

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
TOMAS UBIÑA, JOSE UBIÑA, ROMERO PAGULAYAN, LORETO  
MERCADO, MARCELO DE GUZMAN, PASCUAL ESCOTE AND PABLO  
BINAYUG, DEFEND...**

*G.R. No. L-6969. August 31, 1955*

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**PER CURIAM:**

Defendants appeal from a judgment of the Court of First Instance of Cagayan, finding them guilty of the murder of Aureliano Carag, Esteban Tambiao and Dionisia Tambiao, and sentencing each and every one of them for each of the three deaths to reclusion perpetual, to give an indemnity of P6,000 to the heirs of each of the deceased, and to pay the costs.

Early in the evening of September 14, 1952, Aureliano Carag, Mayor of Solana, Cagayan Arrived on horseback at the house of the spouses Esteban Tambrao and Teodora Quilang in the barrio of Bañgag, Solana, Cagayan. Upon arriving he tied his horse beside the house, went up, and delivered a dead rooster which he had brought along, to Teodora Quilang to be cooked. The Tambiao spouses had a daughter, by the name of Dionisia Tambiao, with whom Carag had illicit relations. After greeting Dionisia with embraces and kisses, Carag, who had planned to go back, was prevailed upon to pass the evening in the house, so he went down to a store to buy salmon for their supper. Teodora Quilang prepared the food for supper, while the three, Carag, Dionisia and Esteban, went down the house to refresh themselves.

Teodora, while cooking supper, was also dressing the dead rooster on the bataan. North of the Tambiao house is the house of Flora Quilang, Teodora's sister and wife of Vicente Ubiña. Flora herself was on the bataan selecting corn. Carag, Dionisia and Esteban had conversation with Flora. Not long after this conversation, Teodora Quilang called the three to go up for supper. Carag thought of removing the saddle off his horse, so he directed his steps towards the place where he had tied his horse. It was then that the first gunshot was heard. Carag was hit at the buttock and immediately called upon Teodora for help. Teodora immediately went down, accompanied by Dionisia and Esteban. Flora also heard the call, so she also started to go down. It was then that further shots were heard. Carag asked Teodora to proceed to the house of Pedro Madella to secure help. Madella was to go to his (Carag's) sister for help, but Madella refused to go for fear.

At that time, Proceso Ledesma, a policeman of Carag, who had heard the shots and the call of Carag for help, went down, stealthily approaching the besieged house of the Tambiaos. He fired two shots in the air as a signal. Upon hearing these, Carag knew that it was Proceso, his policeman, who fired the two shots. So he called upon Proceso to help him, telling him to fire at his attackers and that Tomas Ubiña and his companions 'were on the road. It was then that a voice was heard in answer, "You call for all your policemen, although they are many, we are not afraid." Proceso fired at the attackers while hiding himself beside a granary, and as his shots were returned, he scampered away to safety. After 15 minutes had elapsed, the firing stopped and the attackers went away.

The following morning, the police were called, and upon examining the premises around the house, they found the dead bodies of Aureliano Carag, Dionisia Tambiao and Esteban Tambiao, all on the ground, the first east of and under the house, and the other two towards the northeast. They also found the 45-caliber pistol of the deceased Carag beside his dead body and his horse also dead nearby and under the house. Upon examining the surrounding ground, the police found 30-caliber carbine shells in various places, namely, near a well towards the southwest, near the gate of the fence northwest of the house, on a small way or path north of the house, and also near the intersection of the said path and the road east of the house. Near the place in front of the house of Teodora Quilang, they also found 30-caliber pellets or bullets scattered around. There were also empty 45-caliber revolver shells southwest, in a place where many of the carbine shells were found.

The President of the Sanitary Division examined the dead bodies and found the following: On the body of Aureliano Carag, gunshot wounds on the right and left buttocks, and on the heels; on the body of Dionisia Tambiao, one gunshot wound penetrating thru and thru the deltoid muscle, another gunshot wound at the back of the region of the fifth rib, which lacerated the ventricles of the heart and hurt the lobe of the lung, and a third also at the back and penetrating the abdominal cavity, all of which caused instantaneous death; and on the body of Esteban Tambiao, two gunshot wounds at the back near the sixth and seventh ribs, and one on the right ankle, all of which caused instantaneous death due to shock and hemorrhage.

