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another ₱50,000.00 for each count as moral damages; and the amount of ₱50,000.00 to Manuel Calata as moral damages.

SO ORDERED.

Puno (Chairman), Panganiban and *Sandoval-Gutierrez, JJ.*, concur.

Corona, J., on leave.

SECOND DIVISION

[G.R. No. 131035. February 28, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SALVADOR DE LA CRUZ,** *accused-appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of murder for the death of Florencio Antonio. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

The Supreme Court ruled that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight thereof and its conclusions anchored on said findings are accorded great respect, if not conclusive effect, because of the unique advantage of the trial court of observing and monitoring at close range the conduct, demeanor and deportment of the witnesses as they gave their testimonies before the trial court. However, the principle is not absolute. The appellate court is not bound by the findings and conclusions of the trial court if it ignored, overlooked, misconstrued or misinterpreted substantial facts and circumstances which if considered would change the outcome of the case. However, the Court has carefully examined

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the record of this case and it found no cogent reason to disturb the finding of the trial court.

The Court further ruled that identification of a person is not solely through knowledge of his name. In fact, familiarity with physical features, particularly those of the face, is the best way to identify a person.

The Court likewise held that treachery cannot be appreciated in the case at bar for failure of the prosecution to adduce any evidence as to how the aggression started and who started the same. The barefaced fact that the victim was helpless when he was stabbed does not constitute proof of treachery. For treachery to be appreciated, it must be present at the inception of the attack, and if absent and the attack is continued, even if present at the subsequent stage, treachery is not considered as a qualifying or generic aggravating circumstance.

The circumstance of abuse of superior strength cannot be appreciated because it was not alleged in the Information. Neither was it alleged as a generic aggravating circumstance, as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. Evident premeditation was not attendant because the prosecution failed to prove the elements thereof. Hence, the Supreme Court found appellant guilty only of homicide.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT ON APPEAL; EXCEPTION; NOT PRESENT IN CASE AT BAR.**— [T]he findings of facts of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight thereof and its conclusions anchored on said findings are accorded great respect, if not conclusive effect, because of the unique advantage of the trial court of observing and monitoring at close range the conduct, demeanor and deportment of the witnesses as they gave their testimonies before the trial court. ... The appellate court is not bound by

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the findings and conclusions of the trial court if it ignored, overlooked, misconstrued or misinterpreted substantial facts and circumstances which if considered would change the outcome of the case. However, the Court has carefully and assiduously examined the records of this case and finds that indeed, the finding of the trial court that accused-appellant was one of the three assailants of the victim is safely ensconced in *terra firma.*

2. **ID.; ID.; IDENTIFICATION OF A PERSON IS NOT SOLELY THROUGH KNOWLEDGE OF HIS NAME.**— Both Ferdinand and Danilo may not have known the precise name of accused-appellant and his cohorts when they stabbed the victim but this is *peu de chose*. This Court has held in *People vs. Gallego* that identification of a person is not solely through knowledge of his name. This Court emphasized that: "This Court has previously held that identification of a person is not solely through knowledge of his name. In fact, *familiarity with physical features, particularly those of the face, is the best way to identify a person.* One may be familiar with the face but not necessarily the name. Thus, it does not follow that to be able to identify a person, one must necessarily know his name. "Experience shows that *precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identity of criminals. We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their memory.*" Relatives of the victim have a natural knack for remembering the face of the assailant for they, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor to face the law."

3. **ID.; ID.; WHENEVER THERE IS INCONSISTENCY BETWEEN THE SWORN STATEMENT OF WITNESS AND HIS TESTIMONY, THE LATTER COMMANDS GREATER WEIGHT.**— [W]henever there is inconsistency between the sworn statement of a witness and his testimony, the latter commands greater weight: Whenever there is inconsistency between the affidavit and the testimony of a witness in court,

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the testimony commands greater weight. Moreover, affidavits taken *ex parte* are inferior to testimony given in court, the former being invariably incomplete and oftentimes inaccurate due to partial suggestions or want of specific inquiries. Thus, such alleged discrepancy between the statement in the affidavit and those made on the witness stand would not discredit the declarant witness Rogelio Alvendo.

4. **ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE, STRAIGHTFORWARD AND SPONTANEOUS TESTIMONIES OF EYEWITNESSES IN THE COMMISSION OF THE CRIME; CASE AT BAR.**— The barefaced denial by accused-appellant of having killed Florencio is negative self-serving evidence which cannot prevail over the positive, straightforward and spontaneous testimonies of the eyewitnesses in the commission of the crime. Accused-appellant failed to adduce evidence other than the testimony of his wife, Virginia de la Cruz, to corroborate his testimony that they continued residing in their house after the death of Florencio. Accused-appellant failed to present the Barangay Captain or any *barangay* official to prove that he and his family did not leave their house after the killing of Florencio.

