

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO TIROL AND CIRIACO BALDESCO, DEFENDANTS-APPELLANTS.

G.R. No. L-30538. January 31, 1981

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b8ea31d4aa1f/>

PER CURIAM:

Review of the decision of the Court of First Instance of Cotabato, Branch III, in Criminal Case No. 360, dated March 31, 1969, imposing on Bonifacio Tirol and Ciriaco Baldesco the death penalty for each of the seven (7) murders and an indeterminate sentence for each of the two (2) frustrated murders.

The following facts appear uncontroverted.

In the evening of December 4, 1965, while Kosain Manibpol was sleeping with his family in their house at Kabalangasan, Matalam, Cotabato, he was awakened by the barking of their dogs. When he got up to investigate, he saw two persons outside their house who had already come up. They were Beatingco, Jr. and Julian Casian. He asked them what they came for, and they answered that they wanted to borrow part of his land, to which he consented. After he gave his consent, Kulas Bati suddenly arrived, flashed his flashlight on his face and boxed him. When he fell to the floor, the rest of his assailant's companions, numbering more than ten, who were all armed with bladed weapons and firearms, also came and hacked or boloed him, his wife and his seven children, resulting in the death of his wife, Kadidia Kalangtongan and his six children, namely, Daduman, Malaguianon, Locayda, Pinangcong, Baingkong and Abdul Rakman, all surnamed Kusain. He and one of his daughters, Undang Kosain, who was about six years old, survived although wounded. They were able to run to the houses of their neighbors, and were later brought to the municipal building where they reported to the police and were given medical attention.

For the death of Kosain's wife and his six children, as well as for the wounding of himself and his daughter Undang, fourteen (14) persons were charged (p. 3, Vol. II, rec.) with multiple murder and double frustrated murder by the Matalam Chief of Police, and these were: Nicolas Bate, Beatingco Junior, Ruperto Diosma, Pablo Diosma, Lorenzo Canio, Durico Sugang, Teofilo Baldesco, Ciriaco Baldesco, Julian Casiag, Nick Bunque, a certain Miestizo, Sofring Romualdo, and Bonifacio Bautista [later amended to Bonifacio Tirol; p. 29, Vol. II, rec.]. Of the fourteen, only Ciriaco Baldesco and Bonifacio Tirol were apprehended, while the rest remain at large.

On February 17, 1966, after the second stage of preliminary investigation was waived by accused Ciriaco Baldesco and Bonifacio Tirol, the acting Provincial Fiscal of Cotabato filed the following information (p. 37, Vol. II, rec.) against the two:

"INFORMATION

"The undersigned Acting Provincial Fiscal accuses Bonifacio Tirol and Ciriaco Baldisco of the crime of

mul-tiple murder with double frustrated murder, committed as follows:

"That on or about December 4, 1965, in Kobalangasan, Barrio Lampayan, Matalam, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, in company with Nicolas Bate, Beatingco Junior, Ruperto Diosma, Pablo Diosma, Lorenzo Canio, Durico Sugang, Teofilo Baldisco, Julian Casiag, Nick Bunque, Miestizo, Sopring Romualdo and Bonifacio Bautista who are still at large, conspiring and confederating together and mutually helping one another, armed with bladed weapons and firearms did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation and with intent to kill, taking advantage of the cover of the night, attack, stab and shoot Kadidia Kalangtogan, Duaduman Kosain, Malaguianon Kosain, Locayda Kosain, Penangcong Kosain, Biacong Kosain and Abdul Rakman Kosain, who as a result thereof, sustained mortal wounds which directly caused their death and Kosain Manibpol and Undang Kosain sustained serious wounds which ordinarily would have caused their death, thus performing all acts of execution which should have produced the crime of double murder as a consequence thereof, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is by the timely and able medical assistance rendered to said Kosain Manibpol and Undang Kosain which prevented their death.

"Contrary to Law, especially Articles 248 and 6 of the Revised Penal Code."

