

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELPIDIO MERCADO Y HERNANDO AND AURELIO ACEBRON Y ADORA, ACCUSED-APPELLANTS.

G.R. No. 116239. November 29, 2000

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PER CURIAM:

For automatic review by the court is the decision,[1] dated July 22, 1994, of the Regional Trial Court, Branch 156, Pasig, convicting accused-appellants SPO2 Elpidio Mercado y Hernando and SPO1 Aurelio Acebron y Adora, of the Philippine National Police of Tanay, Rizal, of kidnapping with murder and sentencing them as follows:

“WHEREFORE, in the light of the foregoing discussions and finding the guilt of both accused to be proven beyond reasonable doubt, while the undersigned Presiding Judge does not believe in the imposition of the death penalty as a form of punishment, nevertheless, in obedience to the law which is his duty to uphold, the Court hereby sentences both accused, ELPIDIO MERCADO y HERNANDO and AURELIO ACEBRON y ADORA, to death, to proportionately indemnify the heirs of the deceased Richard Buama in the sum of fifty thousand pesos (P50,000.00); to pay the sum of fifty two thousand six hundred eighty pesos (P52,680.00) (Exhibit ‘J’, ‘J-1’ to ‘J-7’) as expenses incident to the burial; and the further sum of one hundred thousand pesos (P100,000.00) by way of moral and exemplary damages, all without subsidiary imprisonment in case of insolvency and to pay the costs.

“Let a Commitment Order be issued for the transfer of both accused from the Pasig Municipal Jail to the Bureau of Corrections, Muntinlupa, Metro Manila.

“Let the records of this case be forwarded immediately to the Supreme Court for mandatory review.

“SO ORDERED.”[2]

The information against accused-appellants charged-

“That on or about the 9th day of February, 1994, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being them members of the PNP, conspiring and confederating together and mutually helping and aiding one another, did then and there wilfully, unlawfully, and feloniously kidnap one Richard Buama, a 17 year old minor and boarded him in a Red car bearing License plate No. CGZ 835 against his will thus depriving him of his freedom of liberty (sic), brought him to Tanay, Rizal in a safe house and there subjected him to extreme/brutal physical violence, and thereafter with abuse of superior strength and evident premeditation hacked and bludgeoned/clubbed said Richard Buama who thereby sustained mortal wounds which directly caused his death.

“Contrary to law.”[3]

Because of the gravity of the charge, no bail was recommended for the provisional release of accused-appellants.

When arraigned on March 8, 1994, both accused-appellants, assisted by counsel,[4] pleaded not guilty to the crime charged. During the trial, the prosecution presented the following witnesses: Florencio Villareal, Eric Ona,

SPO2 Virgilio Buama, Maria Buama, Lourdes Vergara, SPO2 Delfin Gruta, SPO2 James Mabalot, Jesus Nieves Vergara, and Lupito Buama. Their testimonies are as follows:

Twelve-year-old Florencio Villareal testified that at around 9 o'clock in the evening of February 9, 1994, he and Richard Buama were picked up by accused-appellant Elpidio Mercado near Mercado's house in Sto. Tomas, Bukid, Pasig, Metro Manila. Mercado arrived in a car, together with Eric Ona. Mercado suspected Florencio Villareal and Richard Buama of being the ones who had broken into his store and stolen money. Florencio's friend, Rex Bugayong, was able to run from Mercado. Florencio and Richard were pushed into Mercado's car. Florencio said Mercado poked a gun at Richard which made the latter say, "Sasama na lang po ako. Wag ninyo lang po akong sasaktan." ("I will go with you. Just don't hurt me.")

Mercado drove the car to Tanay, Rizal. Florencio and Richard were seated at the back, behind Mercado and Eric, respectively. Upon reaching Tanay at around 11 o'clock in the evening Mercado took the three of them (Florencio, Richard, and Eric) to an apartment. Florencio was led inside the apartment while Richard was held outside by Mercado. When Florencio looked through the window, he saw Mercado slap and box Richard. Then he was brought inside. Mercado later went upstairs. According to Florencio, Richard asked if they could leave the place as he held his stomach in pain, but Florencio replied that the door was padlocked. Eventually, Mercado came down with Acebron.

Richard was made to sit on the floor in the kitchen of the apartment. Mercado then told Aceborn that he had brought him a present ("pasalubong") and that they were going to kill two boys – a small one and a big one who was dark. In reply, Aceborn said, "Pare, huwag yung maliit dahil kasing hawig ng anak ko, saka magbe-birthday pa kinabukasan." ("Buddy, not the small one because he resembles my son who will celebrate his birthday tomorrow.") As the conversation was made within his hearing distance, Richard became so scared that he could not answer when asked by Acebron about a girl's picture found in his wallet. This angered Acebron who boxed Richard's in the stomach.

Mercado thereafter ordered Richard to take off all his clothes and lie face down on the kitchen floor. Mercado asked his aide Jeff to get a rope. Jeff brought a piece of rattan rope and tied Richard's hands, while Mercado tied Richard's feet. This happened at about 11:30 in the evening. Mercado also ordered Jeff to get rags with which to blindfold and gag Richard and then asked Acebron to get a bolo or a big knife. After getting a bolo, Acebron and Jeff put Richard into the luggage compartment of Mercado's car. They then drove away, leaving behind Florencio and Eric in the apartment. After two hours, Mercado and Acebron came back. Florencio saw Acebron washing the bloodstains off the bolo. He asked Mercado where Richard was, to which Mercado replied, "Wala na. Pinatahimik ko na." ("Gone. I have already silenced him.")

Mercado and Acebron then took Eric and Florencio to a beerhouse in Tanay, Rizal and warned them not to tell anyone about the incident or they and their families would be killed. For fear of his life and that of his family, Florencio promised he would not. From the beerhouse, Mercado drove to Acebron's apartment, where the latter was dropped off, and then proceeded home to Pasig with Eric and Florencio.