5. **CRIMINAL LAW; CONSPIRACY; MAY BE INFERRED FROM THE COLLECTIVE ACTS OF THE ACCUSED BEFORE, DURING AND AFTER THE COMMISSION OF THE CRIME SHOWING CONCERTED ACTION AND UNITY OF PURPOSE AMONG THEM; CASE AT BAR.**— There is conspiracy when two or more persons agree to commit any felony and decided to commit it. While the prosecution is mandated to prove conspiracy with the same quantum of proof as the crime itself, direct proof is, however, not a condition *sine qua non* to prove conspirary. Conspiracy may be inferred from the collective acts of the accused before, during and after the commission of the crime showing concerted action and unity of purpose among them. In this case, when Florencio fled for dear life, accused-appellant and his cohorts, armed with lethal weapons, chased him. When Florencio reached the vacant lot and slipped and fell to the ground, accused-appellant, Tamano and Boy Negro took turns in stabbing him. The trio fled forthwith from the *situs criminis* together. Even if the stab wound inflicted by accused-appellant may not have

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been the proximate cause of death of Florencio, the same is inconsequential. In conspiracy, the act of one is the act of all.

6. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; MUST BE PROVED WITH THE SAME QUANTUM OF EVIDENCE AS THE CRIME ITSELF.**— [T]reachery must be proved with the same quantum of evidence as the crime itself. Treachery cannot be presumed; nor can it be based on mere surmises or speculations. In case of doubt, the same should be resolved in favor of the accused.

7. **ID.; ID.; ID.; MUST BE PRESENT AT THE INCEPTION OF THE ATTACK IN ORDER TO BE APPRECIATED; CASE AT BAR.**— For treachery to be appreciated, it must be present at the inception of the attack, and if absent and the attack is continued, even if present at the subsequent stage, treachery is not considered as a qualifying or generic aggravating circumstance. The prosecution must adduce conclusive proof as to the manner in which the altercation started and resulted in the death of the victim, and if the prosecution fails to discharge its burden, the crime committed is homicide and not murder. In this case, Ferdinand saw accused-appellant, Tamano and Boy Negro, armed with knives, chase and overtake the victim in a vacant lot. The victim slipped and fell to the ground. Accused-appellant Tamano and Boy Negro forthwith took turns in stabbing the victim as the latter tried to stand up. The prosecution failed to adduce any evidence as to how the aggression started and who started the same. The barefaced fact that the victim was helpless when he was stabbed does not constitute proof of treachery.

8. **ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; CANNOT BE APPRECIATED IF NOT ALLEGED IN THE INFORMATION; CASE AT BAR.**— In light of the evidence, abuse of superior strength was attendant in the commission of the crime. However, said circumstance was not alleged in the Information. Neither was it alleged as a generic aggravating circumstance, as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. Although the rule took effect only on December 1, 2000, while the crime subject of the Information occurred on April 6, 1991, the new rule should be given retroactive effect, since it is more favorable to accused-appellant.

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9. **ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.**— Evident premeditation was not attendant because the prosecution failed to prove the elements thereof, namely: (1) the time when the offender determined to commit the crime; (b) sufficient lapse of time between the determination and execution to allow himself to reflect upon the consequence of his act.

10. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND ACTUAL DAMAGES; AWARDED IN CASE AT BAR.**— The trial court correctly ordered accused-appellant to pay to the heirs of the victim Florencio Antonio civil indemnity in the amount of ₱50,000.00 and ₱50,000.00 moral damages. Accused-appellant is likewise ordered to pay actual damages in the amount of ₱98,000.00 as stipulated by the parties.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Roco Bunag Kapunan and Migallos Law Office for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

Before the Court is an appeal from the Decision[1] rendered by the Regional Trial Court of Manila, Branch 18, convicting accused-appellant Salvador de la Cruz of Murder and imposing on him the penalty of *reclusion perpetua,* with all the accessory penalties provided for by law, for the death of Florencio Antonio and to pay the heirs of the victim the sum of ₱50,000.00 as moral damages, and the amount of ₱50,000.00 as civil indemnity.

The Antecedents

Salvador de la Cruz, a pedicab driver, and his family rented a portion of the house owned by one Tamano at Pacheco St., Tondo, Manila. Tamano and his brother, Boy Negro, resided

[1] Judge Perfecto A.S. Laguio.

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in the same house. Florencio Antonio (also known as "Otey") and his family resided at No. 521 Pitong Gatang Street, Tondo, Manila, around three blocks away from the house of Tamano.[2]

On April 5, 1991, at around 12:00 midnight, Salvador, Tamano and Boy Negro went to the house of Florencio. Tamano knocked on the door of the house of Florencio while Salvador and Boy Negro were several meters away.[3] Shortly thereafter, Ferdinand Peñaranda, a distant uncle of Florencio, was resting in his house at No. 513 Pitong Gatang Street, Tondo, Manila, near the house of Florencio when he heard a commotion. He looked out from the window of his house and saw Florencio fleeing for dear life, chased by Tamano and two others namely, Salvador, known in the community as "*Bading*," and Boy Negro. Florencio sought refuge in a vacant lot fronting the house of Ferdinand. A Meralco lamp post lighted the area. Florencio tripped and fell to the ground. Florencio was in the process of standing up when Tamano stabbed him at the back. Bading and Boy Negro took turns in stabbing Florencio. Residents in the neighborhood saw the incident and shouted at Tamano, Bading and Boy Negro. Earlier, when he heard the commotion, Danilo Laviña, who was in a nearby billiard hall, rushed to where the shouts emanated and saw Florencio being stabbed by the three. The latter fled towards Sta. Maria Street, leaving Florencio mortally wounded. Florencio was brought by his wife and some bystanders, including Danilo, to the Mary Johnston Hospital where he expired an hour later. Ferdinand later arrived in the hospital but left and went back home when Florencio died.

