

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NAÑO MILFLORES Y LAKSA, DEFENDANT-APPELLANT.

G.R. Nos. L-32144-45. July 30, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

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Appeal from the decision rendered by the Court of First Instance of Manila (Branch XI) in its Criminal Cases Nos. 88173 and 88174 convicting and sentencing herein accused-appellant Naño Milflores y Laksa: to Four (4) Years, Two (2) Months of prision correccional, as minimum, to Eight (8) Years of prision mayor, as maximum, with the accessory penalties of the law for the crime of multiple attempted murder; and to reclusion perpetua and to pay the heirs of the victim in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, for the crime of murder.

The incidents that gave rise to the filing of the above-mentioned criminal cases against herein accused-appellant in the court a quo may be briefly narrated as follows:

Early in the morning of November 27, 1967, about the hour of 7:45, an old man approached the house on 2233 Garrido Street, Sta. Ana, Manila, calling out the name of one of the occupants - - Mrs. Javier. Heeding such call, Florencia Tactay Javier came out of the door and met the caller. The old man handed to her a paper bag containing some vegetables – pechay, upo and sigarillas – and then left the place. Mrs. Florencia Javier brought the bag into the house and proceeded to empty the same of its contents. As she did so, however, something inside the paper bag began emitting smoke and whistling sound, followed moments later by a deafening bomb explosion which caused death of one, and multiple injuries and wounds to seven (7) other occupants of the house. Investigations thereafter conducted by various police agencies led to the arrest of herein accused-appellant, Naño Milflores y Laksa.

On December 6, 1967, he was charged with multiple frustrated murder (Criminal Case No. 88173) before the Court of First Instance of Manila, in an information reading as follows:

"That on or about the 27th of November, 1967 in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously with evident premeditation and treachery, with intent to kill, attack, assault and use personal violence upon Abelardo Mique Olivar, Romana Mique, Isabelo Lapitan, Benedicto Mique, Florencia Javier, Anaflor Javier, and Ariel Javier, by then and there delivering a bomb inside a bag containing vegetables at the address of the latter at 2233 Garrido, Sta. Ana, causing the same to explode when opened, thereby inflicting upon the seven persons mentioned above mortal wounds on the different parts of their bodies, thus performing all of the acts of execution which would have produced the crime of multiple murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of said accused, that is, the timely medical assistance rendered to said Abelardo Mique Olivar, Romana Mique, Isabelo Lapitan, Benedicto Mique, Florencia Javier, Anaflor Javier and Ariel Javier, which prevented their death." (Pp. 21-22, Record)

In a separate information filed with the same court on even date, he was likewise charged for murder (Criminal Case No. 88174). The body of said separate information reads:

"That on or about the 27th of November, 1967 in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously with evident premeditation and treachery, with intent to kill, attack, assault and use personal violence upon Felicidad Mique, by then and there delivering a bomb inside a bag containing vegetables at the address of the latter at 2233 Garrido, Sta. Ana, causing the same to explode when opened, thereby inflicting upon her mortal wounds on the different parts of her body, which were the direct and immediate cause of her death."

Accused-appellant was arraigned on said two informations on December 14, 1967 and January 23, 1968, respectively, and entered pleas of "Not Guilty" to the charges. Later, he moved to quash the information for murder but the same was denied by the trial court. Thereafter, the two cases were tried jointly, at the conclusion of which the court a quo rendered the decision of conviction and the corresponding sentences first above mentioned.

The factual findings of the court below, upon which it based its sentence of conviction, are not seriously disputed by herein appellant.[1] Indeed, the record which We have carefully reviewed reveals that said findings are supported by the evidence which His Honor summarized as follows:

"From the evidence of the prosecution it appears that Victoria Remolar Javier, a public school teacher, married Antonio Javier on April 28, 1964 at Guiniañgan, Quezon Province. This wedlock, however, is Antonio Javier's second since he was previously married to Florencia Tactay-Javier, then living and with whom he had children. Sometime after the marriage of Victoria to Antonio, she discovered this previously existing marriage to Florencia. Victoria continued her marital relations with Antonio. This anomalous situation -- i.e., a 'love triangle' or the double marriage of Antonio Javier -- naturally resulted in animosity between the two wives. The first wife, Florencia Tactay, filed a charge of bigamy against her husband, Antonio Javier, in Baguio City, and an administrative charge against Victoria Remolar. Florencia, however, later desisted when Victoria promised that she would cease to live with Antonio; and the administrative charge was dropped upon a finding that Victoria married Antonio without prior knowledge that he was previously married.

"Sometime in March, 1967, Victoria consulted with the accused, Naño Milflores -- who advertised his services as a palmist and fortune teller at Magsaysay Avenue, Baguio City. Victoria wanted to know what her future would be and sought Milflores' help. She asked Milflores if she still had a chance to live again with Antonio. Milflores told her that she had a 100% chance to live with Antonio on condition that she pays him P375.00 as fee for the temple. He assured her that the result would be favorable and Antonio would voluntarily come back to her. Milflores told her he would use his spiritual power in making Antonio come back to her voluntarily.

