

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANTIPAS SALARIO, ET AL., DEFENDANTS, ANTIPAS SAGARIO AND LUIS GUI-E, DEFENDANTS AND APPELLANTS.

G.R. No. L-18659. June 29, 1965

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PER CURIAM:

In an information dated November 6, 1956, filed with the Court of First Instance of Zamboanga del Sur, Antipas Sagario, Julian Fuentes, Resurrección Espiga, Quirico Fuente, Matildo Castro, Marcelino Castro, Tomas Castro, Alejandrino Tabiao, Pacifico Danghil, Vicente Don, Andres Grado and Luis Gui-e, were charged with the crime of double murder.

After trial, Court a quo rendered judgment:—

Finding the accused Antipas Sagario and Luis Gui-e, guilty beyond reasonable doubt of the crime of two murders qualified by the circumstance of evident premeditation with the aggravating circumstance attendant, to wit: treachery, use of motor vehicles and nighttime; and the Court hereby imposes upon each of them the extreme penalty of death and condemns them to jointly and severally indemnify the heirs of Patrolman Paulino Ursais the sum of three thousand pesos and the heirs of Patro Jose Gomez the sum of three thousand pesos, and each to pay one twelfth of the costs;

Absolving the other accused for reasonable doubt with ten twelfths of the costs de oficio; and

Ordering the confiscation of the .38-caliber Star pistol and the jeep, belonging to the accused Antipas Sagario.

Both accused Antipas Sagario and Luis Gui-e appealed, after the trial court had denied their motion for reconsideration and/or new trial.

On February 9, 1962, accused Antipas Sagario died while under confinement. Hence, this Court in its resolution dated June 29, 1962, dismissed the instant case, with respect to said Antipas Sagario.

At about 2:00 o'clock in the afternoon of September 3, 1956, Luis Gui-e was seen in the company of Antipas Sagario and other unidentified men at the store of one Leonisa Mercado, at Mahayag, Molave, Zamboanga del Sur, drinking tuba with them. Gui-e was known in the town as the cowboy of a certain Atty. Villanueva-Benedicto. Later, that same afternoon, a jeep owned by Sagario and a car of light cream color, were seen parked side by side, beyond the bridge, at barrio Mahayag, near the bodega owned by Sagario. Still later, twelve persons were seen inside the bodega of Sagario in close huddle. At about 9:00 o'clock, same evening, the same persons were seen talking along the street, with one of them holding a torch, and leading the group was Luis Gui-e, who carried a carbine. This group proceeded again to the store of Leonisa and from there five of the men boarded the car, while seven rode in the jeep; and the two vehicles headed towards the direction of the población.

At the municipal building of Molave, two policemen were on guard duty that same evening and doing the rounds, by shifts. At about 12:00 o'clock midnight, Pat. Paulino Ursais, was replaced by Pat. Jose Gomez, who, during Ursais' turn, went to sleep inside the building, with a detention prisoner, Andres Selada. Soon after, a shot was

heard. Ursais, jumped out of bed and ran to where Gomez was. Then another shot was fired and Ursais was seen groaning and crying for help, saying that he was shot and that he was going to die.

It appears that when Gomez took over the guard duty from Ursais, some twelve persons arrived at the municipal building riding in a car and a jeep. Gomez recognized the person on the wheel of the jeep, as Antipas Sagario. Instantly, he was surrounded by these men and Luis Gui-e whom Gomez knew well, pointed his carbine at him and cautioned him not to move. Then, one who spoke waray-waray, and armed with a tommy gun, commanded him to kneel down and after which he was kicked by the same person. When he was down, this same person said that he was tough policeman and he was going to test him. Then, suddenly a gun exploded and Gomez was hit. He lost consciousness momentarily and when he regained it, he heard another explosion. He crept towards the office of the Chief of Police and hid under a table. Fearing that he might be seen there, he passed through a window and crawled to the house of a co-policeman Nazario Acapulco, from where he was taken to the house of one Cababaran, at Pilar Street.