Police investigators from the Homicide Section of the Western Police District arrived at the crime scene and made an on-the-spot investigation of the stabbing. Ferdinand told the policemen that he witnessed the stabbing. The policemen brought Ferdinand to the police station where he gave his sworn statement.[4] Danilo likewise gave his sworn statement to the police.[5] Ferdinand

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[2] Original Records, p. 17.

[3] *Id., supra.*

[4] Exhibit "B".

[5] Exhibit "D".

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claimed that he did not know the names of the two companions of Tamano although they were known in the community as "Boy Negro" and "Bading" de la Cruz. Ferdinand further stated that he could identify the two assailants if he saw them again. Danilo described Bading as small but with a big body build and a big stomach. Pat. Rafael Melencio signed an Advance Information listing the suspects as "Tamano," "Boy Negro" and "Bading" de la Cruz.[6]

Dr. Marcial Ceñido, the Medico-Legal Officer of the Western Police District, conducted an autopsy on the victim's body and made a report thereon which reads:

POST MORTEM FINDINGS

1. Stab wound, debrided and sutured, right posterior thorax, measuring 13.5 cm. x 12 cm. in depth, directed obliquely forwards, slightly downwards and towards the midline thru the 8th intercostals space perforating the lower lobe of the right lung and diaphragm and piercing the right lobe of the liver;

2. Stab wound, right lower posterior thorax, 4 cm. from the posterior midline, measuring 2.3 cm. x 0.6 x 9 cm. in depth, with two stitches, directed obliquely forwards, slightly downwards and towards the midline thru the muscle tissue;

3. Stab wound, right posterior lumbar, 7 cm. from the posterior midline, measuring 2.6 cm. x 1 cm. x 7 cm. in depth, directed obliquely forwards, slightly downwards and towards the lateral thru the muscle tissue;

4. Linear abrasion, middle 3rd, right arm, antero-lateral surface measuring 7.5 cm. x 0.1 cm.;

5. Abrasion, dorsum of the left forefinger and right hand; and

6. Lacerated wound, lower lip, right of midline measuring 1.3 x 0.3 cm.

Others are mere surgical incisions at the right lower antero-lateral thorax and left arm antero-medial surface.

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[6] Exhibit "K".

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INTERNAL FINDINGS:

1. Stab wounds of the internal organs and tissues as indicated under the internal extension of the external wounds with massive right hemothorax and generalized pallor; and
2. Recovered from the stomach about a glassful of partially digested rice with vegetables and without alcoholic odor.

CAUSE OF DEATH:

Multiple three (3) stab wounds, one (1) fatal at right posterior thorax piercing the right lung and liver.[7]

The doctor also signed a Postmortem Certificate of Death of Florencio.[8]

On July 28, 1991, Salvador was arrested for theft of an electric fan by policemen.[9] When informed of said arrest, Ferdinand went to the police station and identified Salvador, who was then in a cell, and whom he knew as Bading de la Cruz, as one of the assailants of Florencio. It was then that Ferdinand came to know that the full name of Salvador was Salvador de la Cruz. Salvador was booked by the police authorities for Murder. In the Booking Sheet and Arrest Report, Salvador was described as slim.[10] When informed of the arrest of Salvador, Danilo went to the police station, identified Salvador as one of the assailants. Ferdinand and Danilo executed their supplemental affidavits.[11] The two affiants identified Salvador as one of the assailants. Tamano and Boy Negro remained at large.

On July 31, 1991, an Information for murder was filed against Salvador. The Information reads:

The undersigned accuses SALVADOR DELA CRUZ *Y* FLORES of the crime of murder, committed as follows:

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[7] Exhibit "F".

[8] Exhibit "G".

[9] Exhibit "5".

[10] Exhibit "J".

[11] Exhibit "C"; Exhibit "E".

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That on or about April 5, 1991, in the City of Manila, Philippines, the said accused conspiring and confederating together with two others whose true names, identities and present whereabouts are still unknown and hleping (sic) one another, with intent to kill and with evident premeditation and treachery, did then and there wilfully (*sic*), unlawfully and feloniously attack, assault and use personal violence upon one FLORENCIO ANTONIO *Y* RAMOS, by then and there stabbing him several times with a bladed weapon hitting him on the difrerent (*sic*) parts of his body, thereby inflicting upon him mortal stabwounds (*sic*) which were the direct and immediate cause of his death.

Contrary to law.[12]

Upon being arraigned, Salvador pleaded not guilty to the charge. Trial thereafter ensued.

