

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLITO GIDA AND LUCIANO GIDA, ACCUSED-APPELLANTS.

G.R. No. L-41419. January 19, 1981

Ponente: PER CURIAM: REVIEW of the death sentence imposed by the Court of First Instance of Lanao del Norte upon Pablito Gida and Luciano Gida for the killing of Felix Logronio.[1]The record shows that at about 7:00 o'clock in the evening of September 5, 1971, Aurea Lapinig de Logronio was in their house in Lapinig, Kapatagan, Lanao del Norte, tying a shoat which she had brought along with her that evening from Aurora, Zamboanga del Sur, where she spent a few days, in fear of a group of armed Muslims known as the "Barracudas." She and her husband, Felix Logronio, were preparing to go to the house of her father, Cirilo Lapinig, about 100 meters away, where they intended to eat their supper. As she was tying the pig to a post, about 2 meters from the ladder, Aurea heard a chopping sound behind her. When she turned her head, she saw Apolinario Gida hacking the leg of her husband, who was on the top rung of the ladder, locking the door of their house. Felix Logronio fell and Pablito and Luciano Gida took turns in attacking him with their bolos. She pleaded with Luciano Gida not to kill her husband. She also called for help from her parents. After inflicting numerous wounds on Felix, Pablito, Luciano, and Apolinario Gida fled towards the ricefields and thence to the coconut grove where it was dark.[2] Cirilo Lapinig came in answer to his daughter's call of distress. When he arrived at the house of his daughter, he saw his son-in-law Felix Logronio lying on the ground, bleeding from his wounds. Felix was still alive but could not talk. Aurea told him, in answer to his question, that Felix was attacked by Apolinario, Luciano, and Pablito Gida.[3] They brought Felix Logronio to the Aurora General Hospital at Aurora, Zamboanga del Sur, where Felix Logronio was pronounced dead on arrival.[4] Felix Logronio sustained the following lesions:[5] Wound, multiple, scalp, parietal region, left; Wound, earlobe, right, upper portion; Wound, chest wall, posterior, at 3 points; Wound, forearm, left, antero medial aspect; Wound, forearm, right, posterior at 2 points with fracture of the ulnar bone, right; Wound, amputating wound of the fingers, right, middle, ring & little finger; Wound, leg, left, lateral aspect lower portion; and Wound, knee joint, left, anterior aspect. The incident was reported to the police authorities at Kapatagan very early the following day and police corporals Felix Paculba and Nemesio Gina-ut were ordered to go to Lapinig to conduct an investigation. Upon their return, they reported that Felix Logronio was killed by Luciano, Apolinario, and Pablito Gida because of the controversy between Luciano Gida and Cirilo Lapinig, the father-in-law of Felix Logronio, over a parcel of land. They brought with them Luciano and Pablito Gida, as well as the bolo they found in the house of Apolinario Gida, which was used in the killing. Apolinario Gida could not be found and still remains at-large.[6] As a consequence, Luciano and Pablito Gida were charged with the crime of Murder, committed as follows: "That on or about the 5th day of September, 1971, in the barrio of Lapinig, municipality of Kapatagan, Province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring together, confederating and mutually helping with Apolinario Gida who is still at large, armed with bolos and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, stab and wound thereof with treachery, one FELIX LOGRONIO, inflicting upon him the following stab wounds, to wit: Wound Multiple, scalp, parietal region, left. Wound Earlobe, right, upper portion. Wound Chest wall, posterior at 3 points. Wound Forearm, left, antero medial aspect. Wound Forearm right posterior at 2 points with fracture of the ulnar bone, right. Wound Amputating wound of the fingers, right, middle, ring and little finger. Wound Leg left, lateral aspect lower portion. Wound Knee joint, left anterior aspect. and as a direct result thereof, said Felix Logronio died thereafter. "The above-named accused shall indemnify the heirs of the deceased represented by Aurea Lapinig the sum of P12,000.00 and shall pay them the sum of P20,000.00 representing moral and exemplary damages for their mental anguish. "Contrary to and in violation of Article 248 of the Revised Penal Code with aggravating circumstances of evident premeditation, superior strength, nighttime and dwelling of the offended party." Luciano and Pablito Gido denied that they committed the crime. They attribute the killing of Felix Logronio to the armed Muslim bandits.

