

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LIVI LIWANAG Y AGUILAR AND ARIEL TRAVICILLA Y ALVA, ACCUSED. CESAR AGUILAR Y CERVANTES, ACCUSED-APPELLANT.

CR-HC No. 03250, March 22, 2010

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Court of Appeals

The Case

On appeal[1] is the Judgment[2] of the Regional Trial Court ("RTC") of Gumaca, Quezon[3] rendered in Crim. Case No. 7202-G (MCTC-Atimonan-Plaridel) Crim. Case No. 01-4083 (P) entitled PEOPLE OF THE PHILIPPINES, Plaintiff, versus CESAR AGUILAR y CERVANTES, LIVI LIWANAG y AGUILAR and ARIEL TRAVICILLA y ALVA, disposing said case, viz.:

"WHEREFORE and IN VIEW OF ALL THE FOREGOING, the Court finds accused CESAR AGUILAR, LIVI LIWANAG, and ARIEL TRAVECILLA guilty beyond reasonable doubt of the crime of Murder defined and punished under Article 248 of the Revised Penal Code and hereby sentences each of (the) accused to suffer the penalty of Reclusion Perpetua. In addition, the three accused are ordered to pay solidarily the amount of Php50,000.00 as death indemnity; Php50,000.00 as moral damages and Php11,000.00 as actual damages to the heirs of victim Joseph Parua.

SO ORDERED.

Gumaca, Quezon, December 10, 2007."[4]

The Facts

Cesar Aguilar y Cervantes ("Aguilar"), Livi Liwanag y Aguilar ("Liwanag") and Ariel Travicilla y Alva ("Travicilla")[5] (all prisoners) were charged with the crime of Murder in an Information dated February 11, 2002, viz.

* * * * *

That on or about the 17th day of July 2001, at Barangay M.L. Tumagay, Municipality of Plaridel, Province of Quezon, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, armed with a shotgun (sumpak) and bladed weapons, conspiring and confederating together and mutually helping with (sic) one another, with intent to kill, with treachery and evident premeditation, and taking advantage of their superior strength, did then there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm and stab with the said bladed weapons one Joseph Parua, thereby inflicting upon the latter wounds and injuries on different part of his body, which directly caused his death.

CONTRARY TO LAW.

* * * * *"[6]

Prosecution witness Raquel R. Parua ("Raquel"), wife of the victim, testified that on July 17, 2001, at about 6:45

in the evening, while she and her child were inside the bedroom of their house, she heard Liwanag calling out to her husband, victim Joseph Parua ("Parua"), to go out of their house. She went out of the bedroom and proceeded to their kitchen where Parua was cooking. There she saw Liwanag, who was holding a knife, already inside their kitchen. Aguilar, who was holding a sumpak or shotgun next appeared. When Aguilar saw her, he told her, "Kunsintidor ka." She next noticed Travicilla entering the kitchen by passing through their window. Travicilla even kicked a kettle and then positioned himself behind her husband. Raquel heard her husband plead to Aguilar to give him one more night to return a gas tank. Parua then signaled her to go out, but before leaving the kitchen, she pleaded Aguilar not to kill her husband. As she walk backwards to the bedroom, she saw Aguilar shoot Parua with the sumpak. She then fetched her child from the bedroom and as she was about to go out their house, she saw Liwanag and Aguilar leaving the house. She peeped through a window and saw Travicilla stabbing Parua on the neck. She further testified that Liwanag and Aguilar are friends of Parua, while she came to know Travicilla whom she saw once with Liwanag. She does not know of any misunderstanding between her husband and Liwanag, but claims that prior to the incident, Aguilar and her husband had a misunderstanding about a gas tank which her husband borrowed from Aguilar's wife.

Prosecution witness Eric Buhay, a resident of Brgy. Tumagay, Plaridel, Quezon, testified that on that same night of July 17, 2001, when he was near the seashore of their barangay, he saw three accused going to the house of Parua. He claims that upon reaching the house, the three parted ways - two persons went through the door while the other one went through the window. He heard Parua telling Liwanag to get out of his house. Buhay saw Liwanag stab Parua but the latter was able to parry the blow. Aguilar then drew his sumpak (shotgun) and fired at Parua. Thereafter, Travicilla stabbed Parua in the neck. The three subsequently ran away in separate directions.

In his defense, appellant Aguilar interposed denial and alibi. He testified that Liwanag is her brother-in-law, while Travicilla is a barangay mate. He recalled that on July 17, 2001 at 6:45 PM, he was in their hut near the seashore in Brgy. Tumagay, Plaridel, Quezon having a drinking spree with Armando Balagtas and Melanio delos Reyes when he was suddenly arrested by the police.

