

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO FERNANDEZ Y JOCSON @ “EDDIE
FERNANDEZ”; ANTONIO ANTIDO Y BALATUCAN @
“TONY BAGYO”; ROBERTO LABRA Y SANTOS @
“BERTI...**

G.R. Nos. L-32322-23. January 27, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal taken by the accused - Eduardo Fernandez y Jocsen alias "Eddie Fernandez", Antonio Antido y Balatucan alias "Tony Bagyo", Roberto Labra y Santos alias "Berting Labra" and Benjamin Barcelona y Jungco - from the judgment of conviction for murder and frustrated murder rendered against them by the Circuit Criminal Court, Seventh Judicial District, Pasig, Metro Manila, in its Criminal Cases Nos. CCC-VII-363-Q.C. and CCC-VII-367-Q.C.

In Criminal Case No. CCC-VII-363-Q.C., the above-named accused were charged with MURDER in an information reading as follows:

"That on or about September 17, 1969 in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill and without any justifiable motive, with evident premeditation and with treachery, and by taking advantage of their superior strength, did, then and there, willfully, unlawfully, and feloniously attack, assault and employ personal violence upon the person of one RENATO PANGILINAN y PANGILINAN, by then and there firing at and shooting said RENATO PANGILINAN y PANGILINAN with different kinds of firearms which the accused had with them at the time, hitting the said victim on the chest, inflicting upon him serious and mortal injury which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said RENATO PANGILINAN y PANGILINAN in such amount as they may be entitled to under the provisions of our existing laws.

"Contrary to law."

In Criminal Case No. CCC-VII-367-Q.C., the same accused were likewise indicted for FRUSTRATED MURDER in a separate information with the following allegations:

"That on or about September 17, 1969 in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill and without any justifiable motive, with evident premeditation and with treachery, and by taking advantage of their superior strength, did, then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon one APOLINARIO LOPEZ y LACSAMANA, by then and there firing at and shooting the latter with different kinds of firearms which the accused had with them at the time, hitting said APOLINARIO LOPEZ y LACSAMANA on the chest, causing him to sustain serious and mortal injuries, the above-named accused thereby performing all the acts of execution which would produce the crime of MURDER as a consequence,

but which nevertheless was not produced by reason of causes independent of their will, that is, the timely intervention of medical science, to the damage and prejudice of the said APOLINARIO LOPEZ y LACSAMANA in such amount as he may be entitled to under the provisions of our existing laws.

"Contrary to law."

Arraigned on said informations, all the accused entered separate pleas of "not guilty" to both charges. As the two cases arose from a single occasion and under the same circumstances, a joint trial thereof was conducted by the trial court, at the conclusion of which it rendered the above-mentioned judgments of conviction with the following dispositive portion:

"WHEREFORE, in Criminal Case No. CCC-VII-367-Q.C., the Court finds the accused, namely: Eduardo Fernandez, Antonio Antido, Benjamin Barcelona and Roberto Labra, all GUILTY, beyond reasonable doubt of the crime of Frustrated Murder, under Article 248 of the Revised Penal Code, in relation to Article 50 thereto, as charged in the information, and hereby sentences each one of them to suffer an indeterminate penalty of, from EIGHT (8) YEARS AND ONE (1) DAY, of prision mayor, as minimum, to SEVENTEEN (17) YEARS AND FOUR (4) MONTHS, of reclusion temporal as maximum; to pay the victim Apolinario Lopez, the amount of Ten Thousand Pesos (P10,000.00) as moral damages, and another Ten Thousand Pesos (P10,000.00) as exemplary damages, and to pay their proportionate share of the costs.

"In Criminal Case No. CCC-VII-363-Q.C., the Court finds the accused, namely: Eduardo Fernandez, Antonio Antido, Benjamin Barcelona and Roberto Labra, all GUILTY, beyond reasonable doubt of the crime of Murder, under Article 248 of the Revised Penal Code, as charged in the information, and hereby sentences each one of them to suffer the penalty of DEATH; to indemnify the heirs of the deceased Renato Pangilinan, the amount of Twelve Thousand Pesos (P12,000.00), to pay Twenty Thousand Pesos (P20,000.00) as moral damages and another Twenty Thousand Pesos (P20,000.00) as exemplary damages; and to pay their proportionate share of the costs."

- I -

The prosecution's theory of what allegedly happened in this case, as purportedly portrayed in the direct testimonies of its main witnesses Rosanna Ortiz, Hilario Sigua, Fernando Despo and Apolinario Lopez, is substantially thus:

On September 17, 1969, there was a location shooting of the motion picture "Ako Ang Sasagupa" in the house of one Mr. Nasal at Biak-na-bato Street, Quezon City. Among those cast in the said story were accused Eduardo Fernandez who was playing the leading man's role, Rosanna Ortiz (Violeta Orbeta in real life) starring as the leading lady, and accused Roberto Labra who was cast in a secondary role.

Between 4:00 and 5:00 o'clock that afternoon, while the said location shooting was in progress, Renato Pangilinan (the deceased) together with his driver Apolinario Lopez and another companion, Hilario Sigua, arrived at the place purportedly to see Rosanna. Only Pangilinan and Sigua went inside the Nasal residence; Lopez stayed behind near Pangilinan's car. Upon being told of their arrival, Rosanna came out and introduced them to Eduardo Fernandez and Roberto Labra, among others. After the introductions, Rosanna resumed her shooting scenes inside the house, leaving Pangilinan and Sigua with Fernandez and Labra and some other members of the filming crew who were doing their chores about the place. As Fernandez and Labra were then drinking White Horse Whiskey they invited Pangilinan and Sigua to join them, which the latter two did.

While they were thus drinking and conversing, Fernandez, who by then appeared to be feeling the effects of the drinks, voiced his resentment about Rosanna's having caused delay in their location shooting that day, saying that she arrived only at about 2:00 o'clock despite she knew that the same was scheduled in the morning. After such

outburst, however, the conversation continued normally. Fernandez and Pangilinan even talked about producing films together, as they continued drinking.

Meanwhile, a telephone call was received at Precinct 1 of the Quezon City Police Department at Mayon Street relaying the information that a group of men carrying firearms was in the Nasal residence at Biak-na-bato and, shortly thereafter, two policemen in plain clothes arrived thereat. They introduced themselves and announced to those present in the house their purpose in coming, i.e., vis-a-vis the call they received at the precinct, whereupon Eduardo Fernandez stood from his seat, raised his shirt saying: "Ako pare, walang dala, sila meron", (I, friend, have nothing with me, they have.) pointing at Pangilinan and Sigua. Pangilinan and Sigua readily admitted to the peace officers that they indeed were carrying firearms, albeit they reasoned out that the same were duly licensed. Just the same, the duo were invited by the policemen to go with them to their precinct at Mayon Street for the verification of their licenses. And so, Pangilinan and Sigua, as well as the former's driver, Lopez, went along with the peace officers to the police precinct.

Thereat, while the desk officer was verifying the authenticity of the licenses of the guns presented by Sigua and Pangilinan, the group of Fernandez, Labra, Rosanna, Sylvio Ramiro, their film director, and their driver, accused Antido, arrived in a jeep. Rosanna Ortiz had requested Fernandez and his companions to accompany her to the police precinct in order to help Pangilinan and Sigua in clearing the problem of their guns. And after a few minutes of conversation in the conference room of the precinct among Pangilinan, Fernandez and the policemen, the questioned guns were duly verified and cleared. Pangilinan and Sigua tarried a while inside the conference room of the precinct waiting for the final release of their guns, while Fernandez and his group, including Rosanna Ortiz, boarded the same jeep they rode in going there, evidently to go back to their location shooting.

At this juncture, Rosanna heard Fernandez ordering the jeep driver "Kunin mo ang mahaba" as he (Fernandez) got off the jeep and walked back to the precinct. Rosanna followed Fernandez. However, when Rosanna saw that Pangilinan and his group were already coming out of the precinct, she did not go back to the jeep but instead went to ride in Pangilinan's car, after the latter consented to take her back to the location shooting. She occupied the back seat on the right side of the car. Pangilinan also occupied the back seat on the left side, beside Rosanna. Lopez occupied the driver's seat, while Sigua took the front seat on the right side, beside the driver and in front of Rosanna.

