

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR BALISTEROS Y FLORES, NILO AVESTRO Y CARDONA AND ERNESTO GALVANTE Y BALISTEROS, ACCUSED, SALVADOR BALISTEROS Y FLORES ...

G.R. No. 110289. October 07, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

This case originated from the Regional Trial Court of Malolos, Bulacan, Branch 14, wherein the original three accused were charged with murder in Criminal Case No. 1794-M-91 for the killing of one Romeo Abad on August 16, 1991 in Pandi, Bulacan, the information therefor alleging that said accused acted in conspiracy and committed the felony with treachery and evident premeditation.[1]

Upon arraignment, the three accused pleaded not guilty. During the trial of the case, the prosecution moved for the exclusion of accused Ernesto Galvante from the information for murder so that he could become a witness for the Government as particeps criminis.[2] In an order dated April 22, 1992, the lower court discharged said accused from the information to be utilized as a state witness.[3]

A year later, or on April 6, 1993, the trial court rendered its decision finding herein accused-appellant Salvador Balisteros and Nilo Avestro guilty as charged, with the punitive fallo thereof disposing as follows:

WHEREFORE, judgment is rendered, finding the accused Salvador Balisteros and Nilo Avestroz guilty beyond reasonable doubt of the crime of Murder committed with the attendant aggravating circumstances of Abuse of Superior strength, committed in an uninhabited place, the killing augmented by another wrong not necessary for its commission (slashing of the intestines), the court hereby sentences each of the accused to Reclusion Perpetua.

To indemnify the heirs of the victim P100,000.00 (as) compensatory damages. To pay P50,000.00 moral damage(s). With costs.

The provincial Warden of Malolos, Bulacan is ordered to commit the accused to the National Penitentiary (Muntinlupa) immediately upon receipt hereof.[4]

The material facts of this case are narrated in the aforestated decision of the court a quo which we find to be sustained by the evidence, hence we adopt and reproduce the same at length hereunder, with some editing corrections:

On August 16, 1991 at around 7:00 o'clock in the morning Eliza Merceada** reported for work at the store of Romeo Abad. (U)pon arriving, she wiped and cleaned the tables and the places where the merchandise are placed. At about 8:00 o'clock, she brought the merienda of the farm laborers of Romeo, who were busy working at the ricefield. (S)he had to walk alone. On her way to the ricefield, she saw Nilo Avestros, Salvador Balisteros and Ernesto Galvante in the hut of Salvador Balisteros, whom she call(ed) Mang Badong, drinking

liquor (Gin). When she arrived in the ricefield she served the merienda to the farm laborers and after the latter had finished their merienda, she returned to the house of Romeo at Engkanto. (I)t was about eleven o'clock noon when she arrived. It did not take long, (and) she had to return to the ricefield. (T)his time she was bringing the food for lunch of the laborers, aboard the truck with Romeo. When they reached the National Highway, they alighted from the truck after parking it, and walked going to the ricefield. When they passed by the hut of Balisteros, Romeo was left in the hut while she proceeded to the ricefield. (U)pon arrival, she served the lunch to the laborers. After the laborers ha(d) finished eating, Romeo arrived, but he did not stay long because he went to ropegraze (sic) (isinuga) his horse. After several minutes passed, she left and proceeded to the place where the truck was parked at the highway. That on her way, near the bamboo gr(o)ve, she heard two shouts saying, "huwag, huwag", then she called for Nilo, whom she believed was in the hut, but no one answered her call so she proceeded. (O)n the way, she saw the three (3), Mang Badong, Nilo and Ernesto coming out from the bamboo gr(o)ve. Mang Badong was half-naked, wearing a pant (sic) and carrying a bolo. (H)e was in a hurry, followed by Nilo who was wearing a polo shirt, a short (sic) and barefooted, so with Ernesto who was wearing a short pant (sic) and barefooted. (T)hey were all in a hurry going to the hut of Mang Badong. When she saw Mang Badong, after she heard the two (2) shouts, Badong asked her where Romeo Abad was, then she also asked Badong if they have seen Romeo Abad, but Badong did not answer. That while she was walking going to the highway, she noticed Badong, Nilo and Ernesto were following her at a distance of about 4 meters. Badong had his clothes on, carrying a bag. Nilo was wearing a T-shirt and short(s). Ernesto was wearing a T-shirt and shorts (and) both were barefooted. When she reached the highway, she boarded the truck of Romeo and watched the three (3) accused going to the highway. Then she left the truck and went to the store of Romeo but she did not see her Kuya Romy at home. At about 2:00 o'clock p.m., she and her comadre, Yolanda Herno, brought the merienda of the workers in the ricefield. (W)hen they arrived her Kuya Romy was not there, so she and Yolanda looked for Romy at the bamboo gr(o)ve where she previously heard the two shouts and there, they saw blood and the body of Romeo Abad inside the bamboo gr(o)ve, his neck cut and a big wound on his stomach. Then they asked Norberto de Leon to help them and Norberto called his companions Tony and Domeng who were in the ricefield and when they arrived, they brought the body of Romeo Abad to the house of his brother, Amado Abad, at Engkanto, Angat, Bulacan.

