

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. LUIS GARCIA Y FLORES, DEFENDANT-APPELLANT.

G.R. No. L-32071. July 09, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic review of the decision of the Criminal Circuit Court in Criminal Case No. CCC-III-65-Zambales (1221-0) sentencing the accused Luis Garcia y Flores to suffer the penalty of DEATH for the murder of Emiliano Balaga.

The information dated May 14, 1969, to which the accused pleaded not guilty, reads:

"INFORMATION

"The undersigned accuses Alfredo Turla, Benjamin Taguipid, Vicente Salita alias 'VIC, Celso Luba, Reynaldo Sombilla, Noli Sarmiento, John Doe, Luis Garcia y Flores and Eddie Soriano of the crime of Murder, committed as follows:

"That on or about the 18th day of April 1969, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping one another, with intent to kill, all armed with bolos, knives and a gun, with treachery, evident premeditation and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, stab and hack one Emiliano Balaga on several parts of his body, thereby inflicting upon the latter the following injuries, to wit:

"The external physical injuries are the following:

1.

Incised wound 3 inches in length both ends are sharp gaping left anterior 3rd mandibular region.

2.

Incised wound 2 inches in length both extremities are sharp, gaping right level of 2nd intercostal space or I.C.S. just above the anterior axillary region.

3.

Incised stab wound 3 cm. in length both ends sharp, gaping left level of the 5th intercostal space parasternal line-chest, penetrating the thoracic cavity.

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2. Incised wound 2 inches in length both extremities are sharp, gaping right level of 2nd intercostal space or I.C.S. just above the anterior axillary region.

3. Incised stab wound 3 cm. in length both ends sharp, gaping left level of the 5th intercostal space parasternal

line-chest, penetrating the thoracic cavity.

"ABRASIONS: 2 x 1 cm. in length-left lateral, dorsal anterior lower 3rd leg.

which injuries directly caused the death of said Emiliano Balaga shortly thereafter.

"CONTRARY TO LAW, with the qualifying circumstances of treachery, evident premeditation and the accused having taken advantage of their superior strength and with the attendance of the generic aggravating circumstances of the fact that the crime was committed in the dwelling of the offended party and with the use of a motor vehicle.

"Olongapo City, May 14, 1969.

(SGD)SANTIAGO C. MALIWANAG
Second Assistant City Fiscal"[1]

Only Luis Garcia y Flores and his co-accused Eddie Soriano were arraigned and tried, as the rest of the accused remained at large. Both pleaded not guilty when arraigned on June 16, 1969 before the Court of First Instance of Zambales. Thereafter, on June 25, 1969, the case was transferred to the Criminal Circuit Court in Olongapo City. After the prosecution finished with its case, the court ordered the discharge of the accused Eddie Soriano upon motion of the prosecuting fiscal on the ground of insufficiency of evidence. After the defense, represented by counsel de oficio below, had rested its case, the court presided by Judge Himerio B. Garcia promulgated its decision on April 8, 1970, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused Luis Garcia y Flores GUILTY beyond reasonable doubt as co-principal of the crime of murder, qualified by the circumstance of treachery, defined and penalized in Article 248 of the Revised Penal Code and, considering the attendant aggravating circumstances of dwelling and use of motor vehicle, specified under Article 14, paragraphs 3 and 20, of the same Code, which are not offset by any mitigating circumstance, hereby sentences the accused Luis Garcia y Flores to the supreme penalty of death, with the accessories of the law, to indemnify the heirs of the deceased Emiliano Balaga, in the sum of Twelve Thousand (P12,000.00) Pesos, and to pay the proportionate costs.

"IT IS SO ORDERED.

"Given at Olongapo City, this 8th day of April, 1970.

(SGD) HIMERIO B. GARCIA
Judge"[2]

The case was elevated to this Court on automatic review.

The evidence of the prosecution consists of the testimonies of Valeriana Acido, Dr. Vicente T. Tubao, Jr., Carlos Marcelo, Federico de los Santos, and Patrolmen Norberto Mora Dave and Ernesto Agnasta Jr.