"Since March, 1967, Victoria consulted with Milflores at least once a month. She paid him P5.00 for the initial consultation. Sometime later, she paid him the P375.00. Milflores asked for and Victoria gave him the address of Antonio's other wife at 2233 Garrido, Sta. Ana, Manila. Milflores told Victoria he will work in about 7 to 9 weeks, and, within that period he assured Victoria that Antonio will go back to her. Milflores also told Victoria to keep the arrangement between them a secret, in order to insure its success. Victoria returned to Milflores in a couple of weeks. This time Milflores demanded another sum of P375.00 for things he needed in the temple. Victoria gave him the amount the following day. Then, again, Milflores asked Victoria the sums of P200.00 and P175.00, so that by June, 1967, Victoria had given Milflores the sum of P1,130.00 in all.

"After June, 1967, Antonio Javier still did not return to Victoria. Victoria then demanded of Milflores the return of her money. She saw Milflores at least two times in July and August and demanded the return of the sums she had paid him. Milflores told her to be patient as Antonio would, for sure, return to her. In September and the last week of October, 1967, Milflores got mad at Victoria because of the latter's insistence that he (Milflores) return her. (Victoria's) money (Exh. A).

"Florence Tactay really resided at 2233 Garrido, Sta. Ana, Manila. She and her family shared an apartment door with the Mique family -- Romana, Felicidad, Isabelo Lapitan and Abelardo Mique.

"On November 27, 1967, somebody called at the 2233 Garrido apartment door where Florence and the Miques resided for 'Mrs. Javier'. Florence, who was carrying her child, peeped at the window and saw an old man. The man called for 'Mrs. Javier' twice. Florence then went downstairs. The man gave her a big paper bag containing vegetables. Florence inquired as to who sent the same, but the man did not answer. Instead, he hurriedly went away. As Florence received the bag, she saw the address on it -- i.e., 'Mrs. Javier; 2233 Makati'. The bag contained pechay, upo and sigarillas. She then brought the same inside the house and placed it on a chair in a room where Ana, Letty, Abe, Felicidad and Florence's two children were.

"Florence then proceeded to empty the bag of its contents. As she did so, she noticed that it emitted smoke and heard a whistling sound. Alarmed, she withdrew away from the bag. Felicidad Mique, however, went near the same and looked into the bag. Suddenly, a deafening explosion ensued. The explosion caused a hole through the table and on the cement floor 7 inches wide by 4 inches deep. Fragments of utensils and furniture were thrown and scattered around and the splattered room was in complete disarray (Exhs. II & I).

"All of the persons then in that room, where the bomb exploded, sustained injuries and wounds as a result of the explosion. Felicidad Mique y Olivar, 21 years, student; Abelardo Mique y Olivar, 22 years married, goldsmith; Romana Mique Olivar, 21 years, married, housewife; Isabelo Lapitan y Mique, 25 years, laborer; Benedicto Mique y Olivar, 15 years, student; Florence Tactay-Javier, wife of Antonio Javier; Anaflor Javier, 2 years, and Ariel Javier, 9 months, Florence's children -- were brought to the St. Anne's Hospital for emergency treatment. Florence Javier (sic)[2] sustained 23 different, penetrating, explosive blast wounds from metallic objects and wire coil fragments in different parts of her body -- i.e., on her face or both upper right and left extremities and both thighs. Her right anterior VIII rib was fractured and the right lobe of her liver, right diaphragm and right lung, were pierced with metallic fragments. Two (2) coiled wire loop metals were embedded on her right forehead and another in the anterior aspect of her right arm. She suffered hemorrhage of about 700 cc of blood in her respiratory system, exanguination collapse from bleeding, vena cavae, in her cardiovascular system. She died within 15 minutes of arrival at the St. Anne's Hospital from profuse exanguinating hemorrhage, collapsing the vena cavae, and shock due to the 23 different penetrating blast wounds. The rest of the victims were forwarded to the Philippine General Hospital for further treatment (Exhs. B, C, D, E & F).

"Meanwhile, Alexis Nazario, a student, and Desiderio Juvida -- who is known as 'Pops' in the vicinity -- were conversing at the corner of Cagayan and Mabuhay Streets, a block from Garrido Street. They heard the explosion; they saw a person walking hurriedly from Garrido to Mabuhay. The person's face was painted black; he was wearing a checkered polo shirt with black pants and black shoes. Nazario -- who was 8 to 10 meters only away when he saw the person walking at a fast gait towards them (Exh. 1) -- pointed to the person, at the same time calling Juvida's attention to him, thinking that he was a thief. When the blast was heard, the person began to run. Juvida asked Nazario to chase the person, but he (Nazario) did not overtake him (the person) as he was running fast (mabilis). The person ran towards Tejeron Street, where he was able to make good his escape.

"The explosion, which rocked the neighborhood that early morning, brought many persons to the scene, mostly curious onlookers. The police chief, Gen. Ricardo Papa, also arrived at the scene of the explosion. He took immediate steps to investigate the incident. He made requests for homicide operatives. Sgt. B. Brown, Det. N. Bonifacio and Pat. Alejandro Yatco, MPD, responded.

