

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENITO MACAYAN, CIRILO MACAYAN AND MATEO MACAYAN, ACCUSED-APPELLANTS.

G.R. Nos. 61572-73. December 21, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Pangasinan, Third Judicial District, Branch V, finding accused Benito Macayan, Cirilo Macayan and Mateo Macayan guilty of the crime of HOMICIDE in Criminal Case No. U-3406 and of the crime of MURDER in Criminal Case No. U-3407. The dispositive portion of the decision reads:

"WHEREFORE, the prosecution having established the guilt of the three accused for Homicide in Criminal Case No. U-3046, as co-principals, beyond reasonable doubt without any aggravating or mitigating circumstances attending the commission of the crime, are hereby sentenced to suffer the penalty of EIGHT (8) YEARS and ONE (1) DAY of Prision Mayor as minimum to FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY of Reclusion temporal as maximum; to indemnify jointly and severally the heirs of Alfredo Tomines the sum of P12,000.00; to pay damages also to the heirs of the deceased in the sum of P12,050.00 representing expenses for the wake, burial, tomb, and prayers incurred in connection with the death of Alfredo Tomines and to pay the costs.

"The prosecution having also established the guilt of the three accused beyond reasonable doubt in Criminal Case No. U-3047 as co-principals for Murder without any aggravating or mitigating circumstances attending the commission of the crime, are hereby sentenced to suffer the penalty of Reclusion Perpetua; to indemnify jointly and severally the heirs of the deceased, Nestor Megallon, in the sum of P12,000.00 and to pay the heirs of Nestor Megallon damages representing expenses for burial, wake, and other incidental expenses related thereto in the sum of P5,000.00 and to pay the costs."

The information in Criminal Case No. U-3406, dated September 2, 1980, charged the accused-appellants as follows:

"That on or about the 15th day of June, 1980, in the evening, at Barangay Barraca, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with deadly weapons, with intent to kill and with treachery and evident premeditation, did then and there attack and assault Alfredo Tomines, inflicting upon him the following wounds:

" 'x x x

- Stab wound at the lower two third of the right thigh (lateral) measuring 2.5 cms. in length and 16 cms. depth directed downward (thru and thru) up to the upper and two third of the right leg (medial) measuring 1.5 cms. in length.

- Hematoma at the occipital region left side of the brain.

x x x'

which wounds directly caused the death of said Alfredo Tomines.

"With the following aggravating circumstances:

"1. Taking advantage of nighttime; and

"2. Superior strength.

"Contrary to Art. 248 of the Revised Penal Code."

The information in Criminal Case No. U-3407, dated September 2, 1980, charged the accused-appellants as follows:

"That on or about the 15th day of June, 1980, in the evening, at Barangay Barraca, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with deadly weapons, with intent to kill and with treachery and evident premeditation, did then and there attack and assault Nestor Megallon y Abrenica, inflicting upon him the following wounds:

" 'x x x

" Injuries Front:

"1. Incised wound, 10 cms. in length and 7 cms. in depth directed inward cutting the muscle of the throat, bilateral jugular veins and common carotids arteries.

"2. Incised wound, 2.5 cms. in length at the mid-line between 3rd and 4th ribs.

"3. Stab wound, 1.5 cms. in length below right side of the nipple.

"4. Stab wound, 2 cms. in length at the mid-axillary line between 6th and 7th ribs.

"5. Stab wound, 2 cms. in length and 11 cms. in depth at the mid-anterior portion of the right thigh.

"6. Stab wound, 2.5 cms. in length and 14 cms. in depth at the mid-lateral portion of the right thigh.

"7. Stab wound, 5 cms. in length and 9 cms. in depth just below right knee joint medially.

"8. Stab wound, 5 cms. in length and 4 cms. in depth at the mid-anterior portion of the right leg.

"Back Side:

"1. Stab wound, 5 cms. in length and 6 cms. in depth at the mandible left side.

"2. Stab wound, 1.5 cms. in length and 7 cms. in depth at the mid-posterior portion of the neck and just below it another stab wound, 1 cm. in length and 3 cms. in depth directing upward.

"3. Stab wound, 1.4 cms. in length and 7 cms. in depth at the mid posterior portion of the back.

"4. Stab wound, 5.5 cms. in length and 10 cms. in depth directed upward just above cubital fossae.

"Internal:

"1. Stab wound of the heart, cutting the ascending portion of the aorta, and both auricles were cut.

x x x'

which wounds directly caused the death of said Nestor Megallon y Abrenica.

