

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO MUNOZ AND JUSTO MILLORA, DEFENDANTS-APPELLANTS.

G.R. No. L-38016. September 10, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal from the decision[1] dated November 26, 1973 of the Court of First Instance of Pangasinan, Third Judicial District, Branch XI, in Criminal Case No. SCC-172, entitled "People of the Philippines vs. Feliciano Munoz alias "Tony" and Justo Millora alias "Tito," the dispositive portion of which reads:

"WHEREFORE, with these considerations, this Court hereby renders judgment finding the accused, Feliciano Muñoz alias 'Tony' guilty beyond reasonable doubt of the crime of Murder as charged in the Information and is hereby sentenced to suffer the DEATH PENALTY, the attendant aggravating circumstance of use of motor vehicle not having been offset by any mitigating circumstance: to indemnify the heirs of the deceased, Ricardo Depacina, in the amount of Twelve Thousand Pesos (P12,000.00), and to pay the costs.

"In the case of the accused, Justo Millora, alias 'Tito,' as he was only fourteen (14) years, five (5) months and twenty-four (24) days old at the time of the commission of the crime on August 22, 1972, and in compliance with the provisions of Article 80 of the Revised Penal Code, judgment is hereby suspended. Instead, let the body of the said accused be committed to the care and custody of Brig. General Tomas P. Diaz, Commanding General, First Regional Command in the Administration of Detainees, Camp Olivas, First PC Zone San Fernando, Pampanga. Brig. General Tomas P. Diaz shall, from the time of his actual custody of the accused, Justo Millora, submit to this Court, every four (4) months thereafter, a written report on the good or bad conduct and the moral and intellectual progress made by the accused.

"The expenses for the maintenance of the accused minor during the entire period of his commitment at Camp Olivas, San Fernando, Pampanga, shall be borne by the said accused's parents as they are evidently able to do so.

"SO ORDERED." [2]

Feliciano Munoz and Justo Millora were charged with the crime of Murder in the following:

"INFORMATION

"The undersigned Assistant City Fiscal hereby accuses Feliciano Munoz alias 'Tony' and Justo Millora alias 'Tito' of the crime of Murder committed as follows:

"That on or about the 22nd day of August 1972 at San Carlos City in Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms, conspiring together and mutually aiding each other, with evident premeditation and treachery, with intent to kill, did then and there, wilfully, unlawfully, and feloniously attack, assault and shoot one, Ricardo Depacina alias 'Carding', thereby inflicting upon the latter gunshot wounds on his head which mortal injuries caused the death of said Ricardo Depacina, alias 'Carding', as a consequence.

"Contrary to Article 248 of the Revised Penal Code.

"San Carlos City in Pangasinan.

"February 21, 1973." [3]

At their arraignment on March 28, 1973, both the accused, assisted by their counsel de parte pleaded "Not Guilty." [4]

The records show that appellant Feliciano Munoz escaped from the New Bilibid Prison, Muntinlupa, Rizal, on October 11, 1975. [5]

The facts, as stated in the appellee's brief, are:

"On August 22, 1972, the accused Feliciano 'Tony' Muñoz and Justo 'Tito' Millora were security men of the Mayor of San Carlos City, Pangasinan (pp. 18, 19, 43, 44, tsn, Oct. 19, 1973). At about 2:00p'clock in the afternoon of the aforementioned date, Patrolman Eduardo Agbuya of the San Carlos City Police Department was walking on his way to Barrio Nalintap of said city to serve a subpoena issued by the Municipal Court. When he was about to enter the entrance of the road heading towards said barrio, he noticed a police patrol jeep approach and stop. On the jeep were the two accused Tony Muñoz and Tito Millora (pp. 3-7, tsn, Sept. 26, 1973), Tony Muñoz called Pat. Agbuya, and when the latter approached, Munoz - asked the policeman whether he had seen one Carding Depacina, to which question Pat. Agbuya replied that he had seen Depacina when he (Agbuya) passed by a certain store in front of the Bolingit Elementary School in San Carlos City (p. 6, id.). When he was talking to the accused. Muñoz, Pat. Agbuya noticed a gun in between said accused and the other accused Tito Millora (who was driving) inside the jeep (pp. 8-9, id.).

"At about the same time, Narciso Rosal was conversing with Ricardo Depacina, Jose Macaraeg, and Catalino Sayson in front of Sayson's store which was located in front of the Bolingit Elementary School (pp. 10-12, tsn, Aug. 21, 1973). While they were conversing thus, a police patrol jeep of San Carlos City with both accused Tony Muñoz and Tito Millora on board arrived (p. 15, id.). The jeep stopped, and Munoz approached Ricardo Depacina, followed by accused Millora (pp. 28-29, id.). When he got near Depacina, Tony Muñoz shot Depacina, who was sitting down, with a long gun (about a meter long), hitting the latter in the left forehead (pp. 16-18, id.). When the accused Muñoz shot Ricardo Depacina, the other accused Tito Millora was standing by in a 'ready position,' also holding a long gun (p. 18, id.). After he was shot Ricardo Depacina fell on the ground (p. 17, id.).