Florencio waited three days for news about Richard. On February 12, 1994, with still no news about Richard, Florencio decided to talk to Richard's sister, a flower vendor whose store was located near the Pasig Church. Florencio told her to look for Richard in Tanay; he even promised to help them once they found him. Actually, it was Richard's brother, Virgilio Buama, a policeman, who found Richard's body in a morgue in Morong, Rizal. He was told by a funeral parlor employee that they had retrieved Richard's body near the boundary of Laguna. Florencio attended the wake of his friend in Sto. Tomas, Pasig.[5]

Virgilio Buama, a policeman and brother of Richard, last saw the latter on December 25, 1993 as Richard lived

with their mother. On February 11, 1994, Virgilio learned from his sister, Maria Buama, that Richard had been picked up by a policeman on February 9, 1994. Hence, he went to see Florencio Villareal, who related to him how Richard had been kidnapped and killed by Mercado. Virgilio took Florencio to his house, and the following day, February 12, 1994, they went to the PNP headquarters at Hilltop, Taytay, Rizal, where Florencio was shown pictures by Maj. Patricio Abenido. Florencio picked out pictures of Mercado and Acebron and identified them as the culprits in the killing of Richard. Florencio gave a sworn statement concerning the incident to SPO2 James Mabalot at the PNP headquarters. Mercado was thereafter ordered to report to the Provincial Director, Col. Maralit, and it was there that Florencio pointed to Mercado as the person who had kidnapped and killed Richard. Acebron was likewise called, and he and Mercado were detained at the Rizal PNP Command Stockade.

Virgilio found Richard's body at the San Francisco Funeral Homes in Morong, Rizal. The owner/manager of the funeral parlor told him that Richard's body had been recovered in Mabitac, Laguna. Virgilio brought the remains of his brother home.[6]

Eric Matanggihan Ona, 21 years old, was in the house of his neighbor Coco San Juan, in Sto. Tomas, Pasig, Metro Manila, at around 9 o'clock in the evening of February 9, 1994 when Mercado arrived and asked him to go with him, after Mercado had asked Eric's father for permission to do so. Along the way, Eric asked Mercado where they were going, and the latter said that they would look for "Bunso" (Florencio Villareal's nickname) who had stolen money from his video machines. Eric went with Mercado in the latter's car.

Florencio voluntarily went with them when Eric and Mercado saw him. Later, they saw Richard and Rex Bugayong seated on the street gutter. When the two saw the car stop, Rex stood up and ran away. Mercado told Eric to go after Rex, but Eric refused to do so because Rex was his friend. Mercado was able to get Richard. Mercado placed his arm around Richard's shoulders while his other hand poked a gun at Richard's side. Eric heard Richard pleading with Mercado not to hurt him and saying that he would go with him. Eric knew that Mercado poked a gun at Richard because the latter was Mercado's suspect in the robbery of his store. He heard Mercado ask, "Eric, bakit naman pinasok nina Richard Buama at Florencio Villareal ang tindahan ko?" ("Eric, why did Richard Buama and Florencio Villareal break into my store?") He answered that he did not know anything about it. Then, Mercado told Richard and Florencio, "Nagkamali kayo ng tinalo. Isang napakalaking bangungot ang ginawa ninyo." ("You picked on the wrong guy. What you have done is a big nightmare.") According to Eric, they then boarded Mercado's car. Along the way, Eric asked Mercado where they were going, to which Mercado replied, "Sa Tanay. Have you been there?" Mercado asked Richard how many they were in the family, to which Richard replied that they were ten and that one of his brothers was "one of them." ("Kabaro ninyo.") Mercado also asked them when their birthdays were and whether they would like to have another birthday.

Upon reaching Tanay, they were brought to an apartment. There Mercado hit Richard on the face and told him to take off his clothes. Mercado then went upstairs to wake up Acebron. Acebron tried to talk to Richard, but the latter would not speak. This so angered Acebron that he boxed Richard hard on the stomach. Mercado then asked his aide named Jeff to tie Richard's hands and feet and to blindfold and gag him. This done, Acebron and Jeff loaded Richard into the luggage compartment of the car. Eric described Richard as pale ("maputla"). He had hematoma on his stomach and a swollen right cheek that was blackish in color. Eric saw Acebron get a bolo from the kitchen, a long one, "mapurol" ("dull and not sharp"), and with a black handle. Fearing for his safety, Eric kept quiet. Mercado warned them not to tell anybody about the incident; otherwise, they would be killed.

After two hours, Mercado and Acebron returned to the apartment without Richard. Eric saw the bolo with bloodstains. He asked Mercado, "Tata Pedi, where is Richard?" Mercado answered, "Wala na, pinagpahinga ko na." ("He is gone. I have laid him to rest.")

At around 4 o'clock in the morning, they went to the nearby "Space" beerhouse in Tanay, Rizal where they were made to drink. It was there that Eric heard Mercado and Acebron's conversation. Mercado asked, "Pare, ilan na ba ang napatay mo?" ("How many have you killed?") Acebron said, "Ako, labimpito." ("Me, 17.") Mercado countered, "Pare, ako dalawampu't lima." ("Buddy, me, 25.") Acebron said Richard was the 17th person he had killed while Mercado said that Richard was his 25th victim.

Thereafter, with Eric and Florencio in tow, Mercado brought Acebron back to the apartment and they then went home to Pasig in Mercado's car. They reached Sto. Tomas, Pasig at around 5:30 in the morning. Mercado again warned them: "Eric, Bunso, yung sinabi ko, ha." ("Eric, Bunso, don't forget what I told you.") Eric took that to mean that they should not tell anyone about the incident; otherwise, something bad would happen to them. Hence, hounded by fear, Eric did not report the matter to the police. He also did not know that Richard had been killed. He said if he had known that Richard was already dead when Mercado brought him home, he would have reported the matter to police authorities.

