

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL COMPACION ALIAS MANING, ERNESTO PIALAGO,
DECEASED – (PATERNO BARBECHO), CRISANTO MANTALABA
ALIAS SANTOS AND ELACIO ...**

G.R. No. L-33951. September 28, 1979

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PER CURIAM:

Before Us for review is the death sentence imposed upon the above-named accused, by the Court of First Instance of South Cotabato after their conviction for the crime of robbery with double homicide and double frustrated homicide, committed, according to the trial court, with the attendance of the aggravating circumstances of dwelling, nocturnity, evident premeditation, craft, band and treachery, without any mitigating circumstance.

Two separate briefs were filed, one jointly for Manuel Compacion and Ernesto Pialago, and the other, also jointly for Crisanto Mantalaba and Elacio Laoglaog. The fifth appellant Paterno Barbecho did not file a brief.

From the decision of the court a quo, We could quote the following as an accurate and fair recital of the facts as proven by the evidence for the prosecution, as well as that for the defense:

"Felipe Gabutan, 50 years old, resident of Kibol, Taluya, Glan, South Cotabato, married to the late Andrea Barbecho, was blessed with six children, namely, Ponciano, 26 years old; Ricardo; Adelaida, 16 years old, Anecita, 11 years old; Neria, 10 years old and Teofila, 10 months old. Previous to that hapless evening of September 17, 1970, he and his two sons were in their farm at Akon, Glan, South Cotabato, seventeen Kilometers from Kibol, Taluya, Glan, thus leaving at home the women members of his family, his wife and daughters.

"Paterno Barbecho, brother of Andrea Bar-becho Gabutan, owns also a farm in Akon, Glan, adjoining that of Felipe Gabutan, with his family residing in Kibol, Taluya, Glan, in a house of their own. Crisanto Mantalaba, his brother-in-law, had been helping him in his farm in Akon, Glan where they had a house. Hilacio Laoglaog had been their neighbor in said farm as a tuba gatherer and their townmate in Aluginsan, Cebu.

"Manuel Compacion is a third cousin of both Paterno Barbecho and the late Andrea Bar-becho Gabutan, their respective grandmothers being sisters. Ernesto Pialago is the brother-in-law of Manuel Compacion, his wife being a sister of the latter. Both were residing also in Kibol, Taluya, Glan with Compacion's house only about 150 meters from that of Felipe while that of Pialago is 300 meters to that of the Gabutans. In between the houses of Manuel Compacion and Felipe Gabutan is that of Paterno Barbecho.

"By the admissions of Paterno Barbecho, Crisanto Mantalaba and Hilacio Laoglaog, they have seen Felipe Gabutan on and before September 17, 1970 in his farm at Akon, Glan. Manuel Compacion and Ernesto Pialago, being neighbors of the Gabutans, must have known of the absence of Felipe Gabutan and his two sons, Ponciano and Ricardo, from their residence in Kibol, Taluya, Glan. It was with this knowledge that on September 17, 1970, at about six o'clock in the evening, the five indictes who are relatives by consanguinity and/or affinity with the exception of Hilacio Laoglaog who was their neighbor and close friend of Paterno Barbecho and Crisanto Mantalaba and all of whom are natives of Aluginsan, Cebu, proceeded to execute a

