

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS G. RUIZ AND ALFREDO GUNO, ACCUSED-APPELLANTS.

G.R. Nos. L-33604-05. October 30, 1979

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic review of the decision of the Court of First Instance of Agusan del Norte and Butuan City, Branch II, in Criminal Cases Nos. 3323 and 3324, the dispositive part of which reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment finding accused Jesus G. Ruiz and Alfredo Guno:

In Criminal Case No. 3324

GUILTY beyond reasonable doubt of the crime of frustrated homicide, provided for and punished under Art. 249, taken in conjunction with Art. 50 of the Revised Penal Code, and taking into consideration the aggravating circumstance of nighttime which said accused took advantage of in order to commit the crime of frustrated homicide more easily and with greater impunity as provided for in Art. 14(6), of the same Code, with no mitigating circumstance to offset the same, hereby sentences said accused to suffer the indeterminate penalty of SIX (6) YEARS of prision correccional as minimum to TWELVE (12) YEARS of prision mayor as maximum, with all the accessory penalties provided for by the law, to indemnify offended party, Amado Felias, mancomunadamente and in solidum, in the sum of P12,000.00 by way of actual and moral damages, P5,000.00 for expenses of the litigation, all without subsidiary imprisonment in case of insolvency, plus their proportionate share of the costs.

The accused being detained are hereby entitled to the FULL period of their preventive imprisonment which shall be deducted from their term of imprisonment if each of them agrees in writing to abide by the disciplinary rules imposed upon convicted prisoners, or shall be credited with FOUR-FIFTHS (4/5) of their period of detention if they do not agree in writing to abide by the rules imposed upon convicted prisoners, all in accordance with R.A. 6127 approved by the President only yesterday, July 15, 1970;

In Criminal Case No. 3323

GUILTY beyond reasonable doubt of the crime of murder, provided for and punished under Article 248 of the Revised Penal Code, and taking into consideration the aggravating circumstance of nighttime which said accused took advantage of in order to commit the crime of murder more easily and with greater impunity as provided for in Art. 14 (6) of the same Code, with no mitigating circumstance to offset the same, it becomes the painful but imperative duty of the Court to render sentence condemning said accused to suffer the supreme penalty of DEATH by electrocution, to indemnify the heirs of deceased Alfredo Bito, mancomunadamente and in solidum, the sum of P12,000.00 and the further sums of P50,000.00 as actual and moral damages, P25,000.00 as exemplary damages, P10,000.00 for expenses of the litigation, plus their proportionate share of the costs; and

In both Criminal Cases Nos. 3323 & 3324

ACQUITTING accused Melquiades Ruiz from the charges of murder and frustrated murder on reasonable doubt, his guilt in both cases not having been proved beyond moral certainty, with costs de oficio.

PER CONSEQUENCES, the bail bond posted by accused Melquiades Ruiz for his temporary liberty in the amount of P129,600.00 is hereby ordered CANCELLED.

SO ORDERED.

DICTATED in open Court this 16th day of July, 1970 at Butuan City, Phi-lippines.

(SGD) MANUEL LOPE ENAGE

Judge"[1]

Jesus G. Ruiz, Alfredo Guno, Jose Inutan, Melquiades Ruiz, Romeo Dumancas, Peter Doe and John Doe were charged in the Court of First Instance of Agusan with murder in the following:

"1st Amended

I N F O R M A T I O N

The undersigned Assistant Provincial Fiscal of Agusan accuses JESUS G. RUIZ, ALFREDO GUNO, JOSE INUTAN, MELQUIADES RUIZ, ROMEO DUMANCAS, PETER DOE and JOHN DOE of the crime of 'MURDER', committed as follows:

That on the 16th day of December, 1966, at about 9:45 o'clock in the evening, at Barrio Talisay, municipality of Nasipit, province of Agusan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, with treachery and evident premeditation, taking advantage of the night and with superior strength, armed with assorted high caliber weapons, and in contempt of public authority, did then and there wilfully, unlawfully and feloniously with intent to kill, attack, assault and shoot one Alfredo A. Bito, a sergeant of the Nasipit Police Force, while on his official duty, inflicting upon upon him, wounds which caused his instantaneous death:

Contrary to law.

Butuan City, Philippines, January 5, 1967.

(SGD) ELMO M. FAMADOR

First Assistant Provincial Fiscal"[2]

The information was docketed as Criminal Case No. 3323.

Jesus G. Ruiz, Alfredo Guno, Jose Inutan, Melquiades Ruiz, Romeo Dumancas, Peter Doe and John Doe were charged with double frustrated murder in the Court of First Instance of Agusan in the following:

"FIRST AMENDED INFORMATION

The undersigned Assistant Provincial Fiscal of Agusan, accuses JESUS G. RUIZ, ALFREDO GUNO, JOSE INUTAN, MELQUIADES RUIZ, ROMEO DUMANCAS, PETER DOE & JOHN DOE of the crime of 'DOUBLE FRUSTRATED MURDER', committed as follows:

That on or about the 16th day of December, 1966 at about 9:45 o'clock in the evening, in the premises and vicinity of Talisay, Nasipit, Agusan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, confabulating, and helping one another, with treachery, evident premeditation, taking advantage of night-time, with superior strength, in band, acted together, armed

with assorted high caliber weapons, and with the use of a vehicle, to wit: International Scout, Pick-up, painted green and bearing plate No. T-26867, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault and critically wounding the said Police Lieutenant Amado A. Felias, and Corporal Leonardo G. Galve, both members of the Nasipit Police Force while in the performance of their official duties, thus commencing and performing all the acts of execution necessary to commit the crime of MURDER but were not able to produce the said crime by reason of causes other than the accused's own desistance and that is, by reason of early medical attention on the part of Police Lieutenant Amado A. Felias, and by the reason that Police Corporal Leonardo A. Galve chased and pursued one of the assailants who escaped from the scene of the shooting thus said Corporal Leonardo A. Galve did not suffer any injury.

All contrary to law: with the qualifying circumstances of alevesia, the generic aggravating circumstances of known premeditation and other aggravating circumstances to wit: taking advantage of night time, with superior strength, in band who have acted to-gether and with the use of a motor ve-hicle, and in contempt of public autho-rities.

Butuan City, Philippines, January 25, 1967.

(SGD) ELMO M. FAMADOR

First Assistant Provincial Fiscal"[3]

The information was docketed as Criminal Case No. 3324.

These two criminal cases were prosecuted and tried jointly under their respective amended informations. Before the informations were amended, there were three other accused originally included, namely, Tony Zarcas, Manuel Timcang and Jesus Maunes Jr., but with leave of the trial court, they were excluded by the fiscal on the ground that the benefit of the second stage of preliminary investigation before the Nasipit Municipal Court was not extended to them.

The cases against the two accused Jose Inutan and Romeo Dumancas were dismissed. The former died while de-tained in the provincial jail of Agusan del Norte while the latter had died even before these cases were actually filed with the trial court.

