



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**     **G.R. No. 206916**  
 Plaintiff-appellee,

Present:

CARPIO, *J.*<sup>\*</sup>  
 PERALTA, *\*\* Acting Chairperson*  
 MENDOZA,  
 LEONEN, and  
 MARTIRES, *JJ.*

-versus-

**JOSEPH SAN JOSE Y**  
**GREGORIO and JONATHAN**  
**SAN JOSE Y GREGORIO,**  
 Accused-appellants.

Promulgated:

03 JUL 2017

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**DECISION**

**LEONEN, J.:**

The prosecution has the burden to prove the accused's guilt beyond reasonable doubt. If it fails to discharge this burden, courts have the duty to render a judgment of acquittal.

This is an appeal from the Decision<sup>1</sup> dated August 31, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04821.

Joseph San Jose y Gregorio and Jonathan San Jose y Gregorio (the

<sup>\*</sup> On official leave.

<sup>\*\*</sup> Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

<sup>1</sup> *Rollo*, pp. 2-29. The Decision was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan of the Third Division, Court of Appeals, Manila.

San Jose brothers) were charged with murder under Article 248 of the Revised Penal Code. The Information<sup>2</sup> dated September 30, 2002 against them read:

That on or about the 2<sup>nd</sup> day of June 2002 at Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, along with Jonathan San Jose y Gregorio, a minor, 17 years of age, in conspiracy with one another, armed with kitchen knives, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with said knives one CARLITO ESPINO y OREO, thereby inflicting upon the latter mortal wounds which caused his death, the said killing having been attended by the qualifying circumstances of treachery and abuse of superior strength which qualify it to murder.

CONTRARY TO LAW.<sup>3</sup>

In an Order<sup>4</sup> dated May 27, 2003, the San Jose brothers were considered at large despite the warrants of arrest issued on October 30, 2002. The case against them was considered archived.<sup>5</sup> Sometime in 2005, they were arrested.<sup>6</sup> Jonathan San Jose y Gregorio (Jonathan) was arraigned on April 25, 2005 and Joseph San Jose y Gregorio (Joseph) was arraigned on August 24, 2005. Both pleaded not guilty.<sup>7</sup> Trial on the merits ensued.

Jilito O. Espino (Jilito) testified that on June 2, 2002, around 6:30 p.m., there was a baptismal celebration held on a vacant lot<sup>8</sup> beside their residence in Riverside, Manggahan, Rodriguez, Rizal. His brother Carlito Espino y Oreo (Carlito) and his friends were drinking when Jilito saw the San Jose brothers enter the house. The San Jose brothers then started punching Carlito, who tried to run to a nearby store. However, his assailants caught up with him.<sup>9</sup>

The prosecution presented Jilito's testimony that Jonathan embraced Carlito from behind and while punching him, stabbed him on the side of his body while Joseph stabbed Carlito in the front. Thereafter, the San Jose brothers ran away. Carlito's friends also ran away out of fear. Jilito ran after the San Jose brothers for about 100 meters but failed to catch up to them. When he returned to the vacant lot,<sup>10</sup> he was told that Carlito had already been brought to the hospital, where he was pronounced dead on arrival.<sup>11</sup>

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<sup>2</sup> RTC records, pp. 1-2.

<sup>3</sup> Id. at 1.

<sup>4</sup> Id. at 14. The Order was penned by Judge Jose C. Reyes, Jr. of Branch 76, Regional Trial Court, San Mateo, Rizal.

<sup>5</sup> Id.

<sup>6</sup> Id. at 17 and 53.

<sup>7</sup> CA rollo, p. 12, RTC Decision.

<sup>8</sup> This is referred to as "vacant house" in CA rollo, p.13.

<sup>9</sup> Id. at 12-13, RTC Decision.

<sup>10</sup> This is referred to as "vacant lot" in CA rollo, p. 12.

<sup>11</sup> Id.