As the case involves the credibility of witnesses, the testimonies of the witnesses for the prosecution will now be considered.

Ruben Francisco.—He lived in the house of Tomas Ubiña at the time of the incident. In the afternoon of September 14, 1952, at about 3:00 o'clock, Tomas Ubiña, Jose Ubina, Marcelo de Guzman, Loreto Mercado, Jose de Guzman and he (the witness) were in the house of Tomas Ubiña in Tuguegarao, Cagayan. Before 5:00 o'clock that afternoon, they planned to kill Aureliano Carag who, according to Tomas Ubiña, was then in the barrio of Bañgag. After perfecting the plan, Tomas Ubina took three carbines, a 38-caliber revolver and a 45-caliber pistol from a wardrobe. Tomas Ubina put the 38-caliber revolver in his pocket and had the other firearms placed inside a sack. Between 5:00 and 6:00 o'clock in the afternoon, they boarded a freight truck belonging to Tomas Ubina. The driver was Antonio Ugaddan. The truck proceeded to the barrio of Bayo, Municipality of Iguig, and there they got off the truck and crossed the Cagayan River by means of banca, reaching the barrio of Andarayan on the other side of the river. Then they walked about 1 1/2 kilometers to where the house of Tomas Ubiña was located, and here they found Pascual Escote, Romero Pagulayan and Pablo Binayug. It was about 7:00 o'clock p.m. when they reached Andarayan. Tomas Ubiña told the others that they were going to Barrio Bañgag to kill Mayor Carag. So they started for that place by foot, Loreto Mercado carrying the sack in which the firearms were placed, and Romero Pagulayan riding a horse. On their way they passed the barrio of Cattaran where Jose Ubiña bought cigarettes from a store. Then they proceeded to Barrio Bañgag, which they reached at about 8:00 oclock in the evening.

When they reached a place about 200 meters from the Barrio of Bañgag, they stopped and Tomas Ubiña called for the sack containing the firearms. He took the firearms out and gave Jose Ubina the 45-caliber pistol, one carbine to Jose de Guzman, one carbine to Marcelo de Guzman and another carbine to Loreto Mercado. Thus armed they proceeded to a house in the barrio, and upon orders of Tomas Ubina they placed themselves around the house in the following manner: Tomas Ubiña and Jose de Guzman, northwest of the house near the gate; Marcelo de Guzman on the road, east of the house; Loreto Mercado, north of the house on a small path; Jose Ubina, near a well southwest of the house; Romero Pagulayan, west of the house; and Pascual Escote and Pablo Binayug, southeast of the house. After the accused had taken their respective positions as above indicated, he went back to the place where the horse of Romero Pagulayan had been left. From this place he heard shooting, which lasted for

15 minutes. Afterwards, his companions returned. He heard them conversing that he was already dead, referring to Carag. The firearms were collected and again placed in the sack, and Loreto Mercado again asked by Tomas Ubiña to carry it. Pascual Escote and Romero Pagulayan rode on horseback to Cattaran, while the rest proceeded to Barrio Andarayan. When they reached that place, Pablo Binayug went Jiome. They then left Andarayan, crossed the Cagayan River by means of a banca, and reached Barrio Bayo again on the other side of the river. While they were riding in the banca, the sack containing the firearms was thrown into the river by Loreto Mercado upon orders of Tomas Ubiña. In Bayo they rode on a truck and proceeded to Tuguegarao, alighting at Barsain bridge and thereafter proceeding back to the house of Tomas Ubiña. Once in the house, Tomas Ubina gave Jose de Guzman, Mercado de Guzman and Loreto Mercado, P500 each, and to him P100.

Antonio (Getutio) Ugaddan.—He is a driver of Tomas Ubiña on September 14, 1952. He drove the cargo truck of Tomas Ubiña in the afternoon of September 14, 1952, and the persons who rode therein were Tomas Ubiña, Jose Ubina, Ruben Francisco, Jose de Guzman, Loreto Mercado and Marcelo de Guzman.

