

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SULPICIO DE LA CERNA, ET AL., DEFENDANTS. SULPICIO DE LA
CERNA, SERAPIO MAQUI-LING, TEODORO LIBUMFACIL,
GODOFREDO.**

G. R. No. L-20911. October 30, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Sixteen persons, among them herein appellants, were indicted by the provincial fiscal in the Court of First Instance of Cotabato for double murder for the fatal shooting of Rafael and Casiano Cabizares,[1] father and son, in Barrio Cebuano, municipality of Tupi, province of Cotabato, on February 3, 1958. All pleaded not guilty.

In the course of the trial, after the prosecution had rested the People's case, the accused filed a motion to dismiss on the ground, inter alia, that the fiscal, after conducting Ms own preliminary investigation, included in the charge the other accused who were already dropped therefrom by the Municipal Court. The trial court denied said motion but acquitted accused Gaspar Bautista, Agapito Avellana, Cesar Abapo and Eriberto Matchoca for insufficiency of evidence against them.

The defense then presented its evidence. While at this stage, accused Segundo de la Cerna died and the charge against him was dropped.

After trial, the lower court, on January 3, 1962 promulgated its decision. Acquitted were Guillermo Esperanza, Concordio Pardillo, Deogracias Pardillo, Andres Abapo and Joaquin Libumfacil.

Convicted for the murder of Rafael Cabizares were Sul-picio de la Cerna and Serapio Maquiling, as principals, and Godofredo Rotor, Antonio Bautista, Severino Matchoca and Teodoro Libumfacil, as accomplices.

For the murder of Casiano Cabizares, the court convicted Sulpicio de la Cerna and Serapio Maquiling as principals, and Ramon Alquizar as accessory.

A motion to reconsider by the convicted accused failed to move the lower court. So the said accused followed up with their notice of appeal. Two days later accused Ramon Alquizar was allowed to withdraw his intended appeal. And during the pendency of the appeal in this Court, accused Serapio Maquiling moved to withdraw his appeal also, and this was granted on August 8, 1967.

The present appeal, therefore, involves only Sulpicio de la Cerna as principal for the killing of both Rafael and Casiano Cabizares; and Teodoro Libumfacil, Godofredo Rotor, Severino Matchoca and Antonio Bautista as accomplices for the killing of Rafael Cabizares.

The first question is procedural. It appears that when the municipal court finished with the preliminary investigation, it opined that only appellant Sulpicio de la Cerna was guilty while the rest of the accused were not. The fiscal, however, without seeking a review of the findings of the court, conducted his own investigation and,

afterwards, indicted all the accused. It is contended that this was serious error. The objection, however, was raised only after the prosecution had already rested its case. Hence, whatever procedural defect there was, had been waived by the appellants by their failure to raise it before entering their pleas.[2]

Appellants next assail the lower court for relying on the prosecution witnesses who gave, in substance, the following narration of facts and circumstances:

Early in the morning of February 3, 1958, Rafael Cabizares, accompanied by his wife, Hospicia, his brothers Margarito and Romualdo, and his sons Gumercindo, Marcelo, Casiano, Juan and Lamberto, left Barrio Cebuano headed for the poblacion of Tupi, Cotabato, bringing five sacks of corn loaded on a bull cart to be milled in Tupi. Juan, Marcelo and Lamberto, who were all minors, were then going to school. Upon approaching a hilly part, they had to stop since the carabao could not pull the bull cart uphill. Rafael then requested his two brothers and his son Gumercindo to accompany him up the hill and carry on their backs the sacks of corn. With Rafael leading, the four proceeded uphill.

As the four approached Sulpicio de la Cerna's house on top of the hill and were about to put down the sacks of corn, appellant Sulpicio, who was in the house, fired at and hit Rafael, who fell down. Sulpicio then ordered his companions to burn his house so that they would have an excuse. Meanwhile, Casiano, Gumercindo, Marcelo and Romualdo brought the wounded Rafael Cabizares to the house of the latter's father, Demetrio, 100 meters away. Felisa Bastismo, Rafael's mother, Ursula Cabizares and Segundino Cabizares were there at the time.

After the group reached the house, Rafael's wounds were washed with hot water and then he was brought inside the third room of the house. Subsequently, appellant Sulpicio and the other accused arrived at the premises, armed with firearms, bolos and canes. They stoned the house and thrust their bolos thru the bamboo walls and flooring. Finding that there were women inside the house, the accused ordered them to get out or else they would be killed also. As Felisa Bastismo and Ursula Cabizares alighted from the besieged house, Marcelo Cabizares followed them, and although held by accused Conrado Pardillo and boxed by Serapio Maquiling, he was able to escape to the nearby forest.

Serapio Maquiling then climbed up the window of the kitchen, and with the carbine which he got from appellant Sulpicio de la Cerna, shot at Rafael Cabizares who was sitting in the third room. At this moment, Casiano Cabizares jumped down from the house thru the kitchen door and ran away. Serapio Maquiling followed him and shot the latter at the back, killing him a few meters away from Demetrio's house. Appellant Sulpicio de la Cerna then got back the carbine, climbed up the house and fired once more at Rafael, who was now lying down on the floor, killing him finally. Thereafter, the cadaver of Casiano Cabizares was tied to a bamboo pole, carried by accused Ramon Alquizar and one Wilfredo Malias (at large) and placed near the burned house of Sulpicio de la Cerna, as some of the accused followed while the rest proceeded to Rafael's house.

