his eyes inside the courtroom [are] the same eyes that I saw at the night of the killing of my mother and my sisters and brother and I was inflicted hurt, sir.

COURT:

Q: Is that the only part of the face which you remember?

A: There is another, sir.

Q: What other part of the face do you recall?

A: His mustache, sir.

COURT:

Continue.

ATTY. BALINADO:

Aside from the mustache, following up the question of the Court, Ms. Witness, what other part of the face or head do you recall and identify?

ATTY. LINZAG:

Already answered, Your Honor.

ATTY. BALINADO:

Other parts. She said only one part, she said no other part.

ATTY. LINZAG:

That was answered [in] the question of the Court, Your Honor.

ATTY. BALINADO:

She did not say that's the only one.

COURT:

Q: Was that the only part of the face that you recall?

A: There were more, sir

Q: Tell us.

A: His eyes, his nose and mouth and even he changed his...

COURT:

Quote the answer in the vernacular.

WITNESS (answer in the vernacular)

“Ang mata pa niya, ilong at bibig. Kahit po ano ang magbago sa kanya, makikilala ko rin pa siya dahil iyon pong mga mata niya ang nakita ko nang nasa hukuman at iyon din ang nakita ko ng pagsasaksakin ang mommy ko at mga kapatid ko at ng saktan din po nila ako.”[58]

As to her identification of Francisco Lapid, Helen Grace declared on redirect examination:

ATTY. BALINADO:

It said in paragraph...that you also described one of the three persons as, in the vernacular, “medyo mataba, medyo maitim, may bigote at kulot ang buhok” and when you were asked to identify, you identified the person who answered in the name of Francisco Lapid, who appeared to be not “medyo mataba” but really “mataba”, he was “mataba”; not “maitim” but fair, and he was not sporting a mustache. Now, the same question as the

previous one was (sic) asked of you. How were you able to identify him in open court?

A:

As I answered a while ago, his eyes, his nose and mouth inside the courtroom [were] the same things I saw that early morning when that incident happened, where he stabbed my mother, my sisters and brother and who hurt me.[59]

It is understandable that Helen Grace, who was only 11 years of age at the time of the incident, would err in some minor details while recounting her family's ordeal. The killings happened in a darkened room where the only illumination was from a lamppost and an outdoor fluorescent lamp. The witness was a very frightened girl whose mother and siblings were slain in her sight. She feared that she would be the next victim. Nonetheless, Helen Grace exerted efforts to see the faces of the assailants. Victims of violence strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed and not unduly concentrate on extraneous features and physical attributes unless they are striking.[60] A failure to accurately observe certain physical features of the malefactors need not be taken against the witness. The identification of malefactors is not an easy task - the carelessness or superficiality of observers, the rarity of powers of graphic description, and the varying force with which peculiarities of form, color, or expression strike different people make recognition difficult.[61] What matters is the fact that she readily and clearly identified the offenders in open court. Note that her identification was made without hesitation, despite the efforts of appellants to change their physical appearances through such means as shaving off mustaches and beards and putting on weight. Nor is there a showing of ill motive on her part in pointing to the appellants as the culprits. Absent any reason or motive for Helen Grace to perjure, her positive identification of appellants must stand.

Appellants assail alleged inconsistencies in Helen Grace's declarations in court. They point out that in the course of her testimony, Helen Grace made several contradictory statements as to where she stood upon coming out of her bedroom and as to the respective positions of her mother and siblings. Appellants also cast doubt on her account that the female victims were all gagged, hogtied, and blindfolded. Appellants point out that Helen Grace was not tied when found, merely blindfolded. Nancy was found merely gagged, not tied up. Only Maan was found with her hands tied. Finally, appellants insist that Helen Grace's account that all the female victims were stabbed on her mother's bed is inaccurate as Exhibit "43" ("JJ" for the prosecution) would show that the only body found on top of the bed was Joanna's. Appellants submit that the foregoing inconsistencies show that Helen Grace was a coached witness.

