

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR CORDERO Y SUNI, ERNESTO PINLAC Y BANIQUED, JIMMY SALAZAR Y OLIVERAS, ELPIDIO BATAAC ALIAS “DOMINGO”, DOMINGO BATAAC ALIAS ...

G.R. No. 108919. October 11, 1996

Ponente: PUNO, J.

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PUNO, J.:

Edgar Cordero, Ernesto Pinlac y Baniqued, Jimmy Salazar, Elpidio Batac (alias "Domingo" and "Ace"), Domingo Batac (Alias "Dennis"), Sales Sabadao (alias "Sonny"), Marlon Angco, Fred Batac, Ben Balocon (at large) and several John Does, were charged before the Regional Trial Court (Branch VII) of Baguio City, with Robbery with Homicide[1], committed against GARY SALVOSA. The Third Amended Information,[2] dated May 13, 1991, reads:

"That on or about the 12th day of August, 1990, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above " named accused, conspiring, confederating and mutually aiding one another, and by means of violence and intimidation, with intent to gain and against the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, rob and carry away the following articles, to wit:

- a) Nissan pickup 1988 model with Plate No. PJG 398, valued at P380,000.00;
- b) Glock (pistol) valued at P36,000.00;
- c) Uzi machine pistol valued at P53,000.00;
- d) Shotgun valued at P25,000.00;
- e) Browning valued at P38,000.00;
- f) Two jackets (one leather jacket valued at P3,500.00; one military jacket valued at P1,500.00);
- g) Wallet valued at P55.00;
- h) Cash amount of P5,000.00 which was in the wallet mentioned in item
- i) Seiko wrist watch valued at P2,500.00;
- j) Tasco binoculars valued at P8,500.00;
- k) Abloy padlock valued at P3,500.00;

all having a total value of P556,555.00 belonging to GARY SALVOSA, to the damage and prejudice of the said owner; that on the occasion of the robbery and for the purpose of enabling them to take away, steal, rob and carry away the assorted articles and other personal belongings, the herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously and with intent to kill, being then armed with a dagger and other weapons of violence and taking advantage of their superior strength and with evident premeditation and by means of treachery, attacked GARY SALVOSA with a dagger and other weapons, thereby inflicting upon the latter stab wounds which directly caused his death.

"That the aggravating circumstance that the killing was committed in the dwelling of the offended party is present and that the crime was facilitated by the use of a motor vehicle.

"CONTRARY TO LAW."

When arraigned on September 3, 1990, accused Edgar Cordero and Domingo Batac pleaded guilty. The rest of the accused, except Ben Balocon who has remained at large, entered a plea of "not guilty." [3] Trial on the merits ensued.

On November 11, 1991, accused Marlon Angco was discharged from the information and utilized by the prosecution as a state witness. [4]

First, the antecedent facts.

GARY SALVOSA, a 41-year old businessman, owned GP Shopping Arcade, a commercial building located at No. 101 Upper Mabini Street, Baguio City. Its penthouse served as the residence of Gary and his family. The other floors were rented out to tenants. Due to the unsafe condition of the building on account of July 16, 1990 earthquake, the Salvosas moved out of the building. Nonetheless, Gary would occasionally sleep over at the penthouse as he did on August 12, 1990.

PACITA SALVOSA, Gary's wife, recalled that after dinner on August 12, 1990, Gary discussed their plan to attend the wake of his uncle in Pampanga. He showed her his wallet containing P5,000.00 for their trip. At about 7:30 p.m., he went to the GP building on board a white Nissan pickup with license plate no. PJG 398. That was the last time she saw her husband alive.

The initial investigation of the police disclosed that EDGAR CORDERO, a security guard from Lanting Security Agency, was the guard on duty at the GP building on August 12, 1990. His tour of duty was from 4:00 p.m. to 12:00 midnight of said day. When Cordero relieved fellow security guard Freddie Natividad, the latter turned over to the former two (2) firearms: a .38 caliber pistol which is the official service firearm issued by their agency, and a shotgun owned by GARY SALVOSA bearing serial number A278669. The shotgun was lent to the building's security guards by Gary. [5]

The following day, August 13, 1990, at about 9:10 a.m., John Salvosa (a.k.a Jake), the nine-year old son of Pacita and Gary, and one Marlou Soliven, a janitor at the GP Building, discovered the lifeless body of Gary at the penthouse of the GP building. Gary's clothes were soaked with blood, his hands were tied behind his back with a clothesline wire, and his eyes, mouth and neck were covered with strips of cloth.