Richard's brothers and sisters searched for him the following day, but Eric, fearing for his life, did not talk to them. It was only when he saw the wake being held for Richard at the Sto. Tomas Chapel that Eric realized that Richard was dead. After Richard's wake, Mercado told Eric to look for Florencio lest the latter talk about the incident. Eric did not obey Mercado. When Mercado asked him if he had seen Florencio, Eric said he had not. Thereafter, someone from the PNP headquarters in Hilltop picked him up. At the investigation conducted, Eric executed a sworn statement.[7]

The sisters Maria Buama and Lourdes Buama Vergara testified that Richard was informally adopted by the Buama family. When Richard was six months old, his mother gave him to Maria at the Pasig Immaculate Conception Church on June 18, 1977. They considered Richard as their own brother and a member of their family. It was Florencio who informed them that Mercado had picked him up and Richard on February 9, 1994. In the evening of February 11, 1994, upon learning about the incident, Maria and Lourdes went to Mercado's house cum store in Sto. Tomas, Pasig where Richard used to play video machines. Mercado's wife told them that Richard no longer came to the video store as he had done something wrong. Asked what it was that Richard had done, Mercado's wife failed to answer because someone inside the store said, "Hinahanap si Richard ng mga kapatid niya." When asked why his parents were not informed about Richard's alleged mischief, Mercado's wife allegedly replied it was because their store had not yet been emptied. ("Hindi pa raw nauubos ang tindahan nila.") Lourdes and Maria eventually found Richard's body in the early morning of February 12, 1994. For the wake the Buama family held for Richard at the Chapel of Sto. Tomas in Pasig and his funeral, they spent P52,680.00.[8]

SPO2 James Mabalot took the statements of Eric and Florencio. When the latter implicated Mercado and Acebron, SPO2 Mabalot took the two boys to the Administrative Building. From the pictures of almost all of the more than 100 members of the PNP Rizal, Eric and Florencio picked those of Mercado and Acebron. The statements that Eric and Florencio executed were signed in the presence of both SPO2 Mabalot and his superior. SPO2 Mabalot and his team thereafter went to a funeral parlor in Morong, Rizal where they were told that Richard's body had been taken to the PNP Crime Laboratory Services for autopsy. They learned that Richard's body had been found at the boundary of Rizal and Laguna.

On the way to that site, SPO2 Mabalot and his team dropped by the Tanay Police Station to coordinate with the Tanay police in the investigation of the case. When Florencio, who was with them, saw Mercado's car parked outside the police station, he recognized it as the one used in taking them from Pasig to Tanay. When SPO2 Mabalot and his team opened the car, they found blood spots on the backseat. The car was then taken to the PNP Headquarters in Hilltop, Taytay, Rizal for proper identification and examination of the bloodstains.

On orders of Col. Maralit, Mercado and Acebron were placed in detention. SPO2 Mabalot wanted Florencio and Eric to confront Mercado and Acebron, but Florencio and Eric were so scared to do so for fear that the accused might hurt them.[9]

Dr. Jesusa Nieves Vergara, Acting Chief of the Medico-legal Division of the PNP Crime laboratory in Camp Crame, Quezon City, executed and signed the postmortem examination report on Richard's body. Her report shows that the cadaver had previously been embalmed; that there were two marks at the back of the left hand; that both hands were tied with plastic cord while both feet were tied with rattan; and that it sustained nine injuries on the head, neck, left upper extremity, and the left arm. There were abrasions, lacerations, and stab wounds. The multiple abrasions on the forehead and the back of the left arm were possibly secondary to a fall against a hard surface. The lacerations were on the lower jaw, on the front right ear, at the right ear lobe, and two on the right side of the neck. These could have been caused by a blunt object such as a piece of wood, an iron bar, a hollow block, or anything hard. There were also injuries and other lacerations on the back of the head towards the right side which could have been caused by the application of blunt force. Opening of the head revealed hematoma or accumulation of blood. The medical report stated that Richard died of "(i)ntracranial hemorrhage as a result of skull fracture." [10]

Accused-appellants' defense was alibi. SPO1 Miguel Catapusan, Administrative Officer of the Tanay PNP Municipal Station, testified that accused-appellants both reported for work on February 9, 1994 at the police station. The morning and evening Formation Sheets and the Police Duty Roster Book or the logbook showed that accused-appellant Elpidio Mercado and accused-appellant Aurelio Acebron were both present from 8:00 a.m. to 8:00 p.m. However, after signing the logbook in the morning, accused-appellants were told to report to the Rizal PNP Headquarters Command between 9:00 a.m. and 5:00 p.m. regarding some important matters. After the head count that night, the Chief of Police briefed the policemen on their assignments for thirty minutes, until 8:30 p.m.[11]

Testifying in his own defense, accused-appellant Elpidio Mercado said that before he joined the PNP Tanay, Rizal, he was with the Philippine Navy since 1976. He was transferred to the Philippine Coast Guard in 1981 where he served until 1986. When the EDSA Revolution broke out, he was assigned to Malacañang as a member of the Presidential Security Group (PSG) until 1991. His next assignment from 1991 to 1992 was at the Maritime Command, Anti-smuggling Division. Thereafter, he was assigned to Task Force Habagat under Col. Panfilo Lacson of the Presidential Anti-Crime Commission (PACC). In 1993, he was assigned to the PNP of Rizal. For his military and police services, Mercado claimed he received several awards, commendations, and medals.[12]

On February 9, 1994, Mercado reported to the Tanay police station because Col. Maralit had summoned him the night before. After signing the logbook, Mercado, together with Acebron and one SPO4 Bias, asked permission from their superior officer to go to the PNP Hilltop Headquarters for an investigation. They left the Tanay Police Station at 8:10 a.m. and proceeded to the Hilltop Headquarters where they stayed until 5:00 p.m. They went back to the Tanay Police Station to attend the evening formation that lasted up to 8:30 p.m. Thereafter, Mercado went home with Acebron. They invited SPO4 Bias to have dinner with them in their house at Plaza Aldea, Tanay. The house was provided to them by the local government of Tanay, and they shared it with SPO2 Sagat and Chief Inspector Genabe. After SPO4 Bias went home at 10 o'clock in the evening, Mercado went to bed. At around 7 o'clock in the morning the following day, February 10, 1994, Acebron woke Mercado up as he prepared to go to the office. Mercado told Acebron to inform his officer that he would not attend the morning formation.

Mercado said he was married and that his wife stayed in their house in Sto. Tomas, Baltazar St., Pasig, Metro Manila, to attend to their store and two video machines. He usually went home every 15th and 30th of the month except when there were special occasions. He owned a red Chevrolet car, but it was seized by the 221st Mobile

Force on the ground that it was used in a crime. Mercado claimed that the travel time from Pasig to Tanay was one-and-a-half hours and if traffic was heavy, two hours.