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

"At about 9:30 o'clock in the morning of September 16, 1966, while Sgt. Alfredo Bito, Cpl Jalop, and Pat. Leonardo Galve, all members of the Nasipit Police, were at the police station (p. 29, tsn, May 31, 1971), accused Jesus G. Ruiz, who is the President of the Victory Stevedoring and Labor Union, commonly known as the VISLU, arrived thereat with Ben Abian riding in a pick-up car (pp. 29, 30, tsn, May 31, 1967). Then and there, Jesus G. Ruiz angrily questioned Pat. Galve, to wit: 'Galve, where is that Honda which I donated, why do you al-low it to be used by civilians?' Galve replied: 'Because it was used by Sgt. Alota' (p. 30, tsn, May 31, 1967). Upon hearing this answer, Jesus G. Ruiz said: 'You policemen are all stupid.' Sgt. Bito stood up and inquired of Jesus G. Ruiz, 'What is that?' and Pat. Galve also asked the latter, 'What is that Bay, what are the mistakes of the policemen?' Then Jesus G. Ruiz said, 'Bay, you have nothing to do with this.' Sgt. Bito, answered Jesus G. Ruiz: 'Why did you say we policemen are stupid. I am angry because I am a policeman also.' Thereafter, Jesus G. Ruiz, in disgust, immediately rode on his pick-up and went away (p. 31, tsn, May 31, 1967) criss-crossing the town streets (p. 33, tsn, May 31, 1967) until his pick-up was stopped and checked at the Nasipit Cubi-Cubi Check point which was then guarded by Pat. Iglesias who later reported to the police station that Jesus G. Ruiz was mad at him for effecting the check on his (Jesus G. Ruiz's) pick-up car (p. 3, tsn, June 1, 1967).

That same night at around eight o'clock, Mrs. Libertad Bito Ruiz was at her home located at Talisay, Nasipit Agusan del Norte (pp. 162, 163, tsn, Jan. 31, 1967), preparing something as it was the birthday of her sister,

Nenita. Among the people present in her house were her sisters Nenita and Cleotilde. Mr. & Mrs. Teofisto Olamit, and her younger brother, Sgt. Alfredo Bito, who was with Lt. Amado Felias and Cpl. Galve of the Nasipit Police force (tsn, pp. 165-166, Jan. 31, 1967; p. 144, Jan. 23, 1967). These three members of the Nasipit Police arrived in Libertad's house in a police patrol jeep they parked on the right side of the road, its rear beside the edge of the hallow blocks near the driveway of the VISLU office located in front of the house of Libertad and partially blocking the driveway (pp. 11-12, tsn, Feb. 24, 1967).

Before finishing their supper, Libertad heard the sound of a pick-up stop in front of the VISLU office, (p. 169, tsn, Jan. 31, 1967). Thereafter, she went to the sala and heard the loud voice of her uncle, Jesus G. Ruiz, shouting 'wrong parking, wrong parking' (p. 170, tsn, Jan. 31, 1967). Libertad at once informed Sgt. Bito of what she heard (p. 171, tsn, Jan. 31, 1967) and the latter and his police companions transferred to the sala and continued eating there (Id.). At this juncture a cousin of Libertad's husband Melquiades Ruiz arrived (tsn, p. 141, Jan. 23, 1967; pp. 171-172, Jan. 31, 1967) and told Cpl. Galve to come down as as accused Jesus G. Ruiz had something to tell him. Cpl. Galve obliged and went down, followed by Melquiades and Lt. Felias (p. 7, tsn, June 6, 1967).

Libertad who, at that moment was by her window near the door opposite the VISLU office (p. 173, tsn, Jan. 31, 1967) saw the police patrol jeep along the other side of the street facing towards the poblacion and Jesus G. Ruiz' green Scout International pick-up facing towards the wharf (pp. 173-176, tsn, Jan. 31, 1967).

When Lt. Felias and Cpl. Galve reached their parked police patrol jeep, a heated exchange of words ensued between Cpl. Galve and accused Jesus G. Ruiz. The latter asked, 'Why is it that this jeep is parked in front of the VISLU office when this is not a parking place?' Lt. Felias approached Jesus G. Ruiz, patted the latter's shoulder and told him it was not Galve but he who drove the jeep and offered to push the jeep, as it had no starter, if the same obstructed the view of the VISLU office (pp. 7, 8, tsn, June 6, 1967). At this juncture, Sgt. Bito came down the house of his sister Libertad, and admonished accused Jesus G. Ruiz to talk softly and not to shout (Id.). Sgt. Bito told Jesus G. Ruiz that the latter was abusive ('abusador') and challenged him to a draw (p. 206, tsn, Nov. 21, 1968). Accused Jesus G. Ruiz replied 'Let us see tomorrow. All of you will be fired out.' (p. 9, tsn, June 6, 1967) and immediately rode on his green pick-up and drove to town at full speed (Id.). After Jesus G. Ruiz had left, Lt. Felias, Sgt. Bito and Cpl. Galve pushed the jeep and was able to start the same. However, they did not immediately leave for the poblacion because Sgt. Bito had to get his jacket he left in the house of Libertad. While the latter's companions were waiting for Sgt. Bito, with the jeep's motor already running, the accused Jesus G. Ruiz returned from the poblacion with accused Alfredo, Guno, Antonio Zarcas, Jesus Maunes, Jr., Romeo Dumangcas (p. 11, tsn, June 6, 1967) and Jose Inutan (p. 12, tsn, June 6, 1967) riding on the same green pick-up and stopped in front of the VISLU office (pp. 10-11, tsn, June 6, 1967). They stepped down from the pick-up, scattered themselves and took their respective positions: Alfredo Guno went to the Ebarle dilapidated truck near the house of Libertad (p. 14, tsn, June 6, 1967). Dumangcas together with the others went to the VISLU office (Id.); while Jesus G. Ruiz stayed near the pick-up and shouted: 'Tell Sgt. Bito that I want to encounter him.' (p. 15, tsn, June 6, 1967). At that time Lt. Felias was sitting on the driver's seat of the jeep with Patrolman Galve seated beside him, while Patrolman Granada was leaning on the jeep. All of a sudden, a burst of gun fire came from Alfredo Guno who was by the dilapidated truck. Sgt. Bito who had just reached the road on his way to the patrol jeep was hit on the leg, Lt. Felias alighted from the left side of the jeep and while going towards the front, he saw Sgt. Bito already limping (p. 16, tsn, June 6, 1967). In the meantime, Patrolman Galve has jumped out of the jeep upon being fired upon by Jose Inutan. Galve returned the fire prompting Inutan to flee towards a dark alley with Galve in hot pursuit (pp. 33-36, tsn, June 2, 1967; p. 2 of Exh. '6', p. 16, Rec). Gunfires directed towards the patrol jeep were also seen coming from the office of the VISLU and the green pick-up truck (p. 24, tsn, Feb. 24, 1967). Patrolman Granada took cover and crawled under the jeep (p. 23, tsn, Feb. 24, 1967) from where he saw Sgt. Bito drew his pistol and fired, but thereafter the latter ran out of bullets. Patrolman Granada threw his revolver to Sgt. Bito, who, however, was not able to catch it. By the time Sgt. Bito turned his face towards Patrolman Granada, he was immediately shot at the mouth by accused Jesus G. Ruiz (p. 26, tsn, Feb. 24, 1967), killing him (Sgt. Bito) on the spot (p. 27, tsn, Feb.

24, 1967). Thereafter, accused Jesus G. Ruiz nudged and prodded with his right foot Sgt. Bito's body and after finding him already dead, he (Jesus G. Ruiz) moved backward (p. 29, tsn, Feb. 24, 1967).

