

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PINKER JOSEPH BAUTISTA Y BASILIO, ACCUSED-APPELLANT.

G.R. Nos. 96618-19. August 11, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Pinker Joseph Bautista y Basilio appeals from the decision[1] dated February 24, 1989 in Criminal Case Nos. 88-63727-SCC and 88-63728-SCC of the Regional Trial Court of the City of Manila, Branch XLIX, finding him guilty beyond reasonable doubt of the crimes of murder and attempted homicide.

The information[2], filed on June 6, 1988, charging Pinker Joseph Bautista with the crime of murder, reads:

"That on or about the 2nd day of June 1988, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with evidence (sic) premeditation and treachery and with intent to kill, attack, assault and use personal violence upon one Paz Reyes y del Mundo by then and there stabbing her with a kitchen knife on the different parts of the body, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of her death thereafter.

CONTRARY TO LAW."

The information[3], likewise filed on June 6, 1988, charging accused-appellant of the crime of frustrated murder reads, as follows:

"That on or about the 2nd day of June 1988, in the City of Manila, Philippines, the said accused willfully, unlawfully, and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one Eugenio Reyes y Sotero by then and there clubbing the latter's head with a piece of wood thereby inflicting upon him serious physical injuries which are necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered by the said Eugenio Reyes y Sotero which saved his life,

CONTRARY TO LAW."

The accused, duly assisted by counsel de officio, was arraigned on July 1, 1988 and entered a plea of not guilty on both charges. Thereafter, the prosecution and the accused, through counsel, agreed to a joint trial of the two cases.

The facts of the case, as culled by the trial court from the testimonial and documentary evidence presented by the prosecution are, as follows:

Eugenio Reyes, a 66-year old retired jeepney driver (Exhibit "E") and his second wife, Paz (Patsy) del Mundo Reyes, a 60-year old housewife, were residing, all alone by themselves, in their one-story house at No. 820 Jose Basa Street, Tondo, Manila. They did not have any maid. The house had three (3) doors, including the main door. Any of the doors could be opened from inside the house. There was an alley or passageway from the sala or receiving room to the kitchen of the house.

Romulo Reyes, Jr., the nephew of Eugenio Reyes, resided nearby at No. 842 Jose Basa Street, Tondo, Manila, about six (6) houses and less than ninety (90) meters away from the house of the elderly couple.

On May 30, 1988, at around 6:00 o'clock in the evening, the Accused Pinker Joseph Bautista, an 18-year old gay from San Fernando, Pampanga, arrived in the house of Eugenio Reyes in the company of Reynaldo (Rey) Pangilinan, the son of a niece of Paz del Mundo Reyes. The accused was then carrying a plastic traveling bag with him. The couple were surprised at the unannounced arrival of Reynaldo Pangilinan. After all, Rey Pangilinan had not been to the house of the couple since two (2) years before. The accused and Rey Pangilinan told Eugenio Reyes and Paz Reyes that they came to Manila from Pampanga to look for jobs. The accused and Rey Pangilinan did not tarry long because they left the house of the couple that day, the former returning to San Fernando, Pampanga. However, the accused left his plastic bag in the house of the couple.

On June 1, 1988, at about 7:30 o'clock in the evening, the accused arrived, alone, in the house of Eugenio Reyes. It was then raining. The accused was drenched with rain. When Paz Reyes asked the accused if he had a companion, the Accused replied that he was going to wait for Rey Pangilinan. The accused brought with him a bunch of bananas. Concerned, Paz Reyes told the accused to change his wet clothes. The Accused did. He took out from his plastic bag, which he left in the house of the couple earlier (Exhibit "P-2"), a white t-shirt (Exhibit "P-5") and a pair of red-striped short pants (Exhibit "P-4") and put them on. Paz Reyes placed the bananas on the table. Kindhearted as she was, Paz Reyes prepared dinner for the accused after conversing with him for a while. However, Rey Pangilinan failed to arrive that evening. Rather than allow the accused to go back to Pampanga in the dead of the night and in such inclement weather, Paz Reyes allowed the Accused to sleep in their house that evening. At about 11:00 o'clock that evening, the Spouses and the Accused decided to call it the day and prepared to sleep. Eugenio Reyes and Paz Reyes slept in the sala of the house. So did the Accused, about three (3) meters away from Eugenio Reyes.

However, at about 2:00 o'clock in the early morning of June 2, 1988, the Accused awakened Paz Reyes from her deep slumber and asked her to prepare coffee for him. Eugenio Reyes was also awakened in the process. Paz Reyes uncomplainingly prepared coffee for the Accused which the latter drank. Paz Reyes then told the Accused to sleep already. However, the accused told the couple that he could not sleep and that he will sleep later. After the couple put off the lights, they returned to sleep. The Accused on the other hand, remained seated in the place where he slept earlier, leaning against the wall (Exhibit "S").

