

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX REGALARIO Y VILLAGRACIA, CARLOS PABILLAR Y VILLON, JOSE QUINIKUITO Y MAGNATA, ROLANDO DE CHAVEZ Y MONTALBO, AUGURIO VILLA...

G.R. No. 101451. March 23, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

This is an appeal from the judgment of the Regional Trial Court of Lucena City, Branch 58, declaring accused-appellants guilty of murder in Criminal Case No. 565 thereof which was initiated by an information alleging --

"That on or about the 18th day of September, 1986, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and mutually helping one another, armed with a deadly weapon, with evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Menardo Garcia, thereby inflicting upon the latter (a) stab wound which caused his death."[1]

During their arraignment on October 28, 1986, appellants, with the exception of appellant Desembrana, entered a plea of not guilty.[2] However, before the prosecution rested its case, appellants Regalario and Pabillar changed their plea to guilty.[3] Appellant Desembrana was apprehended only on October 7, 1987 by elements of the Lucena City police for another offense,[4] and when separately arraigned for the case at bar on November 3, 1987, he pleaded not guilty.

After trial, appellants were found guilty of the offense charged and sentenced as follows:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused ALEX REGALARIO y VILLAGRACIA, CARLOS PABILLAR y VILLON, JOSE QUINIKUITO y MAGNATA, ROLANDO DE CHAVEZ y MONTALBO, AUGURIO VILLAGRACIA, JR. y ISABELO, and ALBERTO DESEMBRANA, guilty beyond reasonable doubt of the offense of Murder, as defined and penalized under Article 248 of the Revised Penal Code, and, considering the aggravating circumstance of abuse of superior strength which is not off set (sic) by any mitigating circumstance, hereby sentences said accused persons to each suffer the penalty of Reclusion Perpetua, to pay jointly and severally the heirs of Menardo Garcia the amount of Thirty Thousand (P30,000.00) pesos as indemnity, and to pay jointly and severally said heirs the amount of Twenty Three Thousand Three Hundred Eighty-one (P23,381.00) pesos, as funeral expenses and expenses incident to the prosecution of the accused, and to pay the costs."[5]

The judgment of conviction was promulgated in open court on January 17, 1991[6] and a copy thereof was received by appellants' former counsel, Atty. Revenito P. Caruruan, on January 18, 1991.[7] On January 31, 1991, within the 15-day reglementary period, appellants filed a motion for reconsideration which was denied by the trial court on February 22, 1991.[8] On March 4, 1991, appellants filed their notice of appeal which was denied due

course by the court a quo for having been filed out of time.[9] Nonetheless, in an order dated August 2, 1991, said court directed that the records of this case and the transcripts of the proceedings had therein be forwarded to this Court.[10]

The trial court thoroughly summarized its findings on the material facts of the case as follows:

"From the evidence, the Court finds that at about 9:00 o'clock in the evening of September 18, 1986, Menardo Garcia, herein victim, Glenda Osabal and Romano Padillo, all students of Quezon National High School, were walking in the grounds of the Quezon National High School in Lucena City after dismissal from classes on their way home. Outside the gate, as they neared the Division Office of the school, at the corner of Don Feliciano and General Lucban Streets, the six accused, namely: Alex Regalario, Carlos Pabillar, Rolando de Chavez, Jose Quiniquito, Augurio Villagrancia, Jr., and Alberto Desembrana, joined them. Menardo Garcia and Romano Padillo were then walking side by side while Glenda Osabal was walking ahead of them. Accused Carlos Pabillar talked to Menardo Garcia and asked the latter where the 'balisong' was. When Menardo Garcia answered that the 'balisong' was no longer in his possession, Carlos Pabillar boxed him and told his companions, the five other accused, 'tirahin na iyan' (roughly, attack him). At this point, Menardo Garcia ran towards Don Feliciano Street, chased by the six accused. About 50 meters away from the corner of Don Feliciano and General Lucban Streets, in front of the former residence of Ex-Mayor Mario L. Tagarao, the six accused overtook Menardo Garcia and, acting in unison, they ganged up on him and boxed him. With their number Menardo Garcia could just try to evade the blows. Then accused Rolando de Chavez was heard to have stated, 'Tarantado si Menardo, niloloko ako'. At this point accused Alex Regalario stabbed Menardo Garcia once with a fan knife locally known as 'beinte nueve' and hit him at the left side of his back. Despite being stabbed, the six accused, still acting in unison, continued boxing Menardo Garcia until they saw he was down and could no longer stand up. The six accused then hurriedly left the scene together. Romano Padillo, who was walking side by side with Menardo Garcia when the latter was initially confronted and boxed by accused Carlos Pabillar, followed the six accused chase (sic) Menardo Garcia along Don Feliciano Street and witnessed the attack on Menardo Garcia from 10 meters away. The scene was then well lighted by a mercury lamp on the post. When the six accused left the scene, Romano Padillo also left, fearing for his safety, and proceeded to the house of Menardo Garcia and reported the incident to his grandmother, Guida Rendon Panganiban. He accompanied the grandmother to the Quezon Memorial Hospital where they saw Menardo Garcia unconscious. Glenda Osabal, Menardo Garcia's sweetheart and one of his companions that fateful night, who was then walking ahead of the victim and Romano Padillo, heard people shouting and there was a commotion. When she looked behind, she saw the six accused chasing Menardo Garcia along Don Feliciano Street and she ran towards the direction they were running but could not catch up with them. The six accused caught up with Menardo Garcia in front of the gate of the house of former Mayor Mario L. Tagarao and she met the six accused already leaving hurriedly (sic) the scene and, under the light of the electric post and nearby houses illuminating the area and at a distance of about 5 meters, she recognized them. She then proceeded to where Menardo Garcia fell. She asked him what happened but he did not answer but only pointed to his bleeding side. He was trying to stand up but he fell back. When he lost consciousness, a teacher, one Mrs. Dimayuga, arrived and after verifying he was a student of the Quezon National High School, they carried him to a jeep and brought him to the Quezon Memorial Hospital. At the emergency room, Menardo Garcia regained consciousness and called Glenda Osabal and told her he loved her and when she asked for the identity of his assailants he mentioned one by the name of 'YULAC' and as he said this he was already gasping for breath and then he passed away. 'YULAC' is accused Carlos Pabillar, who was one of the two accused to enter a plea of guilty. The other accused who pleaded guilty was Alex Regalario, the one who stabbed the victim.

"Per Autopsy Report (Exhibit 'A') submitted by Dr. Carmelita Amat Laureano of the Quezon Memorial Hospital, who performed the autopsy on Menardo Garcia, external findings show 'stabbed (sic) wound, left, back, level of 8th rib directed upwards measuring 1.7 cm. x 17 cms.' and internal findings show:

'Massive blood clots in the thoracic cavity. Stabbed (sic) wound at the left back penetrated the inferior lobe,

and the inferior border of the superior lobe or the left lung and the base of the heart.

Penetration of the heart measures 3.5 x 5.5 cm.'

Cause of death was established to be shock due to massive internal hemorrhage due to stabbed (sic) wound at the left back penetrating the left lung and the heart. (Exhibits 'A' and 'B')

"P/Sgt. Eduardo Somera (now P/Lt.), then Chief of the Investigation Section of the Lucena City INP, investigated the stabbing incident that led to the death of Menardo Garcia. He summoned eyewitnesses Glenda Osabal and Romano Padillo in the morning of September 19, 1986 and took their statements. Said witnesses gave the names of two of the suspects, Alex Regalario and Carlos Pabillar. As accused Alex Regalario and Carlos Pabillar could not be found in their residences, the mother of Alex Regalario and the sister of Carlos Pabillar were questioned and information was given that said two accused could be found in Labo, Camarines Norte. That very same afternoon, P/Sgt. Somera and 5 to 6 other policemen proceeded to Labo, Camarines Norte where the two accused were arrested. When brought to the Lucena City police headquarters the following morning, they admitted having committed the crime and named their companions in the commission of the crime as Jose Quiniquito, Alberto Desembrana, Rolando de Chavez and Augurio Villagrancia, Jr. That very same morning, elements of the Lucena City INP arrested accused Jose Quiniquito at his given address at Short Cut, General Malvar Street, Lucena City. On September 27, 1986, accompanied by the father of Augurio Villagrancia, Jr., elements of the Lucena City INP led by P/Capt. Rolando Albacea and P/Sgt. Somera, arrested accused Augurio Villagrancia, Jr. and Rolando de Chavez at Sta. Elena, Camarines Norte. When arrested, the two accused readily admitted their participation in the crime.