The post mortem examination[3] conducted that very same day showed that Casiano Cabizares died from a gunshot wound, the bullet entering the back and passing out in front, while Rafael Cabizares sustained three gunshot wounds of entrance, one gunshot exit wound, and one stab wound. Dr. Bienvenido Garcia, the Municipal Health Officer, explained that the bullet which caused the first wound located in front, at the left lower abdomen, did not go thru at the back but split into two parts after entering the body. However, these two parts were already palpable on the left buttock of the decedent from which they were extracted. The bullet which caused the second wound located directly at the back lodged in the 11th thoracic vertebra. The third bullet entered near the left breast and went out at the right lumbar region.

The prosecution also presented proof that prior to the incident, a land dispute arose between Rafael and some of the accused,[4] and that he had filed complaints[5] with the Agrarian Court against the latter, the trial of which

cases was scheduled on February 10, 1958.

Appellants would have this Court believe that they are innocent. The four appellants convicted as accomplices insist they were never at the vicinity of the killing. On the other hand, appellant Sulpicio de la Cerna claims that both Rafael and Casiano were killed in self-defense.

Sulpicio's version of what transpired is this:

In the morning of February 3, 1958, Guillermo Esperanza and Sulpicio de la Cerna had just roasted corn in the latter's house when Rafael, Casiano, and others, all armed with bolos and canes, arrived. Rafael demanded of Sulpicio to come down for a confrontation. The latter's refusal to do so angered Rafael who threw his cane at Sulpicio and ordered his companions to surround the house, thrust their bolos thru it and burn it. Because the house was on fire, and fearing that he would be killed, Sulpicio alerted Guillermo Esperanza, got his carbine and fired indiscriminately at his attackers to drive them away. When Rafael and Casiano were hit, their companions fled. Guillermo Esperanza and Sulpicio then got down from the burning house and left, passing by the prostrate bodies of the decedents. Sulpicio proceeded to the house of one Pedro Esperanza to drink water and while there, he saw a jeep coming loaded with policemen, to whom he surrendered himself and his carbine. Expectedly, Guillermo Esperanza gave the same version as above-narrated.

Said appellant's version cannot be accepted. The autopsy reports contradict Sulpicio's claim that he shot the decedents frontally while he was up in his house. For both deceased each sustained a gunshot wound directly at the back. Moreover Casiano's wound of entry — located along the 12th rib — is lower than the wound of exit — located along the 6th rib[6] — showing that the bullet flight path was upwards, not downwards. A gun fired from the elevated flooring[7] of a house like Sulpicio's, and aimed downwards, could not have caused such wounds. Lastly, Rafael's cadaver bore a stab wound on the left side. Appellant's version could not account for this.

While on the one hand nothing was found around the burned house of appellant Sulpicio de la Cerna, such as the alleged cane thrown by Rafael, nor any other weapon or stones which may indicate aggression or violence, on the other, bloodstains were found inside Demetrio Cabizares' house[8] and also on the ground at the spot where, according to the prosecution,[9] Casiano fell when shot by Serapio Maquiling. An empty carbine shell (Exh. I) was also found by Dr. Garcia in the kitchen. In this regard, his testimony is not hearsay, as appellant contends, for although Dr. Garcia did not personally pick it up, he saw the empty shell taken from the floor and handed over to his companions before finally reaching him.[10] While Casiano's body was found near Sulpicio's burned house, even appellant's own witness[11] admitted having found Rafael's body inside Demetrio's house right after the incidents occurred. Appellant's supposition that Rafael's companions must have returned and carried away his body can hardly be accepted since there is no reason why they would not also bring back Casiano's body.

Moreover, we find it hard to believe that Sulpicio, after felling the decedents and dispersing the latter's companions, would still leave his house when it was not yet totally burned, as he himself admitted. The natural thing for him to have done — were it true that it was decedents who set fire to it — was to put down the fire and save his house. Anyway his life was no longer in danger.

Lastly, Sulpicio has more reason to resent and kill Rafael than the latter would have as to him. The source of the possible motive is the same: land trouble between Rafael Cabizares and Sulpicio's father, and the ejectment suit instituted before the Agrarian Court against the latter by the former. Considering that Rafael was the prevailing party in the land dispute before the NARRA, it is quite hard to believe that he would be the one entertaining a grudge against those over whom he had prevailed. Rather, it was the accused, who were defeated and who were now facing an ejectment suit which was set for hearing, that harbored resentment against the deceased.

Furthermore, all the foregoing considerations fit well into the prosecution's version. We have gone over the testimonies of the prosecution witnesses and found them credible. That most of them are related to the victims does not necessarily impair their credibility.[12] Appellants however invite our attention to inconsistencies and improbabilities allegedly abounding in their testimonies. We shall consider each witness and the testimonies separately.