"With the following aggravating circumstances:

"1. Taking advantage of nighttime; and

"2. Superior strength.

"Contrary to Art. 248 of the Revised Penal Code."

The evidence for the prosecution is summarized in the People's brief as follows:

"At about 10:00 o'clock in the evening of June 15, 1980 at Barangay Barraca, Villasis, Pangasinan, Virginia Megallon went out of their house, located along the Villasis Malasigui road, to look for her husband, Nestor Megallon, who had gone out earlier to buy bread and milk for their sick child. While walking towards the direction of Malasigui, Pangasinan, Virginia saw her husband being attacked, clubbed and stabbed by appellants namely Benito Macayan, Mateo Macayan and Cirilo Macayan. She saw Benito Stabbed Nestor followed by Mateo and Cirilo. Benito stabbed Nestor on the left side of the back, while Mateo stabbed Nestor on the neck, Cirilo stabbed Nestor on different parts of the body (tsn., June 25, 1981, pp. 3-6). At this point of time, a tricycle driven by Vicente Tamayo was passing by going towards Villasis, Pangasinan (tsn., June 25, 1981, p. 6).

"Virginia, gripped with fear, instinctively ducked beside a canal along the road shoulder. From there she saw Alfredo Tomines, who was beside Nestor trying to pacify appellants. Appellant Benito Macayan faced Alfredo and said, 'You are looking for trouble vulva of your mother you are also one.' Benito then stabbed Alfredo hitting him on the leg. Alfredo ran away towards the south crossing the road. Appellants immediately ran after Alfredo, and upon catching up with him, stabbed and clubbed him, until Alfredo fell to the ground (tsn., June 25, 1981, pp. 8-11).

"Thereafter, appellants turned to Nestor who was then lying on the other side of the road. Appellants clubbed and kicked the fallen Nestor (tsn., June 25, 1981, pp. 9-10).

"Appellants then fled. Virginia, stunned and terrified, went home and reported the incident to Nestor's brother, Lolito Megallon. Lolito advised Virginia not to go out (tsn., supra. p. 11).

"The incident was reported by Barangay Captain Tomas de la Peña and Barangay Councilman Jose Romero to the police authorities of Villasis, Pangasinan. Not long thereafter, Pats. Renario Acosta, Imus and Abrenica arrived at the scene. The policemen found Nestor Megallon and Alfredo Tomines already dead. The policemen brought the bodies of the two victims to the municipal building for autopsy and then conducted an on-the-spot investigation of the incident (tsn., October 27, 1980, pp. 4-13)."

On June 16, 1980, the body of the deceased Nestor Megallon was autopsied by Dr. Noemie M. Taganas of the Office of the Municipal Health Officer of Villasis, Pangasinan who made the following postmortem findings:

"MEDICO-LEGAL AUTOPSY REPORT

June 17, 1980

"TO WHOM IT MAY CONCERN:

SUBJECT: NESTOR MEGALLON Y ABRENICA, 34 years old, male, married, Filipino and a resident of Barangay Barraca, Villasis, Pangasinan.

"Time seen by the Physician: 9:00 A.M. Date: June 16, 1980

"BODY Identified by: Virginia Perez (wife of the deceased).

"Autopsy requested by: Office of the Integrated Police thru RENARIO B. ACOSTA, Patrolman, INP, In-charge, Investigation Section of Villasis, Pangasinan.

"General postmortem Findings:

"A. External: I. Body well developed, well nourished, brown complexion, 5 feet in height and weighing about 125 lbs.

2. Garments on: a. Pant-short, maong blue in color.

b. Brief-white in color.

"Injuries Front:

"1. Incised wounds, 10 cms. in length and 7 cms. in depth directed inward cutting the muscle of the throat, bilateral jugular veins and common carotids arteries.

2. Incised wound, 2.5 cms. in length at the mid-line between 3rd and 4th ribs.

3. Stab wound, 1.5 cms. in length below right side of the nipple.

4. Stab wound, 2 cms. in length at the mid-axillary line between 6th and 7th ribs.

5. Stab wound, 2 cms. in length and 11 cms. in depth at the mid-anterior portion of the right thigh.

6. Stab wound, 2.5 cms. in length and 14 cms. in depth at the mid-lateral portion of the right thigh.

7. Stab wound, 3 cms. in length and 9 cms. in depth just below right knee joint medially.

8. Stab wound, 5 cms. in length and 4 cms. in depth at the mid-anterior portion of the right leg.

BACK SIDE:

"1. Stab wound, 5 cms. in length and 6 cms. in depth at the mandible left side.