From the police precinct at Mayon Street, the car left with Pangilinan, Rosanna, Sigua and Lopez on board, followed by Eddie Fernandez and his companions riding in their jeep a while after. The car cruised along Mayon Street, but instead of proceeding towards Biak-na-bato or the scene of the location shooting, the car turned right on A. Bonifacio Street, apparently heading for Manila. Fernandez and his companions followed suit. But the car came to a full stop when it reached the vicinity of a gas station on A. Bonifacio Street near the Manila-Quezon City boundary because there was a heavy traffic jam, and at this juncture, Eddie Fernandez and his group alighted from the jeep and surrounded the car of Pangilinan. Eddie Fernandez, armed with a pistolized carbine, approached the car from the right side. Berting Labra and Antonio Antido, also with drawn guns, went to the left side, while Benjamin Barcelona, who had been in the precinct during the verification of the permits for the guns of Pangilinan and Sigua, also with a drawn firearm, positioned himself behind the back of the car. From a distance of about one and a half (1-1/2) meters from the right side of the car, Eddie Fernandez pointed his pistolized carbine at the occupants thereof and warned them: "Walang kikilos sa inyo, ang kikilos tatamaan". As the glass of the window on the right side of the car was then open, Rosanna saw and heard Fernandez, and she pleaded to him, "Eddie, huwag, Eddie" (Eddie, don't, Eddie). Likewise, Hilario Sigua quipped: "Huwag, pare, hindi kami lalaban" (Don't, friend, we will not fight.) In spite of such pleas from Rosanna and Sigua, however, Eddie Fernandez, Antonio Antido, Roberto Labra and Benjamin Barcelona fired at the occupants of the car almost simultaneously

from the right and left sides of the car and from behind, where they had respectively positioned themselves. The glass of the left side window of the car which was then closed was completely shattered, while the glass on the rear was also broken. According to witness, PC Major Crispin Garcia, there was a bullet hole at the center of the rear or back glass of the car. Renato Pangilinan was hit with a bullet in the left chest. Apolinario Lopez received a gunshot wound in his upper left chest too, while Hilario Sigua was wounded on his right hand between the thumb and the forefinger. As a result of the wound he received, Renato Pangilinan slumped on Rosanna's lap, and the latter, upon realizing that Pangilinan was hit and was bleeding, immediately ordered Lopez, the driver of the car, to move the car out of the place and proceed to the Chinese General Hospital. Pangilinan's wound proved to be fatal; in fact, he was pronounced dead on arrival at the hospital. Lopez survived after the gunshot wound in his chest was operated on, although he was confined therein for several days and had to return thereto from time to time thereafter for further medical treatment. Sigua's minor wound in his right hand required but little medical attention.

Importantly, the prosecution's own evidence (the testimonies of the police investigators) also proves that immediately after the shooting just narrated, accused Fernandez was brought to the National Orthopedic Hospital, later transferred to the V. Luna General Hospital, where he was treated and operated on for two gunshot wounds and still later moved to the Quezon Medical Center where he was operated on again and a metallic substance admitted to be part of a bullet of a .32 caliber gun was found and extracted from his body by no less than Captain (Dr.) Arnold Gruspe, who had previously treated and operated on him at V. Luna General Hospital. Surprisingly, there is hardly any mention of this important evidence in the decision of the trial court.

Now, before Us, the common gripe of herein accused in their separate briefs is that the trial court erred in rejecting entirely the evidence in support of their individual defenses, and, instead, convicted them of Murder and Frustrated Murder by relying solely upon the testimonies of the eye-witnesses for the prosecution despite, they claim, that the same whether taken separately or together, suffer from fatal defects. In effect they all conclude that assessing all the evidence presented at the trial, wholly and impartially, their supposed guilt had not been proven beyond reasonable doubt.

- II -

Indeed, it can be said that at first blush the above narration of the People's version of what happened on the occasion under inquiry would, in fairness to the efforts of the prosecutors, likely persuade one to accept the theory alleged in the information aforequoted that all the accused did, in conspiracy with each other, fire with their respectively held guns at the deceased Renato Pangilinan and his companions, Rosanna Ortiz (Violeta Orbeta), Apolinario Lopez and Hilario Sigua, and also, that inasmuch as said accused, four in number, were all armed on said occasion they may be deemed to have acted as a band.

On the other hand, even a cursory perusal of the same version, however, readily reveals that the "evident premeditation, treachery and - taking advantage of superior strength" expressly alleged as qualifying circumstances to raise the offenses charge against the accused to murder and frustrated murder were not present in the shooting that resulted in the death of Pangilinan and the serious and very light injuries suffered by Lopez and Sigua, respectively. As a matter of fact, the Solicitor General himself concedes in his brief that "whether or not treachery and superior strength may be considered as aggravating (sic) circumstances in the above-entitled cases should be resolved in the negative." (p. 48, Appellee's Brief; Underscoring Ours). Without in anyway agreeing fully with the inculpatory parts thereof pinning down herein accused, but just to point out even at this outset, that to speak of murder and frustrated murder in these cases should immediately be ruled to be juridically inaccurate, We quote from the People's brief:

"The claim of appellants that treachery cannot be decided in the absence of means, methods and forms which

tend directly and specially to insure the execution of the offense seems tenable. While it is true that the strategy of appellant Fernandez in reporting Pangilinan and his group to the Police was designed to divest the victims of their possession of firearms in order to render them defenseless against the contemplated attack, their purpose had not been realized as the victims were released by the police without their arms confiscated. Therefore, the scheme preparatory to the execution of the intended killing to insure appellants against risks apparently only exposed their intentions and warned the victims thereof.

"In fact, the disclosure of appellants' criminal intent to the victims even became evident when Rosanna Ortiz who rode with the deceased Pangilinan overheard appellant Fernandez ordering, "Kunin mo ang mahaba" (t.s.n., p. 20, May 12, 1970, Orbeta) which was meant for a long firearm. More than this, Sigua, another victim, naturally would have placed himself on guard for the worst when he noticed Fernandez tucking his gun on his waist while the latter and three other companions were on board the jeep that followed Pangilinan's car (t.s.n., p. 19, May 12, 1970, Sigua). And yet, after appellants had surrounded their victims inside the car, the element of surprise was certainly not taken advantage of, since Rosanna and Sigua still had time to remonstrate with Fernandez (t.s.n., pp. 36-39, May 12, 1970, Orbeta).

"On the basis of the above-mentioned facts and contrary to the observations of the trial court, the execution of the crimes was, therefore, carried out with risk from any possible defense which the Pangilinan group might have offered. It is significant to note that in spite of the tactical advantage afforded to appellants in cordoning their adversaries, these victims were not entirely helpless as they were indeed armed with two (2) pistols and a revolver (t.s.n., pp. 108-110, April 24, 1970, Sunico; pp. 46-49, May 13, 1970, Viñas).

"There is no question that appellants deliberately endeavored to adopt means or forms in order to insure the execution of the crimes without risk to themselves arising from the defense which the offended party might make but obviously, the method resorted to did not provide appellants complete safety against any defensive or retaliatory act from their victims, which means that no opportunity is given the latter to do so. The requirements, therefore, of the existence of treachery as contemplated by Article 14, paragraph 16 of the Revised Penal Code was not met in these cases.

"Thus, the attack may be sudden, but if there is no showing that the victims were not completely denied an opportunity to prepare and repel or avoid that attack x x x (People vs. Pengzon, 44 Phil. 224; People vs. Sagayno, L-15961-62, October 31, 1963; People vs. Glore, 87 Phil. 739, italics supplied) it would be erroneous to make a finding that the offense was committed in a treacherous manner.

"With respect to the aggravating circumstance of abuse of superior strength, the fact that the victims were also armed as borne by evidence to this effect is self-explanatory to negate the findings of the lower court that this circumstance was present. In this regard, the contention of the four (4) appellants that the facts were insufficient to consider abuse of superior strength as an aggravating circumstance in the instant case, is, perhaps well taken as the consideration of this circumstance must depend upon the relative strength of the one attacking and the one attacked (People vs. Bustos, 51 Phil. 385)." (*Italics underlined*) (Pp. 45-48, People's Brief)

- A -

But the prosecution nevertheless insists that evident premeditation has been proven. It argues that:

"In the case of People vs. Belen, L-13895, September 30, 1963, the Supreme Court held that the existence of conspiracy presupposes evident premeditation and in the case of People vs. Cadag, L-13830, May 31, 1961, the same Court ruled that for conspiracy to exist, it does not require an agreement for an appreciable period prior to the occurrence.

"The above-mentioned cases are relevant to overcome appellants' view that where it appears that they had only about half an hour for meditation and reflection, the same is insufficient in the juridical sense to establish

evident premeditation as contemplated by law. While it is conceded that the jurisprudence on appellant's claim conforms with the requirement that there must be a period sufficient to afford and allow the conscience of the wrongdoers to overcome the resolutions of their will, this defense cannot apply in the instant cases. As borne out by the evidence, the premeditation of appellants to carry out the desired consequences of their collective acts appears to have begun from the time the deceased Renato Pangilinan and his group arrived at 5:00 P.M. on September 17, 1969, at Biak-na-Bato where the location shooting of the picture "Ako Ang Sasagupa" was being filmed (p. 5, Appellant Fernandez's brief). The crimes in question actually took place at 7 o'clock in the evening of the same date or two hours, thereafter (t.s.n., p. 40, May 13, 1970, Viñas).

