

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NEMESIO TALINGDAN, MAGELLAN TOBIAS, AUGUSTO BERRAS,  
PEDRO BIDES AND TERESA DOMOGMA, ACCUSED-APPELLANTS.**

*G.R. No. L-32126. July 06, 1978*

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**PER CURIAM:**

Appeal from the conviction for the crime of murder and the sentence of life imprisonment, with indemnity to the offended party, the heirs of the deceased Bernardo Bagabag, in the amount of P12,000, rendered by the Court of First Instance of Abra in its Criminal Case No. 686, of all the accused therein, namely, Nemesio Talingdan, Magellan Tobias, Augusto Berras, Pedro Bides and Teresa Domogma, the last being the supposed wife of the deceased, who, because no certificate nor any other proof of their marriage could be presented by the prosecution, could not be charged with parricide.

Prior to the violent death of Bernardo Bagabag on the night of June 24, 1967, he and appellant Teresa Domogma and their children, lived together in their house at Sobosob, Salapadan, Abra, some 100 meters distant from the municipal building of the place. For sometime, however, their relationship had been strained and beset with troubles, for Teresa had deserted their family home a couple of times and each time Bernardo took time out to look for her. On two (2) different occasions, appellant Nemesio Talingdan had visited Teresa in their house while Bernardo was out at work, and during those visits Teresa had made Corazon, their then 12-year old daughter living with them, go down the house and leave them. Somehow, Bernardo had gotten wind that illicit relationship was going on between Talingdan and Teresa, and during a quarrel between him and Teresa, he directly charged the latter that should she get pregnant, the child would not be his. About a month or so before Bernardo was killed, Teresa had again left their house and did not come back for a period of more than three (3) weeks, and Bernardo came to know later that she and Talingdan were seen together in the town of Tayum, Abra during that time; then on Thursday night, just two (2) days before he was gunned down, Bernardo and Teresa had a violent quarrel; Bernardo slapped Teresa several times; the latter went down the house and sought the help of the police, and shortly thereafter, accused Talingdan came to the vicinity of Bernardo's house and called him to come down; but Bernardo ignored him, for accused Talingdan was a policeman at the time and was armed, so the latter left the place, but not without warning Bernardo that someday he would kill him. Between 10:00 and 11:00 o'clock the following Friday morning, Bernardo's daughter, Corazon, who was then in a creek to wash clothes saw her mother, Teresa, meeting with Talingdan and their co-appellants Magellan Tobias, Augusto Berras and Pedro Bides in a small hut owned by Bernardo, some 300 to 400 meters away from the latter's house; as she approached them, she heard one of them say "Could he elude a bullet"; and when accused Teresa Domogma noticed the presence of her daughter, she shoved her away saying "You tell your father that we will kill him".

Shortly after the sun had set on the following day, a Saturday, June 24, 1967, while the same 12-year old daughter of Bernardo was cooking food for supper in the kitchen of their house, she saw her mother go down the house through the stairs and go to the yard where she again met with the other appellants. As they were barely 3-4 meters from the place where the child was in the "batalan", she heard them conversing in subdued tones, although

she could not discern what they were saying. She was able to recognize all of them through the light coming from the lamp in the kitchen through the open "batalan", and she knows them well for they are all residents of Sobosob and she used to see them almost everytime. She noted that the appellants had long guns at the time. Their meeting did not last long; after about two (2) minutes Teresa came up the house and proceeded to her room, while the other appellants went under an avocado tree nearby. As supper was then ready, the child called her parents to eat; Bernardo who was in the room adjoining the kitchen did not heed his daughter's call to supper but continued working on a plow, while Teresa also excused herself by saying she would first put her small baby to sleep. So Corazon ate supper alone, and as soon as she was through she again called her parents to eat. This time, she informed her father about the presence of persons downstairs, but Bernardo paid no heed to what she said. He proceeded to the kitchen and sat himself on the floor near the door. Corazon stayed nearby watching him. At that moment, he was suddenly fired upon from below the stairs of the "batalan". The four accused then climbed the stairs of the "batalan" carrying their long guns and seeing that Bernardo was still alive, Talingdan and Tobias fired at him again. Bides and Berras did not fire their guns at that precise time, but when Corazon tried to call for help Bides warned her, saying "You call for help and I will kill you", so she kept silent. The assailants then fled from the scene, going towards the east.