"Then, the two accused Tony Muñoz and Tito Millora loaded the body of Ricardo Depacina into their jeep and brought him to Calasiao (pp. 19-20, id.). That same afternoon of August 22, 1972 the dead body of Ricardo was found lying around five hundred (500) meters from the Provincial Road in Barrio Duyong, Calasiao, Pangasinan (pp. 4-5, id.). A post mortem examination made on the remains of the deceased by Dr. Silverio Petrasanta, Rural Health Physician of Calasiao, Pangasinan, disclosed as cause of death: 'Hemorrhage, severe, external and internal due to a gunshot wound.' (The gunshot wound is described in the post mortem examination report as 'measuring 1/2 inch in diameter as point of entrance at the left side of the upper eyebrow', passing 'through and through at the back of the head . . . measuring 1-1/2 inch in diameter as point of exit') Exh. A p. 1, folder of exhibits; p. 5, tsn, August 21, 1973." [6]

The defendant-appellant Feliciano Munoz assigned the following errors allegedly committed by the lower court:

"I

"THE TRIAL COURT ERRED WHEN IT HELD THAT THE WITNESS FOR THE PROSECUTION ESTABLISHED THAT THE APPELLANT FELICIANO MUNOZ SHOT RICARDO DEPACINA TO DEATH.

"II

"THE TRIAL COURT ERRED WHEN IT DID NOT EXCLUDE THE ALLEGED CONFESSION (EXH. B, B-1, B-2) OF APPELLANT FELICIANO MUNOZ THE SAME HAVING BEEN EXTRACTED UNDER DURESS, VIOLENCE, THREAT AND INTIMIDATION.

"III

"THE TRIAL COURT ERRED WHEN IT HELD THAT THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION WERE NOT OVERCOME BY THE EVIDENCE OF THE DEFENSE.

"IV

"THE TRIAL COURT, THEREFORE, ERRED WHEN IT HELD THAT THE GUILT OF FELICIANO MUNOZ OF THE CRIME CHARGED WAS ESTABLISHED BEYOND REASONABLE DOUBT."[7]

In a separate brief, the accused Justo Millora assigned as errors the following:

"I

"THE TRIAL COURT ERRED IN NOT BELIEVING THE ALIBI OF THE APPELLANT JUSTO MILLORA IN THE LIGHT OF THE CIRCUMSTANCES IN THE CASE.

"II

"THAT ASSUMING ARGUENDO THAT THE EVIDENCE OF THE PROSECUTION IS TRUE, THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT JUSTO MILLORA DESPITE THE ABSENCE OF ANY EVIDENCE OF CONSPIRACY BETWEEN HIM AND THE ALLEGED ASSAILANT TONY MUNOZ.

"III

"THAT ASSUMING ARGUENDO THAT THE EVIDENCE OF THE PROSECUTION IS TRUE, THE TRIAL COURT ERRED IN NOT ACQUITTING THE APPELLANT ON A REASONABLE DOUBT, OR IN NOT FINDING HIM GUILTY AT THE MOST, ONLY AS AN ACCOMPLICE."[8]

As to Feliciano Muñoz:

Anent the first error, Feliciano Muñoz claims that the lower court erred in holding that the witnesses for the prosecution have established that he shot Ricardo Depacina to death. Firstly, appellant Muñoz points out that while prosecution witness Narciso Rosal testified on cross-examination that the incident in question occurred between 2:00 and 3:00 o'clock in the afternoon of August 22, 1972, Dr. Silverio Petrasanta, who conducted a post-mortem examination on the cadaver of the deceased between 3:30 and 4:00 o'clock in the afternoon of the same date, testified, on the other hand, that said deceased had already been dead from 2 to 3 hours on that date. Hence, appellant Muñoz concludes that prosecution witness Narciso Rosal was not telling the truth.[9]

The alleged contradiction between the testimony of prosecution witness Narciso Rosal and that of Dr. Silverio Petrasanta is superficial because if Dr. Petrasanta examined the dead body of Ricardo Depacina after the latter had been dead for two hours, the time of death must have been at about 1:30 o'clock p.m. which coincides, more or less, with the testimony of Narciso Rosal that the victim was killed at around two o'clock in the afternoon. The apparent difference of thirty (30) minutes in their testimonies as to the time of death is a minor inconsistency which, as repeatedly declared by this Court, does not affect the witness' basic credibility.[10]

Secondly, appellant Munoz also submits that while Narciso Rosal claimed that he was in the store of Catalino Sayson in the afternoon of August 22, 1972 conversing with Jose Macaraeg and Ricardo Depacina, he (Rosal) could not remember what they talked about. The record shows that Narciso Rosal testified that he could not remember specifically the matters he talked about with Ricardo Depacina and Jose Macaraeg because they talked of different topics about life in general.[11]