"Sometime (o)n October 7, 1987, accused Alberto Desembrana was arrested by police authorities, together with other persons, for some other offense in Barangay Mayao, Lucena City. Verification of police records showed that Alberto Desembrana is the same person accused in this case and this Court was accordingly informed of his arrest." [11]

The defense version in effect confirms the foregoing factual findings but presents a variation on the details of the actual encounter, in this manner:

"On September 18, 1986, at about 9:00 o'clock in the evening, Menardo Garcia, the private offended party, was allegedly walking on his way home after his dismissal from his class at Quezon National High School, Lucena City with his girl friend, Glenda Osabal, and Romano Padillo, the victim's best friend and neighbor; when they were allegedly at the place near the Office of the Division of the City School, the accused-appellants, namely: Alex Regalario, Carlos Pabillar, Augurio Villagrancia, Jr., and Alberto Desembrana, allegedly joined them; Rolando de Chavez, one of the accused, allegedly would like to get the 'balisong' which he lent to the said victim in June 1986; Rolando de Chavez allegedly told Alex Regalario of his intention to get the said 'balisong' from Menardo Garcia, before the fatal incident took place; (a)t that time, Alex Regalario was with Carlos Pabillar; (c)oincident-ally, the said three accused, allegedly met the other three accused: Augurio Villagrancia, Jr., Jose Quiniquito and Alberto Desembrana who at the time were also at the gate of the Quezon National High School, to meet the girl friend of Alberto Desembrana; Alex Regalario upon seeing Menardo Garcia, asked for the 'balisong' of Rolando de Chavez, but Menardo Garcia answered back and uttered 'ba't ikaw ay pakialam, hindi naman sa iyo.' (why are you interested, it is not yours?); Carlos Pabillar, irked by the remark of Menardo Garcia, boxed him (Menardo Garcia) on the chest; (t)hen Menardo Garcia stepped back; Alex Regalario and Menardo Garcia grappled with each other; (w)hen they were separated Menardo Garcia ha(d) a stab wound on the left side above the waist of his body; (t)hen Menardo Garcia ran toward the direction of the house of the former Ex-Mayor (sic) Tagarao. (TSN June 7, 1989, pages 2-4, 5, 6, 7 and 8)" [12]

Appellants Regalario and Pabillar, who, as earlier stated, had changed their pleas from not guilty to guilty, invoked the circumstance that they were minors when the stabbing incident took place. Both of them presented evidence in order to avail of the mitigating circumstance of minority.

The court below, however, ruled that the evidence adduced by said appellants failed to establish their claim that they were minors when the crime was committed. Likewise, said court gave no credence to the testimonies and evidence presented by the defense and, as heretofore stated, rendered a verdict of guilty.

In their brief, appellants contend in substance that the lower court erred:

1. In rejecting the notice of appeal filed by the accused on the ground "that it was filed beyond the reglementary period;"
2. In accepting the plea of guilty of appellants Regalario and Pabillar when they were re-arraigned but were not apprised clearly and fully of the nature of the offense charged against them;
3. In not considering the testimonies of Rolando de Chavez, Augurio Villagrancia, Jr., Jose Quiniquito and Alberto Desembrana;
4. In relying on the testimonies of the two witnesses for the prosecution, instead of weighing the evidence adduced during the trial in favor of appellants that there was no conspiracy and the act of boxing and stabbing were independently committed by appellants Regalario and Pabillar;
5. In not considering the age of minority of appellants Regalario and Pabillar at the time of the commission of the crime; and
6. In not considering the financial standing of appellant's parents in the imposition of the award of indemnity, as well as the funeral and other expenses incidental to the prosecution of the case.

Appellants inceptively claim that the computation of the period of fifteen days wherein to file the notice of appeal "should be counted from February 23, 1991, not from date of the decision of said case." [13] The flaw in this argument is immediately apparent. Section 6, Rule 122 of the Rules of Court very clearly provides:

"Sec. 6. When appeal to be taken. - An appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his attorney."