- Romualdo Cabizares — He was with his brother Rafael when the latter was shot near Sulpicio's house and was among those who brought Rafael to their father's (Demetrio) house 100 meters away. He did not go up the house since he had to go back and evacuate his family to a forest 400 meters away. Having done so, he went back and saw the incidents around Demetrio's house from a place covered with corn plants just 25 meters away.

Appellants point out that his statements on the whereabouts of Conrado Pardillo were inconsistent, leading the lower court to disbelieve him and acquit Pardillo. We find no inconsistency since Pardillo's going to Rafael's house with the other accused was after the events in Demetrio's premises had taken place.[13] The lower court acquitted Pardillo not because it disbelieved Romualdo but rather, taking his testimony as true, the court held that the facts proved were insufficient to tack criminal liability on Pardillo. [14]

This witness was able to observe the events around Demetrio's house. Even if the corn plants where he hid were sparse, because of the 25-meter distance from the accused whose attentions were focused on Demetrio's house, and considering that he was in a hidden place[15] while the accused were in the open field, Romualdo could see them without their noticing him. It is true that the forest where Romualdo took his family was 400 meters away, but the accused took some time before they followed to Demetrio's house and Romualdo ran back after hiding his family.[16]

- Margarito Cabizares — He was beside his brother Rafael at the hill top when the latter was shot by Sulpicio.

When he tried to hide near some banana clumps, Guillermo Esperanza stabbed him, hitting him near the left shoulder and causing him to fall unconscious. Shortly later when he recovered consciousness, he followed Rafael who was being brought to Demetrio's house but he was told by Rafael to save himself so he went to a forest 400 meters away where he saw the goings-on around Demetrio's house.

Appellants state that nothing much can be gathered from his testimony. However, they overlook the obvious fact that Margarito was an eyewitness to the shooting of Rafael near Sulpicio's house. Although he lost consciousness after being stabbed it was momentary only, the wound not being very serious.[17] It was not impossible for him to have observed activities around Demetrio's house at a distance of 400 meters. Witness Bonifacio Barro corroborates him on this point.[18] Lastly, he need not be a ballistics expert to recognize gunshot bursts.

- Gumercindo Cabizares — He was with his father Rafael at the hill top. He warned his father just before Sulpicio fired the carbine. After Rafael was hit, he helped carry him to Demetrio's house but did not stay there since he was told by Rafael to go to Dadiangas to call the P.C.

Appellants claim that his testimony regarding a conversation with Juan Cabizares on the way downhill is contradicted by Juan himself who stated that he was not with those who brought Rafael to Demetrio's house. We fail to see any contradiction. Juan did not deny having conversed with Gumercindo. And what the latter said was that after meeting Juan, they went ahead and Juan probably followed behind.[19] We do not think it is stupidity for a son to warn his father of imminent danger — as Gumercindo did — and to come to the latter's aid despite danger. We prefer to consider such behaviour as "courage under fire."

- Marcelo Cabizares — He was near the bullcart downhill but when he heard gunshots he rushed uphill. There he helped carry his father Rafael to his grandfather Demetrio's house. After the accused arrived in the latter's house,

the women were ordered to get out. He followed Ursula Cabizares and Felisa Bastismo on the way down but he was held by Pardillo and boxed by Serapio Maquiling. Still, he was able to escape.

Appellants point out to two statements of his, one wherein he was able to identify all the accused and the other, wherein he was able to name only four of them, alleging material inconsistency. The statements however referred to different situations. The first was when all the accused arrived at Demetrio's place, and the second statement refers to those whom Marcelo Cabizares saw when he came down from the house.[20] He was able to run away after Serapio Maquiling boxed him because he was freed from the hold of Pardillo and Serapio.[21] On redirect, he clarified that he left Demetrio's house in the morning.[22]

- Juan Cabizares — He also stayed with the bullcart downhill and when he heard gun shots, he went uphill and saw his father Rafael wounded. He then followed behind the group carrying Rafael to Demetrio's house and while inside the house, saw the killing of Rafael and Casiano.

Juan did not lie when he said his father was shot by Sulpicio for altho he did not see the actual shooting, he had good reasons to conclude that Sulpicio fired the shot since he saw the latter, shortly after the shooting holding , the carbine which was still pointed at Rafael.[23] Any way, his testimony on the point is merely corroborative of the others who were eyewitnesses. He was able to identify Serapio Maquiling as the one who first shot his father in Demetrio's house although Serapio was behind the bamboo partition, since there were openings in it enabling one to see thru and he peeped thru it.[24] The measurements in the third room (3m x 4m) are compatible with Juan's statement that Sulpicio was 1-1/2m away from Rafael when the third shot was fired since Sulpicio did not go inside the room but fired from the window outside.[25] Juan was competent to testify on what occurred outside the house since he was also peeping thru the slits in the bamboo walls.[26]

- Felisa Bastismo — She is the mother of Rafael Cabizares. She was with Ursula Cabizares and Segundino Cabizares inside Demetrio's house when the wounded Rafael was brought in. After Rafael's wounds were washed, Felisa went down from the house with Ursula, as ordered by the accused. And in the corn fields nearby she witnessed the killing of Casiano.

