

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRESENCIANO “SONNY” ENOLVA,
ACCUSED-APPELLANT.**

G.R. Nos. 131633-34. January 25, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

At around seven o'clock in the evening of July 25, 1995, Rogelio Abunda and his three-year old daughter Julie were shot while they were sleeping on the floor of their house at Barangay Bagombong, Municipality of Minalabac, Camarines Sur. Brought to the hospital, Rogelio Abunda was dead on arrival from hemorrhagic shock, secondary to two gunshot wounds. Julie died the following day at the Bicol Regional Hospital due to the gunshot wound that she sustained which caused a ruptured spleen and lacerated lung parenchyma.

Cresenciano "Sonny" Enolva y Alegre was charged in Criminal Case No. 95-6021 and Criminal Case No 95-6047, filed respectively on November 15, 1995 and December 12, 1995, under the following informations:

Civil Case No. 98-6021

"That on or about the 25th day of July 1995 at about 7:00 o'clock in the evening at Barangay Bagombong, Municipality of Minalabac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously assault, attack, aim and shoot with his gun one ROGELIO ABUNDA hitting the same on the upper left side of his body and as a result thereof sustained gunshot wound which caused his instantaneous death.

That as a consequence of the death of the death of Rogelio Abunda, his heirs suffered damages in the amount of P100,000.00, Philippine Currency.

ACTS CONTRARY TO LAW."

Crim. Case No. '95-6047

"That on or about the 25th of July 1995, at Bgy. Bagombong, Municipality of Minalabac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, with intent to kill, while armed with a hand-gun, with treachery and without premeditation, did then and there wilfully, unlawfully and feloniously shot Julie Abunda y Borega, hitting her in the body which caused her death, to the damage and prejudice of her heirs which will be proven during the trial.

ACTS CONTRARY TO LAW."[1]

Accused pleaded "not guilty" to both charges.

The two cases were ordered consolidated before Branch 24, Regional Trial Court, Naga City. The accused waived his right to a pre-trial in both cases, which were thus set for continuous trial.

The prosecution presented the following witnesses: Pedro B. Abunda and Lirlita Abunda, the son and daughter of the deceased Rogelio Abunda, Dr. Antonio B. Estanislao, Municipal Health Officer who issued the post mortem certificate for the autopsy conducted on Rogelio Abunda, Dr. Ruelo Lebi Realuyo, physician at the Bicol Regional Hospital, who conducted the autopsy on Julie Abunda, Major Lorlie Arroyo, a PNP member assigned as Forensic Chemist of the Crime Laboratory at Region V. Claudio Torsero Casilao and Rodrigo Dueña, both residents of Bagumbong, Minalabac.

The testimonies of the prosecution witness were summarized by the trial court as follows:

"Pedro Abunda is the 17-year old son of the deceased Rogelio Abunda and the half-brother of the victim Julie Abunda. He testified that on July 25, 1995 at about 7:00 o'clock in the evening, he was inside their house listening to the radio program "Reyna Bandida" with his cousin, Eddie Abunda. A younger brother, Vener Abunda, was also on his side lying down. A little bit farther from him were his father, Rogelio Abunda, Rowena Abunda, his stepmother, and Julie Abunda, Rogelio and Julie were already asleep. Lirlita Abunda, another sister was outside the house fetching water. Then he heard a gunshot, Eddie Abunda jumped out of the window while Pedro Abunda rolled down the side of the house through the wall which was made only of woven coconut leaves. When he rolled down, he allegedly saw the accused Cresenciano Enolva at the other end of the house, in a half squatting, half kneeling position with his hands extended and two fingers pointing inside the wall. While he was in this position, he heard a second gunshot but this time, he was already beside a "duhat" tree. Pedro Abunda drew a sketch of their house and the relative positions of the people inside the house as well as his location and that of the accused when he saw him (Exh. "C"). Cresenciano Enolva allegedly ran away and so did Pedro Abunda. He ran towards his "tatay" (Rogelio Abunda) who sought help in the house of Menardo Casilao. There, he was told to look for a motor boat that would take Rogelio Abunda to Minalabac because they were to bring him to a doctor. When they reached the wharf at Minalabac, Camarines Sur, his father was brought to the municipal building because he died already on the way. His half-sister, Julie, was brought to the Bicol Regional Hospital for treatment. Both Rogelio and Julie were hit by bullets. The doctor treated Julie only and did not operate on her because he said she could not endure the operation. The following day, Julie died also at the hospital. Pedro Abunda said "according to information Cresenciano Enolva said that if they will not leave the place, he will kill them." A sworn statement found on pages 15-16 of the records was admitted to have been executed by the witness and marked as Exhs. "D", "D"-1" to "D-2".