Likewise, appellant Munoz contends that it is strange that none of the three (Rosal, Macaraeg or Sayson) reported the incident to the authorities and Rosal did not relate the incident to his family, because when the country came under Martial Law on September 21, 1972, and the alleged "mayor's squad" in San Carlos City had been disbanded, the reason for their silence was already removed.[12] In answer to this contention, the Solicitor General correctly stated that it is understandable that Narciso Rosal could not have mentioned the incident to his family because they might just get terrified for the killing was perpetrated in a gruesome manner[13] by persons who were regarded as the "authorities" during those times. The Solicitor General continued that Narciso Rosal was not asked and was not, therefore, able to explain on the witness stand why he did not report the killing to the proper authorities even after the declaration of Martial Law. He testified, though, that he was picked up by the Philippine Constabulary and that he gave a sworn statement regarding what he knew about the incident to the 154th PC Company, Lingayen, Pangasinan on January 19, 1973.[14] As to the prosecution witnesses Jose Macaraeg and Catalino Sayson (who testified as rebuttal witness for the prosecution), it was highly probable that they did not report the incident to the authorities because ordinarily witnesses to such crimes would not volunteer to give information for fear of becoming the next victims. It was only when the culprits were arrested and jailed that they were assured that they would be free from harm and danger. Hence they stated what they knew only in court. The initial reluctance of witnesses to volunteer information about a criminal case, and their willingness to be involved in criminal investigations, is common, and has been declared by this Court as not to affect credibility.[15]

Likewise, under the first assignment of error, appellant Munoz contends that if Narciso Rosal's statement that he (Munoz) used a gun about a meter long was true, the explosion caused by the discharge of the bullet from said gun would have been loud enough to have called the attention of the residents but the latter allegedly did not come about.[16] As properly refuted in the appellee's brief,[17] there is no evidence on record as to the caliber of the gun used in the shooting. The gunshot wound of the deceased measured only one-half (1/2) inch in diameter at its point of entrance[18] which makes it possible that the gun used was a small caliber.

Also, appellant Munoz argues that the allegation that he shot Ricardo Depacina in front of so many witnesses and then carried the body away to dump it somewhere is highly unbelievable even if it be assumed that he (Munoz) and his co-accused Justo Millora were hardened criminals.[19]

In reply to the foregoing argument, a reference to the sworn statement, Exhibit "B," made by appellant Munoz, dated October 22, 1972 given at PC Headquarters in Lingayen, Pangasinan, pertinent portions of which are reproduced as follows:

Exhibit "B-1"

15. "Q. —

Will you state who are the persons who were killed by the Mayor's Squad that you know?

A. —

On my part I participated in the killing of Carling dela Cruz who was on board a Thames jeep going to Dagupan City at Barrio Bolingit, San Carlos City sometime in the month of October 1971. In this incident, I boarded the passenger Thames and fired at the head of dela Cruz is a known robber and a member of the squad of Ex-Mayor Juan Lomibao of San Carlos City.

Exhibit "B-2"

"I was also the triggerman of the killing of a known rustler which I killed in a store in front of the Bolingit School building sometime in August 1972 because he was pointed to me as a cattle rustler by the Warrant Officer of the Police Department of San Carlos City Agbuya whose first name I do not know. My companion in this killing was Tito Millora and I used a Carbine of the Milloras and using the Police Patrol jeep of San Carlos City to transport us.

"We also killed the two Batangueflos who were drugs at San Carlos City sometime in July 1972 who we picked up and forced to board the red jeep belonging to the Milloras and brought them to Bo. Doyong, Calasiao, Pangasinan where Tito and I shot them with Carbines belonging to the Milloras. We were three in this case the third man with us was Marvin Millora who was driving the red jeep. The killing of Martin Maneclang in path at Bo. Bokbok, San Carlos City during its Barrio Fiesta sometime in February 1972 was authored by me, Tito Millora, Marvin Millora and Jose Cayabyab alias Bong. We killed him for insulting a dancer that night and I and Jose Cayabyab shot him using the Carbines belong to the Milloras and also using the squad jeep and driven by Marvin Millora, I killed Opong Sison sometime in May 1972 who is our neighbor at Rizal Ave., San Carlos City because he stabbed my father on the neck. I shot him once on the head with .38 revolver. I was also in company of Marvin Millora, Tito Millora, Ernesto Padua, Genaro Martin, Dong Macam in a jeep Toyota driven by Boy Tamondong on 25 August 1972 when we shot and killed Armando Tandoc at Caranglan District, Dagupan City. I used a carbine to shoot Armando Tandoc because I was forced to do so only because of the order of Marvin Millora. I was also in company of Genaro Martin, Carlos de Vera, Marvin Millora, Tito Millora, Pat. Tammy Tayaba of San Carlos Police Dept. Jose Cayabyab alias Bong and Casi Cayabyab when he shot and killed three persons all surnamed Bulatao at Balite Sur, San Carlos City sometime in June 1972 because they are reported to be cattle rustlers. The first Bulatao was shot and killed in his house by Marvin Millora using his Armalite M14 Rifle while Andoy Bulatao, the second to be killed was shot by me and Tito Millora using his M14 Armalite Rifle while I used the Carbine. The third Bulatao was killed in the ricefield using the M14 Armalite Rifle by Tito Millora. At this time we were using the squad jeep with Genaro Martin as our driver. I was also in company with Marvin Millora, Tito Millora, Ernesto Padua, Carlos de Vera when Marvin Millora shot and killed Arnulfo Benitez at Poblacion San Carlos City sometime in April 1972 with his Cal. 45 Pistol allegedly for revenge. Felipe Rosario, who was on board a tricycle at Bo. Palaming, San Carlos City was shot and killed with a .38 Caliber Revolver by Tito Millora sometime in November 1971.1 and one Ninoy, Cock trainer and driver of the Milloras, and a resident of Bo. Doyong, San Carlos City were Tito's companions and we used the red jeep owned by the Milloras."[20]

