

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. MARLO CANIAL Y ALIMON, ALFREDO EDWARDS Y CONTRERAS, AND JANET CLEMENTE Y HERNANDEZ, DEFENDANTS.

G.R. Nos. L-31042-31043. August 18, 1972

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Automatic review of the decision of the Circuit Criminal Court of Manila in CCC-VI-234, 235 and 236, imposing upon each of accused Marlo Canial y Alimon, Alfredo Edwards y Contreras, and Janet Clemente y Hernandez three death penalties, and ordering them, jointly and severally, to indemnify each set of the respective heirs of Benjamin Galang, Irineo Navasca and Zosimo Felarca in the amount of P12,000.00 as moral damages, and to pay the costs.

It appears that at about 9 o'clock in the evening of April 29, 1969, a shooting incident took place at Elias street, Sta. Cruz, Manila, resulting in death to Benjamin (Totoy) Galang, Irineo (Erning) Navasca, and Zosimo Felarca. On May 27, 1969, three separate informations for murder were filed in the Circuit Criminal Court of Manila charging Marlo Canial, Alfredo Edwards, Janet Clemente and Francisco Sevilla with having conspired and confederated in the shooting of the abovenamed persons, which was allegedly attended with evident premeditation, treachery and use of motor vehicle. Arraigned, the accused entered pleas of not guilty. Upon agreement by the parties, the three cases were jointly tried.

The prosecution tried to establish its case through the testimonies of its witnesses.

LEONARDO FLORES declared that at about 8 o'clock in the evening of April 29, 1969, a white Toyota car bearing five passengers stopped in front of the residence of Dolores Hernandez in Elias, Sta. Cruz, Manila, where a party was then being held. The passengers - Marlo Canial, Alfredo Edwards, Francisco Sevilla, Janet Clemente and Clarita Divina[1] - got out of the car and went inside the house. Later, he saw them come out. The witness was then at Aling Anding's store across the street drinking (presumably liquor) with Totoy Galang, Romy Dalusong, one Jimenez and Toning Langis.[2] As he was called by one Vicente Lladoc who was with Canial's group, he crossed the street and talked to Clarita. Clarita told that Chit, the wife of a certain "Junior Ipis", was jealous of her and saying bad things against her. While they were thus conversing, one Momoy[3] arrived whom Clarita confronted with - "Why are your relatives like that? " At that instance, Janet Clemente, who was standing with her three companions near the car, addressed Clarita: "Katak ka nang katak. Sandali na lang". (You are always talking. Just a little more time.)[4]

Then, he saw Janet pointing to Canial and Edwards the houses of Juancho Rodrigo, Chit, Totoy, Romy, and the persons who were then standing at the street corner. Canial and Edwards said nothing, but Canial went at the back of the car, took a paper bag from the baggage compartment and placed it inside the car near the driver's seat. He noticed the handle of a long firearm protruding from the paper bag.[5]

His wife came and told him to go home, so he left the group. But when he had moved about 15 meters away, he

heard gunfire. He turned his head and saw Erning Navasca sprawled on the middle of the street near the parked car. He went behind an electric post and from there he saw Totoy Galang grappling with Edwards for possession of a gun.[6] Then, he heard gun report and Totoy Galang fell to the ground.[7] Janet, who was then standing near the wall, told Edwards, "Iyan pa ang isa dumarating" (There is another one coming), referring to Zosimo Felarca who was running toward the car. Edwards aimed at Felarca, shot him once and hit him.[8] He saw Canial kick the body of Navasca, then shot it with a long gun. Thereafter, Canial boarded the car and left with Janet and his two companions,[9] but not before he had fired a volley of shots at the house of Jockey Rodrigo.