"Alex Tumale y Palma, 31 years old, and a security guard of the United Equity Agency assigned to the RCPI, alleged that he was the intended victim of the bomb explosion. He implicated a certain Theodore Laudet (See Exhs. M & M-1), a striker of the RCPI, as the person whom he saw carrying a paper bag with three other companions in front of his house before the explosion occurred. Tumale informed the police that Laudet

resented his escorting the manager of the RCPI.

"Further investigation also revealed that Antonio Javier, husband of Florencia Tactay-Javier, had contracted another marriage with one Victoria Remolar with whom he has two children; that Victoria, who resides and teaches in Baguio City, occasionally comes to Manila to see Antonio Javier; that Florencia and Victoria had quarreled for the sole possession of Antonio and that charges and counter-charges had been filed between them. The site of the explosion was also searched for evidence, which were then submitted to the Criminal Investigation Division, MPD (Exhs. U & V).

"On November 28, 1967, at 4:30 a.m., Theodore Laudet y Gabriola was investigated. He was brought before Florencia Javier, Isabelo Lapitan and Alex Tumale. The three failed to identify him. Mrs. Javier and Lapitan averred that the suspect was older, stouter, and his face was painted black. Laudet, on the other hand, accounted for his whereabouts the day previous. Laudet was released. Laudet, who was subjected to a polygraph test, cleared himself (Exh. J).

"On November 30, 1967, at or about 10:00 a.m., Sgt. P. Briones, Det. Dionisia Nena Tuason and Pat. Alejandro Yatco left for Baguio to investigate Mrs. Victoria Remolar-Javier, the second wife of Antonio Javier. They were referred to Pat. Pedro Remolar of the Baguio Police Department, Victoria's father, from whom they learned that Victoria had left for an unknown destination. A background investigation of Victoria revealed that she took her BSEE degree at the Baguio Colleges, where she met Antonio Javier whom she later married in 1963. In 1965, Florencia filed an immorality charge against Victoria. Florencia later desisted, when Antonio promised to leave Victoria and live with her. The immorality charge was dropped, on the ground that Victoria married Antonio in good faith.

"Meantime, in Baguio, Victoria Remolar-Javier, who was then teaching at the Ambuklao Elementary School, heard over her transistor radio, on November 29, 1967 -- a Wednesday -- that her name was being implicated in connection with the bomb explosion. She became apprehensive. She went home to her residence at Baguio City, to seek the advice of her parents. She was shown a newspaper account where her name was implicated, and advised to see their family lawyer, a certain Atty. de Guzman.

"Victoria decided to see the family lawyer. The next day -- November 30, a Thursday -- she was on her way to see him at about 7:00 A.M., but before she could leave the house, a phone call was received by Victoria. The person on the other side of the line identified himself as Naño Milflores. Milflores told Victoria to go to his office at Magsaysay Avenue and bring with her P1,000.00 so that he could help her extricate herself from suspicion in connection with the bomb slaying incident. She then proceeded to the office of the accused with her sister, Gertrudis.

"When she arrived there, Milflores expressed his surprise why she was accompanied by her sister, saying, 'Why did you come with a companion?' I told you to come alone.' Victoria told Milflores there was nothing to hide. Touching her head Milflores said, 'Loko loko ka ba? Ang hirap hirap ng kaso mo. Now you need money so that you will not be involved in this case anymore.' He asked Victoria and her sister to produce P1,000.00, because he knew somebody at the Manila Police Department who could help Victoria. Victoria's sister left to secure money while Victoria was left in the office of the accused. Gertrudis, Victoria's sister, later returned with P200.00. When Milflores saw the amount he said, 'Bakit iyan lang? O, sigue, tama na.'

"The three then proceeded to the Dangwa Bus Station. Milflores secured two tickets without Victoria and her sister's knowledge. Milflores then hurriedly urged Victoria to board the bus for Manila, leaving Gertrudis behind. The two arrived at Angeles City and proceeded to the office of Milflores there, where Victoria passed the night.

"Early the next morning -- December 1, Friday -- at or about 4:00 A.M., Milflores and Victoria proceeded to Manila in his jeep. They arrived in Manila at or about 6:00 o'clock the same morning. In Manila she was introduced to one Atty. Ben Dimaunahan, who tried to gather the facts from Victoria about the bomb-killing.

Victoria had no information to give. In the afternoon, at or about 3:00 o'clock, Atty. Dimaunahan informed the Manila Police Department, thru Lt. A. Lim, that he had with him Victoria Remolar-Javier, the person sought in the bomb-slaying probe, and that they were going to the police headquarters with Milflores, a magician, illusionist, and a marriage counselor of 423 Angeles City, Pampanga, and one Oscar Alayon, their driver. Victoria was interviewed at the headquarters. She was allowed to go home, but was advised to return for confrontation.