Luciano and Pablito Gida declared that they were in the house of Jose Condiman in Lapinig, Kapatagan, Lanao del Norte on September 5, 1971, from 4:00 o'clock in the afternoon to 7:00 o'clock in the evening. Pablito Gida stated that he was playing "Lucky 9" with Lito de la Cruz, Primo Condiman, Jose Condiman, Liberato Rosales and several others, whose names he cannot now remember. They played until 7:00 o'clock in the evening when they heard Aurea Lapinig shouting for help and the players left. However, he did not leave the house of Jose Condiman "because I heard that they suspected Luciano Gida, Pablito Gida, and Apolinario Gida in the hacking of Felix Logronio." [7] Luciano Gida said that he was watching the game of "Lucky 9" and ran home when he heard the cry for help. His house is just in front of the house of Jose Condiman. [8] After going over the records of the case, We find no reason to disturb the findings of the trial court that Pablito and Luciano Gida are guilty of the crime for which they have been charged and convicted. Aurea Lapinig categorically and positively identified them as the persons who attacked and killed her husband on the night of September 5, 1971. The claim of the defendants that Felix Logronio was killed by Muslims is incredible and is not supported by any evidence presented by the defense. The accused point to several contradictory statements, inconsistencies and improbabilities in the testimony of Aurea Lapinig which would render her declaration unworthy of belief. [9] But, these contradictions, inconsistencies, and improbabilities refer to minor and trivial details which cannot destroy the credibility of the witness and the veracity of her statements. Thus, as recently held in *People vs. Castañeda, et al.*, G.R. No. L-32625, August 11, 1979, "the trial court is not bound to believe all that the said witness has said, but it may give weight and credence to such portions of her testimony as it may deem worthy of belief and disbelieve the other portions of her testimony. And in the same case, the following applicable doctrines were invoked as: "Triers of facts are not bound to believe all that a witness has said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances, to be the truth. x x x. Even when witnesses are found to have deliberately falsified in some particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they may deem worthy of belief." (1 Moore on Facts, p. 23, quoted with approval in *People vs. Keller*, 46 O.G. No. 6, pp. 3222-3223. See also *People vs. Li Bun Juan*, L-11077, Aug. 23, 1966, 17 SCRA 934. "It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. As it has been aptly said even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected, but such portions thereof deemed worthy of belief may be credited." (*People vs. Malillos*, L-26568, July 29, 1968, 24 SCRA 133. See also *People vs. Mabuyo*, L-29129, May 8, 1975, 63 SCRA 532; *People vs. Roxas*, L-32912, Oct. 29, 1976, 73 SCRA 583.) In this connection, the positive identification of the appellants belies the defense of alibi. The crime committed is MURDER qualified by treachery. The attack on Felix Logronio was sudden and unexpected. He was first hit on the leg causing him to fall to the ground from the stairs of their house. Upon falling on the ground, his assailants ruthlessly hacked him to death. [10] At the very moment that he was hacked on the leg he was at the top rung of the stairs locking their house. [11] Thereby, dwelling aggravates the penalty because the staircase forms an integral part of the house. [12] And there being no mitigating circumstance present, the death penalty must be imposed. Nocturnity and abuse of superiority are absorbed in treachery because the same form part of the peculiar treacherous means and manner adopted to insure the execution of the crime. Evident premeditation can not be appreciated. There is no showing that the accused premeditated the killing; that the culprit clung to their premeditated act; and that there was sufficient interval of time between the premeditation and the execution of the crime to allow them to reflect upon the consequences of their act. [13] WHEREFORE, appellants are convicted of the crime of murder qualified by treachery aggravated by the circumstance of dwelling, and sentenced to death; to indemnify, jointly and severally, the heirs of the late Felix Logronio with the amount of P12,000.00 for compensatory damages and P15,000.00 for moral damages; and to pay the costs. Considering that appellants have been detention prisoners since September 10, 1971 continuously up to the present, and that nothing can be said against them as to their conduct while in detention, the Court recommends to the Chief Executive the commutation of their sentence to life imprisonment. SO ORDERED. Teehankee, Barredo, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur. Fernando, C.J., took no part. Makasiar, J., join the concurrence of Justice Aquino. Aquino, J., files a separate opinion. [1] The dispositive portion of the decision reads, as follows: "WHEREFORE, this Court finds the accused Pablito Gida and Luciano Gida GUILTY as principals and beyond

reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code with the qualifying and aggravating circumstances of evident premeditation and treachery and the ordinary aggravating circumstances of night time, abuse of superior strength and dwelling of the offended party with no attending mitigating circumstance and hereby sentences both of said accused to each suffer the supreme penalty of death. "Further, the accused are sentenced to indemnify, jointly and solidarily, the heirs of the late Felix Logronio represented by his widow, Aurea Lapinig Vda. de Logronio, in the amount of P12,000.00 for compensatory damages and the additional amount of P15,000.00 for moral damages." [2] t.s.n., Dulay, pp. 5-13. [3] Id., pp. 71, 14. [4] Id., pp. 71-73. [5] Exhibit "A". [6] t.s.n., Dulay, pp. 107-110. [7] Id., p. 183. [8] t.s.n., Jose, p. 24. [9] "Item No. 1.- When asked where she was at about 6 o'clock and seven o'clock in the evening of September 5, 1971 (the time and date when Felix Logronio was allegedly assaulted), she said: 'I was aboard a truck from Aurora going to Lapinig.' (tsn., p. 31, Underscoring supplied.) When the question was repeated, she replied: 'I was on board a truck from Aurora at 6 o'clock in the afternoon and I arrived in our place at about 6:45 in the evening,' (Id., pp. 31-32. Underscoring supplied.) Several questions later, she said 'We (referring to her husband and herself hired a jeep to bring our things,' and '(W)e were met by my mother when the jeep parked in front of our house and I gave to her the fish to be cooked.' (Id., pp. 33-34. Underscoring supplied.) "Item No. 2.- When asked about the time her husband was assaulted, she said, 'Just after we brought our things upstairs we went down to take our supper at the house of my father and that was about 7 o'clock. (Id., p. 32, Underscoring supplied.) Later, when asked about the pig she was tying to a post at which time the assault took place, the witness declared: 'We placed it in the sack and while my husband was getting our things from the jeep I was opening the sack where the pig was placed.' (Id., p. 36, Underscoring supplied.) "Item No. 3.- When asked what she did when the accused were assaulting her husband, she gave the following replies: (a) 'I told them, "Luciano, don't kill my husband." I also asked help from my neighbors.' (Id., p. 11, Emphasis supplied.) (b) 'I said, "Help neighbors, please Pa and Ma because Felix is being hacked, help me!" 'Q - How many times did you shout those words, if you remember? 'A- Many times because I kept on shouting so that somebody will come and help me. 'Q - Those were the only words that you uttered until your father arrived; is that correct? 'A - Yes and my father arrived when I called for help.' (Id., pp. 48-49.) In the affidavit referred to by the witness dated September 9, 1971, given to the Acting Chief of Police, she said in part: "I told Luciano Gida not to kill my husband (Ayaw ninyo pagpatya Noy Ciano) and cried for help (Tabang)". (Note: The affidavit which forms part of the records furnished to counsel de oficio does not appear to have been marked as exhibit and offered in evidence.) "Item No. 4.- From the narration by Aurea Logronio, the initial assault was not frontal. As stated above, the deceased was facing the door of their house. The first assailant, according to the witness, was Apolinario Gida, who hacked the deceased at the left leg. (Id., p. 10.) Apolinario Gida is a right-handed person. (Tsn, Luciano Gida, p. 236, Feb. 28, 1974.) Aurea Logronio also implied that Apolinario Gida was towards the left of her husband. (Id., p. 44.) But whether Apolinario Gida was towards the left or right of the deceased or was directly behind him, it is improbable for him as a right-handed man, using his right hand, to have inflicted the injury on the left leg of the deceased. Equally improbable would be his use of his left hand when he is a right-handed. "Item No. 5.- Aurea Logronio testified that after the deceased was wounded on the left leg, he fell to the ground. His face was bent low, and his two knees and his two arms were touching the ground. (Id., p. 43.) If we visualize the position of the deceased and what he was doing at the time of the assault, and the fact that according to Aurea the attack was swift and unexpected, the deceased could have fallen in these directions: first, he could have lurched forward, his head hitting the door and his body sliding on the stairs until his feet touched the ground; or, second, he could have fallen either to the left or to the right of the stairs in which he would be sprawled on the ground face down; or third, by reason of the suddenness of the attack, his body would have been jerked away from the door, in which case he would fall flat on his back on the ground. It is impossible for the deceased to have assumed the position described by Aurea where both his knees and hands would be touching the ground and his head bent downwards. "Item No. 6.- Aurea Logronio also said that after her husband had fallen to the ground, the accused Luciano and Pablito Gida then helped Apolinario Gida in hacking him to death with their bolos. (Id., p. 11.) All three were carrying 3-foot bolos. (Id., pp. 45-46.) The deceased at this time was already in that position where his knees and hands were on the ground and his head bent low. (Id., p. 46.) If such was the case, how could the deceased have sustained a wound on the knee joint, anterior aspect? (Please see Decision, p. 5, quoting Exh. "A", Medical Certificate.) The knees were touching the ground, and how could the wound described as 'amputing (sic)