Coming back to the raid, it was shown that soon after several shots were heard, a car and a jeep were seen heading towards the direction of Camp VII, coming from the municipal building. The two vehicles were loaded with passengers, and from the car a voice was heard, saying "wala bay nagsunod." A car and a jeep were also seen at the vicinity of Camp VII at past 12:00 o'clock midnight of September 3, 1956. In the early morning of September 4, 1956, a jeep checked in at a private auto repair shop at Molave, for a repair of a tire which exploded. There were several men in the jeep and Sagario was recognized, as one of them. All appeared restless and kept looking at their backs.

A short while, after the shooting, Sgt. de la Serna of the Molave police force arrived at the scene of the crime, after which, he rushed to the Chief of Police, Sergio Turado and reported that the municipal building was raided by armed men and that policeman Ursais was shot and lay dead in the building, but Gomez could not be found anywhere, at the time. Chief Turado headed towards the police station, but while passing by the house of Cababaran at Pilar Street, he was told by the occupants thereof that policeman Gomez was there, wounded and his condition very critical. Turado saw Gomez, and asked him whether he was conscious and when he received an affirmative answer, Turado inquired as to what happened to him. Sensing, however, the serious condition of the victim, Turado desisted from further questioning him and called for a doctor who, immediately administered blood plasma to Gomez, after which the questioning was resumed. In the local dialect, Gomez was questioned and narrated to his chief the circumstances of the raid. Present during the Questioning were Dr. Arcadio, a nurse Mrs. Vergara, Cababaran, Nazario Acapulco and his wife, Sgt. Minoza and Bongabong. The questions and answers given, were reduced to writing by Turado. After the same were accomplished, it was thumbmarked by Gomez who could not sign the same because of his weak condition. The document was properly attested by two witnesses, Dr. Arcadio and the chief of police himself. Then its contents were read to Gomez word for word, in order to ascertain from him, if the same were true, to which Gomez so affirmed. Later, the Justice of the peace of Molave, Judge Constante L. de Peralta, was summoned and the contents of the document were subscribed and sworn to before him by Gomez. Judge Peralta questioned Gomez whether the same document was executed voluntarily, to which Gomez answered in the affirmative. The following is the translation into English of the—

"DYING DECLARATION"

I, Policeman J. Gomez, a guard in the Municipal Building on the dates 3 and 4 September 1956, and while on post from 12:00 midnight until 6:00 o'clock in the morning, incident took place.

That at 3 2:00 o'clock, after having relieved Policeman P. Ursais, there was a jeep coming towards the Municipal Building, I approached and recognized it belonging to Antipas Sagario and the driver and it parked

for a while in front of the Municipal Building. Seven persons rode on the jeep and on the automobile that was the same appearance of the automobile of Villasis were five persons.

That all of the twelve persons alighted and encircled me. Instantly Luis Gui-e pointed to me his carbine and ordered me not to move, and later one of them "Waray" shouted to me, alright kneel, and instantly kneeled. That while I was kneeling, I was fired with a Tommy gun and was hit and fell down. I was unconscious. After gaining consciousness, I went inside the office of the Chief of Police and escaped to avoid being killed, by passing thru the window and crawled towards the house of my companion, Policeman Nazario Acapulco. From there Zario hell"1" me and went to the Doctor as ordered by the Chief of Police who also arrived there.

Q—

In your opinion Patrolman J. Gomez regarding your situation, is it critical?

A—

Yes, very critical, please.

Q—

You said your situation is very critical, do you believe that you will die?

A—

Yes, Sir, please.

Q—

What have you remembered that was uttered to you by twelve persons if ever you remember?

A—

Don't move, you ave a grabber and further say, we will test this, and it burst. Policeman Ursais came out and two bu hit Ursais.

Subscribed and sworn to before me this 4th day of SepteW 1956, at Molave, Zamboanga del Sur, Philippines.

