

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TITO ZUELA Y MORANDARTE, MAXIMO VELARDE Y DE LOS REYES, AND NELSON GARCIA Y TEMPORAS, ACCUSED-APPELLANTS.

G.R. No. 112177. January 28, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal of accused Maximo Velarde y de los Reyes, Nelson Garcia y Temporas and Tito Zuela y Morandarte from the decision[1] of the Regional Trial Court, Camarines Sur, Libmanan, Branch 24, finding them guilty beyond reasonable doubt of robbery with homicide and sentencing each of them to reclusion perpetua, and to pay jointly and severally the amount of one hundred thousand (P100,000.00) pesos to the heirs of Maria Abendaño and John Abendaño, and fifty thousand (P50,000.00) pesos to the heirs of Hegino Hernandez, without subsidiary imprisonment in case of insolvency, and to pay the costs.[2]

On July 29, 1985, Assistant Provincial Fiscal Julian C. Ocampo III filed with the Regional Trial Court, Libmanan, Camarines Sur an information charging accused Maximo Velarde y de los Reyes, Nelson Garcia y Temporas and Tito Zuela y Morandarte with "robbery with triple homicide" committed as follows:

"That in the evening of April 27, 1985 in Camagong, Cabusao, Camarines Sur, Philippines, the above-named accused, conspiring and confederating together and mutually aiding each other, with intent to gain, did then and there, willfully, unlawfully, and feloniously, with violence and intimidation against [sic] persons, that is by shooting and stabbing one Hegino Hernandez, Sr., Maria S. Abendaño and John-John Abendaño, thereby inflicting upon them mortal injuries that caused their instantaneous death, take, rob and carry away the following personal properties belonging to the said Maria Abendaño, to wit:

(1) Cash money P21,000.00

(2) one gold ring P 750.00

(3) one Seiko wrist watch P 1,250.00

P23,000.00

"That as a consequence of the felonious act of the accused, the heirs of the deceased suffered damages in the amount of P25,000.00 each, representing indemnity for death, loss of earning capacity and moral damages.

"CONTRARY TO LAW."[3]

On June 1, 1985, Maximo Velarde was arrested at Magallanes, Sorsogon, while accused Nelson Garcia and Tito Zuela were arrested at Cabusao, Camarines Sur on June 4, 1985 and June 9, 1985, respectively.

On March 26, 1987, all three accused, were arraigned with the assistance of their counsel, and pleaded not guilty

to the charge. Trial ensued.

The evidence established the following facts:

Maria Abendaño was engaged in business. She had a store, operated a passenger jeepney and engaged in the buy and sale of palay. Her house cum store was beside that of her sister Romualda Algarin's house, by the roadside in Barcelonita, Cabusao, Camarines Sur. Romualda also had a store.

Accused Nelson Garcia was Maria's store helper. Accused Tito Zuela alias "Anting" helped Romualda in her store during palay season. The other accused Maximo Velarde was known to Romualda because she met him at a birthday party held at Maria's house on April 19, 1985. The three accused were friends.

On April 27, 1985, Maria made three (3) deliveries of palay on board her jeepney, driven by Hegino Hernandez, Jr., to the ricemill of Gerardo Benitez in San Juan, Libmanan, Camarines Sur. Every delivery costs seven thousand (P7,000.00) pesos. The three deliveries were made at 9:00 in the morning, 2:00 in the afternoon and 7:30 in the evening.[4]

Between 6:30 and 7:00 in the evening of that day, from a distance of five (5) arms length, Romualda saw the three (3) accused board the jeepney of Maria, bound for San Juan, Libmanan, Camarines Sur. Because the jeepney was filled with palay, they merely held on the railing of the jeepney.[5] There were other passengers namely, Pablo Abendaño and Roberto Echiaca.[6]

Gerardo Atienza, the buyer of palay, saw Maximo inside the jeepney during the second and third delivery of palay to his ricemill.[7] For each delivery, Gerardo paid Maria the amount of seven thousand (P7,000.00) pesos.