Police authorities, led by PATROLMAN RAY EKID, repaired to the scene of the crime. They removed the strips of cloth covering Gary's head and found a hunting knife still stuck on his neck. Gary also suffered four (4) stab wounds on the chest and a stab wound on the right upper arm. His left wrist showed ligature marks indicating that the victim had a wristwatch. Dr. Emmanuel Fernandez' autopsy report revealed that Gary died due to "hypovolemic shock secondary to massive hemorrhage due to perforating wounds on the heart, aorta, right lung, liver, stomach and transverse colon due to multiple stab wounds on the chest." [7]

Strips of cloth similar to those used on the victim were found at the alley and the first, second and third floors of the building. Similar strips of cloth were also found at the guard post. [8]

The penthouse was in complete disarray. Its three (3) rooms were ransacked, the closets were opened and several items, such as bags and clothes, were scattered all over the floor. Among those taken from Gary were a shotgun, an UZI automatic pistol with serial number 15406, a Glock 17 9mm pistol bearing serial number EP 706, and a Browning pistol, with serial number 808175.

The white Nissan pickup of the victim, apparently used as a get-away vehicle by the then unidentified robbers was found abandoned along M. Roxas Street, Lower Brookside, Baguio City, about three (3) kilometers away from the crime scene.

State witness MARLON ANGCO testified that he used to visit his cousin and co-accused SALES SABADAO in P. Burgos Street, Baguio City. In February 1990, he accompanied Sabadao to visit former Vice-Mayor ERNESTO PINLAC in his house in Barangay Pulong Sur, Malasiqui, Pangasinan. Marlon likewise met Sabadao's cousins, the Batac brothers-- Fred, Elpidio and Domingo, in Pinlac's house. They stayed there for a week, during which time, Marlon served as the errand boy of Pinlac's group. Marlon went to Baguio but returned a month later to Pinlac's house with Sabadao. This time, Marlon stayed a little longer with Pinlac's group since they refused to let him go back to Baguio. Again, he served as their houseboy.[9]

At about 9:00 a.m. of August 12, 1990, Pinlac, together with Salazar, Fred Batac and Domingo Batac and Marlon went to Baguio on board Pinlac's jeep. Accused Elpidio Batac and Sabadao were left behind in Pangasinan.

They arrived in Baguio at about 3:00 p.m. They proceeded to Malcolm Square after taking their meal at the Slaughter House Restaurant. The Batac brothers left and fetch Cordero. Pinlac and Cordero exchanged cordial greetings and discussed how they would break into a building. At that time, Marlon had no idea of the building they were referring to. Pinlac then inquired: "Ano, itutuloy ba natin?" Cordero answered: "Of course, Vice." Cordero verified if Pinlac was "carrying anything." Pinlac retorted: "Meron, pero iisa lang." Marlon surmised that Pinlac was referring to a .45 caliber pistol in the possession of Domingo Batac. Cordero quipped: "That is not enough." Pinlac then told Cordero to borrow another firearm from his companions.[10] Marlon realized that his companions would stage a robbery, although he was not sure of their target.[11]

At about 4:00 p.m., Cordero left for duty. Pinlac drove his jeep along Session Road and parked it in front of McDonald's construction site, a few meters from the GP building. Pinlac ordered his companions to take their supper.[12] Marlon, Salazar and the Batacs dined in an eatery along Mabini Street and returned to the Session Road at 7:00 p.m. They waited for Pinlac at the Star Café. Cordero came and asked them to join him at the GP building. After they entered the building, Cordero padlocked its gate. He instructed them to hide and said, "If he enters, I will poke my gun at him." Cordero took a blanket from a black bag and cut it into strips. Cordero and the Batac brothers went upstairs while Marlon and Salazar remained on the ground floor. They hid under the stairs. They waited for Gary for about an hour and a half.