The prosecution relied mainly on the testimonies of the two survivors, Kosain Manibpol and his daughter Undang Kosain, to prove the guilt of the accused. The only other witness presented by the prosecution was the municipal health officer who issued the death certificates of the deceased and the medical certificate of Kosain.

Kosain Manibpol, 33 years old, widower and resident of Kabalangasan, Matalam, Cotabato, declared on direct examination that at about 8:00 P.M. on December 4, 1965, more than ten (10) persons, all armed, entered his house in Kabalangasan, Matalam, Cotabato. Two persons, Beatingco Junior and Julian Casian, came ahead, immediately after he got up from his sleep to check what was causing the barking of their dogs which awakened him. When he asked why they were there, the two answered that they wanted to borrow his land, to which he consented. Suddenly, Kulas Bate arrived, flashed his flashlight on his face and boxed him. When he fell to the floor, the rest of the armed men came and hacked or boloed not only him but also his wife and seven children. Among the assailants he recognized aside from the three above-named, were Bonifacio Tirol, Ciriaco Baldesco, Ruperto Diosma, Fbrencio Caño, Dorico whose family name he forgot, Teofilo Baldesco, a certain mestizo and Sopring Romualdo. He actually saw Ciriaco Baldesco hacking his wife with a bolo, and the "bunggi" (harelipped) Bonifacio Tirol hacking his eldest daughter. He had known Bonifacio Tirol for two years before the incident and Ciriaco Baldesco for a longer period. His wife and six of his children died as a result of the sudden attack. He himself was wounded at the outer part of his right arm, at the back of his right wrist and on his forehead, and his chest was badly beaten; but he survived because he was able to run to the house of a neighbor named Angcogan (t.s.n., pp. 1-10, Vol. III, rec.).

On cross-examination, Kosain testified that when he was investigated by the police, he was not sure of the surname of accused Bonifacio, so he stated that it may be Bautista. He learned later that the surname was Tirol. He admitted that he was confused when he stated earlier that he had known Bonifacio Bautista for one year and Bonifacio Tirol for two years. Bonifacio Bautista and Bonifacio Tirol are one and the same person. He further declared that after he had fallen down as a result of the blow by Kulas Bate, Sopring immediately hacked him. It was after he fell that he was able to observe the stabbing and slashing of his family, because his assailants must have thought him dead. He later fled to the house of Angcogan who ran away because of fear, but returned

afterwards with companions and went to their house to verify what happened (pp. 10-24, t.s.n., Vol. III, rec.).

On questioning by the court, Kosain testified that on the night of December 4, 1965 he slept with a petroleum light burning in their house as in fact they always slept with their house lighted because their youngest child would cry if there was no light. When he was attacked he was not able to shout for help because he was caught unaware. His eldest daughter, Danonan (Daduman) was the one who pleaded with their assailants not to hack them as they had no fault, but she was also hacked and hit at the abdomen. At this stage he interchanged the assailants of his wife and children by saying that Bonifacio Tirol hacked his wife and Ciriaco Baldesco hacked his eldest child (p. 29, t.s.n., Vol. III, rec.).

Undang Kosain, about 6 years old, resident of Kabalangasan, Matalam, Cotabato, corroborated the testimony of her father, Kosain Manibpol, that she and her father are the only two in the family now, after her mother, sisters and brother had been killed by more than ten armed men who entered their house and attacked their family. Among their more than ten assailants, she knows only three, namely, Kulas Bati, Ciriaco Baldesco and another person whom she remembers only as "bungli" (harelipped). Of the three she knows, only two were in court, namely Ciriaco Baldesco and the "bungli" Bonifacio Tirol. She identified them by touching the shoulders of Baldesco and Tirol (p. 65, t.s.n., Vol. III, rec.). She remembers Tirol distinctly because of his appearance as "bungli." She did not see who hacked her mother, but she saw "bungli" hack his younger brother and sister. Her elder sisters were hacked by Baldesco. She herself was hacked at her back by Kulas Bati. She showed in court her scar at the back of her left shoulder going diagonally to the spinal column and measuring about 6 inches long and 3/4 of an inch wide, which appear to have scars of stitches. Afterwards, she went to the house of a neighbor named Antalig.