indicates that the manner in which Ricardo Depacina, an alleged cattle rustler was killed, was typical of the way suspected malefactors and other trouble makers were purged and liquidated during those times in the remote towns and barrios of San Carlos City, Pangasinan.

Another discrepancy in the testimonies of the prosecution witnesses pointed out by appellant Munoz's counsel in their Brief[21] is that while Narciso Rosal testified that he (Muñoz) and Justo Millora had a gun each during the incident in question, Eduardo Agbuya, on the other hand, testified that in the jeep where both appellants were riding he saw a gun between them. This discrepancy as to the number of guns the appellants were carrying as testified to by the prosecution witnesses, is correctly explained by the Solicitor General[22] thus:

". . . witness Pat. Eduardo Agbuya spoke only briefly with appellant Muñoz when the latter inquired as to whether the former had seen Ricardo Depacina or not, and he Pat. Agbuya was standing alongside the jeep that appellants were then riding on, so that said witness might not have noticed the number of firearms appellants had inside the vehicle, since he was not able to get near said vehicle (p. 9, tsn, Sept. 26, 1973) Upon the other hand, witness Narciso Rosal was conversing with the deceased Ricardo Depacina and two others in front of the store when the two appellants came in a jeep and then alighted from said vehicle and approached the deceased both carrying long guns, after which appellant Muñoz fired at said deceased, while the other appellant was in a 'ready [to fire] position' (p. 18, tsn, August 21, 1973). Hence, this witness saw very clearly the guns then carried by said appellants."

Appellant Muñoz, in his first assignment of error, subjected the testimonies of prosecution witnesses to a painstaking scrutiny and found some seeming contradictions and inconsistencies. These discrepancies were pointed out to impair the credibility of the prosecution witnesses and support the appellant's contention that it was error for the trial court to hold that the witnesses for the prosecution established that appellant Muñoz shot Ricardo Depacina to death. However, the Solicitor General, in his brief, competently refuted the appellant's arguments and conclusions.

The alleged contradictions, discrepancies, and improbabilities do not destroy or weaken the probative value of the testimonies of Narciso Rosal, Dr. Petrasanta, Patrolman Agbuya, and rebuttal witnesses, Jose Macaraeg, and Catalino Sayson. They do not wilfully pervert the truth nor perpetrate deliberate lies.[23] The alleged inconsistencies on minor details as on matters that are not of material consequence as to affect the guilt or innocence of the accused do not detract from the credibility of the witnesses. In fact, as held by this Court:

"The discordance in their testimonies on collateral matters heightens their credibility and shows that their testimonies were not coached or rehearsed. Far from being evidence of falsehood, they could justifiably be regarded as a demonstration of good faith."[24]

Appellant Muñoz, in impugning the credibility of Rosal and Pat. Agbuya, contends that prosecution witnesses Narciso Rosal and Eduardo Agbuya testified against him because: 1) Rosal, sometime in July, 1972, was creating trouble and to stop him, appellant Munoz slapped said witness, and 2) Pat. Eduardo Agbuya and his brothers earlier had reported to the Chief of Police that Ricardo Depacina and the latter's brother-in-law were robbers and asked that they be liquidated in the presence of appellant, so that Agbuya must have concluded that he (Muñoz) carried out their said request by killing Depacina.[25]

These observations cannot weaken the probative value of Rosal and Agbuya's testimonies. The alleged slapping of Rosal by appellant Munoz at one time cannot detract from the integrity and weight of the latter's testimony who positively and directly identified appellant Muñoz as the person who shot Ricardo Depacina on August 22, 1972. The decisive fact is that Narciso Rosal was present when the accused appellant Muñoz and Tito Millora arrived at the store of Catalino Sayson, alighted from the patrol jeep, approached Depacina and shot him without any warning. Moreover, the lower court's finding on the credibility of witnesses is entitled to great respect and weight by appellate courts.[26] And the same applies to the credibility of Pat. Agbuya, who, incidentally, did not state directly that appellant Munoz was the perpetrator of the crime but merely corroborated Narciso Rosal's testimony when he related that appellant Munoz asked him where the deceased was in the afternoon of August 22, 1972.[27]

As to the appellant Muñoz's second assignment of error, that the trial court erred when it did not exclude his alleged confession, Exhibits "B," "B-1," and "B-2," the same having been allegedly extracted under duress, violence, threat and intimidation,[28] it must not be overlooked that the same was not the main basis of the trial court for finding appellant Muñoz guilty of the crime charged. The principal basis for the conviction of appellant Muñoz was the "direct and positive identification of the prosecution witnesses [which] sufficiently established the

identities of the accused Muñoz and Millora"[29] as the perpetrators of the crime. At any rate, the presumption of the law is in favor of spontaneity and voluntariness of the statement by an accused, and it is incumbent upon him to destroy that presumption.[30] Assistant Provincial Fiscal Pedro Y. Fernandez before whom the statement[31] of appellant Muñoz was signed and sworn to testified, on cross-examination by Atty. Manuel Millora, thus:

x x x x

Atty. Millora:

Q :

In other words, Fiscal when you appraised him of all the contents of this written statement Exhibit "B" you asked these PC soldiers to get out of the room?