Lirlita Abunda is the 15-year old daughter of the deceased Rogelio Abunda. She was interrogated by the presiding judge to find out if she understands the meaning of her oath and the consequences of her testimony in Court. She was found to be qualified to testify. Her testimony shows that on July 25, 1995 at around 7:00 o'clock in the evening, she was sent by her brother to fetch water from Claudio Casilao's house at Bagumbong, (sic) Minalabac, Camarines Sur. After fetching water, she walked home. She saw "Sonny" Enolva beside their house smoking and afterwards, peep into their house. He walked towards their backyard and she followed him. She saw him draw a gun, pointed it to their house and fired two times. She said she was about 1 and ½ arms-length from the accused when he fired the gun. She allegedly recognized Sonny Enolva because of the light coming from the houses of Bienvenido Ces, Claudio Casilao, the Barangay Kagawad and from their house. Sonny Enolva came from the house of Beinwendio Ces. After firing the shots, "Sonny" Enolva ran away. She also ran towards the house of Claudio Casilao. She said she saw her father running and shouting for help because he was hit. Her father went to the house of Barangay Kagawad Menardo Casilao. Her father was not brought anymore to the hospital because he died on the way after he was boarded in the motorboat. Julie Abunda was able to reach the regional hospital but she died in the morning of the next day."

Dr. Antonio Borja Estanislao was the Municipal Health Officer who issued the post mortem certificate (Exhs. "A", "A-1" and "A-2") for the autopsy conducted by him on the cadaver of Rogelio Abunda on July 26, 1995. He testified that the cadaver at the time of the examination, was already in the state of rigor mortis. There were two gunshot wounds found on the body. The first, was found on the armpit, 2 cm. In diameter, with its edges inverted, (edges were directed inwards) with contusion collar (there was a contusion right around the wound)

and with gunpowder tattooing (blackened area around the wound). This was allegedly the entry wound.

The second wound, also 2 cm. In diameter, its edges everted anterolateral aspect, was found on the front left shoulder. This is allegedly the exit wound because the edges are directed outwards. When asked on the possible position of the victim at the time he was shot, Dr. Estanislao said that either the victim's position was higher than the assailant or the victim was lying down with the assailant in equal level as the victim so that the direction of the slug was horizontal. The cause of death was hemorrhagic shock due to assault by firearms and explosives. The cause of death as appearing in the certificate of death (Exh. "B") was marked as Exh. "B-4".

Claudio Tersero Casilao is a resident also of Bagongbong, Minalabac, Camarines Sur. He testified that on the date and time of the incident complained of while he was in his house he heard a commotion in the neighboring house in the house of one Casilao. He transferred to that house and found out that Rogelio Abunda was injured. He did not know whether the child was injured or not but when she was brought to the other house, she suddenly fell down. Later, he stated that it was Rogelio Abunda and Julie Abunda who were injured. He said he knew that Rogelio Abunda was allowed to build his house in that place where they were residing by Sonny Enolva and that the witness was one of those invited to help transfer the house of Rogelio Abunda. He also knew Julie Abunda because she used to play in their house with his children. He was one of those who decided to hire a motorboat to bring Julie to the hospital but he did not go with them anymore.