CARLOS BOLANTIS testified that at about 8 o'clock in the evening of April 29, 1969, he was resting inside the "bahay kubo" built at the corner of Elias and Balaguer streets when a white car with five passengers arrived. The occupants of the car were Clarita Divina and accused Marlo Canial, Alfredo Edwards, Francisco Sevilla and Janet Clemente. The two women alighted first and went up the house of Aling Loleng (Dolores Hernandez) followed later by the driver of the car.[10] Later, one of the men (Canial) came down, went behind the car, got something from its baggage compartment and placed it at the front seat.[11]

After a while, Janet and Edwards came down from the house and talked to Canial. Then, he saw Janet pointing to his two companions the house where Juancho Rodrigo, Chit, Romy and Totoy live. Canial thereafter moved around the car and went near the driver's seat. At this point, he noticed Totoy Galang and another man walking towards the parked car. After the other man (Erning Navasca) had passed the door of the car, he turned back and a gunshot was heard. He saw Erning recoiled. He then ran towards the yard in front of the house of Aling Loleng and lay flat on his stomach under a G.I. iron sheet supported by two drums.[12] He saw Totoy Galang leaning on the right side of the car, his two hands and head inside the vehicle. Then, when the shot rang coming from the car, Totoy withdrew. Edwards came out of the car and shot Totoy who fell face down Janet, who was then leaning against the wall of the yard, told Edwards - "Ayon pa ang isa" (There is another one).[13] Edwards fired at somebody at the rear of the car, and Zosimo Felarca fell.[14] He saw Canial went around the car, and fired at the house of Jockey Rodrigo. Janet then said to Canial, "Tama na darling. Patay na." (That is enough, darling. He is already dead.) Canial fired a few more rounds of bullets, then returned to the car and it sped off, with Janet and Edwards inside.

ROMEO DALUSONG narrated the incident as follows: He was standing behind the parked car watching basketball that evening of April 29, 1969, when he heard Janet Clemente saying, "That is Romeo." He was about to go home when he met Totoy and Erning. Then, he heard gunshots. He dropped to his stomach. When he made a move to stand, somebody poked a gun at him, so he remained flat on the ground.[15] He was able to pick up a piece of wood and threw it at the car hitting the rear mirror. Thus, he was able to stand and run and hid behind the drum about 5 meters away from the car. While he was behind the drum, somebody came out of the car and fired at him; it was Edwards. Then, he saw Edwards aiming his gun at Felarca who was running towards the car, and Felarca was hit.[16]

EDUARDO MENESES testified for the prosecution as follows: He was drinking with Erning Navasca and a certain Ben in a house on Karapatan street that evening of April 29, 1969, when Totoy Galang came.[17] Totoy talked to Erning, then the two left. They came back after a while only to leave again. When Erning failed to return after about 10 minutes, he went out to look for him.[18] He found Erning in Elias street standing by a white car talking to the driver. So, he approached the car together with Zosimo Felarca. But when they were almost behind the vehicle, somebody opened its door and he heard gun reports. He ran and hid himself behind the drums along the road.[19] And, he heard someone said, "There, behind the drums, there is somebody in white." The drums were shot at, and the person who fired the gun was Francisco Sevilla. After a while, he heard an unidentified female voice saying, "That is enough, let us go." [20]

ROGELIO BONIFACIO declared that at about 3 o'clock in the afternoon of April 27, 1969, he saw Janet Clemente in Karapatan street, riding in a white car with Marlo Canial, Alfredo Edwards and Francisco Sevilla.[21] Canial inquired for the whereabouts of Totoy Galang, and he gave the information that Galang was at the racetrack.[22] Then, they talked about Junior Ipis and his wife, and Janet remarked, "p * * * i * * * nila. Inaagrabio nila ang familia ko. Baka hindi sila tatagal." (s * * * o * * * b * * * They are oppressing my family. They may not last.) He relayed to Totoy Galang and "Junior Ipis" Janet and Canila's inquiries, and the two wondered, "Bakit kaya? (What could it be?) [23]

FLORENCIO SAN MIGUEL, alias "Junior Ipis", gave the alleged motive behind the shooting incident. He declared that for about three months, he carried on intimate relations with Clarita Divina; that his wife Chit discovered the affair, so he decided to put an end to it; that four days before April 29, 1969, Clarita's mother and sister (Janet) threatened him that if he would continue living with his wife, they would kill him, his friends and relatives;[24] that Benjamin Galang, Erning Navasca, and Zosimo Felarca were his friends.[25]