fingers, right, middle, right and little fingers' could have been inflicted while the deceased was in that position'. It is significant to note that when Cirilo Lapinig arrived upon the scene of the assault he saw that the deceased 'was wounded lying face on the grounds.' (Id., p. 72.) "Item No. 7.- Considering the sequence of events, as narrated by Aurea Logronio, the wound on the left leg was minor, compared with the wound on the chest wall, or on the right forearm with a fracture of the ulnar bone, or on the fingers which were cut off. Yet, the first wound should have been cutting or more severe because it was the first, delivered suddenly, presumably with full swing and force, and the deceased had no means of anticipating the attack. Unlike in the case of the succeeding wounds where three (3) assailants allegedly each armed with a 3-foot bolo, helping each other in assaulting the deceased, the assailants must either have (a) to stay at more than 6 feet distance from each other otherwise they would hit each other, or (b) at a closer distance, deliver measured blows to prevent the infliction of injury to themselves. It defies probability that the first wound inflicted upon the deceased, as described by Aurea, was not more serious, cutting more deeply, or even causing a fracture. "Item No. 8.- From Aurea Logronio's testimony, it appears that the Logronio residence was about 15 meters from the center of the national highway (Id., p. 50), and that there were no obstructions or coconut trees between the house and the road. (Id.) Between their house and the house of her father, Cirilo Lapinig, is a distance of about 100 to 130 meters. (Id., p. 35.) There were no intervening plants and trees between them. (Id.) There were, however, four houses between her house and that of her father. (Id.) The houses of the accused including Apolinario Gida were also along the national highway (Id., p. 16) but across the road. (Tsn, Cirilo Lapinig, p. 95.) Inasmuch as the deceased and Aurea had just arrive from Aurora (Tsn, pp. 32-33), a few minutes before the attack, the killing of the deceased could not have been planned or premeditated. Evidently, therefore, the Gidas - assuming they were the assailants - would come from their respective house, cross the road, and proceed to the front portion of the house where the deceased was, and commence the attack. At this time, Aurea came down from the house, presumably followed by Felix Logronio. (Id., p. 32.) Aurea started to tie the pig she brought with her from Zamboanga del Sur to one of the posts of their house. Felix, some two meters away from her, was locking the door. (Id., p. 10.) There was a full moon and she could clearly see her husband, and later, his assailants at that distance. (Id., p. 12.) It is inconceivable that neither she nor her husband saw his assailants before the assault. Presumably, the attack, considering the sequence of events, had taken place immediately after she went down followed by her husband. If the assailants were close by, they would not have failed to see them as they were coming down the house, considering their unobstructed view of the front of the house. And if the assailants had run from across the road, to negotiate a distance of more than 15 meters running, both she and her husband would have heard running feet or the impact of heavy feet hitting the ground in the process of running. "Item No. 9.- Aurea Logronio, when asked if her husband said anything 'during the time of the incident', replied: 'None, sir.' (Id., pp. 56-58.) Unless a person is a mute, his normal and spontaneous reaction upon sustaining an injury would be to utter a cry of pain. The deceased and the accused had no previous quarrel nor misunderstanding. (Id., p. 28.) Aside from uttering a cry of pain, the deceased would be expected to ask the assailants the reason for the assault. He did nothing of the sort. He said nothing. He asked no questions. He made no protests. He stoically bore his injuries and pain without even a whimper. Verily, if this was true, Felix Logronio was a superhuman individual. Yet there is nothing in the records to show that he was more than human. "Item No. 10.- Considering the non-fatal nature of the wound on the scalp, earlobe, left forearm, left leg, left knee joint, together with the amputating wounds of three (3) fingers of the right hand of the deceased, the conclusion is irresistible that he must have been attacked frontally, probably by only one assailant. The minor wounds were sustained because the deceased was able to avoid more serious injuries. The three (3) fingers of the right hand were amputated while in the act of vainly protecting his body from the hacking blows of the assailant. The narration by Aurea Logronio as to how the incident happened makes no sense whatsoever in the light of the number, nature and location of the wounds. For it it were true that he had both his arms and knees on the ground, his head bent low, right after the first hacking blow on the victim's leg by Apolinario Gida, the injuries on the hand, forearm, leg and knees would not have been sustained, and the only other injuries on the victim's body would have been those on the chest wall." (pp. 31-37, Appellant's Brief.) [10] Exhibit "A". [11] pp. 9-10, t.s.n., July 6, 1972. [12] People vs. Paulo Alcala, 46 Phil. 739. [13] People vs. Abletes, No. L-33304, July 31, 1974, 34 SCRA 241, citing People vs. Corpus and Serquiña, 107 Phil. 44; People vs. Fuentherula, 73 Phil. 553, and U.S. vs. Gil, 13 Phil. 530, 549. CONCURRING OPINION AQUINO, J.