Rodrigo Dueña y de Monteverde is another resident of Bagongbong, Minalabac, Camarines Sur, who learned of the shooting incident of July 25, 1995. He knew Rogelio Abunda because he was once an operator of his irrigation while Julie Abunda was staying in a place near their house. He also knows Julie Abunda to be the daughter of Rogelio Abunda. He stated that on July 24, 1995 at around 10:00 o'clock in the evening, Rogelio Abunda warned him not to get out of his house because he will be shot. Again at 2:00 o'clock in the morning of July 25, 1995, Rogelio Abunda went to his house and repeated the warning to him because Cresenciano Enolva was allegedly in the dark place near the house of Ama.

Major Lorlie Arroyo is a PNP member assigned as Forensic Chemist of the Crime Laboratory at Region V, Camp Simeon Ola, Legaspi City. She was the one who prepared Chemistry Report No. C-27-95 on the suspect Cresenciano Enolva (Exhs. "H", "H-1" and "H-2"). She testified that she received the paraffin cast of Cresenciano Enolva on July 28, 1995 upon request of the Chief of Police of Minalabac, Camarines Sur. The specimen submitted to her was a pair of paraffin cast taken from both hands of Cresenciano Enolva (Exh. "H-3"). The purpose of the laboratory examination was to determine the presence of gunpowder residue (nitrates) in the specimen submitted (Exh. "H-4") her laboratory examination consisted of adding diphenylamine reagent to the dorsal portion of the paraffin cast and thereafter, dark blue specks appeared on the cast which is an indication of the presence of nitrates or gunpowder residue. These findings were stated in her report in this manner: "Qualitative examination conducted on the specimen mentioned above gave POSITIVE result to the tests for the presence of gunpowder residue (nitrates)" (Exh. "H-5"). She further testified that the presence of gunpowder residue would still be very clear on the hands of the suspect because the crime laboratory personnel at the Provincial Command of Camarines Sur had taken the paraffin cast a day after the incident. Then it was turned over to Camp Ola for examination on the 28th of July, 1995.

On cross-examination, she testified that plain washing of the hands with water before the paraffin cast is done will not remove the nitrates or gunpowder from the hand. As a matter of fact, the technician, prior to the examination even washes the hands of the suspect with plain water to eliminate contaminants adhering to the hands of the suspect. She further explained that if someone handled fertilizer, like complete fertilizer which contains nitrates, it is possible to have a blue speck of nitrates but its appearance would be different from the nitrates residue coming from gunpowder. Even if firecrackers have been exploded by the suspect, again there would be a difference from the nitrates of gunpowder residue which is a distinct blue speck.

Upon examination by the Court, Major Lorlie Arroyo said that a paraffin test is conducted on the dorsal side of the hand because it is the portion which is directly exposed to the firearm. In exploding firecrackers, the most

contaminated is the palm side of the hand not the dorsal side.

On redirect examination by the prosecutor, Major Lorlie Arroyo also explained that contaminants from fertilizers or firecrackers can just be taken off by washing the hands because they are soluble in water. Nitrates from gunpowder, however, are embedded in the pores of the skin, so ordinary washing would not remove them. If they are examined, nitrates from that embedded portion of the skin would appear very neatly as dark blue specks. She was very positive that the nitrates she found in her examination of the paraffin cast were gunpowder residue.

Dr. Ruel Lebi Realuyo was the physician at the Bicol Regional Hospital who conducted the autopsy on the cadaver of Julie Abunda, the three year old victim in Criminal Case No. 95-6047 on July 26, 1995 at 1:30 P.M.

The autopsy report as explained by the witness found two gunshot wounds, identified as point of entry: 0.5 cm. Located at the posterior axillary line at the level of 2nd ICS right and as point of exit: 3 cm. 10th ICS posterior axillary line, left. He testified that upon opening of the body of the victim, he noted the lung parenchyma to be lacerated on the right side. He said the laceration of the lung parenchyma was caused by the traversing bullet of the right side going to the left side."