The following morning, the bodies of Hegino Hernandez, Maria and John-John Abendaño were found in rigor mortis condition at New Poblacion, Cabusao, Camarines Sur.[8]

Dr. Restituto Sampilo, municipal health officer of Cabusao, found Maria in a reclining position on the front seat of the jeepney. John was in a semi-kneeling position, facing his mother with both hands clasping her left hand. Hegino was at the steering wheel with his body, from the abdomen up, resting on the side of the vehicle and his head outside of it.[9] A bullet that exited from Hegino's left eyebrow caused the wound near his right ear.[10]

Maria had a horizontal stab wound at the front part of her neck just above the xyphoid process.[11] Her seven (7) year old son, John, had a three (3) inch slashed horizontal wound at the front base of the neck, a two (2) inch wound on the left upper arm and two (2) stab wounds on the lateral side of the neck at the junction of the right shoulder.[12] Hegino had a small wound with slightly depressed edges, about an inch from the highest tip of the right ear, a wound with everted and lacerated edges above the middle part of the left eyebrow, and seven (7) stab wounds at the back.[13]

Though there were no eyewitnesses, the prosecution established how the crime was committed with the testimony of Romualda Algarin, which was in turn based on the extrajudicial admission given by Maximo Velarde to Romualda when she visited the latter at the Camaligan municipal jail on June 6, 1985.

Maximo, Tito and Nelson conceived the plan to hold-up Maria while drinking in front of Romualda's store because Maximo needed money for his fare to Manila.

When the palay-laden jeepney of Maria left for Libmanan, Camarines Sur Maximo, Tito and Nelson boarded it. They alighted at sitio Cagumpis, Camagong, Cabusao, Camarines Sur to attend a wedding.[14] Maximo was supposed to board the jeepney on its way back to Barcelonita, while the other two (2) accused, Tito and Nelson would wait along the road at the crossing of New Poblacion and Camagong, Camarines Sur to board the jeepney and hold-up Maria.

Everything went according to plan. Nelson and Tito hailed the jeepney at the crossing of Cabusao, Camarines Sur. Upon reaching an uninhabited place, Tito alias "Anting" told Velarde: "Oragui na ngaya ang driver." [15] Maximo poked a gun at the driver and shot him. He also shot Maria at the neck when the latter shouted. [16]

Nelson and Tito alighted from the jeepney. Nelson went to the left front side of the jeepney, while Tito approached the right front side of the jeepney, in the process stepping on the sleeping John-John who was then awakened. The boy stood up and said, "You will see I will tell my father that you killed my mother." [17] To avoid being identified by the boy, Tito told Maximo "Oragui na ini." [18] Maximo took hold of the boy's hair and slashed his neck.

Tito took Maria's money and divided it, each accused receiving about seven thousand (P7,000.00) pesos from the loot.

Tito and Nelson went back to Barcelonita, Cabusao, Camarines Sur. Maximo proceeded to Manila.

On June 1, 1985, Lt. Ernesto J. Idian, Station Commander, Cabusao Police Station, Cabusao, Camarines Sur assisted by two (2) other policemen, arrested Maximo in Magallanes, Sorsogon. Though no warrant of arrest had been issued, Maximo was immediately brought to the Camaligan police station in Camaligan, Camarines Sur where he was investigated and asked to give a written statement in the presence of Atty. Jose Ocampo from the Citizen's Legal Assistance Office (CLAO), Naga City. [19]

On June 4, and 9, 1985, Tito and Nelson were taken into police custody without a warrant. They underwent custodial investigation without the assistance of counsel because no lawyer could be found in Cabusao, Camarines Sur.

On the last page of each accused's confession appeared a statement, in their own handwriting, to the effect that they voluntarily gave their statements and that no one coerced or promised them anything to admit responsibility for the crime.

Maximo, Nelson and Tito signed their individual statements before Judge Lore R. Valencia Bagalacsa, Municipal Circuit Trial Court, Libmanan, Camarines Sur on three (3) different dates. [20] She followed the same procedure and line of questioning, using the local dialect, in ascertaining the voluntariness of the three (3) accused's confessions. She ordered Lt. Idian and his companions to leave her and the accused inside the chamber. [21] Satisfied that they were properly apprised of their rights and that they voluntarily executed their statements, she had them sign their individual extrajudicial statements.