Carlos Marcelo testified that at about 10:00 o'clock in the morning of April 18, 1969, a jeepney carrying several men stopped by his house and two men alighted to inquire if Emiliano Balaga lived there; that Marcelo was unable to answer for he was seized with fear when he saw both men holding long bolos; that just then, another man, whom Marcelo later on identified to be the accused Luis Garcia, also got down from the jeepney and after positioning himself behind the vehicle pointed to the next house as that of Emiliano Balaga; that the three men then entered the yard while the jeepney turned around and parked in front of Balaga's house; that the rest of the passengers also alighted and followed the three; and that Luis Garcia and three others directly went to the kitchen door while the others deployed themselves around the house, (t.s.n., Stenog. Viray, pp. 68-71)

Valeriana Acido, the prosecution's principal witness, declared that at the time on April 18, 1969 she was in the kitchen washing rice; that Emiliano Balaga was near her, sleeping on the kitchen floor, an arm's length away; that the children of the house were playing in the other room; that as Valeriana was washing rice, she noticed the jeepney by the road and saw the people alighting one by one; that the accused Luis Garcia, followed by three companions, arrived at the kitchen stairs and asked her to wake up her husband; that she answered that the man sleeping on the floor was not her husband but her brother; that when she obliged, Emiliano Balaga would not wake up; that Luis Garcia insisted and she tried to wake up her brother the second time; that just as Balaga moved a little and began to wake up, Luis Garcia and his three companions immediately went up the stairs; that she saw Luis Garcia stab Balaga on the upper abdominal region even while her brother was still lying down; and that frightened, she immediately ran downstairs and shouted for help, (t.s.n., Stenog. Cortes, pp. 31-39)

Federico de los Santos, brother-in-law of Emiliano Balaga, was digging a well across the street. Upon hearing the shouts for help, he grabbed the bow and arrow of a passing aeta and moved towards the house. A man with a bolo rushed towards him. As he aimed the arrow at the man running towards him, Federico de los Santos was shot at with a rifle by Alfredo Turla who was at the second step of the kitchen stairs. De los Santos released the arrow and scampered away. While Federico de los Santos was near the house, he saw the accused Luis Garcia up in the kitchen holding a bolo dripping with blood. (Ibid., pp. 11-13)

Valeriana Acido, Carlos Marcelo and a certain Juanito went back to the house after Luis Garcia and his companions had left and found the injured Balaga still alive but unconscious. They lifted him and brought him to the Olongapo City General Hospital. On the way, they asked a passing jeepney driver to report the incident to the police. Balaga was dead on arrival at the hospital, (t.s.n., Stenog. Cortes, pp. 45-47)

The Olongapo City Police Department, notified by the hospital at about 11:00 o'clock that morning of April 18, 1969 sent Patrolman Norberto Mora Dave and police photographer Macahilas to investigate at the hospital and at the scene of the crime. Told by Valeriana Acido that the jeepney used by the assailants bore the body number 1157, Dave relayed this information to police headquarters. At the scene of the crime, photographs were taken (Exhibits G, G-1, G-2 and G-3) and the search for other physical evidence yielded one small samurai knife with the inscription of the name "Jamin"; one fired cartridge shell, caliber .22; and three live bullets of the same caliber, all found near each other on the ground near the kitchen stairs. (Ibid., pp. 152-154)

Meanwhile at about 12:00 o'clock noon that day, Ernesto Agnasta, Jr. and Patrolman Sison were cruising in their patrol car instructed to be on the look out for the passenger jeepney bearing the body number 1157. They went to the house of Luz Francisco at No. 10 Napalan Street, Mabayuhan, Olongapo City and there they found the said jeepney in the garage. The jeepney owner informed them that its driver, Alfredo Turla, had just left a minute before. On inspection, the patrolmen found a bolo in the back seat which when unsheated had partly dried and partly fresh blood on its sides, (t.s.n., Stenog. Viray, pp. 132-136)