Meanwhile, Liwanag admitted that he was in the house of Parua at the time of the incident. He and the deceased were allegedly talking about fishnets when he heard the deceased's wife, Raquel, talking with someone. Suddenly, he heard a gunshot and then saw Raquel shouting and running away. He realized that Parua had been shot and reported the matter to the police.

Travicilla testified that he knew Aguilar and admitted that Liwanag was his friend. On the day of the incident, he was at a store when Liwanag invited him to go to Parua's house. While he was urinating outside Parua's house, Liwanag went inside to talk with Parua. He then heard the two arguing, and he saw Parua punch Liwanag. When Liwanag fell, Parua kicked him. He went inside to pacify Parua but the latter kicked him in the chest. Travicilla then drew the pipe that Liwanag earlier handed to him, it turned out to be a sumpak or shotgun, so he warned Parua not to hurt him or else he will shoot. Travicilla claim that Parua got a knife and aimed it at him. This compelled him to point the sumpak at Parua. As Parua advanced towards him, the sumpak suddenly fired, thereby hitting Parua. Travicilla further testified that Aguilar had no participation in the incident. Claiming that he had no previous misunderstanding with the deceased, he contends that what happened was an accident.

When arraigned,[7] the three accused pleaded not guilty. By agreement of the parties, pre-trial was terminated on August 22, 2002, after which, trial on the merits ensued.

The Ruling of the Trial Court

The trial court found the three accused guilty of the crime of Murder, viz.:

"CONCLUSION/FINDINGS OF THE COURT:

Evidence adduced from the facts established as unraveled from the testimonies of Raquel Parua and Eric Buhay show that the accused Cesar Aguilar, Livi Liwanag and Ariel Travecilla acted in concert in attacking the victim Joseph Parua on July 17, 2001 at Barangay Tumagay, Plaridel, Quezon who was then cooking at the time in the kitchen. Raquel told the Court that Livi Liwanag called her husband to get out of their house and when he came out of the bedroom, she saw Livi Liwanag already in the kitchen holding a knife. Afterwards, Cesar Aguilar arrived carrying a shot gun called "sumpak" who forced her and called her "kunsitidor ka'. Thereafter, Ariel Travecilla arrived who she saw passed through the window. Her husband pleaded to Cesar to give him another night to return the gas tank. Her husband signaled her to go out. But before she went out, she also pleaded to Cesar for he might harm him. But before she entered the bedroom, she heard a gunshot after which she entered their bedroom to get her child, but when she was about to come out from their house, she saw Livi Liwanag and Cesar Aguilar going out of the kitchen when she peeped through the window she saw Ariel Travecilla on top of her husband and suddenly stabbed her husband on the neck. She likewise identified the accused in Court. * * *

* * * * *

Clearly from the foregoing, it points to Cesar Aguilar as the one who fired a gunshot to (sic) Joseph Parua, Ariel Travecilla stabbed the victim on the neck. Raquel stated that she did not notice any particular thing done by Livi Liwanag except that he called her husband twice to get out of their house.

Eric Buhay, another prosecution witness also gave an account on the killing incident as well as the participation of each of the accused in the killing of Joseph Parua. Thusly, she (sic) testified:

Q

Now, you said you have seen three (3) persons going to the house of Joseph Parua. What happened next?

A

When they were about to approach the house of Joseph Parua, they separated ways, Ma'm, two entered through the door and [the] other one entered through the window, Ma'am.

Q

After you have seen these three (3) persons gone on separate, what happened next?

A

I heard an altercation, they were noisy and have an altercation, Ma'am.

Q

Who were having an altercation which you said you have heard?

A

The first one was Livi Liwanag and Joseph Parua and told Joseph Parua to come out from their house, Ma'am.

Q

So what happened next?

A

He did not come out from his house but they forcibly entered the house, Ma'am.

Q

Who forcibly entered the house?

A

Livi Liwanag, Ma'am.

Q

Who else?

A

Cesar Aguilar, Ma'am.

Q

And who else?

A

Uga or Ariel Travicilla, Ma'am.

Q

Then when they entered the house, do you remember of any other things that took place?

A

Yes Ma'am.

Q

What happened?

A

First, Livi Liwanag withdrew a knife and he was forcibly stabbing Joseph Parua, Ma'am.

Q

And what happened when this Livi Liwanag was forcibly stabbing Joseph Parua?

A

He was able to ward off the stab blow and prevented Livi from hitting him, Ma'am.

Q

What did Cesar Aguilar do?

A

He drew a sumpak or gun and poked it towards Joseph and fired, Ma'am.

Q

In what place of the body was Joseph hit with the firing of the gun or sumpak of Cesar Aguilar?

A

On the left side of his body, Ma'am.

Q

Now, how about this Ariel Travicilla? Did you see what he do if he did anything?

A

There was, Ma'am.

Q

And what did he do?

A

He was the last person who hit Joseph Parua, Ma'am, he stabbed Joseph Parua on his neck for several times, the other two (2) had already gone out of the house.