With the lights coming from the electric lamp post of the VISLU office, as well as from Libertad's home and the other houses, Lt. Felias saw accused Jesus G. Ruiz fire at him with a Thompson submachine gun that hit both of his thighs (p. 17, tsn, June 6, 1967). When he fell, he saw Patrolman Granada crawling under the jeep (p. 18, tsn, June 6, 1967) and called the latter for help (tsn, p. 30, Feb. 24, 1967); p. 19, June 6, 1967). Patrolman Granada went to the succor of Lt. Felias and tried to load him in the patrol jeep, but in the midst of gunfire coming from the VISLU office, they were obliged to take cover (p. 31, tsn, Feb. 24, 1967).

After the firing subsided, Patrolman Granada shouted for help. Jesus G. Ruiz approached them and Pat. Granada pleaded with Jesus G. Ruiz not to finish Lt. Felias who was then already unconscious (p. 32, tsn, Feb. 24, 1967). At this, Jesus G. Ruiz returned to his green pick-up (tsn, p. 33, Feb. 24, 1967; p. 214, Nov. 21, 1968) and together with the wounded Inutan, he hurriedly drove to the Butuan City Hospital (p. 216, tsn, Nov. 21, 1968).

Civilians came later and helped Patrolman Granada load the unconscious Lt. Felias in the jeep. They proceeded to the police station leaving behind Sgt. Bito lying on the very spot where he was killed (p. 34, tsn, Feb. 24, 1967).

Upon reaching the police station, Patrolman Granada reported the incident to the police guard who advised him to take Lt. Felias to Butuan City for immediate treatment (pp. 34, 35, tsn, Feb. 24, 1967). At Cubi-Cubi along the way to Butuan City, their jeep was bumped by a green painted vehicle which not only did not stop but also fired upon them (pp. 35, 36, tsn, Feb. 24, 1967) hitting the left arm of Manuel Hao who was then holding Lt. Felias in his arms and causing the jeep to fall on a ditch (p. 37, tsn, Feb. 24, 1967). Fortunately, the jeep of Sinforoso Ayuma was passing by on its way to Butuan City. They loaded Lt. Felias in Ayuma's jeep that brought him to Butuan City (p. 38, tsn, Feb. 24, 1967).

Lt. Felias was confined at the Butuan City Hospital from December 17 to 31, 1966 (p. 20, tsn, June 6, 1967) where he was treated to the following injuries:

'1 & 8 - Gunshot wounds, thru and thru left thigh subcutaneous

'3 & 4 - Gunshot wounds, thru and thru right thigh with fracture of the femur at about its middle' (Exhibit 'U', p. 17, Rec.)

Thereafter he was given further treatment at the National Orthopedic Hospital and was released only on February 8, 1967 when he was placed on plaster cast (Id.).

According to Dr. Francisco Yazon who physically examined Lt. Felias at the Butuan City Hospital, the latter would have died from his wounds were it not for the timely medical intervention, due to (a) infection of the fractured bones and blood poisoning due to that infection; or (b) loss of blood (pp. 41, 42, tsn, June 9, 1967).

As per post mortem findings by Dr. Lydia San Pedro, Municipal Health Officer of Nasipit, Agusan, the de-ceased Sgt. Alfredo A. Bito sustained the following injuries:

'FINDINGS: EXTERNAL PHYSICAL FINDINGS:

'A. Circular wound about two (2) cm. in diameter with contused edges at the medial surface of the leg piercing the gastrochemius muscle about five (5) inches below the knee.

Slit like wound about four (4) cm. length posterior surface of the gastrochemius muscle with slight eversion of the edges.

'B. Oval wound below the nasal septum about 1-1/2 cm. length with inverted edges. All upper teeth with alveolar

arch destroyed and palatine bone (hard and soft palate). Four (4) teeth and all left lower molars were removed from their sockets.

'Lacerated wound 1-1/2 inches at the left parietal bone.

'REMARKS:

'Time when Examined: 1:00 A.M. December 17, 1966

'Estimated Time of Death: 9:00 A.M. Dec. 16, 1966

'STATE OR CONDITION OF THE BODY: RIGOR MORTIS

'Cause of Death: Cerebral hemorrhage

'Internal Findings: Not Performed'

(Exh. 'L'; p. 26, Rec)."[4]

According to the lower court, the accused Jesus G. Ruiz testified to the following:

"x x x that Bito answered that he was abusing and challenged him to a draw; that their distance from each other was more than two meters at this very moment; that he answered him that he will not challenge Bito to a draw because he is a policeman; however, he will meet him the next day in front of the office of the mayor and the police if he wants a draw; that his purpose was to deter him in Bito's desire to fight him to a draw; that he turned his back on Bito and drove his pick-up and went to his house arriving there at past 8:30 in the evening; that he went upstairs and told his wife about what happened; that his wife laughed and remarked: 'Is there a policeman who will challenge you?'; that he stayed in his house sitting for almost an hour; that he noticed that there were policemen coming from the jeep; that he rode on his pick-up for Talisay passing by Eugene Restaurant at about 9:30 P.M.; that upon arriving at Talisay for the second time that very night, he saw the police jeep moved already from where it was parked by the policemen; that his purpose in going to Talisay was to verify the relief, the night shift of VISLU laborers at 10:00 o'clock then loading on a Japanese boat; that the policemen he saw were Felias sitting at the rear of the jeep, Galve by the side of the jeep, and Bito beside Galve; that he saw Granada after he parked his pick-up in front of the house of Luis Faelnar, and when he went down his pick-up, he was met by Granada who told him the jeep was already moved forward; that it was while he was conversing with Granada for a few minutes that he heard a loud voice challenging him to a draw; that at that moment, he moved backward with his left foot so he would be in a position to face his challenger, but when he moved backward, he heard a shot; that the gunshot came from the rear of the police patrol jeep; that he did not see Felias, Galve and Bito, but the gunfire came from behind the patrol jeep; that he sought cover by hitting the ground; that after the first shot, came several shots. So he continued crawling on the ground in order to escape from the gunfire; that he slid because the ground was slippery and sandy; that he continued rolling towards his pick-up; that the several shots that followed the first shot came from the patrol jeep; that when he reached his pick-up, he turned to the front, crawled to the front of his pick-up; that he did not hear any shots anymore; that he stood and observed the situation from where he could not be seen from where the shots came from. Thereafter, shots rang again. Fearing he was in danger, he immediately ran in a stooping position passing by the side of the VISLU office to its back. He went to the back of his office because the wall at the back is cemented. He thought of reporting the incident to the authorities, and was thinking of escaping at the other passage, but there were a few shots still so he thought of going back to his pick-up. He went running back to his pick-up, again in a stooping position. Upon reaching his pick-up, he opened the door, started immediately its motor, and drove away towards the wharf; that on the night of the incident he had with him a .38 cal. revolver, Smith & Wesson. During the shooting, he held his revolver which was in its holster to prevent it from falling; that he does not know where the gun-fires came from; he does not know who was being fired upon; that he knows Jose Inutan; that he remembers having met him on the night of December 16, 1966; that after he