In answer to the court's questions, Undang declared that she had three older sisters, two younger sisters and one younger brother. Her elder sisters were Danonang (Daduman), Maguianon (Malaguianan) and Lakaida (Locayda). Her younger sisters were Inangkong (Penangkong) and Bayangkong (Benangkong), and her younger brother was Abdul Rakman. They all died when more than ten men went inside their house while they were lying down on the mat. She did not see who hacked their father, but she saw Bonifacio Tirol hacking her three elder sisters, and Ciriaco Baldesco hacking his younger brother. They used "kalsido" or bolo. The other men were also armed with boloes, and one of them, Kulas Bati was with a firearm. There was light inside their house at that time. Besides, it was moonlight night. Before the night of the hacking incident, she used to see Bonifacio Tirol passing by their house in going to the house of Kulas Bati which is near their house. She has not seen Ciriaco Baldesco before (t.s.n., pp. 69-75, Vol. III, rec.).

On cross-examination, Undang testified that she used to see Ciriaco Baldesco at their store where her family buys things. The house of Baldesco is near the schools of her elder sisters. She sometimes went with them to school. Her oldest sister was hacked by Baldesco at the abdomen. Her two other elder sisters were likewise hacked by Baldesco at the abdomen. Her younger brother was hacked by Bonifacio Tirol. Their house was lighted at that time, aside from the fact that it was bright because of the round moon. The accused Baldesco and Tirol were dressed in white and dark clothes. The color of the dark clothes was black. She does not know of any trouble between Ciriaco Baldesco or Bonifacio Tirol and her father (t.s.n., pp. 79-85, Vol. III, rec.).

The defense of both accused is alibi, and neither of them disputed the facts established by the prosecution except to deny involvement in the crimes alluded to them.

Accused Ciriaco Baldesco, 48 years old, married and residing at Kabalangasan, Matalam, Cotabato, testifying on his own behalf, declared that on December 4, 1965, he went home at about 6:00 P.M. after pasturing his carabao. He took his supper at 6:00 P.M. and listened to the radio up to 9:00 P.M.. Thereafter, he went to sleep. (t.s.n., pp.

125-130, Vol. III, rec.).

To bolster his alibi, Baldesco presented Demetrio Riparip, 25 years old, single, a former teacher at Kabalangasan Elementary School and boarder in the house of Baldesco, who declared that he took his supper with the latter at his house at about 6:00 P.M. on December 4, 1965. Then he went to sleep at 7:00 P.M.. He did not wake up till the following morning (t.s.n., pp. 96-112, Vol. III, rec.).

A daughter of Baldesco, Teofista Baldesco, 21 years old, married, housekeeper and residing at Lampayan, Matalam, Cotabato, likewise corroborated Baldesco's testimony that their family, consisting of her father, mother, brother, and sister took supper in their house after 6:00 P.M., then listened to the radio up to 9:00 P.M. They went to sleep at 9:00 P.M. (t.s.n., pp. 115-117, Vol. III, rec.).

Accused Bonifacio Tirol, 31 years old, married and residing at Kabalangasan, Matalam, Cotabato, likewise testified on his own behalf. He declared that he was in Salat, a part of Kabacan, Cotabato, from December 2 to 7, 1965, seeking employment as a laborer in the logging firm of Felipe Tan. He left Kabalangasan at 10:00 A.M., took a motorboat and arrived in Salat at 5:00 P.M.. He did not see the manager, Felipe Tan, of the logging firm until December 6, 1965, and so he was able to return to Kabalangasan only on December 7, 1965. While in Salat, he stayed in the camp where his friend Rufino Duan, was staying. When he returned to Kabalangasan, his family had already evacuated out of fear for revenge, because of the massacre of the family of Kosain. He went to Malamaing, another barrio of Matalam, where he found his family. In Malamaing they stayed in the house of a Cebuano named Kulas. They never went back to Kabalangasan because they were afraid that Kosain's family might take revenge on them (t.s.n., pp. 131-142, Vol. III, rec.).