According to Eliza Mercaeda, Romeo had a hut on the ricefield aside from the hut of Balisteros. That the hut of Romeo is around 30 meters away from the bamboo gr(o)ve while the hut of Badong is 20 meters away from the bamboo gr(o)ve. That when she heard the shouts from the bamboo gr(o)ve, she already became apprehensive that the voice was the voice of Romeo Abad but she did not ask Badong when she saw him coming out of the bamboo gr(o)ve together with Nilo and Ernesto as to who shouted because she was afraid.

The accused upon reaching the national highway proceeded to the store of Liberato Antonio located two (2) meters away from the national road at Siling Matanda, Pandi, Bulacan, where Nilo and Ernesto bought two (2) pairs of sandals. After buying sandals, they boarded the jeepney of Florencio dela Cruz near the (G)reenfield piggery farm at Siling Matanda and alighted at a corner in Pandi going to Balagtas and Sta. Maria.

The death of Romeo Abad was reported to the police station of Pandi, Bulacan and also the suspects who boarded a bus. (T)hen Policemen Alejandro Sagala, Camacho and Parulan boarded their service jeep and chased the bus where the suspects (were) reported to have boarded but when they overtook the bus at Brgy. Pulong Gubat, Balagtas, Bulacan, the suspects were not on board, so they fetch(ed) a photographer and proceeded to the house of Amado Abad where they took pictures of the victim. Then they interviewed Eliza Merceada who informed them about the suspects Nilo Avestroz, Badong Balisteros and Nestor Galvante. After the interview, they proceeded to the scene of the crime at the bamboo gr(o)ve where they saw bloodstains and recovered a jungle bolo, Exhibit M.

The police then formed two (2) groups: one group composed of policemen from Angat and another group composed of policemen from San Jose del Monte. Their group proceeded to Batangas while the group from San Jose del Monte proceeded to Plaza Lawton, Manila.

Upon arrival in Manila, Policemen Sagala and Parulan proceeded to the terminal of JM Transit where they waited for the passengers going to Mindoro. That around 2:00 o'clock in the morning, the suspects arrived riding in a taxi and immediately they arrested the suspects Salvador Balisteros, Nilo Avestroz and Ernesto Galvante, whom he identified inside the courtroom. (T)hey brought the suspects to their headquarters at Pandi, Bulacan. The following day, August 17, 1991, he went to the place of (the) incident where they recovered a butcher(s) knife, Exhibit B, B-1 sheath. Then the statement of Eliza Mercaeda, (D)ela Cruz, and Amado Abad were taken, Exhibits L, L-1, L-2, M, N, respectively.

Ernesto B. Galvante, who was discharged from the information to be a State witness, testified that:

On August 3, 1991 he went to his uncle's place (Salvador Balisteros) at Siling Matanda, Pandi, Bulacan and stayed with him until August 16, 1991. In the morning of August 16, his uncle Salvador Balisteros, ordered two (2) bottles of beer and two (2) bottles of gin then the three (3) of them, he, Salvador and Nilo and another whom he does not know, ha(d) a drinking spree in the hut of Salvador.