Antonio Abendaño, the husband of Maria, was working at Saudi Arabia when his family was killed. He came to know about the tragic death of his wife and son through an overseas call from his brother Renato Abendaño. When he learned about it, he became unconscious. He arrived in the Philippines five (5) days after. [22] He knew Nelson Garcia because he was the son of his cousin. He was also familiar with Tito Zuela, but he did not know Maximo Velarde. He spent twenty thousand (P20,000.00) pesos for the funeral of his wife and son. He gave one thousand (P1,000.00) pesos financial assistance to the family of their driver, Hegino. [23]

On the other hand, Maximo, Tito and Nelson interposed common defenses: (1) denial and (2) that they were tortured and forced to make a confession. In addition, Tito and Nelson claimed they were not assisted by counsel when their confessions were taken, while Maximo alleged the defense of alibi saying that he did not leave Magallanes, Sorsogon anytime in 1985.

On June 1, 1985, five (5) persons, led by Lt. Idian, went to the house of Maximo Velarde in Magallanes, Sorsogon to fetch him because his parents wanted him at Cabusao, Camarines Sur as his brother Benito Velarde died. He

was shown the picture of the cadaver of his brother. Maximo went with the group of Lt. Idian on board a red car and traveled to Naga City, arriving there between 7:00 and 8:00 in the evening.

In a dark place before reaching Naga City, the driver stopped the vehicle to urinate. Before the driver could return, Maximo felt a hard object hit his head and he passed out. When he regained consciousness, he was already handcuffed. Pointing a gun at him, Lt. Idian told him that he had two choices, either to die or sign the statement they prepared because his brother had wronged them. He was warned not to tell anyone that he was mauled. Thereafter, they proceeded to the Camaligan municipal jail.

Two days later or on June 3, 1985, Maximo was brought out of the jail and ushered into a small room where he saw three persons, namely Lt. Idian, Atty. Jose Ocampo from CLAO, Naga City and Pat. Gonsalo Refe, a police investigator from Cabusao, Camarines Sur. Atty. Ocampo read to him the contents of a prepared statement, which in substance mentioned that some people died and that he was responsible for their death. Maximo refused to sign. Atty. Ocampo stepped out of the room, followed by Lt. Idian and he overheard that he would be made to sign the statement in Atty. Ocampo's office in Naga City. Atty. Ocampo then left and Lt. Idian returned to the room.

Upon Lt. Idian's return to the smaller room, he kicked Maximo in the stomach and poked a gun at him. Consumed by fear, Maximo promised that he would sign the prepared statement. He was then handed a piece of paper and ordered to copy its contents on the prepared statement. Found on page 5 of his extrajudicial confession was this statement, in his own handwriting:

"Opo binasa ko po ang apedabeth na ito na may 5# pahina na pawang totoo at sasareling kagustohan at walang nantakot o nangako."[24]

On June 4, 1985, Maximo again signed the statement before Judge Lore R. Valencia Bagalacsa, Municipal Circuit Trial Court, Libmanan, Camarines Sur. From the time accused Maximo was arrested, he was never released. Maximo denied that he saw and talked to Romualda on June 6, 1985 at the Camaligan municipal jail because he had been detained at the Libmanan municipal jail since June 4, 1985.

For his part, Nelson Garcia denied any knowledge of the crime. On June 4, 1985, the group of Pat. Gonsalo Refe went to his house and invited him to the office of Lt. Idian. He was brought to the Camaligan Police Station. Upon their arrival, Lt. Idian talked to him and tried to convince him to confess to the killing of the Abendaños. Because Nelson refused, Lt. Idian brought him upstairs and mauled him. He was transferred to Naga City jail, where he was detained for two (2) hours.

Thereafter, he was brought to the Cabusao Police Station where Pat. Rodolfo O. Cariño subjected him to another investigation. Because of his continued refusal to confess, he was mauled again, this time by Pat. Cariño.

To avoid further injury to his person, on June 5, 1985, Nelson Garcia was forced to sign the prepared statement. He was neither informed of its contents nor assisted by counsel. He was handed a piece of paper, the contents of which he was ordered to copy, in his own handwriting, and in substance was similar to what Maximo was ordered to copy as his own extrajudicial statement. He was brought to the office of Judge Bagalacsa that same afternoon so that he could sign his extrajudicial statement.