Q

You said that this Ariel Travicilla had hit or had stabbed Joseph Parua on his neck. What happened afterwards? What happened to Joseph Parua?

A

Blood oozed from his neck, Ma'am.

Q

Now, after you have seen that blood had oozed from the neck of Joseph Parua, what happened next?

A

They left the house of Joseph Parua on separate ways, Ma'am. (TSN - December 12, 2002, pp. 4-5)

Prescinding from the foregoing testimony of Eric Buhay, it can be gleaned that his testimony dovetailed with the testimony of Raquel Parua on material points as to the participation of each of the accused. The only variance in their testimonies refers to the participation of Livi Liwanag. (sic) Both of them told the court that it was Livi Liwanag who called on Joseph Parua to get out of the house while Raquel Parua told the court that she did not notice the particular thing done by Livi Liwanag. The following testimony proves on this point:

Q

How about this Livi Liwanag? Have you seen what he did during that time that there was a firing of a gun?

A

I did not notice him, Ma'am.

(TSN - November 13, 2002, p. 7) On crossing examination, she further testified:

Q

What particular thing did you see Livi did to your husband?

A

I did not notice, sir.

(TSN - November 13, 2002, p. 22)

On the other hand, Eric Buhay told the Court that Livi Liwanag withdrew a knife and forcibly stabbed Joseph Parua but the latter was able to parry the blow and prevented Livi from hitting him. The following testimony of Eric Buhay proves on this point:

Q

Then when they entered the house, do you remember of any other things that took place?

A

Yes, Ma'am.

Q

What happened?

A

First, Livi Liwanag withdrew a knife and he was forcibly stabbing Joseph Parua, Ma'am.

Q

And what happened when this Livi Liwanag was forcibly stabbing Joseph Parua?

A

He was able to ward off the stab blow and prevented Livi from hitting him, Ma'am.

(TSN - December 12, 2002, pp. 4-5)

It is worthy to note that this variance is insignificant and does not affect the credibility of the two (2) said witnesses.

On this score, Court ruled: 'It is settled that minor inconsistencies and honest lapses strengthen rather than weaken their credibility. (People vs. Gomez, 251 SCRA 455 (1995) Moreover minor inconsistencies in the testimony of a witness maybe an indication of truthfulness. (People vs. Collantes, 208 SCRA 853 (1992)

Analyzing carefully the given account on the participation of each of the accused, it gives rise to the inference that there existed conspiracy among the three accused.

In the case of People vs. Robedilla, 286 SCRA 379 (1998), Court ruled: 'Conspiracy does not require a previous plan or agreement to commit assault. It is sufficient if at the time aggression (sic), all the accused manifested by their acts, a common intent or desire to attack.

Along the same breath, in the case of People vs. Versoza, 294 SCRA 466 (1998), it was held that conspiracy (sic), direct proof of a previous agreement to commit a crime is not necessary.

From the fact that all the three (3) accused are all armed, Livi Liwanag with a knife, Cesar Aguilar with a short gun and Ariel Travicilla with a knife (balisong) indicates that they were propelled by a community of design which is to kill a victim. Evidently, the all acted in unison in killing the victim. Necessarily, from the concerted action at the moment of consummating the crime and the form and manner each one of the accused participated in the commission of the crime until the victim fell down and eventually died, Court was led to the conclusion that there was indeed conspiracy among the three (3) accused in the commission of the crime.

Conspiracy having been established and proved, each one of the accused will be liable as principal.' Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of same unlawful purpose, conspiracy is evident and all the perpetrators will be liable as principals. (People vs. Galgo, 382 SCRA 288 (2002)

Furthermore, in the case of People vs. Obello, 284 SCRA 80 (1998), Court ruled: 'Where conspiracy has been established, it is unnecessary to pinpoint who among the accused inflicted the fatal blow. Neither it is necessary to show that conspirators actually killed the victim. (People vs. Galapin, 293 SCRA 474 (1998)

Further, in conspiracy, the act of one is the act of all (People vs. Narvasa, 298 SCRA 637 (1998))

Treachery as alleged in the information cannot be appreciated in the case at bar to qualify the killing to murder. The prosecution miserably failed to prove the presence of treachery in the killing of Joseph Parua by the three (3) accused.