The first to come to the aid of the family was Corazon's male teacher who lived nearby. Teresa came out of her "silid" later; she pulled Corazon aside and questioned her, and when Corazon informed her that she recognized the killers of her father to be her co-appellants herein, she warned her not to reveal the matter to anyone, threatening to kill her if she ever did so. Still later on, other persons arrived and helped fix and dress the lifeless body of the victim, Bernardo, autopsy on which was performed in his own house by the Municipal Health Officer of the place on June 26, 1967, about 36 hours after death; burial took place on the same day. The victim's brother who came from Manila arrived one day after the burial, followed by their mother who came from La Paz, Abra where she resides. Corazon, who had not earlier revealed the identities of the killers of her father because she was afraid of her own mother, was somehow able to reveal the circumstances surrounding his killing to these immediate relatives of hers, and the sworn statement she thereafter executed on August 5, 1967 (Exh. B) finally led to the filing of the information for murder against the herein five (5) appellants.

On the other hand, according to the evidence for the defense: Teresa prior to her marriage with Bernardo, was a resident of the town of Manabo, Abra. She has a sister in Manila and two (2) brothers in America who love her dearly, that is why said brothers of hers had been continuously and regularly sending her monthly \$100.00 in checks, starting from the time she was still single up to the time of her husband's violent death on June 24, 1967, and thereafter. After their marriage, they moved to and resided in her husband's place in Sallapadan, Abra, bringing with them three (3) carabaos and two (2) horses, which Bernardo and she used in tilling a parcel of land in said place, separate and distinct from the parcel of land worked on by Bernardo's parents and their other children. She and Bernardo lived in their own house which was about 4-5 meters away from the house of her parents-in-law. She loved Bernardo dearly, they never quarreled, and her husband never maltreated her; although sometimes she had to talk to Bernardo when he quarrels with his own mother who wanted that Bernardo's earnings be given to her, (the mother) which Bernardo never did, and at those times, Bernardo would admonish Teresa "You leave me alone". Her in-laws also hated her because her mother-in-law could not get the earnings of Bernardo for the support of her other son, Juanito, in his schooling. On his part, Juanito also disliked her because she did not give him any of the carpentry tools which her brothers in America were sending over to her. She never left their conjugal home for any long period of time as charged by her mother-in-law, and if she ever did leave the house to go to other places they were only during those times when she had to go to Bangued to cash her dollar checks with the PNB branch there, and even on said trips, she was sometimes accompanied by Bernardo, or if she had to go alone and leaves Sallapadan in the morning, she rode in a weapons carrier along with merchants going

to Bangued in the morning and always rode back with them to Sallapadan in the afternoon of the same day because the weapons carrier is owned by a resident of Sallapadan who waits for them. Teresa came to know Talingdan only when the latter became a policeman in Sallapadan, as whenever any of the carabaos and horses they brought from Manabo to Sallapadan got lost, she and Bernardo would go and report the matter to the Mayor who would then refer the matter to his policemen, one of whom is Talingdan, so that they may help locate the lost animals; Teresa knew Talingdan well because they are neighbors, the latter's house being only about 250-300 meters away from theirs. But illicit relationship had never existed between them.