2. Stab wound, 1.5 cms. in length and 7cms. in depth at the mid-posterior portion of the neck and just below it another stab wound, 1 cm. in length and 3 cms. in depth directing upward.

3. Stab wound, 1.4 cms. in length and 7 cms. in depth at the mid-posterior portion of the back.

4. Stab wound, 5.5 cms. in length and 10 cms. in depth directed upward just above cubital fossae.

Internal: I. Stab wound of the heart, cutting the ascending portion of the aorta, and both auricles were cut.

CAUSE OF DEATH: Severe hemorrhage due to injuries, multiple, stab wounds."

On the same date, the body of the deceased Alfredo Tomines was autopsied by the same physician who reported the following postmortem findings:

"MEDICO LEGAL AUTOPSY REPORT

June 17, 1980

"TO WHOM IT MAY CONCERN:

"SUBJECT: ALFREDO TOMINES Y MACASO, 34 years old, male, married, Filipino and a resident of Barangay Barraca, Villasis, Pangasinan.

"Time seen by the Physician: 9:00 a.m. Date: June 16, 1980

"Body Identified by: Benito Tomines (Brother of the deceased)

"Autopsy requested by: Office of the Integrated Police thru RENARIO B. ACOSTA, Patrolman, INP, In-charge, Investigation Section of Villasis, Pangasinan.

"General Postmortem Findings:

"A. External -1. Body well developed, well nourished, brown complexion, 5 feet and 4 inches in height and weighing 160 lbs.

2. Garments on: a- T-shirt printed white with SLU (printed)

b. Pant-short, maong blue in color with Marlboro 6 sticks, 1 match and two 5 centavos in the pocket.

c. Brief - light blue in color.

"Injuries: A. Stab wound at the lower two third of the right thigh (lateral) measuring 2.5 cms. in length and 16 cms. depth directed downward (thru and thru) up to the upper two third of the right leg (medial) measuring 1.5 cms. in length.

"B. Internal Hematoma at the occipital region left side of the brain.

"Cause of Death: Intracranial hemorrhage and hematoma at occipital region left side of the brain."

Accused-appellants on the other hand denied any knowledge of or participation in the killing of Alfredo Tomines and Nestor Megallon. They interposed the defense of alibi. The defense evidence is summarized by the lower court as follows:

"Mateo Macayan declared that on the night of June 15, 1980 at between 7:00 and 8:00 o'clock in the evening he was in the house of his uncle Cristobal Macayan which is about 300 meters away from his house in Barraca. He was there because he was requested to watch after the house in the absence of his uncle and his wife who went to Baguio City to attend a wedding of their son; Cornelio Macayan. With him in the house of Cristobal Macayan that night were old woman Susana Duaso and a girl Elvira Macayan who was 14 or 15 years old. He declared that that evening he never left the house of Cristobal Macayan and talked with the old woman and the girl and a neighbor by the name of Ireneo Sibayan who went to the house and asked him if he was one of those who was watching the house. After Sibayan left, who did not stay long, Mateo Macayan went to sleep. He was only roused from sleep at dawn when his uncle Narciso Macayan woke him up at 3:00 or 4:00 o'clock in the morning and told him he was looking for his carabao; that said uncle asked him where he tied his carabao and he told his uncle he tied it near the house and accompanied his uncle and showed him where he tied the carabao; that after he indicated the place where he tied the carabao the night before, his uncle requested him to help him to look for the carabao and they went around the place in order to locate it; that after searching for the carabao this accused decided to drop at the house of his uncle where he slept, and then went home and told his wife about the lost carabao. That same night after telling his wife about the lost carabao he saw people east of their house and thinking that they found the carabao he was looking for went there and as he was approaching the group of people someone lighted his face with a flash light and it was Pat. Imus holding a gun who asked him where he was going and this accused told him he was looking for a carabao; that when he was asked if he did not know what happened in the place he answered he did not know anything because he was only looking for his carabao.