drove his pick-up to a distance of about ten meters, somebody tapped the body of his pick-up; that he asked who it was; that the answer was 'Tokloy.' He said he was wounded and would like me to bring him to the hospital; that he allowed Inutan to ride with him and proceeded to Butuan City. He drove his pick-up straight to the PC barracks and stopped in front of the guardhouse. He asked the guard if Capt. Collado was in but the Guard replied: 'No, he is at the Elite Restaurant.' So the witness asked the guard that he be provided with a PC guard so that Capt. Collado will believe him. Upon remembering that he was not able to bring with him his permit to carry a firearm, he left his firearm at the guardhouse; that that was the firearm he carried with him on the night of the incident; that he deposited the same with Jose Cabillo of the PC; that said PC examined the number of rounds and gave him a receipt for it, Exhibit 10; that he drove to the Elite Restaurant with the PC; that the PC went upstairs and he waited downstairs; that he met Capt. Collado; that he told Capt. Collado of the incident at Talisay; that they went back to the PC headquarters; that upon arrival, Capt. Collado ordered that the bugle be sounded; that the men assembled and Edmundo Esparagoza was ordered to take him to the guardhouse; that he wanted to go to Talisay with Capt. Collado, but the latter told him to stay; that he stayed at the guardhouse from the evening of December 16, to 28, 1966; that on December 17, 1966, he was investigated relative to the Talisay incident; x x x "[5]

Accused, Alfredo Guno, on the other hand, testified as follows:

"x x x that on December 16, 1966, after 3:30 PM., he went home to the house of his elder brother; that Eliazar Esparagoza brought him to the other wharf near the government wharf; that they took Eliazar's jeep; that they stayed for about thirty minutes there at a small store owned by a certain Fely; that from there, he went home; that Tiburcio Guno lives at and is the owner of the Eugene Restaurant; that they took supper there and went to the dance at Talisay near the house of Joe Jimenez; that while waiting for a tricycle, a green pick-up passed by owned by accused Jesus G. Ruiz; that he was driving it; that he saw, among others inside the pick-up, Jesus Maunes, Jr.; that upon knowing it was going to Talisay, and upon being invited by Maunes, Jr., he rode on it at the rear; that Maunes Jr. and he were at the rear; that there were three persons in front, Dumangcas and Inutan among others; that they drove towards Talisay; that the pick-up stopped at the VISLU office; that he heard somebody say: 'By golly, Bay, they are coming back'; that he saw two men running towards him; that he ran towards Pisto Olamit's, house; that he heard a shot; that he was frightened so he headed for the canal of the Veneer Plant; that Eslabon, a security guard of the Veneer Plant, asked: 'What is that?'; that he identified himself by saying: 'Bay, Eslabon' and asked where the faucet was because he wanted to wash; that he went home after washing himself; that the next morning he was arrested by the police; that his affidavit was taken by Sgt. Pates of the PC; that when he was shown to Mrs. Libertad Bito Ruiz, she said 'It seems that he is the one.'; that he was placed in jail in Nasipit; that he was asked by Libertad to testify against accused Jesus G. Ruiz; otherwise, she will implicate him; x x x that the PC took him to the PC barracks where his second affidavit was taken again by PC Sgt. Pates; that he did not sign his second affidavit because the PC did not let him sign it because they crumpled it as the contents were the same as his first affidavit taken at Nasipit; x x x "[6]

The accused Jesus G. Ruiz and the accused Alfredo Guno were represented by two different counsels de oficio before this Court. Counsel de oficio for the accused Jesus G. Ruiz assigns the following errors:

"I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE INHERENTLY INCREDIBLE AND UNCORROBORATED EVIDENCE OF THE PROSECUTION

"II

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT."[7]

The counsel de oficio for accused Alfredo Guno contends that the trial court committed the following errors:

"FIRST ASSIGNMENT OF ERROR

THE COURT A QUO ERRED IN FINDING THAT APPELLANT GUNO SHOT AT AND HIT SGT. ALFREDO BITO IN THE LEG.

"SECOND ASSIGNMENT OF ERROR

THE COURT A QUO ERRED IN DISREGARD-ING THE TESTIMONY OF APPELLANT GUNO AND HIS WITNESS AND IN RELYING SOLELY ON THE BIASED, IMPROBABLE, UNBELIEVABLE TESTIMONY OF THE PROSECUTION WITNESSES.

"THIRD ASSIGNMENT OF ERROR

THE COURT A QUO ERRED IN HOLDING THAT THERE EXISTED A CONSPIRACY BETWEEN APPELLANT GUNO AND APPELLANT JESUS R. RUIZ, AND IN FURTHER HOLDING APPELLANT GUNO LIABLE FOR ACTS ALLEGEDLY PERFORMED AND INJURIES INFLICTED BY APPELLANT JESUS RUIZ.

"FOURTH ASSIGNMENT OF ERROR

THE COURT A QUO ERRED IN ALLOWING ITSELF TO BE SWAYED IN RENDERING THE DECISION UNDER REVIEW BY ITS UNCONCEALED PREJUDICE AND BIAS AGAINST APPELLANT GUNO, MADE MANIFEST BOTH BY HIS ACTUATIONS DURING THE TRIAL AND THE DECISION ITSELF.

"FIFTH ASSIGNMENT OF ERROR

THE COURT A QUO ERRED IN NOT ACQUITTING APPELLANT GUNO.

"SIXTH ASSIGNMENT OF ERROR

ON THE ASSUMPTION, ARGUENDO, THAT THERE WAS GROUND FOR CONVICTING APPELLANT GUNO, THE COURT A QUO ERRED IN NOT HOLDING THAT HE IS CRIMINALLY LIABLE ONLY IN CRIMINAL CASE NO. 3323, WHERE HE IS ALLEGED TO HAVE PERSONALLY INFLICTED A LEG INJURY UPON ALFREDO BITO, BUT NOT IN CRIMINAL CASE NO. 3324 BECAUSE HE INFLICTED NO IN-JURIES UPON AMADO FELIAS AND LEONARDO GALVE, AND IN FURTHER FAILING TO HOLD THAT APPELLANT GUNO COMMITTED ONLY THE CRIME OF PHYSICAL INJURIES INSTEAD OF MURDER,

"SEVENTH ASSIGNMENT OF ERROR

ON THE ASSUMPTION, ARGUENDO, THAT APPELLANT ALFREDO GUNO COULD BE HELD LIABLE FOR THE DEATH OF ALFREDO BITO IN CRIMINAL CASE NO. 3323 ALTHOUGH HE DID NOT INFLICT MORTAL WOUNDS UPON BITO, THE COURT A QUO ERRED IN HOLDING THAT THE KILLING OF BITO WAS MURDER INSTEAD OF HOMICIDE MERELY.

"EIGHT ASSIGNMENT OF ERROR

ON THE ASSUMPTION, ARGUENDO, THAT THERE WAS GROUND FOR FINDING APPELLANT GUNO LIABLE FOR THE INJURIES INFLICTED UPON AMADO FELIAS AND LEONARDO GALVE BY PERSONS OTHER THAN SAID APPELLANT, THE COURT A QUO ERRED IN HOLDING THAT SAID INJURIES CONSTITUTED THE CRIME OF FRUSTRATED HOMICIDE, INSTEAD OF

PHY-SICAL INJURIES ONLY."[8]

The assignment of errors of the accused Jesus G. Ruiz will be discussed first.