However, their submission is far from persuasive. Helen Grace was on the witness stand for almost two months. She underwent a rigorous grilling not just by one but by four defense lawyers on the details of a gruesome and nightmarish experience. That minor inconsistencies should creep into her statements is understandable. A witness is not expected to remember every single detail of an incident with perfect or total recall.[62] We note that the inconsistencies pointed to by appellant are minor ones. Lapses in the testimony of a witness serve to strengthen rather than to weaken the credibility of the witness as they tend to erase any suspicion that the testimony was rehearsed.[63] A discrepancy in the testimony of a witness, to be of value to appellants' cause, must refer to significant facts crucial to the guilt or innocence of the accused. Inconsistencies irrelevant to the elements of the crime are not grounds to reverse a conviction.[64]

B. ON THE ADMISSIBILITY OF THE EXTRA-JUDICIAL CONFESSION OF DANILO LAPIZ AGAINST HIMSELF AND HIS CO-ACCUSED

Appellants next assail the trial court's reliance on the extrajudicial confession of appellant Danilo Lapid in

finding him guilty as an accomplice in four counts of murder and one count of frustrated murder. They submit that his confession was made under duress, without the assistance of independent and competent counsel, hence, it was obtained in violation of the constitutional and statutory rights of Danilo Lapiz. Appellants point out also that at the time the confession was obtained, he had been the subject of illegal warrantless arrest and detention. Appellants now submit that it is a reversible error for the trial court to utilize said confession to support a finding of conspiracy among the appellants. They contend that such reliance is in violation of Rule 130, Section 30,[65] of the Rules of Court.

For the appellee, the Solicitor General counters that the extrajudicial confession of Danilo Lapiz should be deemed admissible against all the appellants. First, the records show that, contrary to Danilo's assertions, his confession was prepared with the assistance of counsel. It was Danilo himself who selected his counsel, namely Atty. Demetrio Hilbero, who corroborated this fact on the witness stand. Second, there was no showing whatsoever of any compulsion or duress on the person of Danilo while he was giving his confession. As to the legality of his arrest, having failed to timely raise this issue, it cannot now be entertained on appeal.

The proper issue to be addressed now, however, is whether Danilo Lapiz's confession was obtained in violation of law and the Constitution.

The records show that on September 16, 1995, Danilo Lapiz was "invited" by elements of the Laguna Drug Enforcement Group (LADEG) of the Philippine National Police (PNP) to shed light on the Payumo killings, following a lead from an undisclosed informer. As testified by PO2 Rolando Recoco, Danilo initially denied any participation, but later orally confessed his participation in the crime and identified his companions.[66] The following day, Danilo was turned over to the PNP force of Cabuyao, Laguna. That same day, September 17, 1995, the latter unit turned over custody of Danilo to PNP Criminal Investigation Command (CIC). Danilo was then brought to Camp Vicente Lim, Laguna, where SPO3 Rizaldy Garcia and other CIC operatives investigated him for complicity in the Payumo slayings. On September 18, 1995, Danilo made his extrajudicial confession, which he swore to before State Prosecutor Lamberto De Vera. At the time he made his confession, Atty. Demetrio Hilbero, a lawyer provided for by the PNP, assisted Danilo.

Article III, Sec. 12 of the Constitution provides:

- (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
- (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
- (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

xxx xxx xxx

Based on the records of these cases, we find that police investigators violated Danilo's constitutional right to competent and independent counsel. As early as September 16, 1995, Danilo was already taken into custody by the police for investigation on his possible role in the Payumo slayings. Yet, there is no showing on record that Danilo was furnished the services of competent and independent counsel in accordance with Section 12 (1) of the Bill of Rights. Danilo was only offered the services of Atty. Hilbero on the night of September 18, 1995, or after two days of custodial investigation. The records further show that Atty. Hilbero's services were tapped only to

assist Danilo in making a confession. Established is the rule that the moment the police try to elicit admissions or confessions or even plain information from a suspect, he should, at that juncture, be assisted by counsel, unless he waives this right in writing and in the presence of counsel.[67] No such waiver by Danilo is on record. Nor is there any showing that Atty. Hilbero was present at the very start of Danilo's custodial investigation. In our view, the process that resulted in Danilo's extrajudicial confession is flawed. The constitutional requirement is not met properly where the lawyer is called in only when the accused is about to put his confession in writing.[68] Danilo Lapid was not assisted by counsel from the start of custodial investigation, when his right to competent and independent counsel had already attached. Hence, pursuant to Article III, Section 12 (3) of the Constitution, we declare his confession inadmissible not only against him, but even against his co-appellants as well.