Early in the evening of June 24, 1967, Teresa was in the kitchen of their house cooking their food for supper. Two of the children, Corazon and Judit, were with her. Her husband, Bernardo, was then in the adjoining room making a plow. He had to make the plow at that time of the night because at daytime he worked as a carpenter in the convent. As soon as the food was ready, she and the children moved over to the adjoining room where Bernardo was to call him for supper, and he then proceeded to the kitchen to eat. Teresa and the two children were about to follow him to the kitchen when suddenly they heard more than five (5) or six (6) successive gun shots coming from near their "batalan". They were all so terrified that they immediately cried for help, albeit she did not know yet at that precise time that her husband was shot, as she and the children were still in the other room on their way to the kitchen, about three (3) meters away from Bernardo. But soon Teresa heard her husband crying in pain, and as soon as she reached him, she took Bernardo into her arms. She did not see the killers of her husband, as the night was then very dark and it was raining. Bernardo was in her arms when the first group of people who responded to their cry for help arrived. Among them were the chief of police, some members of the municipal council and appellant Tobias who even advised Teresa not to carry the lifeless body of Bernardo to avoid abortion as she was then six (6) months pregnant. The chief of police then conducted an investigation of the surroundings and he found some empty shells and foot prints on the ground some meters away from the "batalan". He also found some bullet holes on the southern walls of said "batalan" and on the northern wallings of the kitchen. Later, Teresa requested some persons to relay the information about the death of her husband to her relatives in Manabo, Abra, and they in turn passed on the news to Bernardo's mother and her family in La Paz, Abra, where they were then residing, as they have left their house in Sallapadan about two (2) months previous after they lost the land they used to till there in a case with the natives called Tingians. Two (2) PC soldiers arrived in the afternoon of June 26, 1967, and after Bernardo's remains was autopsied and he was buried under their house, they conducted an investigation, but she did not give them any information relative to the identity of the persons who shot her husband because she did not really see them. Her mother-in-law and a brother-in-law, Juanito Bagabag, arrived later, the former from the town of La Paz, Abra, and the latter from Manila, and after the usual nine (9) days mourning was over, they left Sallapadan, taking Teresa's children under their custody. Teresa suspects that since her mother-in-law and her brother-in-law have axes to grind against her and they have her daughter, Corazon, under their custody, they had forced the said child to testify against her. She further declared that her late husband, Bernardo, had enemies during his lifetime, as he had quarrels with some people over the land they work on.

Furthermore, the defense presented evidence to the effect that: Talingdan was not in Sallapadan at the time of the killing of Bernardo on June 24, 1967; being a policeman of the place at the time, he was one of the two (2) policemen who escorted and acted as bodyguard of the Mayor, when the latter attended the cursillo in Bangued, all of them leaving Sallapadan on June 22 and returning thereto four (4) days later on June 26, hence, he could not have anything to do with the said killing. On the other hand, Tobias claimed to be in the house of one Mrs. Bayongan in Sallapadan on the date of said killing, but he was one of the persons who was called upon by the chief of police of the place to accompany him in answer to the call for help of the wife of the victim. The other two appellants Bides and Berras also alleged that they were in the same house of Mrs. Bayongan on that date; they are tillers of the land of said Mrs. Bayongan and had been staying in her house for a long time. They were

sleeping when the chief of police came that evening and asked Tobias, who was then municipal secretary, to accompany him to the place of the shooting. They did not join them, but continued sleeping. They never left the said house of Mrs. Bayongan, which is about 250-300 meters away from the place of the killing, that evening of June 24, 1967.

After carefully weighing the foregoing conflicting evidence of the prosecution and defense, We have no doubt in Our mind that in that fatal evening of June 24, 1967, appellants Nemesio Talingdan, Magellan Tobias, Augusto Berras and Pedro Bides, all armed with long firearms and acting in conspiracy with each other gunned down Bernardo as the latter was sitting by the supper table in their house at Sobosob, Sallapadan, Abra. They were actually seen committing the offense by the witness Corazon. She was the one who prepared the food and was watching her father nearby. They were all known to her, for they were all residents of Sobosob and she used to see them often before that night. Although only Talingdan and Tobias continued firing at her father after they had climbed the stairs of the "batalan", it was Bides who threatened her that he would kill her if she called for help. Berras did not fire any shot then. But even before the four appellants went up the "batalan", they already fired shots from downstairs.

We also fully believe Corazon's testimony that two nights before, or on Thursday, June 22, 1967, the deceased Bernardo and appellant Teresa had a violent quarrel during which he slapped her several times. She went to seek the help of the police, and it was appellant Talingdan, a policeman of their town, who went to the vicinity of their house and challenged her father to come down, but the latter refused because the former was a policeman and was armed. And so, Talingdan left after shouting to her father that "If I will find you someday, I will kill you."