From the time he was invited to the office of Lt. Idian, Nelson was never released from police custody. He was first detained at the Libmanan municipal jail, and later on transferred to the Tinangis Penal Farm in Pili, Camarines Sur. Though he suffered physically from the beatings he got from the policemen, he was never permitted to see a doctor. His relatives were not able to visit or talk to him because the policemen prohibited visitors.[25]

Like Nelson, Tito alias "Anting," denied participation in the crime. On July 9, 1985, Pat. Refe invited him to the

office of Lt. Idian in Cabusao, Camarines Sur. Upon arrival at the police station, he was investigated about his knowledge of the crime. Failing to elicit any information from him, he was brought to Libmanan jail where he spent the night.

The following day, Tito was again brought to Cabusao Police Station and presented to Lt. Idian. In Lt. Idian's office, he was investigated about his involvement in the crime. When he could not provide any answer, he was made to board the police jeep, to be brought back to the Libmanan jail.

Along the way, the police jeep stopped and Pat. Cabrera got off and kicked Tito who fell to the ground. He heard a gunshot and was shown the piece of paper that he was ordered to sign before Judge Bagalacsa. He was threatened with death should he refuse to sign the prepared statement. Out of fear for his life, Tito promised to sign. Thereafter, they boarded the police jeep and proceeded to the office of Judge Bagalacsa in Libmanan, Camarines Sur.

Upon arrival at the office of Judge Bagalacsa, he was ordered to sign the statement without the assistance of counsel and without being informed of its contents. Thereafter, he was brought to Libmanan municipal jail and later to Tinangis Penal Farm. Like his co-accused, he was never released from police custody from the time of arrest.

On August 26, 1993, the trial court promulgated its decision convicting the three (3) accused of robbery with homicide, the dispositive portion of which reads:

"WHEREFORE, after a careful and serious evaluation of the evidence presented by the prosecution and the defense, the Court is morally convinced beyond reasonable doubt, that the three (3) accused Maximo Velarde, Tito Zuela and Nelson Garcia had committed the crime of Robbery with Homicide and, therefore, sentences them to suffer the penalty of imprisonment of reclusion perpetua and to pay jointly and severally an indemnity in the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS for the Heirs of Maria Abendaño and John Abendaño and FIFTY THOUSAND (P50,000.00) PESOS for the Heirs of Hegino Hernandez, without imprisonment in case of insolvency, and to pay the costs.

"SO ORDERED.

"GIVEN this 26th day of July, 1993 at Libmanan, Camarines Sur, Philippines.

"(Sgd.) SALVADOR G. CAJOT

"Presiding Judge"[26]

On the same day, all three (3) accused filed a notice of appeal with the trial court.

In their appeal, accused-appellants claim that the trial court erred in:

(1)

relying on Maximo Velarde's extra-judicial confession notwithstanding the violation of his constitutional rights;

(2)

giving full faith and credit to Romualda Algarin's testimony; and

(3)

finding all three (3) accused guilty as charged despite the prosecution's failure to prove their guilt beyond reasonable doubt.

Considering that there were no eyewitnesses to the commission of the crime, the extra-judicial confessions of the three (3) accused play a pivotal role in the determination of their culpability. The Court is duty-bound, therefore, to resolve the issue of whether or not the extra-judicial confessions were executed in accordance with the provisions of the 1973 Constitution, in light of the fact that the crime took place in 1985.

The pertinent provision of the 1973 Constitution provides:

"Article IV, Section 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means, which vitiates the free will, shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence." [27]

The right to counsel attaches the moment an investigating officer starts to ask questions to elicit information on the crime from the suspected offender. It is at this point that the law requires the assistance of counsel to avoid the pernicious practice of extorting forced or coerced admissions or confessions from the person undergoing interrogation. In other words, "the moment there is a move or even urge of said investigators to elicit admissions or confessions or even plain information which may appear innocent or innocuous at the time, from said suspect, he should then and there be assisted by counsel, unless he waives the right, but the waiver shall be made in writing and in the presence of counsel." [28]

Lt. Idian's team apprehended appellant Maximo in Magallanes, Sorsogon on June 1, 1985 when no warrant had been issued for his arrest. Immediately thereafter, the arresting peace officers investigated appellant Maximo. His statement was reduced in writing when they were in Camaligan, Camarines Sur. It was in Camaligan that CLAO lawyer Ocampo was summoned to assist appellant Maximo in the execution of his written confession. Atty. Ocampo was not present during the entire duration that accused Maximo was subjected to custodial investigation as could be inferred from the testimony of Pat. Rodolfo Cariño, to wit:

"Q:

And after taking the statement of Velarde, what did you do with the statement of Velarde?