Appellants make much of Felisa's testimony referring to Rafael's "wounds" when he was brought in the house, and argue that Rafael had been shot at least twice already. But Felisa did not examine the wound of Rafael. Neither did she state how many wounds he had. The substance of her testimony is only that Rafael was wounded when he arrived. As to the impossibility for the stones to go thru the broken window shutter (Exh. K), Felisa admitted that she merely heard the sound when they fell on the floor.[27] Surely, appellants cannot seriously contend that one has to see stones going thru the house to know that it is being stoned. Anyway, it is not impossible for a large stone hurled against a bamboo shutter to cause a hole therein measuring 14" x 1-1/2". And assuming that such hole appears more to have been cut by a bolo and forced open, Felisa testified that the accused also thrust their bolos thru the walls.[28]

It is not impossible for Felisa to have seen Casiano's shooting for she lay flat on the ground after having witnessed it already.[29] She also explained why she was alone in the corn field although she left the house together with Ursula. Being 76 years old, she was slower than Ursula, and she stumbled while fleeing so she was able to reach up to the corn fields only.[30] As to Juan's arrival, the testimonies of the other witnesses are uniform that the group carrying Rafael arrived in Demetrio's house first and Juan, who followed behind, arrived afterwards.[31] Juan corroborates Felisa that he helped carry Rafael to the third room.[32] Marcelo probably noticed Juan only after Rafael had been brought to the third room, leading him to say that Juan arrived after Rafael was brought there.[33]

- Ursula and Segundino Cabizares — Both were in Demetrio's house with Felisa Bastismo. They saw the arrival of

the accused and the stoning and thrusting of bolos thru the waitings. One of the bolos wounded Segundino Cabizares on the left thigh. Ursula Cabizares hid in a palay container but when they were ordered to get out, she and Felisa Bastismo left and returned later in the afternoon.

While Ursula was evidently mistaken when she said that Margarito was also in the house, the error is immaterial. Contrary to appellants' contention, she saw Serapio Maquiling on her way down from the house.[34] As to whether the other accused besides appellant Antonio Bautista were armed with bolos, she stated that she did not know since she only saw the bolo tips penetrating thru the wallings.[35] Her positive statement that she saw appellant Godofredo Rotor[36] prevails, of course, over the negative testimony of Maximo Cafta.

Appellants argue that since Segundino Cabizares was fearful, he could not have been moving inside the besieged house of Demetrio, peeping every now and then thru the openings in the walls and observing the accused. They seem to forget however that different people react differently even when apprehensive. Thus, Segundino's restlessness inside the house is neither unnatural or ridiculous to believe.

- Bonifacio Barro — He was with Fiscal Daproza and Sgt. Paladin inside Demetrio's house a few days after February 3, 1958 and upon orders of the Fiscal, he took out part of the flooring (Exh. K), the bamboo slat (Exh. L and L-1) and the stones Exhs. M, M-1 and M-2).

His statement that Exhs. M, M-1 and M-2 were some of the stones Fiscal Daproza found on the roof of Demetrio's house corroborates the other prosecution witnesses who testified that the accused stoned the house. He also stated that there were other stones inside the house, corroborating Romualdo Cabizares.[37]

- Dr. Bienvenido Garcia — As Municipal health officer, he performed the autopsy on Rafael and Casiano Cabizares on February 3, 1958. He found Casiano's body near the burned house of Sulpicio de la Cerna, and Rafael's, inside Demetrio's house. In the latter house, he also saw a bullet hole on the floor (Exh. J-1) and a carbine shell (Exh. I).

Appellants would cavil on Dr. Garcia's statement that he saw Exh. J (part of the flooring) only in court. What he said however was that he saw it as cut already from the floor only in court.[38] His statements as to the room dimensions (3-4m x 4-5m) and the distance of Rafael's body to the partition (1 m or 2 ft) are approximations only and not exact measurements.[39] A difference of a few insignificant meters is to be expected. Lastly, his statement that the bullet hole (Exh. J-1) was on the floor coincides with Barro's testimony that Exh. J was cut from the flooring.[40]

From all the foregoing, it is apparent that the so-charged inconsistencies and improbabilities in the testimonies are without substantial and significant basis. Hence, the lower court's findings should stand, especially since they involved an appreciation of the evidence and credibility of the witnesses.

We now proceed to the criminal liability of the appellants.

The killing of Rafael Cabizares was attended by treachery, Appellant Sulpicio contends that the first shot, fired by him, was not attended with treachery since there is evidence that Rafael was warned by his son Gumerindo just before he was hit in the lower abdomen.[41] However, even assuming the argument to be tenable, the second shot, by Serapio Maquiling, was definitely treacherously fired since Rafael was then in the third room of Demetrio's house, wounded and defenseless. The treachery here has to be independently considered due to the sufficient lapse of time[42] from the first shot, in which the following events intervened: (1) the bringing of Rafael to Demetrio's house 100 meters away after being hit; (2) the washing of his wounds and his being brought to the third room to rest; (3) the arrival of the accused and their ordering the two women to get out. It was only after the women left that Serapio climbed up the kitchen and fired the second shot at Rafael.

