

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
POLICARPO TUMALIP ALIAS CARPO, ANGELITO BOSQUE ALIAS
HELING, PEDRO FULLANTE ALIAS PEDRING, AND ANTONIO
BUENAVISTA, (AT LAR...**

G.R. No. L-28451. October 28, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the judgment of the Court of First Instance of Abra in Criminal Case No. 337 sentencing appellants Policarpo Tumulip alias Carpo, Angelito Bosque alias Heling, alias Hilario Bosque, and Pedro Fullante alias Pedring, to suffer each, triple life imprisonment, for the murder of Ambrocio Tierra, Felino Callejo and Antenidoro Callejo, an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen, (14) years and eight (8) months of reclusion temporal, as maximum, for the frustrated murder committed on Abdon Callejo, and an indeterminate penalty ranging from two (2) years and four (4) months of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, for the attempted murder of Pedro Callejo, to indemnify, jointly and severally, each of the heirs of Ambrocio Tierra, Felino Callejo and Antenidoro Callejo in the amount of six thousand pesos (P6,000.00) without subsidiary imprisonment in case of insolvency and to pay the costs.

I

The record discloses the following facts:

At about eight o'clock in the morning of September 10, 1961, the brothers Antenidoro, Felino, Abdon, and Pedro, all surnamed Callejo, of Barrio Libtec, Dolores, Abra, left their barrio to buy rice and other household necessities, in the town of Lagangilang, the day being Sunday and a market day in the latter municipality. After walking about seven (7) kilometers they arrived in Lagangilang at about ten o'clock that same morning. In the market place of Lagangilang, the Callejo brothers met Antonio Buenavista, together with appellants Policarpo Tumulip and Angelito Bosque. Buenavista inquired from Antenidoro Callejo if it was true that he was the paramour of Segundina Barcena, wife of Pedro Fullante. Antenidoro denied this accusation explaining that such imputation had already been cleared up at a meeting in the house of barrio lieutenant Federico Buenavista of Talugtog, Dolores, Abra. Buenavista, however, insisted saying, "You still deny fool?" to which Antenidoro answered: "No, Manong." Appellants Bosque and Tumulip then intervened, saying: "We better give them." The four Callejo brothers then retreated to the store of Julian Atmosfera, but the three followed them. Antonio Buenavista thereupon challenged them to make a move if they were men, but Abdon Callejo replied that they had no intention of picking up a quarrel. Abdon declared that he heard Tumulip and Bosque say, "We better fetch now Pedro Fullante," then the three (Buenavista, Tumulip and Bosque) went away.

Apprehensive because of the threatening attitude of the three men, the Callejo brothers, instead of walking home,

decided to take a bus to Talugtog on their way to their barrio. It was already between three to four o'clock in the afternoon when they got off at Talugtog. As they were walking towards Barrio Libtec, they spotted the three appellants and Antonio Buenavista several meters ahead of them on the trail. Antonio Buenavista was carrying a carbine, while Policarpo Tumulip, Angelito Bosque and Pedro Fullante were each armed with a bolo. Fearful for their lives, the Callejo brothers instead of proceeding towards their home, sought refuge in the house of Ambrocio Tierra, a member of the barrio council of Talugtog. The three appellants and Antonio Buenavista, however, saw and followed them. It was while the Callejo brothers were in the house of Tierra that Antonio Buenavista, who stationed himself from an elevated position near a bamboo grove northeast of the house, fired at the house with his carbine. The initial burst of gunfire was followed after some interval by successive shots from the carbine. Instantly killed by the ensuing fusillade were Ambrocio Tierra, Antenidoro Callejo and Felino Callejo. Felino Callejo's body was found sprawled on top of the landing where the ladder leading to the house was situated. The body of Antenidoro Callejo was lying on the southern portion of the house, in the ante-sala, while that of Ambrocio Tierra was in the middle of the sala. Abdon Callejo was also hit but managed to crawl to the main part of the house. Pedro Callejo was able to escape unscathed and succeeded in reaching the municipal building of Dolores where he reported the shooting to the police authorities. According to Abdon, after he heard the first gun report, he saw Antonio Buenavista, firing at them from a bamboo grove northeast of the house, with Tumulip, Bosque and Fullante crouching at his side. Six (6) empty carbine shells were later found by the police authorities in front of the bamboo grove, twenty-eight (28) meters northeast of the house of Ambrocio Tierra.