For the qualifying circumstance of treachery to be considered, 'it must be clear that the accused has deliberately and consciously adopted the means of execution that render the person attacked with no opportunity to defend himself or to retaliate.' (People vs. Verchez, 233 SCRA 174 (1994)). 'Treachery cannot be presumed, but must be proved by clear and convincing evidence as conclusively as the killing itself. (People vs. Cedenio, 233 SCRA 356 (1994))

Truly, upon close study of the evidence on record, there was no substantial showing that the killing was done in a treacherous manner. In fact, prosecution witness Raquel Parua told the Court that her husband pleaded to Cesar Aguilar to give him one more night to return the gas tank. She herself likewise pleaded to Cesar Aguilar after she was told by the latter 'kunsintidor ka' because he might harm her husband. Eric Buhay testified that there was an altercation before the killing incident. First, it was Livi Liwanag with Joseph Parua, the former having asked to come out of his house. The three (3) accused forcibly entered his house. The following testimony of Eric Buhay proves on this point:

Q

After you have seen these three (3) persons gone on separate, what happened next?

A

I heard an altercation, they were noisy and have an altercation, Ma'am.

Q

Who were having an altercation which you said you have heard?

A

The first one was Livi Liwanag and Joseph Parua and told Joseph Parua to come out their house, Ma'am.

Q

So what happened next?

A

He did not come out from his house but they forcibly entered the house, Ma'am.

Q

Who forcibly entered the house?

A

Livi Liwanag, Ma'am.

Q

Who else?

A

Cesar Aguilar, Ma'am.

Q

And who else?

A

Uga or Ariel Travicilla, Ma'am.

(TSN - December 12, 2002, p. 4)

The fact that an altercation preceeded the killing of Joseph Parua was established in the testimony of Eric Buhay. Thus, he testified, further on cross-examination:

Q

Now, when the two, Livi Liwanag and Cesar Aguilar, were able to enter the house through the door, where was Joseph Parua, if you know?

A

He was inside the house at the kitchen, sir.

Q

Can you see Mr. Joseph Parua while you were in your place about one and one-half arm stretches away from the door? (sic)

A

Yes, sir.

Q

What was this Joseph Parua doing when he was inside the house?

A

While they have an argument (sic), Livi Liwanag was forcing to stab him (sic), sir.

Q

What was their argument considering that you are very near?

A

I do not know, sir.

Q

And why do you know that they were arguing?

A

I heard, sir.

Q

What were the words you heard?

A

I heard 'Papasukin mo ako' and other 'Kailan mo akong bayaran', sir.

Q

Who said 'Let me enter'?

A

Livi Liwanag, sir.

Q

And who asked 'When are you going to pay me'?

A

Livi Liwanag also, sir.

Q

And what was response of Mr. Joseph Parua if you heard?

A

'I will pay you. Give me another chance'.

(TSN - December 13, 2002, pp. 9-10)

As shown in the above-quoted testimony of Eric Buhay, an altercation ensued between Joseph Parua and the accused Livi Liwanag. Indisputably, there was absence of evidence of any treacherous attack as the killing was preceded by an altercation which led the court to reasonably assume that something out of the altercation between Joseph and the accused may have triggered or propelled the accused to attack the victim. The argument between the accused and the victim before the stabbing was sufficient warning to the victim that the situation would escalate into something more serious. Clearly then, the victim was forewarned of impending danger.' (People vs. Galapin, 293 SCRA477 (1998))

In the same vein, in the case of People vs. Ereño, 326 SCRA 157 (2000) There is no treachery when the killing results from a verbal altercation between the victim and the assailant such that the victim must have been forewarned of the impending danger. In this case, as verbal altercation had been duly established and proved before the killing, conclusion is therefore manifest that qualifying circumstance of treachery in this case was not established by convincing evidence. It bears stressing that treachery is not presumed. It has to be proved as convincingly as the killing itself.

On this score, Supreme Court ruled: A sudden attack by the assailant whether frontally or from behind is treachery does not apply where the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused. (People vs. Academia, Jr. 307 SCRA 229 (1999))

Abuse of superior strength can be appreciated in this case to qualify the killing to murder. To appreciate abuse of superior strength, there must be deliberate intent on part of malefactor to take advantage of their greater in number. They must have notoriously selected and made use of superior strength in the commission of the crime. (People vs. Lobrigas, 394 SCRA 180 (2002))

In the case at bar, there was clear indication that the accused purposely used their joint efforts to consummate the crime with the use of deadly weapon. Cesar Aguilar shot him with a 'sumpak'. Livi Liwanag called accused to come out of the house and likewise forcibly stabbed him (.) only (.) accused was able to ward the stab blows he delivered to Joseph and Ariel Travecilla stabbed him several times on the neck. With their combined efforts with use of deadly weapons death to Joseph was inevitable. From the given circumstances. It is thus clear that without the combined efforts of accused with use of deadly weapons, accused would have failed in killing Joseph Paula with abuse of superior strength having been established and proved the killing of Joseph Parua is qualified to Murder.

The information also alleged evident premeditation, an aggravating circumstance to qualify the killing to murder. However, scrutiny of the evidence adduced in this case shows that prosecution miserably failed to prove evident premeditation.