Dr. Vicente Tubao, Jr., the Medico-Legal Officer of the Olongapo City Police Department, conducted an autopsy on the victim at about 4:00 o'clock in the afternoon of the same day and found that Emiliano Balaga received three (3) stab wounds and an abrasion. Of the three stab wounds, one was a gaping wound on the mandibular region, or below the lips, measuring three inches; another gaping wound was on the upper left chest, measuring two inches; and the third wound, penetrating the thoracic cavity, was on the lower left chest, measuring three centimeters. The doctor specified the probable cause of death to be acute cardiac arrest due to massive internal and external hemorrhages. The doctor's opinion is that the most fatal wound was the third one (t.s.n., Stenog. Cortes, pp. 8-9, Autopsy Report, Exh. A)

Around 2:00 o'clock in the morning of April 19, 1969, Valeriana Acido and Federico de los Santos were brought

to the police station to identify the assailants from photographs shown to them of persons with police records. Both of them positively identified Luis Garcia as the person who stabbed Emiliano Balaga. They also identified Alfredo Turla as the one with the rifle.

On May 8, 1969, in a face to face confrontation after Luis Garcia was apprehended and brought to Olongapo from Dagupan City, Valeriana Acido and Federico de los Santos both pointed to the accused Luis Garcia as the assailant who stabbed the victim Balaga. Thereafter, Luis Garcia gave and signed a sworn statement to the police. (Exhibit H)

As stated in the sworn statement of Luis Garcia, (Exhibit H), presented as prosecution evidence and objected to by the accused Luis Garcia as not having been read to him in its entirety before he signed it, Garcia narrated that sometime in the night of April 17, 1969, at about 9:00 o'clock, at Balik-Balik, Olongapo City, he and Alfredo Turla, alias "Fred Pingas" were invited by the victim Emiliano Balaga and his brother-in-law Ricardo Rebosa to drink liquor. They accepted the invitation and all had two drinks each. Afterwards, Emiliano Balaga got on the jeepney that he and his brother-in-law were riding on. Balaga then tried to run over Alfredo Turla who was sitting by the wayside. Turla was able to evade being hit by the jeep. After Balaga went on his way, Turla intimated to Luis Garcia that the former would yet get even with Balaga. Luis Garcia and Alfredo Turla met later at a grocery store. There Turla confided to Garcia that he had earlier hurled a stone at Balaga who was driving a jeepney.

Sometime later, a jeepney arrived, with Balaga driving it and Rebosa as one of its passengers. Balaga and Rebosa jumped out of the jeepney and chased them as they took to their heels. Rebosa ran after Turla and his wife. As he ran away, Luis Garcia felt a piece of tube whisk by his head. It was thrown by somebody in the jeepney.

Garcia further narrated that on the next day, morning of April 18, 1969, at about 8:00 o'clock, a jeepney with passengers whom Luis Garcia identified as Alfredo Turla, Benjamin Taguipid, Noli Sarmiento, Vic Salita, Reynaldo Sombilla and two other men known to Garcia by their face but not by name came to Garcia's house at the squatter's area, Aultman Street, East Bajac Bajac.

Turla, who was driving the jeep, told Garcia that they were going to settle their altercation with Emiliano Balaga. Luis Garcia joined the group. After picking up Eddie Soriano they proceeded to the place where passenger jeepneys usually park to look for Emiliano Balaga. Learning that Balaga did not go out that morning, Turla decided that they go to the house of Balaga at Balik-Balik. When they arrived at Balik-Balik, five of the men, namely, Benjamin Taguipid, Noli Sarmiento, Alfredo Turla, Vic Salita and Rey Sombillo went up the house of Emiliano Balaga.

In said statement given to the police, Garcia admitted having gone up the kitchen stairs; that he saw Alfredo Turla hacking the victim, immediately after which the woman jumped out of the house shouting and she ran away when she saw Luis Garcia with a bolb; that later, when he looked back he saw Vic Salita withdrawing his bolo from the body of Balaga; that five persons came down from the house; that Benjamin Taguipid shot at an aeta who had a bow and arrow; that the aeta, who was not hit, ran away; and that they then all went back to the jeepney and left the place.