Abdon Callejo also declared that after the shooting, appellants Policarpo Tumulip, Angelito Bosque and Pedro Fullante, armed with bolos, ascended the ladder of the house and upon seeing the prostrate forms of the victims, Pedro was heard to remark, "They are all dead." After those words were uttered, Antonio Buenavista called for them and thereafter the four men left the premises. According to Abdon Callejo, he escaped further harm by feigning to be dead when the three appellants went up the house.

Among those who arrived at the scene of the incident and who give succor to the wounded Abdon were Venancio Atmosfera and Lino Talingden. It was they who brought Abdon to the hospital aboard a Philippine Rabbit Bus.

At the hospital, a constabulary soldier investigated Abdon Callejo about the shooting. Due to the seriousness of his wounds it was at first thought that his declaration that evening would be his ante-mortem statement (Exhibit "F"). The statement of Pedro Callejo (Exhibit "1") was also taken by PC Sgt. Eduardo Malangen the day following the commission of the crime.

According to the autopsy conducted on the bodies of the deceased Ambrocio Tierra, Antenidoro Callejo and Felino Callejo, the three died as a result of gunshot wounds, severe hemorrhage and traumatic shock (Exhibits "C", "H", and "A", respectively). Abdon Callejo, as a result of his gunshot wounds, was hospitalized for fourteen (14) days (Exhibit "D"). Dr. Jose M. Buhain, resident physician at the Abra Provincial Hospital, declared that if he had not been brought to the hospital soon enough, he would also have died from loss of blood as well as possible infection and tetanus.

II

The killing of the three victims, Antenidoro Callejo, Felino Callejo, and Ambrocio Tierra, as well as the wounding of Abdon Callejo, as a result of the shots fired by Antonio Buenavista, who is at large, is not disputed. At issue is the criminal participation of the three appellants, it being the claim of appellants Bosque and Tumulip that they were innocent bystanders during the shooting, while appellant Fullante insists that he was not present at the scene of the incident.

According to appellants Tumulip and Bosque, they could not have been with Buenavista at the time he accused

Antenidoro of being the paramour of Fullante's wife at Lagangilang, as, on that morning of September 10, 1961, they were grazing their carabaos north of the barrio of Piedad, in Dolores, Abra. At about noon, they tied their animals and went home for lunch and had a short nap. Later, at about two o'clock in the afternoon, they went to the place where their animals were tied and it was on that occasion when Antonio Buenavista, who was in fatigue uniform and armed with a gun, invited them to join him in a picnic of goat's meat in the house of Ambrocio Tierra. On the way to the place; Buenavista told them to ascertain whether their companions were already in Tierra's house. Bosque and Tumulip went ahead and upon seeing some persons in the house; informed Buenavista of the presence of persons in Tierra's place. All of a sudden, Buenavista fired his gun towards the direction of the house of Ambrocio Tierra. Bosque and Tumulip claiming that they were afraid, ran home and reported the matter to their parents. Both denied having entered the house of Ambrocio Tierra after the shooting. Appellant Pedro Fullante likewise denied having been in Lagangilang on the morning of September 10, 1961 and in having participated in the killing of the victims. Fullante declared that at about four o'clock in the afternoon of September 10, 1961, while he was working in his farm in Talugtug, Dolores, Abra, he saw Antonio Buenavista pass by armed with a carbine. A few hours thereafter, he heard gun detonations. He went home hours his mother where the shooting occurred. His mother told that it was his duty as a barrio sub-lieutenant to investigate. Consequently, he proceeded to the house of Ambrocio Tierra where he saw the bodies of Antenidoro Callejo, Felino Callejo, and Ambrocio Tierra. Upon noticing that Abdon Callejo was wounded, he brought him aboard a Philippine Rabbit Bus to the hospital at Bangued. He impugned his extra-judicial statement before the police authorities (Exhibit "1-Fullante"), claiming that the same was executed as a consequence of the maltreatment inflicted upon him by Police Chief Claudio Castillo of Dolores, Abra.

Florendo Pilotin, testifying for the defense, declared that it was Antonio Buenavista who had a heated argument with Felino and Teodoro (Antenidoro) Callejo about politics near the crossing south of the house of one, Jesus Villamor, in Lagangilang. The discussion became so heated that one, Julian Atmosfera, allegedly had to pacify them.