We likewise accept as truthful, Corazon's declaration regarding the amorous relationship between her mother and appellant Talingdan, as already related earlier above. So also her testimony that in the morning following the quarrel between her father and her mother and the threat made by Talingdan to the former, between 10:00 and 11:00 o'clock, she saw all the herein four male accused-appellants meeting with her mother in a small hut some 300 or 400 meters away from their house, near where she was then washing clothes, and that on said occasion she overheard one of them ask "Could (sic) he elude a bullet?", We have our doubts, however, as to whether or not her mother did say to her in shoving her away upon seeing her approach, "You tell your father we will kill him." If it were true that there was really such a message, it is to be wondered why she never relayed the same to her father, specially when she again saw the said appellants on the very night in question shortly before the shooting talking together in subdued tones with her mother and holding long arms. Moreover, it is quite unnatural that such a warning could have been done in such a manner.

Accordingly, it is Our conclusion from the evidence related above and which We have carefully reviewed that appellants Nemesio Talingdan, Magellan Tobias, Augusto Berras and Pedro Bides are guilty of murder qualified by treachery, as charged, and that they committed the said offense in conspiracy with each other, with evident premeditation and in the dwelling of the offended party. In other words, two aggravating circumstances attended the commission of the offense, namely, evident premeditation and that it was committed in the dwelling of the victim. No mitigating circumstance has been proven.

Appellants insist in their brief that the lone testimony of Corazon suffered from vital contradictions and inconsistencies and badges of falsehood because of patently unnatural circumstances alleged by her. We do not agree. As the Solicitor General has well pointed out, the fact that the witness varied on cross-examination the exact time of some of the occurrences she witnessed, such as, (1) whether it was before or after Bernardo had begun eating when he was shot; (2) whether it was before or after seeing her mother's meeting with her co-accused in the morning of Friday, June 23, 1967, that she went to wash clothes; and (3) whether or not the accused were already upstairs or still downstairs when they first fired their guns, cannot alter the veracity of her

having seen appellants in the act of mercilessly and coldbloodedly shooting her father to death.

Contrary to the contention of appellants, there was nothing inherently unnatural in the circumstances related by her. We agree with the following rebuttal of the Solicitor General:

"Appellants also attempt to buttress their attack against the credibility of Corazon Bagabag by pointing out five supposed unnatural declarations in her testimony; First, she said that her father appeared unconcerned when she informed him of the presence of people downstairs. But as correctly observed by the prosecuting fiscal, the witness does not know then "the mentality of her father" (p. 62, t.s.n., hearing of March 29, 1968). Second, Corazon also declared that the accused conversed that Saturday night preceding the day the crime charged was committed in a lighted place although there was a place which was unlighted in the same premises. But this only proves that the accused were too engrossed in their conversation, unmindful of whether the place where they were talking was lighted or not, and unmindful even of the risk of recognition. Third, witness declared that Pedro Bides and Augusto Berras did not fire their guns. Even if these accused did withhold their fire, however, since they were privies to the same criminal design, would this alter their culpability? Should the witness Corazon Bagabag be discredited for merely stating an observation on her part which is not inherently unnatural? Fourth, Corazon also declared that only three bullets from the guns of the four male accused found their mark on the body of her father. But would this not merely prove that not all the accused were good shots? And fifth, the witness declared that her father was still able to talk after he was shot, yet Dr. Jose Dalisan declared that his death was instantaneous. It is respectfully submitted, however, that the doctor's opinion could yield to the positive testimony of Corazon Bagabag in this regard without in the least affecting the findings of said doctor as regards the cause of the death of the deceased. As thus viewed, there are no evident badges of falsehood in the whole breadth and length of Corazon Bagabag's testimony. (Pp. 9-10, People's Brief.)

Why and how Corazon could have concocted her version of the killing of her father, if it were not basically true, is hardly conceivable, considering she was hardly thirteen (13) years old when she testified, an age when according to Moore, a child "is, as a rule, but little influenced by the suggestion of others" because "he has already got some principles, lying is distasteful to him, because he thinks it is mean, he is no stranger to the sentiment of self-respect, and he never loses an opportunity of being right in what he affirms." (II Moore on Facts, pp. 1055-1056.) No cogent explanation has been offered why she would attribute the assault on her father to three other men, aside from Talingdan whom she knew had relations with her mother, were she merely making-up her account of how he was shot, no motive for her to do so having been shown.