"The claim of appellant Fernandez that 'until the moment that Fernandez arrived at the Police Precinct, he has no ill feeling as yet towards Pangilinan' (p. 20, Appellant Fernandez's brief) is inconsistent with the records for his decision to get rid of Pangilinan apparently came about when the latter and his companions arrived at 5:00 P.M. to visit Rosanna Ortiz. Such intention is evident from the fact that he was not only angry with Rosanna at the moment but also had caused Pangilinan and his companions to be disarmed by the police in order to insure the realization of the desired liquidation without the least resistance from the victims. The argument of Fernandez that the trial court found him to have decided to eliminate his rival came only when Rosanna rode with Pangilinan in his car is untenable. What the court simply meant here was that because Rosanna Ortiz went with Pangilinan sitting herself at the back seat of the car beside Pangilinan, the decision to liquidate victims even became firmer. Indeed, the situation of Fernandez's being left behind, aggravated his embarrassment. On the basis of the above circumstances, it is obvious that the decision of Fernandez to eliminate his rival was actually effected at 5 o'clock that afternoon, when Pangilinan's group arrived.

"Thus, between the time the intended killing was hatched, and the time it was actually carried out at about 7:00 P.M. (t.s.n., p. 40, May 13, 1970, Viñas) is some two (2) hours in duration. All appellants, therefore, had been afforded more time, sufficient enough to reflect on the evil character of their acts, before the same were executed. The contention of the accused that there was an absence of evident premeditation, since they had only about half an hour or less for meditation and reflection to overcome the resolution of their wills is completely devoid of basis in fact.

"The decisions of this Court on this issue support the existence of evident premeditation. And so, it has been held that premeditation is present where there was a lapse of two hours from the inception to execution (People vs. Hanasan, L-25989, September 30, 1969; People vs. Pajenado, L-27680, February 29, 1970)." (Pp. 42-45, People's Brief.)

We do not agree. Trite to say, in a prosecution for murder, the qualifying circumstance must be proved beyond reasonable doubt, like the killing itself, and in the instant cases, We find it difficult to conclude with moral certainty that the testimonies on record show evident premeditation on the part of the accused, even if We looked exclusively at the evidence of the prosecution, disregarding entirely that of the defense.

Reading between the lines, the basic assumption of the People, albeit it has not spelled it out expressly in its brief, is that some kind of intimate amorous relationship was already existing that fatal afternoon between Rosanna and accused Fernandez, or, at least, that the said accused must have been nursing some deep affection for her, so intense as to make him furiously jealous of anyone who would also fall for her, hence, instantly, upon coming to know Pangilinan and sensing somehow that Rosanna seemed to show unusual fondness not to say preference for the new arrival, then and there, there arose immediately within him a determination to eliminate the latter by killing him that very day. It is to be emphasized, though, that all these are just conjectures to give some flesh to the theory of evident premeditation of the prosecution.

What, on the other hand, to Us appears to be more proximate to the truth that stands out from the record is that there is not a bit of evidence therein indicating anything of such feeling between Rosanna and Fernandez. To be sure, what Fernandez was shown to have felt for Rosanna then was obvious anger, not because of any reason

having to do with love, but because she arrived almost half a day late for the shooting schedule of the film they were co-starring with each other in. And he made no secret of the reason for his anger in his talk with Pangilinan, even as he cooled down later and turned their conversation to the filming business, to the extent of their talking about the possibility of co-producing a film together. These facts are proven beyond doubt by the People's own evidence.

- B -

It is also theorized by the prosecution that it was at the instance of Fernandez that, while he and Pangilinan were talking and drinking together, two Quezon City policemen arrived at the Nasal residence with the objectives, first, of checking on whether or not the "location shooting" had the corresponding permit, and second, to follow up an alleged telephone report received at the Precinct No. 1 that there were persons in that house with unlicensed or illegal firearms. And just because Fernandez, according to Sigua, had instructed a certain Roger to call up Police Precinct No. 1, and upon arrival at the Nasal residence of two Quezon City policemen, Fernandez promptly remarked that, "Ako, pare wala, sila (referring to Pangilinan and Sigua) meron", it is claimed that Fernandez wanted Pangilinan and his companion, whom he saw had guns, disarmed thereby facilitating his (Fernandez') then instantaneously conceived plan to kill Pangilinan.

In this connection, We have already said We cannot perceive in the record any evidence that could have suddenly motivated Fernandez to incubate in his mind any idea of doing away with Pangilinan. And what, to Our mind, negates completely, the probability of such a dastardly intent is that according to the prosecution's own evidence, Fernandez did his bit, in helping in the clearing of Pangilinan and Sigua's possession of their guns, even going to the extent of boasting about his connections with the then Mayor of Quezon City, the late Hon. Norberto Amoranto, and of spending P1,000.00 just to clear up matters with the policemen at the precinct. It is to Us beyond belief that a person harboring an intent to kill would take the trouble of seeing to it that his intended victims were armed or rearmed, Pangilinan with a powerful Browning 9 mm. auto pistol (p. 86, Record), and Sigua, with a .32 caliber nickel revolver.

Withal, it is also to be wondered that whereas, according to the trial court, Sigua claimed he heard Fernandez "called and ordered one Roger to 'Roger, tumawag ka sa Presinto Uno, sabihin mong may mga dalang baril ang mga taong ito'," (p. 38-A, Decision, annexed to Brief for Fernandez) it does not appear that Sigua did anything at all in the face of such obviously alarming directive of Fernandez. Normally, he should have immediately told Pangilinan about it and they could have explained to Fernandez that they had the appropriate licences and permits therefor. Such omission, We are inclined to believe, makes the supposed giving of any such order by Fernandez rather doubtful.

- C -

Otherwise stated, We entertain serious doubt that there is any fact duly demonstrated in the record indicating why Fernandez could have entertained then any premeditated desire to kill Pangilinan. The contention of the Solicitor General that the act of Rosanna, upon coming out from the precinct, of going instead with Pangilinan in his car, after she was already in the jeep with Fernandez and their other companions, must have so embarrassed Fernandez as to induce him to conspire then and there with his co-appellants to liquidate Pangilinan and his companions, is to Us a rather strained theory, hardly probable in the ordinary course of human experience. We cannot accept the same as proof beyond reasonable doubt of something indicative of evident premeditation, considering the other details extant in the record. If at all, what seems more reasonable to believe is that, under the circumstances, what must have seized Fernandez was a suspicion, which turned out to be correct, that Rosanna would not go back to the location shooting, causing him to be more angry at her for bungling and muddling their film work, thereby

disrupting in consequence his own schedule of other commitments. To Our minds, even his being that angry with Rosanna could not have provoked him to kill anyone, much less Pangilinan.

- D -

We hold, therefore, that if the death of Pangilinan and the wounding of Lopez and Sigua, may ultimately be attributed to appellants, as unjustified and unprovoked - the crucial question We shall deal with anon - the same was not the result of evident premeditation, much less of treachery and use of superior strength as alleged in the information against herein accused. As a matter of fact, in arriving at this conclusion, We do not even have to adopt any degree of liberal attitude, dictated by the constitutional presumption of innocence, in favor of the appellants herein. We only have to take a hard look at the evidence of the prosecution, as We are commanded by the law, and not depend on any possible weakness in the evidence of the accused in criminal cases. It is quite plain to Us that, at the most, taking into account, particularly, the shortness of the time that intervened between the events emphasized by the People, on the one hand, and the actual shooting incident, on the other, which could not have been more than half an hour, the probability that the four accused to have talked and deliberated on killing anybody is most remote, what We can hold herein accused guilty of cannot be more than homicide and frustrated homicide.

- III -

Corollarily, the decisive issue that comes up, at this juncture is whether or not, viewing the matter before Us as a whole in the light of the evidence of both the prosecution and the defense, such homicide and frustrated homicide have been proven beyond reasonable doubt to be unprovoked and unjustified. As importantly, We have to determine whether all the four accused now before Us or only some of them should be held responsible or liable in the premises.

- A -

To begin with, it may not be amiss to bring out, at this point, the fact that reading the trial court's decision, extending to 84 pages and rather detailed, the same appears to Us not to be entirely free from the possible influence of some unfavorable impressions His Honor had been apparently entertaining inwardly even before the trial began against actors and actresses in our movieland. Quite candidly, he could not hide such feeling in his decision. Without any evidence at all presented to such effect, this is how he pictured them:

"It is a sad commentary but nonetheless a glaring truth that we have been witnesses to many incidents of the past where movie folks are in constant banner headline for their mischiefs in public, as well as private life. They seem to have that unsatiable quest of getting entangled in deadly brawls, acting as though they are those notorious bandits or rapacious pillagers ordinarily depicted on the screen. They lived as captives of their misguided illusions, exhibiting the stance of being the untouchables, unconquerables, equal to none and unafraid to no one.