The slumber of Eugenio Reyes was suddenly disrupted anew between 4:00 o'clock and 4:30 o'clock that early morning when he heard his wife, Paz Reyes, crying and groaning, as she repeatedly cried: "Aray, aray, aray." It was then dark. However, Eugenio Reyes could see the accused stabbing his wife, Paz Reyes with a knife (Exhibit "S") about six (6) inches long. Eugenio Reyes saw his wife bloodied. Instinctively, he forthwith dove on the accused and tried to strangle him by putting his arms around the neck of the Accused, as Eugenio Reyes grappled with the Accused for the knife used by the latter, at the same time Eugenio Reyes biting the right part of the neck of the Accused and sticking his finger on eyes of the Accused (Exhibit "S"). Paz Reyes, in the meanwhile, continued crying and pleading for succor. The Accused was able to injure Eugenio Reyes with the said knife, on chin, left forearm, fingers, right arm and back. Eugenio Reyes was able to wrest the knife from the Accused, as they wrestled for it up to the door, but the knife fell to the floor. However, the Accused ran to the kitchen. Eugenio Reyes pursued the Accused. The latter took hold of a piece of wood which was used to secure the door and hit Eugenio Reyes on the head with it (Exhibit "O-3"). The Accused ran to the door with Paz Reyes who was then near the door trying to open it. She succeeded in opening the door. However, as she did so, the Accused hit her with the piece of wood. Eugenio Reyes was able to wrest the piece of wood from the Accused. Eugenio Reyes ran after the Accused but weakened in the process and fell unconscious.

By then, concerned citizens in the neighborhood heard of the pleas for help of Paz Reyes and rushed in front of the house of the couple, as the Accused emerged from the house of the couple. Gil Advincula, a neighbor of the couple, got hold of the Accused. Meanwhile, Romulo Reyes, Jr. who was then sleeping, was awakened from his sleep when he heard a commotion. He went out of their house to see what it was all about. He heard a

person shouting: "Saklolohan ninyo. May saksakan na nangyari." Romulo Reyes, Jr. saw the Accused being held by Gil Advincula, bloodied and dazed. There were about ten (10) people holding and around the Accused at the time. Romulo Reyes, Jr. asked the Accused why he was bloody and the latter replied: "Hindi ako..." The concerned neighbors were angry at the Accused.

Earlier, Alfredo Lopez, a vendor, who resided only about two (2) houses away from where the house of the couple, heard the pleas for help of Paz Reyes and responded to her pleas. He proceeded to the house of Eugenio Reyes and Paz Reyes. He saw Eugenio Reyes outside the door of their house inside the yard, holding Paz Reyes on his lap (Exhibit "E-2"). Alfredo Lopez noticed a stab wound on the right side of Paz Reyes, under her armpit. On the other hand, Eugenio Reyes was bloody all over his body. The main door to the house was open. Alfredo Lopez could see, from the outside that the furniture and appliances inside the house were in disarray and topsy-turvy. Eugenio Reyes told Alfredo Lopez that the person whom they allowed to sleep and eat in their house was the person who stabbed him and his wife, Paz Reyes. The latter also divulged to Alfredo Lopez that the person whom she allowed to eat and sleep in their house stabbed her while she was sleeping. Paz Reyes was then still strong and her voice was audible and clear. With the help of two (2) other persons, Alfredo Lopez carried Paz Reyes to the clinic of Dr. Santos, two (2) streets away from the house of Eugenio Reyes. It was then about 5:00 o'clock early in the morning. At the clinic, Paz Reyes told Alfredo Lopez "May pinatuloy kami. Pero sinaksak kami" and asked Alfredo Lopez to go back and attend to her husband, Eugenio Reyes, because he was also wounded. Alfredo Lopez left Paz Reyes under the care of Dr. Santos who put cotton on the stab wound of Paz Reyes to stem the flow of blood and returned to where Eugenio Reyes was. Alfredo Lopez saw Romulo Reyes, Jr. and told him that he brought Paz Reyes to the clinic of Dr. Santos. Romulo Reyes, Jr. asked the people around: "Sino, sino ang sumaksak?" Gil Advincula replied: "Eto, baka ito dahil duguan." However, the Accused insisted: "Hindi ako. Hindi ako."

Romulo Reyes, Jr., Arthur Victorio and his brother-in law then brought Eugenio Reyes to the clinic of Dr. Santos for treatment and medical attention. At the clinic, Romulo Reyes, Jr., also talked to Paz Reyes and asked her who stabbed her and she replied: "Ang sumaksak sa akin pinakain ko na, pinagmagandang loob ay iyong Pinker, iyong bakla." Romulo Reyes, Jr. noticed his aunt bloodied with stab wounds on the left and right sides under the armpit and left and right breasts and had a blow on the head. Eugenio Reyes and Paz Reyes were then placed in stretchers and carried to the car of Romulo Reyes, Jr. and brought to the University of Sto. Tomas Hospital along Espana Street, Sampaloc, Manila. On the way to the car of Romulo Reyes, Jr., Paz Reyes again told him "Walang hiya iyon. Pinagmagandang loob. Ginanito pa ako." She was still strong. Alfredo Lopez went with the couple and Romulo Reyes, Jr. to the UST Hospital. Paz Reyes told Alfredo Lopez: "Boy, huwag ka munang umalis dito sa amin." Romulo Reyes, Jr. stayed in the UST Hospital while Eugenio Reyes and Paz Reyes were being attended to by the doctors. However, they later came to know, at about 6:45 o'clock that morning, that Paz Reyes was already dead."