To prove evident premeditation, it must be shown that there was a period sufficient to afford full opportunity for meditation and reflection and a time adequate to allow the conscience of the actor to overcome the resolution of his will. (People vs. Alagon, 325 SCRA 315 (2000)) Stated differently, the essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. (People vs. Bautista, 278 SCRA 613 (1997)) Evident premeditation cannot be appreciated in as much as the following elements were not duly proven:

1.)

the time when offender determined to commit the crime;

2.)

an act manifestly indicating that offender had clung to his intention;

3.)

sufficient lapse of time between the intention and the execution to allow the offender to reflect on the consequences of his act. (People vs. Galan, 325 SCRA 502 (2000))

* * * * *

The prosecution failed to prove the aggravating circumstances of treachery and evident premeditation, but only abuse of superior strength. Hence, killing is qualified in this case by abuse of superior strength to murder.

* * * * *

To exculpate himself from culpability for the crime charged Cesar Aguilar proffered denial and alibi as his defenses. He denied having shot Joseph Parua on July 17, 2001. He averred that at about 6:45 of July 17, 2001 in the afternoon, he was in their hut near the seashore having a drinking spree with Armando Balagtas and Melanio delos Reyes which ended at 6:00 in the afternoon and was apprehended by police. He heard Raquel Parua testified in Court who pointed to him as the one who shot Joseph Parua on July 17, 2001. He stated he does not know of any reason why wife of the victim testified against him.

He admitted in court knowing Livi Liwanag for he is his brother-in-law. He knows Ariel Travecilla for he is a resident in their place. He knows also Eric Buhay for he is also a resident in their place at Brgy. Tumagay, but he does not know Raquel Parua.

Court is not convinced with his defenses. Court consider (sic) defenses of denial and alibi of Cesar Aguilar to be plain lies and all lies. His defenses of denial and alibi collapsed in the face of the positive identification of Raquel Parua that she saw him shot (sic) her husband. (TSN-November 13, 2002, p. 21) Eric Buhay testified he saw Cesar Aguilar drew his 'Sumpak' and fired at Joseph Parua hitting the left side of his body. (TSN-December 12, 2002, p. 5) Denial like alibi is among the weakest defenses as it can be easily fabricated and concocted. IT cannot prevail over the positive testimony of victim. (People vs. Villanueva, 394 SCRA 93 (2002) Alibi should also be rejected when the identity of the accused is sufficiently and positively identified by an eyewitness to the commission of the crime. As shown above, Raquel Parua and Eric Buhay were in unison in their testimony that they saw Cesar Aguilar shot Joseph Parua.

Defense of alibi of Cesar Aguilar has to be rejected for it was not shown that there was physical impossibility for Cesar Aguilar to be at the scene of the crime at the time of its commission. Their hut where he was having a drinking spree was also in the same barangay where the killing incident happened. The requisites of alibi to be believed are: (a.) presence of accused at another place at the time of perpetration of the offense and; b.) physical impossibility for him to be at the scene of the crime. (People vs. Pagsanjan, 394 SCRA 414 (2002). For alibi to be valid, it must be shown that it was physically impossible for the accused—appellant to have been present at the place of the crime at the time it was committed. (People vs. Saballe, 236 SCRA 365 (1994).

Ariel Travecilla has another version for his defense. He claimed he shot Joseph Parua accidentally. He had a different story to tell. He told the Court that on July 17, 2001 at about 6:45 in the afternoon, he was in a store in Brgy. Tumagay, Plaridel, Quezon resting and drinking softdrinks. When he left the store Livi Liwanag saw him and asked him to go with him. He went with him to Joseph Parua's place. They were walking when Livi Liwanag handed him a pipe, they continued walking until they reached Joseph place (sic). Livi Liwanag went upstairs and they talked which suddenly culminated into arguments. Suddenly, Joseph boxed Livi Liwanag who fell down and he was then kicked by Joseph Parua. At this juncture, Ariel went upstairs and pushed Joseph and told him to stop. Joseph reacted by kicking Ariel at his left chest. Ariel drew the pipe given by Livi Liwanag. He told Joseph that if he will hurt him he will shot him (sic). Joseph took a knife from a coco lumber used as a beam and aimed the same at him. He pointed the 'Sumpak' to Joseph and told him not to approach him but he continuously approached him and attempted to stab him so he moved backward and leaned on the wall and the firearm he was holding fired a shot and when he looked at Joseph, he was hit and fell down.

Joseph wanted to stand, but failed because Livi Liwanag held him and grabbed the weapon from him. Ariel further stated that it was not Livi Liwanag who called at Joseph. It was not true that Raquel saw Livi Liwanag inside their kitchen when she came out from the bedroom and that it was not true that Livi Liwanag was holding the knife. He said it was not also true that Cesar Aguilar went upstairs carrying a 'Sumpak' because Cesar Aguilar has no participation and it was he who accidentally shot Joseph Parua. He denied as true the claim of Raquel Parua that Ariel Travecilla passed through the window and kicked Joseph, but what is true is that he passed by the door carrying a 'Sumpak'. It is not Nowise true that the husband of Raquel pleaded to Cesar Aguilar to give him lime to return the gas tank.