His wife Nicolasa Tirol, 30 years old and residing at Paco, Kidapawan, Cotabato, confirmed Tirol's absence from Matalam from December 2 to 7, 1965 while he was looking for a job in Salat. She also stated that she evacuated her family because she was warned that the family of Kosain might take revenge on them (t.s.n., pp. 145-151, Vol. III, rec.).

A friend from the logging company, Rufino Duan, 23 years old, single and residing at Paco, Kidapawan, Cotabato, likewise corroborated Tirol's testimony that he was in Salat from December 2 to 7, 1965. The said accused stayed with him in the camp he is occupying while he was at Salat for seven (7) days, looking for work. In order to go to Salat from Kabalangasan, one has to take a ride on a truck (t.s.n., pp. 118-122, Vol. III, rec.).

After trial, the trial court rendered its decision (pp. 6-28, Vol. I, rec.) dated March 31, 1969, the dispositive portion of which reads as follows:

"WHEREFORE, the court hereby finds the herein accused, Bonifacio Tirol and Ciriaco Baldesco, guilty beyond reasonable doubt, of the crime of murder of seven (7) persons, namely: Daduman Klantongan Kosain [also written in the transcript of steno-type notes as Danonan and Dananong]; Baingkong Kosain [also written in the transcript as Bai Ingkong]; Abdul Kalatogan Kosain [also written in the transcript as Abdul Rakman]; Kadidia Kalantongan, Malaguianon Kosain, Locayda Kosain [also written Lokaida], Pinangkong Kosain [also written Maningdong] and Binangkong, and of the crime of Frustrated Murder of Kosain Manibpol [also written as Kusain Manedpol] and Undang Kosain; and hereby sentences each of them to suffer the supreme penalty of death for each of the seven murders of the seven deceased, and to an imprisonment of TEN (10) YEARS to SEVENTEEN (17) YEARS and FOUR (4) MONTHS for each of the two Frustrated Murders of the two wounded persons, and to indemnify jointly and severally the heirs of each of the seven deceased with the sum of SIX THOUSAND PESOS (P6,000.00) for each of the seven deceased, or FORTY-TWO THOUSAND PESOS (P42,000.00) in all, and pay the costs, fifty-fifty.

"It appearing that the accused have been detained, they each should be credited one-half (½) of their preventive imprisonment in the cases of two frustrated murders.

"The penalty herein imposed for each of the seven murders being the maximum -- death -- the records of this case are hereby automatically elevated to the Supreme Court.

"Let copy of this Judgment be furnished the Philippine Constabulary and the NBI at Cotabato City, and the Police Department of Matalam, Cotabato, so that they may exert efforts to apprehend the other culprits who committed the crimes herein dealt with.

"SO ORDERED."

On appeal, accused Baldesco and Tirol, contend in their joint brief:

"FIRST ASSIGNED ERROR:

"The lower court erred in admitting in the death certificates issued by the doctor who did not personally view and examine the victims, but whose findings therein were based upon the sketch prepared by the police.

"SECOND ASSIGNED ERROR:

"The lower court erred in disregarding the testimony of both accused despite the convincingly strong evidence showing that they were not at the scene of the crime on 4 December 1965, and therefore their non-participation in the crime charged.

"THIRD ASSIGNED ERROR:

"The lower court erred in not granting new trial even as the complaining witness himself made a voluntary extra-judicial admission by means of a sworn statement (affidavit) that he merely involved accused Baldesco for a consideration.

"FOURTH ASSIGNED ERROR:

"The evidence failed to establish conspiracy among the accused.