Demolishing the theory of the accused that such testimony was taught to her by her uncle, His Honor pointed out that said "testimony, both direct and cross, would show that she was constant, firm and steady in her answers to questions directed to her." We have Ourselves read said testimony and We are convinced of the sincerity and truthfulness of the witness. We cannot, therefore, share appellants' apprehension in their Seventh Assignment of Error that the grave imputation of a mother's infidelity and her suggested participation in the killing of her husband, would if consistently impressed in the mind of their child, constitute a vicious poison enough to make the child, right or wrong, a willing instrument in any scheme to get even with her wicked mother. We feel Corazon was too young to be affected by the infidelity of her mother in the manner the defense suggests. We are convinced from a reading of her whole testimony that it could not have been a fabrication. On the whole, it is too consistent for a child of thirteen years to be able to substantially maintain throughout her stay on the witness stand without any fatal flaw, in the face of severe and long cross-interrogations, if she had not actually witnessed the event she had described. We reject the possibility of her having been "brainwashed or coached" to testify as she did.

The second to the sixth assignments of error in the appeal brief do not merit serious consideration. Anent these

alleged errors, suffice it to say that the following refutations of the Solicitor General are well taken:

"Appellants also decry that the trial court allegedly failed to consider the testimony of Dr. Dalisan that the distance between the assailants and the deceased could have been 4 to 5 meters when the shots were fired. But the appellants overlook the testimony of Corazon Bagabag that when the first shot was fired, the gunman was about 3-1/2 meters from her father (p. 60, t.s.n., hearing of March 29, 1968), which disproves the theory of the defense that the killers fired from a stonepile under an avocado tree some 4 to 5 meters away from the deceased's house. Appellants also insist that the Court a quo ignored the testimonies of defense witness Cpl. Bonifacio Hall and Chief of Police Rafael Berras on their having found bullet marks on the southern walling of the house of the deceased, as well as empty cal. 30 carbine shells under the aforementioned avocado tree. The trial court, however, made the following apt observations on the testimony of defense witness Cpl. Bonifacio Hall:

"This witness stated that we went to the house of the deceased to investigate the crime after the deceased had already been buried; that he investigated the widow as well as the surroundings of the house where the deceased was shot. He found empty shells of carbine under the avocado tree. He stated that the 'batalan' of the house of the deceased has a siding of about 1-1/2 meters high and that he saw bullet holes on the top portion of the wall directly pointing to the open door of the 'batalan' of the house of the deceased. When the court asked the witness what could have been the position of the assailant in shooting the deceased, he stated that the assailant might have been standing. The assailant could not have made a bullet hole on the top portion of the sidings of the 'batalan' because the 'batalan' is only 1-1/2 meters high, and further, when asked as to the level of the ground in relation to the top sidings of the 'batalan', he answered that it is in the same level with the ground. If this is true, it is impossible for the assailant to make a bullet hole at the top portion sidings of the 'batalan', hence, the testimony of this witness who is a PC corporal is of no consequence and without merit. The court is puzzled to find a PC corporal testifying for the defense in this case, which case was filed by another PC sergeant belonging to the same unit and assigned in the same province of Abra' (pp. 324-325, rec.).

"As regards the empty shells also found in the vicinity of the shooting, suffice it to state that no testimony has been presented, expert or otherwise, linking said shells to the bullets that were fired during the shooting incident. Surmises in this respect surely would not overcome the positive testimony of Corazon Bagabag that the accused shot her father as they came up the 'batalan' of their house." (Pp. 11-12, People's Brief.)