"Because of his denial of any participation in the killing of either Alfredo Tomines or Nestor Megallon this accused was asked if he knew any reason why Virginia Megallon testified accusing him and his two brothers Benito and Cirilo as the authors of the crime. He answered that Virginia hated them because one week before the incident, she went to the house of Benito Macayan to borrow money and rice while they were roofing the house of his brother Benito Macayan but his brother did not give her what she want to ask for because Benito

had nothing to give at the time. Spurned, Virginia Megallon left in an huff and did not even ask permission to leave. Another reason that this accused stated in Court for Virginia Megallon to testify against them was another incident where Virginia Megallon was collecting an alleged debt of his cousin, Jose Duaso, in the amount of P50.00 and one ganta of rice but she could not collect because his cousin told her that she was the one who owed him and again she left dejected and pouting. This happened also more than one week before the incident on June 15, 1980. He alleged that he had no misunderstanding or grudge against Tomines or Megallon before June 15, 1980. This accused further testified that he only learned from the people in the place that Nestor Megallon and Alfredo Tomines were killed. After hearing the stories of the people about the killing he left for his house to tell his uncle that they should resume to search for the carabao after breakfast. They finally found the lost carabao at 7:30 o'clock in the morning of June 16, 1980.

"Benito Macayan testified that on the night of June 15, 1980, he was in the western part of Barangay Barraca about 300 meters away from his house. This is the house of Florentino Arnidobal and he went to this house between 7:30 and 8:00 o'clock in the evening; that he went there to gamble in the house of Arnidobal and they played 'Lucky 9' and 'Pusoy'; that they were eight in the group in the gambling house and mentioned the names of Rogelio Arnidobal, Noli Bascos, Victor Marron, Idot Marron, Romulo Marron, Pablo Sibayan and Carlito Ordoñez; that they started gambling at 7:30 or 8:00 o'clock that evening and finished at 12:00 o'clock midnight; that upon arriving in his home he went to sleep but woke up when Pat. Imus went to his house and inquired from him if he knew what happened in connection with the death of the two persons without mentioning their names and he told him that he did not know anything and Pat. Imus left; that after Pat. Imus left he went back to sleep and woke up at 6:00 o'clock in the morning of June 16, 1980. This accused further testified that Arnidobal contracted seven people to transplant palay seedlings in his farm on June 13, 1980 and one of those who was hired was Nestor Megallon who worked from 7:00 o'clock in the morning up to 5:00 o'clock in the afternoon. The others who helped in transplanting palay seedlings were Victor Marron, Ernesto Marron, Ernesto Sandoval, Prudencio Lopes and Ernesto Florez. He claims that Nestor Megallon left the farm at the same time with the others at 5:00 o'clock in the afternoon and when they parted nothing unusual happened because they were all happy.

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"Cirilo Macayan declared that on June 15, 1980, at night, he was in his house at Barangay Barraca because he was down with fever and his wife, Carmela Arnidobal, called for old woman Francisca Retorta whom she saw pumping water from the pump well owned in common by the neighborhood located near the house of Benito Macayan. Francisca Retorta went to their house at about 8:00 o'clock in the evening and upon her arrival she sponged Cirilo with warm water and stayed to observe his condition until it was already dawn because the cocks were already crowing; that on that night of June 15, 1980 he never left the house and was able to leave the house only two days after because of his fever; that he claims that his relationship with both Nestor Megallon and Alfredo Tomines was cordial and they had no misunderstanding before June 15, 1980. He also repeated the reasons already stated by his co-accused why Virginia Megallon accused them for the killing of her husband and Tomines. He claims that his fever started one and a half days before June 15, 1980 but it was only in the evening of June 15, 1980 that his wife called someone to sponge him; that on June 15, 1980 that same night he came to know of the death of Nestor Megallon and Alfredo (Wilfredo) Tomines because Pat. Imus went to their house and talked to his wife."

The only issue raised by the appellants in their appeal is credibility of witnesses. According to the appellants, the prosecution witnesses committed serious inconsistencies, contradictions, and blatant improbabilities and, therefore, the evidence for the prosecution is utterly weak if not worthless.

A careful consideration of the records, however, shows that the appellants have completely failed to show why their case should be an exception to the general rule on the respect to be given to factual findings of a trial court.

When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the

trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. (*People v. Narciso Santos y Marcilang*, 121 SCRA 832; and *People v. Mercado*, 97 SCRA 232)

We have meticulously reviewed the records of the case in the light of appellants' arguments on appeal, and we find that they have failed to show to this Court's satisfaction just where and how the lower court overlooked certain facts of substance and of value which, if considered, might affect the results of the case.