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PER CURIAM:

REVIEW of the death sentence imposed by the Court of First Instance of Lanao del Norte upon Pablito Gida and Luciano Gida for the killing of Felix Logronio.[1]

The record shows that at about 7:00 o'clock in the evening of September 5, 1971, Aurea Lapinig de Logronio was in their house in Lapinig, Kapatagan, Lanao del Norte, tying a shoat which she had brought along with her that evening from Aurora, Zamboanga del Sur, where she spent a few days, in fear of a group of armed Muslims known as the "Barracudas." She and her husband, Felix Logronio, were preparing to go to the house of her father, Cirilo Lapinig, about 100 meters away, where they intended to eat their supper. As she was tying the pig to a post, about 2 meters from the ladder, Aurea heard a chopping sound behind her. When she turned her head, she saw Apolinario Gida hacking the leg of her husband, who was on the top rung of the ladder, locking the door of their house. Felix Logronio fell and Pablito and Luciano Gida took turns in attacking him with their bolos. She pleaded with Luciano Gida not to kill her husband. She also called for help from her parents. After inflicting numerous wounds on Felix, Pablito, Luciano, and Apolinario Gida fled towards the ricefields and thence to the coconut grove where it was dark.[2]

Cirilo Lapinig came in answer to his daughter's call of distress. When he arrived at the house of his daughter, he saw his son-in-law Felix Logronio lying on the ground, bleeding from his wounds. Felix was still alive but could not talk. Aurea told him, in answer to his question, that Felix was attacked by Apolinario, Luciano, and Pablito Gida.[3] They brought Felix Logronio to the Aurora General Hospital at Aurora, Zamboanga del Sur, where Felix Logronio was pronounced dead on arrival.[4] Felix Logronio sustained the following lesions:[5]

- Wound, multiple, scalp, parietal region, left;
- Wound, earlobe, right, upper portion;
- Wound, chest wall, posterior, at 3 points;
- Wound, forearm, left, antero medial aspect;
- Wound, forearm, right, posterior at 2 points with fracture of the ulnar bone, right;
- Wound, amputating wound of the fingers, right, middle, ring & little finger;
- Wound, leg, left, lateral aspect lower portion; and
- Wound, knee joint, left, anterior aspect.

The incident was reported to the police authorities at Kapatagan very early the following day and police corporals Felix Paculba and Nemesio Gina-ut were ordered to go to Lapinig to conduct an investigation. Upon their return, they reported that Felix Logronio was killed by Luciano, Apolinario, and Pablito Gida because of the controversy between Luciano Gida and Cirilo Lapinig, the father-in-law of Felix Logronio, over a parcel of land. They brought with them Luciano and Pablito Gida, as well as the bolo they found in the house of Apolinario Gida, which was used in the killing. Apolinario Gida could not be found and still remains at-large.[6]

As a consequence, Luciano and Pablito Gida were charged with the crime of Murder, committed as follows:

"That on or about the 5th day of September, 1971, in the barrio of Lapinig, municipality of Kapatagan,

Province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring together, confederating and mutually helping with Apolinario Gida who is still at large, armed with bolos and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, stab and wound thereof with treachery, one FELIX LOGRONIO, inflicting upon him the following stab wounds, to wit:

- Wound Multiple, scalp, parietal region, left.
- Wound Earlobe, right, upper portion.
- Wound Chest wall, posterior at 3 points.
- Wound Forearm, left, antero medial aspect.
- Wound Forearm right posterior at 2 points with fracture of the ulnar bone, right.
- Wound Amputating wound of the fingers, right, middle, ring and little finger.
- Wound Leg left, lateral aspect lower portion.
- Wound Knee joint, left anterior aspect.

and as a direct result thereof, said Felix Logronio died thereafter.

"The above-named accused shall indemnify the heirs of the deceased represented by Aurea Lapinig the sum of P12,000.00 and shall pay them the sum of P20,000.00 representing moral and exemplary damages for their mental anguish.

"Contrary to and in violation of Article 248 of the Revised Penal Code with aggravating circumstances of evident premeditation, superior strength, nighttime and dwelling of the offended party."

Luciano and Pablito Gida denied that they committed the crime. They attribute the killing of Felix Logronio to the armed Muslim bandits. Luciano and Pablito Gida declared that they were in the house of Jose Condiman in Lapinig, Kapatagan, Lanao del Norte on September 5, 1971, from 4:00 o'clock in the afternoon to 7:00 o'clock in the evening. Pablito Gida stated that he was playing "Lucky 9" with Lito de la Cruz, Primo Condiman, Jose Condiman, Liberato Rosales and several others, whose names he cannot now remember. They played until 7:00 o'clock in the evening when they heard Aurea Lapinig shouting for help and the players left. However, he did not leave the house of Jose Condiman "because I heard that they suspected Luciano Gida, Pablito Gida, and Apolinario Gida in the hacking of Felix Logronio." [7]

Luciano Gida said that he was watching the game of "Lucky 9" and ran home when he heard the cry for help. His house is just in front of the house of Jose Condiman. [8]

After going over the records of the case, We find no reason to disturb the findings of the trial court that Pablito and Luciano Gida are guilty of the crime for which they have been charged and convicted. Aurea Lapinig categorically and positively identified them as the persons who attacked and killed her husband on the night of September 5, 1971. The claim of the defendants that Felix Logronio was killed by Muslims is incredible and is not supported by any evidence presented by the defense.