As earlier observed, the records of this case show that the judgment of conviction was promulgated in open court on January 17, 1991. Fourteen days thereafter, or on January 31, 1991, appellants filed a motion for reconsideration and a copy of the order denying the same was received by appellants' counsel on February 22, 1991. When appellants filed their notice of appeal on March 4, 1991, ten days had elapsed since the receipt of the notice of the order denying the motion for reconsideration.

As hereinbefore noted, the appeal must be perfected within fifteen days from the promulgation of the judgment, but said period is interrupted from the time a motion for reconsideration or new trial is filed and starts to run again from receipt of the notice denying said motion. Accordingly, from receipt of such denial order, appellant has only the remaining period within which to perfect his appeal. In the case at bar, fourteen days had elapsed before the filing of appellants' motion for reconsideration, hence they had only one day from February 22, 1991 to file a notice of appeal. Consequently, the trial court was correct in rejecting appellants' notice of appeal since it was filed beyond the reglementary period.

Ordinarily, therefore, the appeal herein could have been dismissed outright for being time-barred. The records, however, do not show that either the public or private prosecutor moved for the dismissal of said appeal or objected to the aforesaid order of the trial court directing the elevation of the records of the case to this Court, obviously for appellate review. It was only after appellants had filed their brief that appellee, in its brief, raised the

issue of the belated appeal and, inferentially, the lack of appellate jurisdiction of this Court in this case. However, the principle of estoppel by laches to bar attacks on jurisdiction has been adopted and repeatedly applied by this Court, notably in *Tijam, et al. vs. Sibonghanoy, et al.*,^[14] and in several cases which followed thereafter, including criminal cases.^[15]

Thus, in *People vs. Tamani*,^[16] although the appeal of the accused was demonstrably filed out of time, to obviate a miscarriage of justice this Court nevertheless reviewed the case and rendered judgment on the merits thereof, in view of the fact that the filing of the appeal out of time was due to the inadvertence of the defense counsel and the further consideration that the briefs of the parties had already been filed. Considering that the same features also obtain in the present case, and in view of the gravity of the offense and the penalty involved, we feel that we should also follow the same judicial path and, in the oft-invoked broader interests of substantial justice, grant to appellants in this case the benefit of judicial review.

The trial court did not err in accepting the plea of guilty of appellants Regalario and Pabillar when they were re-arraigned. As reflected in its order dated February 23, 1988,^[17] both appellants were assisted by their counsel and it was only after a series of questions to both of them that said court, after being convinced that the plea of guilty was made intelligently and voluntarily, accepted the change of plea, but nevertheless required the prosecution to present its evidence. As correctly argued by the Solicitor General, appellants never questioned the correctness of that order and of the declarations therein,^[18] until they filed their brief.

Also, during the trial of the case, counsel for both appellants never raised the issue of improvident plea of guilt, as appellants Regalario and Pabillar even presented witnesses to prove their minority during the commission of the crime. If appellants were indeed convinced that their plea of guilty was made without their being duly apprised of the consequences thereof, then they should not have waited for the termination of the case in the lower court and thereafter raise the issue only after the promulgation of the adverse judgment of the trial court. Worse, appellants can not raise for the first time in the appellate court such issue which was not raised in the court a quo as it would be offensive to the basic rules of fair play, justice and due process.^[19]

Appellants also assail the judgment of the trial court for not considering the testimonies offered by the defense. It will be noted that in coming up with the verdict of guilty, the lower court relied on the testimonies of the two prosecution witnesses, Glenda Osabal and Romano Padillo, who positively identified the six appellants during the police investigation and during the trial. Said court also ruled that from the facts of the case, it had been established that there was conspiracy among appellants as their individual actions indubitably showed a common design and concerted action. We have carefully reviewed and evaluated the evidence in this case and we agree with the aforequoted findings of the lower court and its conclusion that the culpability of appellants and the existence of a conspiracy among them was sufficiently established by the prosecution.

Prosecution witness Romano Padillo, testifying in a clear, forthright and consistent manner, refuted the defense version of the fatal encounter by narrating what actually transpired that fateful evening of September 18, 1986, which testimony we feel should be reproduced here:

"Q

When you said that on the evening of September 18, 1986, you were walking in company with Menardo Garcia and Glenda Osabal, these 6 persons you enumerated joined you, what happened when they joined you?

A

I saw Carlos Pabillar talked (sic) to Menardo Garcia, sir.

Q

Did you hear what they talked about?

A

Yes, sir.