Flora Quilang.—Her husband is Vicente Ubiña, a cousin of the accused Tomas Ubina. She has a son by the name of Cecilio Ubiña, another witness for the prosecution. Tomas Ubiña had been buying the tobacco that they used to produce two years before the incident in 1952. Their house is north of that of Teodora Quilang. The gate of the fence enclosing the yard of Teodora Quilang is close to the batalan of her house, and she saw Carag when he arrived on horseback with a dead rooster in his hands, and again when he went out of the gate of Teodora Quilang to buy salmon. At that time, she was on the batalan selecting corn, being lighted by a lamp placed on top of one of the posts of the batalan. There was another lamp placed on the window of the house. At that time her husband was sick, and she did not know where her son Cecilio Ubiña, was. As she was selecting corn, she suddenly heard a burst of shots and then she heard the voice of Carag asking for help. She tried to go down to help him, so she took the lamp and proceeded to go down the ladder of the batalan, but as she stepped on the ladder two shots were fired at her and she fell down, the light of the lamp being put out. She was able to identify the one who had fired the shots at her, both by the light of the lamp in the window of the house of Teodora Quilang and by the flash produced by the shots. It was Tomas Ubiña who was holding a short gun at that time. She could not recognize the other. As she heard the shots, she crawled back to the house and brought her husband and children within the house. Once inside the house with the members of her family, she recognized the voice of Tomas Ubiña saying that even if Carag would call all his policemen, they (the attackers) were not afraid.

Cecilio Ubiña.—This witness is 11 years old. He was in an annex of the house when he heard the first shot. After the first shot, he heard Carag calling for help and, thereafter, his mother went down (to give succor to Carag). His mother was not able to help Carag because Tomas Ubiña fired at her twice and his mother fell down and the light of the lantern was put out. When Tomas Ubiña fired at his (the witness) mother, he was around four meters away from her. He also saw another individual one meter away from Tomas Ubiña, who was firing a long firearm. When he saw these things, he was in the door of the annex of the house. After that he opened the window and peeped through it and saw Tomas Ubiña giving bullets to his companion. Afterwards, he heard Carag say, "Esong, Esong, fire at them rapidly. Tomas Ubiña and others are on the road." A voice answered, "Although you call all your policemen, I am not afraid of anybody," and he recognized this to be the voice of Tomas Ubiña, his uncle.

Teodora Quilang.—At the time she heard the first gunshot, she was dressing the dead rooster. There were two lamps in the house, one at the window of the kitchen and the other at the batalan. Immediately after the first shot, she heard Carag calling for help, whereupon, she, together with Esteban and Dionisia, went down. When they arrived at the place of Carag, they found him lying down flat, face upwards. Carag asked her to get help from his (Carag's) sister, through Pedro Maddela, so she went to the house of Pedro Maddela. But Maddela refused to go, so she went back to the house. Upon arriving at their house, she put out the light of the lamp in the kitchen and

laid down with face down near a water container, as there were many shots. It was then that she heard Carag shouting, "Esong, Esong, succor me. Tomas Ubiña and others are here; Fire at them rapidly." After hearing these, she heard a voice reply, "Even though you call all your policemen, we are not afraid", and she recognized the voice as that of Tomas Ubina, because the latter had been a candidate and she had heard him speak at his political meetings. She knew the voice also because he had been buying tobacco from them.

Proceso Ledesma.—This witness lives west of the house of Teodora Quilang. On the night in question, he was in the house of his wife's uncle Agacaoili. He saw Carag arrive in the evening in barrio Bañgag, at the intersection of the road. When he heard the first shot coming from the yard of Teodora Quilang, he got up, went down immediately, and went to the house of Vicente Lingan. Both of them went to investigate the cause of the gunshots. Lingan lighted a cigar and was fired at from the gate of the fence of Teodora Quilang near the well, so they left the place. Lingan went back to his house while he went closer to the house of Teodora Quilang and fired two shots in the air to notify the police. After firing these shots, he heard Carag say, "Aray, Esong, fire at them rapidly, Tomas Ubina and others are on the road." He also heard a voice believed by him to be that of Tomas Ubiña which answered, "You call for all your policemen, although they are many, we are not afraid." From the place where he had placed himself he saw and recognized Tomas Ubiña by the help of the light from the house of Teodora Quilang. The firing at Carag continued. He also fired at the assailants of Carag, but when his shots were returned, he hid behind a log and then ran towards a bamboo grove where he hid himself until dawn.