The accused point to several contradictory statements, inconsistencies and improbabilities in the testimony of Aurea Lapinig which would render her declaration unworthy of belief. [9] But, these contradictions, inconsistencies, and improbabilities refer to minor and trivial details which cannot destroy the credibility of the witness and the veracity of her statements. Thus, as recently held in *People vs. Castañeda, et al.*, G.R. No. L-32625, August 11, 1979, "the trial court is not bound to believe all that the said witness has said, but it may give

weight and credence to such portions of her testimony as it may deem worthy of belief and disbelieve the other portions of her testimony. And in the same case, the following applicable doctrines were invoked as:

"Triers of facts are not bound to believe all that a witness has said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances, to be the truth. x x x. Even when witnesses are found to have deliberately falsified in some particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they may deem worthy of belief." (1 Moore on Facts, p. 23, quoted with approval in *People vs. Keller*, 46 O.G. No. 6, pp. 3222-3223. See also *People vs. Li Bun Juan*, L-11077, Aug. 23, 1966, 17 SCRA 934.

"It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. As it has been aptly said even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected, but such portions thereof deemed worthy of belief may be credited." (*People vs. Malillos*, L-26568, July 29, 1968, 24 SCRA 133. See also *People vs. Mabuyo*, L-29129, May 8, 1975, 63 SCRA 532; *People vs. Roxas*, L-32912, Oct. 29, 1976, 73 SCRA 583.)

In this connection, the positive identification of the appellants belies the defense of alibi.

The crime committed is MURDER qualified by treachery. The attack on Felix Logronio was sudden and unexpected. He was first hit on the leg causing him to fall to the ground from the stairs of their house. Upon falling on the ground, his assailants ruthlessly hacked him to death.[10] At the very moment that he was hacked on the leg he was at the top rung of the stairs locking their house.[11] Thereby, dwelling aggravates the penalty because the staircase forms an integral part of the house.[12] And there being no mitigating circumstance present, the death penalty must be imposed. Nocturnity and abuse of superiority are absorbed in treachery because the same form part of the peculiar treacherous means and manner adopted to insure the execution of the crime. Evident premeditation can not be appreciated. There is no showing that the accused premeditated the killing; that the culprit clung to their premeditated act; and that there was sufficient interval of time between the premeditation and the execution of the crime to allow them to reflect upon the consequences of their act.[13]

WHEREFORE, appellants are convicted of the crime of murder qualified by treachery aggravated by the circumstance of dwelling, and sentenced to death; to indemnify, jointly and severally, the heirs of the late Felix Logronio with the amount of P12,000.00 for compensatory damages and P15,000.00 for moral damages; and to pay the costs. Considering that appellants have been detention prisoners since September 10, 1971 continuously up to the present, and that nothing can be said against them as to their conduct while in detention, the Court recommends to the Chief Executive the commutation of their sentence to life imprisonment.

SO ORDERED.

Teehankee, Barredo, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., took no part.

Makasiar, J., join the concurrence of Justice Aquino.

Aquino, J., files a separate opinion.

[1] The dispositive portion of the decision reads, as follows:

"WHEREFORE, this Court finds the accused Pablito Gida and Luciano Gida GUILTY as principals and beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code with the qualifying and aggravating circumstances of evident premeditation and treachery and the ordinary aggravating circumstances of night time, abuse of superior strength and dwelling of the offended party with no attending mitigating circumstance and hereby sentences both of said accused to each suffer the supreme penalty of death.

"Further, the accused are sentenced to indemnify, jointly and solidarily, the heirs of the late Felix Logronio represented by his widow, Aureau Lapinig Vda. de Logronio, in the amount of P12,000.00 for compensa-tory damages and the additional amount of P15,000.00 for moral damages."

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[7] Id., p. 183.

[8] t.s.n., Jose, p. 24.

[9] "Item No. 1.- When asked where she was at about 6 o'clock and seven o'clock in the evening of September 5, 1971 (the time and date when Felix Logronio was allegedly assaulted), she said: 'I was aboard a truck from Aurora going to Lapinig.' (tsn., p. 31, Underscoring supplied.) When the question was repeated, she replied: 'I was on board a truck from Aurora at 6 o'clock in the afternoon and I arrived in our place at about 6:45 in the evening,' (Id., pp. 31-32. Underscoring supplied.) Several questions later, she said 'We (referring to her husband and herself hired a jeep to bring our things,' and '(W)e were met by my mother when the jeep parked in front of our house and I gave to her the fish to be cooked.' (Id., pp. 33-34. Underscoring supplied.)

"Item No. 2.- When asked about the time her husband was assaulted, she said, 'Just after we brought our things upstairs we went down to take our supper at the house of my father and that was about 7 o'clock. (Id., p. 32, Underscoring supplied.) Later, when asked about the pig she was tying to a post at which time the assault took place, the witness declared: 'We placed it in the sack and while my husband was getting our things from the jeep I was opening the sack where the pig was placed.' (Id., p. 36, Underscoring supplied.)

"Item No. 3.- When asked what she did when the accused were assaulting her husband, she gave the fol-lowing replies:

(a) 'I told them, "Luciano, don't kill my husband." I also asked help from my neighbors.' (Id., p. 11, Emphasis supplied.)