plan to rob and kill, if necessary, the family of Felipe Gabutan at Kibol, Taluya which plan, according to the confessions of Hilacio Laoglaog, was conceived on the same hour and date, according to that of Paterno Barbecho, on September 15, 1970, at Akon, Glan, South Cotabato, in his farm where he had a house with a pile of corn, and according to Compacion, long after Paterno Barbecho acquired his paltik revolver, caliber 22 (Exhibits H, I, I-1, J, J-1, J-2, K). Hiking from Akon, they arrived at the house of their unknowing victims at about nine o'clock in the evening. Paterno Barbecho was armed with a 22 caliber paltik revolver (Exhibit "K"), and the rest with bolos and knives. Paterno Barbecho, Crisanto Mantalaba and Hilacio Laoglaog remained in the yard of the house taking cover in the coconut trees ten meters away as guards while Compacion and Pialago went up the house after an agreement with their companions to throw stones at the galvanized iron roofing of the house to warn them of anybody coming to the succor of their intended victims. Before going upstairs, Ernesto Pialago got from Paterno Barbecho his paltik revolver, so he was armed with a knife and firearm, while Compacion was armed with a sharp-pointed bolo fifteen inches long. As both went up, Ernesto was whistling, knocked at the door, called for Andrea saying, "Mother, mother, open the door for me" (Ma, Ma, abrehan ako), identifying himself as Ricardo, son of Andrea Barbecho Gabutan, who was then with his father and brother Ponciano in Akon, Glan. Andrea, thinking that the caller was her son, Ricardo, instructed Adelaida to open the door to which the latter obliged, after which, she went back to their bedroom which adjoins the living room but was without any door. So from the main door, one could freely enter their bedroom. Soon after the door was opened, Pialago and Compacion entered the house, proceeded to the bedroom which was lighted with a kerosene lamp and stabbed Andrea who was then standing, hit-ting her above the mammary gland causing her instantaneous death as Adelaida shouted for help and mercy to Compacion not to kill them. Her pleas were ignored as she was stabbed by Compacion, hitting her on the breast, followed by Pialago's shooting her, hitting her left forearm (leaving now a scar of 1/2 inch in length and 1/4 inch width) and stabbed again by Manuel Compacion which she parried, hitting her right wrist (with a scar of 3/4 inch long and 1 inch wide). Immediately followed the stabbing of Aniceta by Manuel Compacion on her epigastrium, who died instantly; the stabbing of Neria Gabutan on her right abdomen who became unconscious. Only Teofila Gabutan, the 10 months old baby was spared. Then the in-truders got the sum of P2,820.00 wrapped with a handkerchief and placed inside the wrapped table cloth hidden in the mat placed behind the post of the bedroom. Adelaida Gabutan ran towards the house of her grandparents, Apolinar Barbecho and Perpetua Barbecho. Also there were her uncle, Gerundio Barbecho, and his wife, with their eight children. With her wounds bleeding, she informed them of being robbed by Manuel Compacion and Ernesto Pialago. Gerundio Barbecho proceeded immediately to the poblacion reporting the matter to the police authorities. After the robbery, Paterno Barbecho, Crisanto Mantalaba and Hilacio Laoglaog, informed by Compacion that their victims were dead, went home to Akon bringing the loot with the under-standing with his companions that they will divide the same in barrio Tower of Glan, South Cotabato, as there are few people there, a week after. Paterno Barbecho further instructed Compacion and Pialago to follow Adelaida to the house of his father in an apparent effort to veil their acts and identities. Thirty minutes after the arrival of Adelaida at the house of Apolinar Barbecho, Compacion and Pialago arrived, the former calling in the yard, "Open the door, Manang, help Andrea Gabutan for they were robbed." Adelaida who was inside told them not to open the door as they were the ones who robbed them. Not heeded to, both defendants left and were found later in the house of Compacion.

"Gerundio Barbecho, on the other hand, arrived in the municipal building of Glan at about 11:00 o'clock and reported the robbery to Patrolman Ernesto Sulacito, a subpoena and warrant officer of the Police Department, who was also assigned then as officer of the day. Patrolman Sulacito reported the matter to Acting Chief of Police Wenceslao Ruelan who instructed him to proceed immediately with Patrolman Macatimbol to the crime scene with Gerundio Barbecho. After interviewing Adelaida in the house of Apolinar Barbecho who told them about the gruesome killing of her mother and her sister Anecita as well as her being stabbed by Compacion and shot by Pialago, Sulacito instructed them to bring immediately Adelaida for medical treatment at the poblacion while they proceeded to the crime scene. There, he saw the dead bodies of Andrea Gabutan and Anecita Gabutan with Neria Gabutan still alive but unconscious due to a stab wound. From there, he with Patrolman

Macatimbol, went to the house of Manuel Compacion. Thereat, he made known to them that they were peace officers and demanded for their surrender, at the same time seeking cover behind a coconut tree. At this instant, Pialago jumped from the window, armed with a bolo, and not knowing where the policemen were, ran towards the coconut tree where Patrolman Sulacito was. When Ernesto Pialago was seven meters away from him, Sulacito shot him, hitting his right thigh (according to Dr. Elizar Deoquino, the wound was not fatal as it was healed after a few days of his treatment). Thereafter, Manuel Compacion went down and surrendered. He was then armed with a scythe and carrying his child whom he told the policemen to be sick. That was about 2:00 o'clock in the morning of September 18. Brought to the municipal building for investigation, he readily admitted his participation of the crime, pointing to Hilacio Laoglaog, Paterno Barbecho, Crisanto Mantalaba and Ernesto Pialago as his co-perpetrators. Pialago was loaded on a sledge to town.