While they were drinking, Salvador and Nilo were talking about the riceland which Romeo Abad bought and where the hut of Salvador was erected. According to Salvador, Romeo gave him a grace period of one (1) month to remove his hut and vacate the premises. During their conversation, he was beside the window, so he could hear what Salvador and Nilo (were) talking about. He heard the plan of Salvador and Nilo to kill Romeo who was then in his house far from the hut of Salvador. That he could hear all their conversation because he was just two (2) meters away from them.

After they ha(d) finished drinking, they rested for about 30 minutes then they proceeded to the ricefield near the bamboo gr(o)ve. (T)his time Salvador was carrying a small knife (kampilan) while Nilo ha(d) a "talis" which Ernesto identified in court. When they arrived in the place, they waited for Romeo and after some few minutes, Romeo arrived. (H)e asked Nilo where is his horse and Nilo told Romeo, his horse is tied in the place where it was rope-grazed (sic). That while Romeo was asking Nilo, he was walking and when his back was turned towards Salvador, the latter suddenly held him by the neck and stabbed him three (3) times on the stomach and Romeo shouted, "huwag, huwag", then he fell on the ground. While Romeo was lying on the ground, Nilo stabbed him for more than three (3) times until his intestines came out, then Nilo slashed it (hiniwa-hiwa). That he (Ernesto) vomit(ed) because he could not bear watching Nilo slashing the intestine(s) of Romeo so he ran (to) the back of the bamboo gr(o)ve where he saw Salvador coming out followed by Nilo, so he followed them and they proceeded to the hut of Salvador.

Upon arrival in the hut, they took all their belongings and went to the store where they bought slippers then they boarded a jeepney on the highway and alighted at Balagtas where they took a tricycle and proceeded to Bocaue. When they arrived in Bocaue, they took their clothes from the house of Ernesto's mother and proceeded to Tondo, Manila. When they arrived in Tondo, they went to the house of Nilo's mother where they rested for about three (3) hours before proceeding to Plaza Lawton, Manila, where they will take a ride in going to Batangas and from there to Mindoro. After they ha(d) rested they took a taxi and then they proceeded to Plaza Lawton. (U)pon arrival at Plaza Lawton they were arrested by the police the moment they alighted from the taxi, then they were brought back to Pandi, Bulacan.

According to Ernesto, he failed to stop Salvador and Nilo from their plan to kill Romeo because he was then drunk but he could understand what they were talking about. He also failed to warn Romeo of the impending danger to his life neither was he able to call the barangay Captain or the police because Salvador was guarding him and sternly looking at him.

According to Amado Abad when he saw Romeo Abad, his brother, inside the bamboo gr(o)ve at Siling Matanda at around 3:00 o'clock in the afternoon of August 16, 1991, Romeo was already lifeless, his throat was slashed and his abdomen was cut and his body bore plenty of stab wounds, so he boarded the body of Romeo in his car and brought him (to) his house at Engkanto, Angat, Bulacan. That at 6:00 o'clock in the evening of the same day, August 16, 1991, his mother arrived and brought the body of Romeo to their house at

Malabon where Romeo was laid in wake for six (6) days and six (6) nights. (D)uring the wake, they spent P2,000.00 a night.[5]

x x x

The corpse of the victim was autopsied by Dr. Juan Zaldarriaga, Jr., a medico-legal officer of the National Bureau of Investigation, on August 17, 1991 at the Floresco Funeral Homes in Kalookan City. According to Autopsy Report No. 91-2097, which was introduced in evidence as Exhibit A-32 for the prosecution, the victim sustained twelve stab and hack wounds, eight of which were fatal. Dr. Zaldarriaga testified that the victim and his assailant could have been at arms length from each other and that the assailant who inflicted the wounds in the back and front of victim was behind and in front of the latter in doing so.[6]