Gary arrived at the GP Building on board his Nissan pickup. Cordero opened the gate and padlocked it. Gary greeted Cordero and inquired why the lights were out. Cordero then switched on the lights but poked a gun at Gary. Startled, Gary asked, "What is happening, Ed?" Cordero ordered Gary to lie down or be killed. At that instance, Fred Batac, Domingo Batac, Salazar, and Marlon appeared.[13]

Domingo also poked his .45 caliber pistol at Gary. With the help of Fred, he frisked Gary. Domingo got from Gary an Uzi and his wallet. Fred took Gary's 9 mm .45 caliber pistol. Salazar got Gary's wristwatch but Domingo snatched it from him and wore it. Seeing the robbery, Marlon got scared and hid behind the Nissan pickup. The commission of the crime continued. Salazar tied Gary's arms at the back with a clothesline wire. Cordero, Domingo and Fred led Gary Upstairs. They summoned Marlon to join them but he refused. They ordered Salazar to stay downstairs to drive the victim's Nissan pickup. Marlon and Salazar thought of leaving the place but the gate was padlocked. Half an hour later, Cordero went downstairs and instructed Salazar to start the pickup's engine. Salazar went upstairs to check on the Batac brothers. He returned and informed Marlon that they should go because Gary had been killed. Before they could go, Fred and Domingo joined them. Marlon noticed that Domingo's shoes were stained with blood. Fred's hands were likewise soiled with blood. Fred told Cordero

that he killed Gary to prevent his identification.[14]

Marlon, Salazar, Domingo and Fred then boarded the victim's pickup while Cordero opened the gate. After his companions left, Cordero walked towards Session Road and boarded Pinlac's jeep which was parked in front of the McDonald's construction site. Pinlac followed the pickup driven by Salazar. Upon reaching Brookside, they abandoned the victim's pickup and transferred to Pinlac's jeep and proceeded to Pinlac's house in Pangasinan.[15] Inside the jeep, Domingo took P200.00 from Gary's wallet and pocketed it.

At about 10:00 p.m., Cordero's reliever, security guard JOHNNY SANNADAN, arrived. Sannadan came two (2) hours earlier than the start of his official duty. To his surprise, Cordero was not around and the main gate of the GP building was padlocked. He knocked at the gate but there was no response. He waited for Cordero until 2:00 a.m. of August 13, 1990, and went home when Cordero still failed to come. After four (4) hours, he again returned to the GP building and found the gate still locked. He proceeded to Cordero's boarding house along P. Burgos Street.[16] He learned that Cordero had taken all his clothes with him and has not returned to the boarding house after he left for work that evening.[17]

At Pinlac's house, the group had a drinking spree. Fred Batac bragged about the killing and the successful heist. He told Sabadao to smell his hands. He challenged Sabadao: "If you were the one who made (sic) that, do you think you were (sic) able to get what we have (sic) got?" Sabadao countered: "If I plan a project, it is assured." The next day, the group separated. Cordero, Sabadao and the Batac brothers left for Manila. Salazar went to his hometown in Villasis while Marlon returned to Baguio.[18]

NICOMEDES PAAS, a security guard assigned at an establishment located across GP building, testified that he saw Gary's Nissan pickup enter the main gate of GP building at about 8:00 p.m. of August 12, 1990. Cordero opened the gate. An hour later, the Nissan pickup left. However, Paas did not see the people on board the Nissan pickup. Neither did he notice when Cordero left his post.[19]

The combined forces of the Baguio City Police, the CIS and the NBI conducted a dragnet which led to the arrest of several suspects, namely: ERNESTO PINLAC, former Vice-Mayor of Malasiqui, Pangasinan, security guard EDGAR CORDERO, state witness MARLON ANGCO, the BATAc brothers, namely, Domingo, Fred and Elpidio, JIMMY SALAZAR and SALES "Sonny" SABADAO.

The arrest of the suspects was made possible through the information given by Marlon to his brother, ROBERT ANGCO, a member of the Cordillera People's Liberation Army (CPLA) and an asset of the NBI. Robert Angco, in turn, relayed his brother's information to the authorities.