Jilito likewise attested that this was not the first incident between Carlito and the San Jose brothers. He recalled that on New Year's Day, the San Jose brothers used a lead pipe to hit Carlito.<sup>12</sup>

The autopsy revealed that the victim sustained "one fatal injury at the abdomen, at the right hypochondriac and multiple abrasions at the lower extremities."<sup>13</sup> The examination also showed that "the stab wound located at the right hypochondriac or in the abdomen caused an injury lacerating the pericardial sac, the right ventricle of the heart and the lower lobe of the right lung."<sup>14</sup> Dr. Pierre Paul Carpio (Dr. Carpio), the Chief of Forensic Autopsy of the Philippine National Police Crime Laboratory, further testified that it was possible for the assailant to have been at the victim's back.<sup>15</sup> He stated that the stab wound at the right hypochondriac (*tagiliran*) was fatal and that there were no defense wounds on the victim.<sup>16</sup>

For their defense, Joseph testified that on June 2, 2002, he and his brother Jonathan were at home eating with a childhood friend, Leo Narito, when a commotion occurred outside the house. People were shouting and when he went outside, he saw a person running away. He asked that person what was going on and was told that someone had been stabbed. Joseph returned to his house and continued eating. Sometime in 2005, while he was at work at a hardware store, police officers arrested him for the killing of a certain Joselito. He denied the charges against him.<sup>17</sup>

Jonathan asserted that he was 16 years old in 2002, having been born on September 2, 1985. His testimony corroborated that of his brother Joseph. Sometime in 2005, he was about to go to work when some barangay tanods came to arrest him for the killing of Carlito.<sup>18</sup>

Jocelyn Espino (Jocelyn) also testified on the San Jose brothers' behalf, claiming that she was Jilito and Carlito's sister. She stated that at the time of the incident, Carlito was outside the house. Their neighbors later informed them of the commotion outside their house involving Carlito. She claimed that Jilito only learned of the incident when he went outside of their house. When cross-examined, Jocelyn failed to present evidence to show that she was Jilito and Carlito's sister.<sup>19</sup>

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<sup>12</sup> Id. at 13.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. at 14, RTC Decision.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 15, RTC Decision.

On May 12, 2010, Branch 76, Regional Trial Court of San Mateo, Rizal, rendered a Decision<sup>20</sup> finding the San Jose brothers guilty as charged. The dispositive portion of the Decision read:

WHEREFORE, judgment is hereby rendered, finding both accused(s) Joseph San Jose y Gregorio and Jonathan San Jose y Gregorio GUILTY of the crime of Murder punishable under Article 248 of the Revised Penal Code as amended.

Accordingly, accused Joseph San Jose y Gregorio is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and accused Jonathan San Jose y Gregorio, being entitled to the privilege[d] mitigating circumstance of minority under Article 68 of the Revised Penal Code and applying the Indeterminate Sentence Law is hereby sentenced to suffer the penalty of Ten (10) years and One (1) day of *Prision Mayor* as minimum to Seventeen (17) years, Four (4) months and One (1) day of *Reclusion Temporal* as maximum; and, both accused are ordered to indemnify the heirs of the victim in the amount of Php 50,000.00 as death indemnity and Php 50,000.00 as moral damages. No pronouncement as to costs.

Both accused(s) are to be credited for the time spent for their preventive detention in accordance with Art[icle] 29 of the Revised Penal Code as amended by R.A.[.] 6127 and E.O. 214.

Accused(s) Joseph San Jose and Jonathan San Jose are hereby ordered committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.

SO ORDERED.<sup>21</sup>

Joseph and Jonathan appealed to the Court of Appeals.<sup>22</sup>

In a Decision<sup>23</sup> dated August 31, 2012, the Court of Appeals affirmed the trial court's Decision. The Court of Appeals relied heavily on Jilito's positive identification of the San Jose brothers as the perpetrators of the crime. It found that the inconsistencies and variances in Jilito's testimony referred only to minor details and proved that his testimony was not rehearsed.<sup>24</sup>

The Court of Appeals found the defense of non-flight from the barangay after the incident unmeritorious since non-flight is not indicative of a clear conscience. It also affirmed the finding of conspiracy since Jonathan's act of holding the victim from behind and stabbing him on the

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<sup>20</sup> Id. at 12–17. The Decision was penned by Judge Josephine Zarate Fernandez of Branch 76, Regional Trial Court, San Mateo, Rizal.