Mercado denied the allegations against him. He claimed that Eric and Florencio implicated them in the crime because of an incident on January 23, 1994 in which Eric created trouble in his video machine shop. Mercado saw Eric strangling a kid. He was going to pacify Eric, but the latter uttered bad words against him. So, he slapped Eric. The youngsters scampered, but Acebron, who was visiting Mercado, was able to grab Florencio. Mercado hit Florencio on the back of the head and told him not to show their faces anymore in his store because they were driving away his customers. Since then, Eric and Florencio harbored ill feelings against him. They had been calling his house and threatening his family that they would kill his son and rape his daughters. Hence, as a precautionary measure, he sent his children to Cavite; only his wife, sister-in-law, and their maid remained in their house in Pasig.[13]

Aurelio Acebron, the other accused-appellant, also testified. He said that before he joined the Tanay Police Force in November 1993, he had been a member of the Philippine Constabulary since 1975. He was assigned to the 61st PC Battalion in Basilan and Cebu until 1978. From 1978 to 1979, he was an investigator of the Constabulary Metrocom. From 1979 to 1982, he was also an investigator at the regional headquarters of the RT Division in Zamboanga City. From 1982 to 1985, he served in the Military Police Brigade in Camp Aguinaldo. At the Rizal PNP Command, he was also an investigator. During his active duty, he received 22 commendations, two medals, and six military merit medals. He was also awarded a bronze medal in the aftermath of the 1989 failed coup d'etat in Makati.

Acebron claimed that on February 9, 1994, he reported for work before 8 o'clock in the morning as shown by the logbook he signed. With Mercado and SPO4 Bias, he was ordered to report to Supt. Crescencio Maralit at Hilltop, Taytay, Rizal. They left Tanay at 8: 10 a.m. and arrived at Hilltop at 9 o'clock that same morning. They conferred with Supt. Maralit from 2 until 5 o'clock in the afternoon. They then went back to the Tanay PNP station and reported to Major Genabe. Acebron attended the evening formation that lasted up to 8:30 in the evening, after which he went home to Plaza Aldea, Tanay together with Mercado and SPO4 Bias. They had dinner with Bias and Major Genabe. Bias left at 10 o'clock in the evening and they settled for the night. The following morning, he woke up at 6 o'clock. Before leaving for the office, he woke up Mercado who, however, said that he would not attend the morning formation as he would go directly to his assignment at Post No. 2.

Acebron also denied all accusations against him. He claimed that he had been implicated in revenge for what happened on January 23, 1994 when he collared Florencio and Mercado hit the boy's back for causing trouble in Mercado's video shop. Acebron claimed that he had been asked by police officers Mabalot and Ople to testify against Mercado, but he refused. He claimed he had been detained on February 12, 1994 after he was implicated in this case.[14]

Corroborating other defense witnesses, SPO4 Teofilo Paz Bias swore that at 7:30 in the morning on February 9, 1994, he attended the morning formation at the Tanay police station. Mercado and Acebron were there present. At past 8:00 a.m., as he accompanied Mercado and Acebron to the headquarters at Hilltop, Taytay, Rizal, they saw Col. Maralit with whom they conferred from 2:00 p.m. until 5:00 p.m. They then went back to Tanay to attend the evening formation which lasted until about 8:45 in the evening. Major Genabe ordered him to go with Mercado and Acebron to discuss in the house the result of the investigation at Hilltop, Taytay. They arrived in that house at 9:00 p.m. While they were having dinner, they discussed what had happened at the investigation of Mercado and Acebron by the Provincial Director. At 10 o'clock that evening, after supper, Bias went home to Pililla, Rizal. The following morning, he saw Acebron report to work.[15]

On the basis of the foregoing evidence, the trial court found both accused guilty and sentenced them to death. Hence, this appeal. The joint brief of accused-appellants Mercado and Acebron contains the following assignment of errors:

FIRST ASSIGNMENT OF ERROR

WITH ALL DUE RESPECT, THE TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN GIVING CREDENCE TO CLASHING MATERIAL INCONSISTENCIES ON THE TESTIMONIES OF THE TWO (2) PROSECUTIONS (sic) PRINCIPAL WITNESSES. THEIR CONTRADICTING TESTIMONIES AND EVIDENCES CREATED NOT ONLY REASONABLE DOUBT BUT RATHER ESTABLISHED FACTUAL ERROR THAT WOULD BRING ABOUT ACQUITTAL OF THE ACCUSED-APPELLANTS.

SECOND ASSIGNMENT OF ERROR

WITH ALL DUE RESPECT, THE TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISREGARDING THE DIRECT MATERIAL EVIDENCE CONSISTING OF POLICE LOGBOOK OR DUTY ROSTER BOOK (EXHIBITS "6" -MERCADO AND "4" -ACEBRON) AND TESTIMONIES OF SPO2 POLICE CATAPUSAN THAT BOTH ACCUSED-APPELLANTS ATTENDED THE MORNING FORMATION AT 8:00 IN THE MORNING OF FEBRUARY 9, 1994 AT TANAY, RIZAL, THEN ATTENDED A CONFERENCE CALL OF SUPT. CHIEF COLONEL MARALIT THE WHOLE DAY AT TAYTAY, RIZAL, THEN BACK TO TANAY, RIZAL AT 6:00 P.M. AND BOTH ACCUSED-APPELLANTS ATTENDED THE EVENING FORMATION AT 8:00 P.M. WHICH LASTED UP TO 8:45 P.M., AFTER WHICH, THEY (SPO1 BIAS, MERCADO & ACEBRON) PROCEEDED TO MAJOR GENABE AT THE TANAY APARTMENT AND MADE REPORT REGARDING THE CONFERENCE CONDUCTED BY COL. MARALIT UP TO 10:00 P.M. HENCE, PHYSICALLY IMPOSSIBLE FOR THE ACCUSED MERCADO TO PICK UP THE VICTIM AT 9:00 P.M. AT PASIG, METRO MANILA.

THIRD ASSIGNMENT OF ERROR

WITH ALL DUE RESPECT, THE TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT THERE EXIST (sic) A CONSPIRACY, WITHOUT ANY EVIDENCE AND BASIS IN FACT AND IN LAW THAT WILL SUPPORT ITS DECISION.