C. ON THE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE TO SUPPORT THE CONVICTIONS

Appellants claim that once the extrajudicial confession of Danilo Lapid is discarded, there is nothing left of the prosecution's evidence but the questionable testimony of Helen Grace. They insist that her accounts of the incident were unreliable. They add that the prosecution utterly failed to show any motive on the part of the appellants to commit the crimes charged. They stress that their non-flight from the locale of the crime reinforces their claim that they had nothing to do with the offenses imputed to them. They now insist that in view of the prosecution's weak evidence, it was error for the trial court to disregard their defense of alibi and denial. They conclude that without Danilo's extrajudicial confession, the trial court's finding of conspiracy has no leg to stand on.

For the appellee, the Solicitor General contends that, assuming arguendo the inadmissibility of Danilo Lapid's extrajudicial confession, it may nonetheless be treated as verbal admission established through the testimonies of the persons who conducted the investigation or who heard the admission. It should also not be forgotten that appellants' conviction, according to the Solicitor General, was not based on Lapid's extrajudicial confession alone. The positive identification of appellants made by Helen Grace in open court, coupled with her vivid narration of the bloody assault against her and her family, clearly established the corpus delicti of the crime. The facts established by the unwavering testimony of an 11-year-old victim herself, concludes the Solicitor General, could not be displaced by empty denials or self-serving alibis.

In every criminal case, the prosecution must prove two things - the fact of the crime and the fact that the accused is the perpetrator of the crime. In the instant cases, the fact of the crime has been duly proven. Only the identification of the criminal(s) remain at issue. To establish the identity of the accused is the duty of the prosecution.[69] Appellants insist that the prosecution's main witness failed to establish their identities as the slayers of the Payumos. They argue that given the inconsistencies in Helen Grace's account, her identification of them as the culprits fails to break the barrier of reasonable doubt.

Given the heinous nature of the offense and the gravity of the sentences imposed on appellants, the Court scrutinized in detail the testimony of the surviving eyewitness, Helen Grace. We concur with the trial court that her testimony is positive and categorical in pointing to appellants as the malefactors. Her testimony in its great length and vast detail might appear inconsistent with respect to minor details. But her testimony bears the badges of candor and truth. An eyewitness to a horrifying event cannot be expected to give a completely accurate portrayal of all that transpired. Nor could she highlight in minute detail every sight and sound. What is important is that the witness remains consistent in relating the principal occurrences and in identifying the malefactors.[70]

In the present cases, Helen Grace's positive identification of appellants Maximo Delmo, Edmund Delmo, and Francisco Lapid in open court remained unshaken. She was steadfast under tedious, even confusing, cross-examination. Moreover, appellants failed to show any reason or ill motive on her part to single them out as

the authors of the crime.[71] It would be unnatural for the surviving victim to commit an injustice by imputing the killings of her mother and siblings to innocent persons and not to those actually responsible therefor.[72] As against the positive identification by Helen Grace, the bare denials of Maximo Delmo, Edmund Delmo, and Francisco Lapiz carry no evidentiary weight or probative value.

Helen Grace's testimony, however, is silent with respect to appellant Danilo Lapiz. Neither did she identify him in open court as one of the perpetrators. Given this circumstance, and in view of the inadmissibility of his extrajudicial confession, Danilo Lapiz must be acquitted of the charges against him, for lack of evidence to sustain his conviction.

As regards the alibi of other appellants concerned, each must show not only that he was somewhere else when the crime was committed, but also that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[73] With respect to Maximo Delmo whose alibi was that he was at home sleeping during the time of the incident, he testified on cross-examination, thus:

ATTY. BALINADO

Q:

Mr. Witness, from your residence at Panorama Village to the residence of the Payumo[s], how long will it take you by foot to reach the place of [the] Payumo[s]?

A:

About one and a half (1 1/2) minutes to two (2) minutes, sir.