A:

It was presented to Atty. Ocampo.

Q:

Do you want to tell me that inspite of the fact that he was present when the confession was made you still present the statement to Atty. Ocampo?

A:

In order to let him sign the statement.

Q:

And where did Atty. Ocampo sign the confession of Velarde?

A:

It was sign [sic] at Naga because he went ahead.

Q:

Do you mean to tell me now that after the confession was made, the confession was left to you and after the confession was brought to his office at the CLAO Office in Naga, is that what you want to tell this court.

A:

We went to Naga with Lt. Idian and Velarde.

Q:

But it remains a fact that Atty. Ocampo was already at Naga when the statement of Velarde was presented to him for signature, is that correct?

A:

Yes he went ahead to Naga."[29]

There was no evidence that Maximo executed a waiver of his right to counsel. In light of these facts, we are constrained to rule that Maximo Velarde's extra-judicial statement is inadmissible in evidence.[30] "An uncounselled extra-judicial confession without a valid waiver of the right to counsel - that is, in writing and in the presence of counsel - is inadmissible in evidence." [31]

The respective sworn statements of appellants Tito and Nelson were likewise inadmissible in evidence because they were executed without the assistance of counsel. Despite the fact that the reason for the absence of lawyer during the custodial investigation was the scarcity of lawyers in the area, the Court could not be lenient in this case. The absence or scarcity of lawyers in any given place is not a valid reason for defying the constitutional mandate on counseled confessions.

Contrary to the ruling of the trial court, the defect in the confessions of Tito and Nelson was not cured by their signing the extra-judicial statements before Judge Bagalacsa.

Nevertheless, the infirmity of accused-appellants' sworn statements did not leave a void in the prosecution's case. Accused-appellant Maximo repeated the contents of his sworn statement to Romualda Algarin who, in turn, related these in court. Such declaration to a private person is admissible in evidence against accused-appellant Maximo pursuant to Rule 130, Section 26 of the Rules of Court stating that the "act, declaration or omission of a party as to a relevant fact may be given in evidence against him." The trial court, therefore, correctly gave evidentiary value to Romualda's testimony. In *People vs. Maqueda*, [32] we held:

"However, the extrajudicial admissions of Maqueda to Prosecutor Zarate and to Ray Dean Salvosa stand on a different footing. These are not governed by the exclusionary rules under the Bill of Rights. Maqueda voluntarily and freely made them to Prosecutor Zarate not in the course of an investigation, but in connection with Maqueda's plea to be utilized as a state witness; and as to the other admission, it was given to a private person. The provisions of the Bill of Rights are primarily limitations on government, declaring the rights that exist without governmental grant, that may not be taken away by government and that government has the duty to protect; or restrictions on the power of the government found 'not in particular specific types of action prohibited, but in the general principle that keeps alive in the public mind the doctrine that governmental power is not unlimited.' They are the fundamental safeguards against aggressions of arbitrary power, or state tyranny and abuse of authority. In laying down the principles of the government and fundamental liberties of the people, the Constitution did not govern the relationships between individuals.

"Accordingly, Maqueda's admissions to Ray Dean Salvosa, a private party, are admissible in evidence against the former under Section 26, Rule 130 of the Rules of Court. In *Aballe vs. People* (183 SCRA 196 [1990]), this Court held that the declaration of an accused expressly acknowledging his guilt of the offense may be given in evidence against him and any person, otherwise competent to testify as a witness, who heard the confession, is

competent to testify as to the substance of what he heard if he heard and understood it. The said witness need not repeat verbatim the oral confession; it suffices if he gives its substance. By analogy, that rule applies to oral extrajudicial admission." (Underscoring supplied.)[33]

And in the recent case of *People vs. Andan*[34] the Court reiterated the doctrine enunciated in the *Maqueda* case. In *Andan*, the Court said that "when the accused talked with the mayor as confidant and not as a law enforcement officer, his uncounselled confession did not violate his constitutional rights. Constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime." Of course, accused-appellant Maximo attempted to discredit Romualda's credibility as a witness when he swore that he could not have been in Camaligan on June 6, 1985 because since June 4, 1985 until some three weeks later, he was detained at the Libmanan jail.[35] The trial court correctly disregarded this self-serving uncorroborated assertion.