Contrary to the contention of the accused Jesus G. Ruiz, the lower court did not err in giving credence to the evidence of the prosecution. There is nothing incredible in the testimony of prosecution witness Libertad Bito Ruiz in so far as it points to the accused. Jesus G. Ruiz as the person who shot her younger brother, Sgt. Alfredo Bito. She testified on direct examination thus:

"A And when I saw my younger brother (referring to Sgt. Alfredo Bito) turning his head towards his right, I saw my uncle Jesus G. Ruiz went near and fired at my younger brother. (p. 191, tsn, Jan. 31, 1967)

x x x

'Q At this point, after you saw the accused Jesus G. Ruiz fire at your younger brother, Sgt. Alfredo Vito (Bito), you were still in the window?

'A Yes, sir.

'Q Were you still looking toward the street?

'A Yes, sir.

x x x

'Q You said that you were still in the window. Where were you looking (to what direction) after you saw the accused, Jesus G. Ruiz?

'A I was still looking at my younger brother, Sgt. Vito (Bito).

'Q Since you were still looking at that particular direction, will you tell the Court what did you see, if any? (p. 4, tsn, Feb. 1, 1967)

'A Uncle Jesus G. Ruiz kicked the left knee of Sgt. Vito (Bito) by his right foot (p. 5, tsn, Feb. 1, 1967)' "

On cross-examination, Libertad declared as follows:

"Q When you saw Jesus G. Ruiz, to what direction was he directing his fire?

'A On the face of my brother.

'Q Did he have his arm automatically stretched when he fired?

'A Quite bent.

'Q And how many times did he fire?

'A When he was near Sgt. Bito, I heard only one shot.

(p. 53, tsn, Feb. 21, 1967)

x x x

'Q And afterwards, what happened to Sgt. Bito?

'A He slumped down.

'Q After Sgt. Bito slumped down, what else did Jesus Ruiz do?

'A He went near Sgt. Bito and kicked with his right foot the left knee of my brother.

(p. 55, tsn, Feb. 21, 1967)""[9]

The foregoing testimony of Libertad that the accused Jesus G. Ruiz fired at the face of Sgt. Bito is corroborated by Pat. Granada who declared thus:

"Q What happened next after you went under the jeep?

'A Sgt. Bito draw his pistol and fired.

'Q And what happened next?

'A After he fired because he has no more bullet, he threw his pistol to me.

'Q And what did he do?

'A He told me he has no more bullet, give me your revolver.

'Q When I threw my revolver to him he was not able to catch it and then when he faced to me, when he turned his face to me, he was immediately shot by Jesus G. Ruiz at the mouth.

(p. 26, tsn, Feb. 24, 1967)' "[10]

The testimonies of Libertad Bito Ruiz and Pat. Granada that the accused Jesus G. Ruiz fired the fatal shot at Sgt. Bito is confirmed by the physical facts as reflected in the post mortem report of Dr. Lydia San Pedro who found that among the injuries sustained by the deceased Sgt. Bito is an "oval wound below the nasal system about 1-1/2 cm. length with inverted edges"[11] which is within the area of the face. Dr. San Pedro testified that judging from the nature and characteristic of the wound found on the upper lip near the nose (nasal system), it is a bullet wound.[12]

Likewise, the testimony of Libertad that the accused Jesus G. Ruiz was near Sgt. Bito when the former fired upon the latter is confirmed by the presence of the "blackened area in the nasal system"[13] of the deceased. According to Dr. Lydia San Pedro, this is indicative of the short distance of not more than 24 inches between the muzzle of the gun used and the deceased.[14]

The contention of the accused Jesus G. Ruiz that the testimonies of Patrolman Galve and Libertad show that the real perpetrators of the killing of Sgt. Bito are Alfredo Guno and Romeo Dumancas fails to take into account the physical facts as regards the nature, characteristics and locations of the wounds sustained by the victim. Furthermore, there is nothing in Pat. Galve's entire testimony that would implicate Romeo Dumancas in the killing of Sgt. Bito.

While it is true that Libertad testified that Alfredo Guno and Romeo Dumancas also fired at Sgt. Bito, they could not have caused the fatal wound sustained by Sgt. Bito. Guno could have only hit the leg of Sgt. Bito who was seen limping immediately after the first shot fired at him by said Guno. On the other hand, Romeo Dumancas only fired towards Sgt. Bito and also towards the jeep which was more than five (5) meters. Therefore, Dumancas could not have been responsible for the fatal wound which was caused by a bullet fired from a gun at close range or at a distance of not more than 24 inches.

In order to discredit Libertad, the accused Jesus G. Ruiz brands her as a biased witness because of her relationship with the victim.[15] The fact that Libertad is the sister of the deceased Sgt. Bito does not necessarily make her a biased witness. The prevailing jurisprudence on the matter is that mere relationship of the prosecution witnesses to the victim does not necessarily vitiate their otherwise credible testimonies[16] nor does it impair their positive and clear testimonies.[17]

Besides, Libertad is also related to the accused Jesus G. Ruiz, the former being married to the latter's nephew, Manuel Ruiz. Moreover, Libertad had been working in the VISLU office for several years. Her continued employment with VISLU must have been with the blessings of her uncle, the accused Ruiz, its perennial president. Hence Libertad was not likely to testify falsely against the accused Ruiz.

The prosecution witness, Pat. Granada, had no motive to testify falsely against the accused Jesus G. Ruiz. Pat. Granada was the friend of Jesus G. Ruiz. Pat. Granada had been allowed by Ruiz to stay in the latter's house for about two months.

There is no merit in the contention that Sgt. Bito sustained only one bullet wound.[18] Dr. Lydia San Pedro stated in her medical certificate (Exhibit "L") and declared that the deceased, Bito, sustained at least two bullet wounds of entry, one on the left leg below the knee and another oval wound below the nasal system about 1-1/2 centimeters in length with inverted edges.[19]

The argument of the counsel of the accused, Jesus G. Ruiz, that the prosecution failed to present any other witness to corroborate the direct participation of accused Jesus G. Ruiz in the killing of Sgt. Bito and the wounding of Lt. Felias,[20] merits scant consideration because:

(1) Libertad's testimony that Jesus G. Ruiz fired at Sgt. Bito is not only corroborated by the testimony of Pat. Granada, but also by that of witness Antonio Zarcas [21]; and

(2) Lt. Felias testified that he saw the accused Jesus G. Ruiz fire and hit him on both thighs[22] and this is partly corroborated by Pat. Granada who declared, among others, that he saw gunfire from the green pick-up where Jesus G. Ruiz was and which was directed at the police jeep where Lt. Felias was sitting behind its steering wheel.

In an effort to minimize the penalty for the crimes committed by the accused, Jesus G. Ruiz, the defense claims that the lower court failed to appreciate in favor of Ruiz the mitigating circumstances of (1) voluntary surrender, (2) drunkenness which is not habitual and (3) having acted in vindication of a grave offense.[23] This Court finds that 'the first two alleged mitigating circumstances cannot be appreciated in favor of said accused.

There is nothing in the affidavit and testimony of Jesus G. Ruiz that he intended to surrender when he went to the PC headquarters late in the evening of December 16, 1966. The idea of surrender must have been far from his mind because according to him he just reported the shooting incident to prevent further bloodshed.[24] As observed by this Court in the case of *People v. Rogales*:[25]

"x x x appellant did not go to the PC headquarters after the shooting to surrender but to report the incident. Indeed he never evinced any desire to own the responsibility for the killing of the deceased."