/s/ CONSTANTINE L. DE PERALTA"

In the morning of September 4, 1956, while Gomez was already on the verge of death, at the Provincial Hospital, he was visited by Governor Bienvenido A. Ebarle of Zamboanga del Sur. He asked Gomez about his condition and Gomez answered that he was very serious. The Governor asked the wounded policeman if he was willing to give an ante-mortem statement, to which Gomez consented. The ante-mortem statements of Gomez were elicited through questions propounded by the Governor in the local dialect, and were reduced to writing by the Governor's private secretary, in the English language. The execution of this document was made in the presence of several persons and the same bears the thumbmark of Gomez. The following is the said statement:

"REPUBLIC OF THE PHILIPPINES

}

PROVINCE OF ZAMBOANGA DEL SUR
SS

MUNICIPALITY OF AURORA

AFFIDAVIT

Statements made by Pat. Jose Gómez of the Molave Police Force before Governor Bienvenido A. Ebarle, at 10:00 A.M. at the Aurora Provincial Hospital, Aurora, Zamboanga del Sur, Septemebr 4, 1956.

Q—

What time did you meet this incident?

A—

At about 12:00 A.M. Sir.

Q—

Where were you then?

A—

I was on guard duty at the Molave Municipal Hall.

Q—

What happened next?

A—

They were riding on a jeep and a car parked near the cement pavement of the Municipal Hall. Then they entered the Municipal Hall. Then the men disarmed me. I was made to kneel and Sagario told me: "Mao kini ang policía sa Molave nga tigas." Testingan tanni.

Q—

Do you think you were the one they are after in going to the Municipal Hall?

A—

I do not know. Sagario reported to the PCAC about some of the policemen.

Q—

Were they masked?

A—

No.

Q—

Did you recognize them?

A—

Yes, the two of them, because of the light.

Q—

When you were made to kneel, what happened next?

A—

They shot me. And then Ursais got out from the room to help me. But when he was at the door, the armed man shot him and was hit.

Q—

How many guards were you then?

A—

We were only two. There were also prisoners.

Q—

How many men were there in the car?

A— Five men.

Q— Is the car new?

A— Yes, like that of Villasis'. It was shiny like the painting of the car of Villasis.

Q— How many men were there in the jeep?

A— Seven.

AFFIANT SAYETH FURTHER NOT.

In Witness Whereof, I have hereunto set my hand this 4th day of September 1956, at Aurora, Zamboanga del Sur.

left

(Thumbmark)

(Thumbmark)

right

Jose Gomez

Statement made
and thumbmarked
in the presence of:
(Sgd.) Illegible
(Sgd.) J. Vergara

Subscribed and Sworn to before me this 4th day of September, 1956, at Aurora, Zamboanga del Sur.

(Sgd.)

BIENVENIDO A. EBARLE

Provincial Governor"

On the 7th of September 1956, Gomez died. He sustained two bullet wounds, one on the lower side of the abdomen and another on the right upper chest. These wounds were caused by a single bullet, one being a wound of entrance and the other being a wound of exit. It was conjectured, by virtue of the location of the wounds, that the victim was shot at his side. Prior to his death, Gomez was operated at the hospital and it was found out that the victim's intestines were perforated, which gave him no chance of surviving.

Meanwhile, the Chief of Police, after obtaining the information from Gomez, ordered the immediate apprehension of Antipas Sagario and Luis Gui-e. Sagario was apprehended outrightly, and detained in the municipal jail. Taken from Sagario was a firearm with four rounds of ammunition. Likewise, Turado examined the spot where the shooting took place and found in the premises gunshot holes in the post, empty shells and marks on the wall.

Prior to September 3, 1956, several events had taken place. It appears that Antipas Sagario had a conflict with a certain Badana over a parcel of land. Apparently, Sagario resented the interference of the police force of Molave, particularly Chief Turado, in favor of Badana. Several men of Sagario were actually arrested and criminal complaints preferred against them. Their arrest was protested by Sagario who, on several occasions, made statements that he and his men were being persecuted and that there was no longer democracy in Molave. Gui-e had also several prior brushes with the Molave police. He was once accused of the crime of attempted homicide, on a complaint filed by the chief of police, because of a sworn affidavit executed by Señorón and Calamba, before the justice of the peace. It was, however, dismissed by the Court of First Instance of Zamboanga. Two other criminal complaints were filed in the same justice of the peace court by Turado against Gui-e. The same were also dismissed after a re-investigation.