The defense presented appellants Salvador Balisteros and Nilo Avestro who denied the charges filed against them and interposed the defense of alibi. Both appellants concurred in their version which was to the effect that on August 16, 1991, Salvador was at Siling Matanda with his children and Nilo. At about 11:30 A.M., Salvador and Nilo, who had been joined by Ernesto Galvante, left the house to proceed to Mindoro where, among other things, a job was supposedly waiting for Nilo. They first went to see Nilo's mother at Salitre, Tondo, Manila, and they spent that night in her house. At around 3:00 A.M. the following day, they left the house and proceeded to Plaza Lawton in the city to take a bus for Batangas. Upon reaching the bus station, the three were arrested by policemen and were brought to Pandi, Bulacan.[7]

The lower court gave full faith and credit to the prosecution's version and concluded that "the defense of denial and alibi of the accused has no weight after Ernesto Galvante, an eyewitness, positively identified and pointed to Salvador Balisteros and Nilo Avestroz as the killers of the deceased Romeo Abad. Besides, the accused ha(ve) not shown any motive why Ernesto Galvante, nephew of Salvador Balisteros and first cousin of Nilo Avestroz, would testify against them." [8]

Appellants now complain to us that the trial court gravely erred (1) in finding that the killing took place in an uninhabited place and was deliberately augmented by another wrong not necessary for its commission; (2) in giving weight and substance to the testimonies of the prosecution witnesses and disregarding the theory of the accused-appellants; and (3) in finding the accused-appellants guilty beyond reasonable doubt of the crime.[9]

A thorough examination of the evidence on record convinces us that we have no other recourse but to affirm the conviction of appellants. Their appeal hinges on the issue of credibility and they have utterly failed to present convincing reasons why the respect which appellate courts give to findings of trial courts should not be maintained in this case.

With reasoned consistency, we have reiterated that much leeway is given to the trial court in assessing the credibility of the person testifying before it. Its conclusions on this matter are accorded great weight on appeal in the absence of a showing that they were reached arbitrarily.[10] It has had the opportunity to observe the demeanor of the witness on the stand and is able to better ascertain therefrom whether he is telling the truth or lying. Through its observations during the entire proceedings, it can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve.[11]

We agree with the court below that the prosecution's witnesses are more credible. None of these witnesses had any motive for testifying falsely against appellants. When there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[12] In the present case, that absence of ill motive on the part of the prosecution witnesses was even affirmed by both appellants who testified that they do not know of any reason why said witnesses would fabricate a serious charge like murder against them.[13]

In an effort to impair the credibility of witness Eliza Marceada, the appellants maintain that her failure to tell anybody about the incident, after she heard the words "huwag, huwag" coming from the bamboo grove, defies the common experience of mankind and thus renders her testimony doubtful.[14] It is undeniable, however, that not every witness or victim of a crime can be expected to act reasonably and conformably to the usual expectations of everyone. Besides, as she explained on the witness stand, she was afraid.[15]

Eliza Marceada's reaction on that occasion is to be expected from a simple 31-year old household helper who was walking alone when she heard those words of remonstrance and then saw the armed appellants suddenly emerge from the bamboo grove where the cry came from. Also, we have ruled in a number of cases[16] that people may react differently to the same situation. One person's spontaneous or unthinking, or even instinctive, response to a horrid and repulsive stimulus may be aggression, while another's may be cold indifference.

A careful review of the pertinent transcripts of the stenographic notes showed that Eliza Marceada remained consistent even during a very exhaustive cross-examination conducted by the defense counsel. In fact, her narration was confirmed by government witness Galvante. Marceada gave this detailed and graphic account on the witness stand:

x x x

Q. Where were you in particular when you heard the shouts 'huwag, huwag'?

A. I was near the bamboo grove, sir.

Q. When you heard the shouts 'huwag, huwag' what did you do, if any?

A. I called Nilo, sir.

Q. Who is that Nilo that you called for?

A. A helper of Kuya Romy, sir.

Q. Is that the same Nilo you pointed to in this Court a while ago?

A. Yes, sir.

Q. Did you receive any reply from Nilo?

A. None, sir.

Q. Then, what happened thereafter?

A. While I was walking then and when I turned my face (to) my left side, I saw them coming out from the bamboo grove, sir.