During the pre-trial, the prosecution and Salvador, assisted by counsel, stipulated on the amount of ₱98,000.00 actual damages.[13]

For his defense, Salvador denied having stabbed the victim. He admitted that he was present when Florencio was stabbed. He, however, insisted that Tamano and Boy Negro helped each other in fighting with and stabbing Florencio. Salvador claimed that when Tamano told him that he just had an altercation with Florencio, he (Salvador) suggested that Tamano and Florencio settle their differences. He even offered to act as mediator since Florencio was the godson of Salvador's father. In going to Florencio's house, Tamano and Salvador were joined by Boy Negro and Salvador's wife Virginia and their son. However, when Florencio opened the door of his house, he saw Tamano and attacked the latter. Tamano backed off and then pulled out a *balisong*. Florencio retreated to a neighbor's house, and when he reappeared, he was already armed with a samurai, about 24 inches long. Before the situation worsened, Salvador tried to pacify them by shouting "*Tama na, tama na! Awat na, awat na*!" (Enough, enough! Stop that, stop that!), but to no avail. Virginia cautioned Salvador, thus: "*Lumayo ka dyan. Lumayo*

[12] Original Records, Crim. Case No. 91-96938.

[13] Original Records, p. 62.

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ka dyan. Baka tamaan ka." (Move away from there. Move away from there. You might get hit.) Boy Negro, who was armed with a piece of wood, watched as Tamano and Florencio squared off. Florencio slipped and fell. The samurai fell from his hand. Suddenly, Tamano lunged at Florencio and stabbed him several times. Boy Negro joined the affray and hit Florencio at the neck with a piece of wood. Salvador and his wife Virginia left the scene and went home. The couple continued residing in the same house. After Florencio's death, Salvador was never investigated by policemen for the death of Florencio. He continued driving a pedicab. After a month, he transferred to the residence of his mother-in-law at No. 1564 Franco Street, Tondo, Manila. On July 28, 1991, Salvador was arrested for theft of an electric fan. Linda and Oga, mother and sister of Florencio, arrived at the police station. It was only then that he was booked for the killing of Florencio.

On March 6, 1995, the trial court rendered its Decision finding Salvador guilty beyond reasonable doubt of murder qualified by treachery and evident premeditation, the decretal portion of which reads as follows:

> WHEREFORE, this Court finds the accused, Salvador De La Cruz *Y* Flores, guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law, and to pay the costs. On the civil liability of the accused, he is further ordered to pay the heirs of the victim ₱50,000.00 moral damages and another ₱50,000.00 for the loss of the victim's life with interest thereon at the legal rate from today until fully paid.
>
> SO ORDERED.[14]

On appeal, accused-appellant Salvador de la Cruz assails the decision of the trial court, contending that:

I

THE TRIAL COURT ERRED WHEN IT GAVE CREDENCE AND PROBATIVE WEIGHT TO THE COLLECTIVE TESTIMONIES OF

[14] Original Records, p. 154.

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THE WITNESSES OF THE PROSECUTION AND IGNORED THOSE OF ACCUSED-APPELLANT AND HIS WIFE VIRGINIA DE LA CRUZ;

II

THE PROSECUTION FAILED TO PROVE BEYOND CAVIL CONSPIRACY BY AND AMONG BOY NEGRO, TAMANO AND ACCUSED-APPELLANT FOR THE KILLING OF FLORENCIO.

III

THE COURT A QUO ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH ON ACCUSED-APPELLANT.

The Court will delve into and resolve in *seriatim* the issues posed by accused-appellant.

On the first issue, accused-appellant avers that the testimony of Danilo pinpointing him as one of the assailants of Florencio is discordant and unreliable. In his sworn statement to the police investigators, Danilo described one of the companions of Tamano as tall and medium built, and the other as stout, with a big stomach. In contrast, the Booking Sheet and Arrest Report dated July 20, 1991 of the arresting officers described accused-appellant as short and slim. Accused-appellant continued residing in the house of Tamano after the killing and transferred his residence only a month after the stabbing. and yet he was never suspected by the close kins of Florencio for the death of the latter. Neither was he investigated by police officers for the killing of Florencio. Ferdinand admitted in his sworn statement to the police investigators on April 6, 1991 that he did not know the companions of Tamano but he heard from other persons that they were "Boy Negro" and "Bading." Ferdinand never testified that the victim was stabbed at the back. The name of accused-appellant as one of the culprits emerged only one month after the killing. Accused-appellant was implicated in the killing of Florencio only because of his close association with Boy Negro and Tamano. In fact, the witnesses of the prosecution invented a third culprit to implicate accused-appellant. Hence, accused-appellant contends that the trial court committed a grievous error when it gave credence to the testimonies of Danilo Laviña and Ferdinand

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Peñaranda identifying him as one of the assailants of Florencio and convicting him for said crime.

The contention of accused-appellant does not persuade. The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight thereof and its conclusions anchored on said findings are accorded great respect, if not conclusive effect, because of the unique advantage of the trial court of observing and monitoring at close range the conduct, demeanor and deportment of the witnesses as they gave their testimonies before the trial court.[15] As this Court held:

> Truth does not always stalk boldly forth naked, but modest withal, in a printed abstract in a court of last resort. She oft hides in nooks and crannies visible only to the mind's eye of the judge who tries the case x x x The brazen face of the liar, the glibness of the schooled witness, as well as the honest face of the truthful one, are alone seen by him.[16]

The principle is of course not absolute. The appellate court is not bound by the findings and conclusions of the trial court if it ignored, overlooked, misconstrued or misinterpreted substantial facts and circumstances which if considered would change the outcome of the case.[17] However, the Court has carefully and assiduously examined the records of this case and finds that indeed, the finding of the trial court that accused-appellant was one of the three assailants of the victim is safely ensconced in *tierra firma*.