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Earlier too, at about 6:00 o'clock that morning of June 2, 1988, Pat. Quevedo of Police Station No. 7 of the Western Police District called by telephone the "Crimes Against Persons Section" of the Western Police District and reported that Paz Reyes, a victim of a stabbing incident, expired at the UST hospital. Pat. Godofredo Alega, Jr. and Pat. Nelson Sorsonas responded to the call and proceeded to the UST Hospital. When they arrived at the hospital, the police investigators were informed by the hospital staff that Paz Reyes was already dead but that another victim, Eugenio Reyes, was being treated in the emergency ward of the hospital. Romulo Reyes, Jr. was also inside the emergency ward at that time. Pat. Godofredo Alega, Jr. interviewed both Eugenio Reyes and Romulo Reyes, Jr. Eugenio Reyes related to the police investigator how he and his wife were stabbed and clubbed and that the weapons used on them were a kitchen knife and piece of wood. Romulo Reyes, Jr., however, averred that he did not see the incident but informed the police officer that the Accused was already in the custody of Police Station No. 7. From the UST Hospital, the police investigators, accompanied by Romulo Reyes, Jr. and Tomas del Mundo, the son of Paz del Mundo Reyes, and

three (3) photographers proceeded to the scene of the stabbing-clubbing, in the house of Eugenio Reyes. They saw the main door open and the furniture and appliances in disarray and topsy-turvy. Blood splashes were found on the floor and on the walls of the house and along the passageway to the kitchen. The police investigators found a bloodied kitchen knife at the door near the sala (Exhibit "P-8") and a broken knife handle was found near the sofa (Exhibit "P-7"). A piece of wound stained with blood was also found beyond the sala inside the house (Exhibit "O-3"). A traveling plastic bag, owned by the Accused (Exhibit "P-2") which contained assorted personal belongings of the Accused was retrieved by the police investigators. Under the pillow used by the Accused when he slept earlier that evening, was found a June 1, 1988 issue of the "People's Tonight" afternoon daily which wrapped a blue plastic nylon cord (Exhibit "R"), a pair of rubberized hand gloves (Exhibits "O" and "O-1") and a scabbard of a knife. The scabbard fit the bloodied knife (Exhibit "P-8").

The police investigators proceeded to Police Station No. 7 of the Western Police District where the accused was turned over to the police investigator, Pat. Godofredo Alega, Jr. The latter noticed that the shirt and short pants of the Accused were bloodied. However, the police investigator did not notice any wounds sustained by the Accused. Pat. Godofredo Alega, Jr. and some other police officers brought the Accused to the UST Hospital for a confrontation with Eugenio Reyes. However, the Accused was not accompanied by any lawyer or by any of his relatives. On the stairway to the room of Eugenio Reyes in the UST Hospital, Pat. Godofredo Alega, Jr. removed the shirt of the Accused because if Eugenio Reyes saw the bloodied shirt, the latter will be able to recognize the Accused easily. The police investigator requested an unidentified janitor in the hospital to remove his upper attire and join the Accused for confrontation with Eugenio Reyes. The Accused and the unidentified janitor were then brought inside the room of Eugenio Reyes who was then lying in his hospital bed with cotton patched on his forehead and dextrose taped on his right hand. Eugenio Reyes pointed to and identified the Accused with his left foot and right hand (Exhibits "F-2", "F-4", and "F-7"). Pictures of the Accused were taken under the room of Eugenio Reyes during the confrontation (Exhibits "F-1", and "F-7"). The confrontation was also published in the "Ang Pilipino Ngayon" issue of June 3, 1988 (Exhibits "G" and "G-1") where Eugenio Reyes is shown pointing to the Accused with his hand."^[4]

Accused-appellant, for his part, categorically denied having stabbed or clubbed Paz del Mundo Reyes and Eugenio Reyes. As summarized by the trial court, the accused testified that:

"...in the morning of May 31, 1988, the Accused, an 18 year old homosexual (per the "Booking Sheet and Arrest Report", Exhibit "J", the Accused was born on November 19, 1969) and a native of San Fernando, Pampanga, met with Reynaldo Pangilinan, a native of Sto. Tomas, Pampanga and proceeded to the house of Lina Basilio, the aunt of the Accused. Thereafter, Reynaldo Pangilinan and the Accused proceeded to the house of Reynaldo Pangilinan in Sto. Tomas, Pampanga. Later, Reynaldo Pangilinan invited the Accused to go with him to the house of the former's grandparents in Manila, Eugenio Reyes and Paz del Mundo Reyes, at No. 820 Jose Basa Street, Tondo, Manila. Reynaldo Pangilinan was the son of the niece of Paz del Mundo Reyes. The Accused agreed. The duo arrived in the house of the couple at 6:00 o'clock later that afternoon. The spouses were surprised at the sudden arrival Reynaldo Pangilinan. After all, Reynaldo Pangilinan had not been to the house of the couple for about two (2) years already. They inquired from Reynaldo Pangilinan who his companion was and Reynaldo Pangilinan introduced the Accused to his grandparents, as his friend. The Accused and Reynaldo Pangilinan did not stay long in the house of the couple. They left the house of the spouses after two (2) hours, at about 8:00 o'clock in the evening and went back to San Fernando, Pampanga. They agreed to meet the next day, June 1, 1988 in the house of the couple.