<sup>21</sup> Id. at 16–17.

<sup>22</sup> *CA rollo*, pp. 19–20.

<sup>23</sup> *Rollo*, pp. 2–29. The Decision was penned by Associate Justice Rebecca De Guia-Salvador (Chair) and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan of the 3rd Division, Court of Appeals, Manila.

<sup>24</sup> Id. at 14–19.

right side of his torso gave Joseph the opportunity to assault and to stab the victim from the front.<sup>25</sup> However, it agreed with the Office of the Solicitor General's view that abuse of superior strength, and not treachery, qualified the crime as murder since there was gross inequality of forces between the assailants and the unarmed victim.<sup>26</sup>

The Court of Appeals also modified Jonathan's penalty to seventeen (17) years and four (4) months since the penalty imposable under the Indeterminate Sentence Law is *prision mayor* in any of its periods as minimum and *reclusion temporal* in its medium period as maximum.<sup>27</sup> It added exemplary damages in the amount of ₱30,000.00 and temperate damages in the amount of ₱25,000.00 with interest of six percent (6%) per annum.<sup>28</sup> The dispositive portion of the Decision read:

WHEREFORE, the appealed decision dated 12 May 2010 in Criminal Case No. 6453 is AFFIRMED with the following MODIFICATIONS:

- (1) The maximum period of appellant Jonathan San Jose's indeterminate sentence is fixed at (17) years and four (4) months; hence, he is sentenced to suffer an indeterminate penalty of imprisonment of 10 years and 1 day of *pris[i]on mayor* as minimum to 17 years and 4 months of *reclusion temporal* as maximum;
- (2) Exemplary damages of Php30,000.00, and temperate damages in the amount of Php25,000.00, are additionally AWARDED to the heirs of Carlito Espino; and
- (3) The total amount of damages awarded to the heirs of the victim shall earn interest at the legal rate of 6% per annum reckoned from the finality of this judgment until fully paid.

SO ORDERED.<sup>29</sup>

Jonathan and Joseph (accused-appellants) filed a Notice of Appeal<sup>30</sup> manifesting their intention to appeal to this Court, which was given due course by the Court of Appeals.<sup>31</sup> The Office of the Solicitor General manifested to this Court that it was no longer filing a supplemental brief and would be adopting the brief it filed before the Court of Appeals.<sup>32</sup> Accused-

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<sup>25</sup> Id. at 21–22.

<sup>26</sup> Id. at 22–23.

<sup>27</sup> Id. at 25.

<sup>28</sup> Id. at 24–27.

<sup>29</sup> Id. at 27–28.

<sup>30</sup> Id. at 30–33.

<sup>31</sup> Id. at 34. The Resolution was penned by Associate Justice Rebecca De Guia-Salvador (Chair) and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan of the Third Division, Court of Appeals, Manila.

<sup>32</sup> Id. at 37–39.

appellants, on the other hand, submitted a Supplemental Brief.<sup>33</sup>

The Office of the Solicitor General argues that Jilito was consistent in his testimony on how accused-appellants killed his brother, Carlito. It maintains that he was able to positively identify accused-appellants since all of them were residents of the same barangay. The autopsy report likewise corroborates Jilito's testimony that Carlito was stabbed at the right side of his torso.<sup>34</sup>

The Office of the Solicitor General further argues that Jocelyn's testimony cannot overcome Jilito's testimony since Jocelyn did not categorically state that Jilito was not able to see the incident. Their late father's affidavit of desistance likewise cannot overturn the prosecution's "overwhelming evidence" against the accused-appellants.<sup>35</sup>

Accused-appellants, on the other hand, counter that there is no qualifying circumstance of abuse of superior strength since the presence of one (1) stab wound on the victim indicates that the victim was not really taken advantage of.<sup>36</sup> They argue that Jilito's testimony on the presence of two (2) mortal wounds on the victim is directly contradicted by the autopsy report.<sup>37</sup> They also point out that a substantial portion of Jilito's testimony is hearsay since Jocelyn testified that at the time of the incident, Jilito was inside their house.<sup>38</sup>

The sole issue to be resolved by this Court is whether accused-appellants are guilty beyond reasonable doubt for the murder of Carlito Espino.