Q:

And that is by ordinary walking?

A:

Yes, sir.

Q:

If you would run, it would take you [a] much shorter time to reach the Payumo residence, is it not?

A:

Yes, sir.

Q:

More so if you will ride in a vehicle it shall take you a shorter time?

A:

Yes, sir.[74]

Concerning Francisco "Kit" Lapiz, who presented the alibi that he was asleep in his residence at the time of the slayings, the following statements appeared in the transcript of his cross-examination:

ATTY. BALINADO:

Q:

Now Mr. Witness, you said you reside at J.P. Rizal St., Cabuyao, Laguna, and you said you have gone to the Payumo residence at 3:00 o'clock in the afternoon of September 9, 1995. What transportation did you use in going there?

ATTY. LINZAG

Objection, misleading, Your Honor. Because it was after 3:00 o'clock and not 3:00 o'clock.

COURT

With that amendment, witness may answer.

WITNESS

A:

My motorcycle, sir.

ATTY. BALINADO

Q:

How long did it take you from your residence at Cabuyao to reach the Payumo residence at Panorama Ville using your motorcycle?

A:

Maybe more or less two to three minutes, sir.[75]

With regard to Edmund Delmo, whose alibi was that he was at a mahjong session at the time the Payumos were killed, the following exchange occurred on cross-examination:

FISCAL DEE:

Q:

Mr. Witness please tell us the distance between the mahjong house where you played mahjong to the gate of Panoramaville?

A:

Maybe more than one (1) kilometer, sir.

Q:

With the use of your motorcycle, how long in terms of minutes or seconds would it take you to reach the mahjong house?

A:

Less than a minute, sir, if there is no traffic.[76]

As foregoing testimonies reveal, appellants Maximo Delmo, Edmund Delmo, and Francisco Lapiz were not far away from the scene of the crimes. Appellants did not show it was impossible for each of them to be physically present at the time and place of their commission. Thus, in the light of the positive identification made by Helen Grace, singling appellants as perpetrators of the massacre, their defense of alibi simply crumbles.

Appellants aver that none of them fled despite the opportunities they had to do so, and that this tribunal should credit them with this fact as an index of their innocence. This contention, however, simply lacks merit. While it is true that we have ruled that flight is evidence of guilt,[77] there is no law or dictum holding that staying put is proof of innocence, for the Court is not blind to the cunning ways of a wolf which, after a kill, may feign innocence and choose not to flee.[78]

On the want of motive on the part of appellants to commit the massacre, we find that the question of motive lacks pertinence in the instant cases. Motive is a key element only when establishing guilt through circumstantial evidence[79] or when the identification of the accused is extremely tenuous.[80] Motive is not an element of a crime and need not be proved to produce a conviction.[81] Crimes have been committed by persons who appear to have no reason therefor, but as long as they have been clearly identified as the offenders, they ought to be held liable. Where the commission of the crime has been proved and the accused were convincingly identified by the surviving victim, motive becomes irrelevant.[82]

Now, on the question of conspiracy among the appellants. The testimony of Helen Grace shows that when she first saw Maximo Delmo, he was watching her mother[83] while Edmund Delmo was making Maria Angela lie down,[84] and Francisco Lapiz was watching John Anton who was lying on the floor face down.[85] Francisco then tied the hands of John Anton.[86] Meanwhile, Joanna Rose was seated on the sofa, tied up, blindfolded, and gagged.[87] Francisco then tied up Helen Grace.[88] After all the victims had been tied-up, the three appellants entered her parents' room, after which they went out, whispering to each other.[89] Maximo and Francisco then brought the female victims inside the master's bedroom. John Anton remained outside, guarded by Edmund.[90] Once inside the bedroom, Francisco inflicted multiple stab wounds on Nancy, Joanna Rose, Maria Angela, and Helen Grace.[91] John Anton, in turn, was fatally stabbed outside the master's bedroom, where Edmund was left guarding him. From the foregoing eyewitness testimony, it appears that the actions of Maximo, Edmund, and Francisco were concerted, even synchronized. There was commonality of purpose and action. From thereon, it is apparent that there was a conspiracy among the three appellants. When two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, but were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment, then conspiracy may be inferred though no actual meeting among them to concert means is proved.[92] Where there is conspiracy, the act of one is deemed the act of all.[93]

Under Article 248 of the Revised Penal Code, the essential elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide. In the instant cases, Nos. 9453-B to 9456-B, we find that the elements of murder have been properly alleged and proved by the prosecution against appellants Maximo Delmo, Edmund Delmo and Francisco Lapiz, beyond reasonable doubt. Likewise, the elements of frustrated

murder in Criminal Case No. 9457-B have also been amply proved.