"After Victoria was interviewed, she noticed that Atty. Dimaunahan and Milflores were nowhere around. Since she was left alone and did not know anybody in Manila, she looked for them, until she saw Atty. Dimaunahan, who was about to leave. She requested him to look for the accused. During the interview, Victoria told Capt. Lim that aside from the P200.00 Milflores received from her sister in Baguio, he also received P210.00 from her in Angeles City; that Milflores told her these amounts will be given to the lawyer who will help her with respect to her involvement in the case. Victoria gave these amounts to Milflores in her desire to clear her name. Capt. Lim told her that she was swindled. From then on, Victoria began to suspect Milflores.

"After Victoria was interviewed, the suspicion of the investigating authorities focused on Milflores. On December 2 (Saturday) -- after Victoria had been interrogated extensively -- Florencia Tactay was invited to the Manila Police Department. Her husband, Antonio Javier, accompanied her to the said office. A police line-up was conducted. Florencia requested that the face of Milflores be painted black. Whereupon, she pointed to him as the very person who handed to her the paper bag containing the vegetables and the fatal bomb. Florencia also stated that the accused had the same tone of voice as the person who handed her the bag. The police line-up was conducted in the presence of police authorities and other persons, including newspaper reporters -- i.e., Tony Alba of ABS, Channel 5; Alfredo Santiago of the Evening News; Fred Cruz of the Manila Times. Pictures were taken during the confrontation (Exh. 3, The Sunday Times, page 1).

"Alexis Nazario and Desiderio Juvida were recalled to the office. Both fingered Milflores as the person they saw running away from the house of Mrs. Javier. Their statements were reduced into writing.

"The accused was investigated. He denied any criminal participation in the fatal explosion incident. He admitted he came to know Victoria Remolar-Javier sometime in June, 1967, when she came to his booth in Baguio City to seek his advice concerning her marital problems with Antonio Javier; that he had asked Victoria to pay him some amounts for his spiritual advice and that all in all he had received from her more or less P800.00. He stood pat on his claim of innocence and that he had merely given her spiritual advice as a minister of the Will of Christ Chapel.

"The statement of Victoria Remolar-Javier was taken (Exh. A) on December 3, 1967 (Sunday). The investigation of Milflores proceeded. He continued to deny any participation in the incident. At 11:00 A.M., the police authorities searched his Willy's Mitsubishi jeep, with Plate No. 1678-67 Manila, which was parked in front of the headquarters. The following articles were found in the glove compartment: (1) one (1) piece of cotton, blackened with dye; (2) one (1) strip of cotton, wrapped in paper; (3) one (1) plastic bottle, pitcher type; (4) one (1) pallet of black dye powder; (5) a receipt from the Talayan, Quezon Blvd., gas station for the purchase of one liter oil, dated November 25, 1967. A further search of the jeep yielded a small box containing: (1) one brown ladies' clutch bag; (2) one white ladies' plastic bag; (3) one forcep; (4) one speculum; (5) one plastic bag with 15 rounds of .22 cal. bullets, short; (6) 3 rounds of .22 cal. bullets, short; (7) one TVR issued by the TRAFCON in his name; (8) one piece of candle (9) one set of keys; (10) four envelopes addressed to him; (11) one crucifix; (12) one envelope containing 40 units of sweepstakes tickets for the December 17, 1967 draw. Confronted with these articles, Milflores denied the presence of these articles in his jeep and claimed the same must be that of his sons (Exh. K).

"At 12:00 o'clock, December 3 -- a Sunday -- 1967, Milflores was taken to the crime scene. Witnesses Nazario and Juvida pointed to the front of House No. 2463 Cagayan Street as the place where they saw Milflores, whose appearance attracted them, because his face was painted black. Milflores was then placed under arrest

and booked for murder and frustrated murder on 7 counts. Charges were preferred (sic) against him with the Fiscal's Office." (Pp. 3-8, Decision, pp. 256-261, CFI Record.)"

To reiterate, the above summation of the evidence by the trial court is fully supported by the evidence on record. Just the same, counsel for appellant has made the following assignments of error in his brief:

I. THAT THE LOWER COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION TO DISMISS CRIMINAL CASE NO. 88174 ON GROUNDS OF DOUBLE JEOPARDY.

II. THAT THE LOWER COURT ERRED IN CREDITING THE ALLEGED PREVIOUS MISDEEDS OF THE DEFENDANT-APPELLANT AS A BASIS FOR AN INFERENCE OF MOTIVE IN THE DELIVERY OF EXPLOSIVE THAT CAUSED THE DEATH OF FELICIDAD MIQUE AND THE INJURIES OF SEVEN OTHERS.

III. THAT THE LOWER COURT ERRED IN CONVICTING THE DEFENDANT-APPELLANT ON AN EVIDENCE THAT FAILED TO PROVE THE GUILT OF DEFENDANT-APPELLANT BEYOND REASONABLE DOUBT."