Court is not persuaded by his defense of accidental shooting. It disbelieved his story that when he leaned on the wall, the firearm he was holding fired a shot and when he looked at Joseph, he was hit and he fell down. Wonder of all wonders, the firearm could not have fired by itself unless Ariel had pulled the trigger purposely to hit Joseph who was just near him. The right hand of Ariel Travecilla give positive result to presence of gun powder nitrate which according to PSI Zaide Abrera, Forensic Chemist means that the hands where paraffin cast were taken fired a gun within a period of more or less three (3) days. In this light, it clearly shows that Ariel indeed fired the gun which hit Joseph Parua.

Indeed the defense of accidental firing of the gun is incredible. Accident is an exempting circumstance under Article 12 of the Revised Penal Code. It must be stressed in raising this defense the accused has the burden of evidence. Hence, it was incumbent upon him to establish that he was exempt from criminal liability. He must show with clear and convincing proofs that: 1.) he was performing a lawful act with due care; 2.) the injury caused was by mere accident; 3.) he had no fault or intention of causing the injury. (People vs. Federico Genita, Jr. G.R. No. 126171, March 11, 2004; Sandoval-Gutierrez, J.

In this case, the requisites of accident mentioned above as exempting circumstance were not proven. More importantly, his defense of accidental firing was not corroborated by any single witness, a strong indication that it was fabricated.

If indeed it were true that it was an accidental firing, the number of wounds sustained by the victim negate the accidental firing of the gun. It is possible that the first wound sustained by the victim was by accident, but what about the other multiple stab wounds and multiple gunshot wounds suffered by the victim. It is indeed improbable that they are similarly inflicted.

Livi Liwanag also proffered denial as his defense to exonerate himself from culpability for the offense. He denied any participation in the killing of victim Joseph Parua as testified to by Eric Buhay. He denied that he called Joseph Parua to go out of their house and claimed that the truth was the victim allowed him to enter the house.

He also had another story to tell. He told the court he was talking with Joseph Parua at about 6:45 of July 17, 2001 concerning the fishnet when he suddenly heard Raquel, wife of Joseph talking with somebody and immediately thereafter he heard a loud 'bang' and he heard Raquel shouting and running. Joseph Parua was shot which he reported to SPO4 Danny Aquino.

Version of accused Livi Liwanag does not inspire belief. Incident happened in plain view of witness Eric Buhay and Raquel Parua. Eric Buhay testified he saw Livi Liwanag stabbing Joseph Parua who was able to ward off the stab and prevented Livi Liwanag from hitting him. (TSN - December 12, 2002, p. 5) Raquel Parua testified he saw Livi Liwanag in the kitchen holding a knife, but he had not seen what he did. (TSN -November 13, 2002, p. 7) Court finds no reason to discredit the testimonies of Eric Biihay and Raquel Parua. There is no showing that these witnesses have any ill motive to testify falsely against the accused. In the absence of proof that a witness is moved by improper motive, it is presumed that he was not so moved and therefore his testimony is entitled to full faith and credit. (People vs. Gonzales, 382 SCRA 694 (2002) although Raquel is related to victim being his wife does not affect her credibility. In the case of People vs. Callet, 382 SCR 43 (2002) it was held that 'Relationship may strengthen credibility, for it is unnatural for an aggrieved party to

falsely accuse someone other than the real culprit. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime. Along the same breath, Court ruled: 'Relationship does not necessarily give rise to presumption of bias or ulterior motive nor does it impair the credibility or tarnish the testimony (of) a witness - the natural intent of witnesses who are relatives of the victim in securing the conviction of the guilty party would prevent them from implicating persons other than the culprits. (People vs. Javier, 377 SCRA 300 (2002))

The fact that version of accused was not corroborated by any other witness renders the same not worthy of any weight. Hence, it collapses. It is well settled that denial, if unsubstantiated by clear and convincing evidence, is a negative self-serving assertion that deserves no weight in law.' (People vs. Baroy, 382 SCRA 56 b(2002) Denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. (People vs. Alagon, 325 SCRA 297 (2000) In this case, there is absence of evidence to prove the innocence of Livi Liwanag. Not to be missed is the positive result of the presence of powder nitrates on his right hand. The three (3) accused presented the different stories about the incident when they are supposed to have a common stand on the issue. Verily, the denial cannot prevail over the prosecution witnesses' positive testimonies. Truly, the presentation by accused of different versions of their defense gives rise to the presumption that their defenses are nothing but concoction (sic). 'The presentation by an accused of contradictory theories is a manifest indication that his defenses are nothing but concoctions.' (People vs. Amamangpang, 291 SCRA 639 (1998)

Finally, after the Court has carefully weighed and evaluated the evidence presented both by the prosecution and the defense, it has been led to the ineluctable conclusion that prosecution has overwhelmingly succeeded in having morally convinced the court to render a verdict of guilty for the three (3) accused Cesar Aguilar, Ariel Travecilla, and Livi Liwanag for having committed the crime of Murder.