The defense presented as witnesses the accused himself, Rowena Borrega Abunda, the common-law wife of the victim Rogelio Abunda, Santiago Casilao, who helped bring the victims to the hospital, and Elena Nuello, a neighbor of the accused.

The accused Cresenciano denied that he shot Rogelio Abunda and Julie Abunda. He claimed that he was sleeping in his house and was drunk at the time of the incident.

Rowena Abunda testified that Pedro and Lirlita Abunda were in their neighbor's house watching TV at the time of the shooting and that when she made her first statement on September 1, 1995, at the Camarines Sur Provincial Command, wherein she charged the accused as the culprit who shot her husband and child, she was only coached by Rosito Abunda and Rodrigo Dueña, and the latter had a grudge against the accused. She admitted having executed an affidavit of desistance stating that she is convinced that the accused is innocent and that there were no witnesses to the shooting incident.[2]

Santiago Casilao testified that he was helping in the kitchen of Claudio Casilao in the evening in question and saw Pedro Abunda and Lirlita Abunda among those watching TV inside the house, when he heard the two gunshots from the house of Rogelio Abunda.[3]

Elena Nuello corroborated the testimony of the accused that the latter was sleeping in his house at the time of the shooting incident.[4]

The trial court upheld the version of the prosecution, relying on the testimonies of the two persons who claim to be eyewitnesses to the shooting, and the fact that gunpowder residue (nitrates) was found on the paraffin cast taken from the hands of the accused. Finding that there was treachery in the attack as the victims were asleep when they were shot, the court found the accused guilty of murder as follows:

WHEREFORE, accused Cresenciano Enolva alias "Sonny" Enolva is hereby pronounced guilty beyond reasonable doubt of the two counts of Murder, qualified by treachery. Accused is hereby sentenced to Death both in Criminal Cases Nos. '95-6021 and '95-6047, to indemnify the heirs of Rogelio Abunda and Julie Abunda in the amount of Fifty Thousand (P50,000.00) Pesos in both cases, to pay moral damages of Thirty Thousand (P30,000.00) Pesos also in both cases, and to pay the costs of these suits.

SO ORDERED."[5]

The accused Cresenciano Enolva raises the following assignment of errors in his appellant's brief:

I

THE COURT A QUO ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE TESTIMONY OF ALLEGED EYEWITNESS PEDRO ABUNDA AND LORLITA ABUNDA INSPITE OF THEIR OBVIOUS LACK OF CREDIBILITY CONSIDERING THAT THE FORMER RECANTED HIS PREVIOUS TESTIMONY WHILE THE LATTER WAS NOT PRESENTED UNTIL MUCH LATER ON BY THE PRESECUTION, THUS, BOLSTERING THE SUSPICION THAT SHE WAS MADE TO LIE BY HER BROTHER, PEDRO ABUNDA.

II

THE COURT A QUO ERRED IN HOLDING THAT THE GUNPOWDER (NITRATES) FOUND ON THE ACCUSED-APPELLANT CONFIRM THE SUSPICION THAT IT WAS THE LATTER WHO PERPETRATED THE CRIMES CHARGED.

III

IN VIEW OF THE FIRST TWO ASSIGNED ERRORS, THE COURT A QUO COMMITTED REVERSIBLE ERROR IN NOT EXTENDING DUE CONSIDERATION TO THE DEFENSES OF DENIAL AND ALIBI RAISED BY THE ACCUSED-APPELLANT.