In this case, the trial court gave credence and full probative credit to the collective testimonies of Ferdinand and Danilo. Ferdinand testified that he saw accused-appellant, whom he knew by the name "Bading," Tamano and Boy Negro successively stab the victim with their knives. Ferdinand saw the macabre killing through the window of his house, which was only about

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[15] *People vs. Operania, Jr.*, 343 SCRA 43 (2000).

[16] *People vs. Del Rosario*, 344 SCRA 382 (2000).

[17] *People vs. Baretta*, 343 SCRA 199 (2000).

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five meters away from where Florencio was stabbed. When asked to pinpoint Bading from among those in the courtroom, Ferdinand pointed to accused-appellant who admitted that his nickname was Bading:

FISCAL SAMPAGA:

Q While inside your house on that particular time and date, do you recall of any unusual incident that happened?

A Yes, Sir.

Q And will you tell this Honorable Court what was that unusual incident happened (*sic*)?

A That night while I was resting in our house I heard shouts and commotion, Sir.

Q From where did you hear shouts and commotion?

A It started from the neighborhood going to the vacant lot, Sir.

Q And when you heard this (*sic*) shouts and commotion, what did you do if any?

A I went towards our window, Sir.

Q And what did you see if any?

A I saw Florencio was (*sic*) being chased by the three men, Sir.

Q And do you know this (*sic*) three men chasing Florencio Antonio?

A I know one by the name of Tamano, but the two others that was the first time I saw them, Sir.

Q Do you know their names?

A One is Tamano, the other one is Bading and the other one is boy negro, Sir.

Q Now, you stated a while ago that you saw this one *alias* Tamano, *alias* bading and *alias* boy negro chasing Florencio Antonio, now, what happens (*sic*) next after that?

A Later on the three men cornered Florencio at the vacant lot, Sir.

Q And where is this vacant lot located?

A Just adjacent to our house, Sir.

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Q In terms of meters, how would you approximate the distance of the vacant lot from your house where you were?

A About five meters, Sir.

Q Was this vacant lot facing in front of your house window of (*sic*) is it somewhere else?

A Beside our window, Sir.

Q After the three persons chasing Florencio Antonio and cornered him as you stated a while ago, what happens (*sic*) next?

A When the three men caught up Florencio Antonio, this three men stabbed him.

Q Who stabbed Florencio Antonio?

A The first one who stabbed him was Tamano, Sir.

Q How many times this Tamano stabbed Florencio Antonio?

A Only once, Sir.

Q After this *alias* Tamano stabbing (*sic*) Florencio Antonio, what happens (*sic*) next?

A The two men also stabbed Florencio Antonio, Sir.

Q Now, who stabbed next after *alias* Tamano stab (*sic*) Florencio Antonio?

A I cannot remember anymore, Sir.

COURT:

Q But you saw the other two men stabbed the victim?

A Yes, Your Honor.

COURT:

Alright, continue.

Q What kind of instrument this *alias* Tamano and the two other (*sic*) used in stabbing Florencio Antonio?

A A knife, Sir.

Q How about *alias* Bading, what kind of instrument did he used (*sic*) in stabbing?

A A home made kitchen knife, Sir.

Q How about the one *alias* boy negro?

A I cannot remember, Sir.

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Q Now, if this (*sic*) three persons, one *alias* Tamano, the other one *alias* Bading and the other one *alias* Boy Negro are inside the court room, would you be able to identify them?

A Yes, sir.

Q Will you please look around that (*sic*) point to them if they are inside the court room?

INTERPRETER:

Witness pointing to man (*sic*) wearing yellow shirt and answer (*sic*) to a name Bading as Salvador dela Cruz.

COURT:

That is your nickname?

ACCUSED:

Yes, Sir, my nickname.

COURT:

Continue.

FISCAL SAMPAGA:

Q What about the two, the one *alias* Tamno (*sic*) and the one *alias* Boy Negro are they here?

A They are not here, Sir.

COURT:

There is only one accused here, only Salvador dela Cruz.

FISCAL SAMPAGA:

Q After the three stab (*sic*) after the other the victim Florencio Antonio, what happened next if any?

A After the three men stabbed the victim they ran out of Sta. Maria Street.

Q And what about the victim Florencio Antonio, what happened to him?

A When he was left, he was in serious condition, Sir.

Q What was his condition when you said serious?

A He could not stand anymore, Sir.

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Q What happened to him when he was on that condition?
A After the victim was left by the three men, he tried to stand and staggard (*sic*) and held to the concrete wall nearby and tried to go home.
Q Now where is the house of Florencio Antonio located?
A One house from our house, Sir.
Q From where he was stab (*sic*) how far is the house of Florencio Antonio?
A Between seven to nine meters away, Sir.
Q Was he able to go home?
A I did not see if he was able to reach home, but what I saw is that when he was staggering the wall.
Q After that, what did you do if any?
A I went down from our house and I asked what the commotion was it (*sic*) all about.[18]

In response to the queries of the court, Ferdinand testified that the *situs criminis* was well-lighted by a Meralco lamp post:

COURT:

When you witnessed the stabbing incident, how far where (*sic*) you from the scene of the incident? How many meters?
A About five meters because I was upstairs, five meters downward, Sir.
Q From the place the stabbing incident occurred, was it lighted or dark?
A It was bright, Sir.
Q Why was it bright?
A There were lights around and a Meralco lamped (*sic*) post were their. (*sic*)
Q How far was this lamped (*sic*) post from the place of the stabbing incident occurred (*sic*)?
A It was just adjacent, Sir. About one meter away, Sir.[19]

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[18] TSN, Peñaranda, Dec. 12, 1991, pp. 4–7, *supra*.