FOURTH ASSIGNMENT OF ERROR

WITH ALL DUE RESPECT, THE TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME KIDNAPPING WITH HOMICIDE, THERE BEING NO EVIDENCE ADDUCED THAT HOMICIDE HAS BEEN COMMITTED IN FURTHERANCE OR AS A CONSEQUENCE OF KIDNAPPING.

FIFTH ASSIGNMENT OF ERROR

WITH ALL DUE RESPECT, THE TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN WRITING THE DECISION WITH UNDUE HASTE AND INCREDIBLE SPEED ONE (1) DAY AFTER THE SUBMISSION OF ACCUSED (sic) 32-PAGE JOINT MEMORANDUM ON JULY 21, 1994, WITHIN THE 15-DAY PERIOD GRANTED BY THE COURT AND PROMULGATING ITS DECISION ON THE NEXT DAY, JULY 22, 1994, CONSISTING OF 39 PAGES, THUS, RESULTING IN FATAL ERROR OF CONVICTING BOTH ACCUSED SENTENCING THEM TO DEATH BASED ON WRONG APPRECIATION OF FACTS, SPECULATIONS AND PROBABILITIES AND DESPITE PATENT FAILURE OF THE PROSECUTION TO PROVE WHAT HAVE BEEN ALLEGED UNDER THE CRIMINAL INFORMATION.

These assigned errors boil down to the following main issues: (1) credibility of witnesses, (2) alibi as a defense,

and (3) the presence of conspiracy.

These issues will be discussed in the course of this decision, although not necessarily in the order discussed by accused-appellants in their brief. But before doing so, we first consider the threshold question raised in the Supplemental Brief filed for accused-appellants by collaborating counsel Rene V. Sarmiento with regard to the constitutionality of Republic Act No. 7659 providing for the death penalty for 13 heinous crimes.

I. CONSTITUTIONALITY OF R.A. 7659 AND R.A. 8177

Accused-appellants argue that Republic Act 7659 violates the 1987 Constitution because -

1. There are no compelling reasons to impose the death penalty for the crimes of treason, qualified piracy, qualified bribery, parricide, murder, infanticide, kidnapping and serious illegal detention, robbery with violence against or intimidation of persons, destructive arson, rape, plunder, importation of prohibited drugs, etc.
2. R.A. No.7659 violates the constitutional ban against infliction of cruel, degrading or inhuman punishment.
3. R.A. No. 7659 impugns the constitutional right to equality before the law.
4. R.A. No. 7659 repudiates the obligation of the Philippines under international law.
5. Death penalty is not deterrence to the commission of crimes.[16]

The constitutionality of Republic Act No. 7659 has already been settled in the Court's 12-3 per curiam Resolution in *People vs. Echegaray*,[17] wherein the following rulings were made:

1. The death penalty is not a "cruel, unjust, excessive or unusual punishment." It is an exercise of the state's power to "secure society against the threatened and actual evil."
2. The offenses for which Republic Act No. 7659 provides the death penalty satisfy "the element of heinousness" by specifying the circumstances which generally qualify a crime to be punishable by death;
3. Republic Act No. 7659 provides both procedural and substantial safeguards to insure its correct application.
4. The Constitution does not require that "a positive manifestation in the form of a higher incidence of crime should first be perceived and statistically proven" before the death penalty may be prescribed. Congress is authorized under the Constitution to determine when the elements of heinousness and compelling reasons are present, and the Court would exceed its own authority if it questioned the exercise of such discretion.

In the subsequent case of *Echegaray vs. Secretary of Justice*,[18] the Court sustained the constitutionality of Republic Act No. 8177, providing for death by lethal injection against claims that death by lethal injection was cruel, degrading, or inhuman punishment, and that the law violated treaty obligations. Petitioner in that case argued that death by lethal injection constituted cruel, degrading, and inhuman punishment because: (1) Republic Act No. 8177 failed to provide for the drugs to be used in administering lethal injection, the dosage for the drug to be administered, and the procedure in administering drug(s) to the convict; (2) Republic Act No. 8177 and its implementing rules did not fix either the date of execution of the convict or the time for notifying him, with the result that such uncertainties cause pain and suffering to the convict, and (3) the possibility of botched executions or mistakes in administering drugs renders lethal injection inherently cruel.

Rejecting petitioner's contention that death by lethal injection violates the prohibition against cruel, degrading, and inhuman punishment in Section 19(1), Article III of the Constitution, the Court said:

"Now it is well-settled in jurisprudence that the death penalty per se is not a cruel, degrading or inhuman punishment. In the oft-cited case of *Harden v. Director of Prisons*, this Court held that "[p]unishments are cruel

when they involve torture or a lingering death; but the punishment of death is not cruel, within the meaning of that word as used in the constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life.' Would the lack in particularity then as to the details involved in the execution by lethal injection render said law 'cruel, degrading or inhuman'? The Court believes not. For reasons hereafter discussed, the implementing details of R.A. No. 8177 are matters which are properly left to the competence and expertise of administrative officials." [19]

As to the contention that the re-imposition of the death penalty violates international treaty obligations, particularly the International Covenant on Civil and Political Rights, the Court explained:

"Indisputably, Article 6 of the Covenant enshrines the individual's right to life. Nevertheless, Article 6(2) of the Covenant explicitly recognizes that capital punishment is an allowable limitation on the right to life, subject to the limitation that it be imposed for the most serious crimes.' Pursuant to Article 28 of the Covenant, a Human Rights Committee was established and under Article 40 of the Covenant, States Parties to the Covenant are required to submit an initial report to the Committee on the measures they have adopted which give effect to the rights recognized within the Covenant and on the progress made on the enjoyment of those rights within one year of its entry into force for the State Party concerned and thereafter, after five years. On July 27, 1982, the Human Rights Committee issued General Comment No. 6 interpreting Article 6 of the Covenant stating that '(while) it follows from Article 6(2) to (6) that State parties are not obliged to abolish the death penalty totally, they are obliged to limit its use and, in particular, to abolish it for other than the 'most serious crimes.' Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the 'most serious crimes.' The article strongly suggests (pars. 2[2] and [6]) that abolition is desirable. x x x. The Committee is of the opinion that the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure. Further, The Safeguards Guaranteeing Protection of Those Facing the Death Penalty adopted by the Economic and Social Council of the United Nations declare that the ambit of the term 'most serious crimes' should not go beyond intentional crimes, with lethal or other extremely grave consequences.