In his testimony in court, however, Luis Garcia gave a different version of his participation in the incident. He testified that he was hired by some six persons to transport them to Balik-Balik where his passengers inquired for the house of Emiliano Balaga; that he himself pointed the house and his passengers went down and proceeded to Balaga's house while he stayed in the jeepney listening to its radio music; that he did not hear any gunshot; that after a while, his passengers returned and he took them to Sta. Rita; that he resumed to pick up passengers until 9:00 o'clock in the evening of that day; that on the next day, April 19, 1969, he left Olongapo City with his wife and went to Manila because he was running away from a woman, a Naty Laot, with whom he lived for a month

and who was forcing him to marry her; that after a week in Manila they went to Dagupan City where five days later, he learned from somebody he met in the market that his picture was seen posted in the municipal building; that he then went to see a Captain Hortaleza who told him that he was involved in a murder case in Olongapo City; that he requested Captain Hortaleza, who is an Iglesia ni Kristo like him, to accompany him to Olongapo but the captain merely made a long distance phone call to Olongapo; that he was detained by the Dagupan police for one day and one night before the Chief of Police of Olongapo City arrived to take him back to Olongapo; that on the night of May 8, 1969, he was brought before the office of the Chief of Police where Valeriana Acido and Federico de los Santos identified him as the one who assaulted and stabbed Emiliano Balaga; and that it was then that he signed a statement (Exhibit H) before the police.

The trial court found the accused Luis Garcia y Flores guilty of murder on the following findings:

". . . The presence of the herein accused in the premises of the deceased Emiliano, along with the other accused, at around 10:00 o'clock in the morning of April 18, 1969 is not denied. Carlos testified that he saw the accused Luis behind the jeepney at the time his two companions approached him (Carlos) to inquire of the house of Emiliano; that Luis pointed to the house of Emiliano; that Luis went up the house of Emiliano by the kitchen door followed by two others and another who passed by the front door, and the others surrounded the house; that after about five minutes, Valeriana went down thru the kitchen door and cried for help, that later Luis came down by the kitchen door also, passed by Valeriana and pushed her; and that he heard a gun report while the rest of the companions rushed to the waiting jeepney on the road.

"Valeriana corroborated Carlos in all material accounts when she declared that Luis, armed with a bolo, and his companions likewise armed, approached her at the kitchen door and bade her to wake up her husband, who was mistaken for Emiliano, lying down nearby; that she talked to him for some time until she was able to awaken her brother Emiliano; that Luis and three others went up the house; that Luis stabbed her brother with the bolo on the latter's upper abdomen; that she rushed downstairs and cried for help, while Luis and his companions assaulted her brother; and that Alfredo Turla, a companion of Luis, fired with his gun at Federico de los Santos, who by then was approaching Valeriana in response to her cries for assistance. The facts recounted by these two government witnesses find substantiation in the recovery of one fired cartridge shell near the steps of the kitchen stairs that must have been extracted automatically from the gun after the firing and cocking, and also in the recovery from under the house of the deceased of the small samurai blade that bore the inscription of the name 'JAMIN'. Verification by the police of the nickname ' JAMIN' shows it is the alias of co-accused Benjamin Taguipid, still at large on date of trial of this case. These circumstances cannot merely be coincidental. The conclusion is inevitable that, with the samurai blade in the premises, either Benjamin Taguipid had been in the house of the deceased at the time of assault or someone, if not the accused, dropped the blade. Yet no explanation was offered by the defense on the recovery of said weapon. The credibility of these prosecution witnesses, in the mind of the Court, has not been shaken; perforce, their testimony should be accorded belief and credence.