JESUS VALDEZ testified that in the evening of April 25, 1969, he was in his house with Benjamin Galang, Ramon Hernandez, Romeo Dalusong, Hilario Gutalban and Renato Tayag. Galang wanted Ramon Hernandez, a nephew of Dolores Hernandez (Janet's mother), to apologize to him (the witness) for having made ugly remarks to his sister over the telephone. Ramon refused to do so, and there was an exchange of heated words between him and Galang.[26] Provoked, Galang slapped Hernandez.[27] Thereupon, Dalusong brought Hernandez down the house and took him home. Witness and Galang followed them. At the corner of Karapatan and Balaguer streets, Hernandez met Anita (a sister of Dolores Hernandez and aunt of Ramon) and they conversed in the Bicol dialect. This angered Galang who did not understand the conversation and said: "Akala ninyo kung sino kayo dito. Palabasin ninyo ang mga lalaki ninyo at haharapin ko." (You think you are people of importance in this place. Send out your menfolk and I am going to face them.)"[28]

The prosecution also presented the testimonies of the forensic chemist of the Central Investigation Laboratory of the Manila Police Department to establish that paraffin tests made on the hands of the victims of the shooting incident on April 29, 1969 found them negative for powder burns. Tests on the bullet holes in the garment of Benjamin Galang also produced negative result, indicating that he must have been more than one yard away from his assailant or assailants.[29]

The medico legal officers of the MPD also affirmed on the stand the result of their examination of the bodies of the three victims and the causes of their death.

For the defense, ALFREDO EDWARDS was allowed to take the witness stand and he testified that in the evening of April 29, 1969, he and Marlo Canial attended the birthday party of Violeta Hernandez, Janet's younger sister; that after staying in their house for about half an hour, they agreed to attend the wake of a deceased relative of Janet;[30] that he, Canial and Lladoc went down the house and boarded the car; that while waiting for Janet who was still bidding goodbye to the mother,[31] about six persons with guns approached the car;[32] that one opened the door of the car on the right side and pulled out Lladoc, while another person pulled Canial out on the left side; that when the man on the right side was trying to get him out, he grabbed the man's .45 cal. gun;[33] that while they were grappling for possession of the gun, he was able to pull the trigger successively to save himself; that the man was hit and fell near him.[34] The witness further declared that as there were other persons firing at them, he fired back with the gun he had wrested from the fallen man;[35] that when he was about to board the car, he noticed a man hiding behind a drum, so he took cover and fired at him,[36] that he did not notice where Janet was, it was only when they were about to leave that he saw Janet at the backseat of the car.[37]

Accused MARLO CANIAL testified that on April 27, 1969, he was with Francisco Sevilla, Alfredo Edwards, and

Janet Clemente when he met Rogelio Bonifacio; that Janet talked to Rogelio, but he could not remember what the topic of conversation was;[38] that he attended the birthday party of the sister of Janet in the evening of April 29, 1969; that they first dropped by the house of the aunt of Janet because he and Edwards did not know how to go to the house of Janet's mother; that with Janet and Clarita who rode with them, they went to the house of Janet's mother in Elias street;[39] that they stayed in the house for only about half an hour; that they agreed to attend the wake of a dead relative of Janet, so he, Edwards, and Vicente Lladoc went down the house and boarded the car; that he sat at the wheels, Edwards was in the middle, and Lladoc was seated at the right side on the front seat of the car;[40] that while they were waiting for Janet to come down, a group armed men approached the car and, surrounded them; that one of the men opened the door at the left side, held him by the collar and tried to pull him out, pointing a gun at his head and saying, "p * * * i * * * ninyo. Mamamatay kayo ngayon." (si * * * o * * * b * * * You are going to die). To which remark he answered, "Maawa po kayo sa amin. Bisita lang po kami dito." (Have pity on us. We are only visitors here.)