"With respect to women actresses and starlets by their loose morals, conduct and behavior, they have gained that common reputation as ruthless wreckers of decent homes and families, contributing to the already troubled society, in destroying the basic foundation of our democratic institution, the home. They defy even the basic element of decency inherent to Filipino womanhood, by parading themselves openly in public with nose high up and disgustedly with false pride for the whole world to know, in the company of men with burden of responsibilities." (Pp. 113-114, Vol. I, Record).

We are not saying that His Honor actually prejudged the case against accused movie actors Fernandez and Labra, only because they are movie stars, but, certainly, it is difficult to assess how much actually was the degree of

undue influence the bad image he had spontaneously portrayed of movie actors and actresses might have swayed him to unwittingly yield to an irresistible impulse to make movie figures learn a lesson or two from him in these cases. We are apprehensive that to some extent his judicial eyes might have somehow been blurred by such pre-judice, hence his manifest deviation from the straight norm of judicious decision-making.

- B -

Furthermore, We note too that knowing, as he ought to have known, that technically, certain facts quite unsavory about the appellants, are in law immaterial and could not affect the decision, still His Honor made it of record that:

"In a report submitted by the Manila Police Department which is already a part of the records of this case, Fernandez has been previously indicted of the following criminal offenses: Murder, in Criminal Case No. 4972 before the Pasay City Court of First Instance; Slight Physical Injuries, in Criminal Cases Nos. 12094 & 12095 of the Municipal Court of Parañaque, Rizal; and Grave Threats, in Criminal Case No. 12093 before the Municipal Court of Parañaque, Rizal. Accused Antonio Antido in the same report, was previously convicted for Concealment of Deadly Weapon and indicted for Attempted Murder, Grave Threats and Illegal Possession of Firearm and Ammunitions, on complaint of one Nilo Calpe of the Tamaraw Studio, Inc." (Page 115, Vol. I, Record.).

The Solicitor General himself points out that such considerations ought to have been disregarded:

"In the case of appellant Fernandez, the report submitted by the Manila Police Department that he has the following criminal records:

'a) Murder, in Criminal Case No. 4972 before the Pasay City Court of First Instance; b) Slight Physical Injuries, in Criminal Case Nos. 12094 & 12095 of the Municipal Court of Parañaque, Rizal; and c) Grave Threats, in Criminal Case No. 12093 before the Municipal Court of Parañaque, Rizal'.

cannot be considered for the purpose of aggravating his criminal liability as a recidivist. The certificate of the Chief of Police of the City of Manila showing that appellant Fernandez has been indicted of an offense is not the best proof (*People vs. Ong Chiu*, 28 Phil. 242) and it cannot be assumed that such indictment ripened to final conviction, more so, when appellant as in this case objected for the consideration of the same (Third assignment of error, Fernandez).

"It likewise appears in said report submitted by the Manila Police Department to the trial court and which now forms part of the records of the case that appellant Antido was previously convicted for concealment of Deadly Weapon and indicted for Attempted Murder, Grave Threats and Illegal Possession of Firearms and Ammunitions. While the conviction of herein appellant for concealment of Deadly Weapon was already final during the trial of the above-entitled cases, yet recidivism as an aggravating circumstance cannot be considered against this appellant, since the former conviction is not embraced in the same title of the Penal Code as the offense he has been prosecuted herein. This being the case, the report bearing on the criminal records of appellant Antido did not, therefore, aggravate his criminal liability in the cases at bar" (Pp. 53-54, *People's Brief*.).

- C -

Bearing in mind such out-of-place expressed perspectives of the trial judge, We do not wonder why there is a notable dearth of appropriate attention given in the decision under review to the very important and vital un rebutted evidence that aside from Pangilinan, Lopez and Sigua, accused Fernandez himself suffered gunshot wounds on the occasion in question. Fernandez testified that as he approached the car of Pangilinan unarmed and

was merely asking Rosanna why they were going towards the direction opposite the site of the "location shooting" they had not yet finished - a most normal thing for anyone in his place would have done as co-star in the picture then being prepared by both of them - Pangilinan got angry and told Sigua: "Talagang asar ang taong ito, tirahan mo na Totoy (Sigua)", whereupon Sigua took his nickel plated .32 caliber revolver from his side and fired at Fernandez about four times; that Fernandez was actually hit and fell in a canal where he lost consciousness which he regained only at the National Orthopedic Hospital from where he was transferred later to the V. Luna General Hospital where he was treated for his two (2) gunshot wounds, one of them through and through at the left chest and the other in the abdomen wherein part of a bullet was observed to be lodged, until it was removed at the Quezon City Medical Center thru an operation undertaken by no less than Captain Arnold Gruspe, the very surgeon of the V. Luna General Hospital who had earlier attended to him thereat on the same night of September 17, 1969 (Exhibit 6, Fernandez; t.s.n., pp. 18-24, May 28, 1970.).

Most importantly, it is beyond Our comprehension why the trial judge paid no heed at all to the testimonies of Major Constantino Leyva of the Philippine Constabulary and Domingo G. del Rosario, Assistant Chief of the Ballistic Division of the NBI leading almost to a point of certainty that the deformed slug extracted from the body of accused Fernandez by Capt. Gruspe, surgeon of V. Luna Hospital was fired from the .32 Caliber gun of prosecution witness Sigua.

Strangely, all that the trial judge remarked about those wounds of Fernandez was:

"The defense has attached much significance to the findings of the National Bureau of Investigation that the lead bullet taken from the body of Eddie Fernandez has markings indicating that it came from Exhibit M-3, the firearm issued in the name of Hilario Sigua in order to bolster the claim that Eddie Fernandez did not fire a gun and that it was the group of Pangilinan who were the aggressors. It will be noted however, that this is contrary to the findings of the ballistics of the Philippine Constabulary to the effect that no definite conclusion can be made as to whether or not the specimen, a .32 caliber deformed lead was fired from the exhibit firearm due to insufficient individual characteristics. Of significant value and very relevant to the point at issue is the admission of defense witness, Dr. Arnold Gruspe, the principal attending physician of Eduardo Fernandez, that the lead bullet taken from the body of Eddie Fernandez was examined by members of the family of Fernandez, and that he entrusted the same to Jose Samson, the owner-administrator of the Quezon City Medical Center, and that the latter was the one who submitted the lead bullet to the authorities for examination. From this circumstance, the danger and possibility of it being substituted or tampered with is not at all remote or improbable, but on the contrary, it is very probable. Corollary to this is the finding that Lopez, Sigua and Pangilinan were all found to be negative of powder burns, whereas, Fernandez, Antido and Barcelona were found positive for powder burns, corroborating prosecution's theory that they fired their guns against Pangilinan's group. Though Labra was found negative of powder burns, it does not necessarily follow that he did not fire a gun for considering the make of gunpowders nowadays, powder nitrates could be easily removed through the use of chemicals" (Pp. 108-109, Vol. I, Record.).

This, when even the witness who deserved an encomium from the judge, albeit he did not see the actual shooting incident but allegedly only the incidents thereafter, the thirteen year-old Fernando Despo, testified that he saw Fernandez was being helped or aided by allegedly, his co-accused Labra, to a jeep behind another car that was following Pangilinan's Mercury Cougar and that Fernandez "fell at the back of the jeep" (pp. 129-130, t.s.n., May 12, 1970.).

It is quite lamentable from the juridical point of view that, under the circumstances just discussed, the trial court gave very little thought to the testimony of Fernandez in his defense. To be sure, Fernandez did not exactly try to prove self-defense, because he denied being armed, thus claiming to be the victim of an offense rather than the aggressor. But even if he were armed and had in fact fired a gun, what is undeniable is that he was himself

injured. Such a vital circumstance should have deserved due attention from His Honor as a vital factor in assessing his guilt or innocence. In a shooting incident where both opposing parties are injured, it is incumbent upon the trial judge to weigh the conflicting versions of the protagonists in order to pinpoint as far as it is humanly ascertainable who in fact started the shooting, what provoked the same and why, and whether or not the means employed in repelling the aggression by either of them was justified. This is specially true in the instant cases where His Honor saw fit to impose upon the accused Fernandez and Labra, against whom he visibly had bad impressions as movie stars, the extreme penalty of capital punishment.

To reiterate, in the final analysis, the ultimate and pivotal issues We have to resolve here and should have been thoroughly assayed by the trial court are: (1) whether or not the accused Fernandez and Antido, who admitted presence at the scene of the offense charged acted in self-defense, and, (2) as to those who denied their presence thereat, namely, Labra and Barcelona, whether or not their pretended alibi could be given sufficient credit to entitle them to acquittal.