On September 4, 1956, Gui-e was arrested and brought before the chief of police. When confronted with the declaration of Gomez, involving him as one of the assailants, he denied any participation in the crime.

Appellant Luis Gui-e offered the following defense: That on the date in question, he was living in Camp VII, Molave ; that in the morning of said day, after taking his breakfast, he went to Misamis in a bus No. 194, to verify whether Atty. Villanueva-Benedicto, his master, had already arrived from Manila. In the house of his master, he was informed that she had not arrived, so after taking his lunch, he returned, boarding the same bus, arriving at Molave at about 4:00 o'clock in the afternoon. Upon arrival, he immediately proceeded to the house of Anacleto Barrientos in the same camp, where he then changed his clothes and thereafter grazed the horses under his care, returning to the house and rested, because of headache. Minda, a daughter of Barrientos gave him a tablet of

Cortal; at 6:30 in the evening, after supper and before going to sleep, he took another tablet of Cortal. About 8:30 o'clock in the evening, he was awakened by Barrientos who asked him whether he had already taken his supper and if Atty. Villanueva-Benedicto had arrived, but went back to sleep, and woke up the following morning at about 5:30 and immediately attended his horses. At 8:30 in the morning, after leading the horses to a shed, he went to the store of Mitang Lumapas where he heard from a rig driver that a policeman died in the municipal building. After inquiring from the rig driver if the assailant was already arrested, he went back to the house of Barrientos, and took his lunch there, and after a nap, grazed the horses again. Thereafter, he dressed up and went to the municipal building in order to inquire from the post office, if there was a letter from his master; that while the postmaster was checking the incoming mails, Gui-e was dragged by a policeman to the jail; and he was told that he was one of those who raided the municipal building, an imputation which he protested.

Appellant Gui-e denies the testimony of prosecution witness Petra Ramos, that he and his co-accused were seen by her, in the camarín of Sagario, holding a conference on September 3, 1956; and that he was in the store of Leonisa Mercado at Mahaya.g and that he passed by the house of Petra Ramos, heading a group of armed men. He disclaimed any knowledge or participation in the raid, asserting that he was, during said time, sleeping at house of Barrientos. He branded as untrue, the testimony that he was seen with Sagario in a jeep carrying with them a tommy gun, carbine .22 caliber rifle and a .45 caliber pistol.

Appellant Gui-e imputed to the Chief of Police Turado ill motive, in including him in the alleged declaration of Gomez; explaining that the chief of police became angry when, on one occasion, he was asked by the chief to leave his employment with Atty. Villanueva-Benedicto, and flatly rejected this request, for which reason Chief Turado threatened to put him in jail. On another occasion, Turado became mad at him (Gui-e) because the latter testified in court against Turado for having boxed a PC soldier; that the day before the trial, Turado requested him to desist from testifying, which request was turned down by Gui-e, and this had irked Turado.

Josefina Barrientos declared that on the night of September 3, 1956, Gui-e slept in their house and that she was sure of this, because she saw Gui-e sleeping in the dining room; her father woke her up, for she had to soak the malagkit rice in water, for the puto; after which she went back to sleep and woke up at sunrise.

There is no dispute, therefore, that about midnight of September 3, 1956, the municipal building of Molave was raided by armed men and as a result of such attack, two policemen were killed. The death of policeman Ursais was instantaneous. The cause of his death was hemorrhage due to bullet wound in the heart. As heretofore stated, Gomez died three days after he was shot. The question which needs determination, is the identity of the perpetrators of the offense. Except Luis Gui-e and Antipas Saga-no, the other accused in this case had been acquitted for failure to establish their identity. In the case of accused Sagario, it is needless to go over the findings of the trial court, in arriving at his conviction, for he died while this case was pending appeal. We are merely concerned, with Gui-e's appeal.