"At about eight o'clock on September 18, 1970, Pablo Abella, neighbor of Felipe Gabutan at Kibol, Taluya, Glan, arrived in Akon, informed Felipe Gabutan and his sons of the tragic incident. Felipe Gabutan with his two sons immediately proceeded home and not knowing about the participation of his brother-in-law, Paterno Barbecho, informed him of the incident. Felipe Gabutan was with Ponciano and Paterno Barbecho, followed later by Crisanto Mantalaba and Pablo Abella. Upon reaching a crossing which was two kilometers away from the house of Felipe Gabutan and equidistant also to the poblacion, Paterno Barbecho, Crisanto Mantalaba and Ponciano Barbecho proceeded to the municipal building, having been informed of the arrest of Manuel Compacion and Hilacio Laoglaog. There, Paterno Barbecho and Crisanto Mantalaba were arrested as previously Compacion confided to Patrolmen Ibali and Carmona his co-conspirators.

"Manuel Compacion was formally investigated on September 20, 1970 by Patrolman Ibali and his confession was subscribed and sworn to before Judge Modesto Vallinas of Glan on September 21, 1970 (Exhs. "J", "J-1", "J-2", infra). Like-wise, Paterno Barbecho was investigated on September 20, 1970 by Patrolman Ibali and his admission was subscribed and sworn to on September 22, 1970 (Exhibits "I", "I-1", infra). Hilacio Laoglaog confessed before Patrolman Millona on September 21, 1970 and the same was subscribed and sworn to on September 22, 1970 (Exhibit "H", infra). Crisanto Mantalaba, upon inquiries of Acting Chief of Police Wenceslao Ruelan, confided that the revolver used in the commission of the crime, that is, the 22 caliber paltik revolver owned by Paterno Barbecho, was hidden by him in his house in Akon, Glan, South Cotabato, in a pile of corn. By reason thereof, Patrolmen Wilfredo de la Cruz and Ferolin, Acting Chief of Police Wenceslao Ruelan and Crisanto Mantalaba went to said house. Patrolman Ferolin and Acting Chief Ruelan, however, waited at a place one kilometer, more-or less, from the house, as it was situated on top of a hill. Patrolman De la Cruz and Crisanto Mantalaba only repaired to the premises. There, Crisanto Mantalaba pointed to Patrolman De la Cruz the gun hidden inside the house covered in a pile of corn which has a bronze under its barrel (Exh. "K"). There-after, Patrolman De la Cruz gave the gun to the Acting Chief of Police. That was September 22, 1970, at about 1:00 o'clock in the afternoon." (pp. 16-24, Rollo)

From the People's brief, We could also quote the following undisputed facts to make out a more complete picture of this case, for a proper evaluation of the correctness of the verdict of conviction, with its accompanying penalty of death, and the merit or lack of it, of appellants' defense:

"Adelaida and Neria were brought to the St. Elizabeth Hospital at General Santos City, where they were examined and treated by Dr. Jesus Veneracion, physician surgeon and owner of said hospital. Dr. Veneracion issued a medical certificate (Exh. A, p. 1, Folder of Exhibits) describing Adelaida's wounds as follows:

'Stab wound, chest, thru and thru, left side, above breast hitting lungs.

'Gunshot wound, left forearm, thru and thru.

'Superficial laceration, wrist, right.'

"Dr. Veneracion also issued a medical certificate for Neria Gabutan, stating that she suffered a 'stab wound, abdomen, right side with laceration (3) of intestines (Exh. B, p. 2, Folder of Exhibits; pp. 8-16, tsn).'