The defense claims that the accused Jesus G. Ruiz was intoxicated at the time of the shooting incident because he was allegedly drinking Tanduay liquor. He even offered prosecution witness Antonio Zarcas to join him. This conclusion is without any basis. Not all persons who drink Tanduay liquor get drunk. In fact, prosecution witness Zarcas did not testify that Jesus G. Ruiz was drunk or intoxicated.

The record has no evidence that shows that the liquor taken by Jesus G. Ruiz was of such quantity as to have blurred his reason and deprived him of self control. Said circumstance must first be established before drunkenness may be considered as a mitigating circumstance. Although the last paragraph of Art. 15, Revised Penal Code, fails to provide for the degree of intoxication needed to mitigate the penalty for an offense, it should be such an intoxication that would diminish the agent's capacity to know the injustice of his acts, and his will to act accordingly.[26]

In the case at bar, the behavior of accused Jesus G. Ruiz, from the time he was seen at his house in the poblacion

by prosecution witness Zarcal drinking Tanduay liquor up to the shooting incident, did not show that he was in such a state of intoxication that would mitigate his liability.

It is significant to note that the defense only interposed on appeal the alleged mitigating circumstance of drunkenness of Jesus G. Ruiz. Said accused never claimed during the trial that he was drunk at any time during the shooting incident in question. There is nothing in the testimony of accused Jesus G. Ruiz to show that he was drunk or intoxicated during the said incident.

However, this Court finds that the mitigating circumstance of having acted in vindication of a grave offense should be appreciated in favor of the accused Ruiz in so far as the killing of Sgt. Bito is concerned. The lower Court made the following findings and conclusions:

"14. That accused Jesus G. Ruiz and Bito were caught in an argument over the parking of the jeep that caused Jesus Ruiz to leave the place hurriedly in his green pick-up towards town;" (p. 70, Sentence; p. 641, Rec.)

"x x x. But as admitted by both the prosecution and the defense, it ended up in an argument between accused Jesus G. Ruiz and Bito where the prosecution contends that Bito advised accused Jesus G. Ruiz to talk softly, and not to shout and where accused Jesus G. Ruiz contends Bito asked him what he wanted, called him 'abusador', culminating in his being challenged by Bito to a draw. If a balance of probabilities is struck, the only rational conclusion consistent with the natural order of things and the experience of man, is that accused Jesus G. Ruiz must have felt insulted, if not slighted, if not hurt, if not deeply offended, inconvenienced as he was by the jeep and then ending up only to be called 'abusador' and challenged to a draw by Bito (Exh. X-12), which doubtless, fired in accused Jesus G. Ruiz a desire to get even with Bito." (pp. 81-82, Sentence, pp. 652-653, rec)

"The evidence shows beyond moral certainty that accused Jesus G. Ruiz deeply offended as he was then called 'abusador' and challenged by Bito to a draw, came minutes later to Talisay with deceased Inutan and Dumangcas and accused Guno, with Zarcal and Maunes Jr. x x x." (pp. 101-102, Sentence; pp. 672-673, rec)[27]

The question of whether or not a certain personal offense is grave is dependent upon such factors as the social standing of the person, the place, and the time when the insult was made. In the case at bar, the accused Ruiz was the President of the Victory Stevedoring and Labor Union (VISLU). Considering that he was called an 'abusador' and challenged to a draw by the deceased, Sgt. Bito, in the presence of Lt. Felias and Cpl. Galve and right in front of his own office building where his laborers were then sup-posed to be reporting preparatory to a loading job, the act of the accused Ruiz in subsequently killing Sgt. Bito is attended by the mitigating circumstance of having acted in vindication of a grave offense.

This Court will now discuss the errors assigned by the accused, Alfredo Guno.

Anent the first error assigned, the accused Alfredo Guno contends that:

"x x x The Court a quo, therefore, erred grievously when it concluded that, because appellant Guno ran away from the two men who were running toward him that night, he was guilty of shooting at and hitting Sgt. Bito's leg." [28]

The accused Alfredo Guno submits that the foregoing conclusion is based on mere suspicion.

This contention proceeds from the erroneous assumption that the aforequoted portion of the decision constitutes the sole basis of the lower court in convicting the accused Guno. The aforequoted observations are mere justifications for the court's refusal to believe accused Guno's pretensions that he did not have prior knowledge about the forthcoming showdown between them and Sgt. Bito and his police companions.

The conviction of Alfredo Guno is anchored on the strong evidence adduced pointing to him as the person who shot Sgt. Bito on the left leg. It is not only the testimony of Mrs. Libertad Bito Ruiz which proves this point. The corroborative testimonies of Panfilo Granada,[29] Lt. Amado Felias,[30] and Manuel Timcang[31] stand unassailed. Therefore, the allegation of the accused Guno that Mrs. Libertad Bito Ruiz could not have possibly seen accused Guno fire at Sgt. Bito because of the presence of the manzanita tree which obstructed her view, as testified to by Collado, cannot affect the conclusion of the lower court.

As regards the second error assigned, the accused Guno attempts to discredit the testimony of witness Libertad Bito Ruiz by invoking the maxim or rule of *falsus in unis, falsus in omnibus*. It is pointed out that a portion of her testimony implicating the accused Melquiades Ruiz was disregarded by the lower court because Libertad "was testifying more from emotion than what she actually saw from the window of her house in the semi-darkness of the night of the incident, specially if we are to remember that Bito was her younger brother."

The cited maxim deals only with the weight of evidence and is not a positive rule of law or of universal application.[32] It should not be applied to portions of the testimony corroborated by other evidence, particularly where the false portions could be innocent mistakes.[33] Furthermore, the rule *falsus in unis, falsus in omnibus* is not mandatory but merely sanctions a disregard of the testimony of a witness if the circumstances so warrant. For the complete disregard of all the testimony of witness on this ground, his testimony must have been false as to a material point, and that the witness must have conscious and deliberate intention to falsify a material point.[34]

In the case at bar, the lower court disregarded that portion of Libertad's testimony implicating Melquiades Ruiz because she was then testifying more from emotion so that it cannot be said that she consciously and deliberately intended to falsify a material point. Hence, her entire testimony need not be disregarded. Her testimony that accused Guno shot Sgt. Bito at the left leg is sufficiently corroborated by the testimonies of Pat. Panfilo Granada, Lt. Amador Felias and Manuel Timcang.

The contention of the accused Guno that the prosecution witnesses Pat. Granada, Pat. Galve and Lt. Felias are biased because they are the brothers in arms of Sgt. Bito is untenable. Testimonies of interested witnesses are not necessarily biased and incredible, for on the contrary, it would be unnatural for such persons interested in vindicating the crime to impute the same to any person other than those responsible.