Witness:

A :

Yes, sir. As per Circular of the Department of Justice. I even examined him physically and I asked him whether he was maltreated or not as per the Circular of the Department of Justice, and he said: "I was not, and I never saw any sign of maltreatment." [32]

Appellant Muñoz was not able to discharge the burden of proving the involuntariness of his confession.

It is difficult to believe that the accused, Muñoz, finding the situation while at Camp Crame unbearable, took some twenty (20) "seconal" capsules which consequently caused his unconsciousness. It was impossible for him to have possessed the said tablets at that time of his alleged maltreatment without the interrogators having detected and confiscated the same. Moreover, the statement of the said accused narrates a detailed account of a series of crimes perpetrated in different towns and barrios of San Carlos City, Pangasinan which only the declarant could have furnished and which could have been known only by him, factors indicating voluntariness.[33] Likewise, there is no evidence on record that the investigators had ill-motive to concoct the facts narrated by the appellant which is another earmark of voluntariness of the sworn statement in question.[34]

In appellant Munoz' joint discussion of his third and fourth assignment of errors he contends that the trial court erred: a) when it held that the testimonies of the prosecution witnesses had not been overcome by the evidence of the defense, and b) when it held that the guilt of appellant Muñoz of the crime charged had been established beyond reasonable doubt.

Appellant Muñoz argues that the evidence for the defense does not consist of mere denials. He testified that on that day of August 22, 1972, he was in the office of the mayor of San Carlos City from which he did not leave until 5 o'clock that afternoon, and this was allegedly corroborated not only by his co-appellant Justo Millora but also by Domingo Ferrer, a janitor in the said office.[35]

It is generally considered that alibi is one of the weakest defenses which can be resorted to by an accused.[36] Thus, it has been often held by this Court that to establish alibi, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed, either before, during or after the time he was at such other place.[37]

The incident in question happened in front of the Bolingit Elementary School in San Carlos City, so that even assuming that appellant Muñoz was in the office of the city mayor at that time, it was not impossible for him to have left said office to commit the offense. As testified to by eyewitness, Narciso Rosal, it happened within two (2) to three (3) minutes from their arrival at the scene of the crime, to the shooting and loading of the victim in the patrol jeep.[38] The whole incident could have transpired even in an hour or half-hour's time, which time of temporary absence from the office of the mayor of the accused, was not probably noticed by the janitor, Domingo Ferrer. The distance between the San Carlos City Municipal Hall and the Bolingit Elementary School is about 8 kilometers and can be negotiated by a motor vehicle in about 5 to 10 minutes. Appellant Muñoz, therefore, has not established that he was at another place for such period of time that it was impossible for him to have been at the scene of the crime at the time of its commission. As this Court has held, the defense of alibi is an issue of fact that hinges on credibility and in this respect, the relative weight which the trial court assigns to the testimony of witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted.[39] Moreover, the defense of alibi is unavailing where the identity of the accused is sufficiently and positively identified by a prosecution witness.[40] The alleged slapping incident could not have been a sufficient and proper motive for Narciso Rosal to have falsely charged the appellant with a grave offense such as murder which is punishable by death.

To corroborate further his defense of alibi, appellant Muñoz cites (1) the testimonies of defense witnesses Marcelino Muñoz and Orlando Cabugao that on August 22, 1972 Catalino Sayson did not yet own a store in front of the Bolingit Elementary School where the incident allegedly occurred and that the store in front of said school belonged to one Jose Macaraeg and (2) Cabugao's testimony that he went to Macaraeg's store, staying there between the hours of 2 and 3 o'clock in the afternoon talking to Narciso Rosal but that no unusual incident happened at said time.[41] However, Catalino Sayson, who testified as rebuttal witness, declared that on August 22, 1972, he had in fact a store in Barrio Bolingit, San Carlos City which he transferred to another place on April 19, 1973 since "I (witness) could not sell there anymore I am afraid somebody is dead there." [42] Likewise, defense witness Orlando Cabugao admitted that there was, on August 22, 1972, another store some 20 meters from the store of Jose Macaraeg, whose owner he did not know,[43] thus indicating that this defense witness was, at the time the deceased was killed, in another store and not in the store of Catalino Sayson where the killing took place as testified by Narciso Rosal.

There can not be any doubt, therefore, that appellant Feliciano Munoz authored the killing of Ricardo Depacina on August 22, 1972 in front of the store of Catalino Sayson in Barrio Bolingit, San Carlos City, Pangasinan.