Q. And you said you saw them, who were they that you are referring to?

A. The three (3) of them, sir.

Q. Name them if you know?

A. The first one was Mang Badong, sir.

Q. Is he the same Badong that you pointed to earlier this morning?

A. Yes, sir.

Q. And what was the physical appearance of Mang Badong when you saw him coming from the bamboo

grove?

A. He was naked up (sic) without T-shirt, sir.

Q. How about the lower position?

A. He was wearing long pants.

Q. Was he carrying anything?

x x x

A. Yes, sir.

Q. What was he carrying?

A. A bolo, sir.

Q. Tell us, was he walking slowly, walking fast or running or standing when you saw him?

A. He was walking fast, sir.

Q. You said you saw those three (3), who were the other persons that you saw following Mang Badong?

A. The tall man, sir.

Q. Please point to him?

A. WITNESS POINTING TO A PERSON WHO STOOD UP AND GAVE HIS NAME AS ERNESTO GALVANTE.

Q. Was he also walking fast or not?

A. Yes, sir.

Q. How far was he from Mang Badong?

A. About three (3) meters away, sir.

Q. And can you describe his physical appearance?

A. No, it was only on that time when I saw him. He was wearing a T-shirt, sir.

Q. Was he with pants?

A. He was wearing short pants (puruntong).

Q. Was he wearing any shoes?

A. None, sir.

Q. Was he barefooted?

A. Yes, sir.

Q. And to what direction was he going?

A. He was following Mang Badong, sir.

Q. You say you saw three (3) people, who was the third person that you saw on that particular occasion?

A. Nilo, sir.

Q. Is he the same Nilo that you pointed to a while ago?

A. Yes, sir.

Q. And how far was he from Mang Badong at the time that you saw him?

A. About four (4) meters away, sir.

Q. Can you describe the physical appearance of Nilo while he was following Mang Badong?

A. He was wearing a polo shirt, sir.

Q. What about the lower portion?

A. He was also wearing a short (sic) called puruntong, sir.

Q. How about his feet, was he wearing anything?

A. He was barefooted at the time, sir.[17]

x x x

Marceada's aforequoted testimony was corroborated by state witness Ernesto Galvante who pertinently testified in broader scope, to wit:

Q. Did you hear any conversation between the two (2), between Salvador Balisteros and Romeo Abad after Romeo Abad has been stabbed at the stomach three (3) times?

A. Yes, sir.

Q. What did you hear?

A. "Huwag."

Q. How many times?

A. Three (3) times, sir.

Q. Who said that "huwag, huwag" three (3) times?

A. Romeo Abad, sir.

Q. Then, what happened next?

A. Romeo Abad fell on his back, sir.

Q. Fell face upward?

A. Yes, sir.

Q. And after that, what happened?

A. Nilo followed and stabbed Romeo, sir.

Q. How many times, if any?

x x x

A. More than three times, sir.

Q. What else happened after Nilo stabbed several times the fall(en) Romeo Abad?

x x x

A. Nilo slash(ed) the intestine(s) of Romeo Abad, sir.

x x x

Q. After you vomi(t)ed, what happened next?

A. I saw Salvador Balisteros getting out of the bamboo grove, sir.

Q. And you, what did you do, if any?

A. I followed him, sir.

Q. Did you notice what Nilo did after you followed Salvador Balisteros?

A. Nilo was following me, sir.

Q. And where did you and Salvador Balisteros and Nilo go after coming from the bamboo gr(o)ve?

A. To the hut, sir.[18]

Appellants likewise endeavored to impeach the credibility of Police Officer Alejandro Sagala who conducted the investigation of that gruesome killing. Appellants argued that said police officer "appeared to be a very ideal and devoted investigator in his testimonies casting doubt on the same," and that "the defense is just puzzled on the zealousness shown by Sagala in handling the investigation of the case." [19] This is preposterous.