Irineo Balonzo and Justina Balonzo, wife of the deceased Ambrocio Tierra, also testified for the defense. Irineo Balonzo, who is also known as Arsenio Balonzo, testified that he was inside the house of Ambrocio Tierra between the hours of three and four o'clock in the afternoon of September 10, 1961 when the Callejo brothers arrived; that "Doro" Callejo and "Lino" Callejo informed Tierra that while they were on their way to Libtec, they saw some persons trying to ambush them, consequently they came to him to borrow his gun, but Tierra said he had none; that Felino Callejo sat at the topmost rung of the ladder while Antenidoro, Abdon, and Pedro Callejo remained downstairs; that all of a sudden, he heard gun reports, and he lay immediately on the floor with the child he was then holding; that "Doro" Callejo, "Lino" Callejo and Ambrocio Tierra were immediately killed, while Abdon was still able to enter the house; and that after the firing had subsided, several persons arrived, one of whom was appellant Pedro Fullante, who was sent to get a ride to bring the wounded to the hospital. This witness, however, admitted that he never related immediately the incident to the police authorities as he was in a temporary state of shock. It was only on September 25, 1961 when he was able to give a statement to the Assistant Provincial Fiscal on the matter. Justina Balonzo also testified that she heard gun reports but she did not notice where they came from. She denied, however, that the three appellants came up the house to verify if the victims were already dead. She said that Fullante only arrived after the shooting to help the wounded. On cross-examination she admitted that after the death of her husband she abandoned her conjugal home to live without benefit of marriage with Celedonio Aldaca in Manila.

Abdon Callejo, on rebuttal, denied that Pedro Fullante was among those who brought him to the hospital, claiming that those who took him there were Domingo Atmosfera, Aning Alcantara and his brother, Pedro Callejo.

III

The incident at Lagangilang on Sunday morning, September 10, 1961 when Antonio Buenavista, in the presence of appellants Tumulip and Bosque, accused Antenidoro Callejo of being a paramour of his niece, Segundina Barcena, appears to be sufficiently established by the evidence. Appellants in their attempt to impugn Pedro Callejo's credibility contend that in Pedro's sworn statement of September 11, 1961, before Sgt. Eduardo Malangen of the Constabulary (Exhibit"1 Bosque & Tumulip) he only mentioned the names of Antonio Buenavista and Pedro Fullante as the two who had a verbal altercation with the Callejos in the morning of September 10, 1961. It is noteworthy, though, that Pedro Callejo was referring only to the identity of the persons who accused Antenidoro, and not to the identity of all the persons present at the time when Buenavista confronted Antenidoro. Such statement does not therefore inveigh against the fact that Tumulip and Bosque were also present during that incident. The testimony of Jesus Villamor that he saw only Antonio Buenavista quarrelling with one of the Callejo brothers near the market at Lagangilang that Sunday morning, certainly does not entirely exclude the possibility that appellants Tumulip and Bosque were also present. For Villamor himself admitted that while Buenavista was quarrelling with one of the Callejo brothers, "there were many people roaming around them" as it was market day. It is true that there is an apparent inconsistency between the testimony of Pedro Callejo and that of his brother Abdon on the presence of appellant Pedro Fullante during that quarrel. For while Pedro Callejo testified that Fullante was present and even accused his brother, Antenidoro, of telling a lie when the latter denied the imputation, his brother, Abdon Callejo, on the other hand, made no mention of appellant Fullante's presence. This variance in their testimonies is of no moment, considering that there were many people near Buenavista when he unleashed his verbal tirade at Antenidoro, and it is probable that Abdon might have failed to notice the presence of Pedro Fullante. Rather than detract from their credibility, such variance on a minor detail may be considered as a badge of veracity, considering that witnesses react differently on what they see and hear depending upon their situation and state of mind.[1] Both Pedro Callejo and Abdon Callejo were, however, positive that Antonio Buenavista, who was then armed with a carbine, and the three appellants, who were all armed with bolos, were waiting for them at about four o'clock in the afternoon of September 10, 1961 when they were walking towards Barrio Libtec; that realizing the danger to their lives if they continued on their way, the four brothers sought refuge in the house of Ambrocio Tierra, a member of the barrio council of Talugtog; that the four men still followed them; that appellants Tumulip and Bosque even tried to verify their presence in the house of Tierra and it was only after they were certain that the Callejos were there that Antonio Buenavista fired his automatic carbine towards the house of Tierra; that while Buenavista was firing his gun, the three appellants – Tumulip, Bosque and Fullante – were crouching by his side. According to Abdon Callejo, after he was wounded he crawled to the interior of the house and it was at that juncture when appellants Tumulip, Bosque and Fullante with drawn bolos went up the house, and upon reaching the stairs Pedro Fullante remarked: "They are all dead," then he heard Antonio Buenavista call for them: "You come down already." After that they left the premises.

