

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DIEGO COLMAN, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-6652-54. February 28, 1958*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a3557f01c545/>**PER CURIAM:**

The facts of these three cases, as narrated by the prosecution, are as follows: Buenaventura Ganzon had a ricemill in the Municipality of Pototan, Iloilo, and from 1949 to around December 15 or 20, 1951, he employed his neighbor Diego Colman as a watchman in the mill, their houses being only 7 meters apart on the same side of San Jose Street close to where it intersects the railroad track. On or about December 15 or 20, 1951, Diego Colman, sensing that he would be dismissed, told his employer that he wanted to resign and so he returned to the ricemill. Diego felt his impending dismissal because his relation with Buenaventura had deteriorated to such extent that he believed Ganzon wanted to get rid of him. It was informed that Diego Colman was not only "back-biting him, but even wanted to rape one of his daughters. Ganzon had misunderstanding with the other accused, Alfredo Pilota, but he knew the latter to be in the same gang of Diego Colman.

On January 7, 1952, Ganzon employed a new watchman in his ricemill in the person of Alfredo Cardinales. At about 7 o'clock in the evening of that day, Rogelio Colman knocked at the door of Ganzon's house saying that he wanted to see Alfredo Cardinales who was then staying there, and as Rogelio Colman appeared to be nervous, Ganzon advised Alfredo Cardinales not to go out. After 30 minutes, however, another man, Cornelio Parreño, came and said that on orders of Diego Colman he wanted to tell Alfredo Cardinales to go to Diego's house. Buenaventura Ganzon again counselled Alfredo not to go and he told Cornelio Parreño to tell Diego to come to his house if he had some important matters to take up with his watchman.

At about 8 o'clock, Buenaventura heard somebody shouting in the dialect that may be Cardinales was placing so much reliance on Buenaventura Ganzon. Hearing his name mentioned thus, Buenaventura told his watchman to follow him, and as they went down the house, Buenaventura saw Diego Colman and Domingo Mainar walking back and forth near his house and also Rogelio Colman who was creeping along at the side of a sari-sari store, armed with a long bolo. Ganzon wanted to ask Diego Colman why he made the remark that Alfredo is placing too much reliance upon him, but just then, Diego Colman went to the sari-sari store and called for his two sons Rogelio and Reynaldo. When Buenaventura Ganzon heard no more talking, he went home. On his way he met Lisondato.

At about 10:15 p.m. Ganzon was already lying down but left on the lights in his room. His wife with their two daughters slept on a bed. Ganzon, however, sensed that something might happen. His wife also felt nervous, but he advised her not to worry. Suddenly, Ganzon heard a rapid firing of shots directed to the place where the watchman was staying in his house, and then towards the room where he and his family were lying down. Ganzon immediately rolled over with his baby boy on the floor. His wife shouted that she was hit. Ganzon told her to lie flat on the floor. Another rapid firing followed. This time Ganzon heard his children crying that they were hit. Ganzon then carried his baby boy to the kitchen and after surrounding the child with some protective covering, he went back to the room for his wife and two children. He lifted his two daughters, took the mattresses and trunks,

and told them to lie down and pray. He then took his flashlight and pistol and went down from the kitchen and watched cautiously around. He saw Rogelio Colman crouching just below the side of their house. He went to the railway track and saw and heard somebody calling for Diego. Flashing his flashlight, he recognized the man to be Damaso Ferraris. Ganzon immediately engaged him in a gun duel and luckily he hit him. He took the pistol of his adversary and ran towards the house of Dr. Silva to get medical aid. On the way he saw Diego Colman, whom he recognized very well by the light of the moon, and he tried to intercept him. As he was approaching Diego Colman, some policemen were also approaching Diego Colman, and the policeman got his pistol. Ganzon went back to the doctor's house telling him that his children were dying. When Ganzon returned to his house, he gave aid to his children who were hit. He then went to the house of the Governor to borrow his car, and with it, he brought his wife and two children to St. Paul's Hospital in Iloilo City. At about 2:30 the next afternoon, Elizabeth, who was 51/2 years old, died. At about 5:00 o'clock that same afternoon, Thelma, who was 7-1/2 years old, also died.

It also appears from the record that at about 8 o'clock in the evening of January 7, 1952, when Domingo Mainar and his wife went out to the railway track near the bridge for some personal necessity, Domingo saw Diego Colman conversing with Cornelio Parreño. Domingo and his wife took different ways, and he saw his wife talking to Diego Colman. Domingo found out later in the house that Diego told his wife that he will kill him for being "rebelde", as well as Ganzon's family. Upon reaching home, they prepared to go to bed with their small children. Their son Antonio Mainar also lay down to sleep. However, Domingo sat by the window and looked outside for what he feared might happen. He saw Rogelio Colman walking by their house. He saw also the small children of Diego Colman being brought down to the other side. He later saw Reynaldo with a bolo going towards the house of Ganzon, below the window, looking around. At around 10:00 o'clock that night, he heard some people conversing at the railway track and recognized the voices of Diego and Reynaldo Colman. Later on, his wife also saw Diego Colman and Damaso Ferraris conversing near their house when the wife got up to urinate. Diego was telling Damaso to be the one to open fire, but the latter told the former to do so. Presently, Reynaldo Colman arrived and joined them. He (Reynaldo) posted himself below the house of Ganzon, near the stairs, while Damaso Ferraris went to the railway. Domingo Mainar later saw Rogelio Colman going up to their house and as Rogelio went up, Diego fired shots at Ganzon's house. Rogelio also fired from his house. Later on Diego went back towards the house of Mainar and fired at it twice one of which hit Antonio Mainar. Domingo Mainar then went down to the parking lot and whistled for policemen. Diego was soon placed under arrest. Mainar brought his wounded son to the Emergency Hospital of Pototan, thence to the Provincial Hospital at Iloilo City where he expired at 4:00 o'clock the following morning.

It should also be stated that before the shooting, Francisco Pogon and Ireneo Lisondato were watching a mahjong game at a sari-sari store near the market place. When they went out of the store to buy cigarettes, they met Diego Colman who inquired "for Alfredo Pilota. Pogon told him he knew where the house of Pilota was, and so on Diego's request, they went there on board a truck. Upon arrival at Pilota's house, Diego alighted and called for Pilota who thereupon went down, carrying a revolver with him. He also had a carbine concealed in his jacket. They proceeded to the parking place of the trucks. Diego went to the market, while Pilota went to the coffee stand. When Diego came from the market, his two sons, both armed, were with him, while Diego himself had a carbine. The group passed for Pilota at the coffee stand, and they all headed towards the house of Ganzon. Stopping first at the middle of the railway track, Diego gave instructions to his companions where to place themselves to accomplish their purpose which was, as Diego revealed, to "kill Ganzon including the watchman and also his cats and dogs". After taking their respective positions as assigned by Diego Colman, shots were heard coming from the front of Ganzon's house.

On the strength of the foregoing facts which were established at the investigation conducted by the authorities,

Diego Colman, Reynaldo Colman, Rogelio Colman, Irineo Lisondato, Francisco Pogon and Alfredo Pilota were all charged in four separate informations filed with the Court of First Instance of Iloilo: Case No. 3165 for the murder of Antonio Mainar; Case No. 3166 for the murder of Thelma Ganzon; Case No. 3167 for the murder of Elizabeth Ganzon; and Case No. 3168 for the frustrated murder of the mother of said girls, Carolina L. Ganzon. The aforementioned cases were tried jointly upon agreement of the prosecution and the defense. Before the trial started, the Provincial Fiscal moved for the discharge of the accused Francisco Pogon so that he could be utilized as government witness, which motion was granted by the Court. After the prosecution closed its evidence, the accused Alfredo Pilota changed his previous plea of not guilty to one of guilty, and in a judgment rendered separately, he was sentenced accordingly. The trial continued with respect to the remaining defendants, namely, Diego Colman, his sons Rogelio and Reynaldo Colman and Irineo Lisondato, after which judgment was rendered by the Court as follows:

(a) In Criminal Case No. 3165 (G. R. No. L-6652) the accused Diego Colman, Rogelio Colman and Reynaldo Colman were found guilty as principals of the murder of Antonio Mainar with the qualifying and aggravating circumstances of treachery, in which is merged that of nocturnity, and dwelling, respectively, and were sentenced as follows: Diego Colman to suffer the supreme penalty of death; Rogelio and Reynaldo Colman to reclusion perpetua, with the accessories of the law, and all of them to indemnify, jointly and severally the heirs of the deceased Antonio Mainar in the sum of P5,000, and to pay the costs.

(b) In Criminal Case No. 3166 (G. R. No. L-6653) the accused Diego Colman, Rogelio Colman and Reynaldo Colman were found guilty as principals of the murder of Thelma Ganzon with the same circumstances already stated and were each sentenced as follows: Diego Colman and Rogelio Colman to suffer the supreme penalty of death; Reynaldo Colman to reclusion perpetua, with the accessories of the law, all of them to indemnify, jointly and severally the heirs of the deceased Thelma Ganzon in the sum of P5,000, and to pay the costs.

(c) In Criminal Case No. 3167 (G. R. No. L-6654) the accused Diego Colman, Rogelio Colman and Reynaldo Colman were found guilty as principals of the murder of Elizabeth Ganzon with the same circumstances already stated and were each sentenced as follows: Diego Colman and Rogelio Colman to suffer the supreme penalty of death; Reynaldo Colman to reclusion perpetua, with the accessories of the law, all of them to indemnify jointly and severally the heirs of the deceased Elizabeth Ganzon in the sum of P5,000, and to pay the costs.

(d) In Criminal Case No. 3168 the accused Diego Colman, Rogelio Colman and Reynaldo Colman were found guilty as principals for frustrated murder of Carolina L. Ganzon with the same circumstances already stated, and were each sentenced to suffer an indeterminate penalty of from 10 years of prision mayor to 17 years and 6 months of reclusion temporal with the accessories of the law, and to pay the costs.

The accused Irineo Lisondato was acquitted in all of the four cases for lack of evidence against him, with costs de oficio. The records do not show that any of the convicted defendants filed a notice of appeal, but pursuant to Rule 118, Section 9 of the Rules of Court the records of cases Nos. 3165, 3166 and 3167 were forwarded to this Court for review of the judgments rendered therein against the defendants who had been sentenced to the capital punishment. For this reason the review of these three cases by this Court is limited to the question of whether the conviction of Diego Colman and Rogelio Colman and the imposition on the first of the death penalty in all said three cases and on Rogelio Colman in G. R. Nos. L-6653 and L-6654 are warranted by the law and the evidence.

In this instance, counsel de oficio for these 2 defendants submits that the trial court erred:

- In holding that your "appellants" (?) were co-conspirators and, consequently, erred in holding them as principals to the crime they are charged with;

- In rendering and promulgating a decision which is contrary to law and jurisprudence, by holding that the aggravating circumstances of treachery, evident premeditation and dwelling were present in the commission of the alleged crimes charged, and by only considering the evidence of the prosecution and not giving any weight to the evidence for your "appellants" (?); and

- In not acquitting your "appellants" (?) of all the crimes they are charged when they are entitled to acquittal, as their rights under the due process of law, guaranteed by the Constitution of the Philippines, have been violated in that they were arraigned in the Justice of the Peace Court without their attorney accompanying them, and with the filing by the Provincial Fiscal of new informations against them in each of these cases, after they have pleaded "not guilty" before the Justice of the Peace Court on the complaint filed by the Chief of Police of Pototan, Iloilo, and for lack of arraignment on the new information filed by the Provincial Fiscal.

At the start We have to declare that in these three cases the facts narrated at the beginning of the decision have been duly established by the evidence of the prosecution. At the hearing Diego Colman denied having taken part in the indiscriminate shooting at the houses of the Ganzons and the Mainars on the night in question, or having conspired in the perpetration of the cold-blooded slaughter of innocent victims. On the other hand, Rogelio Colman, the other defendant, alleged that throughout the night he never left his house because he had headache.

In the light of the evidence of the prosecution these defenses cannot be taken seriously. The mere denial by the defendants of acts attributed to them by the witnesses for the State who had no reason to distort the facts upon which they testified, is of no consequence because in such situation the question turns into one of credibility of witnesses and

"The trial Judge that saw the witnesses testify and had opportunity to observe the demeanor and manner of testifying of the witnesses, is in a most preeminent position to gauge their credibility and, consequently, his findings of fact must not be disturbed unless the record shall show that some facts or circumstances of weight or influence have been overlooked, or the significance of which has been misinterpreted by the lower court, or some conclusion established from the facts is inconsistent with those findings, or there is some inherent weakness in the evidence upon which the trial judge based his conclusion" —Baltazar vs. Alberto, 33 Phil. 336; People vs. Borbano, 76 Phil. 702, citing many other cases). "Nor will the appellate court reverse any findings of fact by the trial court made upon conflicting testimony and dependent solely upon the credibility of witnesses, unless the court below failed to take into consideration some material fact or circumstance presented to it for consideration" (U.S. vs. Ambrosio, 17 Phil. 295; U.S. vs. Melad, 27 Phil. 488; Melliza vs. Towle, 33 Phil., U.S. vs. Remigio, 37 Phil. 599; People vs. Cabrera, V3 Phil. 64; Carazay vs. Arquiza, 53 Phil. 72; Garcia vs. Garcia, 63 Phil. 419)

Counsel for the accused invokes the defense of alibi, but:

This Court has already held in numerous cases that the defense of alibi is the weakest defense that an accused can avail of, and cannot prosper where the accused has been positively and properly identified by the offended party. An alibi should be proved by probable evidence which reasonably satisfied the Court of the truth of said defense (U.S. vs. Oxiles, 29 Phil. 587). Oral proof of alibi must be clearly and satisfactorily established because it is so easily manufactured and usually so unreliable that it can rarely be given credit (People vs. Padilla, M3 Phil. 710—See also People vs. Jose Villaroya et al., G. R. Nos. L-5781-82, promulgated August 30, 1957).

We have, therefore, no reason to disturb the findings of the lower Court in the cases at bar. Coming now to the point of conspiracy involved the first assignment of error and to the contention that the decision is contrary to law and jurisprudence by only considering the evidence of the prosecution and in not giving any weight to the evidence for the defense, which is raised in the second assignment of error, We may say, as held already by this

Court, that:

"Conspiracies need not be established by direct evidence of the acts charged, but may and generally must be proved by a number of indefinite acts, conditions and circumstances which vary according to the purposes to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of an apparently criminal or unlawful purpose in common between them. The existence of the agreement or joint assent of the minds need not be proved directly. It may be inferred by the jury from other facts proved. It is not necessary to prove that the defendants came together and actually agreed in terms to have the unlawful purpose, and to pursue it by common means. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another part of the same so as to complete it with a view to the attainment of the same object the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object. If, therefore, one concurs in a conspiracy, no proof of agreement to concur is necessary in order to make him guilty. His participation in the conspiracy may be established without showing his name or giving his description—5 R.C.L., par. 37, p. 1088 (People vs. Cu Unjieng et al., 61 Phil. 236, 301)."

"If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. * * * The details of the conspiracy need not be proved. If a community of purpose among the parties to do some criminal act or acts is shown, it is not necessary that the acts which are charged or of which evidence has been given, were specifically contemplated by them or included in the original design. * * * Underhill's Criminal Evidence, p. 795, par. 491 (People vs. Carbonel et al., 48 Phil. 868).

"The act of a co-conspirator is attributable to each and every one of his co-conspirators." (People vs. Caringan, 61 Phil. 416; People vs. Cu Unjieng, 61 Phil. 236).

We entertain no doubt that both Diego Colman and Rogelio Colman conspired together with the other defendants for the commission of the crime they are charged in each of these three cases now before Us.

Anent the alleged error committed by the trial Judge in holding that the aggravating circumstance of treachery, evident premeditation and dwelling were present in the commission of the alleged crimes charged (also included in the second assignment), We can cite the following jurisprudence of this Court:

Evident premeditation involves cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at some judgment (People vs. Durante, 53 Phil. 363).

The aggravating circumstance of known premeditation cannot be appreciated against O, the active agent of the murder, because it does not appear at what time prior to the murder this accused yielded to the inducement held out to him by his co-accused and finally resolved to commit the deed (People vs. Orenciada, 47 Phil. 970).

In order to show deliberate premeditation as defined in subsection 7, Art. 10 of the Penal Code (Art. 14, par. 13. RPC), it must affirmatively appear that a sufficient time elapsed between the conception and the perpetration of the crime, for that calm and deliberate reflection upon the nature and consequences of the contemplated act, as a result of which it might fairly be expected that an aroused conscience would induce a reasonable man to relent, and to turn from the actual commission of the deed, in the absence of a fixed and resolute purpose of mind to accomplish his designs at all costs (U.S. vs. Gil, 13 Phil. 530; U.S. vs. Blanco. 18 Phil. 206; U.S. vs. Nalua, 23 Phil. 1; U.S. vs. Buncad, 25 Phil. 530).

It is not necessary that any definite time shall have elapsed between the formation of intention and execution of the crime to show premeditation; it is sufficient if there has been such opportunity for reflection that the conscience might have conquered the determination of the will. Evident means based upon external acts and

not presumed from mere lapse of time (U.S. vs. Ricafor, 1 Phil. 173).

In order to support the qualifying or aggravating circumstance of premeditation as present in the commission of a crime, the evidence must show that there were meditation and reflection by the accused resulting in a deliberate determination to commit the crime; and where it appears that the conception of the crime was close in point of time to the execution thereof: and the evidence fails to show that he meditated and reflected on his purpose to permit the formation of a deliberate determination, the element of premeditation has not been established beyond a reasonable doubt (U.S. vs. Bahatan, 3k Phil. 695).

In the cases at bar, the evidence points to the fact that it was only on January 7, 1952. when Ganzon employed his new watchman Alfredo Cardinales in lieu of Diego Colman who had resigned on December 15 or 20 of the preceding year, and that it was at about 7 o'clock of that same day of January when indications appeared that something was brewing in the minds of the defendants toward the commission of the crimes herein prosecuted, which were perpetrated at 10:00 o'clock on the night of that day. Under such circumstances, we do not think that sufficient time elapsed to give the offenders "an opportunity for reflection that the conscience might have conquered the determination of the will", and thus qualify the premeditation as evident. We are, therefore, inclined to disregard, as We do, said aggravating circumstance. This, however, does not affect the penalty imposed by the trial Judge upon the culprits, because treachery as qualifying circumstance and dwelling as aggravating are sufficient to sustain the penalty thus imposed f upon them. It is to be noted that the attack of the defendants I was sudden, unexpected and when the victims, minor children, were resting in bed in the seclusion of their abode.

Counsel for the defense further contends that Diego and Rogelio Colman have not been accorded the rights under the due process of law of the Constitution because they were arraigned in. the Justice of the Peace Court without the company of their attorney, and that before the Court of First Instance there was no arraignment whatsoever. Answering this contention the Solicitor General, with whom We agree, says the following:

"As far as the arraignment in the Justice of the Peace is concerned, it is not required by law that they should be accompanied by counsel for in the first place, the law does not require arraignment before the Justice of the Peace Court conducting merely the preliminary investigation. In the second place, in the arraignment before the Justice of the Peace Court, the accused entered a plea of not guilty, and such a plea could not have prejudiced them at all. Lastly, through their counsel, the herein appellants waived their right to preliminary investigation.

As to whether the appellants were not arraigned in the Court of First Instance, the records do not show any irregularity in the proceedings with respect thereto. On the other hand, the decision contains a statement that in the case of accused Alfredo Pilota, he changed his previous plea of not guilty to one of guilty after the presentation of the evidence of the prosecution. From this statement, it could be deduced that there has been an arraignment in this case in the manner prescribed by law not only with Pilota but the rest of the accused. Indeed, it could hardly be imagined that the presiding judge, now a Justice of the Court of Appeals, could have committed so grave an error as not arraigning the accused properly in cases in which they are charged with capital offenses. With the foregoing facts, considered (in conjunction) with the presumption of regularity in the performance of official duties, defendants' contention that they have not been arraigned in the Court of First Instance falls on its face.

As to the plea of double jeopardy, it seems clear from the provision of section 10, Rule 113, of the Rules of Court that such a plea can be entertained only at any time before judgment is rendered, and judgment is meant here not the final judgment as rendered by the Court of last resort in case of appeal, but the judgment of the trial court. The defense of double jeopardy cannot be raised for the first time on appeal (People vs. Mangcal et al., 47 O. G., No. 12 Supp. p. 228; Quintos vs. Director of Prisons, 55 Phil. 304) Furthermore, even if it were legally possible to entertain a plea of double jeopardy at this stage, there is clearly no double jeopardy at all as

counsel contends. The four informations under which the accused were charged were properly filed separately instead of just one information as counsel would have it. From the undeniable physical facts regarding the manner the crime was committed, it cannot be seriously contended that the three killings of three separate victims were committed by one single act on the part of the accused as to call for the filing of just one information. If the three victims died of bullet wounds, it is because those wounds were inflicted not by a single act but by as many acts as there are victims. The filing of separate informations was therefore in order."

Wherefore and on the strength of the foregoing consideration, We have no other recourse than to affirm the imposition of the death penalty on Diego Colman in Criminal Case No. 3165 (G.R. No. L-6652); upon Diego Colman and Rogelio Colman in Criminal Case No. 3166 (G.R. No. L-6653); and upon these same two defendants in Criminal Case No. 3167 (G.R. No. L-6654). Consequently, the decision of the lower Court insofar as these two defendants are sentenced to the supreme penalty, is hereby affirmed with costs against them. In the execution of this sentence the provisions of Articles 81, 82 and 84 of the Revised Penal Code shall be strictly applied. It is so ordered.

Paras, C.J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

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