Geronimo Batang.—This witness had a store in Cattaran, Solana, Cagayan. In the afternoon of September 14, 1952, a person by the name of Ben Mangulab left a dead rooster with him to be delivered to Mayor Carag. Carag came later, riding on horseback, and as he passed by, witness gave the rooster to him. Just after Carag left, appellant Romero Pagulayan passed by his store riding on a horse, going on the same way that Carag had taken. He saw him again towards the evening, when he and Jose Ubiña passed by his store to buy cigarettes. When Jose Ubiña was in his store, the witness asked him who were his companions and Jose Ubiña answered it was Tomas Ubiña and others. The witness then looked out of the store and saw Tomas Ubiña, Pablo Binayug, Romero Pagulayan and others.

Vicente Bautista.—On September 9, he saw Mayor Carag meet Tomas Ubiña in front of a bakery and there Carag insulted Ubiña, saying that the latter's properties were obtained by cheating and stealing. Ubiña did not say anything but he looked sullen and his face was heavy.

All the above witnesses were subjected to very long, detailed and close cross-examination, but with the exception of the minor discrepancy in the testimony of Flora Quilang as to where she fell down, whether on the batlan or on the ground, nothing was elicited with respect to their interest, bias, prejudice, or their lack of knowledge of the facts to which they testified which would in the least, affect their credibility. They testified to facts which they saw and heard positively and concretely, such as to give no room for doubt that they actually saw with their eyes and heard with their ears the events testified to by them.

The testimony of Ruben Francisco for the prosecution is claimed to be unworthy of credit because later on he testified for the defense, declaring that all he had stated against the defendants is not true, that he had been paid P700 to make his affidavit incriminating the defendants and was furthermore intimidated into making the same. The person who supposedly gave the witness a bribe of P700 denied this charge, explaining that he had only one hectare of land and had therefore no means to pay the amount mentioned. Just before the trial this witness was living with Tomas Ubiña in the latter's house and it is improbable that he could have been intimidated into making the incriminating affidavit without Ubiña having come to know of it. These are circumstances which refute witness' claim that this testimony for the prosecution is false.

The theory of the defense that Francisco's previous testimony is false, as he subsequently declared it to be so, is as illogical as it is dangerous. Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement (Rule 123, section 91); not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e. that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. (U. S. vs. Magtibay, 17 Phil. 417; U. S. vs. Briones, 28 Phil. 362; U. S. vs. Dasiip, 26 Phil. 503; U. S. vs. Lazaro, 34 Phil. 871). We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one (U. S. vs. Acasio, 37 Phil. 70). Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. If Francisco says that when he testified for the prosecution he was paid P700, what can prevent the court from presuming that subsequently he testified for the defense because the defendants also paid him to testify for them? The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized—in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth.

We have carefully read the testimonies of Francisco, both for the prosecution and later for the defense, and we agree with the trial court that the first testimony reflects the truth. His testimony for the prosecution recites a story, complete in its important details, logical and probable and positive in character, corroborated in all its essential parts by other evidence for the prosecution. His later testimony, for the defense is an incoherent story, unbelievable because of its inherent improbability. In his testimony for the defendants he states that after four o'clock in the afternoon of September 14, he and his wife went to Calle Comercio, in Tuguegarao and they rambled around on said street until 6 or 7 in the evening; that they separated at around 7 o'clock, she going home to the house of Tomas Ubiña, and he going to take wine near the market; that at around 7:30 he and Peter Pinson went around in a calesa near Cine Center, and that as a fellow boxed the driver, he and not the driver was hit; that after this they went to Cine Dizon, but then went back to Cine Center, because Peter Pinson wanted to know who boxed him (witness); that one Gosengfiao fixed the trouble, and that thereafter, he went home. Witness did not tell for what purpose he and his wife had rambled around for more than two hours; nor what they saw or have tried to see. Neither does he explain why he and Pinson should be riding in a calesa for fully one hour; neither does he state what he and Peter were going to Cine Dizon for. But it appears that they never entered that cinematograph or any other cinematograph after all. The supposed movements of the witness during the evening are devoid of any aim, purpose, or intention. Men's acts are performed for a purpose, for an intention, for a desire; yet the supposed movements of the witness were without aim, purpose or end. This is contrary to human nature. It is unbelievable, improbable, and evidently false. The Peter Pinson with whom witness was from around seven to about ten in the evening (the time when the trip to Bangag was made) was not introduced to corroborate the supposed presence of the witness in Tuguegarao during the disputed hours of the evening. On the other hand, the witness who testified to the supposed incident or trouble before Cine Center, was introduced, but the incident testified to took place around ten o'clock in the evening, when the party that committed the crime had arrived in Tuguegarao from the barrio where the murder had taken place two hours before. Between the testimony for the prosecution and that for the defense there can not be room for choice; that for the prosecution only bears the earmarks of truth.