Q

What did they talk about?

A

Carlos Pabillar asked Menardo Garcia, where the balisong was.

Q

What did Menardo Garcia say, if any?

A

Menardo Garcia answered that the balisong was no longer in his possession, sir.

Q

What happened next?

A

Carlos Pabillar boxed Menardo Garcia, sir.

Q

When Carlos Pabillar boxed Menardo Garcia, did Carlos Pabillar say anything?

A

Yes, sir.

Q

What did Carlos Pabillar say?

A

Attack him. ('tirahin na iyan')

Q

Do you know to whom Carlos Pabillar addressed this remark?

A

Yes, sir.

Q

Who was to be attacked?

A

Menardo Garcia, sir.

Q

And who were to attack Menardo Garcia?

A

His companions, sir.

Q

What happened after that?

A

Menardo Garcia ran away, sir.

Q

Towards what direction did Menardo Garcia go or run?

A

Towards the direction in going (sic) to Don Feliciano Street, sir.

Q

When Menardo Garcia ran at (sic) Don Feliciano Street, what did the six young persons do?

A

They chased him, sir.

Q

How about you, what did you do?

A

I secretly follow(e)d them, sir.

x x x

Q

What happened after he reached a distance of 50 meters from the corner of General Lucban and Don Feliciano Street?

A

They were able to take over (sic) Menardo Garcia, sir.

x x x

Q

What happened when the 6 persons you mentioned overtook Menardo Garcia at that place?

A

I saw he was being boxed, sir.

Q

By whom?

A

By the six persons, sir.

Q

What did Menardo Garcia do while he was being boxed by the 6 persons?

A

He was evading the blows, sir.

Q

What happened next?

A

Narinig ko na sinabi ni Rolando de Chavez, 'tarantado si Menardo, niloloko ako' (I heard Rolando de Chavez stated [sic] that he was being fooled by Menardo Garcia).

Q

After uttering this remark you quoted as made by Rolando de Chavez, what transpired?

A

I saw when Alex Regalario stabbed Menardo Garcia, sir.

x x x

Q

When Menardo Garcia was hit, what else happened?

A

He was boxed again by the companions of Alex Regalario, sir.

Q

How long did the companions of Alex Regalario attacked (sic) Menardo Garcia after he was stabbed by Alex Regalario?

A

When they saw that Menardo Garcia could no longer stand up, the 6 persons left."[20]

We have completely scrutinized the records of this case and we find no reason to doubt the veracity of Padillo's narration of what he witnessed. He was intensively cross-examined by the defense counsel, but he never deviated from what he said in his direct examination. Neither has there been a showing of any dubious, unfair or ulterior motive whatsoever on the part of Padillo to testify as he did or to impute such a serious crime to appellants.

It has been our consistent ruling, founded on reason, logic and experience, that the trial court's assessment of the credibility of the witnesses' testimonies is accorded great respect on appeal.[21] We have repeatedly pointed out, and with rational bases, that appellate courts will generally not disturb the factual findings of the trial courts since the latter are in a better position to weigh conflicting testimonies, having heard the witnesses themselves and

observed their deportment and manner of testifying, unless it is found that the trial courts have overlooked certain facts of substance and value that, if considered, might affect the result of the case.[22] That doctrine applies in this case as the exceptive circumstance thereto does not obtain here.

Appellants insist that there was no conspiracy because the acts of boxing and stabbing the victim were independently committed by appellants Regalario and Pabillar. There is no merit in such pretension. The court below did not favorably consider the testimonies of De Chavez, Villagracia, Quiniquito and Desembrana because no other evidence or witnesses were presented to confirm, corroborate or complement their claim that they were at the school gate that night just to meet Desembrana's girlfriend, a certain Liezl Alpahora. As correctly observed by the Solicitor General, "Alpahora was never presented, leading to the conclusion that she either was not around at that time or actually does not exist. Suppression of her testimony without any explanation creates the inference that her testimony would have been adverse to the position of the defense." [23]

It also appears from the records that appellants simultaneously fled from the scene of the crime and tried to contact each other the day after. In fact, appellants Regalario and Pabillar went into hiding together.[24] The stabbing and the death of the victim was announced over a radio broadcast wherein the six appellants were implicated, but despite the fact that they were being hunted by the police authorities, they even went to another province and none of them returned to clear himself of liability.[25]

Four of the accused denied their participation but did not present any other evidence to substantiate their denials. It is, however, clear from the aforequoted testimony of Padillo that when the victim ran towards Don Feliciano Street, all of the appellants chased him, battered him with fistblows and continued hitting him even after Regalario had stabbed said victim. Appellants also fled from the scene of the crime all together after the victim lay sprawled on the ground.