- IV -

Conceded as it must be, the evidence thereof being unassailable, that in the evening in question, Renato Pangilinan died in his car, of gunshot wounds without his being able to use the powerful Browning 9 mm. auto-pistol he had with him then, the central point to determine is who shot him and how. In this respect, and at the risk of repeating an earlier reference to them, four witnesses testified for the prosecution, namely, (1) Rosanna Ortiz (Violeta Orbeta - referred to herein only as Rosanna), (2) a 13-year old boy named Fernando Despo, (3) Hilario Sigua, the companion of Pangilinan and (4) Apolinario Lopez, the driver of Pangilinan who at the time of the incident was the one actually driving the fatal car.

Rosanna, Sigua and Lopez declared uniformly that as Pangilinan's car was stopped by a traffic jam near the corner of A. Bonifacio and Blumentritt Streets, almost at the boundary line of Manila and Quezon City but still within the territorial jurisdiction of the latter, they were surrounded by armed men, one of them definitely the accused Fernandez, and that after a brief warning from said accused, who allegedly was aiming a pistolized carbine at all four of them who were in the car, "Walang kikilos sa inyo, ang kikilos tatamaan," and Rosanna and Sigua had pleaded to him not to harm them, hell broke loose, there was a flurry of gunshots, at the wake of which Pangilinan slumped wounded on the lap of Rosanna, Lopez was also hit in his upper left chest while Sigua was slightly wounded between the thumb and forefinger of his right hand. Rosanna was unhurt.

Despo did not see the actual shooting. He heard gunshots while he was at the Shell gas station on the opposite side of A. Bonifacio street. To quote from the pertinent portions of his testimony:

"Q While you were there at that particular hour (that) date (at seven o'clock in the evening), can you tell the Court if there was anything unusual that happened?

"A There were gunshots.

"Q Where?

"A At the other side of the road at A. Bonifacio Street.

"Q And what did you do after you heard those gunshots?

"A I climbed the top of a truck."

(Pp. 122-123, t.s.n., May 12, 1970.)

x x x x

"Q You climbed on the truck, because you were afraid?

"A Yes, sir.

"Q And what did you do?

"A On top of that truck I looked around because I thought there was a shooting.

"Q Shooting film?

"A Yes, sir. "(P. 145, Id.)

x x x x

"Q What did you see?

"A I saw Eddie Fernandez and Berting Labra.

"Q Where did you see Eddie Fernandez and Berting Labra?

"A I saw them in a black car.

"Q Inside or outside the car?

"A Outside the black car.

"Q And this car was running or in a stop position?

"A It was in a stop position.

"Q Do you know why the car was in a stop position?

"A Because there was a traffic jam.

"Q Where, in what portion of the car did you see Eddie Fernandez?

"A I saw him at the right side of the car.

"Q This Eddie Fernandez, can you point to him now?

"A Yes, sir. (witness pointing to the man with green shirt who upon being asked, answered by the name of Eddie Fernandez, the accused)

"Q How about Berting Labra you mentioned, where was he?

"A He was at the left side of the car.

"Q What were they doing when you saw them?

"A I saw them at the left and right side of the car hiding thru a passenger's jeep and then they went away.

"Q That was immediately after you heard the gunshots?

"A Yes, sir.

"Q Do you know if any of them was holding anything?

"A I saw Eddie Fernandez only holding something this length of one foot.

"Q What was Eddie Fernandez?

"A It was a gun, a long gun. (witness demonstrating a length of about one foot)

"Q How about Berting Labra, was he holding something when you saw him?

"A I did not notice.

"Q Were there any person aside from Eddie Fernandez and Berting Labra that you saw around that black car?

"A They were the only ones I noticed.

"Q Why do you know this Eddie Fernandez and Berting Labra?

"A Once in a while they lodged in the cockpit at La Loma.

"Q The two of them?

"A Yes, sir.

"Q How about in the movies, have you seen the two in the movies?

"A Yes, sir.

"Q That place where you saw these two around that black car, was it lighted or dark?

"A It was lighted.

"Q Why was it lighted?

"A Because it was earlier.

"Q Was there a light on the electric post around?

"A Yes, sir.

"Q This jeep that you saw where Eddie Fernandez and Berting Labra rode did you see the driver?

"A Yes, sir.

"Q Would you look around and see if he is in Court?

"A He is here.

"Q Will you point to him?

"A He is there. (witness pointing to a person who upon being asked, answered by the name of Antonio Antido)

"Q Aside from this driver Antido, was there any other person inside the jeep where Berting Labra and Eddie Fernandez rode?

"A I only saw those three, Eddie Fernandez, Berting Labra and that one with curly hair.

"Q After the incident were you able to see this person you pointed again?

"A I saw him when Eddie Fernandez rode on a jeep which backed up and then fired another shot and then they made short cut in Calavite Street. I recognized the driver, the one with a curly hair and black.

"Q You said he fired another shot, who was that person who fired another shot?

"A Eddie Fernandez.

"Q Towards what direction did you see Eddie Fernandez fired the shot?

"A He was firing it towards the black car.

"Q After that what else did you see?

"A The black car proceeded towards the Chinese.

"Q How do you know that?

"A Yes sir, they proceeded towards the Chinese.

"Q After the incident were you investigated by any of the police agencies?

"A After that the following day, two policemen arrived and it so happened that I have a police friend to whom I narrated the incident and the policeman by the name of Cruz. My friend policeman narrated it to Dalanon.

"Q And you were taken by Detective Dalanon to the police headquarter?

"A Yes, sir.

"Q You gave your statement there?

"A Yes, sir." (P. 123-128, Id.)

x x x x

"Q When you saw Eddie Fernandez for the first time he was being aided by somebody, is it not?

"A I saw them boarded the jeep together and Berting Labra supported Eddie Fernandez, and Eddie fell at the back of the jeep.

"Q Inside or outside the jeep?

"A Outside the jeep.

"Q So Eddie Fernandez, in spite of his being supported by his companion then fell on the ground outside the jeep?

"A It was on the jeep when he fell.

"Q And because Eddie Fernandez was very weak then that is why he was being supported by his companion, that is correct, is it not?

"A Yes, sir.

"Q How far were you from Eddie Fernandez at the first time you saw him?

"A I was very near, at a distance from this place up to that wood. (witness estimating about 9 meters)

"Q About what time was that in the evening?

"A It was quite early seven o'clock.

"Q According to you, you saw him holding something?

"A Yes, sir.

"Q And at that distance you thought it was a gun, is it not?

"A I saw him holding something like this long. (witness demonstrating about 1 1/2 feet long)

"Q That is all you can say - that he was holding something that is long, is it not?

"A Yes, sir.

"Q That was after the shooting that you heard?

"A I heard it only.

"Q This place where you saw Eddie Fernandez was on the street - side of the street from the gasoline station where you were, is it not?

"A Yes, sir.

"Q That must have been more than nine meters because the street there definitely is more than nine meters, is it not?

"A No sir, it is very near to me.

"Q After you heard the shots you must have sought cover, is it not?

"A No, I climbed up the truck.

"ATTY. CASTRO

We have no more questions, your Honor.

"ATTY. BAUTISTA

Cross for Antido.

With the permission of the Honorable Court.

"COURT

Proceed.

"CROSS EXAMINATION BY ATTY. BAUTISTA

"Q How long after the shooting after you saw the incident that you said you talked to the policeman whom you said your friend?

"A It was a long time.

"Q Could it be two days after the incident?

"A Yes, sir.

"Q Who is this policeman, what is his name?

"A He has a car inside the cockpit.

"Q Aside from this policeman was there any person to whom you narrated this incident?

"A None, sir.

"Q Did you not tell this incident to your parents?

"A I told it to the brother of my father.

"Q How long after did you tell this incident to the brother of your father?

"A After two days.

"Q Who was the first one to whom you narrated this incident to the brother of your father or the policeman?

"A At first to the policeman and second to the brother of my father.

"Q Do you remember having been investigated in connection with the incident that you saw?

"A Yes, sir.

"Q When was that?

"A That was Wednesday, September 17.

"Q And was this investigation in writing?

"A It was typewritten by Dalanon.

"Q If shown to you this investigation in writing will you be able to recognize the same?

"A Yes, sir.

"ATTY. BAUTISTA

May we request the Fiscal to produce the statement given by this witness.

"COURT

Granted.

"FISCAL MELENDRES

I am handing to counsel Atty. Bautista statement of the witness Fernando Despo.

"ATTY. BAUTISTA

"Q I am showing to you this statement and for purposes of identification I would like to request that the same be marked as Exhibit 1 for Antido. Please tell us if this is the same Exhibit 1 the statement that you gave on September 20?