(b) 'I said, "Help neighbors, please Pa and Ma because Felix is being hacked, help me!"

'Q - How many times did you shout those words, if you remember?

'A- Many times because I kept on shouting so that somebody will come and help me.

'Q - Those were the only words that you uttered until your father arrived; is that correct?

'A - Yes and my father arrived when I called for help.' (Id., pp. 48-49.)

In the affidavit referred to by the witness dated September 9, 1971, given to the Acting Chief of Police, she said in part: "I told Luciano Gida not to kill my husband (Ayaw ninyo pagpatya Noy Ciano) and cried for help (Tabang)". (Note: The affidavit which forms part of the records furnished to counsel de oficio does not appear to have been marked as exhibit and offered in evidence.)

"Item No. 4.- From the narration by Aurea Logronio, the initial assault was not frontal. As stated above, the deceased was facing the door of their house. The first assailant, according to the witness, was Apolinario Gida, who hacked the deceased at the left leg. (Id., p. 10.) Apolinario Gida is a right-handed person. (Tsn, Luciano Gida, p. 236, Feb. 28, 1974.) Aurea Logronio also implied that Apolinario Gida was towards the left of her husband. (Id., p. 44.) But whether Apolinario Gida was towards the left or right of the deceased or was directly behind him, it is improbable for him as a right-handed man, using his right hand, to have inflicted the injury on the left leg of the deceased. Equally improbable would be his use of his left hand when he is a right-handed.

"Item No. 5.- Aurea Logronio testified that after the deceased was wounded on the left leg, he fell to the ground. His face was bent low, and his two knees and his two arms were touching the ground. (Id., p. 43.) If we visualize the position of the deceased and what he was doing at the time of the assault, and the fact that according to Aurea the attack was swift and unexpected, the deceased could have fallen in these directions: first, he could have lurched forward, his head hitting the door and his body sliding on the stairs until his feet touched the ground; or, second, he could have fallen either to the left or to the right of the stairs in which he would be sprawled on the ground face down; or third, by reason of the suddenness of the attack, his body would have been jerked away from the door, in which case he would fall flat on his back on the ground. It is impossible for the deceased to have assumed the position described by Aurea where both his knees and hands would be touching the ground and his head bent downwards.

"Item No. 6.- Aurea Logronio also said that after her husband had fallen to the ground, the accused Luciano and Pablito Gida then helped Apolinario Gida in hacking him to death with their bolos. (Id., p. 11.) All three were carrying 3-foot bolos. (Id., pp. 45-46.) The deceased at this time was already in that position where his knees and hands were on the ground and his head bent low. (Id., p. 46.) If such was the case, how could the deceased have sustained a wound on the knee joint, anterior aspect? (Please see Decision, p. 5, quoting Exh. "A", Medical Certificate.) The knees were touching the ground, and how could the wound described as 'amputing (sic) fingers, right, middle, right and little fingers' could have been inflicted while the deceased was in that position'. It is significant to note that when Cirilo Lapinig arrived upon the scene of the assault he saw that the deceased 'was wounded lying face on the grounds.' (Id., p. 72.)

"Item No. 7.- Considering the sequence of events, as narrated by Aurea Logronio, the wound on the left leg was minor, compared with the wound on the chest wall, or on the right forearm with a fracture of the ulnar bone, or on the fingers which were cut off. Yet, the first wound should have been cutting or more severe because it was the first, delivered suddenly, presumably with full swing and force, and the deceased had no means of anticipating the attack. Unlike in the case of the succeeding wounds where three (3) assailants allegedly each armed with a 3-foot bolo, helping each other in assaulting the deceased, the assailants must either have (a) to stay at more than 6 feet distance from each other otherwise they would hit each other, or (b) at a closer distance, deliver measured blows to prevent the infliction of injury to themselves. It defies probability that the first wound inflicted upon the deceased, as described by Aurea, was not more serious, cutting more deeply, or even causing a fracture.

"Item No. 8.- From Aurea Logronio's testimony, it appears that the Logronio residence was about 15 meters from the center of the national highway (Id., p. 50), and that there were no obstructions or coconut trees between the

house and the road. (Id.) Between their house and the house of her father, Cirilo Lapinig, is a distance of about 100 to 130 meters. (Id., p. 35.) There were no intervening plants and trees between them. (Id.) There were, however, four houses between her house and that of her father. (Id.) The houses of the accused including Apolinario Gida were also along the national highway (Id., p. 16) but across the road. (Tsn, Cirilo Lapinig, p. 95.) Inasmuch as the deceased and Aurea had just arrive from Aurora (Tsn, pp. 32-33), a few minutes before the attack, the killing of the deceased could not have been planned or premeditated. Evidently, therefore, the Gidas - assuming they were the assailants - would come from their respective house, cross the road, and proceed to the front portion of the house where the deceased was, and commence the attack. At this time, Aurea came down from the house, presumably followed by Felix Logronio. (Id., p. 32.) Aurea started to tie the pig she brought with her from Zamboanga del Sur to one of the posts of their house. Felix, some two meters away from her, was locking the door. (Id., p. 10.) There was a full moon and she could clearly see her husband, and later, his assailants at that distance. (Id., p. 12.) It is inconceivable that neither she nor her husband saw his assailants before the assault. Presumably, the attack, considering the sequence of events, had taken place immediately after she went down followed by her husband. If the assailants were close by, they would not have failed to see them as they were coming down the house, considering their unobstructed view of the front of the house. And if the assailants had run from across the road, to negotiate a distance of more than 15 meters running, both she and her husband would have heard running feet or the impact of heavy feet hitting the ground in the process of running.