Canial declared that he had then a gun beside him, and since he was not certain who was going to survive, he took his gun and fired first; that he could not remember how many times he shot the man who pointed a gun at him;[41] that when he ran out of bullet, he took a carbine from the baggage compartment of the car and fired it, since there were many who were shooting at them;[42] that after firing the carbine, he placed it back inside the car. He admitted on cross examination that both the .45 caliber pistol and the carbine that he used were unlicensed;[43] that he had not met Navasca or Galang before, and he did not know why those people would gang up on them that night; and that when they left Elias street, they proceeded to Makati, then went to Baguio and finally holed up in Tarlac.[44]

Accused FRANCISCO SEVILLA testifying for his defense denied being with the group of Canial in the evening of April 29, 1969. He declared that he was then in a repair shop in Makati, Rizal, drinking with some friends;[45] that when he learned the following morning that he was being implicated in the shooting that took place in Elias street, he tried to contact Captain Sto. Tomas of the Manila Police Department, and when he failed to locate him, he went into hiding in Nueva Ecija; that he surrendered to the police on May 22, 1969, upon learning of the shoot-to-kill order issued in the case. He admitted, however, that he was with Canial and Janet on April 27, 1969, when they went to the house of a relative of Janet in Dimasalang street.[46]

The testimony of Sevilla was corroborated by NESTOR SORIANO, owner of the Saguitsit Motor Shop in Makati, who declared that Sevilla was in his shop from 3:30 to 9:00 in the evening of April 29, 1969.[47]

VICENTE LLADOC testified that in the evening of April 29, 1969, a birthday party was being held in the house of Dolores Hernandez; that Canial and Edwards were among the visitors; that while they were in the house, it was agreed that they would pay their respect to a dead relative, so he, Canial and Edwards went down and rode in the parked car; that Canial seated himself in the driver's seat, Edwards sat in the middle, while he sat at the right side of the front seat; that while they were waiting for Janet and Clarita who were supposed to go with them, a group of men came toward the car;[48] that two of the men came near, Totoy Galang on the right side and Erning Navasca on the left; that Totoy poked a gun at him, while Navasca pointed a gun at the head of Canial, saying, "Kung sino and may baril sa inyo diyan, lumabas at papatayin ko" (whoever has gun among you, come out, and I'll kill you); that Totoy also said, "Magdasal na kayo at wala na kayong ligtas" (You better say your prayers because you have no more escape); that Canial answered, "Wala po, maawa po kayo sa amin, hindi po naman kami nangaano; kami ho ay bisita lang dito" (Have pity on us, sir; we are not doing anything, we are only visitors here); that Totoy then grabbed him by the shirt and pulled him out of the car; that he was dragged and almost dumped into the canal; that when he got up, he ran into the house of Dolores Hernandez.[49] Witness admitted that he did not see the actual shooting of Galang and Navasca.

Accused Janet Clemente did not take the witness stand, counsel resting her case with the formal offer of the testimonies of Canial, Edwards, Lladoc, Sevilla, and prosecution witness Florencio San Miguel.[50]

On July 12, 1969, Judge Manuel R. Pamaran rendered judgment finding accused Marlo Canial, Alfredo Edwards and Janet Clemente guilty of murder for the killing of Benjamin Galang, Ireneo Navasca and Zosimo Felarca, and sentenced them in each of the three cases (Crim. Cases Nos. CC-VI-234, 235 and 236) to the supreme penalty of death and to indemnify each set of heirs of the victims in the sum of P12,000.00 and to pay them P20,000.00 by way of moral damages, and the costs. For lack of sufficient evidence against him, accused Francisco Sevilla was acquitted.

The trial Court considered the killing as qualified by the circumstance of evident premeditation, and aggravated by abuse of superior strength and use of a motor vehicle. In addition, it found that the accused conspired and cooperated with one another in committing the crime.

Appellants Canial and Edwards, while admitting the slaying, pleaded the justifying circumstance of self-defense. The constant jurisprudence is that, in such circumstances, the burden of proof lies on the accused to establish by clear and convincing evidence the existence of the integrating elements of their defense,[51] i.e., illegal aggression, reasonable necessity of the means employed to repel the attack, and lack of provocation on their part. (Art. II, par. 1, Revised Penal Code).

