

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO LUAYON @ “WILLY,” ALFREDO SABIOR, JACINTO MORENG, RODOLFO TONIA CAO, NEMESIO ELICOT, FRESCO ELICOT, NESTOR PATIGUE, PE...

G.R. No. 105672. August 22, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Davao, Branch I in Tagum, finding five (5) out of the ten (10) accused in Criminal Case No. 6512, namely, Wilfredo Luayon, Alfredo Sabior, Jacinto Moreng, Rodolfo Toniacao and Nestor Patigue guilty beyond reasonable doubt of the murder of Alejandro Castillon, and meting out on each of them the penalty of reclusion perpetua and the joint and several indemnification of the heirs of the victim in the amount of P50,000.00.

Alejandro Castillon, former barangay captain of Sabangan, Asuncion, Davao, was reported missing in the morning of January 13, 1987. Thereupon, 2nd Lt. Eduardo Manlapig, Executive Officer of the Second (GHQ) Headquarters Battalion stationed at Poblacion Sawata, Asuncion, organized two teams to conduct an investigation. The team of Pat. Antonieto Hernandez was first to arrive in Sabangan and was immediately hinted thereat to proceed to the house of Nestor Patigue.

Upon arrival at Patigue's house-cum-store, the investigators found tell-tale signs of an assault on a person - bloodstains and particles of brain were splattered on its wet walls and floor, and sand was sprinkled all over the ground. Some concerned civilians then found dumped in the premises, a wet and reddish sack. It contained sand smeared with blood, broken bottles and glasses, a slipper and pieces of cloth with red stains. With the sack was a piece of lumber about 2 x 4 inches x 4 feet in dimension.[2]

While asking around for information on what had transpired in the area, Jacinto Moreng, a barangay councilman, volunteered that he and other persons were in the store with one Ali Alibon, a banana trader from Davao City who offered them some hard drinks. For their part, Ernan Ayop, 17 years old, and Ronnie Custodio, 15 years old, intimated to Pat. Hernandez that the previous night, they saw Wilfredo Luayon strike the missing Alejandro Castillon on the head with a piece of wood and an iron bar ("mulye").

It was around five o'clock in the afternoon when the search yielded the dead body of Castillon lying on a grassy terrain about 800 meters from the locus delicti. The body was then brought to the Barangay Hall. At the scene of the crime, the investigating team found bloodstains in the water tank and the grassy trail. It was gathered from Ernan Ayop and Ronnie Castillo that they were at the store the night before when Luayon struck Castillon with an iron bar. Others who were allegedly present were Alfredo Sabior, Jacinto Moreng, Rodolfo Toniacao, Nestor Patigue, Fresco Elicot and his brother Nemesio.

Pat. Tonga brought these named persons to the police station. Toniacao confessed to having held Castillon as

Luayon attacked the victim. He drew a sketch of the area where the body of the victim could be recovered. With this sketch, Pat. Tonga returned to Sabangan only to find out that the victim's body had been recovered at the spot indicated in the sketch. Pat. Tonga found that the body's head appeared to have been hit with a piece of iron or bottle. Different parts of the body bore contusions. However, as indicated by the death certificate, the body did not have the benefit of medical examination or autopsy.[3]

In the morning of January 14, 1987, Pat. Hernandez was timely advised by the wife of Nestor Patigue to go after Luayon who was already in Tagum, Davao, about to depart for Mt. Diwalwal. Pat. Hernandez and two other policemen proceeded to Luayon's house in Tagum and invited Luayon to the Asuncion police station. While being interrogated, Luayon admitted to Pat. Hernandez that "he killed Alejandro Castillon because of their many grievances." [4] Luayon also revealed that he had buried the victim's gun and wallet under a rotten timber about 300 meters from his residence. Without delay, Pat. Hernandez contacted the Sabangan barangay captain, some members of the ICHDF and a former member of the sangguniang bayan and they searched the area indicated by Luayon. From a freshly excavated hole, Pat. Hernandez recovered the victim's .22 caliber revolver [5] and wallet [6] wrapped in plastic. The chamber of the gun had eight live bullets.