"On September 18, 1970, a post mortem examination was conducted by Dr. Elizar Deoquino, Municipal Health Officer of Glan, Cotabato on the dead bodies of Andrea Gabutan and Anecita Gabutan. According to his report (Exh. D, p. 4, Folder of Exhibits), deceased Andrea Gabutan sustained the following injuries:

1. Wound, stabbed, thru and thru 1 1/2 inches above the mammary gland, left.

'Cause of death:

shock

secondary to hemorrhage

secondary to stabbed wound.'

while deceased Anecita Gabutan was found to have been inflicted with the following:

'1. Wound 1 inch wide, 3 inches deep, epigastrium.

'Cause of death:

Shock

Secondary to hemorrhage

Secondary to stabbed wound.'

(Exh. F, p. 6, Folder of Exhibits; pp. 19, 22 tsn)

"The death certificates of Andrea (Exh. E, p. 5, Folder of Exhibits) and Anecita (Exh. G, p. 7, Folder of Exhibits) were likewise issued by Dr. Deoquino (pp. 21-23, tsn)." (pp. 8-9, Brief for the Appellee.)

In their joint brief, appellants Compacion and Pialago contend that the prosecution failed to establish that robbery was committed. On the other hand, also in their joint brief, appellants Laoglaog and Mantalaba allege that the lower court erred in not finding them guilty only of simple robbery. That robbery was committed is, therefore, accepted by two of the herein appellants--an admission that robs the contrary claim of the other two, of any vestige of truth and credence. The admission is in the nature of a positive evidence which should prevail over the denial, the latter being in the nature of a negative evidence.[1]

Robbery was proved overwhelmingly. The loss of P2,820.00 which was kept in the house, wrapped with a handkerchief and placed in the tablecloth hidden in a mat behind a post of the house was testified to positively by Felipe Gabutan, the father of the hapless family. He discovered the loss upon his arrival from his farm at Akon.[2] When Adelaida Gabutan ran towards the house of her grandparents, after she had been stabbed and shot, she told them, in the presence of her uncle, Gerundio Barbecho, and the latter's wife, Fabiana Dimol, that their family was robbed by appellants Compacion and Pialago.[3] The statement made was clearly part of the *res gestae*, Adelaida being then in a state of shock after going through the startling occurrence, an evidence, likewise, entitled to great weight. Appellant Compacion himself who followed Adelaida to the latter's grandparent's house, together with appellant Pialago, arriving thereat thirty minutes later, and betraying himself of the evil deed committed by them, called on the inmates to open the door saying: "Open the door, Manong. Help Andrea Gabutan for they are robbed,"[4] a fact testified to by among other witness-es, Fabiana Dimol, sister-in-law of appellant Barbecho. In his statement (Exhibits J and J-1),[5] appellant Compacion does not deny the commission of robbery by him and his confederates.

That appellants Compacion and Pialago were the ones who went up the house and inflicted the fatal wounds on Andrea and Aniceta, and also stabbed and shot Adelaida and Neria, was testified to by Adelaida, corroborated by

Neria, the ten-year old sister who was likewise gravely wounded and left for dead by the malefactors. Both testified, according to the trial court, in a clear, positive and straight-forward manner in identifying the two aforementioned appellants. They could not be mistaken in their identification, for they saw the two culprits as they entered the house, for it was Adelaida who unlocked the door, through which appellants Compacion and Pialago freely entered the house as they opened it, believed as they were, mistakenly, to be the brothers of Adelaida who had come home from their farm that night,[6] but turned out to be brutal intruders who inflicted wounds on the two sisters and fatal ones on their mother, Andrea, and their sister, Aniceta.