As to Justo Millora:

As regards the first error assigned by appellant Justo Millora, it suffices to state that alibi, as a defense, being easily concocted and fabricated, must be supported by clear and strong evidence[44] and such evidence does not obtain in the case at bar. The said appellant, in his brief[45] mentions some supposedly "credible witnesses" who testified as to his presence at the Office of the City Mayor in San Carlos City Municipal Hall at the time and date of the commission of the crime in question, but not a single person was named therein, although defense witness, Domingo Ferrer,[46] did swear that both appellants Muñoz and Millora did not leave the office of the Mayor of San Carlos City in the afternoon of August 22, 1972. Likewise, appellant Millora alleged "serious discrepancies" in the testimonies of the prosecution witness without enumerating the same. Finally, the circumstance that the prosecution witnesses were picked up by the Philippine Constabulary to testify against appellants can not destroy the credibility of said witnesses because appellants had the opportunity to test their statements when they were cross-examined in court by their counsel.

In his second assignment of error, appellant Millora contends that the court a quo erred in convicting him of the

crime charged despite the absence of any evidence of conspiracy between him and the alleged assailant Tony Munoz. Under this error, the points raised by appellant Millora are summarized thus:[47] (1) that Appellant Muñoz alone asked witness Pat. Agbuya if he had seen Ricardo Depacina (the intended victim); (2) that said appellant suddenly and without warning shot the deceased, which act of Munoz ,appellant Millora could not have anticipated, and there being no evident premeditation on Millora's part, such fact negates the existence of a conspiracy between him and appellant Munoz; (3) that although prosecution witness Narciso Rosal testified that appellant Millora was at the back of appellant Muñoz in a ready position when he shot the deceased Ricardo Depacina, the said witness hastened to explain that what he meant was that "the gun was not placed on his shoulder but in a foot arm position"; and (4) that appellant Millora did not know the deceased Depacina and had no motive to conspire with appellant Tony Munoz in order to kill said deceased.

It is clear from the records that it was Appellant Munoz who shot Ricardo Depacina. Since there is no proof that Appellant Millora attacked the deceased, it is evident that the basis of the trial court in convicting Appellant Millora of murder is the conspiracy between the Appellants. The trial court found that:

"When Feliciano Muñoz aimed his gun with the Muzzle only about a foot away from Ricardo Depacina, he was effectively supported at his back by Justo Millora who was also armed. In sum, both the accused had all the power to overwhelm the "deceased. Even more, the weapons used and the manner by which Ricardo Depacina was fired upon were of such nature as to render any resistance futile.

"The direct and positive testimonies of the prosecution witness sufficiently established the identities of the accused, Muñoz and Millora, and no amount of denials would overcome the same. This Court is not inclined to believe the defense of alibi interposed by the accused for so it is that they were seen riding on the patrol jeep on the day in question and the scene of the crime was only about half a kilometer away. It would have taken them only a few minutes to commit the crime. Even their supposed whereabouts at the Mayor's Office of San Carlos City did not exclude their physical presence at the scene of the crime: Barrio Bolingit, being only a few kilometers away from the city proper."[48]

These findings of the trial court are supported by the evidence on record. The records show that when appellant Munoz inquired from witness Pat. Agbuya whether the latter had seen Depacina just before the incident happened, appellant Millora was the companion of appellant Munoz in the police patrol jeep driven by Millora, with a gun between both appellants.[49] Likewise, Appellant Millora was seen standing in a ready position near appellant Munoz holding a long gun when Appellant Munoz shot Ricardo Depacina.[50] Hence, Appellant Millora insured the killing of the deceased as he was in a position to help appellant Munoz overcome any resistance that the victim or the persons with whom said Depacina was conversing might have offered. Moreover, after Ricardo Depacina was shot, both appellants loaded his body in a jeep in which they came and then they rode away.[51]

Therefore, although there was no direct proof that appellant Millora and Appellant Munoz entered into a conspiracy to kill Depacina, their unity of criminal design can be inferred from the specific acts done by both of the appellants. They were both seen on a police patrol jeep and armed on the afternoon of August 22, 1972 a few kilometers away from the scene of the crime. Together they arrived at the scene of the crime, alighted from the police patrol jeep, approached the victim, and when appellant Muñoz shot Depacina, appellant Millora stood up in a ready position, loaded the body of the victim, and when appellant Muñoz shot Depacina, appellant Millora stood by in a ready position, loaded the body of the victim in the police patrol jeep and drove away towards Calasiao. Undoubtedly, these overt acts of the appellant are logically and intimately connected, such that their common felonious design cannot be negated. Conspiracy implies concert of design and not participation in every detail.[52]

The Solicitor General[53] also correctly pointed out as evidence of conspiracy the sworn statement[54]of

Appellant Muñoz. A careful reading of said statement indicates that both appellants Muñoz and Millora, had on several occasions around the time of the incident in this case, conspired and executed a plan or scheme of doing away with alleged malefactors and troublemakers in the jurisdiction of San Carlos City (Pangasinan) in their capacity as security or peace officers of the City Mayor. Evidence that one did a certain thing at one time may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, customs, or usage, and the like.[55]