It is also claimed that the testimony of Flora Quilang is unbelievable for the following reasons: That in spite of her nearness to the gunmen, she was not hit by the bullets, nor was the wall of her house; and that neither did she hear the supposed answer of appellant Tomas Ubiña to Carag's instructions to Proceso Ledesma because Ledesma's appearance in the scene took place after 20 minutes from the time the first shots were fired and witness was no longer in the batalan at that time. In answer to the first objection, it must be remembered that Tomas Ubiña is a cousin of Flora Quilang's husband,' so the shots fired at her evidently were not intended to hit her, but just to frighten her away. As to the improbability of having heard Tomas Ubiña's answer to Carag's call for help, we note that Flora Quilang heard said remarks when she had already been able to gather her family inside her house, and not at the time she was still in the batalan (t. s. n., p. 16). As the shooting took place during the night, the voices must have been clear and easy to understand. It is further claimed that she could not have identified Tomas Ubiña by the flash of the latter's pistol. But it must be remembered that one of the assailants was one meter away from Tomas Ubiña and the former was continuously firing shots at the house of Teodora Quilang. It must have been by the flash of these shots that witness was able to recognize Tomas Ubiña.

The testimony of Cecilio Ubiña is also attacked on the supposed ground that when he was asked if Tomas Ubiña had been purchasing tobacco from his family in the years 1935 and 1936, he answered in the affirmative, when at that time he was only about 4 years old. We note, however, that the question propounded to this witness included two particulars, namely, the date of the buying of tobacco and the buying of the tobacco. As the question directed to him involved two points, it is probable that the witness was paying attention only to the more important point, i.e., the buying of the tobacco and not the date. It is also alleged in objection (to his testimony) that whereas he did not identify Tomas Ubiña as one of the assailants before he was confined in the Constabulary barracks, he did identify him while he was already inside the barracks. The explanation lies in the fact that his father Vicente Ubiña is the cousin of Tomas Ubiña, and must have enjoined his son and his wife to keep silent about the identity of the assailants. As a matter of fact, Vicente Ubiña testified for Tomas Ubiña, which shows his interest in shielding his cousin. It must have been out of respect for him that Cecilio Ubiña did not, before his confinement in the Constabulary barracks, disclose the identity of Tomas Ubiña as one of the assailants.

Proceso Ledesma's testimony is also objected to for the reason that he did not disclose the identity of Tomas Ubiña until after three days. The explanation he gave was that the Chief of Police was not able to speak to him, and that he did not like to make the disclosure for fear of being shot as he was the only policeman in the barrio. This explanation, in our opinion, is satisfactory.

The defenses presented by the appellants are alibis. Tomas Ubiña claims that he was in Tuguegarao on September 14, going to the tienda of Domingo Lim at 6 o'clock in the afternoon to sell "mani", later talking with Celo Donato and Emilio Panaga, and then going to the tienda of Quicay Tan in Barsain to pay his debt; he dined at his house at 8 o'clock, together with his wife and others and saw the wife of Jose Ubiña embark in a Luzon Bus Line for Manila at 10 o'clock in the evening. He also claims that on September 14, he did not know where Jose de Guzman was, nor Romero Pagulayan, Pascual Escote and Pablo Binayug, and that Marcelo de Guzman was in Carig; that neither had he known that Carag was in barrio Bañag on that day; that Carag had committed irregularities in the elections, using force and intimidation in the course thereof and that as a result he had filed an election protest against him.

Jose Ubiña testified that in the afternoon of September 14, he was occupied in the loading of sacks of rice and fruits, a basket of chickens and two suckling pigs for Manila; that as he could not load these aboard the Rural Transit bus, he made arrangements to load them in the Luzon Bus Line bus, getting a rig for the purpose of loading them there, and that his wife and children boarded it at 10 o'clock in the evening.