On June 1, 1988, the Accused left Pampanga and proceeded to the house of Eugenio Reyes and Paz del Mundo Reyes. The Accused arrived in the house of the couple at about 7:00 o'clock that evening. The Spouses were alone in the house at that time. The Accused inquired from the spouses if Reynaldo Pangilinan arrived and he was told that Reynaldo Pangilinan was not in the house. The Accused opted to wait for Reynaldo Pangilinan. However, the latter failed to arrive. After having taken of a repast, the Spouses and the Accused then slept. It was then about 9:00 o'clock in the evening. Before he slept, the Accused did not notice if the doors to the

house were closed or not. The Accused was wearing a white t-shirt (Exhibit "P-5") and a pair of short pants (Exhibit "P-4"). They slept on the floor in the sala of the house. Eugenio Reyes and Paz Reyes were beside each other while the Accused was beside Eugenio Reyes, perpendicular to the latter. The Accused was about four (4) meters away from the main door of the house. However, in the early morning of June 2, 1988, the Accused was suddenly awakened by a noise. When he woke up, he stood up and, to his horror, he saw Paz Reyes, near the main door to the house, being clubbed with a piece of wood by a male person. The latter hit Eugenio Reyes, too, with a piece of wood. It was then dark inside the house, the only source of light was that which came from the curtain hanging by the windows in the sala of the house. Paz Reyes was seated on the floor, her hands hanging by her sides, as she was hit by the male person, with the latter's two (2) hands holding the piece of wood. The Accused saw Paz Reyes hit but he did not see what part of her body was hit or how many times she was hit by the male person. Paz Reyes was groaning. The Accused had not seen the male before them. The Accused also saw another male person near the main door holding a glistening pointed object. As the Accused stood up from where he was lying down, he saw Eugenio Reyes coming from the direction of where Paz Reyes was, telling the Accused: "Ikaw, siguro kasama mo iyong mga iyan." The Accused retorted: "Hindi po ako. Hindi po ako." The two (2) male persons holding the piece of wood and pointed object, respectively, ran away from the main door and disappeared.

In the meantime, Eugenio Reyes assaulted the Accused, at the same time, biting the Accused on the right side of his neck, pushing the Accused to the place where he slept earlier, putting his arms around the Accused and holding both hands of the Accused by the palms, arousing the Accused: "Ikaw, kasama ka rin sa kanila." The Accused on the other hand, kept saying: "Hindi po ako kasama doon," and shouting for help, thus: "Tulungan niyo kami." Blood fell from his wounded neck to his t-shirt. Eugenio Reyes was not yet bloody at the time, although Eugenio Reyes was already injured on the chin, which was bloody. The Accused struggled to free himself from the clutches of Eugenio Reyes and succeeded. The Accused, thereupon, ran away around the sala and towards the main door but Eugenio Reyes relentlessly pursued him. In the process, the furnitures in the sala were overturned and disarranged. The Accused kept shouting: "Tulungan niyo kami." However, the Accused saw Paz Reyes sprawled on the floor near the main door, her face up and bloody. The Accused lifted her head but Eugenio Reyes continued his assault on the Accused and pulled up the hair of the Accused in the process. The latter felt pains on his head. The Accused kept shouting: "Saklolo. Saklolo."

By then, some of the neighbors heard the commotion and had gathered in the vicinity of the house of the couple. When the Accused ran outside of the house, he was accosted by the concerned citizens. He heard one of the concerned citizens say, in front of the Accused: "May sinaksak diyan." The Accused heard Eugenio Reyes saying: "Kasama iyan. Kasama iyan." The Accused continued protesting, thus: "Hindi po. Hindi po." The concerned citizens saw Paz Reyes and Eugenia Reyes stabbed. The people, thereupon, mauled and boxed the Accused on the right chest, chin and neck and kicked and bumped his head on the post. The people told the Accused: "Siguro ikaw and sumaksak doon sa dalawa." The Accused kept on insisting: "Hindi po ako." The Accused was also injured on the left palm between his thumb and point finger. The Accused was then tied to said post about a foot in diameter. The wound on his right part of the neck bitten by Eugenio Reyes was bloody and blood trickled to his white shirt. His shirt was bloodied by the blood from his palm as well. His short pants got bloodied when he was being mauled. Some of the blood on his clothes also came from Eugenio Reyes. A policeman later arrived and handcuffed the Accused. The police officer pierced the Accused with the pointed end of an umbrella on his breast and arms, causing four (4) holes on the front portion of his t-shirt and injuring his breast as borne by the two (2) scars one inch in size located between his nipple and above his nipple, and two (2) scars about one-half centimeter in size near his right nipple. The police officer also pressed a cigarette above his left ear and mauled him. The Accused noticed blood on his shirt about his breasts. The police officer and some neighbors of Eugenio Reyes and Paz del Mundo Reyes brought the Accused to Police Station No. 7 where he was pointed to as the perpetrator of the stabbing of the Spouses. The Accused kept denying the charge, saying: "Hindi po ako. Hindi po ako." The Accused was again maltreated. The Accused was not required to give any statement at the police station. The Accused was later brought by the police officer to the Philippine General Hospital where his injuries on the right side of his neck was treated by the doctor on duty.

However, the latter did not treat the other wounds of the Accused because the police officer told the doctor not to treat his other wounds. The Accused was also brought to the UST Hospital and, on the way, the police officers removed his t-shirt and brought inside the room of Eugenio Reyes, half-naked. At the time he signed the "Booking Sheet and Arrest Report", Exhibit "J-3," the Accused was not assisted by counsel.[5]

After trial on the merits, the lower court rendered its Decision dated February 24, 1989, the dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered in these cases as follows:

- In criminal case No. 88-63727-SCC entitled "People of the Philippines versus Pinker Joseph Bautista", the Court finds the said accused guilty beyond reasonable doubt, as principal, for the crime "murder" and there being as aggravating circumstance, hereby imposes on said accused the penalty of "Reclusion Perpetua" with all the accessory penalties of the law and hereby condemns the said accused to pay the heirs of Paz Reyes the amount of P30,000.00 as moral and compensatory damages.