It is the position of appellant, under the first assigned error, that after he had pleaded to the charge of multiple frustrated murder in Criminal Case No. 88173 on December 17, 1967, the trial court gravely erred in not hearkening to his plea of double jeopardy when he was subsequently arraigned on the separate charge of murder in Criminal Case No. 88174 on January 23, 1968, considering that the charge in the separate information for murder is based on facts that are the very same facts alleged in the other information for multiple frustrated murder. Thus, appellant argues in his brief:

"A conscientious study of the allegations in both criminal cases (shows), that in the multiple frustrated murder case and the murder case, the elements of murder were alleged. The facts in both cases are synonymous insofar as the following are concerned:

a) That offense charged in both cases were committed, in one single act, on November 27, 1967;

b) That the accused delivered a bomb inside a bag containing vegetables, causing the same to explode and which single act of the accused (herein appellant) resulted in the:

-1- injuries of seven persons (those named in Crim. Case No. 88173), and

-2- death of Felicidad Mique and independently treated in Crim. Case No. 88174.

"x x x x

"It is very evident that the single act of delivering a big bag containing a bomb caused the injuries of seven persons and the death of one, but the fact of death of one must not be the reason to make the same an object of a distinct and separate information.

"That matter of charging the accused, herein, defendant-appellant, of murder in a separate information based on facts that are the very same facts obtaining in another case of frustrated murder, is a wanton violation of Section 2(h), Rule 117 of the Rules of Court, which provides:

"Sec. 2 - Motion to Quash - Grounds -

"(h) That the defendant has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

in relation to Section 1, paragraph 20, Article III of the Constitution which likewise provides that:

'No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and

an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.'

"It is obvious that the information charging herein appellant with the crime of MURDER in Criminal Case No. 88174 placed him in jeopardy of punishment for the same offense treated in Criminal Case No. 88173. Giving effect to the above-quoted provisions of our laws, our Supreme Court, in the case of Yap vs. Lutero, G.R. No. L-1266, promulgated on April 30, 1959, resolved as follows:

'If the two charges are based on one and the same act, conviction or acquittal under either the law or ordinance shall bar a prosecution under the other. Incidentally, such conviction or acquittal is not indispensable to sustain the plea of double jeopardy or punishment for the same offense. So long as jeopardy has attached under one of the informations charging said offense, the defense may be availed of in the other case involving the same offense, even if there has been neither conviction or acquittal in either case.'" (Pp. 6-8, Appellant's Brief; pp. 77-79, Record)

Before tackling counsel's pose, one important point has to be made clear. And it is that the first information for frustrated murder, Criminal Case No. 88173, does not include among the victims or offended parties Felicidad Mique, the woman who died and is precisely named as the deceased in the murder case, Criminal Case No. 88174. In the sense, therefore, that appellant was ever in jeopardy in that first case, it is plain to see that such was impossible or could not have happened. Counsel is thus off tangent in invoking double jeopardy.

To be accurate, the legal error of the prosecution here consists of having filed two separate informations for a single offense. For there can be no doubt about the fact that since the injuries suffered by the offended parties in Criminal Case No. 88173 resulted from the same act allegedly of the accused that caused the death of Felicidad Mique, the victim in Criminal Case No. 88174, namely, the explosion of the bomb which according to the prosecution was handed by appellant to Florencia Tactay-Javier, the crime for which appellant could be made to answer is the virtually single complex offense of murder with frustrated murder pursuant to Article 48 of the Revised Penal Code which provides:

"Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

There is in law only one offense because there is only one penalty that can be imposed notwithstanding that the act may fact involve a cluster of otherwise separate or distinct offenses.

And so, the legal problem before Us is not really whether or not the filing of Criminal Case No. 88174 placed appellant under risk of double jeopardy. What has to be resolved here is the question of whether or not the error of the fiscal of filing two separate informations for the same offense, albeit with different offended parties in each of them, is reversible error, having in view the peculiar milieu of the said cases.

On this point, the Solicitor General submits that:

"We submit that Criminal Cases Nos. 88173 and 88174 were the results of appellant's single act (pp. i and 1, Informations, rec.), and should have been incorporated in one criminal information in accordance with the provision of Article 48 of the Revised Penal Code, the same being a complex crime. The reason behind the legal doctrine of discouraging the splitting of cause of action in complex crimes was enunciated by this Honorable Supreme Court in the case of People vs. Cano, G.R. No. L-19660, May 24, 1966, when it ruled that:

"From the viewpoint both of trial and practice, it is doubtful whether the prosecution should split the action against the defendant * * *. Such splitting of action would work unnecessary inconvenience to the administration of justice in general and to the accused in particular, for it would require the presentation of substantially the same evidence in different courts * * *".'

Significantly, the cases at bar were filed at the same time and there was a joint hearing in both cases (pp. 1-2, t.s.n., Magalit, March 21, 1968). Definitely then, joint hearing conducted by the trial court in the cases at bar cured the technical defect of splitting the cause of action, for the inconvenience sought to be prevented was avoided.