Romero Pagulayan says that he left his house at 3 o'clock in the afternoon to pasture his horse and returned for

supper at 6 o'clock, and then went to bed at 8 o'clock as he was tired; and that he never left the house at night.

Loreto Mercado states that from 3 o'clock in the afternoon to 7:30 o'clock in the evening on September 14, he was in the house of Cauilan in barrio Carig; and that he supped at 7 o'clock in the evening and went to bed at 8 o'clock, with his wife and children.

Marcelo de Guzman testified that he was also in barrio Carig on September 14, 1952, in the house of Vicente Cauilan; that he was there at the house of the barrio lieutenant because it was Sunday; and that he supped at 7:00 o'clock in the evening and went to bed at 8:00 o'clock.

Pascual Escote says that between 6:00 and 7:00 o'clock in the evening of September 14, he went to play dice with his wife; that his wife stayed with him until 6:00 o'clock and then left him there; and that he went home at about 3:00 o'clock of the following morning. He admits having signed a confession; Exhibit L, on September 20, 1952, but declares that he was forced to sign it.

The trial court refused to believe these defenses of alibis for the reason that no third persons, but the relatives of the defendants themselves, corroborated them. The evidence of the alibis are inherently weak and improbable. They are based on the testimonies of witnesses alone, without corroboration from official documents or records which can not be subject to falsification or fabrication. No less than seven witnesses identified Tomas Ubiña, namely, the driver of his truck, one of his companions, the owner of the store on their way where his companions purchased cigarettes, his nephew Cecilio Ubiña, his relative in-law Flora Quilang, policeman Proceso Ledesma, and the deceased Mayor Carag himself. All of these witnesses except the policeman and the store owner were close personally or related to Tomas Ubiña and they had no reason or cause to testify against him. Certainly his mere denials and the doubtful evidence of his alibi are unavailing against the unimpeached testimonies of these witnesses against him.

Circumstances not denied by the defendants also indicate that all the other defendants must have participated in the commission of the crime, as pointed out by the testimonies of the witnesses for the prosecution. Jose Ubiña is his nephew and lived in his house about the time of the commission of the crime. Appellant Tomas Ubiña lost in the election for mayor to the deceased Aureliano Carag. Tomas Ubiña filed a protest against him and utilized his two co-defendants, Marcelo de Guzman and Loreto Mercado, as witnesses in his favor. These two individuals together with Ruben Francisco were living at his house evidently at Ubiña's own expense. He gave them work by which to earn a living. The other defendants, namely, Romero Pagulayan, Pascual Escote and Pablo Binayug, did not live in Tuguegarao, but were tenants of or connected with Tomas Ubiña in his business and in politics, and when the party headed by Tomas Ubiña arrived at his other house in barrio Andarayan together with his co-defendants, these three were already there waiting for him. These are circumstances which justify the conclusion that they helped and joined Tomas Ubiña in his evil design.

It is also important to remember that Geronimo Batang had testified that Romero Pagulayan had followed Carag, and the latter rode on horseback from Batang's store to Bañag. This, evidently, was a precaution taken by Tomas Ubiña and Pagulayan to assure themselves that they would find the victim at the place where they intended to get him.

After a consideration of all the evidence submitted by the prosecution and the defense, we find the following facts to have been proved beyond reasonable doubt: That because of political enmity and a personal affront committed by the deceased against appellant Tomas Ubiña on September 9, 1952, the latter decided to take revenge, so at 3:00 o'clock in the afternoon of September 14, 1952, he called upon his political adherents and proteges, namely, Marcelo de Guzman, Jose de Guzman and Loreto Mercado, and his nephew, Jose Ubiña, to a conference, in which they resolved to put an end to the life of the deceased; that at about 5:00 o'clock that afternoon, after Tomas

Ubiña had placed 3 carbines and 1 pistol in a bag and armed himself with another revolver, they embarked on a truck, together with said firearms; after crossing the Cagayan River they passed by Andarayan, Solana, where the 3 other appellants were already waiting for them; that these 3 were advised of their purpose and were asked to go with them, which they did; that all of them proceeded to Barrio Bañag, and once, there and after the firearms were distributed among the original conspirators, they went to the house of Esteban Tambiao, and there attacked and fired at and killed Aureliano Carag, Dionisia Tambiao and Esteban Tambiao.