As regards appellant Millora's contention that the existence of conspiracy presupposes evident premeditation which was not proved during the trial,[56]this circumstance does not necessarily negate the existence of conspiracy for the same does not require necessarily an agreement for an appreciable time prior to the occurrence.[57]

In the last error assigned by Appellant Millora, he claims that assuming the evidence of the prosecution is true, the trial Court erred in not acquitting him on reasonable doubt or in not finding him guilty only as an accomplice in the commission of the crime charged. Appellant Millora adds that the circumstance that he was only 14 years old on August 22, 1972, when the crime charged was committed, is another factor that should be considered in resolving all doubts in his favor.[58]

The evidence for the prosecution has established beyond doubt that Appellant Millora is guilty of the crime charged in the information as a co-conspirator or principal by direct participation. The Solicitor General correctly pointed that his minority, being 14 years old on August 22, 1972, should not be a reason in resolving all doubts in his favor because Millora admitted that he told a lie and misrepresented himself to be twenty-one (21) years old in order to secure an appointment as security guard of the mayor of San Carlos City.[59] In fact it was by virtue of such appointment that he assumed the authority of a security or peace officer under which authority he committed the crime charged. Thus, young as he was, appellant Millora had the mental capacity to distinguish what was right and wrong and to fully appreciate the consequences of his unlawful acts.

The trial court imposed the death penalty on both accused because of the finding that the commission of the crime was attended by the qualifying aggravating circumstance of treachery and the ordinary aggravating circumstance of use of motor vehicle without any mitigating circumstance. However, in the case of Justo Millora alias 'Tito,' as he was only fourteen (14) years, five (5) months and twenty-four (24) days old at the time of the commission of the crime on August 22, 1972, in compliance with the provisions of Article 80 of the Revised Penal Code, judgment of the trial court was suspended. Appellant Millora was committed to the care and custody of Brig. General Tomas P. Diaz, Commanding General, First Regional Command in the Administration of Detainees, Camp Olivas, First PC Zone, San Fernando, Pampanga.

The evidence of the prosecution has established the qualifying aggravating circumstance of treachery because the accused deliberately perpetrated a surprise and sudden assault on the unarmed victim without giving him a chance to defend himself.[60]

However, use of motor vehicle should not be considered as an aggravating circumstance. The use by accused-appellants Muñoz and Millora of the police patrol jeep in looking for the victim Ricardo Depacina and in carrying his dead body to Calasiao, Pangasinan was incidental. The police patrol jeep was not deliberately utilized to facilitate the killing of Depacina, the escape of the appellants from the scene of the crime, and the concealment of the body of the victim. Hence, the trial court erred in appreciating the use of a motor vehicle, which was not alleged in the information, in determining the penalty.

The crime committed is murder qualified by treachery under Art. 248 of the Revised Penal Code. There being no aggravating circumstance and no mitigating circumstance, the proper penalty is reclusion perpetua.

WHEREFORE, the judgment of the trial court is hereby AFFIRMED with the sole modification that the penalty to be imposed on appellant Feliciano Muñoz is reclusion perpetua and said appellant is ordered to indemnify the heirs of the deceased Ricardo Depacina the amount of P12,000.00.

Costs against appellants. SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Abad-Santos, Conception Jr., Guerrero, De Castro and Melencio-Herrera, JJ., concur.

Barredo, J., concurs in the opinion of Mr. Justice Makasiar.

Makasiar, J., see partial dissent.

[1] Rollo, pp. 14-25, Records, p. 118.

[2] Rollo, pp. 24-25.

[3] Records, p. 1.

[4] Ibid, p. 8.

[5] Rollo, p. 122.

[6] Brief for the Appellee, pp. 3-5, Rollo, p. 129.

[7] Brief for Defendant-Appellant Muñoz, pp. 5-6; Rollo, p. 104.

[8] Brief for the Accused-Appellant Justo Millora, pp. 4-5; Rollo, p. 64.

[9] Brief for the Accused-Appellant, Feliciano Muñoz, pp. 7-8; Rollo, p. 104.

[10] People of the Philippines vs. Valera, 90 SCRA 400, 413.

[11] TSN, p. 30, Aug. 21, 1973.

[12] Brief for the Defendant-Appellant Feliciano Munoz, pp. 8-9; Rollo, p. 104.

[13] Appellee's Brief, p. 7; Rollo, p. 129.

[14] TSN, August 21, 1973, pp. 36-40.

[15] People-vs. Delfin, 2 SCRA 911, 918-919.

[16] Brief for Defendant-Appellant Muñoz, pp. 9-10; Rollo, p. 104.

[17] P. 8; Rollo, p. 129.

[18] Exhibit "A", p. 1, Folder of Exhibits.

[19] Brief for Defendant-Appellant Muñoz, p. 10; Rollo, p. 104.

[20] Exhibit "B", "B-1", "B-2", Folder of Exhibits, pp. 2-4.

[21] Brief for the Appellant-Defendant Muñoz, p. 12; Rollo, p. 104.