- In Criminal Case No. 88-63278, entitled "People vs. Pinker Joseph Bautista", the Court finds the said accused guilty beyond reasonable doubt as principal, for the crime of "Attempted Homicide", and there being two (2) aggravating circumstances and no mitigating circumstance, hereby imposes on said accused an indeterminate penalty of from SIX (6) MONTHS of Arresto Mayor, as Minimum, to FIVE (5) YEARS, FOUR (4) MONTHS and Twenty One (21) DAYS of Prison Correccional, as Maximum, and to pay Eugenio Reyes the amount of P10,000.00 as moral and exemplary damages.

The accused is hereby ordered likewise to pay to the heirs of Paz Reyes and to Eugenio Reyes the total amount of P22,478.00 as actual damages."

Hence, the present appeal where accused-appellant raises the following assignment of errors[6]:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT PINKER JOSEPH BAUTISTA GUILTY OF MURDER AND ATTEMPTED HOMICIDE ON THE GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN METING OUT A VERDICT OF CONVICTION BY RELYING HEAVILY ON THE TESTIMONY OF EUGENIO REYES THE SPOUSE OF THE MURDERED VICTIM WHICH IS WEAK AND UNRELIABLE.

After a thorough review of the records of the case and a careful consideration of the arguments of the accused-appellant, the Court does not find enough basis to reverse the judgment of conviction. Accused-appellant's guilt has been fully established.

In brief, accused-appellant stakes the present appeal on the assertion that his identity as the offender has not been established properly by sufficient evidence. Maintaining that the criminal liability for the murder of Paz del Mundo Reyes and the frustrated homicide should be imposed on the two unidentified persons whom he allegedly saw inflicting the stab wounds on the spouses, accused-appellant emphasizes the purported failure of the prosecution to impute any motive against him. He argues further that he could not have committed the crimes, being the beneficiary of the victim's kindness[7]

This contention is without merit.

While it is true that the prosecution failed to prove any motive on the part of accused-appellant to commit the

crimes, it is also evident from the records that the prosecution witnesses likewise have no underlying motive in identifying accused-appellant as the culprit. Eugenio Pangilinan, who was a victim himself, and the other witnesses, who are relatives and friends of the deceased, would not just indiscriminately impute the crime to anybody but would necessarily identify and seek the conviction of the real culprit to attain justice[8]. Indeed, there exists no plausible reason why the prosecution witnesses should lie under oath and implicate accused-appellant whom they hardly knew[9]. In fact, it is a matter of judicial knowledge that persons have been killed or assaulted for no apparent reason at all, and friendship or even relationship is no deterrent to the commission of a crime[10].

More importantly however, the lack of motive on the part of accused-appellant is of no consequence in view of his positive identification by witnesses and by the victim herself as borne by the records of the case[11].

First and foremost, accused-appellant was positively identified by Eugenio Reyes, the spouse of the deceased and the victim in Criminal Case No. 88-63728. In his testimony, he stated:

"FISCAL FORMOSO: When the accused was there on the night of June 2, 1988, was there any unusual incident that took place?

WITNESS: There was, sir.

FISCAL FORMOSO: What was that?

WITNESS: The accused asked for a coffee at around 2:00 o'clock early in the morning, sir.

FISCAL FORMOSO: From whom did he ask coffee?

WITNESS: From my wife, sir.

FISCAL FORMOSO: When he asked coffee from your wife, were you awake at that time?

WITNESS: Yes, sir.

FISCAL FORMOSO: You stated that there was an incident that happened, what was that incident about?

ATTY. SAGMIT: Already answered, your Honor.

COURT: Witness may answer.

WITNESS: At around 4:00 o'clock in the morning something happened already, sir.

FISCAL FORMOSO: What was that something about?

WITNESS: I heard my wife crying, sir.

FISCAL FORMOSO: Please describe to us how your wife was crying when you heard her?

WITNESS: When she was crying she was already stabbed, sir.

FISCAL FORMOSO: What were the exact words that you heard from your wife?

WITNESS: She said, "array"!

FISCAL FORMOSO: How many times did you hear that word "array" uttered by your wife?

WITNESS: Many times, sir.

FISCAL FORMOSO: When you heard your wife saying "array", what did you do?

WITNESS: I grappled with him, sir.

FISCAL FORMOSO: Why, what did you see when you heard your wife saying "array"?

WITNESS: I saw the accused holding a "patalim", sir.

FISCAL FORMOSO: Please describe to us that weapon you referred to?

WITNESS: Because it was dark at that time it could be a small one, like this, sir.

INTERPRETER: At this juncture, the witness is demonstrating with his fingers that size of the weapon as about six inches by the parties.

FISCAL FORMOSO: As he held that weapon, what happened next?

WITNESS: We grappled for the knife, sir.

FISCAL FORMOSO: Before you saw the accused held that weapon, what did he do with that knife?

WITNESS: He also stabbed me, sir.

FISCAL FORMOSO: What was your wife doing while grappling with that knife?

WITNESS: My wife was crying and she was asking for help, sir.

FISCAL FORMOSO: Why was she crying for help?

WITNESS: "Dahil hirap na hirap na kami at naliligo na kami ng dugo."

FISCAL FORMOSO: And what happened as you were grappling with the Accused that knife?