"A Yes, sir.

"Q All the questions appearing here were asked of you, is it not?

"A Yes, sir.

"Q And that all the answers here were given by you, is that correct?

"A Yes, sir.

"Q You stated in your direct examination that you were able to know the driver of the red jeep and you pointed

to the person of Antonio Antido, is that correct?

"A He is Antonio Antido, the one with a curly hair. (witness pointing to the accused Antonio Antido)

"Q I am referring you now to question No. 10, of this particular statement marked Exhibit 1. The question here and I quote: "Kung makikita mo uli iyong nagmamaneho ng pulang jeep na sinakyan ni Eddie Fernandez pagkatapos ng barilan makikilala mo pa ba siya?" That is the question and the answer is: "Hindi ko na po makikilala." Did you give this answer to that question?

"A During the trial when we used to go in and out I was able to recognize him and pointed to Detective Dalanon.

"Q Why is it that you said you will not be able to recognize him anymore?

"A After that when I entered the door I immediately recognized him. I was able to recall him, sir.

"Q Is it not a fact that somebody told you that he was the driver of the jeep?

"A No sir, I was the only one who pointed to him." (Page 130-137, Id.)

x x x x

"Q What was the attire of Berting Labra?

"A I did not notice, I only noticed his face.

"Q Do you know whether he was wearing a hat or not?

"A I saw his face only.

"Q Did you notice if he was wearing a Barong Tagalog or a polo shirt?

"FISCAL MELENDRES

Already answered.

"COURT

Sustained.

"ATTY. DIMAANO

I am testing the credibility of the witness.

"COURT

Witness may answer.

"WITNESS

"A I was just looking at his face.

"Q What about Eddie Fernandez, what was he wearing?

"A I was looking at his face only.

"Q You did not notice whether Eddie Fernandez was wearing a polo shirt or a Barong Tagalog?

"A Only faces." (Pp. 145-147, Id.)

As can be readily observed, the foregoing testimony bears features that are rather unusual and unbelievable, such as (1) his being afraid, (it was only after the fiscal that he talked of movie shooting) still, he climbed at the top of a truck to see what was going on, a mere 13-year old boy, as he was; (2) his vague description of where Fernandez and Labra were when he first saw them and what they were respectively doing then; (3) his correction of his earlier written statement given to the police about the identification of accused Antido; (4) his belated (at first he

said the next day, only to admit later it was after two days) relating of what he saw to his policeman friend and the brother of his father (They were the first to whom he revealed the incident; not to his playmates and other persons in the cockpit, much less to the other members of his family); (5) his inability to remember how Fernandez and Labra were attired; etc.

But let Us leave such weaknesses of evidentiary value of his testimony for a while. At this juncture, the important points to bear in mind are (1) that he did not see Fernandez firing the "long gun" the witness said Fernandez held, except when he (Fernandez) and his companions were moving away from the scene; (2) he did not notice that Labra was holding any weapon or gun; (3) that he did not notice any other person with Fernandez, Labra and Antido, thus omitting Barcelona; and very relevantly (4) that he saw Fernandez being aided by somebody to his jeep. To quote him again:

"Q When you saw Eddie Fernandez for the first time he was being aided by somebody, is it not?

"A I saw them boarded the jeep together and Berting Labra supported Eddie Fernandez, and Eddie fell at the back of the jeep.

"Q Inside or outside the jeep?

"A Outside the jeep.

"Q So Eddie Fernandez, in spite of his being supported by his companion then fell on the ground outside the jeep?

"A It was on the jeep when he fell.

"Q And because Eddie Fernandez was very weak then that is why he was being supported by his companion, that is correct, is it not?

"A Yes, sir." (P. 130, t.s.n., May 12, 1970.)

thereby introducing the first indication of the important element, We shall discuss later that Fernandez came out of the incident also wounded.

Rosanna's evidence corroborated Despo's in the sense that Barcelona was not noticed around the place of the incident. And she added a pivotal point insofar as Labra is concerned. She did not notice him there, even as she claimed she saw Antido, less known to her, who according to Sigua and Lopez was allegedly beside Antido; she declared that Labra left the police precinct at Mayon ahead of them together with Director Molina and Antido, thereby supporting the contention of the defense that Labra could not have been with Fernandez[1] at that fatal shooting incident.

Thus, only the testimonies of two witnesses, Sigua and Lopez, are left to serve as possible basis for the conviction of Labra and Barcelona. Let it be recalled that although Lopez claimed he had no gun of his own, the evidence shows that in the glove compartment within his reach was no less than a .45 caliber pistol, allegedly belonging also to Pangilinan. (This gun was never produced in evidence; it was never shown to the police for examination.) Sigua, on the other hand, who claimed to be a mere friend-companion of Pangilinan admitted that whenever they rode in the car, he always had his .32 mm. gun by his side, not in a holster, not in his pocket but evidently ready for use. Thus, it might be said, he was a sort of bodyguard of Pangilinan. Indubitably, therefore, We cannot but take their declarations with grains of salt. They had to have somebody answer for the death of their "master", and, of course, under the circumstances, who could come in handy but Fernandez and Labra, Antido and Barcelona whom they had met earlier in the house of Nasal and were with them at the police precinct when their guns were being verified. In other words, it was easy for them to surmise that those three were with Fernandez in whatever he did. More, they must have thought somehow, that because precisely Labra was one of the co-actors of Fernandez in the film then being done and Antido was his driver to connect them with the doings or misdoings of

Fernandez would easily be swallowed by the undiscerning.

In these premises, We find no difficulty in holding that Labra and Barcelona cannot be held responsible for the crimes charged herein. The least that can be said regarding the evidence against them is that the same does not prove their guilt beyond reasonable doubt as required by the rules, the Constitution and the jurisprudence interpretative thereof. After examining the eye-witness' declarations against said two accused, We cannot say with moral certainty that they were even at the scene of the crimes charged.

- A -

Let Us take the case of Barcelona. As already stated, Despo did not notice his presence. Neither did Rosanna. Only Sigua and Lopez who must have been impatiently concerned with the traffic jam that caused their car to stop and, therefore, must have had their sight towards the front, declared they saw him firing his gun from, of all places, behind the car. How they could have turned around while the shooting was going on to see Barcelona in the seven o'clock darkness of the evening taxes Our credulity to its breaking point. Sigua, particularly, told the court that as soon as the shooting started, he just slid down in his seat to avoid being hit. How could he have seen anyone behind the car?

It is of signal relevance to note that Sigua gave two written statements relative to the incident under inquiry, the first on the night of September 17, 1969 and the second on November 21, 1979, with the peculiarity that the latter was prepared in the presence, if not with the assistance, of Atty. Norberto Quisumbing, the first private prosecutor in these cases. In none of said statements, did Sigua even mention Barcelona or any fourth person with Fernandez (Exhibits 6 and 4-7, Barcelona). Neither was there any mention of any such fourth person, much less Barcelona, in the written statement of Lopez given that evening of September 17, 1969.

Withal, Barcelona's alibi cannot be stronger. That he at the Mayon police precinct at the time the shooting incident in question took place was assured to the court by four members of the police department who were then there. Sgt. Gonzalo Mariano testified that Patrolman Angel Domingo called him by phone to inform him there was a shooting incident at A. Bonifacio and, therefore, he had to send more men thereto. He saw that Barcelona was then at the precinct. He also testified that he dispatched Patrolman Magtanggol Pascual, Edilberto Jimenez and Romeo Alonte to the place indicated by Pat. Domingo. Barcelona was left in the precinct. Patrolman Pascual and Patrolman Jimenez corroborated Sgt. Mariano's testimony in open court which included the information that Barcelona helped in handling of the gun to one of them. They even signed a joint affidavit with Alonte, to the same effect. (See Exhibit 8) All these policemen told the trial court that Barcelona was in the precinct long before the shooting incident and was still there when they returned thereto. To disregard such evidence as against the shaky testimonies of Sigua and Lopez would be irrational and contrary to common sense.

Of course, there is in the record the chemistry report that a single speck of nitrate was found at the region of the distal phalange, index finger of Barcelona's right hand and it appears that the shattered part of the back glass of Pangilinan's car had a hole having the appearance of a bullet hole, which facts could in a way support the People's pose that Barcelona did fire his gun from behind Pangilinan's car. But the single speck of nitrate referred to is to Us inconclusive as, in fact, no attempt was made to make the expert, Mercedes Bautista of the NBI, give her opinion that such was evidence that the subject had fired a gun. Besides, that apparent bullet hole may be explained by Despo's declaration that Fernandez fired a parting shot at the back of the car.