The first question to determine is the criminal responsibility of each of the appellants. It must be noted that appellants Romero Pagulayan, Pascual Escote and Pablo Binayug were riot among thoser who had conspired to kill the deceased Carag, and that they only joined Tomas Ubiña and his companions on their way to Bañag to commit the offense. Then there is no evidence submitted by the prosecution to show that they were armed, or that they had any personal enmity or grudge against the intended victim, or that they had induced or encouraged the original conspirators. Their participation in the act of assassination appears to be limited to being present and staying around the premises, while their companions fired at the victims and carried out their original purpose.

The problem as above indicated has received the attention of the Supreme Court of Spain in cases involving similar circumstances. In its decision of December 7, 1885, it held that a person who assists one who commits the crime of arson and who knows the latter's purpose, but whose participation in the arson is not disclosed, may not be considered as a principal because his acts were neither direct, nor absolutely necessary for the commission of the offense, nor did it induce the said commission (2 Viada, pp. 369-370). In another decision dated December 6, 1902, it said that where the accused accompanied the killer on a road where the victim was going to pass and with open knife encouraged him (the killer) with his presence, the former is not guilty of the crime as principal because his participation is neither direct as defined in Article 13 of the Penal Code, nor does it constitute the inducement necessary to bring about the execution of the crime as defined in paragraph 2 of the same Article, or that of cooperation as defined in paragraph 3 thereof as his act is not indispensable in the commission of the crime (Ibid, pp. 383-384). In still another decision dated June 20, 1892, it held that the mere fact that a person is present when a crime is committed, when such presence does not have the purpose of encouraging the criminal and when there is no previous agreement between them as to the commission of the crime, will make the former responsible only as accomplice in the crime committed (Ibid, pp. 455-456). In another one, dated January 27, 1887, it was held that the presence of the accused, who was armed with a stick, when his companion assaulted the victim with his own stick, makes him. responsible only as accomplice for the reason that he only participated in the manner denned in Article 15 of the Penal Code, because he is not a principal by cooperation in the commission of the offense by acts, previous or simultaneous (Ibid, pp. 428-429).

In the case at bar, other than being present and, perhaps, giving moral support no act of theirs may be said to constitute a direct participation in the acts of execution, and their presence and company was not necessary and essential to the perpetration of the murders. The act of Romero Pagulayan in following the deceased Carag as the latter went to Bañag, and thus assuring the conspirators of his presence at said place, is also merely an act of complicity. Neither did they in any manner induce the commission of the offense; they joined the conspirators after the latter had decided to commit the act. Under the circumstances, they do not fall under any of the three concepts defined in Article 17 of the Revised Penal Code, and may only be considered guilty as accomplices. The same conclusion is strengthened by the principle that when doubt exists as to whether persons acted as principals or accomplices, the doubt must be resolved in their favor and they should be held guilty only as accomplices (People vs. Tamayo, 44 Phil. 38; People vs. Bantagan, 54 Phil. 834).

The next question to be resolved is the determination of the crime committed and the circumstances that may be considered as having attended said commission. There is no question that evident premeditation was present. It

has been held that if a crime was planned at 3:00 o'clock in the afternoon and carried out at 7:00 o'clock in the evening, or planned at 4:00 o'clock in the afternoon and executed at 7:30 o'clock in the evening, the aggravating circumstance of evident premeditation, is present because sufficient time has intervened between the conception of the idea and the resolution to carry it out and the fulfillment thereof (*People vs. Lazada*, 70 Phil. 525; *People vs. Mostoles, et al.*, 85 Phil., 883). This is what exactly took place in the case at bar.