The laudable efforts of police officer Sagala in investigating and eventually solving the case should even be commended and emulated, rather than condemned or doubted. In fact, Sagala's demonstrated dedication to his duties is indicative of the strength of his character and fortifies his credibility as a witness. Furthermore, credence is accorded to the testimonies of prosecution witnesses who are law enforcers for it is presumed that they have regularly performed their duty, in the absence of convincing proof to the contrary. [20]

Appellants end their diatribe with the generalized claim that the People failed to establish their guilt beyond reasonable doubt, on the theory that, without the testimony of Galvante, the prosecution had not presented a witness who saw the actual killing of the victim. We are not at all persuaded by this criticism.

As correctly submitted by the People:

It is axiomatic that a person's guilt may be established not only by direct evidence but also by circumstantial evidence, which is sufficient to convict as long as: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (*People v. Pajarito*, G.R. No. 82770, October 19, 1992, 214 SCRA 678).

The following circumstances, borne out by the records, indubitably point to appellants as the culprits:

1. On August 16, 1991, at around 8:00 a.m., appellants were having a drinking spree in the hut of appellant Balisteros which is located inside the victim's ricefield at Siling Matanda, Pandi, Bulacan (TSN, January 27, 1992, pp. 12-15).
2. The victim, Romeo Abad, dropped by the house of appellant Balisteros, then proceeded to the ricefield (Id., p. 18).
3. Upon arriving at his ricefield at past 12:00 noon, Abad left again to graze his horse near the bamboo grove (Id., p. 19).

4. The helper, Eliza Marceada, on her way home, heard two shouts "huwag, huwag" coming from the bamboo grove. Then, she suddenly saw appellants coming out of the grove, Balisteros, carrying a bolo and walking fast and Avestroz and Galvante, both barefooted (Id., pp. 21-25).
5. When Marceada found out that Abad was not home, nor was he at the ricefield, she went near the bamboo grove where she heard the shouts and found the lifeless body of Abad (Id., pp. 30-33).
6. At past one 1:00 o'clock that day, appellants took a ride in a passenger jeepney driven by Florencio de la Cruz along the road at Siling Matanda, then alighted at Pandi in a corner going to Balagtas and Sta. Maria, Bulacan (Id., February 3, 1992, pp. 5-10).
7. Liberato Antonio, a store vendor, also saw appellant Balisteros and Avestroz and Galvante, at his store at around 2:00 p.m. that day, the latter two, both barefooted. They bought pairs of slippers from him and left thereafter (Id., pp. 24-31).
8. The policemen who chased appellants eventually caught them at Plaza Lawton, about to take a bus ride going to Mindoro (Id., February 12, 1992, pp. 25-26).
9. Galvante confessed to appellant's plan to kill the victim, who wanted to eject appellant Balisteros from his house inside said victim's ricefield. (Id., April 29, 1992, pp. 12-16). He also claimed that appellants armed themselves with a "talis" and a small knife; then, they all proceeded to the ricefield near the bamboo grove and waited until Abad came, asking for his horse from Nilo, who replied that it was tied. All of a sudden, when Abad turned his back, appellant Balisteros held the victim by the neck and when the latter turned around, Balisteros stabbed him three times on the stomach (Id., pp. 26-27).[21]

It is said that circumstantial evidence consists of such incidental facts surrounding the main fact in issue and are compared to the strands in a rope, where no one of them may be strong enough to establish the guilt of the accused beyond reasonable doubt. The entire conduct of the accused may be looked to for corroborative circumstances, and if therefrom his connection with the commission of the crime may be fairly inferred, the corroboration is legally sufficient. Moreover, circumstantial evidence may be sufficiently cogent to satisfy the judicial conscience, and may be as potent as direct testimony in tending to connect the accused with the commission of the offense.[22]