Indeed, the prosecution in this case succeeded in its burden to overcome the presumption of innocence of the accused guaranteed by the constitution.

The penalty for murder is Reclusion Perpetua to Death.

Pursuant to Article 63 of the Revised Penal Code, if penalty prescribed by law is composed of two indivisible penalties, the lower penalty shall be imposed if neither mitigating nor aggravating circumstances are present in the commission of the crime.

In the case at bench, notwithstanding that the killing in this case was qualified by abuse of superior strength, in the absence of any other aggravating circumstance penalty imposed is Reclusion Perpetua.

* * * * *

Issue

On February 18, 2008, Cesar Aguilar y Cervantes appealed^[9] his conviction arguing that:

"The Lower Court erred in finding the accused Cesar Aguilar guilty of murder instead of Homicide only, by appreciating abuse of superior strength as the qualifying circumstance and in declaring the presence of conspiracy. "[10] (emphasis Ours).

Such is the issue in this case.

Our Ruling

The Information dated February 11, 2002 charged appellant Aguilar, along with two others, with the murder of Joseph Parua. It claimed that said killing was attended by conspiracy, treachery, evident premeditation and taking advantage of superior strength. The trial court that conspiracy was present and appreciated the qualifying

circumstance of abuse of superior strength and thus found the three accused guilty of murder.

Appellant Aguilar contends that conspiracy was not duly proven as there was no showing that the three accused acted in concert in killing the deceased.[11] He points out that there was no showing that he, Liwanag and Travicilla simultaneously entered the house of the victim. In fact, Liwanag was already inside the house when he arrived, while Travecilla followed a little later.[12]

The Court notes that here, conspiracy was alleged in the Information as a mode of increasing criminal liability. There is conspiracy when two or more persons agree to commit a crime and desire to commit.[13] Direct evidence is no required to prove conspiracy. It may be proved by circumstantial evidence.[14] For, what is important in conspiracy is that all participants performed specific acts with such cooperation and coordination bringing about the death of the victim.[15] When conspiracy is present, the act of one becomes the act of all.[16] In this case, Liwanag, Travicilla and accused-appellant acted in concert to achieve a common purpose, i. e., to kill the victim. Liwanag stabbed the victim, appellant Aguilar shot the victim with a sumpak or shotgun, while Travicilla stabbed the victim when he was already down. The three fled from the scene together. Without a doubt, the three acted in concert. It did not matter that they, as posited by appellant, did not arrive simultaneously at the victim's house. They, just the same, conspired in killing the victim.

Appellant Aguilar likewise contends that the court a quo erred in appreciating the qualifying circumstance of abuse of superior strength as it was not clearly proven that they "ganged up" on the victim.[17] He claims that his alleged acts were his own and independent of those two other accused.[18]

To appreciate abuse of superior strength, it must be shown that there was deliberate intent on the part of the malefactors to take advantage of their greater number. They must have notoriously selected and made use of superior strength in the commission of the crime:[19] To take advantage of superior strength is to purposely use excessive force out of proportion to the means of defense available to the person attacked [20]

Indeed, superiority in number is not always superiority in strength. However, there is abuse of superior strength where, as in the case at bench, appellant Aguilar and other two accused were armed.[21] Liwanag and Travicilla used knives, while appellant carried a sumpak or shotgun. They only had one adversary, Joseph Parua, who was unarmed when they attacked him and who, therefore, was in no position to defend himself.[22] There was, clearly, abuse of superior strength in this case.

The abuse of superior strength is further buttressed by the multiple injuries sustained by the lone victim, viz.:

"POST MORTEM EXAMINATIONS:

- Stabbed wound, 7, cm., deep, directed postero lateral, sternal notch;
- Stabbed wound, 2 cm. deep directed upward, right parasternal line, 2nd ICS;
- Multiple gunshot wound, anterior surface, left arm;
- Multiple gunshot wound, left infra axillary area;
- Stabbed wound, 4cm. deep directed toward the hand dorsal surface of middle 3rd portion of (sic) left forearm;
- Incised wound, ventral surface, left wrist;
- Through and through stabbed wound hyphothenar portion, left hand;
- Crushing injury, 5th finger, left hand;

- Incised wound, dorsal portion, right hand."[23]

The trial court could not therefore have been wrong when it ruled that abuse of superior strength qualified the killing of Joseph Parua to murder.