It was on October 8, 1990 that Cordero, Sabadao, Elpidio and Domingo Batac were arrested in their hide-out in Novaliches, Quezon City. The authorities recovered from their hide-out the Browning 9 mm. pistol (Exhibit "P") of the deceased victim, some live ammunitions (Exhibit "P-1") and a loaded magazine for a Glock pistol (Exhibit Q-1").[20] The authorities intercepted the jeep of Pinlac in Barangay Bugtong, about two (2) meters from Pinlac's house. Pinlac was then with Salazar and Marlon Angco.[21]

The police recovered the stolen Uzi (Exhibit "M") from Mayor Oscar Lambino of Malasiqui, Pangasinan. Mayor Lambino declared that the Uzi was pledged to him by Pinlac in September 1990 as security for a loan.[22]

Upon the other hand, the stolen shotgun was recovered by the San Carlos City police. Apparently, when Marlon reported the robbery to his brother, Robert, the latter and another NBI asset, LES MORALES, proceeded to Pinlac's residence in Malasiqui, Pangasinan. SABADAO introduced Robert to Pinlac. To facilitate the arrest of Pinlac's group, Robert informed the group that they could stage another robbery if Pinlac would supply the things he needed. Pinlac took the bait. He allowed Robert to use his jeep and the stolen shotgun and instructed one BEN

BALOCON to accompany NBI assets ROBERT and MORALES. Robert was taken aback by Pinlac's swift response to his offer as he had yet to plan how to facilitate the group's arrest. In order not to blow his cover, Robert instructed Morales to ram Pinlac's jeep against a traffic sign near the San Carlos Police Station. When the policemen of San Carlos investigated the traffic accident, they saw the shotgun inside the jeep. They confiscated the shotgun and arrested Robert Angco and company. Robert, Morales and Balocon were released from police custody through the intervention of Pinlac but the shotgun was left with the San Carlos police.[23]

The last suspect, FRED BATAAC, was arrested on July 15, 1991, in Bagong Silang, Novaliches, Quezon City.[24]

Cordero and Pinlac, both represented by PAO lawyers, were investigated by Patrolman Ray Ekid of the PNP, Baguio City. After being informed of their constitutional rights, they executed their extrajudicial statements admitting their complicity and participation in the crime.[25] NBI Agent Rolando Vergara also investigated Cordero. With the assistance of another PAO lawyer, Atty. Tabin, Cordero executed his second extrajudicial statement (Exh. "C"). The other suspects refused to give any statement.

In defense, former Vice-Mayor Pinlac, the alleged leader of the group, and his co-appellants gave a different story.[26]

Sabadao and Pinlac allegedly met for the first time in November 1989, in a motor shop in Quezon City. Albert Pagyao, a worker at the motor shop and cousin of Sabadao, introduced Sabadao to Pinlac. When Sabadao learned that Pinlac was a former Vice-Mayor, he asked help concerning his criminal case in Ilocos Norte. Pinlac told him to drop by his house.

In the early part of 1990, Sabadao visited Pinlac at his residence in Pulong Sur, Malasiqui, Pangasinan. He was accompanied by his cousin, Fred Batac. The two also asked Pinlac to help them find work abroad as seamen. Pinlac did not guarantee he could help Sabadao in his criminal case but he assured the two he has friends with shipping companies who could assist them find work as seamen.

On August 11, 1990, Sabadao and Fred visited Pinlac a second time in Pangasinan. This time, Fred's brothers, Elpidio and Domingo, were with them. Sabadao introduced Elpidio and Domingo to Pinlac. Pinlac told them he was preparing to go to Baguio City to get the personal belongings of his children. The Batac brothers offered to accompany Pinlac since the route to Baguio was difficult. That evening, Sabadao and the Batac brothers slept over at Pinlac's house.

The following day, at about 9:00 a.m., Marlon and Salazar dropped by the house of Pinlac. When they learned that Pinlac was going to Baguio, they asked if they could hitch a ride on his jeep to save their fare. Pinlac accommodated them. Sabadao and Elpidio were left behind in Pangasinan while Fred and Domingo accompanied Pinlac to Baguio.