WITNESS: "Nagbakbakan kami sa loob ng bahay hanggang nakalabas kami sa pintu-an, po"[12]

Eugenio Reyes elaborated further on the incident and denied accused-appellant's version of the events during his rebuttal testimony. Thus:

"FISCAL FORMOSO: In the testimony of the Accused here, he stated that two persons entered your house, one holding a piece of wood and one holding a pointed object, what could you say to that?

WITNESS: That is a lie, sir.

FISCAL FORMOSO: What is true, then?

WITNESS: He was the only person in the house that time, sir.

FISCAL FORMOSO: The Accused also stated that you uttered to him, "siguro kasama mo yon", what could you say to that?

WITNESS: That is not true, that is a lie also, sir.

FISCAL FORMOSO: And what is the truth then?

WITNESS: He was the only one there, sir.

FISCAL FORMOSO: He also stated that the Accused was about to lift up your wife to help her but you bulled the Accused had a scuffle and then bite him on the neck, is that true or not?

WITNESS: That is again a lie, sir.

FISCAL FORMOSO: What about biting the Accused on neck, is that true or not?

WITNESS: That is true, sir.

FISCAL FORMOSO: Why did you bite him on the neck?

WITNESS: Because we had a scuffle, sir.

FISCAL FORMOSO: At the time when you had a scuffle, was he holding something?

WITNESS: Yes, a knife, sir.

FISCAL FORMOSO: Did he use that knife?

WITNESS: Yes, he stabbed me here, sir.

INTERPRETER: Witness is pointing to his neck.

FISCAL FORMOSO: Then what happened next?

WITNESS: He ran towards the kitchen and took a piece of wood, sir.

FISCAL FORMOSO: What did he do with this piece of wood?

WITNESS: He hit me on the head, sir.

FISCAL FORMOSO: What happened when you were hit?

WITNESS: I fell down, sir.

FISCAL FORMOSO: After falling down, what did the Accused do?

WITNESS: He ran towards my wife and kept on hitting her, sir."[13]

Thus, Eugenio Reyes categorically stated that he heard his wife crying due to the stab wounds she had incurred. He likewise saw accused-appellant holding a knife. Upon seeing his wife being stabbed by accused-appellant, he grappled with the latter and in the process, he himself suffered injuries. He likewise saw accused-appellant take a piece of wood from their kitchen and hit him and his wife with it.

His testimony is corroborated by the autopsy report[14] prepared by Dr. Marcial Cenido, the findings of which are:

"POSTMORTEM FINDINGS

EXTERNAL FINDINGS AND EXTENSIONS INTERNALLY

- Stab wound, region of inner end of the right eyebrow, measuring, measuring 0.3 cm. X 0.1 cm. In depth, directed slightly backwards and downwards thru the subcutaneous tissue;
- Superficial incised wound, neck, right antero-lateral surface measuring 2.8 cm. X 0.1 cm.
- Stab wound, thru and thru, base of neck at right antero-lateral surface as the point of entry measuring 4 cm. X 1.8 cm., directed obliquely backwards, slightly upwards and towards the lateral and exiting at the posterolateral surface measuring 3 cm. X 0.5 cm.;
- Penetrating stab wound, right lateral lumbar, measuring 7 cm. X 3.8 cm. X 12.5 cm. in depth, directed very slightly backwards, upwards and towards the midline perforating the right lobe of the liver;
- Penetrating stab wound, right anterior thorax just above the level of the right nipple, measuring 10 cm. x 1.5 cm. x 12.5 cm. in depth, directed obliquely backwards, slightly upwards and towards the lateral, transecting the

right 4th costal cartilage and perforating the middle and lower lobe of the right lung.

- Penetrating stab wound, left antero-lateral lumbar, measuring 7 cm. x 1.8 cm x 12 cm. in depth, directed obliquely backwards, slightly upwards and towards the midline and incising the left kidney;
- Non-penetrating stab wound, left postero-lateral thorax measuring 4 cm. x 0.7 cm x 10 cm. in depth, directed very slightly backwards, slightly downwards and towards the midline thru the muscle tissue;
- Superficial incised wound, right superior posterior shoulder, measuring 1 cm. x 0.4 cm.; and
- Slight epicranial hematoma, vertex of the head, left.

INTERNAL FINDINGS

- Stab wounds of the internal organs and tissues indicated under the internal extensions of the external wounds and with small amount of recovered blood from the right thoracic cavities; and marked pallor;
- Recovered from the stomach a small amount of brownish and slightly viscid liquid and without alcoholic odor.

CAUSE OF DEATH

Three (3) penetrating stab wounds, chest, and abdomen."

In his direct testimony, Dr. Cenido opined that the stab wounds may have been caused by a pointed bladed weapon[15] while the hematoma on the head of the victim was caused by a wooden instrument[16]. This tallies with the testimony of Eugenio Reyes whose account of the event shows that accused-appellant used a knife and a piece of wood in attacking him and his wife.

This congruence between the testimonial and physical evidence leads to the inevitable conclusion that the prosecution did not prevaricate its case[17] Mere denial by an accused, particularly when not properly corroborated or substantiated by clear and convincing evidence, cannot prevail over the testimony of a credible witness who testified on affirmative matters[18]. Denial being in the nature of negative and self-serving evidence is seldom given weight in law[19] Positive and forthright declarations of witnesses are often held to be worthier of credence than the self-serving denial of an accused[20]

Another factor which points to the guilt of accused-appellant is the fact that he was identified by the victim herself, Paz del Mundo Reyes. On this point, Alfredo Lopez testified, as follows:

"FISCAL FORMOSO: Were you able to talk with Eugenio Reyes or Mrs. Reyes, Mr. Witness?