Accused-appellants first question the credibility of eyewitness Virginia Megallon by assailing her testimony that "it was fullmoon" on the night of the incident. The appellants argue that the lower court failed to consider the certification (Exhibit 5) issued by the Chief, Astronomical Observation, Weather Bureau (PAGASA), dated 22 September 1981 which indicates that the moon on that night was not full and:

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"x x x based on the computations made by this Office, the following lunar data for Dagupan, Pangasinan and vicinity is true and correct:

"1. On June 15, 1980 the moon rose at 7:31 a.m. and set at 8:43 p.m. of the same date;

"2. New Moon occurred on June 13, 1981; and

"3. On the evening of June 15, 1980, the moon was 9% illuminated."

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The appellants' contention does not deserve serious consideration. The scene of the crime was undoubtedly illuminated. We agree with the Solicitor General that whether or not the moon was full on the night of the incident is of no moment because the place was lighted by a light from a nearby electric post and at the precise moment defendants-appellants clubbed and stabbed Nestor Megallon and Alfredo Tomines, a tricycle driven by a witness Vicente Tamayo came to the place with its headlights focussed on the scene. The moon may not have been full but it was there on that night.

The accused-appellants next submit that it is strange and bewildering that the widow who had just witnessed the killing of her husband would be found quietly lying down, and sleeping in her house, and when asked where her husband was, she spontaneously answered "He is not at home; he may be in the guardhouse."

The fact that Virginia Megallon stayed in their house after having witnessed the brutal killing of her husband and gave appearances as if nothing happened is understandable. Having witnessed the brutal killing of her husband, the wife was then in a state of shock. As a matter of fact, Mrs. Megallon had to hide in the canal by the shoulder of the road out of fear that she too would be killed. Furthermore, the appellants assume as a fact something which the trial court did not believe – that Jose Romero asked Mrs. Megallon where her husband was immediately, after he was killed. The trial court correctly observed that:

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"x x x It is very likely that Jose Romero did not go to the house of Megallon that night, or if he did, the wife of Nestor Megallon did not bother to answer him because of fear or in compliance to her brother-in-law's advise to her not to go out anymore, lest they (accused) might also kill her."

Accused-appellants point out that one of the supposed star witnesses for the prosecution, Noli Hilario, chose to testify for the defense despite tremendous pressure and undue influence, including direct bribery to do otherwise.

The appellants submit that the testimony of Noli Hilario is very damaging to the prosecution's case and even impeaches the integrity of the municipal judge, the police, the private prosecutor and the father of one of the victims, not one of whom bothered to take the witness stand to rebut Hilario's declarations.

Originally a witness for the prosecution, Hilario later chose to testify for the defense. On June 16, 1980, Hilario's statement to the police (Exhibit F) given on the same date was subscribed and sworn to before Municipal Judge Juvencio Bautista. In Exhibit "F", Hilario recounted in detail how the three accused-appellants killed Nestor Megallon and Alfredo Tomines.

The trial court took the above arguments of the appellants into account and decided that the testimony of Hilario should not be given credence. It stated:

"The letter presented by the defense which was identified by Noli Hilario as coming from the father of Alfredo Tomines by the name of Carpo Tomines wherein different dates appear showing different amounts of money totalling P2,100.00 shows that this letter and the money given by Carpo Tomines to Noli Hilario were made after he had already executed his sworn statement on June 16, 1980 and has already testified in the preliminary investigation of this case on June 20, 1980 as admitted by this witness himself. These amounts were received by him in consideration of his staying on the side of the prosecution as a witness. After receiving all these money which he also admitted to have received this witness had still the temerity to switch to the other side and testified for the defense. For this queer behavior of this witness, the Court can gather only one conclusion and that is that he must have been given a bigger amount than what he had been given by the father of Alfredo Tomines. A witness who sells his testimony to the highest bidder is a useless witness whose testimony is not worthy of belief and should not merit any consideration. For this reason the entire testimony of this witness should not play an important part in the decision of this case."

The records show that the identification of the accused-appellants was positive. Virginia Megallon testified that she saw the accused-appellants stab the victims several times. She stated:

"Q On June 15, 1980, between the hours of 10:00 to 10:30 o'clock in the evening, where were you at that time?

"A I was walking on the street looking for my husband, sir."

(tsn., July 25, 1981, p. 3)

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"Q Why are you looking for your husband at that time?

"A I was looking for my husband because he left earlier to buy milk and bread for my sick child.