- B -

Turning now to Labra, the first and most important point in his favor is that his hands were found negative of any traces that he had fired any gun (Exhibit D, Exhibit 3, Labra). He denied being with Fernandez at the shooting incident. Rosanna practically exculpated him not only by saying that she did notice him at the gun shooting place but by affirming further that he left the precinct ahead of everyone together with Director Molina (pp. 94-95, t.s.n., May 12, 1970). His alibi that he returned to the Nasal house and later to the house of Major Alvarez and was there in very drunken condition was corroborated by Director Molina and another person, Chito Baron. Despo's identification of Labra appears to Us very doubtful, as he was unable to say what he was wearing at the time, whether a polo shirt, a barong or what. Moreover, as We shall discuss again later, it would be dangerous to convict anyone, with Despo's evidence, cluttered as it was with peculiarities that engender disbelief.

- C -

Alibi as a general rule is the weakest of defenses in a criminal case. But this is so only when the identity and presence of the accused are definitely established by credible witnesses. In the cases of Labra and Barcelona, We have taken pains to examine carefully not only their respective alibi - and found them credible - but more, the purportedly inculpatory evidence against them by the prosecution. As far as Barcelona is concerned, only Sigua and Lopez claimed they saw him, but as We have already discussed, those witnesses can hardly be deemed as having given definite and clear evidence of the presence of Barcelona at the scene of the offenses in question. It is not easy to believe that in the midst of the shooting, they could have seen him, behind their car, dark as the night was, as it was already seven o'clock. Withal, said witness could hardly be considered as unbiased. Barcelona's alibi is supported strongly by no less than officers of the law themselves, not one, but four of them. And the same may be said of the attempts of Sigua and Lopez to inculcate Labra. He fired no gun, according to the NBI chemistry report. Rosanna said he left ahead of them from the police precinct and was not with Fernandez; she did not notice him at the gun-shooting incident at A. Bonifacio. We are satisfied that his alibi supported by Director Molina and Chito Baron outweigh the evidentiary value of Sigua's and Lopez' testimonies.

Accordingly, Our collective minds cannot rest easy in the moral conviction that Barcelona and Labra were at the scene of the offense herein charged and that they took part in the killing of Pangilinan and the wounding of Lopez and Sigua. Barcelona and Labra are entitled to acquittal. After all, if in truth, which the evidence before Us does not show, they had anything to do with the crimes in question, their incarceration for about a decade now could almost, if not completely serve as punishment enough, even under the Revised Penal Code, since, as earlier observed, the most they could be guilty of is homicide and frustrated homicide.

- V -

The cases of accused Fernandez and Antido have to be viewed differently. Their presence at the scene of the subject offenses is admitted by them and the only matter We have to inquire into as far as they are concerned is the degree of their participation therein, first, whether it is culpable or not and, in the affirmative, what is the nature of their respective liabilities.

To be sure, the thrust of the defense of Fernandez is that he was not the offender but, on the contrary, the victim of aggression on the part of Pangilinan as instigator and Sigua as the actual aggressor with his .32 caliber colt revolver. (Exh. M-3).

It may be recalled that according to the prosecution, Fernandez approached the stopped car of Pangilinan from its right side, Labra and Antido from its left and Barcelona from behind and that after Fernandez had warned the four passengers, "Walang kikilos sa inyo, ang kikilos tatamaan.", with his pistolized carbine aimed at all of them, and

Rosanna had pleaded "Huwag, Eddie, huwag.", while Sigua had remarked, "Hindi kami lalaban", shots were simultaneously fired by all four accused. The aftermath was that Pangilinan fell wounded on the lap of Rosanna, Lopez got hit on the right chest and Sigua was slightly hurt in the forefinger of his right hand. How Rosanna who was nearest to Fernandez, for she was sitting on the right side of the car the rear window of which was open, came out unscathed is not shown in the record.

According to the prosecution, Fernandez must have been infuriated by Rosanna's going with Pangilinan in the latter's car instead of going back to work at the location in Nasal's house that he decided to kill Pangilinan, obviously the cause of Rosanna's leaving, and within the scarcely five minutes that it took them to turn around and pursue Pangilinan's car, he was able to convince his friends Labra and Barcelona and his driver Antido to conspire with him, each with his definitely assigned part, hence the charges of murder and frustrated murder in band or with abuse of superior strength against them.

That such version of the prosecution cannot be wholly true is immediately demonstrated in Our earlier discussion that treachery and evident premeditation cannot be appreciated in these cases in the light of the circumstances extant in the record. Also, the accusation that the four accused herein acted as a band or with abuse of superior strength cannot hold water, for the simple reason that as We have found above, the presence, much less the participation of Barcelona and Labra have not been proven beyond reasonable doubt, and anyway, all three of the alleged victims were themselves armed. Consequently, if at all Fernandez and Antido may be held guilty, the offenses committed by them would at most be only homicide and frustrated homicide, with the mitigating circumstance of voluntary surrender, a circumstance conceded in the People's brief (p. 56).

- A -

In determining the degree of liability of Fernandez, two very significant circumstances, which to Us have been satisfactorily proven by credible evidence, must above all be considered, namely:

1. That Fernandez himself was wounded during the shooting incident in his left chest and lower part of his body. The testimony of Despo, the boy witness of the prosecution, more than suggested the veracity of this fact, when he declared that he saw that Fernandez was being aided on the way to his jeep and that he "fell" inside it, albeit the defense claim he fell on the roadside. Fernandez was medically treated that same night, first at the National Orthopedic Hospital, later at the V. Luna General Hospital, and when he was ultimately operated on at the Quezon City Medical Center by the same military surgeon who attended to him at V. Luna, Captain Arnold Gruspe, a deformed slug was found lodged in his body.
2. That deformed slug was identified by Major Constantino Leyva, Chief Ballistics Branch of the Philippine Constabulary as a .32 caliber bullet, which when examined scientifically and compared with test bullets fired from the .32 caliber gun Sigua had that evening of the event in question showed significant similarities, albeit not necessarily conclusive to prove the connection between said two objects (Exh. 12, Fernandez, pp. 3-51, t.s.n., May 29, 1970). When further tested by Assistant Chief Domingo R. del Rosario of the NBI Ballistics Division, said expert definitely concluded that the deformed bullet (Exhibit 5) was "fired through the barrel of the above-mentioned firearm", referring to Exhibit M-3, the same gun of Sigua (p. 28, t.s.n., June 16, 1970; Exhibit 13-Fernandez).

By mere implication and without directly and expressly arguing to such effect, in its brief, the People suggests that all the above evidence are incredible and could have been, to put it bluntly, fabricated. We must emphatically reject such a wild and baseless theory, if only because, by its very nature, the supposed confabulation involves several persons, of apparently good professional, official and social standing. It is ludicrous to conceive that they could have, for no reason indicated anywhere in the prosecution's evidence, debased themselves in giving their testimonies.

True, the prosecution tried to explain, when confronted with evidence that indeed Sigua's gun had traces of having been fired, that it was one Reynaldo Pangilinan, an uncle of the deceased, who fired the same in view of his disgust over the death of his nephew and the failure of Sigua to defend him. One has to be very naive to accept such a transparent explanation. Sigua's testimony as to how his gun landed in the hands of Reynaldo Pangilinan, that night was not flawless. He claimed at one instance (in his written statement to the police that same night - Exhibit 4), he could not remember to whom he handed it. At the trial he said he gave it to a security guard at the Chinese General Hospital but when Reynaldo Pangilinan and his companions arrived, he gave it to one of said companions, he could not remember who. But even in his second statement given before Atty. Quisumbing on November 21, 1969, he also did not mention the security guard nor the name of Reynaldo Pangilinan (Exhibit 4-A). In any event, the fact remains that the gun of Sigua was found to have been fired, and We are hard put to believe, it being rather unnatural, as We see it, that Reynaldo Pangilinan was the one who fired the same at nobody five times in the garage of their house just out of disgust that it was not used, as far as he knew, to defend his nephew, Renato. It is more likely that, such explanation was given to vainly hide the fact proven by the experts that Sigua had indeed fired said gun during the shooting incident and the slug found in the body of Fernandez came from his .32 caliber gun he always had, by his own admission, by his side in the car whenever he rode with Renato Pangilinan.

- B -

In the face of these circumstances, Our task is to determine which version approximates the truth, that of the prosecution to the effect that Fernandez and his companions were the first to fire upon the passengers of the car, or, that of Fernandez, who claimed that when he remonstrated Rosanna for not returning to their place of work, Pangilinan ordered Sigua "Totoy, tirahin mo na" after saying "Talagang asar itong tarantadong ito" (referring to Fernandez)?