"The Optional Protocol to the International Covenant on Civil and Political Rights was adopted by the General Assembly of the United Nations on December 16, 1966, and signed and ratified by the Philippines on December 19, 1966 and August 22, 1989, respectively. The Optional Protocol provides that the Human Rights Committee shall receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

"On the other hand, the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty was adopted by the General Assembly on December 15, 1989. The Philippines neither signed nor ratified said document. Evidently, petitioner's assertion of our obligation under the Second Optional Protocol is misplaced." [20]

Accused-appellants further argue that Republic Act No. 7659 denies equality before the law. They cite studies here and abroad allegedly showing that "the death penalty has most often been used against the poor." This statement is too sweeping to merit further serious consideration. Anyone, regardless of his economic status in life, may commit a crime. While there may be perceived imbalances in the imposition of penalties, there are adequate safeguards in the Constitution, the law, and procedural rules to ensure due process and equal protection of the law. As pointed out by Representative Pablo Garcia when interpellated by Representative Joker Arroyo during the congressional deliberation on the death penalty bill:

"x x x. (T)here is something more in the bill that protects the rights of every accused person, be he rich or poor. I refer to the provisions under the Bill of Rights of the Constitution. The Constitution itself protects, envelops the accused with the mantle of protection guaranteed by the Bill of Rights. Section 1 of Article III of the Constitution provides that no person shall be deprived of life, liberty or property without due process of law. In

other words, the accused cannot be deprived of his life without due process of law nor shall any person be denied the equal protection of the laws. In other words, the laws protect the rich and the poor, the lettered and the unlettered. That is guaranteed by the Constitution. x x x.”[21]

Similarly, in *People vs. Mijano*,[22] this Court recently said:

"Finally, accused-appellant in his reply brief contends that the death penalty law is violative of the equal protection clause of the 1987 Constitution because it punishes only people like him, the poor, the uneducated, and the jobless.

"The equality the Constitution guarantees is legal equality or, as it is usually put, the equality of all persons before the law. Under this guarantee, each individual is dealt with as an equal person in the law, which does not treat the person differently because of who he is or what he is or what he possesses (Bernas, *The Constitution of the Republic of the Philippines, A Commentary*, 1987 ed., p. 6).

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"Apparently, as it should be, the death penalty law makes no distinction. It applies to all persons and to all classes of persons - rich or poor, educated, or uneducated, religious or non-religious. No particular person or classes of persons are identified by the law against whom the death penalty shall be exclusively imposed."

Accused-appellants' claim that the death penalty does not deter the commission of crimes is without any basis. To be sure, deterrence is not the only aim of the law. As Representative Pablo Garcia, the principal author of the death penalty bill, explained "more than deterrence, x x x is retributive justice." [23] In *People vs. Echegaray*, it was further stated:

"The abolitionists in Congress insisted that all criminal reforms first be pursued and implemented before the death penalty be reimposed in case such reforms prove unsuccessful. They claimed that the only compelling reason contemplated by the Constitution is that nothing else but the death penalty is left for the government to resort to that could check the chaos and the destruction that is being caused by unbridled criminality. Three of our colleagues are of the opinion that the compelling reason required by the constitution is that there occurred a dramatic and significant change in the socio-cultural milieu after the suspension of the death penalty on February 2, 1987 such as an unprecedented rise in the incidence of criminality. Such are, however, interpretations only of the phrase 'compelling reasons' but not of the conjunctive phrase 'compelling reasons involving heinous crimes.' The imposition of the requirement that there be a rise in the incidence of criminality because of the suspension of the death penalty, moreover, is an unfair and misplaced demand, for what it amounts to, in fact, is a requirement that the death penalty first prove itself to be a truly deterrent factor in criminal behavior. If there was a dramatically higher incidence of criminality during the time that the death penalty was suspended, that would have proven that the death penalty was indeed a deterrent during the years before its suspension. Suffice it to say that the constitution in the first place did not require that the death penalty be first proven to be a deterrent; what it requires is that there be compelling reasons involving heinous crimes.

"Article III, Section 19 (1) of the 1987 Constitution simply states that Congress, for compelling reasons involving heinous crimes, may re-impose the death penalty. Nothing in the said provision imposes a requirement that for a death penalty bill to be valid, a positive manifestation in the form of a higher incidence of crime should first be perceived and statistically proven following the suspension of the death penalty. Neither does the said provision require that the death penalty be resorted to as a last recourse when all other criminal reforms have failed to abate criminality in society. It is immaterial and irrelevant that R.A. No. 7659 cites that there has been an 'alarming upsurge of such crimes,' for the same was never intended by said law to be the yardstick to determine the existence of compelling reasons involving heinous crimes. Fittingly, thus, what R.A. No. 7659 states is that 'the Congress, in the interest of justice, public order and rule of law, and the need to rationalize and harmonize the penal sanctions for heinous crimes, finds compelling reasons to impose

the death penalty for said crimes." [24]

Indeed, today, even members of the Court who originally dissented from the majority ruling sustaining the validity of Republic Act No. 7659 agree on the imposition of the death penalty without in the least changing their view about the constitutionality of the penalty.

As we did in *People vs. Godoy*, [25] we restate mankind's age-old observation and experience on the penological and societal effect of capital punishment: "If it is justified, it serves as a deterrent; if injudiciously imposed, it generates resentment." [26]

We now consider the merits of this case.

II. THE CREDIBILITY OF WITNESSES

The question of credibility of witnesses is primarily for the trial court to determine. [27] For this reason, its observations and conclusions are accorded great respect on appeal. [28] This rule is variously stated thus: The trial court's assessment of the credibility of a witness is entitled to great weight. It is conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered. [29] Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, his assessment of the credibility of witnesses deserves high respect by appellate courts. [30]

In the case at bar, inconsistencies and discrepancies in the testimonies of the two principal prosecution witnesses, Florencio Villareal and Eric Ona, are alleged as undermining their credibility, to wit:

(1) Florencio testified that on February 9, 1994 at about 9 o'clock in the evening, he and the victim, Richard Buama, were picked up by Mercado and Eric while he and Richard, in the company of Rex Bugayong, were passing time near Mercado's house. Eric belied this testimony when, on cross-examination, he said that he and Mercado saw Florencio first at about 8 o'clock, not 9 o'clock in the evening of February 9, 1994 at the corner of Sto. Tomas Street, Pasig, one block away from the place where they later found Richard.