A complaint for murder against ten (10) persons, namely, Luayon, Patigue, Toniacao, Moreng, Sabior, Fresco Elicot, Nemesio Elicot, Pedro Potorbos, Mario Gailanan and Domingo Borlizo, was filed on January 19, 1989 by the Asuncion station commander. [7] Of the ten, only six (6) were detained at the Asuncion police station because Patigue, Potorbos, Gailanan and Borlizo remained at large. [8] The Municipal Trial Court of Asuncion conducted no further investigation as the accused waived their right to a preliminary investigation. Thereafter, the following information dated March 6, 1987 was filed:

That on or about January 12, 1987, in the Municipality of Asuncion, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and mutually helping one another, with treachery and evident premeditation, with intent to kill and armed with a piece of iron (molye) and empty broken bottles of beer, did then and there wilfully, unlawfully and feloniously attack, assault, strike and hit one Alejandro Castillon, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

Contrary to law.

At the arraignment on May 21, 1987, six (6) of the accused, including Patigue who appeared for the purpose, pleaded not guilty to the charge. After arraignment, Patigue never appeared in court notwithstanding the five orders issued for his arrest. [9]

At the trial, the prosecution proved the following:

The victim, 38 year-old Alejandro Castillon, was a gold panner with eight (8) children. At about four o'clock in the afternoon of January 12, 1987, Castillon was at the "purok" some seven (7) meters way from his residence. His wife, Conchita, saw how Patigue approached Castillon and invited him to a drinking spree. Castillon declined the invitation but an hour later, he changed his mind and decided to join Patigue's group.

It was about six o'clock that night when Neria Miranda, whose house was located 30 meters away from the "side back" of the house of Patigue, [10] saw "the accused" drinking at Patigue's store. Later that night, around nine o'clock, she heard noise coming from Patigue's house. Neria went up her own house and through the window, she saw Toniacao and Luayon proceeding to the back of Patigue's house but they did nothing there. [11] She asked her husband what the two were doing but he told her not to mind them at all. [12]

At around 9:30 that same evening, Maria Luz Reveche (Rebitse) was having dinner when she heard the noise of

cracking bottles from the house of Nestor Patigue. Looking out, she saw someone she did not recognize being mauled. She called her uncle ("Yoyo") Rogelio Manga, and told him of what she saw.[13]

Manga was then busy packing chicharon for sale the following morning. He, too, heard the noise of crashing bottles but he did not mind it at all until Maria Luz called his attention to it. Maria Luz, who lived in the next house barely 3 meters away from his own, even went to his house to relate what she saw. As he was then by the window, he saw at a distance of 50 meters, Toniacao, Luayon, Sabior, Moreng and Patigue mauling somebody. Manga went down his house to verify. He crawled behind some plants to a place around 30 meters from the house of Patigue. From then, he clearly witnessed the following:

Q

Now, did you see any incident?

A

Yes, I saw.

Q

What did you see?

A

Barangay Captain Alejandro Castillon was being mauled by the accused.

Q

Who were the persons whom you actually saw helping in mauling the deceased?

A

Wilfredo Luayon, Sabior, Rudy Toniacao, Nestor Patigue and Jacinto Moreng.

Q

You tell the Court whose house was that where the incident happened?

A

The house of Nestor Patigue.

Q

You said you were hiding at a certain area. How far is that to the house of Nestor Patigue?

A

More or less thirty (30) meters away.

Q

In what part of the house did the incident happen?

A

It is outside the house by a table.

Q

Why is there a table outside of the house?

A

That is where they were having a drinking spree.

Q

Is there a store of Nestor Patigue?

A

Yes, there is a store.

Q

Do you know what Mr. Luayon used in mauling the deceased?

A

When I looked at it was an iron which he used in hitting.

Q

How about Sabior what did he use?

A

I saw Sabior using a bottle of grande.

Q

How about Jacinto Moreng.