"Q While walking westward at that time of the evening, were you able to see your husband?

"A I saw my husband, sir.

"Q When you saw your husband, did you notice anything unusual?

"A Yes, sir. I saw three (3) persons stabbing my husband, and after they stabbed they also turned to attack Alfredo Tomines and stabbed and clubbed him."

(tsn., July 25, 1981, pp. 3-4)

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"Q Who are these three (3) persons?

"A Benito Macayan, Mateo Macayan, and Cirilo Macayan, sir.

"Q If these three (3) persons are inside the Courtroom, could you point to them?

"A Yes, sir.

"Q Where are they?

"A That is Benito Macayan, sir. (Witness pointing to the person when asked by the Court what is his name, give his name as Benito Macayan).

That person is Cirilo Macayan, sir. (witness, pointing to a person who give his name as Cirilo Macayan)

And that person is Mateo Macayan, sir. (witness pointing to a person who stand and give his name to the Court as Mateo Macayan)

"Q Incidentally, is the place where you said your husband was stabbed was it provided by light?

"A Yes, sir.

"Q What kind of light?

"A It was illuminated by an electric bulb, and that night the moon is bright and a light of a tricycle coming from the tricycle.

"Q When you said electric bulb, you meant say that there is an electric post there?

"A Yes, sir.

"Q Before the stabbing incident which you witnessed on June 15, 1980, did you already know these three (3) persons?

"A Yes, sir."

(tsn., July 25, 1981, pp. 5-7)

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"Q Who among the three accused clubbed Alfredo Tomines?

"A I do not know, sir. Because they ran after him.

"Q Why did you say that Benito Macayan stabbed your husband first, why, is there a second and first?

"A Yes, sir.

"Q Who stabbed your husband after Benito Macayan?

"A Mateo was the second who stabbed my husband, sir.

"Q Who stab next?

"A Cirilo was the last one who stabbed my husband, sir."

(tsn., June 25, 1981, p. 25)

Vicente Tamayo, the driver of the tricycle that passed by the scene of the crime also positively identified Benito Macayan, Mateo Macayan, and Cirilo Macayan as the persons who killed Nestor Megallon and Alfredo Tomines. He testified:

"Q While you were along the Villasis-Malasiqui road but within the territorial jurisdiction of Barraca, Villasis, Pangasinan, do you remember having witnessed any unusual event?

"A Yes, sir.

"Q Will you kindly inform this Hon. Court what that unusual incident was all about?

"A I sighted some men surrounding a person and they were stabbing that person.

"Q How many men were there that you saw?

"A There were five of them. The fifth one was the one who was pacifying the others.

"Q How many of these four men aside from the fifth man whom you said was pacifying were seen by you to be surrounding a fellow or a person and stabbing that person surrounded by them?

"A There were three, sir.

"Q Do you know those persons whom according to you you saw to be surrounding a man and at the same time stabbing that man surrounded by them?

"A If I see them I can recognize them." (tsn., February 26, 1981, pp. 6-7)

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"Q You said that if you will be able to see these three persons who were at the time stabbing a certain person when you were already at Barraca, Villasis, Pangasinan that evening, you will be able to identify them?

"A Yes, sir.

"Q I will ask you to come down from the witness stand, go among the people in the courtroom and point to the three persons if they are among the people in the courtroom.

"COURT

You touch them. Make of record that the accused who were originally seated in one bench were allowed to mingle with the crowd and sit with the crowd and the witness was made to face west so that he could not see the three persons who were allowed to mingle with the crowd and later on the witness was allowed to go down from the witness stand and touch the three accused from among the crowd if he could recognize them. The witness touching a fellow who gave his name as Mateo Macayan; witness touching a person who gave his name as Benito Macayan; witness touching the third person among the spectators who gave his name as Cirilo Macayan."

(tsn., February 26, 1981, pp. 9-10)

Against these positive and categorical testimonies of Virginia Megallon and Vicente Tamayo, the accused-appellants interposed a flat denial of any participation in the commission of the crime. The accused-appellants introduced the defense of alibi.

Appellant Mateo Macayan claims that he went to sleep in the house of Cristobal Macayan that evening of June 15, 1980 and that he never left the house that night. To corroborate this alibi, he presented Ireneo Sibayan who testified to the same effect. Appellant Benito Macayan on the other hand claims that he was in the house of Florentino Arnidobal in the evening of June 15, 1980 where they played "lucky 9" and "pusoy". Rogelio Arnidobal corroborated this defense. Appellant Cirilo Macayan also claims that he was in his house on the evening of June 15, 1980 suffering from a high fever. Francisca Retorta corroborated this allegation declaring that Cirilo never went out of his house that night of June 15, 1980.