Appellant Sulpicio is chargeable for the treacherous shooting of Rafael by Serapio Maquiling since both were acting as co-conspirators pursuant to their understanding in the meeting held the day before in Andres Abapo's house, as will be shown presently. Anyway, the third shot, fired by Sulpicio, was treacherously done. Rafael was then flat on the floor and although still alive, was completely defenseless, having been shot twice already. The portion of Dr. Garcia's testimony[43] cited by appellants shows that Rafael died after the third shot hit him —

"Q. After wound No. 1 was inflicted, is it possible that Rafael Cabizares was still alive?

A. Rafael Cabizares was still alive.

Q. After inflicting wound No. 2, is it possible that Rafael Cabizares was still alive?

A. He was still alive.

Q. When wound No. 3 was inflicted, was he still alive by your conclusion?

A. He was dead.

Q.

What makes you conclude that he was already dead when wound No. 3 was inflicted?

A. Because wound No. 3 is mortal"

thus corroborating Juan Cabizares' testimony that his father was still alive after the second shot wounded him.

Evident premeditation was also present in this case. The previous plan to kill Rafael Cabizares was testified to by witness Maximo Caña who was present in the meeting of February 2, 1958, in the house of Andres Abapo. Of the many persons present, he recognized only appellants Sulpicio de la Cerna, Antonio Bautista, Severino Matchoca and Serapio Maquiling. Bautista told the group that the purpose of the meeting was to plan the killing of Rafael Cabizares. Then both he and Serapio Maquiling signified their willingness to execute it. Appellant Sulpicio also offered to do it provided his family would be taken care of. To this offer, Bautista and Maquiling replied that they would take care of Sulpicio's family. Caña testified further that none of those attending voiced out any objection but all agreed to the plan. Caña was also present in the early morning of February 3, 1958, when Matchoca, accompanied by Bautista, gave the magazine of bullets to Godofredo Rotor. He was likewise with the accused when Rafael was shot at the hill top, and when he (Rafael) and Casiano were killed in Demetrio's place.

However, one year and ten months after he had testified for the prosecution, witness Caña was presented as a defense witness. As such, he completely retracted on his previous testimony, explaining that all what he had stated was false since he was not in Tupi on February 2 and 3, 1958. Gaudencio Esperanza, presented to corroborate him, testified that in August, 1958, Hospicia Cabizares, widow of Rafael, went to the former's house where Caña was staying, and gave the latter P50.00 to testify falsely for the prosecution. On rebuttal, Hospicia Cabizares denied this.[44]

We have thus two sets of testimonies by Caña, completely at variance with each other. Now the rule is that mere retraction by a prosecution witness does not necessarily vitiate the original testimony otherwise credible.[45] The proper thing for the trial court to do is to weigh and compare both testimonies. Here, the lower court, after having done so, accepted Caña's testimony for the prosecution. In this, it did not err.

Firstly, the original testimony is positive and replete with details, and Caña withstood a long and thorough cross-examination which could not have been so, if the story were merely fabricated. Secondly, Caña's narration of the shooting incident was fully corroborated by the other prosecution witnesses. Lastly, the charged

inconsistencies and improbabilities therein are too insignificant to affect the substance thereof.

On the other hand, in his subsequent testimony,[46] Caña was evasive and most of his answers were: "I don't remember" or "I don't know". His statement that he was in Marbel on February 2 and 3, 1958 is not only uncorroborated but even contradicted by two prosecution witnesses who saw him with accused on February 3, 1958.[47] Caña was also insincere, claiming that his conscience bothered him greatly but he admitted that he could not sleep only in the mornings[48] and notwithstanding the serious predicament he was in — because of the inconsistent statements made in open court — he was even smiling.[49] Moreover, according to Gaudencio Esperanza, who is the father-in-law of Serapio Maquiling, Caña was only constrained to testify falsely when he was bribed by Rafael's widow, Hospicia Cabizares, sometime in August, 1958. This pretense can not be believed since a month prior to that, or on July 28, 1958, Caña had already executed an affidavit (Exh. V) incriminating the appellants. It also appears highly improbable for Rafael's widow to go to the house of a relative of the accused and in his presence openly bribe Caña, a resident therein. Lastly, it is hard to believe that although Gaudencio Esperanza knew of this incident, he told the defense counsel about it only after Caña had already testified for the defense and had been incarcerated to face a charge of perjury.[50] The impulse of a man similarly situated would have been to relate such matter at once to his accused relatives. Gaudencio's failure to do so makes of his story a worthless fabrication.

There being a previous direct conspiracy one day before the killing, evident premeditation is duly established.[51] This qualifying circumstance is further buttressed by the following actuations of appellant on February 3, 1958: (1) Upon seeing Rafael near his house, Sulpicio told his companions to get ready since the one they were awaiting was there already. And then he shot at Rafael. (2) As Rafael was being brought to Demetrio's house, Sulpicio ordered his companions to burn his house so they would have an excuse already. (3) With the other appellants, he pursued the wounded Rafael to Demetrio's house where after they had stoned the same and thrust their bolos thru its wallings, they ordered the women folk to leave lest they be killed also; and (4) after Serapio had already shot at Rafael, Sulpicio still fired a third shot, finally killing Rafael. All these overtly show appellant's determination to end Rafael's life. The killing, therefore, was properly qualified as murder.