We agree with the trial Court that the claim of self-defense was not adequately established. None of the accused suffered any wounds, although they were allegedly surrounded by the victims and the allegedly armed companions of the latter; the hands of the deceased were found by the Police forensic experts negative of powder burns, and so were the bullet holes in the garment of the late Galang, indicating that he must have been shot at a distance of one yard or more by his assailants (ante, p. 425).

On the other hand, going over the evidence adduced in these cases, we find no sufficient proof to sustain a finding that the three accused appellants Marlo Canial, Alfredo Edwards and Janet Clemente are guilty of premeditated murder.

It has been shown, through the testimonies of both prosecution and defense witnesses, that Janet and her sister Clarita arrived at their mother's place in a white Toyota car with Canial and Edwards to attend a birthday party; that after staying in the house for a while, Canial, Edwards and Vicente Lladoc came out and sat at the front seat of the parked car; that there were then men standing and drinking at the store in the street corner; that some of the men walked towards the car, Galang going to the left side of the vehicle where Canial was seated, while Navasca took to the right side.

However, these men were never able to come close to the vehicle much less talk to its occupants, as the defense would like to impress upon the Court. The deceased were coming from the opposite direction and their approach was properly noticed by the trio who were seated inside the car. It is likewise admitted that Canial had then an unlicensed .45 cal. pistol placed on the seat beside him. Certainly, a man who carries with him unlicensed firearms, including a carbine, would not have allowed himself to become a sitting duck to any group of supposedly armed men. Canial and his group, who must have been accustomed to violent encounters with armed persons (witness the presence of unlicensed pistol and carbine in the car), would have readily sensed that the approaching men were not there for a friendly talk. So, before the men could reach them, Canial must have gotten out of the car, as testified for the prosecution, and opened fire at Navasca who was within his direct view. This is clear from the downward direction or trajectory path of the two wounds sustained by Navasca on the left chest almost close to each other,[52] indicating that his assailant was at his front, and the absence of gunpowder around the bullet holes, showing that the gunwielder was more than one yard away when the wounds were inflicted. After

Navasca fell face down, and Canial had emptied his pistol, he went to the back of the car and took the carbine from the baggage compartment. He shot the sprawled Navasca once more, hitting him at the left pre-auricular region (near the cheekbone), the bullet coming out on the right side of the neck. The direction of this wound indicates that the gunwielder was situated overlooking the body of the victim.

It is, of course, understandable that Edwards was not able to fire at Galang at once and he had to grapple first with the latter for possession of his (Edwards) gun. It must be remembered that this accused was seated at the middle with Canial and Lladoc at his sides. In fact, Lladoc had to get out of the car and run. Galang, who appears from the records to be an alert, aggressive person, must have tried to grab Edwards' gun before the latter could make use of it. Nevertheless, after a scuffle, Edwards was able to rid himself of Galang and shot him. This is evident from the absence of gunpowder burns on the bullet hole in Galang's garment, establishing that Edwards was more than one yard away then he fired at Galang. Then, after firing more shots at Galang,[53] Edwards shot Felarca who was coming from behind the vehicle.

Considering the proved circumstances, the incident appears to be more of a chance encounter between the two groups rather than the result of a preconceived plan of the accused to go on a killing rampage on the particular occasion. Note that Canial, Edwards and Lladoc were seated in the car ready to leave for another place when the victims came. That Canial and Edwards did not anticipate any untoward Incident that night may be gleaned from the fact that they had the unarmed Lladoc with them, who was even near the door, while Edwards was seated in the middle which rendered him less free to move. Then, other than the uncorroborated declaration of witness Bonifacio that two days before the incident, Canial was making inquiries as to the whereabouts of Galang, there is no record that the two Canial and Galang) really knew each other or that there was a standing feud between them to warrant a conclusion that the accused purposely sought confrontation with the victims that night. The simultaneous shooting of Navasca and Galang by Canial and Edwards was a reaction drawn by the sight of the men closing in on them.