WITNESS: Yes Sir.

FISCAL FORMOSO: What did you talk about Mr. Witness?

WITNESS: Aling Patche uttered words that she let somebody sleep and eat in her house and that person stabbed her while she was sleeping Sir.

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FISCAL FORMOSO: When you were in the clinic of Dr. Santos, was there an occasion where you were able to talk again with Mrs. Reyes Mr. Witness?

WITNESS: She is speaking Sir.

FISCAL FORMOSO: What did she tell you Mr. Witness?

WITNESS: I was told and I quote ("may pinatulog kami pero sinaksak kami"). Or we let somebody sleep but stabbed us Sir."[21]

For his part, witness Romulo Reyes, Jr. was even more categorical in his testimony that the victim identified accused-appellant. Thus:

FISCAL FORMOSO: Will you please describe to us the condition of your Auntie at the time that you saw her in the clinic, Mr. Witness?

WITNESS: She was still strong and she was still talking, Sir.

COURT: (to Stenographer) Put into records the word used by the witness ("malakas pa ang loob")

FISCAL FORMOSO: And were you able to talk to your Auntie, Mr. Witness?

WITNESS: Yes Sir.

FISCAL FORMOSO: What did you talk about, Mr. Witness?

WITNESS: I asked who stabbed her, Sir.

FISCAL FORMOSO: What did she tell you, Mr. Witness?

WITNESS: She said ("ang sumaksak sa akin, pinakain ko na, pinagmagandang loob pa ay iyong Pinker iyong bakla"), Sir.

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FISCAL FORMOSO: After the clinic of Dr. Santos, where did you go after that, Mr. Witness?

WITNESS: We went to the hospital, Sir.

FISCAL FORMOSO: What hospital was that, Mr. Witness?

WITNESS: UST Hospital, Sir.

FISCAL FORMOSO: What happened when you reached the hospital, Mr. Witness?

WITNESS: I placed her in a stretcher and she was still able to talk, Sir.

FISCAL FORMOSO: What did she utter again in the hospital, Mr. Witness?

WITNESS: She said ("walanghiya iyan, pinakain ko na, pinagmagandang loob, ginanito pa ako")."[22]

Verily, the victim could not have been referring to anyone else but accused-appellant as he was the only one who stayed and ate at their house during that fateful night. While these statements made by the victim may not be considered her dying declarations as it is not shown that these were made under a consciousness of impending death, these statements may still be admitted as part of the *res gestae*[23] since these were made shortly after the startling occurrence and, under the circumstances, the victim had no opportunity to concoct or contrive an untrue version of the events surrounding her stabbing.

In fine, the trial court committed no reversible error in holding that the quantum and quality of the evidence presented by the prosecution were sufficient in identifying accused-appellant as the perpetrator of the crimes.

The next issue to settle is whether treachery can be appreciated to qualify the killing of Paz del Mundo Reyes into murder. On this point, the trial court ruled that the killing of Paz Reyes was attended by the qualifying circumstance of treachery as she was stabbed by the accused while she was sleeping and even if she wanted to

resist the attack, she was defenseless to do so[24]

We do not agree.

Treachery cannot be appreciated in this case where the lone eye-witness to the killing, Eugenio Reyes, was not able to see how the assault started. It cannot be presumed but must be proven positively[25]. As Eugenio Reyes testified, he was asleep when accused-appellant started the attack on his wife and he was only awakened by his wife's cries and groans[26] As previously held by this Court, treachery cannot be considered when the witness did not see the commencement of the assault[27]. The importance of such testimony cannot be overemphasized, considering that treachery cannot be presumed nor established from mere suppositions[28]

Considering that there was no qualifying circumstance, the trial court erred in ruling that the generic aggravating circumstance of nighttime was absorbed by treachery. As we previously held, nocturnity may be properly considered as a generic aggravating circumstance if it was particularly sought by the accused or taken advantage of by him to facilitate the commission of the crime or to ensure his immunity from capture or otherwise to facilitate his get away[29]. In the case at bench, nighttime was shown by the fact that accused-appellant arrived at the house of the victims at 7:20 p.m.[30] and proceeded to wait patiently until 4:00 a.m. when his intended victims were already asleep in order to commit the crimes[31]

The aggravating circumstance of dwelling was properly applied by the trial court. It was shown during trial that the accused-appellant was allowed by the victims to stay overnight and that the victims did not provoke him or give him cause to do them harm. When the crime is committed in the dwelling of the offended party and the latter has not given any provocation, dwelling may be appreciated as an aggravating circumstance[32]

Thus, in Criminal Case No. 88-63727-SCC, the evidence on hand shows that accused-appellant is guilty of the crime of homicide aggravated by nighttime and dwelling. The penalty for homicide is reclusion temporal, or imprisonment for a period of 17 years, 4 months and one day to twenty years. There being two aggravating circumstances, the penalty should be fixed in its maximum period[33] In accordance with current jurisprudence, the death indemnity should be raised from P30,000.00 to P50,000.00[34]

With respect to the injuries suffered by Eugenio Reyes, we agree with the ruling of the trial court that accused-appellant is guilty of attempted homicide.