From the foregoing circumstances, it cannot but be inferred that a conspiratorial undertaking animated the acts of appellants. In a number of cases, the Court has ruled that circumstantial evidence is sufficient to prove conspiracy if it shows a concerted plan, scheme or design to further a common objective.[26] Conspiracy need not be proved by direct evidence but may be inferred from the acts of the accused immediately prior to, during and right after the assault on the victim which indicate their common intention to commit the crime.[27] To prove conspiracy, the prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all stages of the conspiracy.[28]

In its decision, the lower court made the express finding that "(a)ll the six accused admitted their presence at the scene of the crime and their being together immediately before the criminal assault on Menardo Garcia. While they gave various explanations as to their presence, the fact remains that they were there and they were together. Their duly established common design of assaulting Menardo Garcia and their action of boxing said Menardo Garcia militate against their defense of denial." [29]

An, indicium of conspiracy is when the acts of the accused are aimed at the same object, one performing one part and another performing another part so as to complete it with a view to the attainment of the same object, and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[30] The evidence need not establish the actual agreement which shows the pre-conceived plan, motive, interest, or purpose in the commission of the crime; conspiracy is shown by the coordinated acts of the assailants.[31]

The finding of the court a quo of the presence of conspiracy is a finding of fact that must be respected by the appellate court unless there are compelling reasons to disregard the factual findings of the lower court. Such findings of the trial court on the existence of conspiracy should not be disturbed where such finding is not only

logical but also because it is based on evidence appearing in the record.[32]

As regards the contention of appellants that the lower court erred in relying heavily on the testimonies of prosecution witnesses Osabal and Padillo, we have recently reiterated the doctrine declared in a long line of cases that the findings of the trial court on the matter of credibility of witnesses will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have effected the result of the case.[33] There is nothing in the records which would cast doubts on the veracity of the testimonies of said prosecution witnesses who actually saw the killing of Menardo Garcia.

The defense of appellants consists of mere denials. We do not have to cite authorities to show, for so well-settled is the rule, that between the positive assertions of the prosecution witnesses and the negative averments of appellants the former indisputably deserve more credence and are entitled to greater evidential weight.

Appellants Regalario and Pabillar lay much stress on their claim of minority when the crime was committed. The lower court ruled that the evidence adduced by them does not meet the requirement of convincing proof to establish minority in mitigation of, their liability. The Solicitor General, likewise, asserts that the minority of Regalario and Pabillar was not proven since the birth certificate of Regalario,[34] showing that he was born on July 16, 1970, was based on a late registration of his birth, made only after the stabbing incident, which thereby makes the same highly unreliable. Pabillar, on the other hand, produced his baptismal certificate[35] showing his date of birth on October 14, 1970, but the prosecution contends that said baptismal certificate is insufficient to prove minority because it only evidences the fact of baptism, but not of birth.

We do not agree with the conclusion reached by the trial court. The mitigating circumstance of minority, being favorable to both appellants, all doubts should be resolved in their favor. In the early case of *U.S. vs. Bergantino*,[36] we held that:

"While the evidence upon this point is not entirely satisfactory, yet it is sufficient to raise doubt upon this material question in the case, to the benefit of which the defendant is entitled. The baptismal certificate or other evidence of this character would have been much more satisfactory to the court, and, if obtainable, should have been introduced. Neither the prosecution nor the defendant saw it fit to introduce such evidence."

In another case,[37] where the trial court rejected the claim of the accused that he was but 16 years old because it was not corroborated by other proof, this Court overturned said ruling in this wise:

"The evidence shows that the prosecution made no attempt to prove that the defendant was more than 16 years of age. We are of the opinion that the statement of the defendant that he was but 16 years of age, until such fact is disproved by other evidence, must be accepted as a fact. There is nothing in the record which shows that the statement of the defendant was untrue."