At the trial, the four male appellants tried to prove that they were not at the scene of the crime when it happened. This defense of alibi was duly considered by the trial court, but it was properly brushed aside as untenable. In their brief, no mention thereof is made, which goes to show that in the mind of the defense itself, it cannot be successfully maintained and they do not, therefore, insist on it. Nonetheless, it would do well for this Court to specifically affirm the apt pertinent ratiocination of His Honor in reference thereto thus:

"This defense, therefore, is alibi which, in the opinion of the court, can not stand firmly in the face of a positive and unwavering testimony of the prosecution witness who pointed out to the accused as the authors of the crime. This is so because, first, according to the three accused — Bides, Tobias and Berras -- they were sleeping at 8:00 o'clock that night in the house of Mrs. Bayongan which is only 250 meters away from the scene of the crime. Granting, for the sake of argument, but without admitting, that they were already sleeping at 8:00 o'clock in the house of Mrs. Bayongan, Corazon Bagabag clearly stated that her father was gunned down at sunset which is approximately between 6:00 and 6:30 in the evening, hence, the accused Tobias, Berras and Bides could have committed the crime and went home to sleep in the house of Mrs. Bayongan after the commission of the crime. According to Pedro Bides, the house of Mrs. Bayongan is only 250 meters away from the house of the victim. Second, the three accused have failed miserably to present the testimony of Mrs.

Bayongan, the owner of the house where they slept that night to corroborate or bolster their defense of alibi." (Pp. 27A-28A, Annex of Appellants' Brief.)

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"Nemesio Talingdan, alias Oming, the last of the accused, also in his defense of alibi, stated that on June 22, 1967, he accompanied Mayor Gregorio Banawa of Sallapadan to Bangued, together with policeman Cresencio Martinez for the purpose of attending a cursillo in Bangued. They started in Sallapadan in the early morning of June 22, 1967 and arrived in Bangued the same day. According to him, he went to accompany the mayor to the cursillo house near the Bangued Cathedral and after conducting the mayor to the cursillo house, he went to board in the house of the cousin of Mayor Banawa near the Filoil Station at Bangued, Abra. From that time, he never saw the mayor until after they went home to Sallapadan on June 26th.

"This kind of alibi could not gain much weight because he could have returned anytime on the evening of June 22 or anytime before the commission of the offense to Sallapadan and commit the crime on the 24th at sunset, then returned to Bangued, Abra to fetch the mayor and bring him back to Sallapadan on the 26th.

"The irony of this defense of alibi is that the mayor who was alleged to have been accompanied by witness-accused is still living and very much alive. As a matter of fact, Mayor Gregorio Banawa is still the mayor of Sallapadan, Abra, and also policeman Cresencio Martinez, another policeman who accompanied the mayor to Bangued, is also still living and still a policeman of Sallapadan. Why were not the mayor and the policeman presented to corroborate or deny the testimony of Nemesio Talingdan?

"Conrado B. Venus, Municipal Judge of Penarrubia, Abra, and a member of the Cursillo Movement, was presented as rebuttal witness for the prosecution. On the witness stand, he stated that he belongs to Cursillo No. 3 of the Parish of Bangued, Abra, and said cursillo was held on October 20 to 23, 1966, at the St. Joseph Seminary in Galicia, Pidigan, Abra, and not on June 23 to 26, 1967. As a matter of fact, Mayor Banawa of Sallapadan also attended the cursillo held on October 20 to 23, 1966, as could be seen in his 'Guide Book' where the signature of Gregorio Banawa appears because they both attended Cursillo No. 3 of the Parish of Bangued.

"(To) this testimony of the rebuttal witness belies partly, if not in full, the testimony of accused Nemesio Talingdan." (Pp. 29A-30A, Annex of Appellants' Brief.)

Coming now to the particular case of appellant Teresa Domogma, as to whom the Solicitor General has submitted a recommendation of acquittal, We find that she is not as wholly innocent in law as she appears to the Counsel of the People. It is contended that there is no evidence proving that she actually joined in the conspiracy to kill her husband because there is no showing of "actual cooperation" on her part with her co-appellants in their culpable acts that led to his death. If at all, what is apparent, it is claimed, is "mere cognizance, acquiescence or approval" thereof on her part, which it is argued is less than what is required for her conviction as a co-conspirator per *People vs. Mahlon*, 99 Phil. 1068. We do not see it exactly that way.