Janet's alleged grievances against Florencio San Miguel alias "Junior Ipi", for having abandoned her sister, or against Galang, for having slapped a relative, do not prove anything. Assuming the truth of San Miguel's declaration that four days before April 29, 1969, Janet did threaten to kill him, his relatives and friends, or that she really uttered in the presence of Bonifacio the veiled threat that, "they (presumably referring to San Miguel or Galang) may not last", such threats alone do not establish premeditation nor conspiracy among the accused to commit the crimes. Unless it is shown that murder was planned, mere threats to kill do not amount to evident premeditation.[54] For premeditation, as aggravating circumstance, requires direct proof that the crime was planned, that the accused clung to such determination to commit the offense, and that sufficient time had elapsed from the time of planning to its fulfillment for him to dispassionately consider and accept its consequences.[55] In fact, it has been held that even where there was actual plan to kill, if the killing resulted in death to persons other than the intended victims, the circumstance of evident premeditation can not be considered.[56]

Since the encounter that led to the killings was casual and not sought, there can be no premeditation. For, as pointed out by counsel de oficio for appellant Edwards (former Justice Conrado V. Sanchez) in his brilliant briefs, "[T]he fact of the matter is that had the three - Benjamin Galang, Ernesto Navasca and Zosimo Felarca - not approached the car that night (and it may be added, from the left, the right, and the back), no killing could have happened."

Because there is no proof that appellants expected to meet the deceased on the particular occasion, or had reason to anticipate that they would approach the car wherein Canial, Edwards and Lladoc were crowded together in the front seat, it was error to declare the existence of evident premeditation.

This Court, through Mr. Justice Fernando, in the recent case of *People vs. Torejas* (L-29935, Jan 31, 1972, 43 SCRA 158, 169), expressed the rule on evident premeditation as supported by abundant jurisprudence, to be as follows:

"In other words, this circumstance can be taken into account only when there had been a cold and a deep meditation, and a tenacious persistence in the accomplishment of the criminal act. There must be 'an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what they had planned to do, an interval long enough for (the) conscience and better judgment to overcome (the) evil desire and scheme.' Where 'there was no direct evidence of the planning or preparation' it cannot be said to exist 'since it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious untoward acts evincing determination to commit the crime. It is not "premeditation" merely; it is "evident premeditation." ' It follows then that if at most, the accused was heard to express a resolve to commit a crime without any evidence that he did seek out the deceased to kill him, it cannot be said that the crime was so attended, as it must 'be well-defined.' It must be remembered in this connection that to justify such a finding, it is not enough that there be a threat on the life of the victim; it must be proved that the accused not only had decided to commit the crime but also, that the decision was the result of meditation, calculation and reflection. Nor is it to be forgotten that premeditation, as in the case of any other aggravating circumstance, must be duly proved. Otherwise stated, the evidence must be such as to dispel any reasonable doubt as to its existence. The same quantum as is necessary to establish the crime is required; that degree of clarity is indispensable."

It may be added that the fortuitous and unexpected character of the encounter in question likewise rules out the idea of its having been the effect of a conspiracy. The peppering of the house of San Miguel with shots fired by Canial alone and after the three victims had lost their lives, is no indication of concerted action on the part of the three appellants from which conspiracy can be legitimately inferred.

In the cases at bar, no evidence whatsoever has been presented to show that on account of her grievances, Janet had planned with her two other co-accused to kill Galang, Navasca and Felarca, or anybody for that matter or that they clung to that plot, and went to Elias street that evening of April 29, 1969, to carry out such a plan. The presence alone of unlicensed guns in the car does not establish any preconceived arrangement to kill anybody that particular evening; the guns could have been there for a variety of reasons, such as habit or precaution, not necessarily to commit murder. The fact remains that Canial, Edwards and Lladoc (who had nothing to do with the shooting) boarded the car to go somewhere else, and that it was while they were waiting for Janet to join them that the victims walked towards the car. The accused evidently did not seek the confrontation. And in this regard, it may be noted that not even one of the prosecution witnesses was able to convincingly place Janet or to testify on her participation during the shooting of Galang or Navasca. For according to defense witnesses, she was still inside the house when Galang and Navasca fell victims to Canial and Edwards' guns.