"FIFTH ASSIGNED ERROR:

"The decision is contrary to law" (p. 98, Vol. I, rec.).

During the pendency of this appeal, or on October 23, 1977, appellant Baldesco died in the New Bilibid Prison Hospital (p. 192, Vol. I, rec.), so that on January 28, 1978, We resolved to dismiss this case insofar as the criminal liability of the said appellant is concerned. Following the doctrine in *People vs. Sendaydiego* (81 SCRA 124, 134), this appeal will be resolved insofar as Baldesco is concerned only for the purpose of determining his criminal liability which is the basis of the civil liability for which his estate may be liable.

Appellants would like the court to reject the death certificates of the victims on the ground that they are hearsay evidence, since the doctor who issued them did so on the strength of the sketch furnished by the police, without personally examining the bodies of the victims.

WE find no error in the admission of said exhibits "as part of the testimony of the witnesses" (p. 9, Vol. I and p. 95, Vol. III, rec.). The fact of death of the victims is not in issue. The testimonies of the prosecution witnesses that the victims died because of stab wounds inflicted by the armed men who entered their residence on the night of December 4, 1965 remain uncontroverted. That death came to the deceased by foul means is a moral and legal certainty. Their death certificates therefore are only corroborative of the testimonies of the prosecution witnesses.

Appellants would likewise have the Court give credence to their defense of alibi, alleging that they have presented convincingly strong evidence showing that they were not at the scene of the crime on December 4, 1965. This contention is devoid of merit. The rule is well settled, to the point of being trite, that the defense of alibi, which is easy to concoct, must be received with utmost caution, for it is one of the weakest defenses that can be resorted to by an accused. (*People vs. Castañeda*, 93 SCRA 58, 69; *People vs. Cortez*, 57 SCRA 208).

Moreover, the alibi of both appellants cannot prevail over the positive identification of the prosecution witnesses identifying and pointing to the accused as among the group of armed men which massacred the victims (*People vs. Tabion*, 93 SCRA 566, 570; *People vs. Angeles*, 92 SCRA 433). The two survivors, Kosain and his 6-year old daughter positively identified both accused as two of the more than ten persons who entered their house on December 4, 1965 and participated in the hacking and boling of their family. Accused Tirol was even more distinctly and positively recognized as the "bungli" (harellipped) who hacked some of the victims. The credibility of these two prosecution witnesses was never successfully assailed. The inconsistencies attributed to Kosain Manibpol refer to minor details (i.e., about the length of time he had had known one of the two persons who first came up to his residence on the pretext of borrowing his lot -- pp. 15-16, Vol. III, rec., in relation to Exhibits "1" and "2", pp. 5 & 17, Vol. II, rec.), which do not affect his credibility. The apparent inconsistency in his testimony as well as that of 6-year old Undang Kosain whose credibility was never questioned, as to who among the armed men hacked or attacked which victim is likewise insufficient to destroy their credibility, considering that the presence of a number of armed men simultaneously participating in the unlawful aggression could really be confusing. As noted by the trial court, it would be unnatural if the witnesses who were themselves victims of the horrible deed were not confused during that terrifying massacre committed together by more than ten persons (p. 27, Vol. I, rec.). What is important is the positive identification of the two accused appellants as having been in that group and who participated in the concerted attack on the hapless victims. "Alibi is unavailing once the accused is positively identified by one without motive to charge falsely said accused, specially with a grave offense that could bring death by execution on the culprit" (*People vs. Estante*, 92 SCRA 122).

The weakness of appellant Baldesco's defense lies in the fact that his house where he purportedly stayed from 6:00 P.M. of December 4, 1965 to the following day -- is only about one kilometer from the house of the victims, the scene of the crime, according to his own daughter and witness, Teofista Baldesco (p. 116, Vol. III, rec.). And although Baldesco himself testified that the victims' house is more than three (3) kilometers from his, it still does

not belie the fact that he could easily go there if he wanted to, considering that both residences are within the same barrio of Kabalangasan.