Pinlac's group arrived in Baguio at about 3:00 p.m. Marlon, Salazar and Domingo alighted in front of the McDonald's construction site along Session Road while Pinlac and Fred drove towards the boarding house of Pinlac's children.

Pinlac parked his jeep near the boarding house while Fred got the belongings of his children. They waited for their other companions inside the jeep. Later in the evening, Marlon, Jimmy and Domingo reappeared. Cordero was with them. They alighted from a Nissan pickup and boarded Pinlac's jeep. Marlon introduced Cordero to Pinlac. Marlon, Cordero, Salazar and Domingo seated themselves at the back. Pinlac overheard snatches of conversation among his passengers and he suspected that they committed robbery and homicide during their trip to Baguio.

Upon arriving in his house, Pinlac reprimanded Marlon and his companions. He ordered them to leave his house

at once. Pinlac was mad for fear that he would be involved in the case.

In a 54-page Decision,[27] dated January 21, 1993, the trial court found accused CORDERO, PINLAC, SALAZAR, DOMINGO BATAAC and FRED BATAAC guilty as principals of the crime charged and sentenced each of them to suffer the penalty of reclusion perpetua. SALES SABADAO was held liable as an accomplice and was sentenced to suffer imprisonment from 12 years of prision mayor to 20 years of reclusion temporal. ELPIDIO BATAAC was acquitted for insufficiency of evidence. All appellants were also adjudged civilly liable and were ordered:[28]

"1. To restore to the legal heirs of the victim, Gary Salvosa, the wallet, the P200.00 (cash) contained in the wallet and the Seiko wristwatch, or in case of failure to do so, to pay jointly and solidarily the value thereof as follows: a) P55.00 for the wallet, and b) P2,500.00 for the Seiko wristwatch;

2. To restore the Glock pistol to the government or in case of failure to do so, to pay jointly and solidarily its value in the amount of P36,000.00 to the legal heirs. The Glock pistol shall be delivered to the legal heirs upon presentment of the necessary papers to possess it;

3. To indemnify jointly and solidarily the heirs of Gary Salvosa in the amount of P50,000.00 (Art. 2206, Civil Code);

4. To indemnify jointly and solidarily the legal heirs for consequential damages as follows: a) P950,000.00 representing lost earnings of the victim for 19 years, since he was only 41 years old when killed and the life expectancy of an average Filipino is now 60 years old. At P50,000.00 income a year, for Gary Salvosa alone, times 19 years, equals P950,000.00; b) P86,371.00 representing actual and compensatory damages; c) P1,000,000.00 as moral damages; and d) P100,000.00 as exemplary damages;

5. The Uzi, Browning 9 mm, and the shotgun shall remain in the custody of the government and should be delivered to the legal heirs only upon presentment of the necessary papers showing their legal authority to possess it.

6. The other effects of the crime in the custody of the government are ordered released to the proper persons legally entitled thereto unless they are lawfully being held in connection with any other offense;

x x x."

Hence, this appeal.[29] After submission of the parties' Briefs, however, appellant Jimmy Salazar, on his own, filed a motion to withdraw his appeal. On August 2, 1995, Atty. Jose Molintas, counsel of Salazar, confirmed the withdrawal of appeal made by his client. In accord with *People vs. Taaca*,[30] we hereby approve appellant's motion premised on his perceptions that he is satisfied with the judgment of the trial court.

We now come to the appeal of the remaining appellants.

Appellants contend that the trial court erred in discharging Marlon Angco as a state witness and in giving credence to his testimony. It is also urged that appellant Sabadao should not have been convicted as an accomplice. Appellant Pinlac particularly faults the trial court for giving greater credence to the version of the prosecution than that of the defense.

We affirm.

Appellants claim that Marlon Angco should not have been discharged as a state witness because he appears to be the most guilty. They point out that he led some of the appellants to the GP building and he was present when the crime was committed. They contend that the prosecution should have discharged either Pinlac, Elpidio Batac or Sabadao as a state witness.