There are other circumstances which strongly indicate the spontaneity of the identification of appellants by these witnesses: (1) A few hours after he was shot and suffering from the agony of his injuries, Abdon Callejo positively identified Antonio Buenavista, Policarpo Tumulip and another one from "the same barrio of Policarpo Tumulip," as the group that fired at them.

"Q -

Who were they who shot you?

A -

They are Antonio Buenavista, Policarpo Tumulip and another one, I don't know his name who is from the same barrio of Policarpo Tumulip." [1-a] (Exhibit "F")

This statement, although not an ante-mortem declaration, may, however, be considered as part of the res gestae, for it was made almost immediately after the startling occurrence. (2) Pedro Callejo, as early as September 12, 1961, declared under oath before the Justice of the Peace of Dolores, Abra, on the fact that Antonio Buenavista and the three appellants – Tumulip, Bosque and Fullante – were the ones responsible for the attack made upon his brothers and Ambrocio Tierra on the afternoon of September 10, 1961.

"Q -

What place did they stay to shoot you if you know?

A-

On the northeast of the house of Ambrocio Tierra, sir.

Q-

Who shot you?

A-

Antonio Buenavista, stood near the bamboo grove in a position with his carbine aimed at us, then he shot us followed with a volley of gun fire, and Policarpo Tumulip, Pedro Fullante and Angelito Bosque stayed near him, Pedro Fullante on the right side, and Policarpo Tumulip on his left side, also Angelito Bosque sat behind him.

Q-

Where were your brothers, Abdon, Felino, Antenidoro, Ambrocio Tierra and also you when there was gun fire and the sound of gun fire coming from the place where Antonio Buenavista was?

A-

Felino Callejo was sitting on the stair of the house, Antenidoro Callejo was standing near the stair facing my elder brother Felino toward the south, my younger brother Abdon was also standing facing Felino, Ambrocio Tierra was then making eyeglasses for fishing, at the door of their house and myself was facing a bamboo grove where these people who shot us stayed at the east side of the house where we stayed.

Q-

What happened after the sound of gun fire, if any?

A-

I saw my elder brother Felino, lying near the stair, and my elder brother Antenidoro went up the stair, fell and lie down on the bangsal (anteroom) of the house, Ambrocio Tierra went inside the house, Abdon was bent to the ground near the stair and then went tip inside the house, and when I have seen my brothers lying down, I lie down myself on my belly near the house, and when there is no more sound of gun fire, I ran coming to this Municipal

Building of Dolores, Abra, and I reported all that happened to us.

X X X X X X X X

Q-

Do you know what is the cause why Antonio Buenavista, Policarpo Tumulip, Pedro Fullante and Angelito Bosque shot you?

A-

They accused my brother Antenidoro Callejo, to be the paramour of Segundina, the wife of Pedro Fullante, the reason why they shot us." (Exhibit "1-Bosque & Tumulip")

The early identification of appellants by the prosecution witnesses as the companions of Antonio Buenavista in perpetrating these heinous offenses, which identification led to their prompt arrest, bespeaks of their spontaneity and veracity.[2]

In the face of the positive and convincing identification of appellants as those who participated in the commission of the crimes in the case at bar, their denial and alibi are worthless. For one thing, appellants Tumulip and Bosque admitted their presence at the scene of the shooting, although they claimed that they joined Buenavista unaware his criminal intention. This claim is unworthy of credence. It is rather highly improbable that they would have joined Buenavista, knowing that he was armed with an automatic carbine, without even asking him why he was armed, considering that they were allegedly going to a picnic. Besides, why should Buenavista bring the two appellants with him to the place where he was going to commit a crime unless the two had a previous understanding with him on the matter. Obviously, Buenavista did not bring the two appellants just to enable the latter to witness his criminal act. As regards appellant Pedro R. Fullante, his denial on the witness stand on his participation is contradicted by his admissions contained in his sworn statement on September 11, 1961 before the Justice of the Peace of Dolores, Abra. In that statement, he admitted that he was with appellants Bosque and Tumulip, together with Antonio Buenavista, when the latter shot the victims.