[19] TSN, Peñaranda, Dec. 12, 1991, p. 7, *supra*.

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Danilo corroborated the testimony of Ferdinand and testified that accused-appellant stabbed Florencio with a hunting knife at the back once:

Q Sometime on April 5, 1991, at 10:00 o'clock in the morning, do you recall where you were?

A I was inside a billiard hall (*sa loob ng bilyaran*), Sir.

Q Where is this billiard hall located?

A At *Pitong Gatang*, Sir.

COURT:

Q What City?

A Tondo, Manila, Sir.

Q Where in Tondo?

A At Pitong Gatang, Sta. Maria, Tondo, Manila, Sir.

Q And what were you doing at that time while inside the billiard hall?

A I was playing billiard, Sir.

Q And while playing billiard poll (*sic*), do you recall of any unusual incident happen (*sic*)?

A Yes, Sir.

Q Will you please tell this Honorable Court what was that unusual incident happened (*sic*)?

A I heard people shouting, Sir.

Q From where did you hear shouts?

A In the neighborhood, Sir.

Q And what did you do if any when you heard those shouts?

A I saw Florencio Antonio being pursued by Tamano, Boy Negro and Salvador dela Cruz, Sir.

Q You said that you were inside the billiard pool, how did you happened (*sic*) to see Florencio Antonio being pursued by the three accused including the accused you identified a while ago?

A I saw them because when I heard shouts, I went outside, Sir.

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Q When you saw Florencio Antonio being pursued by Salvador dela Cruz, Boy Negro and Tamano, what happens (*sic*) next?

A When Tamano caught up Antonio, Tamano stabbed him, Sir.

Q How many times did Tamano stab Antonio?

A Once, Sir.

Q What was the weapon used by Tamano?

A A hunting knife, Sir.

Q And what part of the body of the victim was hit?

A The back of Antonio, Sir.

Q After Tamano stabbed Florencio Antonio at the back once, what happens (*sic*) next?

A Boy Negro also stabbed him, Sir.

Q What part of his body was hit?

A Also at the back, Sir.

Q What weapon was used?

A Also a hunting knife, Sir.

Q How many times did Boy Negro stabbed (*sic*) the victim?

A Once, Sir.

Q After Boy Negro stabbed once Antonio, what happens (*sic*) next?

A Salvador dela Cruz also stabbed Antonio, Sir.

Q What was the weapon used by Salvador dela Cruz?

A A hunting knife, Sir.

Q How many times Salvador dela Cruz stabbed the victim?

A Also once, Sir.

Q What part of the body of Antonio was hit?

A Also at the back, Sir.

Q When Salvador dela Cruz stabbed Florencio Antonio, what was Florencio Antonio doing at that time?

A He was trying to stand up when he was stabbed by dela Cruz, Sir.

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Q After Salvador dela Cruz stabbed Florencio Antonio, what happened after that?

A I ran away to get a transportation, Sir.

Q Why, what was your purpose in ranning (*sic*) away and getting a car?

A So that we could bring Antonio to the hospital, Sir.

Q What about Tamano, Boy Negro and Salvador, where were they?

A They also ran away, Sir.

Q To what direction did they go?

A They went out of the street, Sir.

Q At that time the three stabbed one after the other the victim Florencio Antonio, were there other persons present?

A Because the incident happens (*sic*) so fast I did not noticed (*sic*) anymore, Sir.

Q Where their (*sic*) other persons aside from you and the three persons who stabbed Antonio within the place of incident?

A Their (*sic*) were many persons in the vicinity, Sir.

Q Now, you said that you ran away to get a vehicle. Were you able to get a vehicle?

A Yes, Sir.

Q What did you do after that?

A I brought the victim to the hospital, Sir.

COURT:

Q By the way, what kind of vehicle did you get?

A A jeepney, Sir.[20]

Danilo testified that he saw the face of accused-appellant when the latter stabbed the victim:

ATTY. VICTORIO — WITNESS:

Q You said that you came to know the accused on the evening the stabbing incident occurred. Now, how did you come to know the accused?

A Because I recognized his face, Ma'am.

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[20] TSN, Laviña, Jan. 16, 1992, 3-5, *supra*.

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Q But at the time when the stabbing incident occurred you do (*sic*) not know yet the name of the accused, is that correct?

A Yes, Ma'am, not yet.

COURT:

Q You only knew him by face but you did not know his name at the time of the stabbing incident?

A Yes, Your Honor?

Q But the 1st time you saw the face of the accused was on the time of the stabbing incident, is that correct?

A Yes, Ma'am, that was the 1st time.

Q And you learned that his name is Bading dela Cruz, because you heard from the people, is that correct?