In his defense, appellant Aguilar interposed denial and alibi. Time and time again, it has been ruled that denial and alibi are the weakest of all defenses, because they are easy to concoct and difficult to disprove[24] Moreover, they cannot prevail over the positive and unequivocal identification of the appellant by the witnesses[25] Here, appellant was positively identified by the deceased's wife and another witness who lived in the same barangay, as the one who shot the victim with a Sumpak or shotgun.

No doubt, appellant Aguilar and the two other accused are guilty of the crime of Murder which was qualified by abuse of superior strength for their killing Joseph Parua.

Article 248 of the Revised Penal Code, as amended, imposes the penalty of reclusion perpetua to death for the crime of Murder.[26] The lesser of the two penalties, reclusion perpetua, was therefore correctly imposed especially that no other circumstance attended the crime.[27]

Anent the award of damages, the awards of civil indemnity (which is granted to the heirs of the victim without need of proof other than the commission of the crime)[28] and moral damages are proper they being in accord with prevailing jurisprudence.[29]

The award of actual damages is however increased to P11,200.00 because such is the actual amount that has been supported by official receipts offered in evidence.

Also, an award of exemplary damages in the amount of P25,000.00 is in order as the qualifying circumstance of abuse of superior strength attended the commission of the crime. Besides, it is already a settled rule that exemplary damages in the amount of P25,000.00 is recoverable if an aggravating circumstance, whether qualifying or ordinary, attended the commission of the crime,[30] as what happened in this case.

And while it is settled that an appeal taken by one or more of several accused shall not affect those who did not appeal, unless the judgment of the appellate court is favorable and applicable to the latter,[31] such rule will not however excuse the two other accused who did not appeal and who are hereby held solidarity liable with appellant Aguilar for the higher amounts herein imposed on actual damages and exemplary damages additionally imposed—as said impositions are not in the form of penalty.[32]

WHEREFORE, the instant appeal is denied. The decision of the trial court dated December 10, 2007 is affirmed with modification. The award of actual damages is hereby increased to P11,200.00 and an additional award of P25,000.00 is solidarily imposed upon all accused as exemplary damages.

SO ORDERED.

Villamor and Acosta,[*] JJ., concur.

[*] Court of Appeals Reports Annotated, Vol. 48.

[1] Rollo, p. 44.

[2] Ibid., pp. 20-43.

[3] Branch 61.

- [4] Rollo, p. 43.
- [5] Also referred to as "Travecilla" in portions of the records.
- [6] Rollo, p. 8.
- [7] Records, p. 20.
- [8] Rollo, pp. 29-43.
- [9] Ibid., p. 45.
- [10] Ibid., p. 53.
- [11] Rollo, p. 54.
- [12] Ibid.
- [13] *People vs. Miranda*, 417 SCRA 383, 392 (2003), citing Article 8, Revised Penal Code.
- [14] Ibid.
- [15] Note 13, *supra.*, citing *People vs. Arizobal*, 348 SCRA 143 (2000).
- [16] Ibid., citing *People vs. Crisostomo*, 222 SCRA 93 (1993).
- [17] Rollo, p. 57.
- [18] Ibid., p. 56.
- [19] *People vs. Beruega*, 380 SCRA 674, 688 (2002), citing *People vs. Langres*, 316 SCRA 769 October 13, 1999.
- [20] *People vs. de Leon*, 350 SCRA 11, 27 (2001), citing *People v. Maldo*, 307 SCRA 424, 441 [1999]; *People v. Asto*, 277 SCRA 697, 711 [1997]
- [21] Ibid., at p. 28.
- [22] Ibid.
- [23] Records, Folder of Exhibits, p.1.
- [24] *People vs. Hamton*, 395 SCRA 156, 186 (2003), citing *People vs. de Leon*, 378 SCRA 495 (2002).
- [25] Ibid., citing *People vs. Sansaet*, 376 SCRA 426 (2002).
- [26] *People vs. Pinuela*, 396 SCRA 561, 571 (2003).
- [27] *People vs. Hate*, 389 SCRA 578, 586 (2002), citing Revised Penal Code, Art. 63 (2).
- [28] *People vs. Fuentes*, G.R. No. 175995, September 23, 2008, citing *People v. dela Cruz*, G.R. No. 121272, 07 June 2007.
- [29] Note 27, *supra.*, p. 587.
- [30] Note 27, *supra.*, citing *People vs. Catubig*, 363 SCRA 621 (2001); *People vs. Samson*, 377 SCRA 25 (2002).
- [31] *People vs. Pacafia*, 345 SCRA 72, 83 (2000) citing Rules of Court, Rule 122, Section 11 (a).
- [32] Ibid.

[*] Acting Junior Member; Per Office Order No. 26-10 ABR dated March 12, 2010.

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