"Q -

Why are you here now in the Municipal Building, in the office of the Chief of Police of Dolores, Abra?

A-

I have come to give a statement of the truth of what I have witnessed in the shooting of Ambrocio Tierra, Teodoro Callejo, Felino Callejo and Abdon Callejo by Antonio Buenavista, Policarpo Tumulip and Angelito Bosque in the house of Ambrocio Tierra in Barrio Talugtog, Dolores, Abra, yesterday September 10, 1961.

Q-

Give all what you know how Teodoro Callejo, Ambrocio Tierra, Felino Callejo and Abdon Callejo were shot?

A-

At around the hour of 2:30 o'clock in the afternoon of September 10, 1961, I was near my ricefield grazing my carabao, not very long, Policarpo Tumulip, Angeling Bosque, Antonio Buenavista approached where I was, and Policarpo Tumulip said: "We, were almost killed by Teodoro Callejo," and Antonio, also said, 'Doro, is there', and what I answered, 'They are not there uncle,' (Tata) and he again said, 'Are you telling a lie,' and he immediately

followed with a statement, 'You follow us and see them.' That way I followed them as far as near the place east of our house, and Antonio Buenavista, sent Angeling Bosque, and Policarpo Tumulip to see and verify where is Teodoro Callejo, and not very long Angeling Bosque and Policarpo Tumulip returned to where we were and informed us that they were near the house of Ambrosio Tierra, and Antonio Buenavista, who is armed with a carbine at once told me, "Let's go Angeling, Carpo, to shoot them, and you Pedring, you stay in a place not far from me, you see if there are people there, because, I was afraid I obeyed what he asked me to do and if I do not follow, he will shoot me.

Q-

What did Antonio Buenavista, Angeling Busque and Policarpo Tumulip do?

A-

Antonio Buenavista stood up and shoot Felino Callejo, who was sitting in the place of the stair and the anteroom (bangsal) was the place were his other brothers were when the sound of a rapid fire came from the gun held by Antonio Buenavista, and after the shooting they ran away to the east, I also went away to see my cow and carabao at the place where I left them to graze.

Q-

Where did Antonio Buenavista place himself to shoot Teodoro Callejo, Felino Callejo, Ambrosio Tierra and Abdon Callejo and what is their relative position at the time they were shot?

A-

On the northeast of the house of Ambrosio Tierra, and north of my house.

Q-

How many meters away is Antonio Buenavista, in shooting Teodoro Callejo, Felino Callejo, Ambrosio Tierra and Abdon Callejo?

A-

More or less twenty (20) meters, sir.

x x x x x x x x

Q-

Are you related to Antonio Buenavista?

A-

I am not related to him, but he is the uncle of my wife Segundina Barcena.

Q-

Are you holding any position in your barrio, if any?

A-

2nd Barrio lieutenant of Barrio Talugtug, Dolores, Abra.

Q-

You stated that you followed, what is also your weapon?

A-

I am not armed, sir.

Q-

What is your participation, if any?

A-

I did not do anything against those who were killed, and that now, I have come to give a statement of the truth of what I have witnessed these three, namely: Antonio Buenavista, Angeling Bosque and Policarpo did."

x x x x x x x x

(Exhibit "1-Fullante").

It is true that appellant Fullante later repudiated said extra-judicial statement (Exhibit "1-Fullante") by claiming that he was maltreated by the Chief of Police of Dolores, Abra, and that he signed the same after Sgt. Eduardo Malangen held his head and bumped it to the table saying "You sign that now and nothing will happen to you." It should be noted, however, that Fullante never complained about his alleged maltreatment to the Municipal Judge when he confirmed under oath the veracity of said declaration. Apart from this, as observed by the trial court, the signature of said appellant appearing in Exhibit "1-Fullante" was written with a firm and steady hand, which, otherwise, would not have been the case if the person affixing his signature thereon were nervous and under emotional stress as a result of any maltreatment. But what is more significant is the fact that the extra-judicial statement contains exculpatory facts tending to show that Pedro Fullante was a mere innocent bystander. Certainly, if they were not the voluntary statement of said appellant but a concoction of the police authorities, it is quite incredible that the latter would be more interested in exculpating the declarant rather than in proving clearly his criminal complicity. According to appellant Fullante, he was arrested by the Chief of Police of Dolores and P.C. Sgt. Eduardo Malangen at about sunset, just a few hours after the slaying of the three victims. This circumstance shows that Fullante was immediately identified as one of the perpetrators of the offense by the witnesses.