Another contention of appellants is the alleged violation of the Constitution, particularly Section 12 of Article III, when in accordance with the present rule for the qualification of a state witness,[23] Galvante executed a sworn statement wherein he categorically admitted his guilt but without the assistance of a counsel. Appellants also claim that Galvante "made his sworn statement in the presence of Atty. Alejandro, the counsel of the plaintiff (sic), Mr. Matic, the two brothers of the deceased, the Mayor of Pandi and another person whom he did not know. With this battery of persons surrounding him, we could imagine the pressure exerted on Galvante." [24]

Appellants cannot seek solace in the provision they have invoked. What is provided by the modified formulation in the 1987 Constitution is that a confession taken in violation of said Section 12 and Section 17 of the same Article "shall be inadmissible in evidence against him," meaning the confessant. This objection can be raised only by the confessant whose rights have been violated as such right is personal in nature.

It should also be noted that Galvante repeated in court what he had stated in his affidavit and, although he was likewise subjected to a thorough cross-examination, he stood fast on his confession and the revelations therein. Appellants' imputations of pressure and coercion are refuted thereby. Also, by repeating his confession in court, Galvante converted it into a judicial confession which, having been allowed by the trial court, eliminated the need for assistance of counsel which is required in extrajudicial confessions. Furthermore, even in extrajudicial confessions which under jurisprudential doctrines have been held to be generally binding upon the confessant and

not against his co-accused, Galvante's confession would readily fall into the exceptions to that rule since appellants are charged as co-conspirators and said confession is used only as a corroborating evidence,[25] or as circumstantial evidence to show the probability of participation by the co-conspirator,[26] or is corroborated by other evidence of record.[27]

Finally, appellant Balisteros testified that the father of Galvante harbored ill feelings against him because of the money sent to him by his sister which was previously sent to said father of Galvante. He even presented a letter from Hawaii to substantiate his claim.[28] This is not only conjectural since, additionally, a mere perusal of the letter[29] in question does not prove anything except that it came from a very concerned sister.

The lower court correctly convicted appellants of murder since the killing was attended by treachery. Where a victim was totally unprepared for the unexpected attack from behind and had no weapon to resist it, the stabbing cannot but be considered as treacherous.[30] In the case at bar, appellant Balisteros suddenly came from behind, held the victim by the neck and repeatedly stabbed him. He was then successively stabbed by appellant Avestro as he lay helpless on the ground. Parenthetically, the abuse of superior strength, which was considered by the court below, should be deemed absorbed in the treacherous mode of attack.

Aside from treachery, evident premeditation was also present since the evidence showed how and when appellants agreed and conspired to kill the victim, followed by a sufficient interval of time during which they could reflect on the consequences of their felonious intent but during which period they instead armed themselves and lay in wait for their unsuspecting prey. This circumstance, which can be either qualifying or aggravating, will have to be considered here as having aggravated the liability of appellants.

We see no further need to pass upon the arguments of appellants questioning the lower court's appreciation of cruelty and desoblado. Presumably because the same were not alleged in the information, although they could nevertheless be proved, the prosecution's evidence thereon would only result in equivocal theories. Thus, assuming that the victim was still alive during the entire period of the ordeal to which he was subjected, there could possibly be cruelty since appellants deliberately augmented the wrong they committed. On the other hand, if the victim died immediately after he was stabbed, then appellants could be held to have outraged his corpse when they fiendishly slashed his intestines to pieces.[31] However, neither of these alternative hypotheses was established and, further, the intervening time between the initial attack and subsequent acts were not sufficiently established to enable the Court to determine whether they were one continuous series of acts or were so deliberately spaced as to constitute either cruelty or outrage.

The same is true with respect to whether or not the locus delicti was an uninhabited place, since it is not only the distance to the nearest occupied habitation but also the possibility of securing assistance that should be considered,[32] on either of which alternative bases, again, there is no certitude. In any event, even if aggravating circumstances could be appreciated, under the Constitutional proscription and the penalty for murder then, the penalty could not be higher than reclusion perpetua. On the other hand, even disregarding all the aggravating circumstances present or which could have been considered in this case, since there is no mitigating circumstance the penalty would have to be imposed in the medium period of that provided by law for murder,[33] which is likewise reclusion perpetua. The court below, therefore, did not err in the penalty it imposed.