There being no showing anywhere in the record of any amorous relationship between Fernandez and Rosanna, and it being but natural that Fernandez, who had already been made to wait for her for half a day to make their scene in the filming of "Ako ang Sasagupa", should be very much concerned why Rosanna would take French leave, something that to Our mind, could hardly induce any desire to take another man's life, We are more inclined to believe that it was Pangilinan who considered Fernandez a nuisance and in a moment of bravado, he did direct Sigua to give Fernandez the works. This is not to say, We are not convinced that Fernandez and Antido were armed. What We are more persuaded to believe, however, is that the one who started the gunshooting was Sigua.

- VI -

As We try to visualize what really happened that fatal evening from the thrust of the respective evidence of the prosecution and the defense, the picture that emerges is one that practically reconciles the most important portions of the apposing theories of the parties.

Let it be recalled that even before Pangilinan's car reached the traffic jam at A. Bonifacio and Blumentritt, omen of something untoward that Fernandez entertained within him already became obvious to Sigua who declared that as they changed their course to go towards Manila instead of Biak-na-Bato or Nasal's residence, he already noticed that Fernandez followed them. He testified that in fact he saw Fernandez in the act of holding a gun then.

With this circumstance in mind added to Sigua's admission that he always kept his gun ready by his side, it is but rational to assume that he had warned his companions accordingly. So, when, as they must have anticipated, Fernandez overtook them and approached their car, they were not unprepared. We are convinced that Fernandez

and Antido, both of them brandishing their respective firearms, approached Pangilinan's car, Fernandez at the right and Antido at the left thereof. We believe the prosecution's evidence that at that moment as he came near Rosanna's side Fernandez did say, "Walang kikilos sa inyo, ang kikilos tatamaan." We also believe, on the other hand, that aside from the foregoing warning, Fernandez also berated Rosanna for taking French leave and not going back to their work. Thus, We conclude that such acts of Fernandez and Antido constituted sufficient provocation for Pangilinan and his companions to react, and, accordingly, We give credence to the testimony of Fernandez that Pangilinan did say, "Talagang asar ang tarantadong ito. Sigue, Totoy, tirahin mo na." And ready as he was, Sigua fired at Fernandez from his .32 caliber gun. Fernandez was hit and must have instantly tried to retaliate, but there is no clear evidence in what direction he succeeded in firing, no traces of the bullets of the nature of those that could have come from the kind of firearm he used having been presented at the trial. For sure, it was not Fernandez who hit Pangilinan. It was Antido who must have fired through the glass rear window of the car in an obvious effort to avoid Pangilinan from joining Sigua's assault upon Fernandez. It was also Antido that must have hit Lopez, who must have naturally tried himself to get reach of the .45 caliber pistol in the glove compartment of the car. How Sigua was hurt, he himself did not explain.

In these circumstances, it is plain to Us that having acted, albeit instantaneously, to help his master Fernandez, Antido is guilty of homicide and frustrated homicide. But We appreciate in his favor the mitigating circumstance of having acted in incomplete defense of Fernandez. He only reacted to the assault upon Fernandez by Sigua, sensing evidently that Pangilinan and Lopez might join Sigua. Of course, as already stated, there was sufficient provocation on the part of Fernandez and Antido. But there was unlawful aggression on the part of Sigua. And by and large, taking all circumstances into account, We cannot hold that the means used by Antido to repel the aggression were entirely unwarranted.

Inasmuch as the provocation came principally from Fernandez and it is satisfactorily proven that he also fired his gun, he must also be liable for the death and injuries that resulted from his acts, even if it does not appear that he himself hit Pangilinan and Lopez. As in the case of Antido, he tried to repel an aggression with means which cannot be said to be unreasonably uncalled for in the premises.

JUDGMENT

The foregoing opinion is shared by Chief Justice Fernando, Justices Concepcion, Fernandez, Guerrero and De Castro.

While Justices Makasiar, Plana and Escolin also agree as to the acquittal of appellants Labra and Barcelona, they find and hold that the offenses of homicide and frustrated homicide committed by appellant Fernandez and Antido were not acts of incomplete self-defense, and that they were mitigated only by their voluntary surrender, hence they each deserve "accordingly" the indeterminate penalties of anywhere within prision mayor (from six (6) years and one (1) day to twelve (12) years) as minimum to anywhere within reclusion temporal in its minimum period (from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months) as maximum, for the homicide and another indeterminate penalty each of one degree lower for the frustrated homicide.

Justice Erica concluded that all the appellants are guilty of homicide with the mitigating circumstance of voluntary surrender offset by the aggravating circumstance of in band, for which the penalty should be indeterminate and anywhere within prision mayor, as minimum, to reclusion temporal in its minimum period fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months), as maximum.

Justices Teehankee and Abad Santos voted to affirm the conviction of all the appellants for murder and frustrated murder, with the mitigating circumstance of voluntary surrender offset by the aggravating circumstance of band, for which the penalties should be reclusion perpetua each for the murder and six (6) years and one (1) day of

prison mayor to twelve (12) years and one (1) day of reclusion temporal each, for the frustrated murder.

Justices Aquino and Melencio-Herrera did not take part.

With the foregoing varying conclusions, the result is that nine (9) members of the Court are for the acquittal of the appellants Labra and Barcelona, hence they are both hereby acquitted and their immediate release is ordered.

However, as regards appellants Fernandez and Antido, there are six (6) votes sustaining the finding of incomplete self-defense (of the Chief Justice, Justices Concepcion Jr., Fernandez, Guerrero, De Castro and this writer) and for the imposition upon each of them of the indeterminate penalties only of six (6) months of arresto mayor, as minimum, to six (6) years of prison correctional as maximum, for the murder, plus the straight penalty four (4) months of arresto mayor, for each of them, for the frustrated murder.

As already discussed above, six (6) other members of the Court, (Justices Teehankee, Makasiar, Abad Santos, Ericta, Plana and Escolin) voted for higher penalties.

In other words, there are six (6) Justices who voted for the penalty imposed by this ponente appropriate for homicide with the mitigating circumstances of incomplete self-defense and voluntary surrender and equally six (6) votes for varying higher penalties.

Pursuant to Section 3 of Rule 125, when in an appeal in a criminal case the Court is equally divided as to the guilt of the appellant or the necessary votes for a judgment of conviction (eight) can not be had, the "judgment of conviction of the lower court shall be reversed and the defendant acquitted." By parity of reasoning, the Court, by the vote of twelve (12) members of the Court, namely, the Chief Justice, and Justices Teehankee, Makasiar, Aquino, Fernandez, Guerrero, De Castro, Herrera, Ericta, Plana, Escolin and this writer, and with Justice Abad Santos reserving his vote and Justice Concepcion Jr. being on leave, at the time of voting on this particular point of construction, rules that the lower penalty stated above should be imposed, as the same are hereby imposed upon each of the appellants Fernandez and Antido. Importantly, it need be stated here that all four appellants herein have been in detention for more than twelve years.

The appellants Fernandez and Antido are hereby further sentenced to pay jointly and severally the heirs of Renato Pangilinan the sum of TWELVE THOUSAND (P12,000.00) PESOS and Apolinario Lopez the sum of FIVE THOUSAND (P5,000.00) PESOS, as civil indemnity, without subsidiary imprisonment.

Should it appear that their period of preventive imprisonment, to full credit for which they are fully entitled, the accused Fernandez and Antido have both already served the two penalties hereinabove imposed upon each of them for homicide as well as that for frustrated homicide, the Director of Prisons is hereby ordered to immediately release them together with the acquitted accused Labra and Barcelona, unless their continued confinement is legally warranted for any other cause.

Fernando, C.J., Concepcion, Jr., Fernandez, Guerrero, and De Castro, JJ., concur. Teehankee, J., concurs with the dissenting opinion of J. Abad Santos. Makasiar, J., dissents in part. Abad Santos, J., see dissenting opinion. Ericta, J., states that the four defendants should be convicted of homicide and frustrated homicide. The aggravating circumstance of in band and voluntary surrender should be appreciated. Plana and Escolin, JJ., join in J. Makasiar's dissent. Aquino and Melencio-Herrera, JJ., no part.

[1] Antido was with Fernandez, because according to his own testimony after conducting Molina and Labra to the Nasal residence, he went back to the precinct to fetch Fernandez.

DISSENTING OPINION

ABAD SANTOS, J.:

I dissent. The crimes committed were murder and frustrated murder qualified by evident premeditation. Present the aggravating circumstance of band and the mitigating circumstance of voluntary surrender the penalty for the first is reclusion perpetua and for the second an indeterminate sentence of 6 years and 1 day of prision mayor to 12 years and 1 day of reclusion temporal.

DISSENTING IN PART

MAKASIAR, J.:

Appellants Fernandez and Antido are guilty of homicide and frustrated homicide, respectively, mitigated only by voluntary surrender, and therefore should be sentenced accordingly. Incomplete self-defense should not be appreciated in their favor as they were the ones who followed the victims and appellant Fernandez provoked the incident by approaching the car of the victims and warned them not to move or they will be shot.

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