Appellants place much reliance on the testimony of Irineo Balonzo and Justina Balonzo, that said witnesses did not see appellants enter the house of Ambrocio Tierra immediately after the shooting for the purpose of verifying whether or not the victims were already dead. It must be noted that the aforesaid declaration of Irineo Balonzo is inconsistent with his sworn statement before Special Counsel Montero of the Provincial Fiscal's Office of Abra, dated September 25, 1968 (Exhibits "G" to "G-1"), wherein he stated, inter alia, that when the Callejo brothers were about to leave, he heard successive gun reports coming from northeast of the house; that Doro and Ambrocio Tierra shouted "We are dying!"; that immediately he lay down on the floor face downward; that after the firing stopped, he raised his head to see whether anyone was hit, and he saw Felino lying prostrate, Doro was lying sidewise and so with Ambrocio Tierra; while Abdon Callejo entered to seek refuge inside the house and lay down

on the eastern corner of the house; that since there was no noise from Felino Callejo, Antenidoro Callejo and Ambrocio Tierra, he went to see what happened to them, and saw them already dead; that not long after he saw Pedro Fullante, Policarpo Tumulip and Angelito Bosque approaching, followed by Antonio Buenavista, who remarked that they will kill the victims if they were not yet dead; that Policarpo, Pedro and Angelito were armed with bolos and went near the victims; that he heard Antonio Buenavista and Pedro Fullante saying "Stab those victims who are still alive". It is true that Irineo Balonzo tried to deny the execution of this sworn statement, but his evasive, ambiguous and even uncertain answers to the questions of the prosecuting fiscal and by the court regarding the aforesaid statement only served to underscore the complete unreliability of his denial. As to Justina Balonzo, it must be recalled that on the date she testified for the defense on July 31, 1967, she was already living, without benefit of marriage, with another man. While she claims that she did not see Pedro Fullante enter their house together with Bosque and Tumulip immediately after the shooting, for conduct during the investigations shows that such a claim is devoid of spontaneity and sincerity. As the trial court observed, if what Justina Balonzo said in court regarding the incident were true, she could have presented herself without delay before the police authorities, the Provincial Fiscal, or the Municipal Judge of Dolores, Abra, after knowing that appellant Pedro Fullante was already arrested and detained for the death of her husband, and not wait for more than five years and after the defense counsel, Atty. Jeremiah Zapata, had approached her to tell this story. It is very evident that such a claim is a mere afterthought, for if it were true that she was an eyewitness of the incident, her statement would certainly have been taken by the police at the time they were investigating the case. As admitted by her, however, she was not even questioned by the police. The trial court was therefore justified in not giving much weight and credence to the testimonies of these witnesses.

IV

The next question that confronts the Court is whether or not conspiracy among the accused existed. It is evident that only Pedro Fullante and Antonio Buenavista had strong motives to go after Antenidoro Callejo. Pedro Fullante, as husband of Segundina Barcena, was naturally infuriated over the report that his wife was the paramour of Antenidoro Callejo. It is highly probable that to avenge such a dishonor, he must have prevailed upon Antonio Buenavista, uncle of Segundina, to assist him in the elimination of Antenidoro. This is shown by the fact that after the verbal altercation that Sunday morning between Buenavista and Antenidoro Callejo, Buenavista was seen later in the afternoon already armed with an automatic carbine, while Pedro Fullante was with him also armed with a bolo, the two and their companions apparently waiting for Antenidoro and his brothers.

In *People vs. Madera*,^[3] citing *People vs. Custodio*, We said: "It is well to recall the settled rule that conspiracy presupposes the existence of a preconceived plan or agreement and in order to establish the existence of such a circumstance, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated. There must be established a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design. Considering the far-reaching consequences of criminal conspiracy, the same degree of proof required for establishing the crime is required to support a finding of its presence that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself."