Eugenio Reyes, while grappling with accused-appellant for possession of the knife, suffered injuries on his fingers, head, chin, and back[35]. He was also hit by the appellant on the head with a piece of wood[36] As a result of his injuries, he was confined at the UST Hospital for three and a half days[37]. Thus, the intent to kill of accused-appellant may be inferred from the circumstances that he used a deadly weapon and repeatedly stabbed and hit Eugenio Reyes with these weapons. Considering, however, that no evidence was presented as to the seriousness of the injuries suffered by Eugenio Reyes, the trial court correctly ruled that the offense is only attempted homicide aggravated by nighttime and dwelling.

Thus, in Criminal Case No. 88-63728-SCC, accused-appellant is found guilty of the crime of attempted homicide, the penalty for which is prision correccional. There being two aggravating circumstances and no mitigating circumstance, the penalty should be imposed in its maximum period[38]

With respect to the award of actual damages in the total amount of P22,478.00, the same is also deleted considering that there is nothing in the records to justify the said award. The Court can only grant such amount for expenses if they are supported by receipts[39]. In the case at bench, neither documentary nor testimonial evidence was presented by the prosecution to support the claim for actual damages. Consequently, the Court cannot award the same.

Anent the trial court's award of moral and exemplary damages in the amount of P10,000.00 to Eugenio Reyes in Crim. Case No. 88-63728-SCC, we find the same to be unwarranted.

Moral damages may be recovered in criminal offenses resulting in physical injuries^[40] but there must be a factual basis for the award.^[41] We have studied the records and find no justification for the award of such damages. As to exemplary damages, such may be awarded in criminal offenses when the crime was committed with one or more aggravating circumstances, as in this case.^[42] However, the private complainant must first show that he is entitled to moral, temperate or compensatory damages before the Court may consider the question of whether or not exemplary damages should be awarded.^[43] As shown, private complainant is not entitled to any of these damages. Thus, there is no basis for an award of exemplary damages.

WHEREFORE, premises considered, the decision dated February 24, 1989 of the Regional Trial Court (Branch XLIX) of the City of Manila is hereby MODIFIED. Accused-appellant is found guilty in Criminal Case No. 88-63727-SCC of the crime of homicide and is hereby sentenced to an indeterminate sentence of twelve (12) years of Prison Mayor as minimum to twenty (20) years of Reclusion Temporal as maximum. He is likewise ordered to pay the amount of P50,000.00 as death indemnity. In Criminal Case No. 88-63728-SCC, accused-appellant is found guilty of the crime of attempted homicide and is hereby sentenced to suffer an indeterminate penalty of six (6) months of Arresto Mayor as minimum to six (6) years of Prison Correccional as maximum. The award of P10,000.00 for moral and exemplary damages is deleted.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Judge Romeo J. Callejo.

[2] Rollo, p. 5.

[3] Rollo, p. 6.

[4] Decision dated February 24, 1989; Rollo, pp. 18-25.

[5] Ibid, pp. 29-32.

[6] Brief for the Accused-Appellant, p. 1; Rollo, p. 106.

[7] Appellant's Brief, pp. 13-16; Rollo, pp. 118-121.

[8] People vs. Macagalang, 237 SCRA 299.

[9] People vs. Cruza, 237 SCRA 410.

[10] People vs. Ilaoa, 233 SCRA 231.

[11] People vs. Campa, 230 SCRA 431.

[12] TSN, August 22, 1988, pp. 16-20.

[13] TSN, January 20, 1989, pp. 2-5.

[14] Exhibit "A".

[15] TSN, August 15, 1988, p.9.

- [16] TSN, August 15, 1988, p. 18.
- [17] People vs. Tuson, 330 Phil. 443.
- [18] People vs. Castillo, 273 SCRA 22.
- [19] People vs. Ondalok and Mahinay, 272 SCRA 631.
- [20] People vs. Gondora, 333 Phil. 240.
- [21] TSN, September 23, 1988, pp. 10-13.
- [22] TSN, October 7, 1988, pp. 13-16.
- [23] People vs. Salison, Jr., 253 SCRA 758; People vs. Abboc, 53 SCRA 54; People vs. Reyes, 52 Phil. 538.
- [24] Decision, p. 37; Rollo, p. 54.
- [25] People vs. Alcartado, 261 SCRA 291; People vs. Quilatan, 205 SCRA 279, People vs. Cordero, 217 SCRA 1.
- [26] TSN, August 22, 1988, p. 18.
- [27] People vs. Tiozon, 198 SCRA 368; People vs. Garcia, 258 SCRA 411.
- [28] People vs. Salvador, 224 SCRA 819; People vs. Devaras, 205 SCRA 676.
- [29] People vs. Pareja, 265 SCRA 429.
- [30] TSN, August 22, 1988, p. 10.
- [31] TSN, August 22, 1988, p. 17.
- [32] People vs. Feliciano, 256 SCRA 706.
- [33] Article 64, par. 2, Revised Penal Code.
- [34] People vs. Piamonte, G.R. No. 91999, February 25, 1999; People vs. Espanola, 271 SCRA 689.
- [35] TSN, August 22, 1988, p. 20.
- [36] TSN, January 20, 1989, p.4.
- [37] TSN, August 22, 1988, p. 3.
- [38] Article 64, paragraph 2, Revised Penal Code.
- [39] People vs. Gutierrez, G.R. No. 116281, February 8, 1999.
- [40] Art. 2219 (1), Civil Code of the Philippines.
- [41] People vs. Patrolla, 254 SCRA 467.
- [42] Art. 2230, Civil Code of the Philippines.
- [43] Art. 2234, Civil Code of the Philippines.

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