D. ON THE PENALTY IMPOSED

In imposing four death sentences upon each of the appellants, the trial court said:

In the cases ... the qualifying circumstances of treachery and abuse of superiority were present. There was treachery because the victims were hogtied and defenseless when stabbed by the perpetrators. (*People v. Fulinara*, 247 SCRA 28). Likewise, abuse of superiority qualified the killing to murder because the assailants utilized superiority in number and employed deadly weapons in assaulting the unarmed victims. (*People v. Plasencia*, 249 SCRA 674). The qualifying circumstance of treachery, however, absorbs abuse of superiority. (*People v. Gapasin*, G.R. No. 73489, April 25, 1994). And the settled rule is that where one of the aggravating circumstances is used as a qualifying circumstance, the other shall be used as generic aggravating circumstance.[94]

For treachery to exist, the following must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) said means of execution was deliberately or consciously adopted.[95] The victims of the mass slayings in these cases, namely Nancy Payumo and her children, were hogtied, blindfolded, and gagged, thus precluding any means of defense on their part. None of them was armed. All sustained multiple wounds and injuries. Nancy Payumo had 11 stab wounds, contusions, hematoma, and four incised wounds.[96] Joanna Rose suffered 22 stab wounds and two incised wounds;[97] Maria Angela had 29 stab wounds, one puncture wound, one lacerated wound, four incised wounds, and the base of her skull was fractured;[98] and John Anton incurred 15 stab wounds and three incised wounds.[99] They had no means of escape, much less retaliation. They were at the mercy of appellants, though one of them was a close friend of the father of the family. Without doubt, treachery attended the killings.

The trial court pointed out that treachery, in qualifying the killings to murder, necessarily absorbed the generic aggravating circumstance of abuse of superior strength.[100] However, the trial court considered the latter as a generic aggravating circumstance, separately from the qualifying circumstance. This is erroneous. Once abuse of superior strength is absorbed in *alevosia*, only the latter circumstance will be appreciated.[101] Once abuse of superior strength is absorbed in treachery, it cannot be treated even as a generic aggravating circumstance.[102]

The respective informations in these cases also alleged cruelty as an aggravating circumstance. The number of stab wounds sustained by the victims in these cases, however, does not per se give rise to cruelty. In one case, we held that the mere fact that the victim sustained ten stab wounds does not prove that the accused inflicted the injuries to prolong unnecessarily the physical suffering of the victim.[103] For cruelty to be appreciated against an accused, there must be a showing that the accused for his pleasure and satisfaction, caused the victim unnecessary physical and moral pain.[104] The record in these cases is bereft of any showing that appellants sadistically augmented the wrongs committed by causing another wrong not necessary for the commission of the crimes, so as to increase the victims' sufferings. Hence, cruelty as a generic aggravating circumstance ought also to be ruled out.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, murder is penalized with reclusion perpetua to death. There being no aggravating nor mitigating circumstances, for each count of murder the lesser penalty of reclusion perpetua must be imposed against appellants Maximo Delmo, Edmund Delmo, and Francisco Lapiz, pursuant to Article 63 of the Revised Penal Code.

The penalty to be imposed upon the principals in a frustrated murder case, following Article 50 of the Revised Penal Code, shall be that "next lower in degree than that prescribed by law for the consummated penalty." The penalty next lower in degree is reclusion temporal. There being neither aggravating nor mitigating circumstances,

the penalty must, by mandate of Article 64 of the Revised Penal Code, be imposed in the medium period. Reclusion temporal in its medium period ranges from 14 years, six months and one day to 17 years and four months. Applying the Indeterminate Sentence Law, the proper sentence on appellants, for the frustrated murder of Helen Grace, shall be within the range of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, six (6) months and one (1) day of reclusion temporal as maximum.