"Moreover, the cases cited by the appellant in support for its defense of double jeopardy cannot be applied in this case (pp. 8, 9, Appellant's Brief). Firstly, because there was only one injured party in the cited cases, while there were several injured parties in the case at bar; secondly, the filing of the information and the hearings on the former cases were made one after the other, while the informations in the cases at bar were filed on the same date (pp. 1 and 1, Informations, rec.); and then there was a joint hearing (U.S. vs. Ledesma, 29 Phil., 431; Melo vs. People, 85 Phil., 769)." (Underscoring Ours) (Pp. 4-5, Solicitor General's Brief)

There is, to Our mind, some degree of plausibility in such posture of the People. Indeed, it is obvious that the technical error of the fiscal in filing two separate informations did not cause appellant any substantial prejudice at all. In effect, as the proceedings were actually conducted, it is as if appellant had been prosecuted and tried under a single information. It would be giving premium to technicality and sacrificing substantial justice to yield to counsel's contention. Besides, to do so would result in duplicating what had already been done, the full-dressed trial of the case, with both prosecution and defense presenting all their respective evidence.

But the more untenable aspect of the position of appellant is that when he invoked the defense of double jeopardy, what could have been the first jeopardy had not yet been completed or even began. It is settled jurisprudence in this Court that the mere filing of two informations or complaints charging the same offense does not yet afford the accused in those cases the occasion to complain that he is being placed in jeopardy twice for the same offense, for the simple reason that the primary basis of the defense of double jeopardy is that the accused has already been convicted or acquitted in the first case or that the same has been terminated without his consent (Bulaong vs. People, L-19344, July 27, 1966, 17 SCRA 746; Silvestre vs. Military Commission No. 21, No. L-46366, March 8, 1978; [3] Buscayno vs. Military Commissions Nos. 1, 2, 6 and 25, No. L-58284, Nov. 19, 1981, 109 SCRA 273)

Accordingly, We overrule appellant's first assignment of error.

Under his second assignment of error, appellant submits that the lower court erred in giving full weight and credit to the evidence presented by the prosecution to prove certain alleged previous misdeeds of his as basis for an inference of motive which must have induced him to commit the crimes imputed to him in these cases. He places reliance on Section 46 of Rule 130 of the Rules of Court which provides in part that unless in rebuttal, the prosecution cannot prove the bad moral character of the accused. More specifically, he bewails the finding of the court a quo from the testimony of Victoria Remolar to the effect that appellant, having extorted the sum of P1,130.00 from said Victoria with the promise that with his spiritual powers he would make her erstwhile husband Antonio Javier come back to her, failing in which Victoria had demanded from him the return of her money, appellant resorted to the nefarious scheme of delivering a bomb to said Antonio's other wife (Florescia Tactay-Javier) to do away with her. And on this particular point, on the other hand, counsel for the People counters that what was considered by the lower court in the determination of appellant's motive were evidence of series of events and acts indicating his specific intent, system, scheme and plan to commit the crimes for which he had been indicted, which kind of evidence is admissible under Section 48, Rule 130 of the Rules of Court.

It would appear idle, however, to discuss at length such opposing views of the parties. Suffice it to say that what happened between Victoria Remolar and appellant as related above, furnishes a well-founded clue to what could have been the reason for appellant's act of delivering the fatal bag of vegetables containing also a deadly bomb, to Florescia Tactay-Javier. But even this observation seems superfluous, for the determination of motive becomes relevant only where there is doubt as to whether or not an accused is the one who committed the crime charged.

Withal, lack of motive does not preclude conviction of the offense when the crime and participation of the accused are definitely proved, as in these cases. (People vs. Lumantas, L-28355, July 17, 1969, 28 SCRA 764, 769, and cases therein cited; People vs. Dorico, L-31568, Nov. 29, 1973, 54 SCRA 172, 186; People vs. Herila, L-32785, May 21, 1973, 51 SCRA 31, 38, and cases therein cited.) There is thus no merit in appellant's second assignment of error.

Appellant's third and last assignment of error is directed against the finding of his guilt by the trial court beyond reasonable doubt. He complains that the testimonies of the witnesses and the circumstantial evidence against him were excessively outweighed while the evidence on his behalf was hardly paid credit by His Honor. Accordingly, We have taken pains to reread the transcript of the stenographic notes taken at the trial in order to find out by Ourselves where the trial court might have erred in the appreciation of all the oral and real evidence presented by both parties. Our conclusion after such review is that appellant's plaint has no merit.

1. As to what We might refer to as the prelude to the fatal events which constituted the graver offenses committed by appellant, he more or less, admits either expressly or impliedly in his testimony and in his brief his meetings and conversations with Victoria Remolar whom he made to believe he had spiritual powers to help her solve her triangular-marriage affair involving her bona-fide marriage with Antonio Javier who, turned out to have been previously legally married to Florencia Tactay. He has not denied he received money from her several times in consideration of his promise that for sure soon enough Antonio would be Victoria's alone.

As he in truth did not possess a bit of the spiritual means he pretended to have and was in fact deceiving Victoria to be able to fleece money from her, it is inescapable to believe that upon being finally cornered by Victoria, he concocted the diabolical idea that he could make true his word to her by making Antonio a widower freed from the marriage with Florencia. In a word, he must have found no other way out of his problem with Victoria than to snap out the life of Florencia.