Futile and unavailing, therefore, is the claim of appellant Compacion that he did not go up the house but posted him-self only downstairs. Even more so was appellant Pialago's alibi that he was all the time in his house during the commis-sion of the crime, belied, as it is, by his having been posi-tively identified by witnesses without evil motive, as the other ruthless intruder inside the house who shot Adelaida, rendering the alibi totally worthless.[7]

From the evidence just examined with close scrutiny, there should not be the slightest misgiving in pronouncing the guilt of appellants Compacion and Pialago as having been proved beyond reasonable doubt. Theirs was a direct participation in the commission of the crime charged, and their denial of the existence of conspiracy with their co-appellants would, there-fore, be of no materiality or purpose. It is to the other appellants, Laoglaog, Barbecho and Mantalaba that a claim of non-participation in the conspiracy may be of vital effect in the determination of the degree of their culpability, for no reliable proof has been adduced to show their direct partici-pation, at least in the killing of the victims committed on the occasion or by reason of the robbery. Only appellant Compacion pointed to the three appellants, Laoglaog, Mantalaba and Barbecho, as the ones who went up the house and committed therein the heinous crime charged. Upon the other hand, in their second assignment of error, appellants Laoglaog and Mantalaba admit that, assuming that there was conspiracy, they could be found guilty only of simple robbery, indicating a disposition of admitting their involvement through conspiracy, although only to the extent of the crime of simple robbery.

By more than mere circumstantial evidence, conspiracy to rob has been sufficiently proven. The presence of all the appellants during the robbery at the scene, with participation of each directly and mutually aiding in the commission of the offense, is a most eloquent proof of conspiracy. Their presence as just stated is also proved by the admission in the extra-judicial statements of appellants Compacion, Barbecho and Laoglaog.[8] Also by the testimony in court of Compacion, the presence of appellants Mantalaba, Laoglaog and Barbecho is established. Mantalaba led the policemen to where he hid in his house the gun of Barbecho used in the robbery on Septem-ber 22, 1970. This fact was testified to by the policemen who went to the place indicated from which they recovered the gun. Appellant Mantalaba's denial of being with the other appellants during the commission of the robbery, therefore, cannot merit or inspire belief. Conspiracy was thus more than adequately proven.

Mantalaba's attempt to show motive on the part of Compacion in implicating him falsely cannot but fail. He claims to be the creditor of Compacion who refused to pay his debt of P30.00, a year before the incident. Appellant Compacion had, therefore, no reason to give further cause for resentment against him by one he should try instead to gain his trust and continued generosity. This observation holds true with appel-lant Laoglaog who paid for the bet lost by appellant Compacion in a cockfight which the latter could not pay, and therefore, deserves the gratitude of Compacion, not hate or resentment, as would be generated by the latter's testifying falsely against his benefactor, as it were, appellant Laoglaog.

With the presence of appellants Barbecho, Laoglaog and Mantalaba during the commission of the crime abundantly proven, the next issue to be resolved is whether they were in league, by prior conspiracy, with appellants Compacion and Pialago who, as convincingly shown, were direct participants in both the killing and the robbery.

The Court is fully convinced from the evidence that as far as the robbery is concerned, there was previous conspiracy among all the appellants as found by the trial court, based on the confession of appellants Laoglaog, Barbecho and Compacion. The plan to rob and kill was hatched two days before the actual commission of the crime at the farm of appellant Barbecho at Akon, Glan. The pre-conceived plan was executed on September 17, 1970, the day apparently chosen with deliberateness when all the menfolks in the Gubatan family had gone to their farm in Akon, leaving only five women in the family dwelling in Kibol, including a 10-month old baby girl.

While the confessions were repudiated by the declarants who claimed to have been maltreated into making them, the trial court rejected the claim saying:

"Neither is the court prepared to discard these three written extrajudicial confessions, executed before the Police Investigators and subscribed and sworn to before Municipal Judge of Glan, South Cotabato, after having satisfied himself of the spontaneity of each and every one of them. More so where immediately thereafter, upon the request of Patrolman Ibali, Dr. Elizar Deoquino, in his capacity as Municipal Health Officer, examined them physically and found them to be with no visible external injuries. The presumption is that these public officials and peace officers regularly performed their duties. So with the voluntariness of these confessions. (People vs. Casillar, 30 SCRA 352, 357; People vs. Baluran, 32 SCRA.) There is no scintilla of proof proffered that these officials and officers have any interests whatsoever in the success or failure of the cause of the prosecution, nor was there any motive assigned why they will falsely testify against them." (pp. 69-70, Rollo).