A

I saw him holding a piece of wood.

Q

How about Nestor Patigue?

A

Also a bottle of family.

Q

How about Fresco Elicot?

A

He was there but it was not so clear to me regarding his participation but what was very clear to me on the crime scene were the five accused.

Q

Now, after seeing this incident what did you do?

A

I remained on the area where I was observing and later on they put off the light.

Q

Then where did you go?

A

Because of my fear that I might get involved I went home? [14]

Manga, who was born in Sabangan, could recognize all the accused even at a distance because they were his neighbors.[15] Hiding behind some flowering plants and vegetation,[16] Manga could see what was happening in the store which, as measured by a commissioner,[17] was 31 meters away. Between Manga and the store was the 10-meter wide municipal road.[18] Along the road were cacao and banana trees but the fruit trees were behind the store.[19] From the road, there was a one-meter-wide path leading to the store.[20] The moon was shining brightly that night and the store was illuminated by a fluorescent bulb.[21] However, while he succeeded in ascertaining the identities of the persons participating in the incident, he could not hear any word spoken by the group. When the incident was over, the fluorescent light was turned off and Manga sneaked away from his hiding place gripped with fear that someone might have seen him.[22]

Later that night, Neria Miranda saw a carabao on the road with a person loaded on its back. Managing the carabao was someone whose identity she could not determine as he was on the other side of the carabao. Following the carabao as it headed towards the cemetery were Sabior and Luayon. Thereafter, she observed by the moonlight Toniacao and Fresco Elicot, with a flashlight, cleaning the ground "using sand." [23]

Alejandro Castillon did not come home that night. The following day, Conchita saw his lifeless body at the barrio hall. She identified his brown wallet and the pair of slippers he was wearing when she last saw him.

None of the appellants herein denied their presence at the store of Patigue that night of January 12, 1987 but they professed either to have left the place before the crime transpired or to have nothing to do with it. Luayon went to the store at around seven o'clock in the evening to buy some ice candy cellophane wrappers. Sabior, Patigue and Toniacao were there drinking beer and White Castle whiskey with one Ali Alibon, a banana trader from Davao City. At about eight o'clock, Moreng joined the group. There were two benches with a table in-between. Sabior, Patigue and Moreng were seated on one bench with Ali Alibon while Luayon and Toniacao were on the other bench. The group engaged themselves in conversation regarding the "classifications, prices and freight of bananas." When Castillon arrived, he seated himself on the left side of Luayon and they invited him to partake of the drinks.

Initially, Castillon and Luayon talked about gold panning while drinking. Suddenly, Castillon confronted Luayon about a case filed before the office of the barangay captain wherein Luayon testified that on January 9, 1987, he saw two persons who were allies of Castillon, hurling stones at the residence of one Millomida. Momentarily, Castillon placed his right arm over Luayon's right shoulder, held Luayon's breast and squeezed his nipple. Out of pain, Luayon cried, "Agoy, it's painful, pare." [24] Luayon then stood up and walked towards the back of the house. After ten minutes, he returned and sat beside Castillon. Again, Castillon positioned his right hand over Luayon's shoulder and squeezed his nipple, saying, "you are tough," and "are you ready, why did you witness that stoning incident" Luayon shouted, "Aray, sakit."

Just then, Castillon drew his revolver from his hips and poked it on Luayon's left temple, addressing the latter thus: "Ngano mang metistigo ka kung kinsay nagbato sa balay ni Dioscoro Millomida?" (Why did you testify against those who threw stones at the house of Dioscoro Millomida?) [25]

From this point on, the defendants interposed their individual defenses.

Luayon swore that he did not leave the table for a while. Instead, he grappled with Castillon until he was able to wrest the handgun away from Castillon. Castillon fell on the side of the table while Luayon dashed towards his house about a hundred meters away as the rest scurried for safety. The following day, he went to Tagum, Davao, passing along the way several military headquarters but he did not bother to surrender the gun nor report the incident.