We hold that the discharge of Marlon is in accord with Section 9, Rule 119 of the Rules of Court which provides:

"When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed witness at a hearing in support of the discharge, the court is satisfied that:

"a) There is absolute necessity for the testimony of the accused whose discharge is requested;

"b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

"c) The testimony of said accused can be substantially corroborated in material points;

"d) Said accused does not appear to be the most guilty;

"e) Said accused has not at any time been convicted of any offense involving moral turpitude.

"Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence."

The power to prosecute includes the initial discretion to determine who should be utilized by the government as a state witness. The reason cannot escape us. The prosecution has gathered the evidence against the accused and is in better position to decide the testimonial evidence needed by the State to press its prosecution to a successful conclusion. Under our Rules, however, it is the courts that will finally determine whether the requirements have been satisfied to justify the discharge of an accused to become a witness for the government.

In the case at bar, we uphold the finding of the trial court that Marlon does not appear to be the most guilty of the accused-appellants. The records show that Marlon did not participate in the robbery with homicide. He was not part of the conspiracy from its start but belatedly learned of it only when he heard Cordero and Pinlac discussing the crime at the Malcolm Square in Baguio City. During its commission, he hid behind the Nissan pickup while Salazar, Cordero, and the Batacs were ganging up on the victim. More importantly, he revealed the nefarious activity of the group to the authorities through his brother, Robert.

Next, appellants assail the credibility of the testimony of Marlon. It is settled, however, that the matter of determining the credibility of a witness and calibrating the probative value of his testimony is the primary task of the trial court.[31] Its findings are accorded great weight, if not finality, since by observing the deportment of witnesses while testifying in court it can better discern its open and buried dimensions.[32] We take note of the trial court's observation that "while the state witness (Marlon Angco) may be himself a culprit and therefore, is likely to put the blame on his co-accused rather than himself, yet, it appears from a perusal of his testimony that the same (testimony) is sincere and given unhesitatingly and in a straightforward manner. Marlon's testimony is full of details which by their nature could not have been the result of deliberate afterthought. x x x His demeanor, as observed by this Court, exudes an assurance that he is telling the truth, unlike that of the other accused that engenders suspicion." [33]

We come to appellant Pinlac's contention that his participation in the conspiracy was not established by the prosecution. He insists that he only accommodated the real culprits in his jeep when he went to Baguio City that fateful day and points to co-appellant Cordero as the sole killer of the victim. He puts up the defense of alibi, claiming he was within the vicinity of the boarding house of one of his children during the robbery. His non-flight, he maintains, also bolsters his innocence, unlike his co-accused who all left his house after the incident.

We reject these contentions. Conspiracy need not be proved by direct evidence of prior agreement to commit the crime. It may be inferred from the conduct of the accused before, during, and after the commission of the crime showing that they acted in unison with each other, evincing a common criminal purpose or design.[34]

In the case at bar, the concerted acts of appellants reveal their common criminal intent. Each of them played a distinct role to commit the robbery with homicide. Pinlac cannot downplay his role in the conspiracy. His house served as the meeting place of the group. A few hours before the robbery, he inquired from Cordero whether they could proceed with their plan. He himself drove his jeep utilized by his group and parked it near the scene of the crime. He waited for his companions who were then staging the robbery. Thereafter, he gave them a ride on his way home. About a month after the incident, one of the guns stolen from the victim, particularly the UZI machine pistol[35] was pledged by Pinlac to Mayor Lambino. In addition, the victim's Bently shotgun was found in Pinlac's jeep, the same jeep used by him and his cohorts during the August 12, 1990 robbery.