2. Appellant's contention that Florencia did not have sufficient basis for identifying him as the man who delivered the bag with the fatal bomb to her that unhappy morning of November 27, 1967 is utterly untenable. Florencia had immediately described his general build and appearance to the investigators and readily identified him in the police line up in the presence of pressmen after he was made to paint his face black the same way he did that morning of the event in question. And although he did not answer her when she asked from where the bag came and did not hear his voice then, it should be recalled that when he knocked at the door and Florencia or Mrs. Javier looked out from the window upstairs, he said that he was looking for "Mrs. Javier". Thus, that Florencia could identify him thru his voice cannot be surprising.

Florencia's testimony on this point reads:

"Q - At 7:45 o'clock in the morning, do you remember anything unusual that happened in your house at 2233 Garrido Street?

A - Yes, sir.

COURT: (to witness)

Q - What was that?

A - Somebody called me, 'Mrs. Javier'.

ASST. FISCAL: (to witness)

Q - Upon hearing such call, what did you do?

A - I peeped out of the window.

Q - And what did you see after peeping out of the window?

A - I saw an old man.

Q - And what happened?

A - He called me twice, so I went downstairs." (t.s.n., Hearing of July 11, 1968, p. 2. Underscoring supplied.)

And as to the fact that this witness first failed to identify appellant as the person who handed to her the bag containing the bomb, the fact still remains that she later readily pointed to him after appellant's face was painted with black dye, let alone the circumstance that black dyeing materials were also found in the glove compartment of his jeep used by appellant in coming to the police headquarters.

As to the identification of appellant by prosecution witnesses Desiderio Juvida and Alexis Nazario, it is not accurate to say, as suggested by appellant, that said witnesses had only a passing glimpse of the person they saw running fast from the scene of the crime and could not have seen his face, much less recognized him. On this point, the following is revealing:

"COURT: (To witness [Desiderio Juvida])

Q - You say that the man you saw that morning is painted?

A - Yes, Your Honor.

Q - On his face and on his hands?

A - Yes, Your Honor.

Q - How are you certain now that this man, the accused, was the man whom you saw that morning, because, as you said, he was painted black?

A - I noticed his face when he passed by because he was only around two meters away from me

* * * *

* * * *

Q - Will you please indicate on this diagram, Exhibit 1, where your position was, and where the accused came nearest to you at the point of 2 meters?

A - This is the store.

Q - Where were you?

A - I was at the corner of the store.

* * * *

* * * *

Q - And where was the accused when you saw him?

A - He was here already in this place -- corner of Cagayan and Mabuhay Streets. I was sitting at the corner indicated by a blue dot. Alexis, who was standing near me, facing Cagayan Street, told me that there was a man with painted face who might be a robber.

Q - What did you do then?

A - I stood up and then I looked at the man who was passing and it was then that [he] passed in front of me.

Q - And then?

A - And I suspected, because he was painted, that he might be a criminal or something like that. So I followed him with my face up to 15 meters. He was not running but he was rushing. When we heard an explosion, and he ran, I suspected he might be connected with the explosion, so I requested Alexis Nazario to run after him." (t.s.n., Hearing of June 4, 1968, pp. 11, 21-23.) (Words in brackets supplied)

"COURT: [To witness Alexis Nazario]

* * * *

* * * *

Q - You said as soon as you heard the explosion you saw the accused walk at a fast clip. Will you indicate the route the accused took when you first saw him?

(The witness indicates it with an arrow.)

Q - You also said you heard an explosion. From what portion of this sketch did you hear the explosion come from?

A - It came from Garrido Street -- the third house from the corner.

ATTY. GENSON:

Q - Was the explosion, from the place where you were standing, loud, or soft?

A - It was loud.

Q - How many explosions did you hear?

A - Just one.

COURT:

Q - You also said that the accused was walking at a fast clip and after he passed you, he ran faster. Will you indicate the route the accused took from the place where you were?

(Witness indicating.)

ATTY. GENSON:

Q - After you heard the explosion, where did you see the accused for the first time, in this sketch?

A - Here, sir.

ATTY. GENSON:

Please mark it with 'X'.

WITNESS:

The first time we saw the accused he was walking in Cagayan Street, but when we heard the explosion he was in Mabuhay and running already." (t.s.n., Hearing of May 2, 1968, p. 9; Words in brackets supplied.)

"ATTY. CABANTING: [Cross-examining witness Alexis Nazario]

Q - I suppose Milflores just passed on November 27 when you saw him that morning. Am I right?

A - Yes, sir.

Q - When you saw him, he was already running fast. Is that correct?

A - When he passed us, he ran fast.

Q - He was already far away, when you saw him, or noticed him running. Is that correct?

A - It is quite far.

COURT:

Q - Will you indicate, more or less, how far?

A - From this place to that place.

COURT:

Make of record that the witness indicates a distance of eight (8) to ten (10) meters.

ATTY. CABANTING:

Q - That was the first time you saw him in your lifetime. Is that correct?

A - Yes, sir.