There are four requisites which must concur in order that a dying declaration may be admissible, to wit: (a) it must concern the crime and surrounding circumstances of the declarant's death; (b) at the time it was made, the declarant was under a consciousness of an impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for homicide, murder or parricide in which the declarant was the victim (III Moran's Rules of Court, p. 311, 1952 ed.).

(a) The first requisite is present in the ante-mortem statements of deceased Gomez. Certainly, the narration made by Gomez at Cababaran's house, before the Chief of Police and at the hospital before the Governor, concerned the cause and surrounding circumstances of the declarant's death. The two government officials heard from the declarant's own lips, his description of the circumstances which brought about his injuries and subsequent tragic

death. There were recitals of facts in the declarations of policeman Gomez which he could have given as a witness in court, if living, and the same included ones coincident with the commission of the crime, (b) The declarant at the time he gave the dying declarations was conscious of his impending death. Pat. Gomez knew at the time he was being questioned, that chances of his recovery were nil and this fact was corroborated by the statements of the doctor who attended him to the effect that the victim would not recover from his wounds. One of the questions posed at Gomez by Chief Turado: " * * * Do you think you will die?" The victim answered: "Yes, sir. Moreover, it must have been obvious to Gomez that death was fast approaching, because the bullet perforated his internal organs which he must have surely felt. The nature of the wounds justified the apprehension of a mortal danger to his life. The declarant expressed his serious state of health to Governor Ebarle in the hospital. Governor Ebarle even asked Gomez whether he would be willing to issue an ante-mortem statement and he readily consented to the request. All of which clearly evinces a finding that Gomez was under the expectation of a rapidly approaching death or that he had abandoned all hopes to live. (People vs. Chan Lin Wat, 50 Phil. 182, 190,) (c) That Pat. Gomez, at the time he gave the dying declarations, was competent as a witness, is too obvious to warrant further discussion, (d) The dying declarations of Gomez were offered as evidence, in a criminal case for murder in which the declarant was one of the victims.

The dying declarations of Pat. Gomez pointed unmistakably to accused Antipas Sagario and Luis Gui-e, as among those who participated in the raid. The records do not show that Gomez rendered involuntary declaration. It may be, as the defense contended that the dying declarations did not conform entirely to the other evidence introduced by the prosecution, for instance, the version of Selada, a detention prisoner, which contained insignificant variations from Gomez' description of how he was shot. But this discrepancy cannot diminish the evidentiary value of the dying declarations, for it has not changed at all the declarant's positive statements that Sagario and Gui-e were *particeps criminis*. Moreover, those who took the dying declarations explained that he did not write all the statements of Gomez, for fear that he might expire, but noted down only the material and pertinent statements of the deceased, considering his critical condition. "One does not hold the dying to the observance of all the niceties of speech to which conformity is exacted from one on the stand." (Mr. Justice Cardoso).

It has been held that conviction or guilt may be based mainly on the ante-mortem statements of the deceased (People vs. Serrano, 58 Phil., 669). In the face of the positive identification made by deceased Gomez of Antipas Sagario and Luis Gui-e, it is clear that the two participated in the crime denounced.

Appellant Gui-e puts up an alibi which is generally treated as a weak defense. More so, when, like the instant case, there appears no physical impossibility on the part of Gui-e to reach the municipal building from Camp VII, where Gui-e allegedly stayed that night. This place was only about one-half kilometer from the municipal building which can be negotiated in 5 minutes by car, running at a moderate speed. The circumstance that Gui-e was in the house of Minda Barrientes, his witness, at Camp VII, on the night of September 3, 1956, does not at all discard the possibility of his going to the municipal building, to commit the crime. It was neither improbable for Gui-e, to have been at the scene of the crime, that night. (People vs. O. Corpuz, etc., et al., 107 Phil., 44; People vs. Llanto, L-1563, April 3, 1962.) Alibi in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity.

The defense claims that the reporters of the dying declarations, Chief of Police Turado and Governor Ebarle, have included Gui-e, to "even up things with Luis and Atty. Villanueva"; that Chief Turado resented the rebuffs he suffered from the hands of Gui-e; and that bad blood existed between Governor Ebarle and Atty. Villanueva-Benedicto, owing to a piece of land belonging to the latter, which the Governor wanted to be distributed to squatters.