True it is that the proof of her direct participation in the conspiracy is not beyond reasonable doubt, for which reason, she cannot have the same liability as her co-appellants. Indeed, she had no hand at all in the actual shooting of her husband. Neither is it clear that she helped directly in the planning and preparation thereof, albeit We are convinced that she knew it was going to be done and did not object. (*U.S. vs. Romulo*, 15 Phil. 408, 411-414.) It is not definitely shown that she masterminded it either by herself alone or together with her co-appellant Talingdan. At best, such conclusion could be plain surmise, suspicion and conjecture, not really ineludible. After all, she had been having her own unworthy ways with him for quite a long time, seemingly without any need of his complete elimination. Why go to so much trouble for something she was already enjoying, and not even very surreptitiously? In fact, the only remark Bernardo had occasion to make to Teresa one

time was "If you become pregnant, the one in your womb is not my child." The worst he did to her for all her faults was just to slap her.

But this is not saying that she is entirely free from criminal liability. There is in the record morally convincing proof that she is at the very least an accessory to the offense committed by her co-accused. She was inside the room when her husband was shot. As she came out after the shooting, she inquired from Corazon if she was able to recognize the assailants of her father. When Corazon identified appellants Talingdan, Tobias, Berras and Bides as the culprits, Teresa did not only enjoin her daughter not to reveal what she knew to anyone, she went to the extent of warning her, "Don't tell it to anyone. I will kill you if you tell this to somebody." Later, when the peace officers who repaired to their house to investigate what happened, instead of helping them with the information given to her by Corazon, she claimed she had no suspects in mind. In other words, whereas before the actual shooting of her husband, she was more or less passive in her attitude regarding her co-appellants' conspiracy, known to her, to do away with him, after Bernardo was killed, she became active in her cooperation with them. These subsequent acts of her constitute "concealing or assisting in the escape of the principal in the crime" which makes her liable as an accessory after the fact under paragraph 3 of Article 19 of the Revised Penal Code.

As already indicated earlier, the offense committed by appellants was murder qualified by treachery. It being obvious that appellants deliberately chose nighttime to suddenly and without warning assault their victim, taking advantage of their number and arms, it is manifest that they employed treachery to insure success in attaining their malevolent objective. In addition, it is indisputable that appellants acted with evident premeditation. Talingdan made the threat to kill Bernardo Thursday night, then he met with his co-accused to work out their conspiracy Friday and again on Saturday evening just before the actual shooting. In other words, they had motive -- Talingdan's taking up the cudgels for his paramour, Teresa -- and enough time to meditate, and desist, if they were not resolved to proceed with their objective. Finally, they committed the offense in the dwelling of the offended party.

In these premises, the crime committed by the male appellants being murder, qualified by treachery, and attended by the generic aggravating circumstances of evident premeditation and that the offense was committed in the dwelling of the offended party, the Court has no alternative under the law but to impose upon them the capital penalty. However, as to appellant Teresa, she is hereby found guilty only as an accessory to the same murder.

WHEREFORE, with the above finding of guilt beyond reasonable doubt of the appellants Nemesio Talingdan, Magellan Tobias, Augusto Berras and Pedro Bides of the crime of murder with two aggravating circumstances, without any mitigating circumstance to offset them, they are each hereby sentenced to DEATH to be executed in accordance with law. Guilty beyond reasonable doubt as accessory to the same murder, appellant Teresa Domogma is hereby sentenced to suffer the indeterminate penalty of five (5) years of prision correccional as minimum to eight (8) years of prision mayor as maximum, with the accessory penalties of the law. In all other respects, the judgment of the trial court is affirmed, with costs against appellants.

Barredo, Muñoz Palma, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Castro, C.J., concurs, with the observations, however, that the evidence points to the appellant Teresa Domogma as a co-principal and that she should therefore also be held guilty of murder and sentenced to death.

Fernando and Antonio, JJ., no part.

Teehankee, J., concurs, but join in the partial dissent of Mr. Justice Makasiar insofar as the penal liability of the accused Teresa Domogma is concerned.

Makasiar, J., dissents in part in a separate opinion.