"Further, there is convincing proof that the jeepney with body number 1157 and belonging to Luz Francisco was used by the accused and his companions in going to, and in escaping from, the crime scene. The investigation conducted by Patrolman Agnasata of owner Luz Francisco merely confirmed the fact that Alfredo Turla, the driver of the jeepney, garaged the same a short time after the commission of the crime, contrary to what the accused would want the Court to believe that he still operated and picked up passengers up to 9:00 o'clock the same evening. If another jeepney was used, how could Carlos have reported that the number of the vehicle that led to its recovery was 1157 that was driven by Alfredo Turla, one of those indicted? Another circumstance that proves the involvement of the jeepney in the killing of Emiliano is the discovery by the police of the bolo, Exhibit C, from inside the jeepney and which evidenced blood stains splattered all over the blade and edges.

"There can be no question as to the identity of the herein accused. Not only did Valeriana and Federico point to

or pick up the picture of the accused from among the several pictures shown them by the police in the early wee hours of April 19, 1969, but also Carlos and Valeriana positively identified Luis as the person who stood behind the jeepney on the street and pointed to the house of Emiliano, as the person who talked to Valeriana before he went up her house, and as the person who pushed Valeriana as he hurried past by her on his way to the jeepney. The admission made by the accused to police investigator Dave that he was with the assailants, his naming of the other accused Celso Luba, Benjamin Taguipid and Alfredo Turla as his companions, and his refusal to mention the other men in the group strengthen the belief of the Court that he was not merely an unwilling participant in the killing of Emiliano. These series of circumstances preclude any misgivings on the role the herein accused played along with his companions.

"The motive for the killing is supplied no less by the accused. In his sworn statement, Exhibit H, which he swore before Assistant Fiscal Anonas immediately after he was brought in from Dagupan City on May 8, 1969, he mentioned that Alfredo Turla, Noli Sarmiento, Benjamin Taguipid, Vic Salita, and two others, whom he did not know by name, passed by him at 8:00 o'clock in the morning of April 18, 1969 at the house of Victor Laut on Aultman St., East Bajac-Bajac, Olongapo City, where he lived with his co mm on-law-wife, Nati Laut, and picked him up, for the purpose of bringing him along to even up a score with the deceased for an affront committed on him the night before. After Alfredo was almost side-swiped by Emiliano, who drove the jeepney of his brother-in-law, Carding, he remarked to the herein accused a threat on Emiliano: 'May pagkakataon din siya sa akin.' And during the same evening some time later, the latter chased Alfredo and his wife on the road while they were proceeding home and Carding ran after Luis in a jeep. To quote the accused on this point:

T:

Ano ang kinalaman mo sa pagkakamatay nitong si Emiliano Balaga?

S:

Noon po ika-18 ng Abril 1969, humigit kumulang sa ika 8:00 ng umaga, ako po ay dinaanan sa aking bahay na Squatter Area sa Aultman St., East Bajac Bajac, lunsod ng Olongapo, doon sa bahay ng aking bayaw na si Victor Laog, ng aking mga kaibigan na nakasakay sa isang pasaherong jeepney.

T:

Sino-sino ang mga kaibigan mo na nakasakay sa pamasaherong jeepney na nagdaan sa iyo ng umagang iyon?

S:

Sina Noly Sarmiento, si Benjamin Taguipid, Alfredo Turla sa siyang nagmaneho ng jeep, si Vic Salita, at dalawa po na hindi ko alam ang mga pangalan, ngunit sa mukha ay kilala ko.

T:

Ano ang dahilan, at ikaw ay kanilang dinaanan sa iyong pamamahay sa Aultman St., East Bajac Bajac, kung bakit sinundo nila?

S:

Bumaba po sa kanyang minamanehong jeepney si Alfredo Turla alias 'Fred Pingas' at sinabi sa akin na 'aaregluhin natin iyong humarang sa kanya noon nakaraang gabi.

T:

Sino ang tinutukoy nila na aaregluhin?

S:

Iyon bayaw ni 'Carding' na si Emiliano.

T:

Iyong bang aaregluhin nila na si Emiliano ay si Emiliano Balaga na taga Balik-Balik, Barrio Sta. Rita?

S:

Opo. .

T:

Bakit daw at ano ang dahilan at aaregluhin si Emiliano Balaga?