Studying the evidence carefully, the Court is satisfied that the confessions were made voluntarily. The exculpatory tone which pervades each of the confession, with the declarants pointing to each other as the real culprit in the slaying and wounding of the four adult women in the house, with the 10-month old baby the only one spared from harm, is an index of voluntariness.[9]

The claim of appellants Laoglaog and Mantalaba that even assuming that they took part in the conspiracy, at the most they should be held liable only for simple robbery is untenable. In effect, they would contend that if ever, as far as they are concerned, there was conspiracy, it was only to rob, but not to kill on the occasion or by reason of the robbery, since they had no part in the killing, or in the infliction of wounds on the victims, nor could they have known that Compacion and Pialago were to commit the violent acts, and so could not have prevented the perpetration thereof. To show that the conspiracy did not contemplate killing to eliminate witnesses, they point to the fact that they did not kill Adelaida who slipped out of the house, as they should have done in pursuance of the conspiracy to rob and to kill, if they were involved in such conspiracy, since they were downstairs standing on guard. Accordingly, they contend that their liability should not extend to that for the more grievous offense of robbery with homicide, but only for simple robbery.

From the manner the crime was committed, there can hardly be any doubt that the conspiracy was not limited to committing robbery. It included the killing, if necessary, of all the inmates, as when witnesses who would point to them as the malefactors had to be eliminated. Appellants Compacion and Pialago stabbed and shot all the inmates instantly upon entering the house, except the 10-month old baby. If their only intention was to rob, they could have accomplished their purpose without resorting to the liquidation of the entire family then in the house. Threats and intimidation would have sufficed for the successful execution of a mere plan to rob. If killing accompanied or preceded the robbery, as actually happened, it was because the intention was to eliminate witnesses, the eventuality that made necessary the plan also to kill for the successful commission of the robbery without risk of prosecution. The conspiracy as was hatched, therefore, had included the idea of killing from the very beginning, and not as a sudden brainstorm only on the part of appellants Compacion and Pialago who came face to face with the inmates who witnessed their misdeeds. It may be true that had the conspiracy included killing, they (Laoglaog and Mantalaba) should have also killed Adelaida when she went down the house to escape

after being wounded. But from where Laoglaog and Mantalaba posted themselves behind coconut trees, ten meters away from the house, they might not have seen Adelaida; or that having seen her wounded, they might have thought that death would surely overcome her too. Such wounds as "stab wound chest, through and through hitting lungs," and a "gunshot wound, through and through, left forearm," which might have splashed blood all over her body made it appear to appellants Laoglaog and Mantalaba that Adelaida's death was so certain and imminent that they need not do anything more to insure its occurrence. The participation of Laoglaog, Mantalaba and Barbecho in the con-spiracy, not only to rob but to kill, has thus been shown to be beyond any reasonable doubt.

In the case of *People vs. Ubaldo*, L-19490, August 26, 1968, 24 SCRA 735, 763, cited by the Solicitor General,[10] it was held:

"The precision which characterized the movements of the accused in carrying out their plan to rob the victim, strongly suggests a unity of purpose and design to the end that the accused intent may be expeditiously consummated. As planned and later on carried out, three of the accused, namely: Gorgonio Ubaldo, Norberto Lumpay and Severo Caigoy entered the store in order to secure things of value; Superable, Villablanca, Jr. and Hembra posted themselves on one corner of the road while Calabia, Antonio Pacli and Benjamin Pacli stood guard on the other corner of the street to insure protection against any interference from the outside that may hamper the success of the whole operation. They acted accordingly, primarily obsessed with the unity of their intent to gain from the undertaking. Thus, Ubaldo shot and killed policeman Cotoñer even before the latter could render any help to the victims of the robbery; while the lookouts posted on opposite corners of the road fronting the store effectively halted policeman Glore by wounding him even before he could come near the store and assess the gravity of the situation. Such precision displayed by them in the execution of the robbery, coupled with the evidence that they came together to the house of Antonio Pacli earlier that afternoon and agreed to commit the same against Eng Wan, leave no room for doubt that they have acted pursuant to a conspiracy. Consequently, it is not absolutely necessary to pinpoint specifically, who fired the shot that killed either policeman Cotoñer or the Chinese woman Co Gui Hui; all the conspirators are liable irrespective of the fact that some had limited themselves to the act of robbery while the others participated in the act of homicide and less serious physical injuries." (*People vs. Ubaldo*, 24 SCRA 735, 763.)