We also hold that the defense of alibi proffered by Fred Batac and Pinlac is as weak as a rug. Pinlac and Fred were allegedly at the boarding houses of Pinlac's children between 3:00 p.m. and 5:00 p.m., of August 12, 1990. It was, however, established that the crime was committed between 8:00 p.m. and 9:00 p.m. of the same day. Hence, it was not physically impossible for them to be at the scene of the crime at the time of its commission. The shopworn rule is that for alibi to prosper, it is not enough to show that accused was at some place else at the time of the commission of the crime. It must also be proved by clear and convincing evidence that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission and commit the crime.[36]

On the part of Sabadao, we find that he participated in conspiring to commit the crime at bar. The records show that he was responsible for forming Pinlac's group. He designated the persons who should accompany Pinlac to Baguio.[37] When the group returned from Baguio, he joined them in the drinking spree in celebration of their success and even boasted: "If I plan a project, it is assured." [38] The trial court should have convicted Sabadao not merely as an accomplice for in conspiracy the act of one is the act of all.[39]

It is meet to point out that the defense of the appellants is incredible. For instance, Pinlac claims he was to go to Baguio in the morning of August 12, 1990 to get the personal belongings of his son and daughter. Domingo and Fred Batac offered to accompany him. However, when they arrived in Baguio, Domingo did not go with Pinlac, instead he joined state witness Marlon and Salazar. No satisfactory explanation was given for this change of plan. Appellants also tried to establish that Marlon and Salazar only hitched a ride in Pinlac's jeep to save fare in going to Baguio on August 12, 1990. Yet, one wonders why Marlon and Salazar had to return all the way to the house of Pinlac in Malasiqui when Marlon is from Baguio. We doubt the generosity of Pinlac in accommodating appellant Cordero in his jeep when he hardly knew the man. At that time, his jeep was already loaded with passengers and the belongings of his children and the roads of Baguio were difficult to travel.

More. While driving his jeep to his hometown Malasiqui, Pinlac allegedly heard Marlon and his companions talking about the crime at bar. The Batacs and Sabadao also testified that Pinlac got angry at Marlon and asked them to leave his house because of the "bad thing" that happened in Baguio. Yet, Pinlac, a former Vice-Mayor, did not even report the incident to the authorities. To top it all, he willingly lent his jeep and the stolen shotgun to Marlon's brother two weeks after the incident while pretending he feared he would be implicated in the crime.

We entertain no doubt that appellants are guilty of the special complex crime of robbery with homicide. They should suffer reclusion perpetua, an indivisible penalty which will not be affected by the presence of aggravating or mitigating circumstances.

One final note. Our review on the computation of damages awarded to the legal heirs of Gary Salvosa,

particularly for loss of earning capacity, reveals that the victim's life expectancy was fixed at sixty (60) years. Considering that the victim was forty one (41) years old at the time of death and had an income of P50,000.00 per year, the trial court awarded P950,000.00 for the lost earnings of the victim for 19 years.

The computation is erroneous. The formula consistently used by this Court in determining life expectancy is $(2/3 \times [80 - \text{age of the victim at the time of death}])$.^[40] Thus, the victim's income of P50,000.00 should be multiplied by twenty six (26) years, not nineteen (19) years. Accordingly, the award for loss of earning capacity should be P1,300,000.00.

The actual damages awarded in the amount of P86,371.00 should also be corrected because some of the expenses included in the computation are not in accord with the guidelines set in *People vs. Degoma and Taborada*.^[41] We disallow the amount of P9,000.00 spent by Ray Dean Salvosa, brother of the victim, in connection with the investigation of the case, and the amount of P42.00 representing snacks for lawyers. Thus, the award for actual damages is reduced to P77,329.00. In *Degoma*, we held:

"..... Of the expenses allegedly incurred, the Court can only give credence to those supported by receipt and which appear to have been genuinely incurred in connection with the death, wake or burial of the victim. Thus, the Court cannot take account of receipts showing expenses incurred before the date of the slaying of the victim; those incurred after a considerable lapse of time from the burial of the victim and which do not have any relation to the death, wake or burial of the victim; those incurred for purely aesthetic or social purposes, such as the lining with marble of the tomb of the victim; those which appear to have been modified to show an increase in the amount of expenditure"; those expenditures which could not be reasonably itemized or determined to have been incurred in connection with the death, wake or burial of the victim; those which, nonetheless, would have been incurred despite the death, wake and burial of the victim, the death, wake and burial being merely incidental; and those which were not in fact shouldered by the immediate heirs of the victim, such as plane tickets by relatives or in-laws..."