We believe that Chief Turado could not be possessed of any motive, so compelling as to induce him to include

Gui-e in a declaration as serious as the one at bar. The criminal complaint that Gui-e filed against him, for allegedly manhandling a detention prisoner, was quashed and whatever resentment he might have had against Gui-e already dissipated. On the contrary, it can be said that Gui-e and not Turado was possessed of an ill-motive, because at the time Gui-e filed the criminal complaint, he was himself a detention prisoner, who, in all probability, was trying to find a way to go against Turado. And the incident at the municipal building on the night in question, had afforded him such opportunity. With respect to Governor Ebarle, assuming for a moment, he had entertained ill-feeling against Atty. Villanueva-Benedicto, there was absolutely no sense for venting his spleen against a mere cowboy of the lawyer. If Governor Ebarle knew Gui-e to be innocent, it is hard to imagine how he could have included Gui-e, in his report of the dying declaration. With the evidence in view, there would appear no cogent reason, to disturb the trial court's findings. As the learned trial court has stated:

"The foregoing facts have been fully established. They corroborate the dying declarations of Jose Gomez because they point to the existence of the raid by a group of malefactors, using two vehicles in the commission of the crime; because they point to the fact that the criminals who shot Ursais to death in the municipal building after he had risen from bed, attracted by the report of the pistol or rifle shot and queried, 'What is that,' and later exclaimed: 'Gomez, help me because I am shot,' are the same group of the accused Antipas Sagario and Luis Gui-e who previously shot Jose Gomez.

"These proven facts establish the existence of conspiracy among the accused Antipas Sagario, Luis Gui-e and his unidentified group, for they prove a concert of action and evince a unity of purpose on the part of the said accused and their unidentified group. The attack on Gomez was concerted; they surrounded him and disarmed him; Luis Gui-e pressed the muzzle of his carbine upon the body of Gomez, telling him not to move; Antipas Sagario expressed his hatred to Gomez, saying; 'This (referring to Gomez) is a tough policeman; let us make him taste of the punishment' and they also shot Ursais as the latter appeared and inquired, 'What is that' when he heard the shot. In this jurisdiction conspiracy may be proved by circumstantial evidence. (People vs. Cu Unjieng, et al., 61 Phil. 263.) What more eloquent proof of conspiracy is there than the concerted attack upon the unfortunate Policemen of Molave by the accused, already above?

"The foregoing conclusions of the Court are bolstered up by the fact that the accused Antipas Sagario and Luis Gui-e were the ones who had sufficient motives to commit the dastardly act. As we have already shown, Antipas Sagario felt aggrieved at the intervention of the police force of Molave in favor of Pascual Badana in his conflict with the said Badana over the possession of a piece of land in Mahayag. Because of their intervention, he was deprived of the harvest of his corn crop. He had charged the Chief of Police and his police force with repeated abuses. He even denounced them to the late President Magsaysay. He hated them. Being unable to endure the said abuses longer, he thus decided to take the law into his hands. As for the other accused, Luis Gui-e, he too felt aggrieved at the abuses of the Chief of Police and the police force. He had been made defendant in criminal cases which he believed to be fabricated. These were filed at the instance of the said Chief of Police and his police force. They put him in jail. He also believed that they had been partial in favor of Señorón against his employer (Attorney Villanueva-Benedicto). He too hated them. He could no longer endure the abuses of the Chief of Police and his men; so, he also decided to wreck vengeance on them. Although motive is not an essential ingredient of the crime, nevertheless proof of motive becomes important, for it helps to point to the accused as the party most likely to commit the diabolical act.