S:

Dahil po sa noon humigit kumulang sa ika 9:00 ng gabi, petcha 17 ng Abril 1969, kami ni Alfredo Turla alias 'Fred Pingas' ay nagbiyahe sa Balik-Balik at nakita namin si Emiliano Balaga at ang kanyang bayaw na si Carding. Kami po ay inanyayahang uminom ng alak ni Emiliano Balaga at ng kanyang bayaw na si Carding. Kami naman po ay nagbigay sa kanila at uminom kami ng tig-dadalawang takal. Matapos po naming mag-imuman ay sumakay si Emiliano doon sa isa pang jeepney na minamaneho ni Carding at pina-andar niya ang nasabing jeep at pinasagasaan niya si Alfredo Turla na nakaupo sa buhanginan sa karsada. Ngunit nakailag po si Alfredo Turla, at si Emiliano tuloy-tuloy na at ang ginawa ni Alfredo ay nag-paalam na kay Carding at umalis na kami. Matapos na po nito ay sinabi sa akin ni Alfredo Turla na may pagkakataon din siya sa akin.

T:

Sino ang tinutukoy ni Alfredo Turla noong sabihin niyang 'may pagkakataon din siya sa akin'?

S:

Si Emiliano Balaga po, dahil sa muntik ng sinagasaan nitong si Emiliano si Alfredo.

T:

Saan kayo nagpunta pagkatapos ng pangyayaring ito?

S:

Nagpunta po kami doon sa may kanto ng Sta. Rita, na papunta sa Balik-Balik, at ako ay inutusan ni Alfredo na sunduin ko ang kanyang asawa sa Old Spice Night Club, at siya naman po (Affiant referring to Alfredo Turla) hahanapin si Jaim (Affiant referring to Benjamin Taguipid), at pagkatapos ay abangan ko raw siya sa tapat ng Tuason's Grocery.

T:

Bakit daw niya hahanapin si Taguipid?

S:

Hindi ko po alam. (Exhibit H, pp. 131, 132 of the records.)

"The Court finds no reason to disregard this revelation. That his statement was involuntary the accused had not shown by satisfactory evidence. Neither did he attempt to prove that he was coerced or intimidated into either executing his statement or affixing his signatures thereto. When he affixed his signatures on his statement before the fiscal he thereby removed all doubts as to its due execution, his protestation notwithstanding. As a matter of fact, he admitted no differences with investigating officers Cesar Cabuco and Norberto Mora Dave.

' 'The pretension of the herein accused that he drove the jeepney of Alfredo Turla as an extra on that day is unbelievable and therefore, should be rejected. If it is true that Alfredo gave him the jeepney, why would he (Alfredo) be in the group of Taguipid and Noli Sarmiento in going to Balik-Balik? Again, his claim that at 9:00 o'clock in the evening of the same day he placed the jeepney in the garage and then, together with his wife, left Olongapo City for Manila, is belied by Patrolman Agnasata, who testified that he (Agnasata) came upon the jeepney in the garage of Mrs. Luz Francisco at about high noon of the same day, and found that the driver thereof, Alfredo Turla, had just left a minute before.

Moreover, this claim is contradicted by the accused in his narration before the police on what he and his companions did after killing Emiliano.

"It is evident from a reading of the statement of accused Luis that it is replete with details which he alone, as co-participant, could supply. In fact it contains the names of his other companions who were not earlier identified by the prosecution witnesses. Besides, several incidents contained in said statement are sufficiently confirmed by the prosecution's theory. The narration of facts reflects spontaneity and coherence which psychologically cannot be associated with a mind to which intimidation, as insinuated by the defense, has been applied, and the response to every interrogatory is so fully informative as to indicate the mind to be free from extraneous restraints. Significant is the fact that in this statement the herein accused exculpated himself from actually delivering blows on the victim, a circumstance that obviously negates involuntariness and undue execution. And granting his statement to be involuntary, since he failed to prove the contents thereof to be false, the same is not rendered inadmissible."[3]