It is a basic right of the accused under our Constitution to be presumed innocent until the contrary is proven.<sup>39</sup> Thus, the quantum of evidence required to overcome this presumption is proof beyond reasonable doubt. Rule 133, Section 2 of the Rules of Court provides:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

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<sup>33</sup> Id. at 44–52.

<sup>34</sup> *CA rollo*, pp. 70–76.

<sup>35</sup> Id. at 77–78.

<sup>36</sup> *Rollo*, p. 47.

<sup>37</sup> Id. at 47–48.

<sup>38</sup> Id. at 49–50.

<sup>39</sup> CONST, art. III, sec. 14(2).

The burden of proving the accused's guilt rests with the prosecution. A guilty verdict relies on the strength of the prosecution's evidence, not on the weakness of the defense.<sup>40</sup> If the prosecution's evidence produces even an iota of reasonable doubt, courts would have no choice but to rule for the accused's acquittal. In *People v. Capili*:<sup>41</sup>

Proof beyond reasonable doubt is needed to overcome the presumption of innocence . . . Accused-appellant's guilt must be proved beyond reasonable doubt . . . otherwise, the Court would be left without any other recourse but to rule for acquittal. Courts should be guided by the principle that it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.<sup>42</sup>

The determination of guilt requires courts to evaluate the evidence presented in relation to the elements of the crime charged.<sup>43</sup> The finding of guilt is fundamentally a factual issue.<sup>44</sup>

Considering that this Court is not a trier of facts, factual findings of the trial court are usually accorded great respect "because of the opportunity enjoyed by the [trial court] to observe the demeanor of the witnesses on the stand and assess their testimony."<sup>45</sup> Nevertheless, this Court is not precluded from reviewing these findings or even arriving at a different conclusion "if it is not convinced that [the findings] are conformable to the evidence of record and to its own impressions of the credibility of the witnesses."<sup>46</sup> The factual findings of the trial court will not bind this Court if "significant facts and circumstances were overlooked and disregarded . . . which if properly considered affect the result of the case."<sup>47</sup>

This is also an appeal under Rule 122, Section 2(c) of the Rules of Court, where the entire records of the case are thrown open for review. In *Ferrer v. People*:<sup>48</sup>

It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.<sup>49</sup> (Citation omitted)

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<sup>40</sup> See *People v. Macasinag*, 255 Phil. 279 (1989) [Per J. Cruz, First Division].

<sup>41</sup> 388 Phil. 1026 (2000) [Per J. Melo, En Banc].

<sup>42</sup> Id. at 1037, citing *People vs. Reyes*, 158 Phil. 342 (1974) [Per J. Fernando, Second Division] and *People vs. Maliwanag*, 157 Phil. 313 (1974) [Per J. Esguerra, First Division].

<sup>43</sup> See *Macayan v. People*, 756 Phil. 202, 214 (2015) [Per J. Leonen, Second Division].

<sup>44</sup> Id.

<sup>45</sup> *People v. Macasinag*, 255 Phil. 279, 281 (1989) [Per J. Cruz, First Division].

<sup>46</sup> Id.

<sup>47</sup> *People v. Ortiz*, 334 Phil. 590, 601 (1997) [Per J. Francisco, Third Division].

<sup>48</sup> 518 Phil. 196 (2006) [Per J. Austria-Martinez, First Division].

<sup>49</sup> Id. at 220 citing *Aradillos v. Court of Appeals*, 464 Phil. 650, 659 (2004) [Per J. Austria-Martinez, Second Division].