So also is the house of Tirol located in the same barrio. According to him, his house is about 1½ kilometers from that of the victim. He wants to impress upon this court, however, that he was not in his house when the incident occurred but in another town looking for a job in a logging company. The trial court correctly rejected this theory because of the inconsistencies noted in Tirol's evidence. Said the trial court:

"The alibi of Bonifacio Tirol is unbelievable. His witness Rufino Duan testified that from Kabalangasan where Bonifacio Tirol lived to Salat where Bonifacio was supposed to be on December 4, 1965, people would take a truck ride of the PTC; but Bonifacio Tirol declared that he went to Salat by speedboat, and went home to Kabalangasan by banca. Duan testified that Salat is very far from Kabalangasan because it takes one day to reach it from there; but Bonifacio Tirol declared that he started at Kabalangasan by motorboat at 10:00 A.M., and arrived at Salat at 5:00 P.M. or seven hours only. He modified this afterwards, in the cross-examination, by testifying that from his house in Kabalangasan to the log pond where he took the speedboat, he had to walk from 6:00 A.M. to 10:00 A.M. or for 3 hours; fixing the time from his home to Salat at 10 hours. But this testimony about the log pond cannot be believed. He testified he did not know where the log pond was located; that was the first time he went there. How he located a log pond at a place he did not know is certainly beyond belief. Of course, he said, Rufino told him where to pass, but that was a long time ago. Bonifacio Tirol further testified that when he went home to Kabalangasan, he took a banca at Salat at 3:00 dawn and arrived in his house at Kabalangasan at 9:00 in the morning, or 6 hours. He changed the time of arrival to 10:00 A.M. when questioned by the Court about it. When asked by the Court why the difference in the period of time of travel, he reasoned out that the motorboat in going to Salat was going upstream, and the paddled banca in going to Kabalangasan was going downstream. Even, if that were so, the difference cannot be three or four hours.

XX XX XX XX

"But even granting that Bonifacio really went to Salat on the 2nd to look for work, there was no physical impossibility for him to be in Kabalangasan on the evening of the 4th which was a Saturday. The testimony of Duan that he saw Bonifacio on the 4th in the evening cannot be believed because of his interest and its improbability. Why should Bonifacio wait for the manager on a Saturday evening when the next day was a Sunday, therefore not a work day?" (pp. 24-25, Vol. I, rec.).

It is a well-settled doctrine that for alibi to be acceptable, it must be shown that the place where the accused was alleged to when the offense was committed must be located at such a distance that it is well nigh impossible for him to be at the scene of the crime (People vs. dela Cruz, G.R. No. L-30912, April 30, 1980; People vs. Mercado, et al., L-39511-13, April 28, 1980; People vs. Malibay, 63 SCRA 421).

As to appellant Baldesco, the testimonies of his witnesses do not at all bolster his alibi. Demetrio Riparip stated that he took supper with Baldesco at 6:00 P.M. on December 4, 1965, after which he slept at 7:00 P.M. and did not wake up until the next morning (p. 109, t.s.n., Vol. III, rec.). Baldesco's daughter, Teofista, on the other hand, testified that she took supper at 6:00 P.M. with her father, mother, brother and sister (p. 116, t.s.n., Vol. III, rec.), without mentioning the presence of Riparip in their house; then she listened to the radio with her father, mother, brother and sister up to 9:00 P.M. and went to sleep afterwards. These testimonies do not rule out the possibility that he could have left the house that same evening while the rest of his family were sound asleep and returned late that night or early the following morning.

The third assigned error is likewise bereft of merit. Counsel for appellants contends that the trial court erred in not granting a new trial even as the complaining witness himself made a voluntary extrajudicial admission by means of a sworn statement (affidavit) that he merely involved accused Baldesco for a consideration. The trial court rejected the motion for new trial on the ground that it was filed out of time (p. 97, Vol. II, rec.).