It is true that in the case of *People vs. Guillen*, 47 Off. Gaz. No. 7, 3433, we held that when the person killed is different from the one intended to be killed the qualifying circumstance of evident premeditation may not be considered as present. However, in the case of *People vs. Timbol, et als.*, G. R. No. 47471-47473, promulgated August 4, 1944, we held that evident premeditation may be considered as present if it is shown that the conspirators were determined to kill not only the intended victim but also any one who may help him put a violent resistance. In the case at bar, it may not have been the original intention of the conspirators to murder Dionisia and Esteban Tambiao, but the fact that the conspirators number more than five and were armed with three carbines and two revolvers, indicates that they were to carry out their intention to murder the deceased mayor notwithstanding any objection or opposition that the latter or his companions may interpose or offer or may be able to put up. This determination to kill all who stood on their way is evident from the answer of appellant Tomas Ubiña to the deceased mayor's call for help, when Tomas Ubina said that even if the deceased would call all his policemen he is not afraid of them. We hold, therefore, that the aggravating circumstance of evident premeditation is present not only with respect to the killing of the deceased Mayor Carag, but also with respect to Dionisia Tambiao and Esteban Tambiao.

The court a quo correctly found that the aggravating circumstance of alevosia, attended the commission of the crime, with nighttime as having been included therein. The scene of the crime was in a remote barrio where Carag must have felt secure. This, together with the suddenness of the attack and the darkness of the night, certainly insured the success of the attack and shielded the conspirators from risk or danger. There was, furthermore, the additional circumstance of abuse of superior strength because there were no less than eight of the attackers, all acting in concert around the besieged house, three of whom were armed with carbines, which are certainly superior in deadliness and accuracy to the only pistol with which the victim was armed (*U. S. vs. Tandoc, et al.*, 40 Phil. 594; *People vs. Abril*, 51 Phil. 676; *People vs. Antonio*, 73 Phil. 421).

We, therefore, find that three murders have been committed, with the qualifying circumstances of treachery and abuse of superior strengths. In the commission of these crimes, we hold that Tomas Ubina, Jose Ubiña, Loreto Mercado, and Marcelo de Guzman participated as principals, whereas Romero Pagulayan, Pascual Escote and Pablo Binayug took part as accomplices. Under the provisions of the law, which we have been sworn to uphold and to apply without fear or favor, the supreme penalty should be imposed upon all the principals, the crime committed being triple murder attended by the aggravating circumstances of treachery and abuse of superior strength. A sufficient majority of the Court, however, can not agree to the imposition of the supreme penalty upon Jose Ubiña, Marcelo de Guzman and Loreto Mercado in view of the personal influence that Tomas Ubiña had over them, by reason of their relations or the favors that he had extended to them. They appear to have depended in their livelihood upon Tomas Ubiña, and this dependence must have influenced them into helping their protector. Their acts were, therefore, not entirely the voluntary results of inner depravity.

But as to Tomas Ubiña, who conceived the plan and utilized his influence to carry out the offense, the circumstances show marked determination, cruelty and depravity. Assuming for a moment that he had reasons for resenting the treatment that he received at the hands of the deceased Mayor Carag, there certainly was no justification for him to enlist the help of so many people, armed with so many arms, to carry out his revenge, or to wreck vengeance on innocent victims like Dionisia Tambiao and her father Esteban Tambiao. He did not

personally avenge the supposed wrong he had received at his victim's hand, as ordinary men would do; he sought the aid of armed cohorts and took advantage of an unexpected and sudden attack in a remote barrio, and the superiority of his men and arms. And he did not wreak vengeance on his personal enemy alone, but gave vent to his anger unnecessarily murdering two other innocent and defenseless victims. For him justice can not be tempered with mercy; the law must be applied in its full force and to its full extent.

Wherefore, the judgment appealed from is hereby modified and we hereby sentence Tomas Ubiña to suffer the penalty of death by electrocution as provided by law, defendants-appellants Jose Ubiña, Marcelo de Guzman and Loreto Mercado to suffer the penalty of reclusion perpetua for each of the deaths of Aureliano Carag, Dionisia Tambiao and Esteban Tambiao, and defendants-appellants Romero Pagulayan, Pascual Escote and Pablo Binayug to a period of from 8 years and 1 day of prision mayor to 14 years 8 months and one day of reclusion temporal for each and every one of the above murders. All the accused-appellants are further sentenced to indemnify jointly and severally the heirs of each of the deceased in the amount of P4,000, and to pay the costs.

It appearing that Jose de Guzman has not been included as an accused, proceedings against him should immediately be instituted unless such action has already been taken.

Bengzon, Acting C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

Judgment modified.

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