In this case, the trial court and the Court of Appeals placed heavy reliance on the testimony of the prosecution's lone eyewitness, Jilito Espino, and his positive identification of the accused-appellants as the assailants who murdered his brother. Thus, the review of finding of guilt necessarily involves a re-evaluation of Jilito's testimony.

In order to secure a conviction for murder under Article 248 of the Revised Penal Code,<sup>50</sup> the prosecution must prove "[*first,*] that a person was killed; [*second,*] that the accused killed that person; [*third,*] that the killing was committed with the attendant circumstances stated in Article 248; and [*finally,*] that the killing was neither parricide nor infanticide."<sup>51</sup>

Jilito testified before the trial court that he saw accused-appellant Jonathan holding the victim from behind and stabbing him on the side of his body. He also testified seeing accused-appellant Joseph stab his brother in the chest.<sup>52</sup> The trial court found his testimony "to be credible and trustworthy and supported by the testimony of Dr. Carpio, an expert witness who conducted the autopsy."<sup>53</sup>

A review of Jilito's testimony, however, when placed against the other pieces of evidence, reveals numerous material inconsistencies that cannot be ignored.

First, it was unclear where the stabbing actually occurred. During the direct examination, Jilito testified:

- Q: When you saw your brother being stabbed, was it in front of that house or at the side of that house?  
A: In front of the house, sir.<sup>54</sup>

<sup>50</sup> REV. PEN CODE, art. 248 provides:

Article 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 reclusión temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. 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.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

<sup>51</sup> See *People v. Obosa*, 429 Phil. 522, 537 (2002) [Per J. Sandoval-Gutierrez, En Banc].

<sup>52</sup> CA rollo, p. 15.

<sup>53</sup> Id.

<sup>54</sup> TSN dated January 24, 2006, p. 7.

During the cross-examination, Jilito testified that the stabbing happened in front of a store:

Q: According to you, you really saw what transpired or what was the incident all about, could you tell us if there was someone who was an arm's length away from your brother when the two (2) assailants stabbed your brother?

A: There was, sir.

Q: Is he a male or a female?

A: A female, sir.

Q: According to you, when the San Jose brothers attacked your brother all the people who were there got scared and ran away?

A: Yes, sir.

Q: And still there was this female who was near your brother?

A: She did not go near my brother she just went outside the store.

Q: I thought the stabbing happened in the place where the four (4)] persons were drinking?

A: Yes, sir.

Q: You mean to say that before your brother was stabbed he had managed to run away from the said assailants?

A: Yes, sir, he was able to run away.

Q: So it is different from what you have told the Hon. Court awhile ago. Which is which, you saw what transpired at the "silong" or the other version that your brother managed to run away?

A: When he was boxed he was able to run away up to the store and it was at the store where he [sic] the assailants were able to catch up with him and the brothers embraced him and stabbed him, sir.<sup>55</sup>

Jilito stated that he was able to witness the incident because he was located only "20 arms length" away from the scene of the crime.<sup>56</sup> Jilito initially testified that he saw his brother stabbed in front of the vacant house. Later, he testified that his brother was able to run away from the vacant house to a store where he was stabbed. The Court of Appeals considered the change of location a "clarification" that the victim was able to run away during the commotion.<sup>57</sup>

Rather than clarifying the situation, Jilito's testimony raises even more questions that the trial court and the Court of Appeals ignored. A point of interest, for example, would have been how far the store was from where Jilito was located that he was still able to witness the stabbing. Another query would have been how the female could have gone outside the store

<sup>55</sup> TSN dated January 24, 2006, pp. 14-15.

<sup>56</sup> *Rollo*, p. 12.

<sup>57</sup> *Id.* at 16. The "vacant house" is also referred to as "vacant lot" in *CA rollo*, p. 12.

during the incident without coming near the victim considering that the stabbing occurred at the store.

There were also material inconsistencies between Jilito's testimony and the autopsy report submitted by the prosecution. Jilito repeatedly stated to the trial court that his brother was stabbed twice:

COURT:

Q: You stated that Jonathan San Jose embraced him and stabbed him, I am referring to the victim, what about the other one, what was his participation, Joseph San Jose?