It may be true that Janet pointed to Edwards the deceased Felarca, who rushed to the aid of his friends, despite the gunfire, from behind the car of the accused, and that Edwards promptly shot the latter. But considering the situation that Edwards had already hit Navasca, and Canial on the other side of the car was using and firing a carbine, it is unlikely that Janet's statement - "Iyan pa and isa dumarating" - was taken and obeyed by Edwards as an order to shoot. From all indications, Edwards then did not need prodding or instigation from anybody to fire at anyone who would rush toward him, as Felarca had imprudently done. Janet's statement partook more of a warning to Edwards of an impending threat than an inducement to shoot.

For the utterances of an accused to make him a principal by inducement, it is necessary that the words be of such nature and uttered in such a manner as to become the determining cause of the crime, and that the inducement precisely was intended to serve such purpose.[57] In other words, the inciting words must have great dominance and influence over the person who acts; they ought to be direct and as efficacious or powerful as physical or moral

coercion or violence itself.[58] Thus, where the alleged inducement to commit the crime was no longer necessary to incite the assailant, then the utterer can not be held accountable for the crime as a principal by inducement.[59] Her statement do not, therefore, make Janet Clemente incur in criminal liability for the killings effected by her co-accused.

The foregoing conclusion renders irrelevant the claim of Janet Clemente that she was deprived of her right to fair trial; that she was denied, opportunity in the court below to present her evidence and, therefore, the decision under consideration as to her is a nullity. Moreover, such claim is devoid of merit.

The records bear out the fact that during the entire proceedings, she was properly represented by counsel de parte; that her said counsel cross-examined the prosecution witnesses, and like her other co-accused, she had every opportunity to present proof on her behalf. That her counsel, perhaps as part of their strategy; desisted from adducing evidence and relied merely upon the strength or weakness of the proof thus presented by both parties, can not be taken against the regularity of the proceedings in the lower court, much less against the validity of the decision of the trial judge. It is elementary that a party is bound by the actions of his counsel in the conduct of a case that he can not be heard later to complain that the result might have been different had he proceeded differently.[60] A client, in fact, has to bear the adverse consequences of the mistakes,[61] even of the negligence[62] of his counsel.

Neither can we sustain the trial court's consideration of the use of motor vehicle as an aggravating circumstance. Under Article 14, paragraph 20 of the Revised Penal Code, motor vehicle would be an aggravating circumstance if the crime was committed by means thereof. There is no question that in these cases, the arrival and departure of the accused in a white Toyota car had nothing to do whatsoever to the slaying of the victims.

The court below, however, properly considered abuse of superior strength to have aggravated the crime. The use by the accused, particularly Canial, of firearms against the deceased who were found unarmed, gave to the former that element of superiority which they took advantage of to prevent any retaliation or defense from their adversaries. The claim of the accused that the deceased were also armed and with companions has not been fully substantiated. What has been proved is that the deceased Galang, Navasca and Felarca never fired guns and no such weapons were found with them.

WHEREFORE, the decision of the trial court is modified as follows:

- (a) On ground of reasonable doubt, Janet Clemente is acquitted of the charges against her;
- (b) Accused Mario Canial is found guilty of homicide for the killing of Irineo Navasca, attended by the aggravating circumstance of abuse of superior strength, which is not offset by any mitigating circumstance, and he is hereby sentenced to the indeterminate penalty of from 10 years and 1 day of prison mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum; to indemnify the heirs of Irineo Navasca in the sum of P12,000.00 and to pay them moral damages in the amount of P10,000.00; and 1/2 of the cost, together with all the accessory penalties of the law;
- (c) Accused Alfredo Edwards is found to have caused the death of Benjamin Galang and Zosimo Felarca. However, said accused, having died pending this appeal, on July 19, 1972, at the National Penitentiary, his criminal liability for the wrongs he had committed is declared to have been, legally extinguished.

SO ORDERED.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

[1] The latter two are daughters of Dolores Hernandez.

[2] p. 41, hearing of June 23, 1969.

[3] A relative of Chit.

[4] pp. 43-44, t.s.n., hearing of June 23, 1969.

[5] p. 44, id.