WHEREFORE, the assailed judgment of the court a quo is hereby **AFFIRMED**, with costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, and Mendoza, JJ., concur.
Padilla, J., on leave.

* The family name of this appellant appears and is spelled in some portions of the record as "Avestros or Avestroz," and his maternal surname as "Cardena."

[1] Original Record, 1.

[2] Ibid., 68.

[3] Ibid., 77.

[4] Ibid., 158; per Judge Felipe N. Villajuan, Jr.

** The surname of this witness is spelled in certain parts of the record as "Mercaida" or "Mercaeda."

[5] Ibid., 152-155.

[6] TSN, January 20, 1992, 3-27.

[7] Brief for the Accused-Appellants, 19; Rollo, 59.

[8] Original Record, 158.

[9] Brief for the Accused-Appellants, 1; Rollo, 41.

[10] People vs. Telio, G.R. Nos. 72786-88, June 22, 1992, 210 SCRA 169.

[11] People vs. Diaz, G.R. No. 100752, August 4, 1992, 212 SCRA 147.

[12] People vs. Ruedas, G.R. No. 83372, February 27, 1991, 194 SCRA 553.

[13] TSN, October 2, 1992, 16; Ibid., November 11, 1992, 15-16.

[14] Brief for the Accused-Appellants, 28; Rollo, 68.

[15] TSN, January 27, 1992, 58.

[16] See People vs. Danico, G.R. No. 95554, May 7, 1992, 208 SCRA 472; People vs. Kyamko, G.R. No. 103805, May 17, 1993, 222 SCRA 183, and cases cited therein.

[17] TSN, January 27, 1992, 21-25.

[18] Ibid., April 29, 1992, 27-31.

[19] Brief for the Accused-Appellants, 29, 30; Rollo, 69, 70.

[20] People vs. Segwaben, G.R. No. 88401, February 19, 1991, 194 SCRA 239.

[21] Brief for the Plaintiff-Appellee, 19-22; Rollo, 119-122.

[22] See 2 Wharton's Criminal Evidence, 1259, 1345.

[23] Section 9, Rule 119, Rules of Court.

[24] Brief for the Accused-Appellants, 31; Rollo, 71.

[25] *People vs. Linde, et al.*, L-10358, January 28, 1961, 1 SCRA 38; *People vs. Sta. Maria*, L-19929, October 30, 1965, 15 SCRA 222; *People vs. Cortez, et al.*, L-31106; May 31, 1974, 57 SCRA 308.

[26] *People vs. Condemena, et al.*, L-22426, May 29, 1968, 23 SCRA 910; *People vs. Pareja*, L-21937, November 29, 1969, 30 SCRA 693; *People vs. Vasquez*, G.R. No. 54117, April 27, 1982, 113 SCRA 772.

[27] *People vs. Paz, et al.*, L-15052-53, August 31, 1964, 11 SCRA 667; *People vs. Agdeppa*, L-17489, December 24, 1969, 30 SCRA 782; *People vs. Victor, et al.*, G.R. Nos. 75154-55, February 6, 1990, 181 SCRA 818; *People vs. Alvares*, G.R. No. 88451, September 5, 1991, 201 SCRA 364.

[28] *Ibid.*, October 2, 1992, 24-27.

[29] *Ibid.*, *id.*, 127; see Exhibit "I".

[30] *People vs. Bragaes, et al.*, G.R. No. 62359, November 14, 1991, 203 SCRA 555.

[31] See *People vs. Binondo*, G.R. No. 97227, October 20, 1992, 214 SCRA 764.

[32] *People vs. Rubia*, 52 Phil. 172 (1928); *People vs. Arpa, et al.*, L-26789, April 25, 1969, 27 SCRA 1037; *People vs. Egot*, L-35775, June 29, 1984, 130 SCRA 134.

[33] Article 64(1), Revised Penal Code.

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