For his part, Sabior was called by his wife at that crucial moment. His house was 20 to 25 meters away from the store. Sensing trouble, he heeded his wife's call. He was still on the porch when he heard a commotion taking place at the store. Dogs were barking and it sounded as though someone was being battered. Nevertheless, he did not go out of his house and therefore he could not have towed a carabao to the cemetery that night. At around five o'clock the following morning, Luayon came knocking at his door and told him. "Way report" (no report). Luayon left after that remark. However, even if he was then a barangay councilman and a former barangay treasurer, Sabior did not take the initiative of reporting the incident to the authorities.

According to Moreng, he left after Castillon's intimidating remark. Sabior and Luayon left ahead of him. He went home about five minutes after they had left while Toniacao stayed. Moreng professed that he did not know if Luayon returned to the store. He knew, however, that a commotion occurred immediately after he had left. The following day, he was questioned by the police and invited to the police station where he and his co-accused were locked in jail after signing sworn statements.

Toniacao pinned responsibility for the crime on Luayon. After Castillon's provocative remark, Luayon left and went to urinate beside a banana plant about five meters away from the table. Luayon returned holding a steel bar about 1-1/2 feet long and 3 inches wide, approached Castillon whose head was bowed, and struck Castillon's hands. Castillon attempted to draw his pistol but Luayon hit the left side of Castillon's head. Castillon fell with his back on the ground, dead. Luayon then directed a certain Rene Boy del Rosario to fetch a carabao and warned Toniacao not to report what happened. After a short while, Luayon loaded the victim on the carabao's back. At five o'clock the following day, Luayon went to Toniacao's residence warning him once again from informing the authorities of the incident.

Fresco Elicot, Patigue's brother-in-law, resided in Patigue's house. He was on his way to the kitchen when he heard noise from outside of persons running as if they were being chased by a dog. Through the window, he saw only the seated Castillon and Luayon -- the former was poking a gun on the latter's head. Fresco hurriedly closed the door and went to his room. At five o'clock the following morning, he woke up to do his usual housework. Upon opening the door, he saw Luayon standing outside with a gun tucked on his waist, Luayon forced him to clean the floor and rid it of bloodstains, scattered broken bottles and a pair of slippers. He observed that the table was upturned.

No independent witness supported the defendants' testimonies. Only the appellants and Fresco Elicot testified for the defense.

On July 25, 1991, the trial court rendered the herein questioned decision. Finding that Luayon's act of striking Castillon with an iron bar while his head was bowed and the act of his co-accused "in helping one another in mauling" Castillon "were acts of treachery, conspiracy and resort of superior strength"[26] (sic) the court convicted Luayon, Sabior, Toniacao and Patigue of the crime of murder as defined in Article 248 of the Revised Penal Code and imposed on them the penalty of reclusion perpetua and the joint and several indemnification of the victim's heirs in the amount of P50,000.00. It acquitted Fresco Elicot for failure of the prosecution to prove his guilt beyond reasonable doubt.

The dispositive portion of the decision having inadvertently omitted the name of Jacinto Moreng, the trial court

amended the same accordingly.[27] Upon motion of the defense, promulgation of the decision was deferred for August 5, 1991.[28]

Thereafter, the defense filed a motion for reconsideration of the decision alleging "new and material evidence" consisting of an affidavit of Conchita Castillon alleging that from a "heart-to-heart talk" with prosecution witnesses Rogelio Manga and Maria Luz Rebeche, she learned that only Luayon was responsible for the crime and that Manga was "pressured" by her in-laws to implicate the other accused persons in the crime.[29] The trial court denied the motion, ruling that the alleged "newly discovered evidence" was actually a "forgotten" one.[30]

Hence, the instant appeal interposed by defendants Luayon, Toniacao, Sabior and Moreng contending that the trial court erred in: (1) giving weight and credence to the testimonies of prosecution witnesses Manga and Miranda; (2) holding that there was conspiracy among the accused; (3) assuming their culpability, convicting them of murder instead of homicide, and (4) failing to appreciate the mitigating circumstance of sufficient provocation in favor of appellant Luayon.