However, appellant Sulpicio cannot be held liable for the killing of Casiano Cabizares, notwithstanding a conspiracy between him and Serapio Maquiling. The conspiracy was to kill Rafael only and no one else. Nothing was said or agreed upon about the members of Rafael's family. In fact, in executing their plan appellants let the two women inside Demetrio's house leave unhurt and they did no harm to the remaining companions of Rafael in the house. Their target was solely Rafael Cabizares. And the rule has always been that co-conspirators are liable only for acts done pursuant to the conspiracy. For other acts done outside the contemplation of the co-conspirators or which are not the necessary and logical consequence of the intended crime, only the actual perpetrators are liable.[52] Here, only Serapio killed Casiano Cabizares. The latter was not even going to the aid of his father Rafael but was fleeing away when shot.

Although Serapio got the carbine from Sulpicio, the latter cannot be considered a principal by indispensable cooperation or an accomplice. There is no evidence at all that Sulpicio was aware Serapio would use the rifle to kill Casiano. Presumably, he gave the carbine to Serapio for him to shoot Rafael only as per their agreement. Neither is there concrete proof that Sulpicio abetted the shooting of Casiano. Sulpicio might have been liable if after the shooting of Rafael, Serapio returned the carbine to him but upon seeing Casiano fleeing, immediately asked again for the carbine and Sulpicio voluntarily gave it to him. Serapio's criminal intention then would be reasonably apparent to Sulpicio and the latter's giving back of the rifle would constitute his assent thereto. But such was not the case. Sulpicio, therefore, must be acquitted for the killing of Casiano Cabizares,

Appellants Godofredo Rotor, Antonio Bautista, Severino Matchoca and Teodoro Libumfacil all put up alibi as

their defense. This the trial court rejected but it held them liable as accomplices only, finding reasonable doubt on their guilt as co-principals. Appellants would again advance their respective alibis here.

Appellant Rotor claims that at dawn on February 3, 1958, he went alone to the spring in Barrio Cebuano to fetch water and after staying awhile there, started back home. On the way back, his mother met him and told him not to go home because of an incident (the killing of the decedents) so he went instead to Simeon Navajas' house and stayed there until February 18, 1958.

The prosecution, however, proved that in the early morning of February 3, 1958, Rotor was with Maximo Caña fetching water in the spring. On their way home, they met appellants Bautista and Matchoca. The latter gave Rotor a carbine magazine with bullets, saying: "Here is the magazine of the bullets and give it to Sulpicio de la Cerna." And appellant Bautista said: "Please hurry. Give it to Sulpicio de la Cerna because we will follow later on." Shortly afterwards, Caña went with him to Sulpicio's house where he gave the magazine to Sulpicio, saying: "Here are some bullets supposed to be given to you." [53]

Rotor was seen outside — downstairs of — Sulpicio's house later that morning by Margarito and Gumerindo Cabizares. After Sulpicio had fired at Rafael, Rotor got the pistol from appellant libumfacil and fired also at Rafael. [54] This appellant was also seen by Romualdo, Ursula and Segundino Cabizares as among those who arrived at Demetrio's house. [55] When Ursula Cabizares alighted from the house, she saw Rotor outside holding a pistol which he gave to Libumfacil commenting that it was stuck. [56] After the killing of the decedents, Romualdo Cabizares saw him with the group following the cadaver of Casiano Cabizares which was being brought near Sulpicio's burned house. [57]

In the face of the overwhelming positive identification of six prosecution witnesses, Rotor's uncorroborated alibi must fail. Although he was not present or did not participate in the meeting of February 2, 1958, his presence in the situs of the shootings on February 3, 1958 was not merely passive. His active participation — shooting at Rafael and carrying a pistol — which has a direct connection with the criminal design against Rafael Cabizares makes him a principal by indirect conspiracy, not an accomplice only. Motive is not wanting. Rotor admitted that his wife is the sister of Sulpicio's wife [58] and the evidence shows that his father had a land dispute with Rafael Cabizares and was a respondent in the case before the Agrarian Court. [59]

Appellant Bautista claims that on February 2, 1958, he left Barrio Cebuano for Tupi (5 kms. away) to get a truck to load his corn. That afternoon, he returned to Cebuano where they loaded corn but he could not return to Tupi as the truck would not start, so he slept at home. Early the next day, February 3, 1958, they pushed the truck to start it. Later, appellant Matchoca arrived and helped them. He also rode in the truck but upon reaching an uphill road, it stopped again. They were able to recharge its batteries from a tractor that happened to pass by. They continued the trip and finally arrived in the pobiacion of Tupi at about 8:00 A.M. Several months later, while he was at Sergio Rotor's house, his child told him that a P.C. soldier was waiting at home, so instead of going home, he had a conference with Andres Abapo, Ramon Alquizar, Roberto Matchoca (son of Severino) and Agapito Avellana. They all decided to proceed to Tupi and surrender to the Mayor.