A: He stabbed my brother in front, your Honor.

Q: On the chest?

A: Yes, your Honor.

Q: And Jonathan San Jose, where did he stab your brother?

A: On his side, sir.

Q: How many times did each one stab your brother?

A: One (1) each, sir.

....

[Atty. Censon:]

Q: According to you, Joseph San Jose embraced your brother, how did he embrace your brother?

A: It was Jonathan who embraced my brother from behind and it was Joseph who went in front of my brother and stabbed him, sir.

Q: Could you demonstrate how Jonathan embraced your brother, did he use both hands?

Pros. Gonzales:

Witness demonstrating that he had used the left arm to embrace the upper left shoulder of the victim and using the right hand with a weapon to stab the victim on the side.

Atty. Censon:

Q: And the other San Jose stabbed your brother on the chest?

A: Yes, sir.

Q: And you saw it clearly?

A: Yes, sir.<sup>58</sup>

However, Dr. Carpio, testified that the victim sustained "one fatal stab wound on the abdomen or at the right hypochondriac."<sup>59</sup> Otherwise stated,

<sup>58</sup> TSN dated January 24, 2006, pp. 10-12.

<sup>59</sup> RTC Decision, p. 2, CA *rollo*, p. 14.

Jilito testified that the victim was stabbed *twice*, but there was only *one* (1) stab wound found on the body.

The doubt created by Jilito's testimony is magnified by the testimony of Jocelyn, Jilito and the victim's sister. Jocelyn testified that at the time of the incident, Jilito was inside their house eating:

- Q: Where were you when your brother died, Madam Witness?
- A: I was inside our house, sir.
- Q: And who were with you at the said house on the said date?
- A: My elder brother, sir.
- Q: How about your parents, where were they at that time?
- A: They were there in our house eating, sir.
- Q: And why was Carlito Espino not with you at that time?
- A: He was outside the house, sir.
- Q: So how were you able to know the incident that caused the death of your brother Carlito Espino?
- A: From our neighbors because there was a commotion outside, sir.
- Q: Did you personally know what really transpired or who allegedly stabbed your brother Carlito Espino?
- A: No, sir.
- Q: Jolito [sic] Espino, according to you, was with you at that time, Madam Witness?
- A: Yes, sir.
- Q: So when did he learn of this incident or when did he know of the incident[,] Madam Witness?
- A: When he went outside of the house, sir.
- Q: When did he go outside your house[,] Madam Witness?
- A: When there was a commotion outside, sir.<sup>60</sup>

The prosecution tried to discredit her testimony by questioning her relationship with the victim and the eyewitness<sup>61</sup> but the Office of the Solicitor General eventually conceded that she was indeed Carlito and

<sup>60</sup> TSN dated September 16, 2009, pp. 3-4.

<sup>61</sup> TSN dated September 16, 2009, pp. 6-7.

Jilito's sister.<sup>62</sup> The Court of Appeals, on the other hand, disregarded her testimony on the ground that she did not categorically state that Jilito was unable to see the incident:

Nowhere in her affidavit did Jocelyn categorically say that Jilito did not actually see the events that transpired. Her testimony revolved more on what she perceived and failed to see at the time Carlito was stabbed, rather than what Jilito perceived, because, naturally, only Jilito can testify on that.<sup>63</sup> (Citations omitted)

On the contrary, Jocelyn categorically stated that Jilito was inside the house when they were informed by a neighbor that there was a commotion outside involving their brother. She stated that Jilito only learned about the incident when he went out of the house. Learning about an incident after it occurs is the same as not having witnessed it.

The trial court and the Court of Appeals likewise failed to note that the victim's sister was a witness for the defense and the victim's late father signed an affidavit of desistance<sup>64</sup> in the accused-appellants' favor. It is consistent with the human experience for the victim's relatives to seek justice.<sup>65</sup> An unusual detail, such as two (2) immediate family members of the victim testifying on behalf of the accused-appellants, forces this Court to take a second hard look at the prosecution's evidence.