Also, it has been ruled that "(i)n regard to the doubt as to whether the accused is over or under 18 years of age, and in the absence of proof that on the day he committed the crime he was 18 years old, he must perforce be considered as still under that age. x x x." [38] In a more recent case,[39] the mitigating circumstance of minority was appreciated by the Court despite the fact that the only evidence presented by the accused in said case was his own testimony regarding his age while he was on the witness stand narrating what happened two years earlier.

It appears, therefore, that on the date of the commission of the offense charged, appellant Regalario was 16 years, 2 months and 2 days old, while appellant Pabillar was 15 years, 11 months and 4 days old. Appellant De Chavez failed to invoke minority as a mitigating circumstance during the trial of the case, as well as in this appeal. However, after an exhaustive examination of the records of the case, it appears that De Chavez was born on June 24, 1969.[40] Therefore, he was 17 years, 2 months and 24 days old when he committed the crime.

It is a basic rule in our criminal justice system that penal laws should be liberally construed in favor of the offender. Accordingly, the mitigating circumstance of minority should, as a matter of fairness, be appreciated in favor of De Chavez who was clearly a minor when he committed the offense, especially in light of the compassionate liberality this Court has granted to minors involved in serious crimes.

Thus, in *People vs. Jose, et al.*,^[41] a prosecution for murder, and in *Co vs. Court of Appeals, et al.*,^[42] a prosecution for homicide, considering the gravity of the offenses and in the interest of justice, this Court allowed the presentation of and admitted the birth certificates of the accused to prove the mitigating circumstance of minority although said birth certificates were not presented or offered in the trial court. We can adopt the same equitable consideration with respect to appellant De Chavez, since the fact of his minority is established by an official document prepared by the Department of Social Services and Development in the exercise of its functions and which document is incorporated in the records of this case of which we can take judicial notice *ex mero motu*.

Finally, the lower court held that evident premeditation qualified the killing to murder. It further considered abuse of superior strength in coming up with the penalty of reclusion perpetua. Note must also be taken of the fact that the court *a quo* found that there was conspiracy. We have held in a number of cases that under normal conditions, where conspiracy is directly established with proof of the attendant deliberation and the selection of the method, time and means of executing the crime, the existence of evident premeditation can be taken for granted.^[43] As a rule, therefore, conspiracy presupposes the existence of evident premeditation. Under the antecedent factual milieu which led to the killing of the victim, we are satisfied that evident premeditation may properly be considered here as a qualifying circumstance since the evidence shows when appellants agreed on the commission of the crime, the supervision of an appreciable period of time therefrom, and their persistent adherence to their criminal resolution.

The prosecution further alleged that abuse of superior strength aggravated the perpetration of the offense. For superior strength to aggravate a crime, it must be clearly shown that there was deliberate intent to take advantage of it.^[44] In the case at bar, it is quite clear that the appellants did take advantage not only of their numerical, but also of their physical, superiority of combined strength.

In *People vs. Jovellano, et al.*,^[45] we declared that the existence of the aggravating circumstance of superior strength is evident from the notorious disparity between the relative strength of the victim and the four armed assailants and the manner in which the fatal stab wounds were inflicted, showing that the latter cooperated in such a way as to secure advantage of their physical superiority. The killing of Menardo Garcia in the present case was decidedly aggravated by the circumstance of abuse of superior strength.

In rendering its judgment of conviction, the trial court also ordered appellants to pay, jointly and severally, the heirs of Menardo Garcia the amount of P23,381.00 as funeral expenses and expenses incident to the prosecution of the case. We accept the ruling of the lower court on this score since such damages were duly proven by the prosecution. However, the death indemnity awarded by the court *a quo* should be increased to P50,000.00 in accordance with prevailing case law.

The penalties imposed by the trial court on accused-appellants Jose Quiniquito y Magnata, Augurio Villagrancia, Jr. y Isabelo and Alberto Desembrana are correct since the crime of murder was aggravated by abuse of superior strength, hence their penalties should be imposed in the maximum period, or reclusion perpetua, in view of the proscription on the imposition of the death penalty.

Accused-appellants Regalario, Pabillar and De Chavez are entitled to the privileged mitigating circumstance of minority under paragraph 2, Article 68 of the Revised Penal Code and the penalty next lower than that prescribed by law shall be imposed, in the proper period. As reduced by one degree, the maximum impossible penalty for

these three appellants shall be within the range of prision mayor in its maximum period to reclusion temporal in its medium period.