In assailing the credibility of prosecution witnesses Manga and Miranda, appellants point out that it was impossible for them to have seen or properly identified them as the assailants because they could not have been recognized from the distance said witnesses indicated in their testimonies. Such assertion, however, dims in the presence of evidence supporting the contrary. The trial court, perceiving the possible objections on the matter of identification, commissioned a geodetic engineer to determine the distance between the observation point of Manga and the locu delicti and found that Manga's testimony on the matter approximated the finding of the commissioner. The prosecution's evidence on the issue of visibility was satisfactory -- it was a moonlit night and, while the crime was being perpetrated, the fluorescent lamp at the store was on. While Manga was hiding behind plants, his testimony that he had an unobstructed view of the crime was unsullied. Moreover, the witnesses were no strangers to all the appellants as they were barriomates. In fact, appellants Sabior, Moreng and Toniacao held responsible positions in the barangay.[31]

The issue of credibility on appeal is unavailing. The judge below is in a better position to pass judgment on the issue because it is he who personally heard the witnesses testify and observed their deportment and manner of testifying. Thus, his evaluation deserves no less than the highest respect of the appellate court.[32] In addition to this settled doctrine is the fact that the defense simply failed to offer any piece of evidence attributing to the prosecution witnesses any foul motive to falsely accuse and incriminate the appellants in so grave a crime. Thus, their testimonies deserve full faith and credit.[33]

Criminal conspiracy was deduced by the trial court from the "joint acts of the accused in helping one another." [34] To establish conspiracy, two or more persons must be shown to come to an agreement concerning the commission of a felony.[35] It is not, however, necessary that direct proof be adduced to establish such agreement. It can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime.[36] What is essential is that there is unity of purpose and unity in the execution of the unlawful objective.[37]

To hold an accused guilty as a co-principal by reason of conspiracy, it must be shown that he had performed an overt act in pursuance or furtherance of the conspiracy. Such an act may consist of active participation in the actual commission of the crime itself, or of moral assistance to his co-conspirators by being present at the time of the commission of the crime or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.[38] Once conspiracy has been established, all the conspirators become liable as co-principals regardless of the extent and character of their individual participation in the crime because, in contemplation of law, the act of one is the act of all, the guilt of one is the guilt of all.[39]

Prosecution witness Rogelio Manga positively testified that he saw appellants, in the company of Nestor Patigue, help each other in mauling the victim. He saw that Luayon used an iron bar (spring leaf); Sabior, a bottle of "grande" (a one-liter bottle of San Miguel Beer); Moreng, a piece of wood, and Patigue, a bottle of "family" (a 769 ml. bottle of Coca-Cola).[40] These objects are lethal when used with force upon a person. In the case at bar, the use of these objects resulted in the instantaneous death of Castillon. The fact that each of the appellants was armed with these objects shows that indeed they had a common objective in mind -- to finish off Castillon.

Even after the commission of the offense, appellants acted in unison in trying to cover up the crime. Appellants Sabior and Luayon led the carabao with the victim on its back, towards the cemetery, away from the scene of the crime. For his part, Toniacao, assisted by Fresco Elicot, cleaned up the place with sand in a bid to hide the traces of the crime.

Against these positive proofs of their culpability, each of the appellants interposed simple denial while admitting that they, in fact, were at the scene of the crime immediately before it was perpetrated. Such bare denials, unsupported as they are by independent evidence, are no more than self-serving assertions. It is a weak defense, and it cannot prevail over the declaration of credible witnesses who were able to positively identify them as the authors of the crime.[41]

However, the Court agrees with the appellants that the crime committed was homicide and not murder. The trial court appreciated treachery as a qualifying circumstance to the killing of Castillon principally on the misperceived "strength" of the testimony of appellant Toniacao that Luayon hit Castillon's hands with the iron bar as he was bowing his head. The prosecution presented no evidence on how the assault began as Rogelio Manga witnessed only the part wherein the appellants were mauling the victim. Toniacao's testimony, however, leaves much to be desired in terms of evidentiary value.

The manner by which the assault commenced was drawn out by Toniacao's own counsel, Atty. Conrado Edig, at his client's direct examination. Without closing such examination, however, Atty. Edig asked for continuance on account of his own illness. The direct examination was supposed to have been concluded the next hearing day, October 31, 1989, but this scheduled hearing, as well as all subsequent hearings, were continually postponed. When the case was finally heard almost a year later or on October 24, 1990, Atty. Edig, instead of recalling Toniacao to the witness stand, presented appellant Moreng for direct examination.[42] Luayon was therefore deprived of the opportunity to confront his co-accused who, sadly, in his selfish bid for exoneration, turned witness against him.

Teenagers Ernan Ayop and Ronnie Custodio, who executed a joint affidavit stating that they saw that appellant Luayon, after having urinated, suddenly run towards the back of Castillon and hit his neck with an iron bar, could have been utilized as witnesses to bolster proof on the initial assault on the victim. However, neither the prosecution nor the defense presented them as witnesses. While their joint affidavit was offered by the prosecution as Exhibit P, the same may not suffice to prove the first assault to the prejudice of the defense, particularly appellant Luayon, which was not given the opportunity to confront them and verify the truth of their common statement.

The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked.[43] Even presuming that the attack on Castillon was sudden and coming from behind, these circumstances per se do not bespeak of Alevosia.[44] Absent any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victim unfolded, treachery cannot be appreciated to qualify the killing to murder.[45] Evident premeditation which is alleged as an aggravating circumstance in the information not having been proven, the crime committed is homicide.[46]

Article 249 of the Revised Penal Code imposes the penalty of reclusion temporal for homicide. In the absence of mitigating or aggravating circumstances, said penalty would be imposed in its medium period pursuant to Article 64(1) of the same Code or 14 years, 6 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the penalty imposable upon appellants Sabior, Toniacao and Moreng is six (6) years and one (1) day of prision mayor minimum as minimum penalty to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal medium as maximum penalty.

With respect to appellant Luayon, the mitigating circumstance of sufficient provocation or threat on the part of the offended party should be credited in his favor. Aside from the fact that the provocation should immediately precede the commission of the offense, it should also be "proportionate to the damage caused by the act and adequate to stir one to its commission." [47] It was established during the trial that before Luayon hit Castillon with an iron bar, Castillon, albeit casually, squeezed Luayon's nipple twice who complained of pain. Not satisfied, Castillon poked his gun on Luayon's head threatening him for his participation in another case involving Castillon's followers. This aggression made in front of several persons was quite unexpected considering that the group was merely having a drinking spree at that time. While there is no definitive proof as to the time which elapsed between the provocation and appellant Luayon's assault upon Castillon, the doubt should be resolved in favor of the mitigation of penalty.

The mitigating circumstance of provocation being personal to appellant Luayon, [48] he alone shall benefit therefrom. Accordingly, the imposable penalty shall be the minimum period of reclusion temporal [49] or 12 years and 1 day to 14 years and 8 months. With the application of the Indeterminate Sentence Law, appellant Luayon shall suffer the minimum penalty of six (6) years and one (1) day of prision mayor minimum up to the maximum penalty of fourteen (14) years and eight (8) months of reclusion temporal as minimum.

The judgment of conviction as regards Nestor Patigue is final. His right to appeal has been forfeited by his escape immediately after arraignment. [50]

WHEREFORE, the judgment of conviction below is hereby MODIFIED. Accused-appellants are found guilty beyond reasonable doubt of the crime of homicide, instead of murder, and shall jointly and severally indemnify the heirs of Alejandro Castillon in the amount of P50,000.00. Appellants Alfredo Sabior, Jacinto Moreng and Rodolfo Toniacao shall suffer the indeterminate sentence of six (6) years and one (1) day of prision mayor minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium while appellant Wilfredo Luayon is meted out the indeterminate sentence of six (6) years and one (1) day of prision mayor minimum to fourteen (14) years and eight (8) months of reclusion temporal minimum.