One final word on the damages awarded. The trial court awarded P426,458.34 in actual damages to the heirs of the deceased victims. In order that actual damages may be recovered, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon the best evidence available of the actual amount thereof.[105] The records show that the claim for actual damages is adequately supported by receipts and other documents,[106] hence, the trial court did not err in awarding the said amount of P426,458.34. Civil indemnity for each deceased victim in the amount of P50,000 is in order pursuant to current jurisprudence. In these cases of consummated murder, considering the testimony on record on the stab wounds suffered by all the victims, moral damages in the amount of P50,000 for each victim is also proper. In the frustrated murder case, considering that the victim Helen Grace Payumo, an 11-year-old child was subjected to prolonged traumatic ordeal; and by way of public example, exemplary damages are in order in the amount of P25,000.

WHEREFORE, the consolidated decision of the Regional Trial Court of Biñan, Laguna, Branch 24 in Criminal Cases Nos. 9453-B to 9456-B, finding appellants MAXIMO DELMO, EDMUND DELMO, AND FRANCISCO “KIT” LAPIZ GUILTY beyond reasonable doubt as principals in four (4) counts of murder is AFFIRMED, with the MODIFICATION that they are hereby sentenced to suffer the penalty of reclusion perpetua on each count, with the accessory penalties set by law. Appellants are further sentenced to pay to Helen Grace Payumo and other heirs of the deceased victims, jointly and severally, actual damages in the sum of P426,458.34 as well as moral damages in the amount of P50,000.00 and civil indemnity also in the sum of P50,000.00 in each count of the murder.

In Criminal Case No. 9457-B for frustrated murder, the decision of the Regional Trial Court of Biñan, Laguna, Branch 24 finding appellants MAXIMO DELMO, EDMUND DELMO, AND FRANCISCO “KIT” LAPIZ GUILTY beyond reasonable doubt as principals is AFFIRMED, with the MODIFICATION that they are hereby sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, six (6) months and one (1) day of reclusion temporal as maximum, with the accessory penalties provided for by law. Further, said appellants are ordered to pay, jointly and severally, to the surviving victim, Helen Grace Payumo, considering her traumatic injuries and ordeal, the sum of P50,000.00 as moral damages together with exemplary damages in the amount of P25,000.00.

Appellant DANILO R. LAPIZ is ACQUITTED, on the ground of reasonable doubt, in Criminal Cases Nos. 9453-B to 9457-B. He is ordered IMMEDIATELY RELEASED from prison, unless he is being held for some other lawful cause. The Director of Prisons is DIRECTED to inform this Court immediately of the action taken hereon within five (5) days from receipt hereof.

Costs de oficio.

SO ORDERED.

Bellosillo, Acting C.J., Puno, Vitug, Panganiban, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Callejo, Sr., JJ., concur.

Davide, Jr., C.J., Mendoza, and Sandoval-Gutierrez, JJ., on official leave.

[1] Rollo, Vol. I, pp. 202-355.

[2] Also spelled “Edmund,” “Edmundo,” or “Edmun,” in the records. Appellant insists that the proper spelling of his name is “Edmond.” See TSN, October 9, 1996, p. 51.

[3] Rollo, Vol. I, pp. 353-355.

[4] Also referred to in the records as “Joan” or “Joann.”

[5] Also referred to in the records by her nickname “Maan.”

[6] Also called “John-John” or “Jon-Jon” in the records.

[7] Also referred to in the records by her nickname “Sweet.”

[8] TSN, May 9, 1996, pp. 19-21.

[9] Id. at 28.

[10] Id. at 21-26.

[11] TSN, May 20, 1996, pp. 15-24.

[12] Records, Vol. I, pp. 49-53.

[13] Id. at 41-42.

[14] Id. at 43-44.

[15] The trio are sometimes referred to collectively in the records as the “Hiphop boys.”

[16] Exh. “73,” pp. 162, 164, 171.

[17] Records, Vol. I, pp. 118-122.