"Item No. 9.- Aurea Logronio, when asked if her husband said anything 'during the time of the incident', replied: 'None, sir.' (Id., pp. 56-58.) Unless a person is a mute, his normal and spontaneous reaction upon sustaining an injury would be to utter a cry of pain. The deceased and the accused had no previous quarrel nor misunderstanding. (Id., p. 28.) Aside from uttering a cry of pain, the deceased would be expected to ask the assailants the reason for the assault. He did nothing of the sort. He said nothing. He asked no questions. He made no protests. He stoically bore his injuries and pain without even a whimper. Verily, if this was true, Felix Logronio was a superhuman individual. Yet there is nothing in the records to show that he was more than human.

"Item No. 10.- Considering the non-fatal nature of the wound on the scalp, earlobe, left forearm, left leg, left knee joint, together with the amputating wounds of three (3) fingers of the right hand of the deceased, the conclusion is irresistible that he must have been attacked frontally, probably by only one assailant. The minor wounds were sustained because the deceased was able to avoid more serious injuries. The three (3) fingers of the right hand were amputated while in the act of vainly protecting his body from the hacking blows of the assailant. The narration by Aurea Logronio as to how the incident happened makes no sense whatsoever in the light of the number, nature and location of the wounds. For it it were true that he had both his arms and knees on the ground, his head bent low, right after the first hacking blow on the victim's leg by Apolinario Gida, the injuries on the hand, forearm, leg and knees would not have been sustained, and the only other injuries on the victim's body would have been those on the chest wall." (pp. 31-37, Appellant's Brief.)

[10] Exhibit "A".

[11] pp. 9-10, t.s.n., July 6, 1972.

[12] *People vs. Paulo Alcala*, 46 Phil. 739.

[13] *People vs. Abletes*, No. L-33304, July 31, 1974, 34 SCRA 241, citing *People vs. Corpus and Serquiña*, 107 Phil. 44; *People vs. Fuentherula*, 73 Phil. 553, and *U.S. vs. Gil*, 13 Phil. 530, 549.

CONCURRING OPINION

AQUINO, J.:

I concur. The motive for the assassination is shown in the Solicitor General's summary of the prosecution's evidence which is quoted below (page references to the record are omitted):

"Aurea Lapinig and her late husband Felix Logronio were residents of Barrio Lapinig, Municipality of Kapatagan, Province of Lanao del Norte at the time of the killing incident which happened on the evening of September 5, 1971.

"Accused-appellants Luciano Gida and Pablito Gida and Apolinario Gida (still at-large) were likewise residents of Barrio Lapinig, Kapatagan, Lanao del Norte at the time of the incident.

"Luciano Gida is the father of Apolinario Gida while Pablito Gida is Luciano's grandson whom he had been taking care of since childhood.

"The houses of the Gidas were all located along the national highway leading to Iligan City just near the house of the Logronio couple, also located along the same road. Aurea Lapinig had known the Gidas since 1951 when they became neighbors in Barrio Lapinig, Kapatagan, Lanao del Norte.

"It appears that Aurea's father, Cirilo Lapinig, also a resident of Barrio Lapinig, Kapatagan, Lanao del Norte, had a land conflict with the accused Luciano Gida, which started sometime in 1961. This controversy between the accused Luciano Gida and Cirilo Lapinig was due to the encroachment of the former upon the adjacent land owned by the latter in Barrio Lapinig.

"Even before her marriage to Felix Logronio two years before the incident, Aurea Lapinig already knew of this land conflict between her father and accused Luciano Gida. Aurea was also aware that their family was not in good terms with the Gidas because of this misunderstanding.

"There was a time when the Gidas burned the house of Cirilo Lapinig and a case of arson was filed against the former which was however dismissed. On the other hand, Luciano Gida caused the filing of a case for qualified theft against Cirilo Lapinig, Sotera Lapinig, Serma Lapinig, and Aurea Lapinig, for coconuts allegedly gathered by the Lapinigs in the land subject of the quarrel which was likewise dismissed by the municipal court of Kapatagan.

"It further appears that Cirilo Lapinig and Venancio Luania filed a protest with the Bureau of Lands against Luciano Gida due to the encroachment of the latter upon the land occupied by Lapinig and Luania. The Bureau of Lands caused an investigation of the protest, and based upon the amicable settlement of the parties who agreed that a relocation survey of the land in question be undertaken and to abide with it, the Director of

Lands, through Isidoro C. Nery, Region Chief, Regional Land Office No. VII, Cagayan de Oro City, issued an order dated May 26, 1966 establishing the correct boundaries of the land which was subdivided into three (3) lots (Lots Nos. 2850-A, 2850-B and 2850-C) and awarding each of the contending parties.

"Lot 2850-B was awarded to Venancio Luania who had occupied, fully improved and cultivated the same; Lot 2850-C to Cirilo Lapinig who had also occupied and fully improved the same; and Lot 2850-A to Primitiva Montebon, wife of Luciano Gida, which was the area actually occupied and cultivated by the Gidas.

"On August 4, 1971, Mr. Primo Lara, an employee of the Bureau of Lands accompanied by Mr. Pangilinan, Mr. Omoral and a local policeman went to the house of Cirilo Lapinig at Barrio Lapinig, Kapatagan, Lanao del Norte, to execute the decision of the Bureau of Lands. In the presence of Luciano Gida who was also summoned to appear at the place, Mr. Lara read the decision of the Bureau of Lands and ordered Luciano Gida to vacate the land which does not pertain to him and return the same to Cirilo Lapinig and Venancio Luania.

"Luciano Gida in answer stated that he will not return the land unless there is blood that will be shed. Apolinario Gida who was also present at the time the decision was being read by Mr. Lara likewise made the same remark that they will not return the land unless there is bloodshed.