In *People vs. Peralta*,^[4] We declared that to hold appellants "guilty as co-principal by reason of conspiracy, it must be established that he performed an overt act in furtherance of the conspiracy either by actively participating in the commission of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy." In the case of appellants Tumulip and Bosque, there is no evidence that they had any personal enmity or grudge against the intended victim. Their participation in the criminal act appears to be limited

to being present in the premises while their companions had a verbal altercation with Antenidoro, and later in the afternoon when Buenavista fired at the victims. We have previously held that where the acts of the co-defendants who, other than being present, and perhaps, giving moral support to the principal accused, cannot be said to constitute a direct participation in the acts of execution and their presence and company was not necessary and essential to the perpetration of the murder in question, such co-defendants may only be considered guilty as accomplices. (People vs. Tamayo, 44 Phil., 38; People vs. Bantogan, 54 Phil., 834).[5]

As to the nature and gravity of the multiple crimes committed, the trial court was correct in considering evident premeditation as qualifying the killing of Antenidoro Callejo as murder. The killing of Felino and Ambrocio Tierra, and the wounding of Abdon Callejo, were apparently thought of on the spur of the moment, after the Callejo brothers went to the house of Tierra. This Court in previous cases had laid down as a rule that the circumstance of evident premeditation must be evident and not merely suspected by which is meant "a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to harken to its warnings." [5-a] The attack, however, on all the victims was treacherous because it was done with a deadly weapon and was sudden and unexpected. Treachery, therefore, qualified the killing of Felino Callejo and Ambrocio Tierra as two separate crimes of murder, and the infliction of physical injuries on Abdon Callejo as frustrated murder.

In view of the absence of any evidence showing that the accused Antonio Buenavista or the appellants intended to kill Pedro Callejo and performed overt acts directly designed to realize that intention, We cannot hold appellants guilty of the crime of attempted murder. We, therefore, reverse the judgment insofar as it finds them guilty of the said offense. As appellant Pedro Fullante is liable as a co-principal for all the crimes committed in furtherance of the conspiracy, irrespective of the degree of his actual participation, We, therefore, affirm the judgment of the court *quo insofar as the penalties imposed on said appellant is concerned*, except that the civil indemnity in favor of each of the heirs of the deceased Ambrocio Tierra, Felino Callejo and Antenidoro Callejo should be increased to P12,000.00 instead of P6,000.00.

Appellants Tumulip and Bosque, as accomplices in the three (3) crimes of murder and that of frustrated murder should, pursuant to Articles 52 and 54 of the Revised Penal Code, be sentenced to suffer a penalty next lower in degree than that prescribed by law for each of the crimes of murder and the frustrated murder.[6]

We, therefore, modify the judgment, with respect to appellants Policarpo Tumulip and Angelito Bosque, by sentencing each of them to suffer a triple indeterminate penalty, ranging from SIX (6) YEARS and EIGHT (8) MONTHS of prision mayor in its minimum period, as minimum, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of reclusion temporal in its minimum, as maximum, for each of the crimes of murder, and, in addition, each of them to suffer an indeterminate penalty ranging from TWO (2) YEARS and ELEVEN (11) MONTHS of prision correccional, as minimum, to SIX (6) YEARS and SEVEN (7) MONTHS of prision mayor, as maximum, for the crime of frustrated murder. With respect to the civil liability, by apportioning the indemnity of P12,000.00 each of the heirs of the three deceased aforementioned, or a total of P36,000.00 as follows: (1) the principal, Pedro Fullante, shall be liable primarily for P18,000.00; and (2) the two accomplices, Policarpo Tumulip and Angelito Bosque, shall be liable, jointly and severally (in solidum) for P18,000.00. The subsidiary liability of all of them shall be enforced in accordance with the provisions of Article 110 of the Revised Penal Code.[7]

WHEREFORE, with the aforementioned modifications, the appealed judgment is hereby affirmed.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] People vs. Pascual, G.R. No. L-4801, June 30, 1953; People vs. Mones, G.R. No. L- 2029, May 6, 1950.

[1-a]Appellant Angelico Bosque is from the same barrio as that of Policarpo Tumulip.

[2] People vs. Corpus, 107 Phil., 48.

[3] 57 SCRA 349.

[4] 25 SCRA 759, 777.

[5] People vs. Ubina, 97 Phil., 515, 533, 534.

[5-a]People vs. Yturriaga, 86 Phil., 534.

[6] Article 110 of the Revised Penal Code provides that "Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable. The subsidiary liability shall be enforced, first against the property of the principals; next, against that of the accomplices, and, lastly, against that of the accessories. Whenever the liability (in solidum) or the subsidiary liability has been enforced, the person by whom payment has been made shall have a right of action against the others for the amount of their respective shares." (See also People vs. Bantagon, 54 Phil. 834; People vs. Cortes, 55 Phil. 143; Lumiguís vs. People, No. L-20338, April 27, 1967, 19 SCRA 842.)

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