[18] TSN, August 5, 1996, pp. 26-28.

[19] Supra note 17, pp. 114-115, 116-117.

[20] Id. at 153-155.

[21] Records, Vol. III, pp. 604-605.

[22] Records, Vol. I, pp. 1-2.

[23] Id. at 5-6.

[24] Id. at 9-10.

[25] Id. at 13-14.

[26] Id. at 17-18.

[27] Rollo, Vol. II, pp. 1038-1041.

[28] Rollo, Vol. I, p. 299.

[29] Id. at 284-285.

- [30] Id. at 300.
- [31] Id. at 306.
- [32] Id. at 304-305.
- [33] Id. at 305.
- [34] Id. at 278-279.
- [35] Rollo, Vol. II, p. 810.
- [36] Rollo, Vol. I, p. 494.
- [37] Rollo, Vol. II, pp. 713-721.
- [38] Rollo, Vol. I, pp. 422-423.
- [39] *People v. Quillosa*, 325 SCRA 747, 754 (2000); *People v. Tanilon*, 293 SCRA 220, 229 (1998).
- [40] *People v. Geguira*, 328 SCRA 11, 29 (2000); See also *Sumalpong v. Court of Appeals*, 268 SCRA 764 (1997).
- [41] *People v. Aquino*, 329 SCRA 247, 262 (2000), citing *People v. Nang*, 289 SCRA 16, 30 (1998).
- [42] TSN, August 5, 1996, pp. 42-44.
- [43] TSN, June 17, 1996, pp. 12-13.
- [44] TSN, July 17, 1996, p. 10.
- [45] Rollo, Vol. I, p. 339.
- [46] *People v. Parica*, 243 SCRA 557, 565 (1995).
- [47] TSN, June 18, 1996, p. 49. See also TSN, June 11, 1996, pp. 46-47.
- [48] *People v. Dela Cruz*, 335 SCRA 620, 641 (2000), citing *People v. Herbieto*, 269 SCRA 472, 480 (1997).
- [49] Rollo, Vol. I, pp. 335-336.
- [50] *People v. Ratunil*, 334 SCRA 721, 730 (2000).
- [51] *People v. Galano*, 327 SCRA 462, 471 (2000), citing *People v. Abalos*, 258 SCRA 523, 531 (1996), *People v. Evangelista*, 256 SCRA 611, 621 (1996), and *People v. Fulinara*, 247 SCRA 28, 40 (1995).
- [52] TSN, May 27, 1996, pp. 21-30.
- [53] TSN, July 9, 1996, pp. 121-122.
- [54] TSN, June 3, 1996, pp. 25-30.
- [55] *People v. Legaspi*, 331 SCRA 95, 115 (2000).
- [56] *People v. San Juan*, 326 SCRA 786, 798 (2000).
- [57] Rollo, Vol. I, pp. 332-333.
- [58] TSN, July 17, 1996, pp. 24-26.

[59] *Id.* at 26-27.

[60] *People v. Aquino*, 329 SCRA 247, 262 (2000).

[61] *People v. Contega*, 332 SCRA 730, 742 (2000), citing *People v. Niño*, 290 SCRA 155, 159-160 (1998).

[62] *People v. Rios*, 333 SCRA 823, 832 (2000), citing *People v. Alas*, 274 SCRA 310, 320 (1997).

[63] *People v. Anacan*, G.R. No. 144318, April 3, 2002, p. 5, citing *People v. Albarido and Igday*, G.R. No. 102367, October 25, 2001, p. 7.

[64] *People v. Antonio*, 336 SCRA 366, 372 (2000) citing *People v. Sancha*, 324 SCRA 646, 654 (2000).

[65] SEC. 30. Admission by conspirator. – the act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

[66] TSN, May 13, 1996, pp. 56-58; TSN, May 14, 1996, pp. 68-72.

[67] *People v. Valdez*, 341 SCRA 25, 41 (2000), citing *Gamboa v. Cruz*, 162 SCRA 642, 648 (1988).

[68] See *People v. Rodriguez*, 341 SCRA 645, 653 (2000).

[69] *People v. Arapok*, 347 SCRA 479, 491 (2000), citing *People v. Delmendo*, 109 SCRA 350, 368 (1981).