Section 9, Rule 122 of the Rules of Court requires that in all cases in which the death penalty is imposed, the records should be forwarded to this Court within twenty (20) days but not less than fifteen (15) days from rendition of judgment. This 20-day period is not rigid or absolute nor jurisdictional, and may be shortened or extended (*People vs. Bocar*, 97 Phil. 398). However, the extension of period is for the purpose of enabling the lower court to comply with the mandatory requirement of elevating the records for review, and not to lengthen the minimum period within which trial courts may modify or alter their decision. As enunciated in *People vs. Bocar*, supra, the reason for the 15-day minimum requirement is such that within that period, the trial court may on its own motion with the consent of the defendant, grant a new trial. Within that period the trial court may modify its judgment by reducing the penalty or fine, or even set it aside altogether and acquit the accused.

In the case at bar, the motion for new trial was filed on April 28, 1969 (pp. 92-94, Vol. II, rec.) or twenty-eight days after rendition of the judgment on March 31, 1969 (p. 90, Vol. II, rec.). Although a 15-day extension from April 21, 1969 was granted to the lower court within which to forward the record of this case (p. 30, Vol. I, rec.), that extension did not affect the 15-day period for filing a motion for new trial.

But even granting that the said motion were filed on time, the same does not merit a favorable action. The ground relied on is an alleged newly-discovered evidence, referring to a sworn statement (p. 94, Vol. II, rec.) executed on April 17, 1969 by a certain Romualdo Diosma, barrio captain of barrio Lampayan, Matalam, Cotabato. In the said affidavit, the affiant declared that he was shocked to learn that the accused were sentenced to death; that Kosain Manibpol, the principal witness, had confided to him that he was only interested in commercializing or making money out of his case, which is why he implicated the accused Baldesco; that Kosain Manibpol had persuaded him to convince Feliciano Codoy, a son-in-law of Baldesco, to give him (Kosain) one carabao so that he will drop the case; that Kosain Manibpol also personally demanded from Codoy one carabao so that he will not testify against Baldesco; thaehe (affiant) even went with Kosain to see Codoy in November, 1967 to persuade him to give a carabao to Kosain, but Codoy refused; and that Kosain, realizing the wrong he had done, was willing to tell the truth regarding the non-involvement and non-participation of Baldesco in the crime charged, but it was too late to tell the court because the case was already submitted for decision; and that it was a common knowledge in their barrio that Baldesco was not among the band that killed Kosain's family.

This so-called "extra-judicial admission," referring to Diosma's sworn statement is not the kind of newly-discovered evidence contemplated in Section 2, Rule 121 of the Rules of Court. Well-settled is the rule that before a new trial may be granted on the ground of newly-discovered evidence, it must be shown that: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) the evidence is material, not merely cumulative, corroborative or impeaching, and (d) it must be to the merits as ought to produce a different result, if admitted [*Jose vs. CA*, 70 SCRA 258].

The very affidavit of Diosma indicates that the so-called extra-judicial admission of Kosain was already available during the trial, otherwise, he would not have demanded from Feliciano Codoy personally one carabao so that he will not testify against accused Baldesco.

For how could he have offered not to testify against Baldesco if the trial was already concluded? Codoy should have been presented as a defense witness if such was the fact, together with some other barrio residents who had

knowledge, as was allegedly "public knowledge in our barrio," that Baldesco was not involved in the crime. The purported extra-judicial admission is a last-minute concoction.

Appellants also point out as error that the evidence failed to establish conspiracy. While it has been held that conspiracy must be established by positive evidence, direct proof is not essential to show it, since by its very nature it is planned in utmost secrecy (*People vs. Peralta*, 25 SCRA 760).

In the case of *People vs. Mada-i Santalani* (93 SCRA 316, 330), We held: "Conspiracy implies concert of design and not participation in every detail of the execution. If it is proved that two or more persons aimed, by their acts, at the accomplishment of some 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 sentiments, conspiracy may be inferred although no actual meeting between them to conspire is proved, for the prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all stages of the conspiracy" (see also *People vs. Cabiling*, 74 SCRA 285).