The defense failed to attribute any ill-motive on the part of Romualda for testifying on accused-appellant Maximo's admission and therefore the presumption that in so testifying, she was impelled by no other reason than to tell the truth, stands. The fact that she is related to two of the victims did not render her testimony incredible. Relationship per se is not proof of prejudice.[36] She might have been mistaken as to the date when she talked with accused-appellant Maximo while he was detained considering the more than three-year gap between June 1985 and September to October 1988 when Romualda testified. However, it is not necessary that the witness should be able to fix accurately the date of the conversation in which the admission was made. What is important is that the witness is able to state the substance of the conversation or declaration.[37]

Romualda's testimony on accused-appellant Maximo's admission sealed not only the latter's fate but also that of appellants Tito and Nelson. The rule that an extrajudicial confession is binding only upon the confessant and is not admissible against his co-accused because the latter has no opportunity to cross-examine the confessant and therefore, as against him, the confession is hearsay,[38] is not applicable here. What is involved here is an admission, not a confession. Wharton distinguished these terms as follows:

"A confession is an acknowledgment in express terms, by a party in a criminal case, of his guilt of the crime charged, while an admission is a statement by the accused, direct or implied, of facts pertinent to the issue and tending, in connection with proof of other facts, to prove his guilt. In other words, an admission is something less than a confession, and is but an acknowledgment of some fact or circumstance which in itself is insufficient to authorize a conviction and which tends only to establish the ultimate fact of guilt."[39]

Appellants Tito and Nelson were afforded the opportunity to cross-examine witness Romualda on accused-appellant Maximo's declaration. They could have questioned its veracity by presenting evidence in support of their defenses of denial and alibi so they could put to test Romualda's credibility. Having failed to do so, Romualda's testimony, which the trial court correctly considered as credible, stands unscathed.

Romualda's testimony on the substance of accused-appellant Maximo's admission standing alone, may not be the basis for conviction of the appellants. However, such testimony, taken with circumstances duly established by the prosecution, point unerringly to accused-appellants' culpability. These circumstances are: (1) accused-appellants and the victims were all residents of Barcelonita, Cabusao, Camarines Sur, a small barangay where everyone knew everybody; (2) accused-appellants Tito and Nelson helped in the stores of the sisters Maria and Romualda a week before the incident; (3) Romualda saw the three accused-appellants as they boarded Maria's jeepney during its last palay delivery to Libmanan; (4) Gerardo Atienza saw accused-appellant Maximo with Maria's group during the jeepney's second delivery of palay; (5) Atienza saw accused-appellant Maximo riding in Maria's jeepney after the last delivery; (6) after the commission of the crime, accused-appellants Tito

and Nelson no longer went to the store of Romualda; (7) accused-appellants never attended the wake of the victims, and (8) accused-appellant Maximo fled to Manila.

These circumstances form an unbroken chain, which, by themselves, lead to a fair and reasonable conclusion that accused-appellants were the culprits in the robbery with homicide.[40] Under the law, circumstantial evidence is sufficient basis for conviction as long as: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proved, and (3) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt.[41] These requisites were present in this case.

Accused-appellants' diverse courses of action after the commission of the crime, with accused-appellant Maximo going to Manila and accused-appellants Tito and Nelson staying in Barcelonita, do not negate their guilt. As regards accused-appellant Maximo, his flight to Manila and to Magallanes, Sorsogon with no plausible explanation therefor is a clear indication of guilt.[42] With respect to accused-appellants Tito and Nelson, their decision to stay in Barcelonita did not mean that they were not equally guilty as accused-appellant Maximo. As this Court once said:

"Accused-appellant argues that had he participated in the crime, his natural reaction would have been to flee. We do not agree. Each culprit behaves differently in externalizing and manifesting his guilt. Others may escape or flee – which circumstance is strongly indicative of guilt, while others may remain in the same vicinity so as to create a semblance of normalcy, careful not to arouse suspicion in the community." [43]

Conspiracy may be inferred from the acts of accused-appellants before, during and after the commission of the crime, which indicate a joint purpose, concerted action and concurrence of sentiments.[44] Whenever homicide is committed as a consequence or on the occasion of the robbery, all those who took part as principals in the conspiracy are also guilty as principals in the special complex crime of robbery with homicide although they did not actually take part in the killing, unless there is proof that they tried to prevent the crime.[45] There is no evidence that any of the accused-appellants desisted from the malevolent intent of the others to kill the victims during the robbery. As such, they shall equally bear the responsibility for the resulting crime.