"Having thus established the conspiracy among Antipas Sagario, Luis Gui-e and their unidentified companions, it results that they are each liable for the acts of one or all of them. It is undoubted that the shooting of Patrolman Ursais and Jose Gomez at midnight of September 3, 1956 was part of the plot or conspiracy to liquidate the police force of Molave; it was in implementation of it. Even if neither Luis Gui-e nor Antipas Sagario fired the lethal shots which were the proximate cause of the death of Ursais and Gomez, nonetheless they are each liable for their death. As the proven facts show, Luis Gui-e and Antipas Sagario were the leaders of the raiding party; Luis Gui-e pressed the muzzle of his carbine at the body of Gomez and ordered

him not to move; while Antipa Sagario pointed to Gomez as the tough policemen who should be made to taste of the punishment, and the next thing happened-he (Gomez) was shot."

Even without the dying declarations, still, the anterior and posterior circumstances of the incident at bar, lead to a logical conclusion which points to appellants Gui-e and Sagario, as the guilty persons. Beginning with the running dispute between Gui-e and Sagario, on the one hand, and the police force of Molave, on the other; the drinking of tuba at the store of Leonisa; the conference at the bodega of Sagario; the night march with a torch; riding in the car and the jeep; the escapade after the reported rifle shots; the repairs of the tire and the recovery of firearm and rounds of ammunitions from Sagario—all leave no room for doubt that the appellant Gui-e is a principal author of the crime. Appellant Gui-e was present in all those incidents immediately preceding the raid. He and Sagario were the leaders of the group, and they, together with the others, undertook the bloody mission. The existence of conspiracy is not even necessary to make appellant Gui-e responsible.

Treachery attended the commission of the offense. The attack upon the two victims was sudden and unexpected to the point of incapacitating the two to repel or escape from it (*People vs. Pengzon*, 44 Phil., 224). The raiders adopted a method which tended directly to insure the accomplishment of their objective, with no risk to themselves. It was right after he was kicked that the gun exploded and this made Gomez totally unprepared to defend himself against the sudden attack. The medical report indicated that the wound of entrance was on the side of the victim, giving room to conclude that Gomez was not facing his aggressor.

The attack was planned. The determination to kill had existed long before the actual killing. This is indicated by the simultaneous arrival by the raiders at the municipal building, and their immediate attack upon Gomez. The fact, moreover, that the raiders, numbering about twelve, arrived with firearms and riding in motor vehicles, clearly discloses that they were to carry out their intention to kill, irrespective of any opposition. This evident premeditation was also present in the killing of Pat. Ursais, even though the latter was not included in the plan. (*People vs. Ubina*, 97 Phil., 515). While treachery qualifies the offense to murder (*People vs. Limaco*, 88 Phil, 35, it however, absorbs the other aggravating circumstances of nighttime and superior strength (*People vs. Bumanlag*, 56 Phil., 10; *People vs. Bandajo*, 70 Phil., 486). The use of motor vehicles and the presence of evident premeditation should be treated as generic aggravating circumstances, without any mitigating circumstance to offset them. The record inferentially shows that Gui-e was about 19 years old, at the time of the commission of the offense, which age is over the minority provided by law (Art. 13 (2) RPC and Rep. No. 47 amending Art. 80 RPC). Besides, there was no attempt at all, to establish appellant's minority.

Appellant through counsel, after the decision was entered, filed several pleadings with the trial court praying for a new trial on the ground of newly discovered evidence. The alleged newly discovered evidence can not, however, be appropriately called newly discovered, for they could have been very well presented during the trial, with the exercise of reasonable diligence. They are rather essentially impeaching in character. The trial court is, therefore, correct in denying the motions for new trial prayed for by the appellant.

It is finally insinuated that an error was committed in not presenting Atty. Villanueva-Benedicto during the trial, for had she testified she could have disclosed some facts not theretofore introduced and which could alter the decision in this case; and her testimony could now come under the category of a newly discovered evidence. (Error of counsel in the conduct of a case is not a ground for new trial.) Moreover Atty. Hermosísima, the principal counsel for the defense, does not seem to have conducted himself in an irregular and improper manner or to have acted against the interest of appellant Gui-e.

IN VIEW HEREOF, it becomes Our painful duty to affirm. We do hereby affirm, the appealed sentence against appellant Gui-e, without costs.

Bengzon, C.J., Bautista Angelo, Concepción, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Judgment affirmed.

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