[6] p. 45, id.

[7] p. 47, id.

[8] p. 46, id.

[9] p. 48, id.

[10] p. 60 t.s.n. hearing of June 23, 1969.

[11] p. 61, id.

[12] p. 63, id.

[13] p. 65, id.

[14] p. 64, id.

[15] p. 83, id.

[16] p. 84, id.

[17] pp. 5-6, t.s.n., hearing of June 25, 1969.

[18] p. 7, id.

[19] p. 9, id.

[20] pp. 10, 14, id.

[21] p. 29, t.s.n., hearing of June 23, 1969.

[22] p. 30, id.

[23] p. 33, id.

[24] p. 91, id.

[25] p. 93, id.

[26] p. 63, id.

[27] p. 65, id.

[28] p. 66, t.s.n., hearing of June 23, 1969.

[29] pp. 1-2, t.s.n., hearing of June 25, 1969.

[30] p. 120, hearing of June 26, 1969.

[31] p. 129, id.

- [32] p. 121, id
- [33] p. 122, id.
- [34] p. 130, id.
- [35] p. 123, id.
- [36] p. 130. id.
- [37] p. 131, id.
- [38] pp. 156-157, id.
- [39] p. 158, t.s.n., hearing of June 26, 1969.
- [40] p. 159, id
- [41] p. 160, id.
- [42] p. 161, id.
- [43] p. 164, id.
- [44] p. 165, id.
- [45] p.134, id.
- [46] p. 136, id.
- [47] pp. 152-154, t.s.n., hearing of June 26, 1969.
- [48] pp. 143-144 id.
- [49] pp. 145, id.
- [50] p. 2, t.s.n., hearing of June 27, 1969.
- [51] *People vs. Ansoyon*, 75 Phil. 772; *People vs. Berio*, 59 Phil. 533; *People vs. Bauden*, 77 Phil. 105; *People vs. Talaboc*, L-25004, Oct. 31, 1969, 30 SCRA 57, and cases cited therein; also Ed. Note, 30 SCRA pp. 91-92.
- [52] Exhibits F and H.
- [53] Galang sustained two other wounds: one, entering at the left antero-lateral chest (back), coming out on the lower posterior chest, and another, with point of entry on the scalp, right occipital region and existing behind the right ear.
- [54] *People vs. Upao Moro*, L-6771, May 28, 1957; *People vs. Torrecampo*, L-5161, Sept. 7, 1953.
- [55] *People vs. Diokno*, 63 Phil. 601; *People vs. Carillo*, 77 Phil. 572; *People vs. Custodio*, 97 Phil. 698; *People vs. Mendova*, 100 Phil. 811; *People vs. Diva*, L-22946, April 29, 1968, 23 SCRA 332.
- [56] *People vs. Umali*, 96 Phil. 185.
- [57] *People vs. Castillo*, L-19238, July 26, 1966, 17 SCRA 721; *People vs. Gensola*, L-24491, Sept. 30, 1969, 29 SCRA 483.
- [58] *U.S. vs. Indanan*, 24 Phil. 203.

[59] *People vs. Castillo*, *supra*.

[60] *Isaac vs. Mendoza*, 89 Phil. 279; *Fernandez vs. Tan Tiong Tick*, L-15877, April 28, 1961, 1 SCRA 1138, citing *U.S. vs. Umali*, 15 Phil. 33; *Vivero vs. Santos*, 98 Phil. 500; *Talens vs. Chuakay & Co.*, L-10127, June 30, 1958.

[61] *Bello vs. Labong*, L-10788, April 30, 1959; *Inocando vs. Inocando*, 110 Phil. 266; *Heirs of Cabalag vs. Roxas y Cia.*, L-20011, Dec. 17, 1966, 18 SCRA 1099; *Ocampo vs. Caluag*, L-21113, April 27, 1967, 19 SCRA 971.

[62] *Beatriz vs. Cederia*, L-17703, Feb. 28, 1962, 14 SCRA 617; *Rivera vs. Vda. de Cruz*, L-21545, Nov. 27, 1968, 26 SCRA 58.

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