IN VIEW WHEREOF, we affirm the judgment of the trial court subject to the following:

1. Appellant Sales Sabadao alias "Sonny", being a co-conspirator, should suffer reclusion perpetua.
2. Appellants are ordered to pay the legal heirs of the victim:
 - (a) P77,329.00 as actual damages; and
 - (b) P1,300,000.00 for the victim's loss of earning capacity

Costs against appellants.

SO ORDERED.

Regalado, (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Docketed as Criminal Case No. 8030-R.

[2] Original Records, p. 147; The Original Information was amended three (3) times to include the names of other accused.

[3] RTC Order, dated September 3, 1991; Original Records, p. 271.

[4] RTC Order, dated November 11, 1991; Original Records, pp. 225-235.

[5] TSN, Romeo Guillermo, September 11, 1991, pp. 8-9; TSN, Freddie Natividad, September 12, 1991, pp. 3-4.

[6] Exhibit "X", Sworn Statement of Marlou Soliven.

- [7] Exhibits "F", "F-2" and "F-3", Medico-Legal Autopsy Report.
- [8] TSN, September 11, 1991, pp. 40-43.
- [9] TSN, Marlon Angco, December 3, 1991, pp. 4-15.
- [10] TSN, Marlon Angco, December 3, 1991, pp. 16-21.
- [11] Ibid, p. 24.
- [12] Ibid, pp. 22-23.
- [13] TSN, Marlon Angco, December 3, 1991, pp. 8-9.
- [14] TSN, Marlon Angco, December 3, 1991, pp. 9-20.
- [15] Ibid, pp. 21-22.
- [16] Exhibit "U", Sworn Statement of Johnny Sannadan, dated August 13, 1990.
- [17] TSN, Efren Hortillano, September 4, 1991, pp. 53-55.
- [18] Ibid, pp. 23-35.
- [19] TSN, Nicomedes Paas, September 5, 1991, pp. 16-20. See also Exhibit "Y", sworn statement of Paas, dated August 13, 1990.
- [20] TSN, Mario Uson, September 18, 1991, p. 14; TSN, Francisco Linggon, September 17, 1991, pp. 26-27;
- [21] TSN, Mario Uson, September 18, 1991, pp. 35-39.
- [22] TSN, Oscar Lambino, September 24, 1991, pp. 3-4.
- [23] TSN, Robert Angco, October 11, 1991, pp. 20-33.
- [24] Original Records, p. 149.
- [25] Exhibits "A" and "C";
- [26] Brief for Appellant Ernesto Pinlac, October 6, 1993, Rollo, pp. 126-141; Appellant's Brief, October 30, 1993, Rollo, pp. 146-159.
- [27] Penned by Judge Clarence J. Villanueva; see Rollo, pp. 51-103.
- [28] RTC Decision, *supra*, at pp. 53-54.
- [29] Original Records, p. 518.
- [30] G.R. No. 35652, September 29, 1989, 178 SCRA 56.
- [31] *People vs. Taaca*, *supra*.
- [32] *People vs. Uycoque*, G.R. No. 107495, July 31, 1995, 246 SCRA 769, 779.
- [33] RTC Decision, *supra*, at p. 39.
- [34] *People vs. Manzano, et al.*, G.R. No. 108293, September 15, 1995, 248 SCRA 239, 247.
- [35] Exhibit "M".

[36] People vs. Trilles, et al., G.R. No. 114388, March 12, 1996.

[37] Exhibit "D", Statement of Marlon Angco, dated, October 13, 1990.

[38] TSN, Marlon Angco, December 5, 1991, p. 24.

[39] People vs. Taaca, supra.

[40] People vs. Teehankee, Jr., G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 120, citing Philippine Airlines, Inc., vs. Court of Appeals, 185 SCRA 110 [1990]; Monzon vs. Intermediate Appellate Court, 169 SCRA 760 [1989]; Davila vs. Philippine Airlines, Inc., 49 SCRA 497 [1973]; Villa Rey Transit, Inc., vs. Court of Appeals, 31 SCRA 511 [1970].

[41] G.R. Nos. 89404-05, May 22, 1992, 209 SCRA 266.

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