A Yes, Ma'am.[21]

Both Ferdinand and Danilo may not have known the precise name of accused-appellant and his cohorts when they stabbed the victim but this is *peu de chose*. This Court has held in *People vs. Gallego*[22] that identification of a person is not solely through knowledge of his name. This Court emphasized that:

> This Court has previously held that identification of a person is not solely through knowledge of his name. In fact, *familiarity with physical features, particularly those of the face, is the best way to identify a person.* One may be familiar with the face but not necessarily the name. Thus, it does not follow that to be able to identify a person, one must necessarily know his name. "Experience shows that *precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identity of criminals. We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their mem*ory." Relatives of the victim have a natural knack for remembering the

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[21] TSN, Laviña, Jan. 16, 1992, pp. 9–10, *supra*.

[22] 338 SCRA 21 (2000).

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Relatives of the victim have a natural knack for remembering the face of the assailant for they, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor to face the law.[23]

There is no showing in this case that Ferdinand and Danilo had any ill-motive or nurtured ill-feelings against accused-appellant as to falsely implicate him for the killing of Florencio, for which accused-appellant could be meted *reclusion perpetua* or the supreme penalty of death. Moreover, Ferdinand and Danilo were so near the *locus criminis* which was lighted by a Meralco lamp post.[24] The testimony of Danilo is buttressed by the Medico-Legal Report of Dr. Marcial Ceñido showing that the victim was stabbed three times at the back.

The testimony of Danilo is not enfeebled and his credibility not eroded by the discordance of his description of accused-appellant in his sworn statement on April 6, 1991 as small, with a big body build and a bulging stomach, with the entry in the Booking Sheet and Arrest Report dated July 30, 1991 of the police investigators where accused-appellant was described as small and thin. When he testified, Danilo claimed that when he gave his sworn statement on April 6, 1991 to the police investigators, he described the accused-appellant as slim like himself:

FISCAL SAMPAGA TO WITNESS:

Q Mr. Laviña, during the 1st time that you gave your statement to the police investigators after the stabbing incident, you stated that you gave descriptions of the persons who stabbed Florencio Antonio. What description did you gave to the police for Tamano?

A I described him as fat, big tummy and a big face, Ma'am.

Q How about Boy Negro?

A Also heavily built, big body and toothless (*bungi*) toothless on his upper teeth.

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[23] *Id.*, p. 37, *supra.*

[24] TSN, Peñaranda, Dec. 12, 1991, *supra.*

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Q What about your description with respect to the other accused, Salvador dela Cruz?

A Thin, slim like me, Sir.[25]

The Court is led to believe that the description by Danilo of accused-appellant in his sworn statement dated April 6, 1991 was erroneously typewritten. Case law has it that whenever there is inconsistency between the sworn statement of a witness and his testimony, the latter commands greater weight:

> Whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight. Moreover, affidavits taken *ex parte* are inferior to testimony given in court, the former being invariably incomplete and oftentimes inaccurate due to partial suggestions or want of specific inquiries. Thus, such alleged discrepancy between the statement in the affidavit and those made on the witness stand would not discredit the declarant witness Rogelio Alvendo.[26]

The barefaced denial by accused-appellant of having killed Florencio is negative self-serving evidence which cannot prevail over the positive, straightforward and spontaneous testimonies of the eyewitnesses in the commission of the crime.[27] Accused-appellant failed to adduce evidence other than the testimony of his wife, Virginia de la Cruz, to corroborate his testimony that they continued residing in their house after the death of Florencio. Accused-appellant failed to present the *Barangay* Captain or any *barangay* official to prove that he and his family did not leave their house after the killing of Florencio.

On the second issue, the Court agrees that there is no direct evidence that the fatal stab wound sustained by the victim was inflicted by accused-appellant. However, accused-appellant is nevertheless criminally liable for the death of the victim because he and his cohorts, Boy Negro and Tamano, conspired to kill the victim. There is conspiracy when two or more persons agree

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[25] TSN, Laviña, Jan. 16, 1992, p. 15.

[26] *People v. Estorco*, 331 SCRA 38 (2000).

[27] *People vs. Go-od*, 331 SCRA 612 (2000).

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to commit any felony and decided to commit it. While the prosecution is mandated to prove conspiracy with the same quantum of proof as the crime itself, direct proof is, however, not a condition *sine qua non* to prove conspiracy. Conspiracy may be inferred from the collective acts of the accused before, during and after the commission of the crime showing concerted action and unity of purpose among them.[28] In this case, when Florencio fled for dear life, accused-appellant and his cohorts, armed with lethal weapons, chased him. When Florencio reached the vacant lot and slipped and fell to the ground, accused-appellant, Tamano and Boy Negro took turns in stabbing him. The trio fled forthwith from the *situs criminis* together. Even if the stab wound inflicted by accused-appellant may not have been the proximate cause of death of Florencio, the same is inconsequential. In conspiracy, the act of one is the act of all.[29]

Crime Committed by Accused-Appellant

The trial court convicted accused-appellant of murder on its finding that treachery and evident premeditation attended the killing of Florencio.