Similarly, cited is the case of *People vs. Pujinio*, L-21690, April 29, 1969, 27 SCRA 1185, 1189, where it was held:

"Pujinio's counsel further claims that although the latter entered a plea of guilty, he, however, explained to the court that it was Balbuena who killed Aquilino Sebial, and that, therefore, he should be found guilty only of robbery. This contention finds support only in the sworn statement mentioned heretofore and which, as already stated, can not be considered in connection with Pujinio's case.

"Moreover, even assuming that Pujinio testified to that effect, it would not justify a finding that he was guilty only of robbery, for it is settled that one who participated in the commission of the crime of robbery in connection with which homicide was also committed-- as in this case--will be equally guilty as principal of the crime of robbery with homicide, unless there is clear evidence that he tried to prevent the commission of the latter offense (*People vs. Morados*, 70 Phil., 558; *People vs. Carunungan, et al.*, G. R. No. L-13283, September 30, 1960)"[11]

From the rulings above-quoted, there should be no hesitation in finding the evidence in the case at bar legally and factually sufficient to prove the existence of a previous conspiracy to rob and to kill, not only to insure successful execution of the plan, but also to prevent prosecution of the offense. With conspiracy duly proven, it would not matter that the participation of each of the conspirators varies in extent and character, as long as it tended to help in the consummation of the evil design. A co-conspirator may not have even helped physically in the actual commission of the crime, or even at the scene thereof. He is, nevertheless, liable equally as those who directly

participated therein.[12]

Appellants maintain that "band" should not be considered as aggravating as was done by the court a quo. This Court has serious doubts from the evidence that four of the appellants were armed as to make "band" as an aggravating circumstance present. In his extra-judicial statement, Laoglaog said he was not armed. In the extra-judicial statement of Compacion, he stated that Barbecho had a 22 Cal. revolver, but this is the gun taken from him by Pialago. While he said that Laoglaog was also armed, Compacion cannot be believed on this particular score, because he was clearly lying when he pointed to Laoglaog as one of the three who went up the house, for the evidence shows convincingly that it was he (Compacion) and his brother-in-law, Pialago, whom he tried to exculpate, who went up the house and killed and wounded the adult inmates. The Solicitor General himself appears not unyielding in supporting the finding of the court a quo as to the existence of "band," although he is correct in saying that even assuming that the crime was not committed by a band, the imposition of the death penalty would still be proper, considering the presence of other aggravating circumstances as previously indicated, without any mitigating circumstance to offset them.

FOR ALL THE FOREGOING, the Court is constrained to affirm the judgment of conviction and finds no reason to disturb the penalty of death as imposed by the court a quo. Costs against appellants.

SO ORDERED.

Teehankee, Acting C.J., Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., on leave.

Santos and Abad Santos, JJ., took no part.

[1] *People v. Español*, 51 OG # 4-6 2423-2425; *People v. Gonzales*, 76 Phil. 473-479; *People v. Borbano*, 76 Phil. 702-707.

[2] Page 51, t.s.n.

[3] Pages 32-33, t.s.n.

[4] Pages 34-35, 156, t.s.n.

[5] Pages 12-13, Folder of Exhibits.

[6] Pages 28-32, 46-47, t.s.n.

[7] *People v. Artieda*, L-38725, May 15, 1979; *People v. Barut*, L-42666, March 13, 1979; *People v. Moises*, 66 SCRA 151--161; *People v. Tizon*, 66 SCRA 372-379.

[8] Exhibits J, J-1, pp. 12-13; Exhibits I, I-1, pp. 10-11; Exhibits H, pp. 8-9, Folder of Exhibits.

[9] *People v. Magsilang*, 82 Phil. 271, 274-275; *People v. Alcantara*, 21 SCRA 906, 912.

[10] Appellee's Brief, pp. 13-14.

[11] Pages 14-15, Appellee's Brief.

[12] *People v. Mangulabnan, et. al.*, 99 Phil. 992, 998; *People v. Rodolfo Cabiling & Roberto Lopez*, 74 SCRA 285; *People v. Mitra*, 108 Phil. 788, 799.

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