Appellant Matchoca related the same incident told by Bautista regarding the trip to Tupi. He then claimed to have returned to Barrio Cebuano about noontime and there learned of the incident. The next day, he evacuated his family to avoid trouble.

The prosecution however has established that these two appellants were in the meeting held in Abapo's house on February 2, 1958. They openly participated therein. Their meeting with appellant Rotor early the following morning has also been established thru the testimony of Maximo Caña.

These two were also seen outside Sulpicio's house. Bautista was carrying a bolo and a cane and was heard shouting at Rafael thus: "Rafael, you cannot reach the trial because we will kill you." [60] Gumercindo Cabizares also heard Matchoca shouting: "Go ahead, shoot. We will kill him so that he will not reach the day of the hearing," [61]

Bautista and Matchoca were among those who went to Demetrio's house. [62] The former thrust his bolo thru the bamboo waitings hitting Segundino Cabizares. [63] When Ursula Cabizares came down from the house, she saw Bautista holding a bolo. [64] Romualdo, on the other hand, claimed having seen him holding a firearm. [65] After the killings had taken place, Bautista went with the group that proceeded back to Sulpicio's burned house whereas Matchoca marched with the other group headed for Rafael's house. [66]

The positive identification of the several prosecution witnesses must prevail over the alibis proffered by these appellants. Their presence and active participation in the meeting in Abapo's house make them actual conspirators in the killing of Rafael. They were also present and zealously participating in the execution of their criminal design, giving a carbine magazine and instructions to appellant Rotor, threatening Rafael and giving encouragement to Sulpicio to shoot at the latter. They were among those who laid siege to Demetrio's house and left together with the others after finally accomplishing their criminal deeds as agreed upon. Appellants Bautista and Matchoca are therefore also liable as co-principals in Rafael's murder. Regarding motive, it was proved that both were among those involved in the land conflict with Rafael Cabizares and were among the respondents in the case before the Agrarian Court.

Appellant Libumfacil's story is that in the morning of February 3, 1958 he was in the Menzi Area about 6 kilometers from Barrio Cebuano. That afternoon, he returned to the poblacion of Tupi. To corroborate him, Lauro Esconde stated that he saw Libumfacil that day working on the latter's farm lot in the Menzi area.

However, Maximo Caña saw appellant Libumfacil outside Sulpicio's house when the former arrived there with appellant Rotor in the morning of February 3, 1958. Libumfacil has a pistol which he also fired at Rafael. [67] Gumercindo Cabizares also saw him holding a pistol which he gave to Rotor who then took a shot at Rafael. [68]

Appellant Libumfacil was seen by Caña again among those who went with the other accused downhill from Sulpicio's house to Demetrio's house. [69] The other prosecution witnesses saw him also around Demetrio's house, armed with a pistol. [70] He was among those who stoned the house. [71] When Ursula Cabizares alighted therefrom, she saw appellant Libumfacil outside, conversing with Rotor and receiving from the latter a pistol which had gotten stuck. After the incidents in Demetrio's house, Libumfacil went with appellants Rotor and Bautista to Sulpicio's burned house. [72]

Libumfacil's alibi, though corroborated, cannot overcome the positive identification of the eight prosecution witnesses who saw him. Although he was not present in Abapo's house on February 2, 1958, he was present at Sulpicio's house and in the premises of Demetrio's house with the other accused and appellants. He was armed, had fired at Rafael also, and took part in the stoning of Demetrio's house where Rafael was brought. His actions manifest that he was aware of the criminal design of the original conspirators, that he approved of it and carried it out, thus showing that his presence at the scene of the crime was not merely passive. Consequently, he is a co-principal in Rafael's murder. And motive is not wanting. It was established that his mother had a land conflict with Rafael [73] and that his step-father Diosdado Esperanza was one of the respondents in the case before the Agrarian Court.

We find therefore all five appellants guilty as co-principals in the murder of Rafael Cabizares.

The aggravating circumstance of treachery, applicable against appellant Sulpicio de la Cerna only, is offset by his

voluntary surrender after the incident. This mitigating circumstance however can not benefit the remaining appellants who did not voluntarily surrender. For all the appellants, therefore, the penalty for Rafael Cabizares' murder must be imposed in the medium period. For the killing of Casiano Cabizares, appellant Sulpicio de la Cerna must be acquitted.

Wherefore, the judgment appealed from is modified as follows:

(a) Appellants Sulpicio de la Cerna, Godofredo Rotor, Antonio Bautista, Severino Matchoca, and Teodoro Libumfacil are hereby found guilty as principals for the murder of Rafael Cabizares and sentenced to each suffer reclusion perpetua, to indemnify, jointly and severally, the heirs of Rafael Cabizares the sum of P6,000,00 and to pay the costs;

(b) Appellant Sulpicio de la Cerna is hereby acquitted for the murder of Casiano Cabizares.

So ordered.

Conception, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur,

Judgment modified.

[1] Originally, there were two information's but upon motion of the accused, they were consolidated and jointly tried in the same proceedings.

[2] Sec. 10, Rule 113, now Rule 117, Rules of Court; Oca is, Jimenez, L-17777, June 29, 1962.