(2) Florencio testified that when they were apprehended at the corner of Baltazar Street, Mercado pushed him straight into the car, and held and poked a gun at Richard. On the other hand, Eric testified that Florencio voluntarily went with them into the car as Mercado, with a .38 black gun tucked at his side, placed his arm around Richard's shoulder.

(3) In his sworn statement, Florencio stated in answer to Question No.3, "At kami po ay dinala ng pulis na humuli sa amin doon sa inuupahan niyang bahay at isinakay kami sa kanyang kotse at kami ay dinala sa Tanay, Rizal." However, in answer to Question No. 6, Eric said "Una kaming dinala sa bahay na inuupahan ni Elpidio Mercado dito sa Pasig." Eric denied Florencio's statement that they did not stay in Mercado's house; instead, they just circled the place and then proceeded to Tanay, Rizal right away. Florencio in fact contradicted his own statement at the trial by declaring that they just passed by Mercado's house and did not stay there.

(4) In his testimony, Florencio said that on their way to Tanay, Rizal, he did not hear conversation between Mercado and Eric. Yet Eric testified that, upon reaching Rosario, he talked to Mercado and asked him where they were going. Mercado answered, "Sa Tanay, have you been there?" Mercado even asked them their birthdays and if they still wanted to have birthdays.

(5) Florencio testified that upon reaching Tanay, Rizal and alighting from the car he was brought inside the apartment and that when he peeped through the window he saw Mercado slapping Richard on the face. On the contrary, Eric testified that upon their arrival in Tanay, Rizal, they alighted from the car and were told to go inside the apartment and it was there where Mercado slapped Richard on the face and asked him to undress.

(6) Florencio further testified that after Richard had taken off his clothes as ordered by Mercado, the latter

asked Richard to lie down, face downward, and thereafter, Richard's feet and hands were tied by Mercado and his aide, Jeff, with a rattan rope. Eric stated on cross-examination that when Richard was lying down, Mercado stepped on Richard's left cheek, implying that Richard lay not with his face down but with his right cheek on the ground.

(7) Florencio stated in his sworn statement that upon reaching Tanay, Rizal, they were taken into an apartment opposite a beerhouse. On the other hand, Eric claimed that the apartment was some 130 to 150 meters away from the beerhouse.

(8) Florencio stated in his sworn statement that after Richard was beaten up, his hands and feet were tied and then Mercado and his police companion loaded (sinakay) Richard into the car. Eric, however, testified that Richard was loaded in the baggage compartment of the car by Acebron and Jeff. On cross-examination, Florencio contradicted himself by admitting that it was Acebron and Jeff who loaded Richard into the car.

(9) Florencio testified that, although Mercado asked Acebron to get a bolo, the latter got a long knife (not a bolo) with a "sharp pointed edge" (sic). Eric declared that the bolo taken by Acebron was "mapurol."

(10) Eric testified that on February 12, 1994, he was investigated ahead of Florencio by SPO2 James Mabalot and insisted that his statement was the truth. He even stated that as he was being investigated, Florencio was around, talking. However, this testimony was contradicted by SPO2 James Mabalot who declared that it was Florencio who was first investigated as shown by the fact that Florencio was investigated at 6:20 p.m., while Eric was investigated at 10:45 p.m. of February 12, 1994.

(11) On cross-examination, Eric testified that while SPO2 Mabalot was investigating him and Florencio, SPO1 Buama was just outside the office and even saw him. SPO1 Buama confirmed this statement. However, SPO2 Mabalot said that when he investigated Florencio and Eric, SPO1 Buama was not present having then already left.

(12) SPO1 Buama testified that Richard was his full blood brother, but his sister, Maria Buama, said that Richard was an adopted child, although they considered him their full blood brother.[31]

Inconsistencies in the testimonies of witnesses which refer only to minor details and collateral matters do not affect the veracity and weight of their testimonies where there is consistency in relating the principal occurrence and positive identification of the assailants. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed. They are thus safeguards against memorized perjury.[32]

Nor are such inconsistencies and even improbabilities unusual, for there is no person with perfect faculties or senses.[33] An adroit cross-examiner may trap a witness into making statements contradicting his testimony on direct examination. Intensive cross-examination on points not anticipated by a witness and his lawyer may make a witness blurt out statements which do not dovetail even with his own testimony. Yet, if it appears that the same witness has not willfully perverted the truth, as may be gleaned from the tenor of his testimony and the conclusion of the trial judge regarding his demeanor and behavior on the witness stand, his testimony on material points may be accepted.

A witness' testimony may likewise contradict that of another witness. As long as the contradiction involves minor details and collateral matters, the credibility of both witnesses will not be deemed impaired. After all, no two witnesses could testify on a matter from the same point of view or perception. The recollection of different witnesses with respect to the time, place, and other circumstances of a criminal event would naturally differ in various details. Absolute uniformity in every detail of testimonies cannot be expected of witnesses who by nature react differently to what they see and hear depending upon their situation and state of mind.[34] On the contrary, if witnesses should agree on every detail of a transaction that occupied a considerable space of time and should

undertake to tell all that occurred in precisely the same order, each giving the same incidents as the others in precisely the same words, that fact should make their testimonies suspect.[35]

Applying these rules to this case, the alleged inconsistencies in the testimonies of Florencio Villareal and Eric Ona pointed out by appellants concern only minor details which do not detract from the essential points of their testimonies that accused-appellants, after beating up the victim, took him away in accused-appellant Mercado's car, and, when they returned to the apartment, both admitted that they had "silenced" the victim or had "laid him to rest."