Under the third assignment of error, the accused Guno assails the lower court's finding of conspiracy among Guno and Ruiz and contends that inasmuch as the prosecution evidence shows that the accused Guno boarded the pick-up at Eugene restaurant without any conversation having taken place between them and had no chance to confer on the way to Talisay, there could be no possible meeting of the minds between them to constitute conspiracy;[35] that there was no time to reach an agreement to commit the crime since there was a very short span of time between the time when the accused Ruiz was deeply offended as he was called "abusador" and challenged by Bito to a draw and the time when accused Ruiz came back to Talisay with Inutan and Dumancas and accused Guno with Zarcas and Maunes, Jr.;[36] and that the accused Guno was only a chance passenger in the pick-up, because he was going to a party and he took advantage of the only available transportation then.[37]

The contentions of accused Guno are not meritorious. It is a well-settled rule that conspiracy need not be proved by direct evidence and may be deduced from the mode and manner in which the offense was perpetrated.[38]

The finding that there was conspiracy between the two accused Ruiz and Guno was proven by the following:

- "1. In their boarding together of accused Jesus G. Ruiz' pick-up minutes after Jesus G. Ruiz admitted he was called by Bito 'abusador' and was then and there challenged by Bito to a draw;
2. In their proceeding immediately to Talisay where Bito was;

3. In their alighting immediately from the pick-up upon arrival at Talisay and their taking of their respective positions in the scene of the crime;
4. In their firing simultaneously and at will at Felias, Bito and Galve;
5. In their getting away in the same pick-up of accused Jesus G. Ruiz after their shooting of Felias, Bito and Galve, except crossing the canal breast deep with sea water behind the house of Libertad;
6. In accused Jesus G. Ruiz' bringing the wounded Inutan to the hospital for treatment right after the incident;
7. In their pattern of feigning total ignorance as to who were shooting at when on the night of the incident; and
8. In the unexplained failure of Inutan to file, during his lifetime, the proper criminal complaint against Felias and Galve, who together with deceased Bito, shot him and wounded him by his buttocks." [39]

This Court finds no merit in the contention of the accused Guno that there could be no conspiracy because there was very little time for them to have reached the agreement to commit the crime. The prevailing rule is that "unlike in evident premeditation, where a sufficient time must elapse to afford full opportunity for meditation and reflection and for the perpetrators to deliberate on the consequences of their intended deed, [40] conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it." The above-enumerated eight circumstances prove the presence of conspiracy.

Since conspiracy has been established, the rule is every conspirator is responsible for the acts of the others in the furtherance of conspiracy and are liable as co-principals. [41] Therefore, although the shot fired by the accused Guno at Sgt. Bito only hit the latter's left leg, the former is still liable as co-principal for the death of said Sgt. Bito. Also, the accused Guno should be held liable as co-principal for the injuries inflicted upon Amado Felias and Leonardo Galve.

Regarding the fourth assignment of error, the accused Guno contends that the lower court erred in allowing itself to be swayed in rendering the decision under review by its prejudice and bias against him. The accused Guno cited the following incidents to prove his contention:

"(1) When Libertad Bito Ruiz, prosecution witness, was under direct examination and appeared to be having some difficulty in answering the Fiscal's question, the Court a quo told the Fiscal:

'Reform the question to suit the answer.' (t.s.n., Vol. I, pp. 187-188)

(2) When appellant Guno was testifying in his own behalf and, on direct examination, was being asked about the co-accused Dumangcas, who had already died, the Court, without giving counsel a chance to explain the materiality of the question, sustained the Fiscal's objection, saying:

'Do not show concern for Roming Dumangcas; he is dead now. Concentrate your fire on your client; he is still breathing.' (t.s.n., Vol. III, pp. 597-598).

(3) The Court a quo *motu proprio* ordered the striking out of a portion of appellant Guno's direct testimony even though the prosecution had not moved for the striking out of such testimony (t.s.n., Vol. III, p. 601).

(4) The Court a quo examined appellant Guno extensively (t.s.n., Vol. III, pp. 608-612), and when de-fense counsel resumed his direct questions, following the line of the Court's interrogation on the same matter, the Court a quo, in sustaining the Fiscal's objection, stated:

'The Court's privilege is not of the counsel. Re-form.' (t.s.n., Vol. III, p. 612)."[42]

The contention of the accused Guno is without merit because, as stated by the appellee:

"1. The incidents cited by appellant Guno (pp. 40, 41, Brief for Appellant Alfredo Guno) are merely innocuous and isolated remarks from the lower court during the long drawn out trial of these two criminal cases. They were brought about by the lower court's obvious desire to expedite the proceedings with regard to the proper presentation of evidence by both parties.

2. In the interest of justice, courts have discretion to order the striking out of any portion of a witness' testimony if the same is not responsive to the question propounded or touched on matters that are either immaterial, impertinent or irrelevant. Hence, no prejudice nor bias on the part of the lower court may be inferred out of a short portion of ap-pellant Guno's direct testimony (t.s.n., Vol. III, p. 601).

3. As to the lower court's extensive examination of appellant Guno (t.s.n., Vol. III, pp. 608- 612), there is nothing objectionable about it. There is authority to the effect that the active participation taken by a judge in the conduct of a trial motivated by a desire to expedite the proceedings and direct the course thereof in accordance with the real issues involved should not be taken as interest nor partiality nor hostility on the part of the judge (Ventura vs. Yatco, L-11223, March 16, 1959).

4. Significantly, while appel-lant Guno harps on the isolated remarks of the presiding judge which to him appear to be prejudicial and biased (which of course this representation does not admit), as could be expected, said appellant chose to ignore the other remarks and or rulings of the lower court which are favorable to his cause.

5. We agree with the proposition that judges should refrain from showing partiality to one party and hostility to another. This does not mean, however, that he should keep mum throughout the trial and allow the parties to ask questions even if they are improper, irrelevant and immaterial to the issues involved. If trials are to be expedited, judges should take a leading part by directing counsel to submit evidence on facts, by asking clarifying questions and by showing an interest in its speedy and fair termination. Unless they do, the speedy administration of justice which is the aim of the government and of the people cannot be attained."[43]

The foregoing discussion also disposes of the fifth and sixth errors assigned.

The contention of the accused Guno under the seventh error assigned that the killing of Sgt. Bito was not murder but only homicide on the ground that there was neither treachery or evident premeditation is well taken.

After analyzing the testimonies of the witnesses for the prosecution and the defense, the trial court found that the shooting incident took place in the following manner:

"TO begin with, the whole incident on the night of December 16, 1966 started with the partial blocking by Felias, Bito and Galve of their police patrol jeep by the driveway of the VISLU office. This prompted accused Jesus G. Ruiz to verify as to who drove the same, and to ask that the jeep be moved forward. But as admitted by both the prosecution and the defense, it ended up in an argument between accused Jesus G. Ruiz and Bito where the prosecution contends that Bito advised accused Jesus G. Ruiz to talk softly, and not to shout, and where accused Jesus G. Ruiz contends Bito asked him what he wanted, called him 'abusador,' culminating in his being challenged by Bito to a draw. If a balance of probabilities is struck, the only rational conclusion consistent with the natural order of things and the experience of man, is that accused Jesus G. Ruiz must have felt insulted, if not slighted, if not hurt, if not deeply offended, inconvenienced as he was by the partial blocking of his driveway by the jeep and then ending up only to be called 'abusador' and challenged to a draw by Bito (Exhibit X-12), which, doubtless, fired in accused Jesus G. Ruiz a desire to get even with Bito.

BUT finding himself alone before Felias, Bito and Galve, who were armed as they were supposed to be being police officers, could not make a move then. This prompted accused Jesus G. Ruiz to leave hurriedly in his green pick-up for town, and minutes later came back with deceased Inutan and Dumangcas, accused Guno, Zarcas, and Maunes, Jr. Be it remembered that accused Jesus G. Ruiz left Talisay after being called 'abusador' by Bito, and to top it all, after he was challenged by Bito to a draw, as testified to by him. So, the only rational

conclusion consistent with the natural order of things and the experience of man is that accused Jesus G. Ruiz, in his second going to Talisay, this time in company with Inutan, Dumangcas, Guno, Zarcas, and Maunes, Jr. was hell-bent for a showdown with Bito.