The court below found the element of conspiracy present in the commission of the crime. The existence of unity of action and purpose among the accused Luis Garcia and his several co-accused can be inferred from these proven circumstances: (1) as early as 8:00 o'clock in the morning of April 18, 1969 when Luis Garcia was picked up from his house by his co-accused they started to search for the victim first at the parking area, then at the victim's house, with the purpose of putting to rest the altercation between the victim and Alfredo Turla; (2) upon arrival at the victim's house they all entered the yard, the accused with three companions directly going to the kitchen door while the rest of his companions deployed themselves around the house; (3) all ' of them were armed with bladed weapons and a gun; (4) as the accused and two other companions hurried upstairs to the kitchen, another of his companions entered through the front door; (5) and after attacking the helpless victim the accused and the rest of his companions together rushed to the jeepney which stood ready for the getaway.

As a qualifying circumstance, treachery was appreciated considering that the victim was stabbed by the accused Luis Garcia while the victim was just waking up and still lying down on the kitchen floor, being thus defenseless and without any opportunity to evade the sudden assault. The circumstance of abuse of superior strength was considered absorbed in treachery and the court below considered the circumstance of evident premeditation as being absorbed in conspiracy. The trial court appreciated dwelling and the use of motor vehicle as aggravating circumstances. There was no question that the crime was committed in the house of the victim, with neither the victim nor his sister Valeriana Acido giving any provocation for the attack.

The lower court did not consider the mitigating circumstance of voluntary surrender, urged by the accused on his claim that he submitted himself voluntarily to the police of Dagupan City some two weeks after the victim was killed. The reason of the trial court is that the accused himself admitted that he left Olongapo City the day following the commission of the crime, going to Manila and then to Dagupan City, so that his arrest posed a problem upon the authorities. Moreover, there was no evidence of his voluntary surrender other than his own assertion.

Luis Garcia, represented by counsel de oficio, now assigns as errors the credence the trial court accorded the testimonial evidence of the prosecution witnesses; its finding of the presence of conspiracy; its appreciation of the

qualifying circumstance of treachery; its appreciation of the use of motor vehicle as an aggravating circumstance, and its rejection of voluntary surrender and lack of instruction as mitigating circumstances.

Anent the first error assigned, it is the contention of the accused that the identification made by Valeriana Acido and Federico de los Santos was doubtful not only because of the inconsistencies of Valeriana Acido in her testimony but also due to irregularity in the manner Luis Garcia was identified before the police authority. This contention has no merit.

There were two occasions when the accused Luis Garcia was identified before the police. The first, on April 19, 1969 from photographs shown the witnesses, and the second, on May 8, 1969, in a face to face confrontation when the accused was already in the custody of the police. Luis Garcia points out that on the first occasion it was Federico de los Santos who was shown the picture of the accused and his identification of the said accused led Valeriana Acido to make the same identification. Luis Garcia also claimed that on the second occasion, the Chief of Police spoke first and pointed out the said accused before Valeriana Acido and Federico de los Santos identified him. The accused was then sitting alone in a chair and not in a police line-up which is the standard procedure adopted by the police.

There is nothing irregular in the identification of the accused Luis Garcia by Valeriana Acido. The alleged minor inconsistencies in the testimony of Valeriana Acido did not detract from her identification of the accused. The alleged act of the Chief of Police in pointing out the accused even before Valeriana Acido and Federico de los Santos made their identification of him, and that the accused was not placed in a police line-up when he was actually so identified, does not substantially affect the certitude of the identification made, considering that the said accused had already been previously identified from his photograph. Moreover, the fact that Federico de los Santos was first allowed to identify the accused from his photograph before Valeriana Acido did the same, did not make her identification of the accused doubtful.

The second assignment of error, which questions the credibility of Valeriana Acido's eyewitness account of the stabbing of the victim by the accused, is based on some alleged imprecisions in her testimony such as her failure to recall or account for minor details, as well as some inconsistencies between her account and those of the corroborating testimonies of Carlos Marcelo and Federico de los Santos. The alleged inconsistencies and inaccuracies noted by the accused are of minor significance, not normally, unexpected from witnesses, and do not impair the essential credibility of their generally harmonious accounts of the incident.