Q - You saw him in a split second that morning before giving chase. Is that correct?

A - Not only seconds. He was walking towards us, facing us.

Q - He was not running, but walking?

A - He was walking at a fast clip." (t.s.n., Hearing of May 2, 1968, pp. 5-6; Words in brackets supplied.)

From the above-quoted portions of the testimonies of witnesses Juvida and Nazario, it can be readily seen that they came face to face with appellant. They saw him walking at a fast clip from Cagayan Street to Mabuhay Street, and because they also noticed that his face was painted black, their suspicion was readily aroused that he must be a robber or something when he passed by them at a distance of only about two (2) meters. And so, after appellant had passed in front of them, when they heard the explosion and saw appellant start running, the old man Juvida instructed the younger Nazario to try to catch him, albeit in such attempt Nazario failed because appellant was able to make good his escape after Nazario lost sight of him amongst the many people passing by Tejeron Street. It cannot be said then that said witnesses had only a glimpse of appellant at the time. Then too, it is not at all out of the ordinary, as testified to by said witnesses, that they saw appellant first merely walking at a fast clip after having delivered the fatal bomb to the intended victim, for the stubborn fact is, as explained by said witnesses, appellant started to run soon after the explosion of said bomb, apparently in an attempt to get away from the scene of the crime of which he was the author as fast as he could upon realization that the said bomb he planted had exploded. Surely, such behavior of appellant, as described by the two witnesses referred to, is not in conflict with the experience of common life and the ordinary instincts and promptings of human nature as insisted by appellant.

Our review of the evidence leads Us to no other conclusion that appellant has been definitely and indubitably identified as the man who handed the bag with the fatal bomb to Florencia Tactay-Javier.

As to appellant's lament about the finding of the trial court vis-a-vis the black dyeing materials found in his jeep, it is very safe to say that those materials constituted the strongest mute evidence of his having been indeed the black-painted man whom Florencia and the other two eye witnesses Juvida and Nazario saw that morning. Said materials, albeit circumstantial, pointed to him conclusively as the culprit. There were very credible oral evidence

on top of the dyeing materials. The accurate summation by the lower court of the evidence in support of the case for the People reads as follows:

"Having been identified; having thus been shown to have a motive for committing the offense; and having had in his possession blackening materials -- the evidence thus conclusively point to him as the person guilty as charged in the information."

It may not be amiss to close this discussion with the following words in *People vs. Gonzaga*, L-34418, May 26, 1977, 77 SCRA 140, 144-145, to dispose of his defense of alibi:

"It is easily understandable why the identification of an accused as a participant in the commission of an offense by evidence that is worthy of credence and belief negates the claim of alibi. The falsity of an assertion that he was elsewhere and therefore could not have been guilty of the crime imputed to him becomes apparent. Where the proof of his presence then is clear and positive, such a defense is unavailing. In the language of Justice Laurel in *People v. Caroz* (68 Phil. 521 [1939]): 'Alibis cannot stand and prevail over clear and convincing affirmation of credible witnesses' (Ibid., 526). Such a doctrine is of respectable lineage. It was first announced by Justice Torres in *United States v. Roque* (11 Phil. 422), a 1908 decision, where the accused 'was recognized with rare unanimity by five eye witnesses to the sequestration as being one of the four armed individuals who in the early morning of the 23rd of June, 1904, abducted the deceased, ...' (Ibid., 426). Since then, as pointed out by Justice Trent in *United States v. Lasada* (18 Phil. 90 [1910]), promulgated two years later, alibi cannot avail as against 'the positive and direct testimony' (Ibid., 100) of the witnesses for the prosecution."

Unquestionably, the crimes proven, as found above to have been committed by appellant in these cases, constitute the complex crime of murder with frustrated murder, the same being the result of a single act - that of delivering the bomb which actually exploded as he had intended causing the death and grave injuries already referred to earlier. The qualifying circumstance is use of explosive. Based on the facts proven, We also find that the commission of the offense was attended by evident premeditation, craft and dwelling. His guilt having been proven beyond reasonable doubt, We have no alternative than to find him guilty of said complex offense, with the aggravating circumstances just mentioned, and he deserves no less than the extreme penalty of death.

IN VIEW OF ALL THE FOREGOING, the appellant Naño Milflores y Laksa is hereby found guilty beyond reasonable doubt of the complex offense of murder with frustrated murder with the aggravating circumstances of evident premeditation, craft and dwelling and he is hereby sentenced to death. It appearing from the records, however, that he is presently more than 70 years old, pursuant to Article 47 of the Revised Penal Code, We have no alternative but to affirm the penalty of reclusion perpetua imposed by the trial court, with all the concomitant accessories thereof. Costs against appellant.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

[1] Appellant's assignment of errors -- based mainly on his claim that the trial court erred in not hearkening to his plea of double jeopardy, and that the evidence for the prosecution is insufficient for conviction, coupled with his defense of alibi -- shall be discussed later.

[2] The name should be Felicidad Mique -- the victim in the separate charge for Murder.

[3] 82 SCRA 10

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