"Afterwards, Luciano Gida who had refused to comply with the decision of the Bureau of Lands executed an affidavit (Exh. D) to the effect that although during the investigation of their land conflict he agreed to respect the respective claims of the contending parties and in fact have agreed to the relocation survey, he was no longer agreeable to the same as well as the decision of the Director of Lands dated May 26, 1966, and he will hold himself liable to any crime that will be filed against him for disobedience.

"On September 4, 1971, a day prior to the killing incident, Aurea's husband Felix Logronio and Cirilo Lapinig entered the land awarded to them having already won a decision in their favor. Cirilo brought his son-in-law Felix Logronio to said land to gather coconuts intended for copra. They were in fact able to gather coconuts from morning until the afternoon of that day without interference or disturbance from anybody.

"On September 5, 1971, Aurea Lapinig and her husband Felix Logronio went to Aurora, Zamboanga del Sur to get their things but were back in their house at about 6:45 p.m. The Logronio house is a little elevated from the ground and the stairs consists of four (4) steps. It was more or less about 100 meters from the house of Cirilo Lapinig, Aurea's father, and there are about four (4) intervening houses between them.

"The Logronios hired a jeep to bring their things from Aurora and when they arrived at their house they were met by Aurea's mother in front of their house to whom they gave fish to be cooked. The couple had also brought with them a pig from Zamboanga del Sur and upon arrival Aurea tied it to the step of their stairs.

"At about 7:00 o'clock after the Logronio couple had brought their things inside their house, they proceeded downstairs as they planned to take their supper at the house of Aurea's father. Felix Logronio was in the act of

locking the door of their house while Aurea was already downstairs transferring the pig and tying it to one of the posts of the house about two (2) meters from the door when she heard a chopping sound.

"Aurea turned her head and she saw Apolinario Gida hacking the leg of her husband Felix with a bolo. Felix fell to the ground face downward and then she saw the other accused Pablito Gida and Luciano Gida join Apolinario in hacking Felix. All the three assailants Pablito, Luciano and Apolinario were each armed with a bolo about three (3) feet long.

"Aurea then shouted 'Help neighbors, please help Pa and Ma because Felix is being hacked, help me'. Aurea was able to recognize the three accused assailants of her husband because, being her neighbors since 1951, she knew them very well and it was full moon and she was only two (2) meters away from them.

"She even pleaded to them and called their names saying 'Noy Luciano, Pablito, Apolinario, don't kill my husband', believing that she might stop them from further hacking her husband. Despite Aurea's pleas they did not listen to her but continued to hack Felix and afterwards they ran towards the ricefield and coconut grove.

"Cirilo Lapinig heard her daughter's cry for help and he immediately rushed to her house. Upon arrival at her daughter's house, he saw his son-in-law Felix lying on the ground face downwards. He was wounded but still alive; however, Felix could no longer utter any word because when asked by Cirilo what happened to him, all he could answer was a groan.

"Then Cirilo immediately asked what happened from his daughter Aurea who replied that Felix was hacked by Luciano, Pablito and Apolinario. Domingo Etol, a neighbor of the Logronios and whose house was about 200 meters from the scene of the incident was one of those who likewise rushed to the scene and had helped in carrying the wounded Felix.

"When Etol arrived at the scene of the incident he saw the victim, Felix Logronio, who was dying, being embraced by his wife Aurea. Etol asked Aurea what happened and Aurea told him that Luciano, Pablito and Apolinario Gida ganged up on her husband.

"After seeing the precarious condition of his son-in-law, Cirilo instructed his wife to hire the jeep of their neighbor Sindoy de la Cruz in order to bring Felix to Aurora General Hospital. They arrived at about 9:30 o'clock that evening.

"Doctor Anita L. Nayve, a resident physician of the Aurora General Hospital at Aurora, Zamboanga del Sur, examined Felix Logronio immediately and found him already dead on arrival. Her examination of the body of Felix Logronio as stated in the medical certificate issued by her revealed that the victim suffered seven (7) wounds.

"Doctor Nayve stated that the wounds suffered by the victim must have been caused by a sharp bladed instrument like a bolo. She further declared that taken collectively, all the wounds inflicted on the victim caused bleeding and the cause of death is shock due to pain and loss of blood. On cross-examination said doctor was of the opinion that if immediate attendance were given the victim, he could have been saved.

"Early in the morning of September 6, 1971, Domingo Etol reported to Sergeant Andres Sacabin, then acting chief of police of Kapatagan, Lanao del Norte, the killing incident that took place at about 7:00 o'clock in the evening of September 5, 1971. Sergeant Sacabin immediately directed Corporals Felix Pacunla and Nemesio to proceed to the scene of the incident and conduct an investigation.

"Upon their return, Corporal Pacunla reported to Sergeant Sacabin that Felix Logronio was killed by three persons, namely, Luciano Gida, Apolinario Gida and Pablito Gida as per statement of the wife of the victim Aurea Lapinig whom they have investigated. It was gathered by the police investigators from the widow Aurea Lapinig that it was Apolinario Gida who attacked Felix Logronio first with the participation of the herein accused-appellants Luciano Gida and Pablito Gida.

"The policemen were informed by Aurea that each one of the assailants of her husband used a bolo. Pacunla turned over to Sergeant Sacabin a bolo (Exh. B) which the former recovered at about 9:00 o'clock in the morning of September 6, 1971 from the house of Apolinario Gida but which was then already clean with no bloodstain on it.

"The result of the investigation conducted by the Kapatagan Police Department gave rise to the filing of the present case against the herein accused-appellants Pablito Gida and Luciano Gida and Apolinario Gida who is still at large."

The trial court did not err in rejecting the alibi of the accused and in sentencing to death Pablito Gida and his grandfather Luciano Gida for the killing of Felix Logronio.

I agree with the conclusion of the trial court that the three assailants, as co-conspirators, acted with evident premeditation because it may be inferred from the proven facts that they had agreed upon a previous plan to liquidate Felix Logronio.

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