It is well settled that the factual conclusions of the trial court on the credibility of witnesses ought not to be disturbed unless it is clearly shown that the court has overlooked certain facts of substance and value that, if considered, might affect the result of the case.[4]

Applicable to this case is what this Court said in *People vs. Gumahin*,^[5] that as far as credibility is concerned, the findings of the lower court which has the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies will be accorded the highest degree of respect by this Tribunal.

In his third assignment of error, the accused Luis Garcia assails the trial court's finding of conspiracy in the killing of the victim. There is sufficient evidence on record establishing the factual circumstances from which it can be inferred that there had been spontaneous agreement and unity of purpose. The apparent personal association of the several accused, their sharing of a common purpose, and their cooperative actuations in the commission of the offense indeed show a deliberate agreement or conspiracy among them. The direct and active participation of Luis Garcia in the assault against the deceased, simultaneously with the other conspirators, and the presence of multiple wounds, further reveal a concerted attack made with unity of purpose and design. Conspiracy having been alleged and proven, the accused, Luis Garcia, as a conspirator would still be equally responsible for the acts

of his co-conspirators even if it is believed, as he claims, that he had not actually stabbed the victim.

The statement of Valeriana Acido that she saw Luis Garcia immediately stab the deceased in the abdominal region, where the most fatal wound was located, while the victim was still lying down helpless on the kitchen floor, is positive evidence of treachery, as it obviously shows that Luis Garcia chose and employed the manner of attacking the victim which directly insured success of execution without risk to himself from any defense which the victim might make.

There is, therefore, no merit in the fourth and fifth errors assigned disputing the trial court's finding the accused guilty beyond reasonable doubt of murder and appreciating the qualifying circumstance of treachery in the commission of the offense charged.

The sixth error assigned which questions the trial court's appreciation of the aggravating circumstance of use of motor vehicle is sustained. It appears that the use of motor vehicle in this case was merely incidental and was not purposely sought to facilitate the commission of the offense or to render the escape of the offender easier and his apprehension difficult.

It is a fact that Emiliano Balaga was killed in his residence. Hence the trial court correctly appreciated dwelling as an aggravating circumstance.

The trial court's rejection of the alleged voluntary surrender of Luis Garcia as a mitigating circumstance appears to be in order. Other than the appellant's version in court that he went to a police officer in Dagupan City and asked the latter to accompany him to Olongapo City after he was told by someone that his picture was seen posted in the municipal building, no other evidence was presented to establish indubitably that he deliberately surrendered to the police authority.

Lastly, Luis Garcia claims in his favor the mitigating circumstance of lack of instruction. At the trial, no evidence was presented on this point. It is the trial court that is in the better position to determine the degree of instruction or the lack of it of the accused. In *People vs. Casillar*⁶ this Court held that it is for the trial court, rather than the appellate court, to find and consider the circumstance of lack of instruction, for it is not illiteracy alone but the lack of sufficient intelligence and knowledge of the full significance of one's acts that constitutes this mitigating circumstance and only the trial court can properly assess the same.

There being no mitigating circumstance to offset the aggravating circumstance of dwelling, the trial court correctly imposed the penalty of death. However, due to lack of sufficient votes, the penalty next lower in degree should be meted to the accused.

WHEREFORE, the decision under review is affirmed with the sole modification fiat the accused Luis Garcia y Flores is hereby sentenced to reclusion perpetua, to indemnify the heirs of Emiliano Balaga in the sum of P12,000.00 and to pay the costs.

SO ORDERED.

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

[1] Rollo, pp. 34.

[2] Rollo, pp. 30-31.

[3] Rollo, pp. 16-25.

[4] People vs. Ogapay, et al., L-28566, August 21, 1975, 66 SCRA 209, 213.

[5] L-22357, October 31, 1967, 21 SCRA 729, 735.

[6] L-28132, November 25, 1969, 30 SCRA 352, 358.

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