IV

ULTIMATELY, THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF TWO COUNTS OF THE CRIME OF MURDER AND SENTENCING HIM TO DEATH AND TO PAY INDEMNITY, MORAL DAMAGES AND COST OF SUIT."[6]

Accused-appellant assails the testimonies of Pedro Abunda and Lirlita Abunda claiming they are not credible. He claims that Pedro Abunda impeached himself when he executed an affidavit of desistance to withdraw the murder charges which he filed as complaining witness. Like Rowena Abunda, who also executed as Affidavit of Desistance, she clearly manifested that she is not convinced that the accused is the perpetrator. With respect to Lirlita Abunda, her belated decision to testify for the prosecution more than a year after the shooting incident is unnatural considering that she was related to the deceased victims.

We find no merit in the above contentions of the accused-appellant. The records show that prior to the cross-examination of Pedro Abunda, he executed an affidavit of desistance on October 8, 1996, wherein he stated that he is no longer interested in the further prosecution of the cases against the accused; that he no longer wished to be subjected to cross-examination because what he declared in his direct testimony is not true as he did not actually see the accused shoot his father and his sister on July 25, 1995 and was merely coached by his uncle Rosito Abunda. Said affidavit of desistance was marked as Exhibit I for the defense. However, on redirect examination Pedro Abunda recanted his affidavit of desistance. In his redirect testimony, he explained why he did so:

"Q

By the way, why did you execute this affidavit of desistance?

A

I executed this affidavit of desistance because of the tragedies that met my family, the death of my Uncle Sito Abunda and also the accident that my kid brother met. So, I was forced to execute this affidavit of desistance."[7]

xxx xxx xxx

"COURT:

Questions from the Court.

Q

Were you given any amount in signing that document?

A

Yes, Ma'am. I was given an amount of money when my brother was in the hospital but because when I found that the amount is not commensurate for what I am asking, I decided to pursue the case.

Q

In other words, because you needed money that you decided to forego the prosecution of these cases?

A

Yes Ma'am.

Q

That would be all.[8]

Pedro Abunda, on cross-examination, reiterated his earlier testimony on direct examination that he was in his house when the incident happened. After he heard the gunshot, he rolled down the wall of the house to the ground, because he was afraid and shocked. He admitted that he was earlier watching, TV at Ediong Casilao's house prior to the incident, but stated that he left to return to his house to listen to the radio drama "Reyna Bandida". He denied that his uncle Rosito Abunda coached him on what to say, and testified that he is still interested in pursuing the case to give justice to his father.[9]

Aside from the fact that the initial retraction was withdrawn, as the complainant Pedro Abunda decided to pursue the case against the accused-appellant, it must be borne in mind that retractions are looked upon with disfavor as they can easily be secured, usually for monetary consideration or through intimidation.[10] Similarly, the delay on the disclosure by Lorkita Abunda about what she had witnessed on July 25, 1995 was adequately explained. Lorkita stated in court:

"Q:

You mean after the incident where you witnessed the accused fired shots toward your house, you never gave any statement to the authorities about what you know?

A:

No, sir.

Q:

And you did not volunteer to give any statement to the authorities?

A:

No, sir.

Q:

And it is only now that you are making your statement about what you saw during the incident of July 25, 1995 ?

A:

Yes, sir.

Q:

Why is it that it's just only now that you are divulging what you saw of that incident that happened to your family on July 25, 1995 ?

A:

Because according to my brother Pedro Abunda, I should not involve myself because he will be the one to take care of this case.

Q:

You never told anyone, to your family what you saw that evening of July 25, 1995 where you witnessed the accused fired shots toward your house?

A:

I did not because I was afraid."[11]

It has been held that delay or vacillation in making a criminal accusation will not necessarily impair the credibility of the complaining witness if such delay is satisfactorily explained.[12]

The second assigned error has no merit. Accused-appellant's insistence that although he was found positive for gunpowder residue (nitrates), there was no conclusive evidence as to the exact source of the same. Thus, although Major Lorlie Arroyo testified on cross-examination that the same "blue reaction" can "possibly" be caused by exploding firecrackers and handling fertilizers, the same witness categorically testified that both hands of the accused-appellant were found positive of nitrates.[13]

Major Arroyo on cross-examination explained that if someone handled fertilizer, like complete fertilizer which contains nitrates, or exploded firecrackers, the distinct blue speck of gunpowder residue would be different:

"Q:

Is it possible also that nitrates can be found not only in gunpowder but also in other elements?

A:

It can also be found, sir.

Q:

Like fertilizers use by farmers?

A:

Yes, sir.

Q:

So, it is correct to say that the fertilizer like urea and this similar fertilizer used by farmers contain nitrates?

A:

Urea has no nitrates except for those what we call complete. It has nitrates.

Q:

If a farmer has just handled fertilizer known as complete since he has fertilized his farm if his hands are examined for nitrate contents, is it possible that nitrate compound can be found on his hands?

A:

It is possible to have a blue speck also for nitrates but the appearance of the nitrates is different from that nitrate residue coming from gunpowder.

Q:

And firecrackers contain also nitrates?

A:

Yes, sir, potassium nitrate.

Q:

If a person has just been recently exploding firecrackers because there is a barangay fiesta and a paraffin test is conducted on his hands, is it also possible to find nitrates on the paraffin cast on his hands?

A:

It is also possible, sir, but it is also different since the nitrates would be very abundant unlike that of the nitrates from gunpowder residue, distinct blue speck."^[14]

There is an "abundance of blue color" on the hands resulting from the firing of a gun^[15] which makes it different from the residue left by exploding firecrackers:

"A:

That is why subject is being washed first with plain water to get rid of the contaminants as first, fertilizers and firecrackers they are adhering or they are just above the skin, then they can be taken off when washing because if they are not washed and directly examined this color especially of firecrackers and fertilizers, there will be conglomeration or smudges of blue color so the dirty appearance will be there, whereas, if they are washed those adhering on the skin will be taken off and they are soluble in water, so that is taken off. While that of nitrates coming from gunpowder, they are embedded in the pores of the skin, so ordinary washing cannot be removed from the skin. If they are examined, these nitrates from that embedded portion of the skin would be appearing very neatly as dark blue specks.

Q:

The purpose precisely of Exh. "H", as I stated awhile ago is for you to determine the presence of gunpowder residue nitrates and in your findings, you positively stated that qualitative examination conducted on the specimen mentioned gave positive result to the test of the presence of gunpowder. In other words, you would like to tell this Honorable Court and this Fiscal that precisely, this chemistry report no. C-27-95, you are very positive that the subject here has a gunpowder residue?

A: Yes, sir."^[16]

As to why both hands of the suspect yielded positive result for nitrates. Major Arroyo testified that even if only

one hand is used for firing a gun, the other hand could be contaminated with gunpowder residue unless hidden from the hand holding the gun.[17]

In fine, the issues raised by accused-appellant boil down to one of credibility. The trial court found that the testimony of Pedro Abunda was rendered in a "very straight forward manner," complete with details of the incidents that could not have been the product of coaching from anyone:

"He was able to explain upon interrogation of defense counsel why he transferred from Claudio Casilao's house to their house. The shock that he felt when he first heard the gunshot which impelled him to roll down their wall was understandable. The anguish that he underwent when he left alone with the care of his younger brother who met an accident and was confined in the hospital with him not having a single penny of his own, and the death of his nearest relative, Rosito Abunda, left him miserable and helpless, thus, he was persuaded to recant his previous testimony. He said he was given money to sign the affidavit of desistance but when he received a measly amount contrary to what he was asking, he decided to pursue these cases. He, therefore, abandoned his affidavit of desistance and submitted himself to court for cross-examination.[18]

The court a quo also found Lorldita credible:

"If Pedro Abunda's testimony was not convincing enough, Lorldita Abunda was the witness who performed very creditably on the witness stand. She corroborated the statement of Pedro Abunda that she was told to fetch water from Claudio Casilao's house. It was while she was on her way back that she saw the accused smoking beside the house. He later went towards the back of the house, drew his gun and fired at the house. When asked by the Court why it was only lately that she came to testify in these cases, she answered that she was told by her brother, Pedro Abunda, not to involve herself because he will be the one to take care of the cases. She did not tell her family what she saw on that fateful day because she was afraid. After she stayed in the hospital with her sister Julie, she went to Tinangis, Pili, Camarines Sur with her uncle. Later, she worked as a housemaid in Manila with the son of Fiscal Leaño and subsequently, she worked at Martillana, Pili, Camarines Sur again as a domestic helper. She said she knew that the accused was mad at her father because he told him that if he will not leave the place, he will kill Rogelio Abunda."[19]

The court did not err in ruling that the alibi of the accused that he was drunk and asleep in his house at the time that the shooting occurred will not lie against the positive identification of Lorldita and Pedro Abunda. The court also gave no credence to the testimony of Santiago Casilao which tended to show that Lorldita and Pedro were in the house of Claudio Casilao at the time of the incident.

After an examination of the evidence, we find no cogent justification to set aside or overturn the court's assessment of the credibility of the witnesses and their testimonies, a matter which is best undertaken by the trial court.[20] It is doctrinal that the Supreme Court will not interfere with the judgment of the trial court in passing upon the credibility of witnesses unless there appears in the record some fact or circumstance of weight and substance which has been overlooked or the significance of which has been misinterpreted.[21] We find no such basis.

The crime committed is murder qualified by treachery. When the victims were shot, they were lying down completely unaware and had no way of defending themselves. Thus, appellant employed means or methods to insure the execution of the crime, without risk to himself.[22] Evident premeditation as alleged in the informations was not proven. There is no evidence presented to show that the accused-appellant meditated and reflected upon his decision to kill the victims and the intervening time that elapsed before his plan was carried out. Settled in the rule that when it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered.[23]

Murder is punishable by reclusion perpetua to death,[24] which are two indivisible penalties. In the absence of

mitigating or aggravating circumstances in the commission of the offense, the lower penalty shall be applied.[25] Hence, the imposable penalty is reclusion perpetua in both cases.

WHEREFORE, the judgment appealed from is affirmed with the modification that the penalty imposed in both Criminal Cases Nos. '95-6021 and '95-6047 is reduced to reclusion perpetua.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Rollo, pp.81-82.

[2] TSN, June 11, 1997.

[3] TSN, June 30,1997, p.6.

[4] TSN, June 30,1997, pp. 18-20.

[5] Rollo, p. 92.

[6] Rollo, pp. 59-60.

[7] TSN, Nov. 19, 1996, p. 22.

[8] TSN, Nov. 19, 1996, p. 25.

[9] TSN, Nov. 19, 1996, pp.12-14.

[10] People vs. Dalabajan 280 SCRA 696; People vs. Dulay, 217 SCRA 103; Lopez vs. Court of Appeals, 239 SCRA 562.

[11] TSN, Nov. 21, 1996, pp. 25-26.

[12] People vs. Herbieto, 269 SCRA 472; People vs. Errojo, 229 SCRA 49; People vs. Jimenez, 250 SCRA 349.

[13] TSN, April 25, 1997, pp. 9-11.

[14] TSN, April 25, 1997, pp. 9-10.

[15] At p. 12.

[16] TSN, April 25, 1997, pp. 13-15.

[17] At pp. 11-12.

[18] Rollo, p.89.

[19] Rollo, pp. 89-90.

[20] People vs. Oliano, 287 SCRA 158.

[21] People vs. Nang, 289 SCRA 16.

[22] People vs. Guevarra, 23 SCRA 58.

[23] People vs. Derilo, 271 SCRA 633; People vs. Bongadillo, 234 SCRA 233.

[24] Article 248 Revised Penal Code, as amended by R.A. 7659, which took effect on December 31, 1993.

[25] Article 63, par. 2.

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