WHEREFORE, accused-appellants Alex Regalario y Villagracia, Carlos Pabillar y Villon and Rolando de Chavez y Montalbo are hereby each sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. The death indemnity to be paid by all the accused-appellants to the heirs of Menardo Garcia is increased to P50,000.00. As thus MODIFIED, the judgment of the trial court is hereby AFFIRMED in all other respects. SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Campos, Jr., JJ., concur.

[1] Original Record, 2.

[2] Ibid., 28.

[3] Ibid., 203-204.

[4] TSN, January 10, 1990, 14; *ibid.*, 332.

[5] Ibid., 418-419; per Judge Ludovico C. Lopez.

[6] Ibid., 420.

[7] Ibid., 448.

[8] Ibid., 444.

[9] Ibid., 448.

[10] Ibid., 451.

[11] Ibid., 398-403.

[12] Brief for the Defendants-Appellants, 3-4; Rollo, 80-81.

[13] Rollo, 82. Appellants' counsel appears to have been confused over the mode of appeal involved in this case as, in fact, the brief for appellants is entitled "Petition for Review on Certiorari," and the Solicitor General was initially misled thereby (Rollo, 77, 133).

[14] 23 SCRA 29 (1968).

[15] See *Vera, et al. vs. People, et al.*, 31 SCRA 711 (1970); *People vs. Casuga*, 53 SCRA 278 (1973).

[16] 55 SCRA 153 (1974).

[17] Original Record, 234.

[18] Appellee's Brief, 12; Rollo, 165.

[19] *National Power Corporation vs. Gutierrez, et al.*, 193 SCRA 1 (1991).

[20] TSN, January 30, 1987, 23-28.

[21] *People vs. Tejada*, 170 SCRA 497 (1989); *People vs. Arceo*, 187 SCRA 265 (1990); *People vs. Gerones*, 193

SCRA 263 (1991).

[22] *People vs. Demecillo, et al.*, 186 SCRA 161 (1990); *People vs. Toring, et al.*, 191 SCRA 38 (1990); *People vs. Beringuel, et al.*, 192 SCRA 561 (1990).

[23] Appellee's Brief, 13; Rollo, 166.

[24] TSN, June 15, 1988, 10-11.

[25] *Ibid.*, January 12, 1990, 15-17.

[26] *People vs. De la Cruz, et al.*, 183 SCRA 763 (1990); *Veloso vs. Sandiganbayan, et al.*, 187 SCRA 504 (1990); *Balmadrid, et al. vs. Sandiganbayan*, 195 SCRA 497 (1991).

[27] *People vs. Umbrero, et al.*, 196 SCRA 821 (1991).

[28] *People vs. Lorenzo, et al.*, 200 SCRA 207 (1991).

[29] Original Record, 413-414.

[30] *People vs. Sunpongco, et al.*, 163 SCRA 222 (1988).

[31] *People vs. Salcedo, et al.*, 172 SCRA 78 (1989); *People vs. Gupo, et al.*, 190 SCRA 7 (1990); *People vs. Carpio*, 191 SCRA 671 (1990).

[32] *Ramos vs. Sandiganbayan, et al.*, 191 SCRA 671 (1990).

[33] *People vs. Lutañez*, 192 SCRA 588 (1990).

[34] Exhibit 1; Original Record, 374.

[35] Exhibit 2; *ibid.*, 348.

[36] 3 Phil. 118, 120 (1903).

[37] *U.S. vs. Roxas*, 5 Phil. 375 (1905).

[38] *U.S. vs. Barbicho*, 13 Phil. 616, 621 (1909).

[39] *People vs. Tismo*, 204 SCRA 535 (1991).

[40] DSSD Social Case Study Report; Original Record, 138.

[41] 71 SCRA 273 (1976).

[42] 99 SCRA 321 (1980).

[43] *U.S. vs. Cornejo*, 28 Phil. 457 (1914); *People vs. Timbang, et. al.*, 74 Phil. 295 (1942); *People vs. Custodio, et. al.*, 97 Phil. 698 (1955).

[44] *People vs. Salcedo, et al.*, 172 SCRA 78 (1989).

[45] 56 SCRA 156 (1974).

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