Copies of this decision shall be furnished the Philippine National Police and the National Bureau of Investigation in order that they may cause the arrest of Nestor Patigue.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug and Hermosisima, Jr., JJ., concur.

[1] Penned by Judge Marcial L. Fernandez.

[2] Exhibits C, D & E.

[3] Exhibit R.

[4] TSN, February 2, 1989, p. 19. Pat. Hernandez admitted that all throughout the investigation, he never bothered advising Luayon of his constitutional rights on the ground that the latter and the others were his close friends (Ibid., p. 37).

- [5] Exhibit M.
- [6] Exhibit N.
- [7] Record, p. 36.
- [8] Id., at 55 & 75.
- [9] Id., at 58, 63, 83, 91, 121 & 271.
- [10] TSN, February 3, 1989, pp. 7 & 10.
- [11] TSN, October 5, 1988, pp. 10-11.
- [12] Id., at 12.
- [13] TSN, September 12, 1988, pp. 21-22.
- [14] TSN, April 14, 1988, pp. 15-17.
- [15] Id., at 18 & 27.
- [16] TSN, July 7, 1988, p. 28.
- [17] A geodetic engineer of the Bureau of Lands named Macario Palen. Per his measurement, the oblique distance between Manga's house and the store was 54.5 meters.
- [18] TSN, February 22, 1991.
- [19] TSN, April 14, 1988, pp. 21-23.
- [20] TSN, February 22, 1991, p. 14.
- [21] TSN, July 7, 1988, pp. 10-11.
- [22] Id., at 32-33.
- [23] TSN, October 5, 1988, pp. 15-17.
- [24] TSN, May 8, 1989, p. 12; TSN, October 24, 1990, p. 15.
- [25] TSN, May 30, 1989, p. 13; TSN, June 30, 1989, p. 16; TSN, November 29, 1990, p. 10.
- [26] Decision, p. 12; Rollo, p. 41.
- [27] Record, p. 379.
- [28] Id., at 381.
- [29] Id., at 392.
- [30] Id., at 394-395.
- [31] Sabior and Moreng were both barangay councilmen, Toniacao was a purok leader and even Patigue was a barangay secretary.
- [32] *People v. Morales*, 241 SCRA 267 (1995).
- [33] *People v. Espinosa*, 243 SCRA 7 (1995).

- [34] RTC Decision, p. 10.
- [35] *People v. Timple*, 237 SCRA 52 (1994).
- [36] *People v. Orchuela*, 232 SCRA 82 (1994).
- [37] *People v. Manuel*, 234 SCRA 532 (1994).
- [38] *People v. De Roxas*, 241 SCRA 369 (1995).
- [39] *People v. Mallari*, 241 SCRA 113 (1995).
- [40] TSN, April 14, 1988, pp. 15-17.
- [41] *People v. De Roxas*, *supra*.
- [42] TSN, October 30, 1989, pp. 12-13, 19; Record, pp. 253 to 300.
- [43] *People v. Abapo*, 239 SCRA 469 (1994); *People v. Ponayo*, 235 SCRA 226 (1994).
- [44] *People v. Sunga*, 283 SCRA 274 (1994); *People v. Decena*, 235 SCRA 67 (1994).
- [45] *People v. Lug-aw*, 229 SCRA 308, 321 (1994) citing *People v. Castor*, 216 SCRA 410, 422 (1992).
- [46] Abuse of superior strength appears to have been appreciated by the trial court, but since it is not alleged in the information, it may not qualify the killing. As nonappreciation of this circumstance favors the appellants, the same shall not be considered as a generic aggravating one.
- [47] AQUINO, THE REVISED PENAL CODE, Vol. I, 1987 ed., p. 257.
- [48] Art. 62(3), Revised Penal Code.
- [49] *People v. Sanchez*, 199 SCRa 414, 420 (1991).
- [50] *People v. Acol*, 232 SCRA 407 (1994).

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