Treachery was not alleged in the information but the suddenness of the assault upon Hegino and Maria from behind was proven beyond reasonable doubt. As such, treachery may be appreciated as a generic aggravating circumstance.[46] As regards seven-year-old John, even if the manner by which he was attacked was not shown, treachery may be deemed to have attended his killing. Treachery exists when an adult person illegally attacks a child of tender years and causes his death.[47]

The crime committed is the special complex crime of robbery with homicide defined and penalized in Article 294 of the Revised Penal Code. The trial court correctly considered the crime as robbery with homicide and not "robbery with triple homicide" as charged in the information. The term "homicide" in Article 294(1) is used in its generic sense, embracing not only the act which results in death but also all other acts producing anything short of death.[48] Neither is the nature of the offense altered by the number of killings in connection with the robbery.[49] The multiplicity of victims slain on the occasion of the robbery is only appreciated as an aggravating circumstance. This would preclude an anomalous situation where, from the standpoint of the gravity of the offense, robbery with one killing would be treated in the same way that robbery with multiple killings would be.[50]

Under Article 294 (1) of the Revised Penal Code, robbery with homicide is punishable by reclusion perpetua to death. By the presence of two aggravating circumstances, namely, treachery and multiplicity of slain victims, the proper penalty should be death in view of Article 63 (1) of the same Code.[51] However, considering that when this case happened, the imposition of the death penalty was proscribed, the proper imposable penalty was

reclusion perpetua. The heinousness of the crime they committed notwithstanding, accused-appellants may not be deprived of such favorable factor in their case.

The Solicitor General's plea for modification of the penalty in accordance with Republic Act No. 7659 which "has already expressly converted reclusion perpetua into a divisible penalty" and on account of the decision in *People vs. Lucas*,^[52] is untenable. It must be stressed that the Lucas ruling has been reconsidered and, accordingly, the Court has held:

"After deliberating on the motion and re-examining the legislative history of R.A. No. 7659, the Court concludes that although Section 17 of the R.A. No. 7659 has fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty."^[53]

The trial court failed to award the heirs of Maria Abendaño the amount of twenty three thousand (P23,000.00) pesos in reimbursement of the stolen cash, ring and wristwatch and the expenses amounting to twenty thousand (P20,000.00) pesos for her wake and that of her son, which were duly proved.^[54] The heirs are entitled to those amounts as reparation of the damage caused by accused-appellants. They shall also be liable for exemplary damages in view of the presence of two aggravating circumstances in the commission of the crime.^[55]

WHEREFORE, the Court AFFIRMS with MODIFICATION the decision of the trial court. The Court renders judgment finding accused-appellants Tito Zuela y Morandarte, Maximo Velarde y de los Reyes, and Nelson Garcia y Temporas guilty beyond reasonable doubt of robbery with homicide, defined and penalized under Article 294 (1) of the Revised Penal Code, and sentences each of them to reclusion perpetua with all its accessory penalties and to pay civil indemnity of one hundred thousand (P100,000.00) pesos to the heirs of Maria Abendaño and John Abendaño and fifty thousand (P50,000.00) pesos to the heirs of Hegino Hernandez, Jr.

In addition, the Court sentences each of the accused-appellants solidarily to pay the additional amounts of forty three thousand (P43,000.00) pesos as reimbursement of damages to the heirs of Maria Abendaño, and fifty thousand (P50,000.00) pesos as exemplary damages to the heirs of each of the three (3) victims.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Criminal Case No. 1-337, dated July 26, 1993, Judge Salvador G. Cajot, presiding.

[2] Trial Court Decision, Rollo, pp. 23-44.

[3] Information, Trial Court Records, p. 35.

[4] TSN, April 11, 1988, p. 420.

[5] TSN, October 17, 1988, p. 480.

[6] TSN, September 14, 1988, p. 465.

[7] TSN, April 11, 1988, p. 420.

