PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE ABORDO, RICARDO AREBALO, DANIEL ABORDO AND ANICETO JALANDONI, ACCUSED-APPELLANTS.

G.R. No. 107245. December 17, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Court of Appeals dated January 15, 1992, in CA-G.R. CR No. 10910, which affirmed the judgment on March 14, 1990, of the Regional Trial Court of Tagum, Davao, Branch I, in Criminal Case No. 6856 for Murder.[2]

The information against accused-appellants Felipe Abordo, Daniel Abordo, Ricardo Arebalo and Aniceto Jalandoni alleged:

> "That on or about June 19, 1988, in the Municipality of Asuncion, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with pieces of wood and stones, did then and there, wilfully, unlawfully and feloniously attack, assault and stike (sic) one Porferio Lubiano, thereby inflicting upon him injuries which caused his death, and further causing actual, moral, and compensatory damages to the heirs of the victim.
>
> Contrary to law."[3]

Upon arraignment, all four accused entered a plea of not guilty. After trial, the court decreed in its judgment as follows:

> "WHEREFORE, premises considered, the guilt of Felipe Abordo, Ricardo Arebalo, Daniel Abordo and Aniceto Jalandoni having been proven beyond reasonable doubt they are hereby sentenced pursuant to Article 248 of the Revised Penal Code to an imprisonment of 17 years, 4 months and 1 day, minimum, to 20 years, maximum, of Reclusion Temporal, and to indemnify in solidum the heirs of Porfirio Lubiano for P30,000.00.
>
> SO ORDERED."[4]

The accused appealed, assigning the following errors in their appeal brief, to wit:

> "I. THE LOWER COURT ERRED IN NOT FINDING THAT ACCUSED-APPELLANT FELIPE ABORDO ALONE IS GUILTY OF THE CRIME OF MURDER, IN KILLING PORFERIO LUBIANO, BASED ON HIS VOLUNTARY ADMISSION IN OPEN COURT AND WAS SUBJECTED TO CROSS-EXAMINATION BY THE PROSECUTION; and
>
> II. THE LOWER COURT ERRED IN NOT ABSOLVING ACCUSED-APPELLANTS RICARDO AREBALO, DANIEL ABORDO AND ANECITO (sic) JALANDONI OF THE CRIME CHARGED IN THIS CASE BASED ON THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE WHICH HAS NOT BEEN OVERCOME BY THE PROSECUTION."[5]

On January 15, 1992, the Court of Appeals promulgated its assailed decision, disposing as follows:

> "WHEREFORE, the trial court's judgment convicting appellants Felipe Abordo, Daniel Abordo, Ricardo Arevalo, and Aniceto Jalandoni of murder is hereby AFFIRMED; the indeterminate sentence imposed on appellant Felipe Abordo, which is imprisonment of 17 years, 4 months and 1 day as minimum, to 20 years as maximum, is also AFFIRMED except that the death indemnity which all four appellants were ordered to pay in solidum to the heirs of Porfirio Lubiano is hereby increased from P30,000 to P50,000.00; and since the appropriate penalty imposable on appellants Daniel Abordo, Ricardo Arevalo, and Aniceto Jalandoni, there being no mitigating nor aggravating circumstance, is reclusion perpetua which is the medium period of the prescribed penalty of reclusion temporal in its maximum period to death, pursuant to Article 248 in relation to Article 64 (1) of the Revised Penal Code, we hereby CERTIFY this case for review. Accordingly, let the whole record of this case be forwarded immediately to the Supreme Court.
>
> SO ORDERED."[6]

Before us, appellants re-submit their brief and reply brief filed with the Court of Appeals, in effect assigning the same errors they raised before said court.[7] They pray that the decision of the trial court be modified, thereby acquitting appellants Ricardo Arebalo, Daniel Abordo, and Aniceto Jalandoni; and sentencing Felipe Abordo only to suffer the penalty for murder, based on his admission of culpability for the killing, but crediting him with two mitigating circumstances of voluntary surrender and incomplete self-defense.[8] We now proceed to review the evidence on record for the prosecution as well as the defense.

As found by the trial court, the prosecution's version of the incident is as follows:

> "The mother of the accused Abordos came early morning to the residence of the barrio councilman-Hermogenes Pan - Purok 3 of Sabañgan, Asuncion, Davao requesting that he summon for a conference Porferio Lubiano because of his (sic) talks that Ricardo Arebalo convinced him to rob of (sic) cacao in the residence of Ireneo Longakit.
>
> Pan complied and a conference was held at the Purok Hall on 19 June 1988. In attendance were Porferio Lubiano, Felipe Abordo, Daniel Abordo, Ciriaco Abordo, Maxima Abordo, Ricardo Arebalo, Conchita Abasolo, Teresita Abasolo and Aniceto Jalandoni.
>
> Apparently the Abordo family were in full attendance in that conciliation conference presided by Hermogenes Pan.
>
> In the confrontation, Porferio Lubiano reiterated what Ricardo Arebalo told him that they rob [the] Longakit residence. However Ricardo denied such allegation as fabricated.
>
> Ricardo Arebalo is the nephew of Maxima[,] mother of the accused Abordos. The Abordo family felt strongly against the (sic) Lubiano[`s] assertions, hence Maxima insisted that the latter be required to appear in the conciliation conference.
>
> The parties appeared and [the conciliation conference] was predominantly attended by the Abordos. Aniceto Jalandoni, who was a gambling barcada of Felipe Abordo attended since he was requested by Hermogenes to attend and witness the conciliation proceedings.
>
> The parties reported in (sic) the house of Hermogenes Pan but was (sic) transferred to Purok 3 Hall which is 40 meters away and some persons attended. It commenced at more or less 1:30 P.M..
>
> While the proceedings were going on, prosecution asserted that Aniceto Jalandoni, although he was not related to the Abordos[,] seems the one who reacted adversely, he was very angry. There were instances that (sic) he interferred in the conciliation. He approached Lubiano while the proceedings was on (sic), he raised his shirt and then pronounced that he (Lubiano) has no knife.

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> Aniceto Jalandoni, not only behaved obstructively, but he also got hold of Lubiano's arm insisting that they should go already to Purok 4 eventhough (sic) Hermogenes was still presiding on (sic) the conference, telling Lubiano, `let us go now to Purok 4 because Tarcilo Orillo is waiting and he is angry with you.'
>
> Lubiano in company with the accused left for Purok 4. Jalandoni placed his arm on the shoulder of Lubiano [and] so with Felipe Abordo on the other side. Daniel Abordo and Ricardo Arebalo were with them.
>
> At a distance of 30 meters, Hermogenes called back Lubiano requiring him to pay P15.00 ordinance fee for conciliation, but [the latter] failed [to pay] because he has no money promising (sic) to pay when he comes back.
>
> Lubiano rejoined the group of Jalandoni, Abordo and Arebalo who waited for him and continued in the same relative position to Purok 4. Before reaching this Purok, they have to pass Gaga Creek which is roughly around 300 meters from Purok 3 where they attended in (sic) the conciliation.
>
> It was at this point thereon (sic) that Hermogenes Pan followed them secretly because he was suspicious of the actuations of the accused shown during the conference.
>
> Upon arriving at the creek he hid in the grasses around 30 meters away and there he saw Daniel Abordo took hold of the arm of Porferio Lubiano and also with Arebalo (sic) the other arm, and while on (sic) that situation Aniceto Jalandoni took a piece of wood and hit Lubiano. The victim fell down and while lying face downward, Felipe Abordo picked up a stone and dropped it on the back of the head of Lubiano.
>
> When he saw this incident that occurred more or less at 2:45 P.M. he was afraid and could not do anything because the accused are (sic) really very brave, so he ran towards Purok 3 [and] told the people about the incident. They responded and many went with him to the scene where they saw Lubiano on a narra tree.
>
> They found plenty of contusions on his body, the back of his head was broken and was full of blood. There was [a] dent caused by the stone dropped on the head, [and] the brain came out. Lubiano was still alive and they placed him on a cradle and brought [him] to Dr. Domecillo at Sitio Ernan but was pronounced dead on arrival - around 15 minutes thereafter."[9]

In contrast, as summarized by the trial court, the version of the defense is as follows:

> "Those who actually attended the conciliation were Porfirio Lubiano, Ricardo Arebalo, Aniceto Jalandoni, Felipe Abordo who just dropped by to listen. Daniel Abordo was only playing basketball he did not attend the conciliation.
>
> After the conference, Lubiano allegedly told Felipe Abordo that they remain (sic) to drink tuba.
>
> Felipe Abordo accepted Lubiano's invitation, and they were at the store of Cardo Abasolo. Drinking tuba with them were:
> Ciriaco Abordo - father of Abordo
> Maxima Abordo - mother of Abordo
> Hermogenes Pan
> Jose Pan
> Dionie Plasabas

Ciriaco Abordo ordered 2 gallons of tuba and after consuming this, Hermogenes allegedly wanted to drink more so Ciriaco ordered some more.

After consuming the first order of 2 gallons, Lubiano invited Felipe Abordo to a cockfight at Purok 4.

Aniceto Jalandoni testified on his behalf that after the conciliation he went home to Purok 9 a distance of 5 kilometers from Purok 3, [while] Daniel Abordo and Ricardo Arebalo, as testified by Ciriaco Abordo father of the

Abordos went to Purok 7. Daniel and Ricardo are cousins, and the latter is living with Ciriaco.

The cockfight that they intended to go [to] was at Purok 4 and they have to pass Gaga Creek. While walking towards the creek, Lubiano told Felipe that he was already tipsy, drunk and groggy. Felipe insisted that he was on (sic) his correct senses.

Felipe declared that at a distance of around 8 meters before reaching the creek they were walking together. His left hand was clasping the right hand of Lubiano and upon reaching the creek Lubiano released his hand and suddenly pulled his knife and immediately thrust (sic) towards him (Felipe) and so he faced him and stepped backward with his right foot and the other foot pivoting with his left hand parrying the thrust of Lubiano hitting his small left finger. Lubiano again stabbed him so he picked up a stone and thrust (sic) it towards the center of his face between the two eyebrows. Lubiano was hit and he turned around and fall (sic) down, with his two hands holding the ground and his body facing the ground at around one (1) foot in height - as witness demonstrated in court. At this position, Felipe declared - that he was already out of his correct senses. (sic) so he thrust (sic) the stone at the right portion of his head above the right ear. He explained that he was very angry, forgot and lost his senses because of the wound inflicted on his small left finger. Thus, Lubiano was hit many times on his left face, right face, and has many injuries (TSN 19-20 Aug. 16, 1989). He said the stone he used in hitting Lubiano - was enough for him to grasp and he continously hit it towards his (sic) head when he was already on the ground. He looked at Lubiano, who was dying, then he recovered his senses, and surrendered to barangay councilor Indong Petrobos at Purok 4 informing the latter that he killed a person. Felipe mentioned that he met Aniceto Jalandoni at Purok 4 when he surrendered."[10]

In convicting all the accused, the trial court found worthy of credence the testimonies for the prosecution. It found the defenses of alibi and denial by the accused unavailing. Appellants now contend that the trial court convicted them on the basis of the testimony of the lone eyewitness, Hermogenes Pan, which is allegedly not worthy of belief. Appellants allege that it was highly impossible for Pan to have witnessed the alleged commission of the crime as he was drinking all the time that afternoon of June 19, 1988, in the company of Ciriaco Abordo, Jose Pan, Dionisio Plasabas, and the store owner until the time that he was informed of the victim's death.[11] Further, appellants Daniel Abordo, Ricardo Arebalo and Aniceto Jalandoni allege that their defense of alibi should have been appreciated, as it was highly impossible for them to be at the place where the crime was committed. Consequently, they claim that the trial court erred in finding them culpable for the victim's death. They add that the prosecution failed to overcome the constitutional presumption of innocence in favor of the appellants.[12]

However, the Court of Appeals accepted the trial court's findings and conclusions. It affirmed the conviction of the appellants, but raised the penalty imposed upon Daniel Abordo, Aniceto Jalandoni and Ricardo Arebalo to reclusion perpetua, there being no mitigating or aggravating circumstances in their case.[13] It also raised the indemnity imposed upon appellants from P30,000.00 to P50,000.00, in line with current jurisprudence.

Given the errors assigned by appellants in their briefs, now, essentially the issue before us involves the credibility of witnesses, especially the eyewitness to the killing of the victim Porferio Lubiano. For the trial court, and later the respondent appellate court, anchored the finding of guilt of accused-appellants on the testimony of eyewitness Hermogenes Pan. Although it is well-settled that findings of the trial court as to the credibility of witnesses are accorded great weight, even finality, on appeal, that rule admits of an exception, that is if and when the trial court failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case.[14] We are, therefore, constrained to scrutinize Pan's testimony with painstaking care.

On the witness stand, Pan positively testified that he saw the four accused-appellants perpetrate the crime. He said that he had seen them with Porferio Lubiano walk towards Purok 4 after the conciliation proceedings he

conducted at Purok 3 were over.[15] Pan had secretly followed the group until Gaga Creek, where he witnessed Daniel Abordo and Ricardo Arebalo take hold of the arms of Lubiano, enabling Aniceto Jalandoni to hit him with a piece of wood. Lubiano fell to the ground, lying face downward. Pan then saw Felipe Abordo pick up a stone and drop it on the back of the head of the prostrate victim.[16]

Earlier, during the conciliation proceedings, Pan noticed that Aniceto Jalandoni attempted to pull Lubiano out of the purok hall three times.[17] He also saw Jalandoni pull up the shirt of Lubiano, and declare that Lubiano had no hunting knife on him. Having observed these incidents, Pan concluded that "they have intention (sic) against Porferio Lubiano,"[18] hence Pan followed the group secretly. Pan's testimony impressed the trial court for being direct and succinct. As shown by his demeanor and the manner he answered questions propounded by both prosecution and defense counsels, the trial court found Pan a credible and convincing witness.[19]

Pan's testimony finds support in the testimonies of his cousin Jose Pan and of Dionisio Plasabas, who both stated that they saw all the four appellants leave for Purok 4 together with Porferio Lubiano after the conciliation proceedings were concluded.[20] They said that all the four appellants were present during the conciliation conference earlier.[21] They also testified that while the five walked towards Purok 4, two of the appellants were holding Porferio Lubiano by his shoulders.[22]

Witness Jose Pan also confirmed that during the conciliation proceedings, Aniceto Jalandoni lifted the shirt of Lubiano and remarked that the victim had no hunting knife.[23] Jose Pan and Plasabas both testified that it was also Jalandoni who said that Lubiano was summoned by the purok leader of Purok 4, which is why they left for that place.[24] While the five were walking towards Purok 4, Jose Pan did not notice Hermogenes Pan anymore around the premises where the conciliation was conducted.[25] Fifteen minutes later, both Jose Pan and Plasabas saw Hermogenes Pan running towards them, telling them that Lubiano had been killed.[26] Hermogenes identified the four appellants as the killers of Lubiano.[27] Jose Pan also testified that during the conciliation conference, he had heard from appellants that "they are going to hit Porferio (Lubiano)."[28]

To blunt the prosecution's testimonial evidence, appellant Aniceto Jalandoni testified that he and eyewitness Hermogenes Pan had certain differences. He claimed that Pan had earlier told him to stop the "tabo" or gathering of people in Purok 9, where Jalandoni was a purok leader, because Jalandoni's "tabo" was attracting people away from Pan's own "tabo" in Purok 3.[29] It appears that such gatherings were venues for gambling and fairs where people could buy various goods.[30]

Jalandoni's testimony obviously aims to cast a cloud of doubt over Pan's veracity and objectivity. However, no other witness attributed any malicious or improper motive to Pan's narration of events. Jalandoni's isolated attribution to Pan of an improper motive thus fails to discredit Pan's testimony. The ill-will ascribed to Pan was found by the trial court insufficient to impel Pan to implicate Jalandoni, let alone all the appellants. It is not convincing enough, nay inconceivable, for such a witness to openly concoct a story that would send innocent men to jail.[31] As keenly observed by the trial court:

> "No plausible reason could question the veracity of Hermogenes Pan's testimonies. The fact that the Abordos went to him urging him to summon Porferio Lubiano to a conciliation conference because of derogatory information, the latter circulated, shows that they have respect and regards on Pan's stature and leadership as Purok councilman. Neither had the Abordos shown or proven that they harbor animosity against Hermogenes Pan thus making his declaration suspect or bias. On the contrary they submit themselves to the jurisdiction and authority of Pan to conciliate them. . ."[32]

Where there is no concrete evidence, in our view, to indicate that the witness against the accused has been actuated by any improper motive, and absent any compelling reason to conclude otherwise, the testimony given is

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ordinarily accorded full faith and credit.[33] Hence, eyewitness Pan's straightforward testimony against the appellants was rightly accorded credence. The absence of sufficiently convincing evidence as to ill motives actuating the principal witness of the prosecution strongly tends to sustain the finding that no improper motive existed and, thus, his testimony is worthy of full faith and credit.[34]

We now consider the effect of appellant Felipe Abordo's admission in open court, that he killed the victim, on the culpability of appellants Ricardo Arebalo, Daniel Abordo and Aniceto Jalandoni.[35] According to these three appellants, Felipe Abordo's admission that he alone committed the crime shows that there was no conspiracy among them, hence they should be freed from criminal liability.

Does Felipe Abordo's admission that he alone killed the victim in this case mean his sole authorship of the crime of murder? Obviously, said admission on Felipe's part could not necessarily exonerate the other appellants from criminal liability. To uphold this argumentation would leave in the hands of the one accused, who elects to plead guilty, the automatic exemption of his co-accused from all criminal responsibility. Plainly, this should not be automatically allowed.[36] The culpability or innocence of the co-accused should be determined on the evidence of their individual participation, if any, in the offense charged.

Co-accused Daniel Abordo, Ricardo Arebalo and Aniceto Jalandoni interpose the defense of alibi and presumption of innocence in their favor. Alibi, being one of the weakest defenses, is easily susceptible of concoction, it is invariably viewed with suspicion and may be considered only when established by positive, clear, and satisfactory evidence. To be given credence, it must be established that it was impossible for the accused-appellants to be at the scene of the crime at the same time.[37] In other words, the accused-appellants must establish the physical impossibility of their presence at the scene of the crime at the time of its commission.

Aniceto Jalandoni testified that he went home to Purok 9 after the conciliation proceedings in Purok 3 were terminated.[38] Ciriaco Abordo, the father of Daniel Abordo, testified that the latter and Ricardo Arebalo went home to the Abordos' house in Purok 7 after the proceedings were finished,[39] which was confirmed by Daniel Abordo and Ricardo Arebalo in their respective testimonies.[40]

In this case, the trial court estimated the distance between Purok 3 and Purok 4 to be a mere 300 meters,[41] and the distance between Purok 3 and Purok 9 to be a mere five (5) kilometers.[42] The distance of Purok 7 from Purok 3 was more or less one (1) kilometer, according to Ciriaco Abordo in his testimony.[43] Thus, the places where appellants claimed to have stayed or proceeded to after the conciliation proceedings are not so distant from the scene of the crime, as to exclude the possibility of appellants' presence therein at the time the offense was committed. For the defense of alibi to prosper, it is not enough for appellants to prove that they were somewhere else when the crime took place, but they must likewise demonstrate that it was not possible for them to be physically present at the place of the crime at the time of its commission.[44] Hence, given the relative proximity of the locus criminis established by the trial court, the three appellants' defense of alibi must necessarily fail.

Note that aside from the three appellants themselves, only one other defense witness, Ciriaco Abordo, raised the matter of alibi. He testified that his son Daniel, Ricardo Arebalo, and Aniceto Jalandoni all went home after the conciliation proceedings were concluded.[45] Ciriaco Abordo also testified that after the conciliation, Hermogenes Pan drank tuba with him, along with Jose Pan, Dionisio Plasabas and one Camilo Zurita at the time the killing took place.[46]

What weakens Ciriaco's testimony is lack of corroboration by other persons who could have done so. On record, Ciriaco could not explain why, in spite of the presence of several persons and friends outside his drinking group, only he came forward to present the alibi in favor of his son and other appellants.[47] As repeatedly held, alibi is regarded as weak if it is sought to be established wholly or mainly by the accused himself or his relatives,[48] and

not by credible persons.[49] As well said by the trial court,

> "Likewise that of Ciriaco Abordo that his son Daniel and nephew Ricardo went home after the conciliation is self-serving too. It could not be otherwise because of paternal instinct to save his close kin from the wrath and vengeance of the law.
>
> Such a scheme of an expedient testimony of denial and alibi testified by Ciricao rather than other people who are not related by family ties is wanting. It cannot be said that they were the only people in that Purok for after the conciliation there could be some other persons who could convincingly persuade this Court to believe on the truth of their declaration. But none was presented."[50]

Coming now to the existence of conspiracy among appellants. As recently held in People vs. Alas:

> "There is conspiracy `when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.' Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, it may be inferred from the conduct of the accused before, during and after the commission of the crime. All taken together, however, the evidence therefor must be reasonably strong enough to show a community of criminal design. Settled is the rule that to establish conspiracy, evidence of actual cooperation, rather than mere cognizance or approval of an illegal act, is required."[51]

In the present case, Daniel Abordo and Ricardo Arebalo appear to have held the arms of the victim, preventing the latter from escaping as well as defending himself. It was while in that position that Aniceto Jalandoni hit the victim with a piece of wood. With the bloodied victim sprawled on the ground, Felipe Abordo crushed the back of the victim's head with a stone. All four appellants appear to have acted in concert during the fatal attack against the deceased Porferio Lubiano.

Each performed specific acts with such close coordination as to indicate beyond doubt a common criminal design or purpose.[52] Recall that appellants had a misunderstanding with the victim, arising from the latter's accusation that Ricardo Arebalo enticed him to steal some cacao products from the residence of a certain Ireneo Longakit.[53] It is for this reason that the parties were summoned for conciliation proceedings. During the conference, Hermogenes Pan already observed that appellant Aniceto Jalandoni was very angry.[54] He thrice attempted to bring Lubiano out of the purok hall by pulling his arms.[55] Then, on yet another occasion, Jalandoni suddenly raised the shirt of Lubiano and declared, "[s]o he has no hunting knife."[56] Jose Pan also recalled that Jalandoni told him that "they would hit Lubiano."[57]

Throughout the conference and thereafter, the actuations of Jalandoni and other appellants revealed ill-will and animosity toward the victim. Doubtless, they were moved by the same sentiments. Conspiracy to commit the offense is therefore deducible from the acts of the appellants before, during, and after the commission of the crime, which are indicative of a joint purpose, concerted action, and concurrence of sentiments.[58]

Conspirators are liable as co-principals regardless of the manner and extent of their participation since, in point of law, the act of one would be the act of all.[59] Under the law, a conspirator, no matter how minimal his participation in the crime, is as guilty as the principal perpetrator of the crime.[60] Thus, in People vs. Dinglasan, we had occasion to rule that:

> "As previously discussed, the accused-appellant's participation is limited only to his having held and restrained the victim Efren Lasona during the fatal stabbing. Nevertheless it is well-settled that, `(i)n a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.' Hence, the fact that the accused-appellant did not actually stab the victim Efren Lasona does not negate the appellant's being part of a conspiracy to kill

> the latter. Moreover, the fact that appellant Robert Dinglasan conspired in the commission of the crime charged was sufficiently and convincingly shown by his active participation in holding the victim to render him immobile thus enabling the former's companions to consummate their dastardly act. As the trial court a quo astutely and correctly observed:
> x x x x x x x x x
>
> The role of the herein accused was to hold Efren Lasona to immobilize him and to preclude any potential resistance or fight that he may possibly put up making it possible for his two co-conspirators to stab their victim repeatedly and with impunity without peril to themselves.
>
> In carrying a conspiracy into effect, every act of one of the conspirators in furtherance of the common purpose is in contemplation of law the act of all.
>
> Consonant to these legal principles which are deeply rooted in our criminal justice system, the herein accused is just as guilty as if he himself dealt the killing blows that sent Efren Lasona to an early grave."[61]

In the present case, even if it was Felipe Abordo who admittedly inflicted the fatal blow that caused the death of the victim, the other appellants as co-conspirators are equally liable for the murder of Porferio Lubiano.

As to the qualifying circumstances here present, the treacherous manner by which the appellants perpetrated the crime is shown not only by the sudden and unexpected attack upon the unsuspecting Lubiano but also by the deliberate manner in which the attack was perpetrated. The victim was utterly defenseless when he was killed. His arms were each held by Ricardo Arebalo and Daniel Abordo, so he could neither defend himself nor escape from the blows directed at him. It was during this instance that Aniceto Jalandoni struck the victim with a piece of wood, and as he lay prostrate on the ground, Felipe Abordo crushed his head with a stone, concertedly inflicting on him injuries that caused his death.[62]

Treachery is present "when the offender commits any of the crimes against the person; employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party may make."[63] That circumstance qualifies the killing into murder.

The commission of the crime was also attended by abuse of superior strength on account of the fact that appellants purposely used force out of proportion to the means of defense available to the person attacked. However, this aggravating circumstance is already absorbed in treachery.[64]

Although alleged in the information, evident premeditation was not proved by the prosecution anymore. In the light of the finding of conspiracy, evident premeditation need not be further appreciated, absent concrete proof as to how and when the plan to kill was hatched or what time had elapsed before it was carried out.[65]

As to the mitigating circumstance of voluntary surrender invoked in Felipe Abordo's favor, we agree with the respondent Court and the Solicitor General that this circumstance was correctly considered and applied.[66] Having voluntarily surrendered to barrio councilman Pedro Petorbos immediately after the incident and before arrest, Felipe Abordo properly submitted himself to the custody of a person in authority, allowing him the benefit of this mitigating circumstance.[67] The mitigating circumstance of incomplete self-defense, however, cannot be appreciated, for lack of basis in the light of the findings of the trial and the appellate courts.

We note, however, that the trial court imposed upon Felipe Abordo the penalty of imprisonment of 17 years, 4 months and 1 day, as minimum, to 20 years, maximum, of reclusion temporal. The Court of Appeals affirmed this penalty, after crediting Felipe Abordo with one mitigating circumstance. But it imposed the penalty of reclusion perpetua upon the other appellants namely Ricardo Arebalo, Daniel Abordo, and Aniceto Jalandoni. We concur in

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the conclusion of the respondent Court on this score. The penalty for murder as of the time of the commission of the crime in the case was reclusion temporal in its maximum period to death. The minimum period thereof, reclusion temporal in its maximum period, was correctly imposed upon Felipe Abordo, because he was credited with the mitigating circumstance of voluntary surrender. Reclusion perpetua, the medium period of the penalty set by law, was properly imposed on the other appellants, who had no mitigating circumstance appreciated in their favor. The respondent appellate court also correctly ruled that the indemnity payable to the heirs of the victim should be increased to P50,000.00 from P30,000.00, consistent with prevailing case law.[68]

WHEREFORE, the assailed decision of the Court of Appeals promulgated on January 15, 1992, finding appellants Felipe Abordo, Ricardo Arebalo,[69] Daniel Abordo and Aniceto Jalandoni guilty beyond reasonable doubt of the crime of Murder, as well as the respective penalties imposed on each of them, is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] CA Rollo, pp. 24-36.

[2] Id. at 14 to 14-G.

[3] Id. at 5.

[4] Id. at 14-G.

[5] Id. at 17-J to 17-K.

[6] Id. at 35-36.

[7] Rollo, p. 8; CA Rollo, pp. 17-17-S.

[8] Supra, note 1 at 17-S.

[9] Id. at 14 to 14-B.

[10] Id. at 14-C to 14-D.

[11] Id. at 17-O to 17-P.

[12] Id. at 17-R.

[13] Id. at 35.

[14] People vs. Batidor, G.R. No. 126027, February 18, 1999, p. 10.

[15] TSN, February 22, 1989, p. 17.

[16] Id. at 18-19.

[17] Id at 17.

[18] Id. at 19.

[19] Supra, note 1 at 14F.

[20] TSN, March 27, 1989, pp. 7, 18.

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[21] Id. at 6, 17-18.

[22] Id. at 8, 19.

[23] Id at 16.

[24] Id. at 7, 18.

[25] Id. at 9.

[26] Id. at 9-10, 20.

[27] Id. at 10, 20.

[28] Id. at 12.

[29] TSN, September 4, 1989, pp. 12-13.

[30] Id. at 13.

[31] People vs. Lapura, 255 SCRA 85, 95 (1996).

[32] CA Rollo, p. 14E-14F.

[33] People vs. Solis, 291 SCRA 529, 539 (1998).

[34] People vs. Pano, 257 SCRA 274, 283 (1996).

[35] TSN, August 16, 1989, p. 16-21.

[36] People vs. Patrolla, Jr., 254 SCRA 467, 474 (1996); citing People vs. Dela Merced, 7 SCRA 291 (1963). See also People vs. Armada, Jr., 225 SCRA 644 (1993).

[37]Supra, note 34 at 282.

[38] Supra, note 29 at 10.

[39] TSN, December 19, 1989, p. 20.

[40] TSN October 18, 1989, p. 10; September 26, 1989, p. 10.

[41] Supra, note 32 at 14-B.

[42] Id. at 14-C; TSN, September 4, 1989, p. 35.

[43] Supra, note 39 at 23-24.

[44] People vs. De Guia, 280 SCRA 141, 158 (1997).

[45] Supra, note 39.

[46] Ibid. at 20-22.

[47] Ibid. at 29-30.

[48] Supra, note 44.

[49] Supra, note 34 at 282.

[50] CA Rollo, p. 14E.

[51] 274 SCRA 310, 323-324 (1997).

[52] Supra, note 36; citing People vs. Campa, 230 SCRA 431 (1994).

[53] Supra, note 50 at 14-A.

[54] Id. at 26; TSN, February 22, 1989, p. 17.

[55] Id. at 26-27; TSN, February 22, 1989, p. 17.

[56] Id. at 27; TSN, February 22, 1989, p. 19.

[57] Supra, note 20 at 12.

[58] People vs. Salvatierra, 257 SCRA 489, 505 (1996); citing People vs. Bayrante, 235 SCRA 19 (1994); People vs. De Leon, et al., 245 SCRA 538, 546-547 (1995).

[59] Id. at 506; citing People vs. Apawan, et al., 235 SCRA 355 (1994).

[60] Supra, note 51 at 326; citing People vs. Cedon, 233 SCRA 187, 194 (1994).

[61] 267 SCRA 26, 45-46 (1997).

[62] CA Rollo, p. 34.

[63] Supra, note 36 at 475.

[64] Id. at 475-476.

[65] Ibid.; citing People vs. Peñones, 200 SCRA 624 (1991).

[66] CA Rollo, p. 38.

[67] Revised Penal Code, Article 13 in relation to Article 152.

[68] People vs. Quilaton, 205 SCRA 279, 287 (1992); citing People vs. Bartulay, 192 SCRA 621, 631 (1990); People vs. Yeban, 190 SCRA 409, 417 (1990); People vs. Padrones, 189 SCRA 496, 511 (1990).

[69] The last name of Ricardo Arebalo is spelled as "Arevalo" in some parts of the records.

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