Alibi being easily susceptible of concoction and a very common defense in criminal cases, we reiterate the rule that to be accorded credence, it does not suffice for the appellant to merely prove that he was at some other place

but also that the distance was such as to preclude the possibility for him to be at the scene of the crime at the time it was committed (People v. Romero, 119 SCRA 234; People v. Gacho, G.R. No. 60990, Sept. 23, 1983). In this case before us, the houses where the accused-appellants claimed to be at the time of the commission of the crime were only around 300 meters away from the place where the crimes were committed. In the face of clear and positive identification, not much consideration can be given to the alibis.

Furthermore, for the defense of alibi to prosper, the evidence to support it must be clear and convincing (People v. Chavez, 117 SCRA 221).

The trial court found the testimonies of the defense witnesses regarding their alibis both contradictory and unbelievable and accordingly rejected the defense of alibi:

"Benito Macayan claims that in the evening of June 15, 1980, he went to the house of Florentino Arnidobal to gamble. He said he went there between 7:30 and 8:00 o'clock and went home at 12:00 o'clock midnight. He declared that they played 'Lucky 9' and later 'Pusoy' and they were 8 in all including one Carlito Ordoñez. Rogelio Arnidobal, brother of Florentino Arnidobal, also testified for the defense that he was one of those who played in the house of his brother Florentino Arnidobal in the evening of June 15, 1980 and the people in the house who played were Noli Bascos, Pablo Salinas, Benito Macayan, Victorio Marron, Romulo Marron, Idot Marron and himself or seven persons in all. He also mentioned that the game they played was 'Pepito' contrary to what Benito Macayan declared that they played 'Lucky 9' and later 'Pusoy'. Arnidobal did not mention the presence of one Carlito Ordoñez as one among the players. He was positive that there were only 7 who played that night in the house of his brother. Benito Macayan said that they were 8 including Carlito Ordoñez. It is possible that Arnidobal forgot the presence of Carlito Ordoñez but certainly he could not have mistakenly stated that the name of the game they played was 'Pepito' if, indeed, they played this game. Benito Macayan likewise could not have forgotten or mistakenly stated that they played 'Lucky 9' and later 'Pusoy' if, indeed, they played these games. The variance in the testimony of these witnesses on the same matter is material and relevant and cast doubt on the veracity of their testimonies.

"Benito Macayan further declared that upon arrival in his house he went to sleep and he had just slept when Pat. Imus went to their house and inquired from him if he knew about the killing of two persons in their barangay and after answering him that he did not know anything he went back to sleep and woke up only at 6:00 o'clock the following morning. He only learned they were suspected as the killers of the two dead persons, Nestor Megallon and Alfredo Tomines, at 3:00 o'clock P.M. of June 16, 1980. It is impossible to believe this testimony of accused Benito Macayan because the killing of the two victims happened very close to his house. Incidents like this in the barangays spread like wildfire. At 12:00 o'clock midnight there were already policemen and many people were in the vicinity of his house where the killing took place. It is therefore, impossible that Benito Macayan could not have seen the people in the vicinity as he proceeded to his house coming from the house of Florentino Arnidobal. His alleged reaction after Pat. Imus inquired from him if he knew anything about the killings is likewise unbelievable. How could he have gone back to sleep and woke up only at 6:00 o'clock in the morning with police authorities and so many people near his house watching 2 dead persons? This is preposterous."

xxx xxx xxx

"Cirilo Macayan testified that on June 15, 1980 he was down with fever and stayed all day and night in his house attended by his wife and an old woman Francisca Retorta who sponged him. It may be true that sometime in June he had fever but it is doubtful if it was on June 15, 1980. Francisca Retorta earlier declared that she did not know if it was June 15, 1980 when she went to sponge Cirilo Macayan but she said it was June 15, 1980 because before she took the witness stand the defense counsel told her it was June 15, 1980. It is possible that Cirilo Macayan had fever sometime before June 15, 1980 because Francisca Retorta positively declared that nothing happened that evening she went to sponge Cirilo as everything was peaceful."

Apart from questioning the trial court's findings on the credibility of witnesses, the appellants have raised no other alleged errors of said court.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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