[8] Original Record, Exhs. "G", "H", "I", pp. 4, 6, 8.

[9] TSN, May 11, 1988, pp. 8-9.

- [10] Ibid, p. 11.
- [11] Exh. E, Trial Court Records, p. 5.
- [12] Exh. D, Trial Court Records, p. 3.
- [13] Exh. F, Trial Court Records, p. 7.
- [14] TSN, September 14, 1988, pp. 468-470.
- [15] When translated in Filipino, this means "Tirahin mo na ang driver."
- [16] TSN, *ibid*, p. 472.
- [17] TSN, *ibid*.
- [18] In Filipino, it means, "Tirahin mo na ito."
- [19] TSN, March 10, 1988, pp. 8, 16.
- [20] Judge Bagalacsa administered the oath on the extrajudicial statements of the three accused on different dates: Maximo Velarde on June 4, 1985, while Nelson Garcia and Tito Zuela on June 6, 1985 and June 10, respectively.
- [21] TSN, December 1, 1989, p. 521.
- [22] TSN, August 16, 1988, p. 451.
- [23] TSN, *ibid*, pp. 456-457.
- [24] Regional Trial Court Records, p. 19.
- [25] TSN, September 6, 1990, pp. 11-14.
- [26] Trial Court Decision, Rollo, p. 44.
- [27] The above provision is carried over in the 1987 Constitution, but has been broken into two sections. The traditional right against self-incrimination has been placed in Section 17 and the right of persons under investigation was set apart and put in Section 12 to emphasize that it is not just a right against self-incrimination but also a guarantee of the right to proper treatment of those under investigation. Bernas, S. J., *The 1987 Constitution of the Republic of the Philippines A Commentary*, 1996 edition, p. 409.
- [28] *Gamboa vs. Cruz*, 162 SCRA 642, 648, 651 (1988)
- [29] TSN, February 23, 1989, p. 508.
- [30] *People vs. Quidato, Jr.*, 297 SCRA 1, 9 (1998)
- [31] *People vs. Cabiles*, 284 SCRA 199, 211 (1998), citing *People vs. Cabintoy*, 241 SCRA 442 (1995)
- [32] 312 Phil. 646 (1995)
- [33] *People vs. Maqueda*, *supra*, at 675-676 (1995)
- [34] 269 SCRA 95, 110 (1997)**
- [35] TSN, April 30, 1990, pp. 13-14.
- [36] *People vs. Escandor*, 333 Phil. 277, 282 (1996)

- [37] 7 Francisco, The Revised Rules of Court of the Philippines, Part I, 1990 ed., 307.
- [38] People vs. Pamon, 217 SCRA 501, 515-516 (1993)
- [39] People vs. Maqueda, supra, pp. 667-668 citing 2 WHARTON'S CRIMINAL EVIDENCE S. 337, 12th ed., (1935)
- [40] People vs. Cedenio, 233 SCRA 356, 363 (1994)
- [41] People vs. Olivarez, Jr., 299 SCRA 635, 651 (1998)
- [42] People vs. Igat, 291 SCRA 100, 109-110 (1998)
- [43] People vs. Ocampo, 218 SCRA 609, 618 (1993)
- [44] People vs. De Leon, 315 Phil. 584, 594 (1995)
- [45] People vs. Angeles, 315 Phil. 23, 38 (1995)
- [46] People vs. Cantre, 186 SCRA 76, 79 (1990)
- [47] People vs. Ganohon, 196 SCRA 431, 446 (1991), citing People vs. Retubado, 162 SCRA 276 (1988); People vs. Valerio, 112 SCRA 208 (1982); U.S. vs. Lansangan, 27 Phil. 474 (1914); U.S. vs. Baul, 39 Phil. 846 (1919)
- [48] People vs. Servillon, 236 SCRA 385, 392 (1994)
- [49] People vs. Sinoc, 341 Phil. 355, 375 (1997)
- [50] People vs. Timple, 237 SCRA 52, 70 (1994)
- [51] The pertinent provision of this Article states: "In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:
- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied; x x x."

[52] 232 SCRA 537 (1994)

- [53] 310 Phil. 77, 80 (1995)
- [54] Arts. 104 & 106, Revised Penal Code.
- [55] Art. 2230, Civil Code; People vs. Esguerra, 326 Phil. 670, 679 (1996)

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