The delayed arrests of the accused-appellants likewise cast doubt on their guilt. The crime occurred on June 2, 2002. Accused-appellant Jonathan was arrested on April 1, 2005<sup>66</sup> and accused-appellant Joseph was arrested on August 3, 2005,<sup>67</sup> or about three (3) years after the crime was committed.

Accused-appellants remained residents of Barangay Manggahan, Rodriguez, Rizal from the occurrence of the crime in 2002 until their arrests in 2005:

PROS. GONZALES:

....

Q How long have you stayed at Riverside, Brgy. Manggahan, Rodriguez, Rizal?

A Since 1994 to 2005, sir.<sup>68</sup>

....

<sup>62</sup> CA rollo, p. 77.

<sup>63</sup> Rollo, p. 19.

<sup>64</sup> RTC records, p. 251.

<sup>65</sup> See *People v. Capili*, 388 Phil. 1026, 1036 (2000) [Per J. Melo, En Banc].

<sup>66</sup> RTC records, p. 17.

<sup>67</sup> Id. at 53.

<sup>68</sup> TSN dated February 12, 2009, pp. 11-12.

- Q When were you arrested, Mr. Witness?
- A March 25, 2005, sir.
- Q Where were you when you were arrested?
- A I was in our place in Manggahan, sir.
- Q After June 2, 2002, or after the alleged incident, where did you go, if you have gone to another place else [sic]?
- A None, sir.
- Q You mean to say, you remained residing in your house located in Manggahan?
- A Yes, sir.<sup>69</sup>

In *People v. Capili*,<sup>70</sup> this Court was inclined to question the credibility of the supposed eyewitness who only reported the crime a week after it occurred, leading to the accused's acquittal:

The Court finds significance in the accuracy of the time when witness Badua really reported the matter to the brother or father of the victim considering that said victim Alberto Capili was Badua's relative. It is but logical for a relative who was an eyewitness to a crime to promptly and audaciously take the necessary steps to bring the culprit into the hands of the law and seek justice for the poor victim. There is greater probability that Badua only reported the matter, if at all he actually did, to the victim's brother on October 11, 1994 because the latter only went to the authorities to report the matter on October 13, 1994. If we consider this unexplained delay in reporting a crime together with the supposed behavior of accused-appellant and the principal witnesses which we find rather unnatural, it would be rather risky and hazardous to pronounce accused-appellant guilty of the crime charged . . .

In fact, there is even some possibility that Badua's identification of accused-appellant as the perpetrator was a mere afterthought, there being no definite lead as to the identity of the author of the crime even after the lapse of several days following the finding of the cadaver of the victim by the riverbank on October 7, 1994. The foregoing considerations taken together cast reasonable doubt on the culpability of accused-appellant as killer of Alberto Capili. The evidence which stands on record does not eliminate the possibility of absence of foul-play, i.e., that there had been only an accidental death by drowning. Striking a rock after accidentally slipping could cause contusions similar to those found at the back of the victim's head and shoulders and result in the loss of consciousness leading to drowning. Only by proof beyond reasonable doubt, which requires moral certainty, may the presumption of innocence be overcome . . . Moral certainty has been defined as "a certainty that convinces and satisfies the reason and conscience of those who are to act upon it" . . .

<sup>69</sup> TSN dated May 11, 2009, pp. 5-6.

<sup>70</sup> 388 Phil. 1026, 1036-1037 (2000) [Per J. Melo, En Banc].

Absent the moral certainty that accused-appellant caused the death of the victim, acquittal perforce follows.<sup>71</sup>

This case may be factually different from *Capili* in that there were warrants of arrest as early as October 2002.<sup>72</sup> However, this Court finds echoes of the same unnatural behaviors of the victim's relatives as in *Capili*. Here, the prosecution has an eyewitness account in the victim's brother Jilito. The victim's family remained in the same barangay.<sup>73</sup> The accused-appellants did not live anywhere else but were arrested in the same barangay they had been residing. It is highly unusual for the victim's family to have taken three (3) years to have the alleged perpetrators arrested.