In this case under review, it has been clearly established that the appellants and their cohorts acted in unison when they went up the house of Kosain Manibpol and attacked their victims in a manner showing singleness of purpose -- the massacre of the entire family of Kosain. The fact that two survived is of no moment. The intention to kill all of them was most patent.

Thus, the fifth assigned error, i, e., that the decision is contrary to law, need not be considered separately. The prosecution evidence has clearly established the guilt of the accused appellants. In addition, there are more incriminating evidence that emanate from the appellants themselves. The trial court had taken judicial notice of the escape of accused Baldesco from police custody on December 15, 1965 (p. 27, Vol. II, rec.), and his subsequent re-arrest while en route to Davao (p. 28, Vol. II, rec.). On the other hand, accused Tirol himself had testified that after coming from Salat, he left his house and never returned, for the reason that the members of his family were afraid of some vendetta because of the massacre of Kosain Manibpol's family (pp. 141-142, Vol. II, rec.). The trial court noted that this fear was entertained even before the chief of police could file a complaint and before a warrant of arrest could be issued. These actuations could only indicate a sense of guilt. As the trial court pointed out, fear of reprisal or retaliation could only haunt one who is aware of his wrongdoing (p. 26, Vol. I, rec.).

The trial court did not err in finding the accused guilty of murder of seven (7) persons, qualified by treachery, and of two frustrated murders. There was treachery because the accused and their companions made a deliberate surprise attack on the victims. They perpetrated the killings in such a manner that there was no risk to themselves. Treachery has absorbed the circumstance of nighttime, taking advantage of superior strength, employing means to weaken the defense, and that the crime was committed by a band.

The aggravating circumstance of evident premeditation was not proven, hence it may not be appreciated.

The aggravating circumstance of dwelling, the crime having been committed in the dwelling place of the victims who had not given any provocation, likewise can be appreciated.

Considering that there is no mitigating circumstance, the trial court did not err in imposing the maximum penalty provided for in Article 248.

Since the penal liability of appellant Ciriaco Baldesco had been extinguished by his death on October 23, 1977, only his civil liability remains to be determined which can be recovered from his estate.

The civil liability of both appellants for each of the seven victims of the seven murders is hereby raised to P12,000.00 and their civil liability for each of the two victims of the two frustrated murders is hereby increased to P8,000.00. The civil liability arising from the crime of 2 or more accused is solidary.

WHEREFORE APPELLANTS BONIFACIO TIROL AND CIRIACO BALDESCO ARE HEREBY SENTENCED TO (1) INDEMNIFY JOINTLY AND SEVERALLY KOSAIN MANIBPOL AND UNDANG KOSAIN AS THE ONLY SURVIVING HEIRS OF THE SEVEN MURDER VICTIMS IN THE SUM OF TWELVE THOUSAND (P12,000.00) PESOS FOR EACH OF THE SEVEN MURDER VICTIMS ; AND (2) INDEMNIFY JOINTLY AND SEVERALLY KOSAIN MANIBPOL IN THE SUM OF EIGHT THOUSAND (P8,000.00) PESOS AND UNDANG KOSAIN ALSO IN THE SUM OF EIGHT THOUSAND (P8,000.00) PESOS AS THE TWO VICTIMS OF THE TWO FRUSTRATED MURDERS.

THUS MODIFIED, THE JUDGMENT IS HEREBY AFFIRMED IN ALL OTHER RESPECTS.

SO ORDERED.

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

Fernado, C.J., concurs insofar as the accused Bonifacio Tirol is concerned. The death of accused Ciriaco Baldesco terminated the criminal case as to him.

Barredo, J., I concur in the judgment against appellant Tirol. I dissents as regards Baldesco because I firmly believes his liability, both criminal and civil were extinguished by his death.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.