[3] Exhs. A-B and E-F.

[4] See Exh. T,

[5] Exhs. N-1, N-2 and O.

[6] Exh. B.

[7] The flooring was about 5 ft. high from the ground (ts.n. Millares 842).

[8] T.s.n. (Ibero) p. 960.

[9] T.s.n. (Ibero) pp. 88-89; 193.

[10] T.s.n. (Ibero) pp. 38, 51-52,

[11] Pat Absalon Tabar, ts.n. (Ibero) p. 937.

[12] People vs. Constantino, L-23558, Aug. 10, 1967.

[13] T.s.n. (Ibero) pp. 129-130.

[14] See Appellant's brief, p. 154.

[15] Maximo Caña testified that a person inside the corn stalks could not be seen (t.s.n. (Ibero) p. 274).

[16] T.s.n. (Ibero) p. 167.

[17] See Exh. P. (Ibero) p. 529.

- [18] T.s.n. (Ibero) p.
- [19] T.s.n.(Ibero) pp. 569-570.
- [20] T.s.n. (Ibero) pp. 454-455; 473-475.
- [21] T.s.n. (Ibero) pp. 490-491.
- [22] T.s.n. (Ibero) p. 498.
- [23] T.s.n. (Ibero) p, 67.
- [24] T.s.n. (Ibero) pp. 98-101.
- [25] T.s.n. (Ibero) pp. 107-108.
- [26] T.s.n. (Ibero) p 104.
- [27] T.s.n. (Ibero) p. 430.
- [28] T.s.n. (Ibero) p. 410.
- [29] T.s.n. (Ibero) p. 414.
- [30] T.s.n. (Ibero) p. 412.
- [31] T.s.n. (Ibero) pp. 79, 110, 308-309, 408409, 449, 545, 569-570; (Millares), p. 10.
- [32] T.s.n. (Ibero) pp. 80, 418.
- [33] T.s.n. (Ibero) pp. 451-452.
- [34] T.s.n. (Ibero) p. 339.
- [35] T.s.n. (Ibero) p. 347.
- [36] T.s.n. (Ibero) pp. 345-34.
- [37] T.s.n. (Ibero) pp. 144, 519-520.
- [38] T.s.n. (Ibero) p. 41.
- [39] T.s.n. (Ibero) pp. 43-45.
- [40] T.s.n. (Ibero) pp. 43, 518.
- [41] T.s.n. (Ibero) p. 556.
- [42] See U.S. vs. Baluyot, 40 Phil. 385.
- [43] T.s.n. (Ibero) p. 50.
- [44] T.s.n. (Miilares) pp. 73, 75.
- [45] People vs. Urbina, 97 Phil. 515; People vs. Alcaraz, 103 Phil. 533.
- [46] T.s.n. (Ibero) pp. 1126-1189.
- [47] T.s.n. (Ibero) pp. 331-332; 558-559.
- [48]T.s.n. (Ibero) p. 1189.

- [49] T.s.n. (Ibero) p.1186.
- [50] T.s.n. (Millares) pp. 107-108.
- [51] U.S. vs. Cornejo, 28 Phil. 457; People vs. Bangug, 52 Phil. 87.
- [52] People vs. Hamiana, 89 Phil, 225; People vs. Daligdig. 89 Phil, 598; People vs. Umali, 96 Phil, 185; People vs. Ducjias, L-15307, May 30, 1961; See also I Reyes, The Rev. Penal Code, 432-433.
- [53] T.s.n. (Ibero) pp, 205-209.
- [54] T.s.n. (Ibero) pp. 366-368, 403, 539, 542.
- [55] T.s.n. (Ibero) pp. 169-170, 311; (Millares) pp. 10, 25.
- [56] T.s.n. (Ibero) pp. 316, 345-346, 354; Romualdo also saw Rotor holding a firearm, t.s.n. (Ibero) p, 170.
- [57] T.s.n. (Ibero) p. 129.
- [58] T.s.n. (Ibero) p. 744.
- [59] See Exhs. T and N-1.
- [60] T.s.n. (Ibero) pp. 366-367; 539, 542-543.
- [61] T.s.n. (Ibero) pp. 543, 565.
- [62] T.s.n. (Ibero) pp. 211-219, 312-A-313, 473; (Millares) pp. 10, 25.
- [63] T.s.n. (Millares) p. 13.
- [62] T.s.n. (Ibero) pp. 316, 318.
- [63] T.s.n. (Millares) p. 13.
- [64] T.s.n. (Ibero) pp. 316, 318.
- [65] T.s.n. (Ibero) pp. 169, 170.
- [66] T.s.n. (Ibero) pp. 129-130.
- [67] T.s.n. (Ibero) pp. 210, 259-262.
- [68] T.s.n. (Ibero) pp. 539, 542.
- [69] T.s.n. (Ibero) p. 270.
- [70] T.s.n. (Ibero) pp. 62, 70, 215, 312-A, 474; (Millares) pp. 10, 25.
- [71] T.s.n. (Ibero) p. 169.
- [72] T.s.n.(Ibero) p.129.
- [73] T.s.n. (Ibero) p. 765.

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