While delay *per se* may not impair a witness's credibility, doubt arises when the delay remains unexplained. The delay in this case becomes significant when pitted against Jilito's *Kusang-loob na Salaysay*, where he admits that he merely heard about the incident from other people:

16.T– *Nalaman mo ba kung bakit pinagtulangang suntukin nitong sina Joseph at Jonathan hanggang sa saksakin ang iyong kapatid na si Carlito?*

S– *Ang sabi po ng ilang nakasaksi ay bigla na lamang po raw pumasok doon sa grupo ng nag-iinuman itong sina Joseph at Jonathan at biglang pinagsusuntok hanggang sa . . . pagtulungan saksakin ang aking kapatid na si Carlito.*<sup>74</sup> (Emphasis supplied)

As in *Capili*, the unexplained delay and the *Kusang-loob na Salaysay* lead this Court to the possibility that Jilito's supposedly positive identification of the accused-appellants as the perpetrators of the crime was a mere afterthought.

Here, both the victim's father and sister are convinced that accused-appellants are not guilty of the crime. The prosecution's lone eyewitness could not even give a clear and categorical narrative of the events. There were several unusual circumstances during the prosecution of the case that he has not adequately explained. The prosecution having failed to discharge its burden to prove guilt *beyond* reasonable doubt, this Court is constrained to acquit accused-appellants.

**WHEREFORE**, the appeal is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04821 is **REVERSED** and **SET**

<sup>71</sup> Id. citing *People vs. Vergara*, 82 Phil. 207 (1948) [Per J. Perfecto, En Banc]; *People vs. Custodio*, 150-C Phil. 84 (1972) [Per J. Antonio, En Banc]; and *People vs. Lavarias*, 132 Phil. 766 (1967) [Per J. Fernando, En Banc].

<sup>72</sup> RTC records, pp. 10–11.

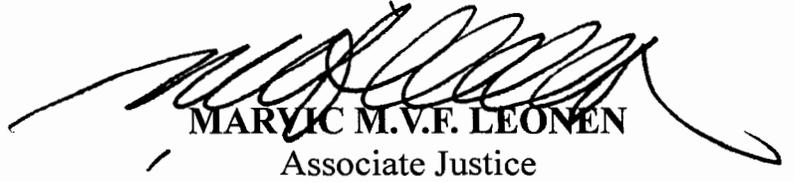
<sup>73</sup> See TSN dated January 24, 2006, p. 2 and TSN dated September 16, 2009, p. 2.

<sup>74</sup> RTC records, pp. 203–204.

**ASIDE.** Accused-appellants Joseph San Jose y Gregorio and Jonathan San Jose y Gregorio are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately **RELEASED** unless they are confined for any other lawful cause.

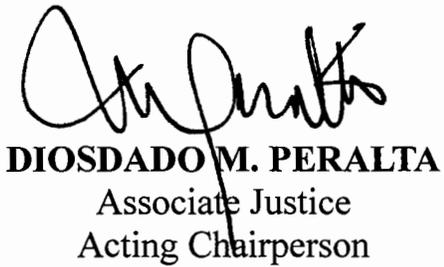
Let entry of judgment be issued immediately.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

On official leave  
**ANTONIO T. CARPIO**  
Associate Justice

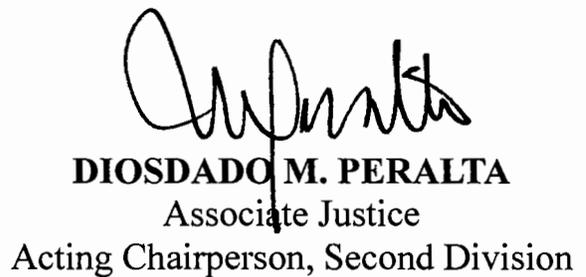
  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**SAMUEL R. MARTIRES**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice