

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EXEQUIEL ANGELES Y KU, DEFENDANT-APPELLANT.

G.R. Nos. L-31646-52. August 06, 1979

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PER CURIAM:

At a shooting incident that took place at the Melrose Kitchenette, located at San Andres, Malate, Manila in the evening of June 23, 1969, allegedly done by three persons, victims Rosita Garcia, Conrado (Amado) Dungca, and Herminigildo Sebastian were killed; victims Jose Caraon Jr. and Fructuoso Abayon were wounded; and victims Edilberto Aquino and Saturnino Melida were seriously injured.[1]

William Limson y Lopez was charged and convicted by the Circuit Criminal Court of Manila for the murder of Rosita Garcia, Amado Dungca and Herminigildo Sebastian;[2] for frustrated murder arising from wounds inflicted on Edilberto Aquino and Saturnino Melida;[3] and attempted murder for wounds inflicted on Jose Caraon Jr. and Fructuoso Abayon.[4]

The certification of Clerk of Court (Mariano L. Andrada) of the Circuit Criminal Court of Manila shows that William Limson y Lopez was convicted in Criminal Cases VI-292, murder; VI-294, murder; VI-295, murder; VI-288, frustrated murder; VI-289, attempted murder; VI-291, frustrated murder; VI-293, attempted murder, and given by the trial court the mitigating circumstance of voluntary surrender in all those cases, which were jointly tried. The decision was rendered on August 16, 1969, and became final and executory in September, 1969. The mitigating circumstance of voluntary surrender was credited accused William Limson y Lopez to offset the aggravating circumstance of evident premeditation, and in Criminal Cases VI-292, VI-294, and VI-295 he was sentenced to reclusion perpetua. (Certification enclosed in Rollo).

Arising from the same shooting incident, accused-appellant Exequiel Angeles y Ku was charged in seven (7) informations[5] before the Circuit Criminal Court of Manila for -

"x x x conspiring and confederating together with William Limson y Lopez who has already been charged with the same offense(s) in the Circuit Criminal Court of Manila (docketed as Crim. Cases Nos. CCC-VI-288 to CCC-VI-295), and subsequently convicted thereof, and with one whose true name and identity are still unknown, and helping one another, armed with guns of different calibers, did then and there wilfully, unlawfully and feloniously, with evident premeditation, treachery and intent to kill, attack, assault and use personal violence"

upon the seven victims, namely Rosita Garcia, Herminigildo Sebastian, Conrado (Amado) Dungca, Edilberto Aquino, Saturnino Melida, Jose Caraon and Fructuoso Abayon, thereby inflicting gunshot wounds upon said victims, resulting in the deaths of Rosita Garcia, Herminigildo Sebastian and Conrado Dungca. For the shooting of Edilberto Aquino and Saturnino Melida, accused was charged with frustrated murder; for the shooting of Jose Caraon and Fructuoso Abayon, accused-appellant Angeles was charged with attempted murder.[6]

The seven cases were tried jointly, by agreement of the parties, as they arose from the same incident,[7] and the trial court found the accused-appellant guilty beyond reasonable doubt in all the seven offenses charged, as

follows:

"The penalty imposed herein is the stiffest that this court has ever imposed upon a police officer. But it must be that way not only because the facts and law justify it but to strongly impress upon the peace officers that when they go beyond the limit of their duty, they become vicious criminals or thugs who must be given the penalty that they deserve.

"Exemplary damages are likewise awarded to the victims or their heirs to deter the accused and others in a similar condition from the repetition of these offenses.

"Wherefore, judgment is hereby rendered as follows:

"(1) In CCC-VI-400, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder, qualified by treachery and there being proven the aggravating circumstance of evident premeditation without any mitigating circumstance to offset the same, sentences him to Death and to indemnify the heirs of the deceased Herminigildo Sebastian the sum of P12,000.00 jointly and severally with William Limson who has been previously convicted for the death of said Herminigildo Sebastian;

"(2) In CCC-VI-397, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery and there being proven the aggravating circumstance of evident premeditation without any mitigating circumstance to offset the same, sentences him to Death and to indemnify the heirs of the deceased Conrado (Amado) Dungca the sum of P12,000.00 jointly and severally with William Limson who has been previously convicted for the death of said Conrado (Amado) Dungca;

" (3) In CCC-VI-394, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery and there being proven the aggravating circumstance of evident premeditation without any mitigating circumstance to offset the same, sentences him to Death and to indemnify the heirs of the deceased Rosita Garcia the sum of P12,000.00 jointly and severally with William Limson who has been previously convicted for the death of said Rosita Garcia;

" (4) In CCC-VI-399, accused is hereby found guilty beyond reasonable doubt as principal of the crime of frustrated murder qualified by treachery and there being proven the aggravating circumstance of evident premeditation without any mitigating circumstance to offset the same, sentences him to an indeterminate penalty ranging from ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum and to indemnify the victim herein Saturnino Melida the sum of P4,000.00 by way of moral damages jointly and severally with William Limson who has been previously convicted for the frustrated murder of said Saturnino Melida;

"(5) In CCC-VI-398, accused is hereby found guilty beyond reasonable doubt as principal of the crime of frustrated murder qualified by treachery and there being proven the aggravating circumstance of evident premeditation without any mitigating circumstance to offset the same, sentences him to an indeterminate penalty ranging from ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum and to indemnify the victim Edilberto Aquino the sum of P4,000.00 by way of moral damages jointly and severally with William Limson who has been previously convicted for the frustrated murder of said Edilberto Aquino;

"(6) In CCC-VI-396, accused is hereby found guilty beyond reasonable doubt as principal of the crime of attempted murder qualified by treachery and there being proven the aggravating circumstance of evident premeditation without any mitigating circumstance to offset the same, sentences him to an indeterminate penalty ranging from four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor as maximum and to indemnify the victim herein Fructuoso Abayon the sum of P2,000.00 by way of moral damages jointly and severally with William Limson who has been previously convicted for the attempted murder of said Fructuoso Abayon;

"(7) In CCC-VI-395, accused is hereby found guilty beyond reasonable doubt as principal of the crime of attempted murder qualified by treachery and there being proven the aggravating circumstance of evident premeditation without any mitigating circumstance to offset the same, sentences him to an indeterminate penalty ranging from four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor as maximum and to in-demnify the victim herein Jose Caraon, Jr., the sum of P2,000.00 by way of moral damages jointly and severally with William Limson who has been previously convicted for the attempted murder of said Jose Caraon Jr.; and

" (8) To pay exemplary damages in the amount of P10,000.00 to the heirs of each of the deceased, Amado Dungca, Herminigildo Sebastian and Rosita Garcia; P4,000.00 each to Saturnino Melida and Edilberto Aquino and P2,000.00 each to Fructuoso Abayon and Jose Caraon, Jr.

" (9) To pay the costs.

"So Ordered."[8]

The injuries suffered by the seven victims of that shooting incident were as follows:

Herminigildo Sebastian died on the spot and was brought to the City Morgue where he was autopsied by Dr. Luis C. Larion, the Postmortem Findings showing the cause of death as profuse hemorrhage and shock due to a gunshot wound penetrating the chest and lacerating the lungs, pericardium and heart;[9]

Rosita Garcia was immediately brought to the Philip-pine General Hospital but she died the same evening. Her cadaver was brought to the City Morgue where it was autopsied by Dr. Luis L. Larion, the Postmortem Findings showing the cause of death as profuse hemorrhage and shock due to two gunshot wounds, one penetrating the chest and lacerating the lungs, pericardium and thoracic aorta;[10]

Amado Dungca was immediately brought to the Philippine General Hospital but he died the same evening. His cadaver was brought to the City Morgue where it was autopsied by Dr. Luis C. Larion, the Postmortem Findings showing the cause of death as profuse hemorrhage and shock due to the gunshot wounds, one on the posterior left shoulder and the other penetrating the left lumbar region, fracturing the 3rd cervical and 11th thoracic vertebra and lacerating the liver, mesentery, diaphragm and inferior vena cava.[11]

The other victims were also brought to the Philippine General Hospital that evening of June 23, 1969, and Dr. George Barrios who attended to all of them, stated that the injury suffered by each of them, is as follows:

(a) Edilberto Aquino - a gunshot wound on the "xyphoid area, no exit" which could have caused the death of said victim without medical attendance;[12]

(b) Fructuoso Abayon - a "soft gunshot wound left" of the pelvis which would not immediately cause death even without medical attendance;[13]

(c) Jose Caraon Jr. - his "fracture would require for a period of 7 to 9 days to heal" and the "same does not cause death immediately";[14]

(d) Saturnino Melida - an open fracture which could have caused his death if no medical attendance was extended to him.[15]

The prosecution's version of the crime and identification of accused-appellant Exequiel Angeles as one of the three assailants on the night of June 23, 1969, is as follows:

Consolacion Ramos, 19 years, single, waitress at the Melrose Kitchenette testified that on June 23, 1969, she was already a waitress of the Melrose Kitchenette. She was on duty on that date from 7:00 a.m. to 7:00 p.m. At about

6:00 p.m. of June 23, 1969, two men approached the Melrose Kitchenette, one of whom was accused Angeles. They were outside and just looked inside the restaurant once. Accused Angeles and his companion talked with each other. Witness learned about the shooting incident the following day. Three days after the incident she saw the accused Angeles near the Playboy Theater at Dakota, Malate, and when the accused saw her, he ran to the upstairs of the Playboy Theater. Before June 23, 1969, accused had been at the Melrose Kitchenette as a customer.[16]

Rosario Vergara de Ablola, 34 years, married, restaurant manager of the Melrose Kitchenette, declared that she knew the accused Angeles two months before the shooting incident at the Melrose Kitchenette on June 23, 1969, when he went there to drink. The Kitchenette is in the name of her husband Celso Ablola. When accused Angeles went to the Kitchenette to drink before June 23, 1969, with another one in the uniform of a traffic policeman, witness knew that accused Angeles was a policeman. Consolacion Ramos served them at that time. On June 23, 1969, between 7:00 and 8:00 p.m., while she was in the restaurant getting their sales for the morning, she sat at table 8 where she had a full view of the restaurant and saw Edilberto Aquino, Saturnino Melida, Jose Caraon Jr., Bert Elias and Amado Dungca. At that time Lydia Romero was fixing napkins. Sebastian, Dungca, Melida, Aquino and Abayon were drinking and eating. Witness and Rosita Garcia (victim) were eating avocado. Suddenly the shooting incident happened. Witness saw one of the persons who fired shots and that person is the accused Angeles. She could not tell how many times he fired but she heard many shots. Accused Angeles was inside the Melrose Kitchenette when he fired at the direction of table 6. Witness could not distinguish what kind of gun was used as she did not know anything about guns. After hearing the shots, she pushed the table and lay flat under the table. She saw her companions, some falling and others lying on the floor. The shooting incident lasted for about three minutes. She sensed somebody went to table 6 and then the three assailants ran away. Witness heard the cry of anguish of persons, including victim Rosita Garcia who was lying at her feet. She went to the Aristocrat Restaurant to seek help. When she was investigated by the police on June 23, 1969, she did not tell the investigator what she knew as she was afraid that those who fired shots might be able to hide and take revenge on her. After accused William Limson y Lopez was convicted, she was again investigated and this time she identified accused Angeles.[17] Positive identification of accused Angeles as one of those who fired shots inside the Melrose Kitchenette on the night of June 23, 1969 was made by witness Rosario Vergara de Ablola.[18]

Lydia Romero, 31 years, married, declared that on June 23, 1969, she was employed in the Melrose Kitchenette as night cashier. Between 7 and 8 p.m. of said date she was inside the Melrose Kitchenette. She saw Herminigildo Sebastian and Rosita Garcia at table 8. She also saw Dungca, Aquino, Caraon and Melida. On that night, between 7:30-8:00 p.m., while witness was preparing napkins at table 8, a person suddenly entered and started shooting. There were more or less three persons. William Limson was the one who started shooting. Accused Angeles was with William Limson at the time. Witness saw accused Angeles behind Limson, but she did not notice whether or not the accused Angeles was holding something at the time, but she heard successive shots from different places inside the Kitchenette. When the witness heard the shots, she stood up and she ran to the kitchen. She saw Sebastian, Caraon, Dungca and Garcia sprawled on the floor. The shots were directed at table 6. Garcia was then at table 8, facing witness. Garcia was hit and could not talk. Dungca was also hit, stood up and fell. Before the shooting incident of June 23, 1969, accused Angeles apprehended her because he was looking for her license.[19]

Edilberto Aquino, 25 years, married, one of the victims in the shooting incident, declared that in September, 1968, he was employed as a waiter at the Aristocrat Restaurant. The ULP canteen was for the members of the union of waiters of the Aristocrat Restaurant. In September of 1968, a certain group was drinking in the ULP canteen, and after drinking, they created trouble. There were around ten or more persons in the group. Also present were Sebastian and other waiters. William Limson was in the group of drinking persons. The drinking group created trouble, had an exchange of words with Sebastian, threw bottles, destroyed the tables and chairs. Sebastian fought

back, and there was a free for all. The persons drinking ran away, but three were apprehended by Sebastian, including Roberto Limson. On June 23, 1969, at around 7:45 p.m. he was at the Melrose Kitchen-ette. Melida, Caraon, Sebastian and Dungca, his co-waiters were also there. And so was Rosita Garcia. Caraon Jr. was beside the witness. Sebastian was at the third table drinking with Melida and Dungca. Witness was talking with Dungca when William Limson entered the Melrose Kitchenette and fired. He heard many shots. When Limson entered, she said: "Mga putang ina ninyo mga waiter kayo, tignan ko ang titigas ninyo." After the shooting, he heard "Ayos na pare, dead ball na si Sebastian." Sebastian died. Jose Caraon was hit on the right arm while Melida was hit on the thigh. Dungca died although he was brought to the Philippine General Hospital for operation and was in fact operated on twice.[20] Edilberto Aquino testified that during the shooting incident when he was already lying down he saw three pairs of feet belonging to the assailants.[21]

Before the prosecution rested its case, it manifested that Fructuoso Abayon, Jose Caraon and Saturnino Melida were not cooperative anymore to the prosecution.[22]

The defense based on alibi, presented its version as follows:

Angel Rebullido, 36 years old, married, Instructor of the Philippine College of Commerce, declared that he came to know accused Angeles as the former used to play billiard with the latter since April, 1969, at the corner of Dakota and San Andres streets. On June 23, 1969, at about 4:30 to 5:00 p.m., witness was at the billiard hall at the corner of Dakota and San Andres streets, Malate, Manila, and accused Angeles approached him and the witness introduced accused to his friends. At the instance of the accused Angeles, they went to the house of Ben Frieria at the back of the San Andres playground. Upon reaching the house, they saw persons playing lucky nine and accused Angeles played with the ladies and he won the game. The accused invited the witness, Frieria and a certain Ben to a "blow-out." They went to San Andres to wait for a taxicab. When they were about to board the taxicab, accused Angeles saw Patrolman Frieria, brother of Ben Frieria, who was asked to go with the group, so they boarded the taxicab and went to Norva's Kitchenette in Nebraska. At the kitchenette, they ordered drinks. Accused Angeles ordered two cans of corned beef and beer, while Patrolman Frieria ordered coffee. Accused Angeles called and tabled two ladies. They left the Norva's Kitchenette and Patrolman Frieria asked the group to walk to Kaggie in Mabini, at around 9 p.m., where they drank whisky and stayed for around one-half hour, where Patrolman Frieria and accused Angeles sang. At around 10 p.m., they proceeded to Roxas Boulevard and turned to San Andres, where Patrolman Frieria and accused Angeles saw a crowd in the street, so they told the driver to stop and they went down. They talked with some people and they entered the Melrose Kitchenette and accused Angeles said there was plenty of blood on the floor. On August 26, 1969, witness learned that accused Angeles was implicated in the shooting incident so witness voluntarily went to the police headquarters to have his sworn statement taken.[23]

Mauro Frieria, 35 years, married, patrolman of the Manila Police Department, corroborated the testimony of Angel Rebullido.[24]

Accused Exequiel Angeles, 28 years, patrolman of the Manila Police Department, confirmed the versions of Rebullido and Frieria. He narrated how he was ordered to report to Chief Morales on August 26, 1969 and how he was placed in a line-up of eight persons. He was ordered to surrender his firearm. He admitted that Exhibits "E-2-Angeles" and "E-3-Angeles" were his firearms. On May, 1969, he arrested the owner of the Melrose Kitchenette for violation of an ordinance prohibiting selling liquor after 2:00 a.m., but he just warned them. He denied seeing Consolacion Ramos at the Playboy Theater.[25]

Jose Caraon Jr., one of the victims, pointed out by the prosecution as a non-cooperative witness, 28 years old, single, declared that he testified against William Limson as he was a complaining witness. He saw two men firing

guns during the shooting incident and one was William Limson. He could not identify the other person whom he saw shooting during the incident.[26]

Washington Bacud, 51 years, senior ballistic expert of the Manila Police Department, declared he made a report on the fire-arms taken from the accused Angeles[27] and the recovered slugs were not fired from those guns and that there were no indication of changing the barrels of both exhibits.[28]

That a shooting incident at the Melrose Kitchenette took place on the night of June 23, 1969, and that the aforementioned persons were the victims, some of whom died and some of whom were injured, is undisputed. The only principal issue in these cases is the alleged criminal participation of accused-appellant Exequiel Angeles y Ku.

Appellant Angeles claims that the trial court erred in finding him sufficiently identified on the basis of the testimonies of Rosario Vergara de Ablola and Lydia Romero. Examining the testimony of Rosario Vergara de Ablola, it appears very clear that this witness positively identified accused Angeles as one of the three who fired shots within the Melrose Kitchenette on the night of June 23, 1969.[29] Likewise, witness Lydia Romero positively identified accused Angeles as one of the three assailants on the night in question, standing behind accused William Limson, although the witness did not see if he was holding anything during that shooting incident.[30] According to the impression and observation of the trial judge, (Judge Manuel R. Pamaran) who was in a position to observe the demeanor of these witnesses, "the testimonies of these witnesses on the shooting incident and the identification of the accused Angeles were given in a very spontaneous, natural, consistent and reasonable manner which are all the earmarks of truth which became more credible in the cross-examination to which they have been exposed." [31]

Witness Lydia Romero was emphatic in the identification of the accused when she stated that she knew the face of the accused but not his name and that she cannot be mistaken about his face because she looked and stared at him; and before the incident, she already met the accused when he was looking for her license. According to the trial court, "her testimony in the cross-examination[32] that she did not mention the name of Angeles before because accused is a policeman and she believes that a policeman cannot be arrested and as a matter of fact, she has a phobia on policeman, is an indication of the naturalness of her testimony especially when the court observes that this witness is not highly intelligent." [33] It is also the observation of the trial court that when witness Lydia Romero testified, "her emphasis, gesture and inflection of voice exhibit her sincerity." [34]

With respect to witness Rosario Vergara de Ablola, the trial court believes that the credibility of her testimony was enhanced when she declared that she did not testify in the William Limson cases because actually she did not see Limson during the shooting incident and it is hard to tell a lie and that the person she saw then was accused Angeles who was then two or three yards away from the door.[35] It is also difficult to question the credibility of witness Vergara on the mere ground that she did not immediately point to the accused Angeles on June 23, 1969, after the crime was committed, because she explained that she knew accused Angeles was a policeman and she was afraid to talk and she was emboldened only when she knew that William Limson was convicted.[36] It is the trial court's observation that "what actually happened is that before the conviction of William Limson, everybody was afraid to testify against Angeles because of his being a policeman, but after Limson was convicted by this court, the witnesses were encouraged to testify for they realized that nobody can be above the law." [37]

Aside from the positive identification of accused Angeles as one of three assailants in the shooting incident at the Melrose Kitchenette on June 23, 1969, witness Consolacion Ramos testified that she saw the accused Angeles at around 6:00 p.m. or about two hours before the incident, peeping inside the Melrose Kitchenette with a companion. This witness also stated that she saw the accused Angeles at the Playboy Theater after the shooting

incident and he immediately ran upstairs. These proven circumstances clearly implicate accused Angeles in the shooting incident.[38]

No evidence exists indicative of any evil or bad motive as to why witnesses Romero, Vergara and Ramos would falsely testify against the accused Angeles. The mere fact that before the shooting incident of June 23, 1969, accused Angeles called the attention of the spouses de Ablola (Rosario Vergara de Ablola) about an alleged violation of an ordinance prohibiting selling liquor after 2:00 a.m., and merely warned them, would not be sufficient reason or motive for witness Rosario Vergara de Ablola to testify falsely against accused Angeles. The natural reaction of the spouses would be to be grateful for the consideration given them by the accused Angeles in not filing charges but merely warning them. The same conclusion can be derived when accused Angeles asked for the license of witness Lydia Romero before the shooting incident and nothing was done to arrest her.[39] Where there is no evidence to show any reason or improper motive why the prosecution witnesses should testify falsely against the accused[40] or falsely implicate him in the heinous crime of murder[41] the logical conclusion is that no such improper motive existed and their testimony is worthy of full faith and credit.[42]

The inevitable conclusion is that the credibility of the witnesses Romero, Vergara and Ramos were never successfully assailed, hence their version of what happened during the shooting incident speaks the truth.

As to the evidence presented by the senior ballistic expert of the Manila Police Department, Washington Bacud, to the effect that a ballistic examination of the two firearms surrendered by the accused Angeles (Exhibits "E-2-Angeles" and "E-3-Angeles") indicated that the recovered slugs were not fired from those guns and there were no indications of barrel swapping for both guns,[43] to Our mind, such evidence becomes of no moment to accused Angeles in the face of clear positive identification made by witnesses Romero and Vergara that he was one of the three assailants who fired guns during the shooting incident at the Melrose Kitchenette on June 23, 1969. If it is sufficiently proven that accused Angeles was one of the three who fired guns during that incident, it becomes unnecessary to identify correctly the gun that he fired, as the gun that he used might be different from the guns he surrendered for ballistic test, two months after the incident.

The principal defense of accused Angeles is an alibi. He declared, supported by the testimonies of Angel Rebullido and Mauro Frieria[44] that at the time of the shooting incident at Melrose Kitchenette, accused Angeles was in Norva's place, then at Kaggie's Kitchenette. Aside from the legal truism that alibi is considered a weak defense because it can easily be fabricated and it is so easy for witnesses to get confused as to dates, it can not prevail against the positive identification of the accused by credible witnesses. It is indispensably necessary in order to establish an alibi successfully that the accused was at some other place at the time the crime was committed, and that it was physically impossible for him to be in the place where the crime took place.

In this case, accused Angeles was positively identified by witnesses Romero and Vergara that he was at Melrose Kitchenette at the time of the shooting and he was one of the three persons who entered and fired shots that evening of June 23, 1969. There was no showing of a physical impossibility for accused to be at Melrose Kitchenette during the shooting incident because accused Angeles and his witnesses declared they were then at Norva's Kitchenette and Kaggie's place, which are places in the vicinity of Melrose Kitchenette.

The trial court did not give much credence to the testimony of Angel Rebullido, Mauro Frieria and accused Angeles to prove the alibi because said sworn declarations "lack spontaneity, frankness and sincerity of a credible testimony." [45] The trial court did not believe in the testimony of witness Frieria because it was unlikely that a policeman like him, in uniform and while on duty, would abandon his post and go to the restaurant or club for a good time.[46]

The trial court correctly disregarded the testimony of victim Jose Caraon Jr. to the effect that while he saw two

men, including William Limson firing guns during the incident, he did not see accused Angeles during that time, because this witness, for failure to obtain a loan from Maxima Dungca, mother of victim Amado Dungca, became uncooperative to the prosecution.[47]

Conspiracy between the accused Angeles and his two companions could be inferred from their acts when they suddenly entered the Melrose Kitchenette that evening of June 23, 1969, and immediately helped one another in shooting at the victims. They exhibited solidarity of purpose by their sudden simultaneous firing of guns directed at the victims. There is oneness in their concerted acts. Besides, accused Angeles was seen by witness Consolacion Ramos[48] looking inside the Melrose Kitchenette two hours before the shooting incident, apparently to verify the presence of the victims. That must be the reason why when the three assailants entered the Melrose Kitchenette they were immediately able to fire at the victims without anymore verifying their presence thereat.

The presence of treachery or alevosia in the commission of the crime is established. The attack on the victims was sudden and unexpected, catching the victims totally unprepared to make a defense or to flee. There is no doubt that the accused in shooting the victims suddenly and by surprise, employed means and methods in the execution thereof which tend directly and especially to insure its execution without risk to himself arising from the possible defense the victims might make. The victims were unarmed and had no warning whatsoever before the attack commenced.[49]

The victims Saturnino Melida and Edilberto Aquino suffered injuries which might have caused their death if not for the timely medical attendance given to them,[50] so the trial court concluded that the crimes committed by accused Angeles against the two are frustrated murder qualified by treachery.

The victims Fructuoso Abayon and Jose Caraon Jr. suffered injuries which would not have caused death even in the absence of medical attendance[51] so the trial court concluded that the crimes committed by accused Angeles, against the two are attempted murder qualified by treachery.

The trial court found the aggravating circumstance of evident premeditation amply established by evidence. In the second week of September of 1968, an incident occurred between the victim Sebastian and his co-waiters and William Limson, the companion of accused Angeles during the shooting incident. William Limson and his companions created trouble in the Aristocrat employees canteen, destroyed bottles and glasses, upturned tables, which led to the apprehension and prosecution of the three companions of Limson.[52] The affidavit[53] found in the pocket of victim Sebastian at the time of his death, also show that September, 1968 incident. Vengeance must have existed in the heart of Limson and his companions to kill Sebastian and his fellow waiters, as shown, when Limson entered the Melrose Kitchenette on the night of June 23, 1969, and before the firing of guns, in his words "Mga putang ina ninyo mga waiter kayo, tignan ko ang titigas ninyo. "[54] That such was the situation is also indicated when one of the assailants, after the shooting incident uttered - "Ayos na pare, dead ball na si Sebastian, nakaganti na tayo. "[55] Under such proven circumstances, it is manifest that since October 1968, the accused Angeles, including the two other assailants, had sufficient period in the judicial sense for meditation and reflection to overcome the resolution of his will to commit a wrong. But the long period did not change the resolution of the accused to kill, evidenced by what happened on the night of June 23, 1969. When accused Angeles conspired with William Limson and his companion to commit the crimes, the former must have known that the motive for the shooting was vengeance. That accused Angeles must have planned the shooting, together with the other two, becomes self-evident because Angeles visited the Melrose Kitchenette two hours before the shooting incident trying to determine the presence of the victims thereat.

The trial court did not find any mitigating circumstance in favor of the accused and a review of the record of these

cases do not show any.

Aside from the aggravating circumstance of treachery We also find as present in each and every one of the above-mentioned Criminal Cases the aggravating circumstance of taking advantage of his public position. While it is not alleged in the information, it was proven by the evidence, and therefore should be taken into account in imposing the penalty.[56]

WHEREFORE, the judgment of the trial court, being in accordance with the law and the evidence, is AFFIRMED in toto.

SO ORDERED.

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

Fernando, C.J., in the result.

Antonio, J., concurs. The policeman who, taking advantage of his public position, commits murder, does not deserve judicial leniency. As stated in a previous case: "While the law protects the police officer in the proper discharge of his duties, it must at the same time just as effectively protect the individual from abuse of the police." (U.S. v. Pabalan, 37 Phil. 352).

Makasiar, Santos, and Abad Santos, JJ., no part.

[1] Rollo, pp. 5-11.

[2] Crim. Case No. VI-295; Crim. Case No. VI-294; Crim. Case No. VI-292.

[3] Crim. Cases Nos. VI-291 and VI-288.

[4] Crim. Cases Nos. VI-293 and VI-289; Rollo, pp. 20-23.

[5] Crim. Cases Nos. VI-394 to Crim. Case No. VI-400.

[6] Rollo, pp. 2-11.

[7] Id., p. 20.

[8] Id., pp. 50-54.

[9] pp. 62, 64-66, t.s.n., Sept. 9, 1969, Perez; Exh. "H-3"; Postmortem Findings of Sebastian, p. 50, Record of Case No. CCC-VI-394.

[10] Exhibit "G-3", p. 45, Record of CCC- VI- 394.

[11] Exhibit "F-4", p. 40, Record of CCC-VI-394.

[12] Exh. "A", pp. 5-6, t.s.n., Sept. 9, 1969-Perez.

[13] Exh. "B", p. 6, t.s.n., Sept. 9, 1969-Perez.

[14] Exh. "C", p. 9, t.s.n., Sept. 9, 1969-Perez.

[15] Exh. "D", p. 8, t.s.n., Sept. 9, 1969-Perez.

[16] pp. 75-89, t.s.n., Sept. 9, 1969, Cando.

[17] pp. 18 to 70, t.s.n., Sept. 9, 1969, Cando.

- [18] pp. 31-33, t.s.n., Sept. 9, 1969, Cando.
- [19] pp. 59-69, t.s.n., Sept. 9, 1969-Perez.
- [20] pp. 10-21, t.s.n., Sept. 11, 1969, Rodriguez.
- [21] pp. 17-18, t.s.n., Sept. 11, 1969, Rodriguez.
- [22] p. 34, rollo.
- [23] pp. 2-10, t.s.n., Sept. 12, 1969, Perez.
- [24] pp. 12-14, t.s.n., Sept. 12, 1969, Perez.
- [25] pp. 18-35, t.s.n., Sept. 12, 1969, Perez.
- [26] pp. 6-10, t.s.n., Sept. 12, 1969, Perez.
- [27] Exhs. "E-2-Angeles" and "E-3-Angeles".
- [28] pp. 2-4, t.s.n., Sept. 18, 1969, Perez; pp. 2-5, t.s.n., Sept. 15, 1969, Palma; pp. 13-27, t.s.n., Sept. 9, 1969, Perez.
- [29] pp. 31-33, t.s.n., Sept. 9, 1969, Cando.
- [30] pp. 62-64, t.s.n., Sept. 9, 1969, Perez.
- [31] p. 40, rollo.
- [32] pp. 68-86, t.s.n., Sept. 9, 1969, Perez.
- [33] pp. 40-41, rollo.
- [34] p. 41, Id.
- [35] pp. 58-61, t.s.n., Sept. 9, 1969, Cando; p. 41, rollo.
- [36] p. 41, Id.
- [37] p. 41, Id.
- [38] pp. 41-42, Id.
- [39] pp. 42-43, Id.
- [40] People vs. Macalindong, 76 Phil. 719.
- [41] People vs. Baquiño, et al., 77 Phil. 721.
- [42] People vs. Borbono, 76 Phil. 702.
- [43] pp. 2-4, t.s.n., Sept. 18, 1969, Perez; pp. 2-5, t.s.n., Sept. 15, 1969, Palma; pp. 13-27, t.s.n., Sept. 9, 1969, Perez.
- [44] pp. 2-10, t.s.n., Sept. 12, 1969, Perez; pp. 12-14, t.s.n., Sept. 12, 1969, Perez.
- [45] p. 45, rollo.
- [46] p. 45, Id.

[47] pp. 10-13, t.s.n., Sept. 18, 1969, Perez.

[48] pp. 75-89, t.s.n., Sept. 9, 1969, Cando.

[49] People vs. Pengson, 44 Phil. 244, 232.

[50] Exhibits "A-Angeles" and "D-Angeles".

[51] Exhibits "B-Angeles" and "C-Angeles".

[52] pp. 10-21, t.s.n., Sept. 11, 1969, Rodriguez.

[53] Exhibits "P-Angeles" and "3-Angeles".

[54] p. 18, t.s.n., Sept. 11, 1969, Rodriguez.

[55] p. 19, t.s.n., Sept. 11, 1969, Rodriguez.

[56] People vs. Collado, 60 Phil. 610.

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