[22] Brief for the Appellee, pp. 10-11; Rollo, p. 129.

[23] People vs. Llanto, 88 SCRA 8, 13.

- [24] People vs. Molo, 88 SCRA 22 36-37.
- [25] Brief for Defendant-Appellant Muñoz, p. 16; Rollo, p. 104.
- [26] People vs. Aguel, 97 SCRA 795, 805. People vs. Advincula, 96 SCRA 875, 882.
- [27] TSN, September 26, 1973, p. 6.
- [28] Brief for Defendant-Appellant Muñoz, p. 12; Rollo, p. 104.
- [29] CFI Decision, p. 8; Rollo, p. 21.
- [30] People vs. Pereto, 21 SCRA 1469, 1477.
- [31] Exh. "B-6", p. 4, Folder of Exhibits; Records.
- [32] TSN, September 26, 1973, pp. 64-65.
- [33] People vs. Barrios, 92 SCRA 189, 194; People vs. Bautista, 92 SCRA 465, 472.
- [34] People vs. Puesca, 87 SCRA, 130, 149.
- [35] Brief for Defendant-Appellant Muftoz, pp. 18-19; Rollo, p. 104.
- [36] People vs. Fontillas, 23 SCRA 74.
- [37] People vs. Angeles, 92 SCRA 432, 448.
- [38] TSN, August 21, 1973, p. 31.
- [39] People vs. Artieda, 90 SCRA 144, 155.
- [40] People vs. Lucero, 96 SCRA 694, 703.
- [41] Brief for Defendant-Appellant Muñoz, pp. 19-20; Rollo, p. 104.
- [42] TSN, October 24, 1973, pp. 36-38.
- [43] TSN, October 18, 1973, pp. 40-41.
- [44] People vs. Barrios, 92 SCRA 189, 195.
- [45] Brief for Accused-Appellant Millora, pp. 5-6; Rollo, p. 64.
- [46] TSN, October 24, 1973, p. 7.
- [47] Brief for the Defendant-Appellant Millora, pp. 6-14; Rollo, p. 64.
- [48] CFI Decision, pp. 8-9; Rollo, pp. 21-22.
- [49] TSN, Sept. 26, 1973, pp. 6-9.
- [50] TSN, Aug. 21, 1973, pp. 18-19.
- [51] TSN, Aug. 21, 1973, pp., 19-20.
- [52] People vs. Aniel, 96 SCRA 199, 208-209.
- [53] Brief for the Appellee, p. 18, Rollo, p. 129.
- [54] Exhibit "B", "B-1", and "B-2", Folder of Exhibits, Records.

[55] SEC. 48, Rule 131, Revised Rules of Court

[56] Brief for the Accused-Appellant Millora, p.10; Rollo, p. 64.

[57] People vs. San Luis, 86 Phil. 485, 497.

[58] Brief for Accused-Appellant Millora, pp. 14-17; Rollo, p. 64.

[59] TSN, October 19, 1973, p. 50.

[60] People vs. Dumdum, Jr. and Renalo Peralta, 92 SCRA 198, 202.

DISSENTING IN PART

MAKASIAR, J.,

The use of motor vehicle should be appreciated as an aggravating circumstance. It is patent from the record that appellant Munoz and his co-accused Millora, both security men of the then mayor of San Carlos City, Pangasinan, purposely utilized the police patrol jeep ("police patrol" presumably painted on its sides) not only to facilitate their search for the victim, whose whereabouts on the day of the murder they inquired from Pat. Agbuya of the San Carlos City Police Department, but also patently to insure their speedy escape from the scene of the crime as well as to discourage any resistance or pursuit from the victim and from the bystanders who saw the incident. As a matter of fact, they loaded the body of the victim in the police patrol jeep and brought the victim to Calasiao where the victim was dumped in barrio Duyong, Calasiao, Pangasinan, about half a kilometer from the provincial road. Since the said aggravating circumstance was established, although not alleged in the information, and is not offset by any mitigating circumstance, the supreme penalty of death should be imposed on appellant Munoz, who from his own confession, narrated with a gangster's braggadocio that he was the triggerman of the then mayor of San Carlos City and as such triggerman he shot to death:

- one Carling dela Cruz in October, 1971 allegedly a known robber and a member of the squad of ex-mayor Juan Lumibao of San Carlos City, obviously a political opponent, if not an enemy, of the then incumbent mayor of whom said appellant was a security man;

- two Batanguenos in San Carlos City sometime in July, 1972;

- one Martin Manalang during the barrio fiesta in barrio Bocboc, San Carlos City, sometime in February, 1972, together with appellant Tito Millora and two others, utilizing the same squad (police patrol) jeep;

- one Opong Sison sometime in May, 1972, his neighbor in San Carlos City, with one shot from a .38 caliber revolver;

- one Armando Tandoc of Caranglan District, Dagupan City, in the company of co-appellant Millora and two others, with a carbine on August 25, 1972; and

- one Andoy Bulatao sometime in June, 1972 at Balite Sur, San Carlos City.

With such a record of treacherous and cold-blooded murders, appellant Muñoz does not deserve to live.

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