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## SEPARATE OPINION

### MAKASIAR, J.:

I dissent insofar as the liability of the accused Teresa Domogma who should be convicted, not merely as an accessory, but of parricide as principal and meted the death penalty, is concerned. A marriage certificate is not indispensable to establish the fact of marriage; because the presumption that the deceased and the accused Teresa were married subsists by reason of the fact that they had been living together for about thirteen (13) years as evidenced by the birth of the child-witness Corazon, who was 12 years old at the time her father was killed on June 24, 1967 by the accused-appellants, and who was 13 years of age when she testified. They have other children aside from Corazon.

That appellant Teresa is a co-conspirator, not merely an accessory after the fact has been clearly demonstrated by the testimony of her own daughter, Corazon, who declared categorically that she plotted with her co-appellants the assassination of her own husband whom she betrayed time and time again by her repeated illicit relations with her co-accused Nemesio Talingdan, a town policeman and their neighbor. The record is abundant with evidence that Teresa, without a feeling of shame and unnaturally lacking any concern for her minor children of tender age, deserted several times their family home to live with and continue with her immoral relations with appellant Talingdan with whom at one time she cohabited for more than three (3) weeks. Her patient husband had to look for her and to beg her to return each time she left the family abode for the embrace of her lover.

WE should believe Corazon's statement that between 10 and 11 o'clock Friday morning, she saw her mother, appellant Teresa, meeting with her other co-appellants in a small hut owned by her father some 300 to 400 meters away from the latter's house near the creek where she was then washing clothes; that she heard one of the conspirators say "Could he elude a bullet?"; that when her mother noticed her presence, her mother shoved her away saying, "You tell your father that we will kill him"; that in the evening of the following day, Saturday, June 24, 1967, while she was cooking supper in their house, she saw her mother go down the stairs and meet the other appellants in the yard about 3 to 4 meters from where she was in the "batalan"; that she heard them conversing in subdued tones; that she was able to recognize all of them by the light coming from the kitchen lamp through the open "batalan"; that she knows all of them very well as they are all residents of their barrio and she used to see them almost everyday; that she noted that appellants were armed with long guns; that their meeting did not last long; that after about 2 minutes her mother, appellant Teresa, came up the house and proceeded to her room while the other appellants hid under an avocado tree nearby; that when supper was ready she called her parents to eat; that her father did not heed her call but continued working on a plow while her mother excused herself by saying she would first put her small baby to sleep; that she (Corazon) ate alone after which she again called her parents to eat; that about this time she informed her father about the presence of persons downstairs but her father paid no heed to what she said; that her father proceeded to the kitchen and sat on the floor near the door while Corazon stayed nearby watching him; that at the that moment her father was shot from below the stairs of the "batalan"; that the four accused then went up the stairs of the "batalan" with their long guns and, upon seeing that her father was still alive, appellants Talingdan and Tobias fired at him again; that when she (Corazon) tried to call for help, appellant Bides warned her saying "You call for help and I will kill you"; and that thereafter, the assailants fled towards the east.

The foregoing testimony of 13-year old Corazon should be accorded belief in the same way that credence was given to her statement that, upon her mother's inquiry immediately after the shooting as to whether she recognized the assailants of her father, she (Corazon) readily told her mother that she identified appellants Talingdan, Tobias,

Berras and Bides as the culprits; for which reason her mother warned her "Don't tell it to anyone. I will kill you if you tell this to somebody."

On Thursday or two days before Bernardo was shot, he and Teresa had a quarrel during which Bernardo slapped Teresa several times by reason of which Teresa left the house and sought the help of the police. Shortly thereafter appellant Talingdan came and called Bernardo to come down. When Bernardo ignored him because Talingdan was a policeman and was then armed, appellant Talingdan left after warning Bernardo that someday he would kill him.

Can there be a clearer demonstration of the active cooperation of Teresa in the conspiracy against the life of her husband? The majority opinion admits that Teresa was a paramour of appellant Talingdan; hence, she wanted freedom from her husband, the victim, so that she could enjoy the company of her lover, appellant Talingdan.

From the evidence on record, appellant Teresa had no moral compunction in deserting her family and her children for the company of her lover. As heretofore stated, she did this several times and continued to do so until the violent death of her husband even as she was carrying a six-month old baby in her womb, the paternity of which her husband denied.

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