SO, it was not a surprising thing, in the considered opinion of the Court, that upon accused Jesus G. Ruiz' second arrival in Talisay minutes after he was called by Bito 'abusador,' and was challenged by the latter to a draw, this time in company with Inutan, Dumangcas, Guno, Zarcas, and Maunes, Jr., all hell broke loose all of a sudden." [44]

From the foregoing facts, it is clear that there was neither treachery nor evident premeditation.

Evident premeditation was not present in the case at bar because there was no "sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act." [45]

As borne by the record, the accused Ruiz was called an "abusador" and was challenged to "a draw" by Bito at around 8:30 o'clock in the evening. The shooting took place at about 9:00 o'clock that same night or after a half hour had elapsed. There was not sufficient time for the two accused to coolly and serenely think and deliberate on the meaning and the consequences of what they planned to do. One half hour is not long enough for them to reflect and deliberate on the crime they planned to commit.

The attack on the policemen by Jesus G. Ruiz and Alfredo Guno was not sudden. Moreover, there was already a previous altercation between the policemen on the one hand, and the two accused and their companions on the other hand. A heated exchange of words had taken place between Sgt. Bito and the accused Jesus G. Ruiz over the parking of the police jeep in front of the VISLU office. When the accused, Jesus G. Ruiz, and his companions returned from the poblacion, the accused Alfredo Guno, Antonio Zarcas, Jesus Maunes, Jr. and Romeo Dumangcas were riding in the same pick-up. They stopped in front of the VISLU office, stepped down from the pick-up, and took different positions. Alfredo Guno went to a truck near Libertad and Dumangcas, together with the others, went to the VISLU office. The accused, Jesus G. Ruiz, went near the pick-up and shouted "Tell Sgt. Bito that I want to encounter him." The accused gave a warning to the policeman before the former opened fire. In fact, Sgt. Bito was able to return the fire. The policemen could seek cover and fire back. It was a shoot-out, plain and simple, between the policemen on the one hand, and the two accused and their companions on the other hand.

From the facts found by the trial court, it is evident that the two accused did not employ means to commit the crime without risk to themselves.

Treachery is present when the assault was sudden and unexpected and the victim did not have the slightest opportunity to defend himself. [46]

There was no abuse of superior strength. The number of persons who shot at the policemen did not greatly outnumber the victims. Moreover, the incident was a shoot-out where the protagonists had equal opportunity to defend themselves.

There is no basis for the award of moral and exemplary damages and expenses of litigation.

WHEREFORE, the decision reviewed is modified in that the two accused, Jesus G. Ruiz and Alfredo Guno, are hereby declared guilty of the crimes of homicide and frustrated homicide with the mitigating circumstance of immediate vindication of a grave offense. Hence, the penalties for the crimes committed should be imposed in the minimum periods.

Applying the Indeterminate Sentence Law, as amended, the following principal penalties should be imposed upon each of the accused:

In Criminal Case No. 3323 for homicide - to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as its maximum.

In Criminal Case No. 3324 for frustrated homicide - to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor as maximum.

The accused Jesus G. Ruiz and Alfredo Bito are ordered, jointly and severally, to indemnify the heirs of the deceased Alfredo Bito the sum of P12,000.00 and to indemnify, jointly and severally, the offended party, Amado Felias, the sum of P10,000.00 as actual damages. Costs against both accused.

SO ORDERED.

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

Teehankee, J., took no part.

Aquino and Antonio JJ., in the result.

[1] Rollo, pp. 170-173.

[2] Rollo, p. 56.

[3] Rollo, pp. 54-55.

[4] Appellee's Brief, pp. 4-13, Rollo, p. 279.

[5] Lower Court's decision, pp. 52-57, Rollo, pp. 108-113.

[6] Rollo, pp. 117-20.

[7] Brief for the Accused Jesus G. Ruiz, p. 2, p. 235.

[8] Brief for the Accused Alfredo Guno, pp. 1-2, Rollo, p. 262.

[9] Appellee's Brief, pp. 13-15, Rollo, p. 279.

[10] Ibid., p. 16

[11] Exhibit "L", par. B.

[12] T.s.n., pp. 75-76, June 2, 1967.

[13] Exhibit "K-4".

[14] T.s.n., p. 79, June 2, 1967.

[15] Brief for Accused, Jesus G. Ruiz, p. 14, Rollo, p. 235.

[16] People v. Constantino, L-23558, Aug. 10, 1967, 20 SCRA 940-941; People v. Cuadra, L-27973, Oct. 23, 1978, 85 SCRA 576.

[17] People v. Villalba, L-17243, Aug. 23, 1966, 17 SCRA 948.

[18] Brief for Accused Jesus G. Ruiz, p. 10, Supra.

- [19] Exhibit "L", par. B; T.s.n., pp. 75-76, June 2 1967.
- [20] Brief for Accused Jesus G. Ruiz, p. 11, Supra.
- [21] T.s.n., p. 109, July 20, 1967.
- [22] T.s.n., p. 17, June 6, 1967.
- [23] Brief for Accused Jesus G. Ruiz, pp. 19-23, Rollo, supra.
- [24] T.s.n., pp. 11-12, Nov. 28, 1968.
- [25] L-17531, Nov. 30, 1962, 6 SCRA 830, 835.
- [26] U.S. v. Dodwell, et al., 11 Phil 4; People v. Noble, 77 Phil 93.
- [27] Brief of the Appellee, p. 28, Rollo, p. 279.
- [28] Brief for accused Alfredo Guno, p. 34, Rollo, p. 262.
- [29] T.s.n., pp. 23-24, Feb. 24, 1967.
- [30] T.s.n., pp. 15-16, June 6, 1967.
- [31] T.s.n., p. 16, Aug. 1, 1967.
- [32] People v. Refuerzo, 82 Phil 576.
- [33] People v. Dasig, et al., 93 Phil 618.
- [34] Ibid.
- [35] Brief for Accused Guno, p. 37, Rollo, supra; Reply Brief for Accused Guno, p. 8, Rollo, p. 308.
- [36] Reply Brief for Accused, pp. 7-8, Rollo, pp. 307-308.
- [37] Ibid., p. 8.
- [38] People v. Roncal, L-26857-58, 79 SCRA 509.
- [39] Lower court's decision pp. 90-91, Rollo, pp. 146-147.
- [40] US v. Gil, 13 Phil 330.
- [41] People v. Angeles, L-23304, May 20, 1969; People v. Bautista, L-23303, May 20, 1969, 28 SCRA 184; People v. Pareja, L-21937, Nov. 29, 1969, 30 SCRA 693.
- [42] Brief for Accused Guno, p. 40, Rollo, supra.
- [43] Brief for Appellee, p. 41, Rollo, supra.
- [44] Sentence, Rollo, pp. 136-139.
- [45] People v. Mendoza, 91 Phil 58; People v. Roncal, L-26857-58, Oct. 21, 1977, 79 SCRA 509.
- [46] People vs. Plateras, L-37162, May 30, 1970, 83 SCRA 401.

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