[70] *People v. Mira*, 341 SCRA 631, 641 (2000).

[71] See, for instance, TSN, October 2, 1996, p. 70 (Maximo Delmo) and TSN, October 9, 1996, p. 78 (Edmund Delmo).

[72] *Supra*, note 55, citing *People v. Pareja*, 265 SCRA 429, 438 (1996).

[73] *People v. Berzuela*, 341 SCRA 46, 55 (2000), citing *People v. Payot*, 308 SCRA 43, 63 (1999), *People v. Tabarangao*, 303 SCRA 623, 633 (1999), and *People v. Verde*, 302 SCRA 690, 705 (1999).

[74] TSN, October 2, 1996, pp. 109-110.

[75] TSN, October 21, 1996, p. 46.

[76] TSN, October 9, 1996, p. 84. See also testimony of defense witness Venancio Reyes Reforma, TSN, October 7, 1996, pp. 30-32, to the effect that by jeepney, the distance between the place where the mahjong games were held was only “two to three minutes” away from Panoramaville.

[77] *People v. Ciron, Jr., et al.*, G.R. No. 139409, March 18, 2002, p. 6; *People v. Naag*, 322 SCRA 716, 738 (2000), citing *People v. Payot*, *supra* at 62.

[78] *People v. Legaspi*, *supra* at 121.

[79] See *People v. Taliman*, 342 SCRA 534, 546 (2000), citing *People v. Villaran*, 269 SCRA 630, 636 (1997); *People v. Yip Wai Ming*, 264 SCRA 224, 236 (1996).

[80] See *People v. Cañedo*, 335 SCRA 81, 98-99 (2000).

[81] *People v. Berzuela*, *supra* at 53, citing *People v. Aposaga*, 108 SCRA 574, 595 (1981).

[82] See *People v. Deang*, 338 SCRA 657, 673 (2000), citing *People v. Alviar*, 59 SCRA 136, 160 (1974).

[83] TSN, May 27, 1996, p. 25.

- [84] Id. at 33.
- [85] Id. at 39-40.
- [86] Id. 41-42, 47.
- [87] Id. at 48.
- [88] Id. at 50-51.
- [89] Id. at 49, 51-53.
- [90] Id. at 54-56; TSN, June 3, 1996, pp. 19-20.
- [91] TSN, June 3, 1996, pp. 22-30.
- [92] *People v. Bacungay, et al.*, G.R. No. 125017, March 12, 2002, p. 16, citing *People v. Layno*, 264 SCRA 558, 575 (1996).
- [93] *People v. Gutierrez, et al.*, G.R. Nos. 137610-11, February 6, 2002, p. 15, citing *People v. Aquino*, G.R. No. 145371, September 28, 2001, p. 12.
- [94] Rollo, Vol. I, pp. 346-347.
- [95] *People v. Obosa*, G.R. No. 129688, April 2, 2002, p. 14, citing *People v. Dorado*, 303 SCRA 61, 71 (1999).
- [96] Exh. “U” and sub-markings, Folder of Exhibits, Vol. III, pp. 571-572.
- [97] Exh. “V” and sub-markings, Id. at 573.
- [98] Exh. “W” and sub-markings, Id. at 574.
- [99] Exh. “X” and sub-markings, Id. at 575.
- [100] *People v. Ubaldo*, 342 SCRA 338, 351 (2000), citing *People v. Violin*, 266 SCRA 224, 233 (1997).
- [101] *People v. Lazarte*, 334 SCRA 635, 650 (2000).
- [102] See *People v. Go-od*, 331 SCRA 612, 623 (2000).
- [103] *People v. Ballenas*, 330 SCRA 519, 536 (2000).
- [104] *People v. Magayac*, 330 SCRA 767, 775 (2000).
- [105] *People v. Jakosalem*, G.R. No. 130506, February 28, 2002, p. 9, citing *Luxuria Homes, Inc. v. Court of Appeals*, 302 SCRA 315, 327 (1999).
- [106] Exh. “K-A” and series, to “K-296”, Folder of Exhibits, Vol. III, pp. 612-1081.

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