The Court does not agree with the trial court. Case law has it that treachery must be proved with the same quantum of evidence as the crime itself. Treachery cannot be presumed; nor can it be based on mere surmises or speculations. In case of doubt, the same should be resolved in favor of the accused.[30]

For treachery to be appreciated, it must be present at the inception of the attack, and if absent and the attack is continued, even if present at the subsequent stage, treachery is not considered as a qualifying or generic aggravating circumstance.[31] The prosecution must adduce conclusive proof as to the manner in which the altercation started and resulted in the death of the victim, and if the prosecution fails to discharge its burden, the

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[28] *People vs. Legaspi*, 331 SCRA 95 (2000).

[29] *People vs. Go-od*, 331 SCRA 612 (2000).

[30] *People vs. Hilot, et al.*, 342 SCRA 128 (2000).

[31] *People vs. Go-od*, 331 SCRA 612 (2000).

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crime committed is homicide and not murder.[32] In this case, Ferdinand saw accused-appellant, Tamano and Boy Negro, armed with knives, chase and overtake the victim in a vacant lot. The victim slipped and fell to the ground. Accused-appellant Tamano and Boy Negro forthwith took turns in stabbing the victim as the latter tried to stand up. The prosecution failed to adduce any evidence as to how the aggression started and who started the same. The barefaced fact that the victim was helpless when he was stabbed does not constitute proof of treachery. As this Court held in the early case of *People vs. Cañete*:[33]

> In this connection it should be noted that the original assault was begun by a direct frontal attack and there was momentary struggle between the accused and the deceased before the first knife wound was inflicted on the thigh of the deceased; and it was at this point that the deceased turned to flee. Moreover, pursuit by the accused followed immediately, after the deceased started to run, and the assault was practically continuous from the beginning to the end. The fall of the deceased in the course of his flight must be considered to have been in the nature of a mere accident which did not materially change the conditions of the struggle. In every fight it is to be presumed that each contending party will take advantage of any purely accidental development that may give him an advantage over his opponent in the course of the contest. It follows that *alevosia* cannot be predicated of this homicide from the mere fact that the accused overtook and slew the deceased while the latter was endeavoring to rise from the ground.
>
> In its main features the case now before us is identical with one noted by Viada to the following effect: Between the accused and the person slain a fight had taken place, provoked by the former, in which the contestants exchanged some ugly words and the accused received a shove from the deceased which caused him to strike against a wall. As the two attempted to engage again, some friends seized the accused, who nevertheless escaped from the person who were holding him and ran after the deceased, who was then fleeing. In the course of his flight the deceased tripped and fell to the ground; whereupon the accused at once precipitated himself on his fallen antagonist and, holding him with one hand, struck him with the other

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[32] *People vs. Adoc*, 33 SCRA 626 (2000).

[33] 44 Phil. 478 (1923).

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with a jackknife, producing a wound which caused death. In the court of the Audiencia of Almeria the accused was declared to be guilty of murder, but this judgment was reversed by the Supreme Court. (Viada, 2 Supp., 298, reporting decision of Dec. 26, 1891.) In the course of this decision the court observed that although the trouble had begun in a barber shop and the homicide occurred on the outside, nevertheless the contest should be viewed as a single series of acts without any appreciable break in the continuity of action. The homicide was accordingly declared not to be qualified by *alevosia*.

In light of the evidence, abuse of superior strength was attendant in the commission of the crime. However, said circumstance was not alleged in the Information. Neither was it alleged as a generic aggravating circumstance, as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. Although the rule took effect only on December 1, 2000, while the crime subject of the Information occurred on April 6, 1991, the new rule should be given retroactive effect, since it is more favorable to accused-appellant. Evident premeditation was not attendant because the prosecution failed to prove the elements thereof, namely: (1) the time when the offender determined to commit the crime; (b) sufficient lapse of time between the determination and execution to allow himself to reflect upon the consequence of his act.[34]

In fine, accused-appellant is guilty only of homicide, defined in and penalized by Article 249 of the Revised Penal Code, with *reclusion temporal* in its full term.

There being no modifying circumstances in the commission of the crime, accused-appellant should be meted an indeterminate penalty, the minimum of which shall be taken from any of the period of *prision mayor*, which is one degree lower than *reclusion temporal* and the maximum period of which shall be taken from the medium period of *reclusion temporal*.

Civil Liability of Accused-Appellant

The trial court correctly ordered accused-appellant to pay to the heirs of the victim Florencio Antonio civil indemnity in the

[34] *People vs. Castillo*, 289 SCRA 213 (1998).

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amount of ₱50,000.00 and ₱50,000.00 moral damages. Accused-appellant is likewise ordered to pay actual damages in the amount of ₱98,000.00 as stipulated by the parties.

IN LIGHT OF ALL THE FOREGOING, the decision appealed from is *AFFIRMED* with *MODIFICATION*. Accused-appellant is found guilty of *homicide* defined in Article 249 of the Revised Penal Code and there being no modifying circumstances in the commission of the crime, is meted an *indeterminate penalty of from Nine Years and Four Months* of *prision mayor* in its medium period, as minimum, *to Seventeen Years and Four Months* of *reclusion temporal* in its medium period, as maximum.

Accused-appellant is hereby ordered to pay to the heirs of the victim Florencio Antonio the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱98,000.00 as actual damages.

With costs against accused-appellant.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing and *Austria-Martinez, JJ.,* concur.