

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON NAVARRO, ACCUSED-APPELLANT.

G.R. Nos. 132696-97. February 12, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Ramon Navarro (accused-appellant) appeals his conviction for the crime of Murder with the Use of an Unlicensed Firearm for which he was sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim the amount of P100,000.00 as damages by the Regional Trial Court, Branch 54, Alaminos, Pangasinan.

Two (2) separate Informations were filed against accused-appellant for Murder (Criminal Case No. 3082-A) and Aggravated Illegal Possession of Firearm and Ammunitions (Criminal Case No. 3083-A). The Information for murder reads:

That on or about August 28, 1987, in the evening, along the highway in Palamis, municipality of Alaminos, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, taking advantage of nighttime and superior strength, did then and there wilfully, unlawfully and feloniously shoot Romeo Calizar with a handgun which cause [sic] his untimely death as a consequence, to the damage and prejudice of his heirs.

CONTRARY to Art. 248 of the Revised Penal Code.[1]

The Information for aggravated illegal possession of firearm and ammunitions reads:

That on or about August 28, 1987, in the evening along the highway in Palamis, municipality of Alaminos, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did there and then willfully, unlawfully and feloniously have in his possession, control and custody a handgun without first securing the necessary license or permit to possesses [sic] the same and the said handgun was used in shooting to death Romeo Calizar.

CONTRARY to Sec. 1 of Presidential Decree No. 1866.[2]

Accused-appellant was not allowed to post bail. At his arraignment, accused-appellant pleaded not guilty to both charges. Thereafter, a joint trial of the two cases ensued.

The case for the prosecution was based mainly on the testimony of Bob Regaspi. He testified that on 28 August 1987, at 9:00 in the evening, he was driving a tricycle on his way home. He noticed that he was following an owner-type jeep. The tricycle was about several meters behind the jeep. Both vehicles were going towards the south. Before they reached Bugtong Bridge, the jeep suddenly stopped. Regaspi had to stop the tricycle behind the jeep because there were several vehicles on the other lane coming from the opposite direction. Regaspi then saw accused-appellant got off from the right side of the jeep. Accused-appellant was carrying a .45 caliber gun. Regaspi also saw accused-appellant pull out a person from the jeep. Accused-appellant kicked said person and then shot him three (3) times. The victim was Romeo Calizar.[3]

According to Regaspi, he was able to identify accused-appellant as the assailant even if the killing happened at night because there was sufficient illumination from the light of the jeep as well as the lights of the other vehicles passing at the time. After he witnessed the incident, Regaspi proceeded to his home. He did not report the crime to the police as he was afraid of accused-appellant. He said that there were rumors that accused-appellant was a killer.[4]

Fearing for his life, Regaspi relocated to Manila and lived there for three (3) years. Before he left, however, he already told the victim's wife, Demetria, that it was accused-appellant who killed her husband. He returned to Pangasinan only in 1990 and resided at his mother's residence in Bolaney, Alaminos, Pangasinan. He also briefly stayed at his grandfather's house in Barangay Balingasay, Bolinao.[5]

The prosecution also presented as its witnesses Demetria Calizar, Dr. Maria Victoria Orfinada, PO3 Delfin Estabilla Flores and SPO3 Romeo De Guzman.

Demetria Calizar, wife of the victim, testified that she was in Bolinao, Pangasinan, when she learned that her husband was killed. It was her sister, Carmen Conde, who broke the news to her. Demetria just gave birth at the time. Upon hearing about her husband's death, she immediately went to the funeral parlor and attended to the burial preparations. She spent about ten thousand pesos for the wake and burial of her husband. At the time of his death, the victim was earning three hundred pesos a day as an itinerant empty bottle buyer. He was forty two (42) years old. The victim left behind five (5) children with Demetria. Finally, Demetria confirmed that Bob Regaspi told her that it was accused-appellant who shot her husband.[6]

Dr. Maria Victoria Orfinada, Municipal Health Officer of Alaminos, Pangasinan, identified the Certificate of Death[7] issued in connection with the death of Romeo Calizar. The certificate showed that the cause of death was "severe hemorrhage due to multiple gunshot wounds on the different parts of the body." [8] The certificate was issued by Dr. Manuel Navarro,[9] the Municipal Health Officer at the time. Unfortunately, Dr. Navarro could no longer testify because he already died.

PO3 Delfin Estabillo Flores testified that he was on duty at the Philippine National Police (PNP) Alaminos Police Station on 29 August 1987. Around 6:00 in the morning of said date, Flores received a call to respond to an alleged shooting incident that occurred at Barangay Palamis, Alaminos, Pangasinan. Together with the other policemen on duty, Flores immediately proceeded to the said place to investigate. When they arrived at the crime scene, they saw a man lying face down on the right side of the road going to Mabini. The said person, later identified to be Romeo Calizar, was already dead. They recovered two (2) empty shells and two (2) slugs of a .45 caliber gun near the body.[10]

SPO3 Romeo De Guzman testified that he works in the Firearms and Explosives Office of the PNP Camp Crame and that based on their records, accused-appellant is not licensed or authorized to possess or carry a firearm.[11]

For its part, the defense presented the following witnesses: Mayor Leon Rivera, Rodolfo R. Aquino, PO3 Marciano Bacani, Rogelio Banogon, Leonora Arboleda and Danilo Malapit. Accused-appellant opted not to testify on his behalf.

Leon Rivera testified that during his incumbency as Mayor of Alaminos, he was not aware of any criminal case having been filed against accused-appellant. He admitted on cross-examination, however, that the people of Alaminos once held a big rally against the alleged illegal activities, e.g., killings, robberies and jueteng, of the notorious Aguila Gang. Accused-appellant was widely believed to be the leader of said gang.[12]

Rodolfo Aquino is a retired provincial prosecutor of Alaminos. He testified that during his stint as assistant provincial prosecutor and subsequently provincial prosecutor from 1983 up to 1990, he never came across any

criminal charge against accused-appellant apart from the present case.[13]

PO3 Marciano Bacani, member of the PNP of Alaminos, was presented to show that there was no mention of accused-appellant in the police blotter for 30 August 1987. Entry No. 4978 on said date stated that the body of Romeo Calizar was found lying face down at the edge of the road in Barangay Palamis. He sustained multiple gunshot wounds. Two (2) empty shells and two (2) slugs of .45 caliber gun were found near his body.[14]

In his direct testimony, Rogelio Banogon claimed that on 28 August 1987 at about 9:00 in the evening, he was riding a tricycle going to the town from Bolaney. He was on his way to buy medicine for his son who was then having a stomachache. When the tricycle was near the Bugtong Bridge, he heard a gunshot. The driver immediately stopped his tricycle. Banogon alighted from the tricycle and switched on his flashlight. He saw Bob Regaspi, the witness for the prosecution, holding a .45 caliber gun. Banogon said he also saw a man lying down but that he did not see his face. Banogon asked Regaspi what happened and the latter allegedly said he shot the victim because he had sexual intercourse with all his (Regaspi's) aunties. Banogon did not report the matter to the police but proceeded to the town to buy the medicine for his son.[15]

Leonor Arboleda testified that some time on 9 May 1987, the victim, Romeo Calizar, was having a drinking spree with her (Arboleda's) husband and two other companions at their (Leonor and Teddy Arboleda's) house. Demetria, wife of the victim, suddenly arrived and started to quarrel with her husband over money matters. After their argument, Demetria allegedly uttered "ipapatay kita" to the victim.[16]

Danilo Malapit stated that the victim worked in the junk shop owned by his (Danilo's) father. Calizar bought empty bottles and delivered them to the junk shop. On 28 August 1987, Danilo saw the victim leave the junk shop at around 8:00 in the evening. The victim left in a tricycle driven by his companion. The following morning, Danilo heard about the news of the victim's death.[17]

After consideration of the evidence adduced by the prosecution and defense, the trial court rendered judgment convicting accused-appellant for the crime of murder with the use of unlicensed firearm and sentencing him to suffer the penalty of reclusion perpetua. The dispositive portion of the decision reads:

WHEREFORE, in consideration of the foregoing premises, the accused is declared GUILTY beyond reasonable doubt of the crime of Murder with the use of unlicensed firearm and Criminal Case No. 3083-A is considered a mere aggravating circumstance of the crime of Murder, together with the aggravating circumstance of treachery and nighttime. Accused is sentenced by reason hereof to suffer the single indivisible penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P100,000.00.

Considering the recent events at the Provincial Jail in Lingayen, Pangasinan, where a week ago from this date of judgment, there five detention prisoners who escaped detention and considering the state of security and even the conditions at the Provincial Jail in Lingayen, Pangasinan, this Court orders immediately the National Bureau of Investigation represented by Head Agent, Atty. Teofilo Galang, and/or his agents to bring the living body of the accused immediately today, upon receipt of this Decision, to the National Penitentiary at Muntinlupa to serve his sentence, subject to the automatic and requisite review of this Decision by the highest court of the land.

IT IS SO ORDERED.[18]

Accused-appellant accordingly filed his notice of appeal.[19] Thereafter, he filed his appellant's brief alleging the following:

ASSIGNMENT OF ERRORS

First Assignment of Error

The Trial Court committed a reversible error in convicting the accused-appellant upon an uncorroborated and incredible testimony proceeding from the mouth of an equally incredible witness;

Second Assignment of Error

The Trial Court committed grave and reversible error when in order to bolster its unjustified judgment of conviction of the accused-appellant in the above-entitled case, cavalierly and without legal bases took judicial notice of unproved, extraneous and doubtful facts and circumstances, in violation of jurisprudence x x x;

Third Assignment of Error

The Trial Court committed reversible error in not taking into consideration the substantial albeit circumstantial evidence testified to by the witnesses for the defense that point to a conspiracy among the alleged lone eye witness Bob Regaspi with his blood aunt, the widow Demetria Calizar as the authors and perpetrators of the murder of Romeo Calizar.[20]

The appeal must fail.

Accused-appellant impugns the credibility of the prosecution eyewitness, Bob Regaspi, alleging that his testimony was marred by inconsistencies. Accused-appellant points to, among others, the following alleged inconsistencies:

- On direct-examination, Regaspi stated that he is a resident of Brgy. Bolaney, Alaminos, Pangasinan. However, on cross-examination, he mentioned that he is a resident of Brgy. Balingasay, Alaminos, Pangasinan;
- Regaspi denied that he is a relative of Demetria Calizar, the wife of the victim. In her testimony, however, Demetria admitted that Regaspi is her nephew as he is the son of her older sister, Monica Clave;
- Regaspi claimed that he was driving a tricycle on the night of 28 August 1987 when he witnessed the slaying of Romeo Calizar. He admitted, however, that he did not possess any license to drive said vehicle. Further, while he (Regaspi) claimed that he merely borrowed the tricycle he was then driving, he could not give the name of the owner thereof;
- Regaspi testified that he saw accused-appellant shoot Romeo Calizar three (3) times. However, there were only two (2) slugs and two (2) empty shells found near the body of Romeo Calizar.[21]

The Court finds nothing unusual about the fact that Regaspi stated two different addresses as his residence. As explained by him, after he came back from Manila, he resided in Brgy. Bolaney. However, there was also a time when he briefly resided with his grandfather in Brgy. Balingasay. Also, the fact that he is a relative of the victim's widow does not detract from Regaspi's credibility as a witness. The weight of testimony of a witness is not impaired or in any way affected by his relationship to the victim when there is no showing of improper motive on the part of the witness.[22]

Likewise, Regaspi's admission that he did not have a driver's license does not negate the fact that he was driving a tricycle at the time when he witnessed accused-appellant gun down Calizar. Indeed, a person can still drive a vehicle even without possessing the necessary license albeit violating the traffic rules. Finally, whether there were two or three gunshots is immaterial. The certificate of death stated that Romeo Calizar died of multiple gunshot wounds.

In any case, to the mind of the Court, these inconsistencies enumerated by accused-appellant do not make the testimony of Regaspi unworthy of credence. As found by the trial court, Regaspi's testimony was straightforward and candid. He testified thus:

Q How long have you known Romeo Calizar?

A It is a long time, sir.

Q Mr. Witness, is Romeo Calizar still alive, if you know?

A He is already dead, sir.

Q Do you know how he died?

A Yes, sir. I know, sir.

Q How did he die?

A He was shot, sir.

Q Do you know who shot Romeo Calizar?

A I know, sir.

Q Who shot Romeo Calizar?

A It was Ramon Navarro, sir.

Q If Ramon Navarro is inside the court room, will you be able to recognize him, identify him and point to him?

A Yes, sir.

Q Will you please point on the accused, Ramon Navarro?

A

(Witness pointing at the accused who was wearing a blue pants and shirt and with sun-glasses and when asked his name answered Ramon Navarro).

COURT:

Where? The accused with sun-glasses?

PROS. USON:

Yes, your Honor.

Q Why do you say that it was Ramon Navarro who shot Romeo Calizar?

A I saw him with my two eyes, sir.

Q Where did Ramon Navarro shoot Romeo Calizar?

A In Palamis, sir.

Q Palamis. What town is that?

A Alaminos, Pangasinan, sir.

Q When did Ramon Navarro shoot Romeo Calizar at Palamis, Alaminos, Pangasinan?

A August 28, 1987, sir.

Q What time, more or less, if you know, did you see Ramon Navarro shot Romeo Calizar?

A At 9:00 o'clock, sir.

Q 9:00 o'clock, in the morning or evening?

A In the evening, sir.

Q

Now, Mr. Witness, you said that you saw Ramon Navarro shoot Romeo Calizar along Palamis, Alaminos, Pangasinan on August 28, 1987 at around the hour of 9:00 o'clock in the evening. Let us go back to that day and time. Where were you when you saw Ramon Navarro shoot Romeo Calisar?

A I was near them, sir.

Q What were you doing when you were near them?

A I was riding on a tricycle, sir.

Q Were you a passenger or a driver of that tricycle?

A I was the driver, sir.

Q How about Ramon Navarro, where was he in relation to you?

A He went down from the vehicle that they were riding on, sir.

Q He went down from what kind of, may I withdraw that, your Honor.

You said he went down. Are you saying he was also riding a vehicle?

A Yes, sir.

Q What was he riding before he went down?

A An owner-jeep, sir.

Q Where was the owner-jeep heading when you saw Ramon Navarro get down?

A It was facing south, sir.

Q When you said that the jeep was facing south, how about you and your tricycle, where were you also facing?

A It was also facing the south, sir.

Q How far were you and your tricycle from the jeep that was being ridden by Ramon Navarro?

A About three (3) meters, sir.

Q So you were following the jeep going south?

A Yes, sir. I was following the jeep.

Q

You said a while ago, you saw Ramon Navarro get down from the jeep. Was the jeep still running when he got down or was it stopped?

A It was stopped, sir.

Q How about you? When the jeep stopped, what did you do while you were following them?

A I also stopped my tricycle, sir.

Q When you stopped your tricycle, you saw Ramon Navarro get down from the jeep?

A Yes, sir.

Q What part of the jeep did he get off?

A In the right side, sir.

Q When you saw Ramon Navarro, may I withdraw.

Will you describe the appearance of Mr. Navarro when you saw him get down from the right side of the jeep?

A He was carrying a gun, sir.

Q By what means was he carrying the gun?

A He was holding it with his right hand, sir.

Q

After you saw Ramon Navarro get down from the jeep with a gun on his right hand, what next did you see happen?

A He pulled out a person from the jeep, sir.

Q What happened to the person that he pulled out from the jeep?

A He kicked the person, sir.

Q After Ramon Navarro kicked the person, what next did Ramon Navarro do?

A He shot him three (3) times, sir.

Q What happened to the person whom you saw Ramon Navarro shoot three times?

A When he kicked the person, the person fell down on the ground and he shot him three times, sir.

Q

Mr. Witness, how were you able to see Mr. Ramon Navarro kicked the person and shot him three times when it was around 9:00 o'clock in the evening?

A

The light of their jeep was on, sir, and the light of my tricycle was also on and also the light of the jeep coming from the opposite direction.

Q

What kind of gun was used by Ramon Navarro that you saw in shooting the person he pulled out from the jeep?

A It was short gun, sir, a 45.

Q A short gun, 45. Are you familiar with 45 caliber guns?

A I know, sir, because I used to see that kind of gun.

Q

Now, Mr. Witness, you saw that the gun used was short and according to you, it was a 45 caliber. Will you describe the gun used, let us say the color?

A It was shiny, sir.

Q How could you say it was shiny when it was nighttime at around 9:00 o'clock?

A It was illuminated, sir.

Q And what illuminated the gun to make you so sure that it was a 45 caliber?

A It was illuminated by the light of my tricycle, sir.

Q

By the way, Mr. Witness, who was that person whom you saw pulled out from the jeep by Ramon Navarro, kicked him and then shot him three times with a 45 caliber pistol?

A It was Romeo Calisar, sir.

Q

After you saw Ramon Navarro pulled out Calizar out of the jeep, kicked him and shot him three times with a 45 caliber pistol, what next did you do?

A I drove the tricycle and went home, sir.

Q

Mr. Witness, did you come to know later on whatever happened to Romeo Calizar as a result of his being shot three times with a 45 caliber pistol by Ramon Navarro?

ATTY MONTEMAYOR:

I think that is already answered in the beginning, your Honor. It was already there.

PROS. USON:

Killed.

COURT:

Yes, already answered.

ATTY. MONTEMAYOR:

Yes, your Honor, he knows what happened to him.

COURT:

Objection sustained.

PROS. USON:

Q

So, you went home after you witnessed the incident. Did you not report to the Police station of Alaminos, Pangasinan what you saw?

A

No, sir, because there were rumors that he was a killer.[23]

The inconsistencies pointed out by accused-appellant refer merely to inconsequential details and not to the crux of the case - that Regaspi actually saw accused-appellant gun down Calizar. Well-settled is the rule that

"inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony." [24]

Accused-appellant likewise attempts to discredit Regaspi by faulting him for not reporting the crime immediately to the authorities. Regaspi admitted that he fled to Manila after witnessing the incident and returned to Alaminos, Pangasinan in 1990. He disclosed to the police what he knew about the killing only in 1995. The fact that it took Regaspi and the wife of the victim, Demetria, almost eight (8) years before they filed a criminal complaint against accused-appellant cannot be taken against them. Their initial reluctance to implicate accused-appellant is undoubtedly borne out of fear given the latter's reputation in the community. As found by the trial court:

From the time that the incident occurred on or about August 28, 1987, it took the widow and her witness eight years more or less before a complaint was filed for Murder against the accused (Pages 3-7, Records). The delay was understandable because of fear of Ramon Navarro, the alleged leader of the "Aguila Gang."

This Court takes judicial cognizance of the fact that Alaminos, Pangasinan was held tightly gripped by the criminal elements and its citizenry cowered in fear, of their lives being endangered and wasted. Hence, literally speaking, the citizens in one occasion in 1995 stood up as one to denounce the Aguila Gang. In that rally referred to, to seek an assurance from the authorities for justice and protection and for the attainment of a just and lasting peace and order, the government authorities, with equal vigor and zeal, responded to the numerous cases filed against the accused of crimes dating back to the year 1987. Many witnesses and offended parties came up by then, encouraged by their belief that their government's commitment for their protection from the lawless element has been revitalized by the entire citizenry, who were awakened and rose up as one to prevent further destruction of lives and for the protection of the interest of humanity.

This judicial notice adopted by the Court finds its support in the testimony of one of the witnesses for the defense, in the person of the Honorable Mayor of Alaminos, Pangasinan, Leon M. Rivera, Jr. Mayor Rivera, Jr. testified that he became mayor of the municipality of Alaminos from 1973 continuously up to the present; that he knows Ramon Navarro, the accused in these cases; that there was a rally of Alaminos residents against accused Ramon Navarro (TSN, January 31, 1997, Page 6) with a very big participation from the residents of the municipality; that the accused is the leader of the Aguila Gang and the rally that was conducted in 1995 by the citizens of Alaminos is precisely centered on the alleged illegal activities of the Aguila Gang, with respect to unsolved killings, robberies and proliferation of jueteng attributed to the leadership of the accused (TSN, Page 7, supra). [25]

Accused-appellant opines that it was highly unlikely for accused-appellant to have committed the crime considering that, as testified to by Regaspi, there were numerous vehicles passing by the place and there was sufficient illumination from these cars. Accused-appellant posits that "it is totally and absolutely unbelievable that any man who is not a total fool or mentally deranged could still proceed and commit such grievous and brutal act of murder knowing that all his actions can be seen clearly under the full glare of the lights of numerous oncoming vehicles." [26] This argument is untenable. That accused-appellant killed Romeo Calizar under the circumstances testified to by Regaspi is not incredible. Criminal offenders have been known to execute their evil designs in such audacious and brazen manner. Indeed, crimes are now committed in the most unexpected places and in brazen disregard of authorities. [27]

In the second assignment of error, accused-appellant contends that the trial court based its judgment of conviction upon "unproved, extraneous and doubtful facts and circumstances." Accused-appellant particularly refers to the judicial cognizance taken by the trial court regarding accused-appellant's notoriety. As a backgrounder, the trial court quoted in its decision the August 1995 PNP RECOM I BULLETIN thus:

As a backgrounder and by way of judicial notice, the Court quotes the August 1995 PNP RECOM I BULLETIN, in Pages 32-33 of the Special Report, in order to give a sufficient background on who the accused

is in these cases:

Alaminos, a bustling seaside town of Pangasinan which had been silent witness for seven years to a series of salvages (summary killings) attributed to a self-styled group of vigilantes who had become notorious and untouchable, could now be said to be enjoying once again the serene atmosphere it used to experience in years of yore.

This is so because the leader of the vigilante group, tagged as "Aguila Gang" for the eagle tattoo sported by its members, had already been arrested by joint elements of the Alaminos police station and 1st provincial mobile force company of the Pangasinan PNP provincial command, with the assistance of the intelligence group from the Ilocos PNP regional command.

With the arrest of gang leader Ramon Navarro y Escobar, second most wanted person in Region I, the Aguila Gang, reportedly composed of eight to ten armed members and believed to be behind the violent death of at least 28 persons since it was organized sometime in 1986 until October in 1993, is now said to be neutralized.

BIRTH OF AGUILA

The execution, mostly of suspected criminals started late 1986 when then Lt. Marlou C. Chan, then the municipal police chief, organized a vigilante group to go after cattle rustlers, thieves and drug pushers.

At the core of the group, according to the testimony of Reniedo to the NBI, were he, Navarro, the slain Bito and two others who are still being tracked down by police and military intelligence agents. Navarro was a former military informer.

"In the beginning, the people tend to approve of their activities, especially after seeing known criminals being killed one after another," said Dr. Pedro Braganza in an interview with the Philippine Daily Inquirer.

OPERATION: MARIA KAPRA

Including the charges filed by the NBI, Navarro was charged for nine counts of criminal cases, ranging from rape, murder and illegal possession of firearms, before the regional trial court in Alaminos. This placed him as the second most wanted person in Region I with a recommended reward of P100,000."^[28]

Contrary to accused-appellant's contention, the foregoing "backgrounder" or judicial notice taken by the trial court was not the basis for his conviction. Rather, accused-appellant's conviction was based on the strength of the prosecution's evidence against him. It must be underscored that accused-appellant was positively identified by Regaspi as the person who shot Romeo Calizar on that fateful day of 28 August 1987. The defense tried to discredit Regaspi by imputing to him the crime. Rogelio Banogon^[29] and Leonora Arboleda^[30] were presented by the defense to support its theory that it was Regaspi, conspiring with his aunt and the victim's wife, Demetria, who killed Romeo Calizar. Thus, in his third assignment of error, accused-appellant avers that the trial court committed reversible when it did not give any credence to the testimonies of these defense witnesses.

It is doctrinally settled that the assessment of the credibility of witnesses and their testimony is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination.^[31] In this case, the trial court found Regaspi to be the more credible witness and accorded his testimony full faith and credence. Upon the other hand, the trial court found the testimony of Arboleda "phony and mere fabrication"^[32] and that of Banogon "inherently improbable."^[33]

The Court finds no cogent reason to overturn these findings. Regaspi's testimony on the manner by which accused-appellant killed Romeo Calizar was straightforward, clear and consistent. The fact that only Regaspi came out as an eyewitness to indict accused-appellant does not detract from his credibility. Truth is established not by the number of witnesses but by the quality of their testimonies. The testimony of a single witness if

positive and credible is sufficient to support a conviction. Indeed, criminals are convicted not on the number of witnesses against them, but on the credibility of the testimony of even one witness who is able to convince the court of the guilt of the accused beyond a shadow of doubt.[34] Moreover, the defense failed to prove any ill-motive on the part of Regaspi to testify against accused-appellant. In the absence of any evidence or any indicium that the prosecution's main witness harbored ill motives against the accused, the presumption is that he was not so moved and that his testimony was untainted with bias.[35]

The guilt of accused-appellant for the killing of Calizar has thus been established beyond reasonable doubt in this case. Moreover, the trial court correctly appreciated the aggravating circumstance of treachery in the commission of the crime. Article 248 of the Revised Penal Code provides:

Art. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death[36] if committed with any of the following circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x

There is treachery when the shooting was unexpected and sudden, giving the unarmed victim no chance whatsoever to defend himself. The two conditions for treachery to be present are: (1) that at the time of the attack, the victim was not in a position to defend himself and (2) the offender consciously adopted the particular means, method or form of attack employed by him.[37]

As graphically described by the trial court, there is treachery in the case at bar because -

[F]rom the evidence presented, the poor victim was dragged from inside the jeep by the accused and when he was on the ground, he was kicked and when he fell down, he was shot three times. The shooting of the victim by the accused is all of a sudden. From all indications, there was no opportunity for the deceased to defend himself or to retaliate and the means of execution was deliberately adopted. The accused was in the jeep together with the deceased. The deceased would not have ridden into that jeep if he knows that he will be killed. So that when the deceased rode into that jeep before he was killed, the offender must have consciously adopted that particular means or method by use of a motor vehicle in order that the accused's dastardly act could be accomplished. The Court takes note of the time of the killing at night and the fact that the victim was dragged from inside the jeep by the accused and after the victim was outside of the jeep, the accused kicked him and shot him three times. These circumstances alone would provide that scenario that indeed, the victim was not in the position to defend himself.[38]

Finally, following the doctrine enunciated in *People vs. Molina*[39] and reiterated in *People vs. Feloteo*[40] and *People vs. Lazaro*,[41] among others, the trial court appropriately considered the separate criminal charge of illegal possession of firearms against accused-appellant merely as an aggravating circumstance in this case. As the law stands today, there can no longer be a separate conviction of the crime of illegal possession of firearms under P.D. No. 1866 in view of the amendments introduced by Republic Act No. 8294.[42] Instead, illegal possession of firearms is simply taken as an aggravating circumstance in murder or homicide pursuant to Section 1 of R.A. No. 8294. Said provision of law reads in part:

If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

In illegal possession of firearms, two (2) requisites must be established: (1) the existence of the subject firearm, and (2) the fact that the accused who owned or possessed the gun did not have the corresponding license or permit

to carry it outside his residence.[43] The first element - the existence of the firearm - was indubitably established by the prosecution. Regaspi actually saw accused-appellant shoot the victim with a .45 caliber gun. Two empty shells and two slugs of a .45 caliber gun were recovered near the body of the victim by the police authorities and these were offered in evidence by the prosecution. Further, the testimony of SPO3 Romeo De Guzman of the Firearms and Explosives Office of the PNP Camp Crame attesting that based on their records, accused-appellant is not licensed or authorized to possess or carry a firearm suffices to prove the second element. The trial court, therefore, judiciously convicted accused-appellant for the crime of murder with the use of an unlicensed firearm.

At the time of the commission of the offense at bar, the penalty prescribed for murder was reclusion temporal in its maximum period to death.[44] Since there was an aggravating circumstance of the use of an illegally possessed firearm in the commission thereof,[45] the law enjoins the imposition of the maximum penalty.[46] In this case, however, the penalty of death cannot be imposed on accused-appellant because the crime was committed prior to the enactment of Republic Act No. 7659, the law imposing the death penalty on heinous crimes. Accordingly, the trial court correctly imposed on accused-appellant the penalty of reclusion perpetua.

WHEREFORE, premises considered, the appealed Decision, dated 25 February 1998, is hereby AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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- [1] Records, Criminal Case No. 3082-A, p. 1; Rollo, p. 9.
- [2] Records, Criminal Case No. 3083-A, p. 1; Rollo, p. 11.
- [3] TSN, Testimony of Bob C. Regaspi, 1 March 1996, pp. 4-10.
- [4] Ibid.
- [5] TSN, Testimony of Bob C. Regaspi, 5 March 1996, pp. 4-7.
- [6] TSN, Testimony of Demetria Calizar, 6 March 1996, pp. 4-11.
- [7] Exhibit "C".
- [8] Exhibit "C-3".
- [9] Exhibit "C-4".
- [10] TSN, Testimony of SPO3 Delfin Estabillo, 22 October 1996, pp. 3-7.
- [11] TSN, Testimony of SPO3 Romeo de Guzman, 22 October 1996, pp. 12-15.
- [12] TSN, Testimony of Leon Rivera, 31 January 1997, pp. 2-7.
- [13] TSN, Testimony of Rodolfo Aquino, 31 January 1997, pp. 8-9.
- [14] TSN, Testimony of PO3 Marciano Bacani, 5 August 1997, pp. 3-5.
- [15] TSN, Testimony of Rogelio Banogon, 6 August 1997, pp. 2-8.
- [16] TSN, Testimony of Leonora Arboleda, 28 October 1987, pp. 4-7.
- [17] TSN, Testimony of Danilo Malapit, 3 December 1997, pp. 4-7.

[18] Decision, 25 February 1998, p. 19; Rollo, p. 51.

[19] Rollo, p. 52.

[20] Appellant's Brief, pp. 1, 5 and 7; Rollo, pp. 69, 73 and 75

[21] Id., pp. 2-3; Rollo, pp. 70-71.

[22] People vs. Carpio, 282 SCRA 23 (1997).

[23] See Note 3, pp. 4-8.

[24] People vs. Dando, G.R. No. 120646, 14 February 2000, p. 18; People vs. De Guia, 280 SCRA 141 (1997); People vs. Padilla, 242 SCRA 629 (1995).

[25] See Note 18, pp. 1-2; Rollo, pp. 33-34.

[26] See Note 20, p. 4.; Rollo, p. 72.

[27] People vs. Sahagun, 274 SCRA 208, 218 (1997).

[28] See Note 18, pp. 15-16; Rollo, pp. 47-48.

[29] See Note 15.

[30] See Note 16.

[31] People vs. Quilang, 312 SCRA 314, 327 (1999); People vs. Delmendo, 296 SCRA 371 (1998).

[32] See Note 18, p. 11; Rollo, p. 43.

[33] Id., at. 12; Id., at 44.

[34] People vs. Benito, 303 SCRA 468, 478 (1999).

[35] People vs. Galano, G.R. No. 111806, 9 March 2000, p. 10; People vs. Timon, 281 SCRA 577 (1997).

[36] This provision was subsequently amended by Republic Act No. 7659 increasing the penalty for murder to reclusion perpetua to death. Said law took effect on 31 December 1993 while this crime was committed on 28 August 1987. Being unfavorable to the accused-appellant, R.A. 7659 cannot be given retroactive effect.

[37] People vs. Dacibar, G.R. No. 111286, 17 February 2000, p. 15.

[38] See Note 18, p. 17; Rollo, p. 49.

[39] 292 SCRA 742 (1998).

[40] 295 SCRA 607 (1998).

[41] 317 SCRA 435 (1999).

[42] Republic Act No. 8294 took effect on 6 July 1997, fifteen (15) days after its publication on 21 June 1997. The crime in this case was committed on 28 August 1987. R.A. 8294 is applied retroactively as the same is advantageous to herein accused-appellant.

[43] People vs. Cerveto, 315 SCRA 611, 624 (1999); Padilla vs. CA, 269 SCRA 402 (1997).

[44] See Note 35.

[45] See Notes 38-41.

[46] Article 64 (3), Revised Penal Code.

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