The alleged inconsistencies between the testimonies of the prosecution witnesses and their affidavits, on the other hand, refer to minor matters that do not affect the substance of the prosecution's evidence. Affidavits are not entirely reliable evidence in court due to their incompleteness and the inaccuracies that may have attended their formulation.[36] In general, such affidavits are not prepared by the affiants themselves but by another person (i.e., investigator) who may have used his own language in writing the statement or misunderstood the affiant or omitted material facts in the hurry and impatience that usually attend the preparation of such affidavits. As this Court has often said:

"An affidavit, 'being taken ex-parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject.'"[37]

"'We have too much experience of the great infirmity of affidavit evidence. When the witness is illiterate and ignorant, the language presented to the court is not his; it is; and must be, the language of the person who prepares the affidavit; and it may be, and too often is, the expression of that person's erroneous inference as to the meaning of the language used by the witness himself; and however carefully the affidavit may be read over to the witness, he may not understand what is said in a language so different from that which he is accustomed to use. Having expressed his meaning in his own language, and finding it translated by a person on whom he relies, into language not his own, and which he does not perfectly understand, he is too apt to acquiesce; and testimony not intended by him is brought before the court as his.' (2 Moore on Facts, sec. 952, p. 1105; People v. Timbang, 74 Phil. 295, 299)."[38]

For this reason, affidavits have generally been considered inferior to testimony given in open court.[39]

Neither is the credibility of prosecution witnesses Florencio Villareal and Eric Ona in any way lessened, much less impaired, by the motives imputed to them by accused-appellants who claim that the former testified against them on account of an incident on January 23, 1994 when Mercado slapped Eric and hit Florencio on the back. Accused-appellants' contention is nothing more than a desperate attempt to discredit said witnesses. It is inconceivable that these principal prosecution witnesses, two young boys, would impute a crime as heinous as kidnapping with murder to anyone if the same was not true. Indeed, it would be contrary to the natural order of events and of human nature, and against the presumption of good faith for Florencio and Eric to falsely testify against accused-appellants.[40] These young boys, in testifying against accused-appellants, would have nothing to gain and everything to lose, including their lives. Florencio and Eric knew that, even if accused-appellants were bemedalled military and police officers, they had no compunction at all in claiming to have killed a number of people. Even granting that such braggadocio was simply meant to frighten these young boys into silence, it would nonetheless have the same effect on them and would have deterred them from testifying against accused-appellants had what they testified to been a mere fabrication.

III. SUFFICIENCY OF THE EVIDENCE OF THE PROSECUTION

It is true that no eyewitnesses were presented by the prosecution to testify on the actual killing of Richard Buaman.

But it is settled that a conviction may rest on purely circumstantial evidence, provided the following requisites concur: (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.[41] Thus, in *People vs. Fulinara*,[42] wherein the victim was kidnapped in the evening and the following day his body found in a ravine, this Court said:

"While the positive identification made by the key witness does not refer to the actual killing of the deceased, the circumstantial evidence on record constitutes an unbroken chain which leads to a fair and reasonable conclusion that accused-appellants are indeed guilty of the offense charged. It is not only by direct evidence upon which guilt may be predicated. The accused may also be convicted on circumstantial evidence."

In this case, the following circumstances, viewed in their entirety, show beyond shadow of a doubt that accused-appellants are indeed guilty of kidnapping with murder:

- (1) Mercado picked up Richard on the night of February 9, 1994 near his (Mercado's) house in Pasig and, poking a gun at him, forced him to ride with him in his car;
- (2) Mercado took Richard to his apartment in Tanay;
- (3) Mercado slapped and boxed Richard before bringing him inside the apartment;
- (4) Mercado went up the second floor of the apartment and came down with Acebron;
- (5) Mercado and Acebron took turns in subjecting Richard to physical abuse;
- (6) Mercado ordered his aide named Jeff to get a piece of rope with which to bind Richard and Jeff obliged by getting a rattan rope;
- (7) Richard was gagged and his limbs were bound;
- (8) Acebron and Jeff put Richard into the luggage compartment of Mercado's car;
- (9) Mercado asked Acebron to get a bolo before they drove away;
- (10) Accused-appellants rode together in the car with Richard in its compartment;
- (11) After two hours, accused-appellants returned to the apartment without Richard;
- (12) When Florencio asked Mercado about Richard's whereabouts, Richard replied, "Wala na, pinatahimik ko na." ("Gone, I already silenced him").
- (13) When Eric asked Mercado the same question, the latter replied, "Wala na, pinagpahinga ko na." ("He is gone. I have laid him to rest").
- (14) Eric saw Acebron wiping off bloodstains on the bolo;
- (15) At the disco bar, accused-appellants bragged about the fact that Richard was the 25th person and the 17th person Mercado and Acebron had killed, respectively;
- (16) Richard's body was found in a morgue on February 12, 1994;
- (17) The victim's body showed signs that his hands and feet had been tied and his mouth stuffed with a towel; and
- (18) Mercado warned Eric and Florencio not to talk to anyone regarding the incident.

These circumstances constitute an unbroken chain clearly pointing to accused-appellants' culpability to the crime

of kidnapping with murder.

IV. THE EVIDENCE OF CONSPIRACY

Accused-appellants argue that the trial court erred in finding conspiracy in the commission of the crime because the prosecution allegedly failed to establish a common resolution between them to commit the crime charged. This argument is likewise without merit.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To establish the existence of conspiracy, direct proof is not essential, as it may be shown by the conduct of the accused before, during, and after the commission of the crime.[43] It may be proven by facts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged, or it may be deduced from the mode and manner by which the offense was perpetrated.[44] In this case, the concatenation of facts and circumstances establish beyond a shadow of a doubt that accused-appellants conspired to kill Richard, to wit: (1) upon reaching the Tanay apartment, which he shared with Acebron, Mercado went upstairs and called Acebron; (2) as they came downstairs, Mercado told appellant Acebron that he had a present for him and that they were going to kill someone, saying "Pare, may regalo ako sa iyo, may papatayin tayo"; (3) Mercado and Acebron slapped and boxed Richard; (4) when told by Mercado to get a bolo, Acebron did so; (5) Acebron helped in loading Richard into the car's luggage compartment; (6) Mercado and Acebron left the apartment together in Mercado's car with Richard in the car's luggage compartment; (7) after two hours, the two came back to the apartment without Richard; (8) when Eric and Florencio asked them where Richard was, they answered that Richard had been "silenced" or had been "laid to rest"; and (9) Acebron washed a bloodstained bolo.

V. ACCUSED-APPELLANTS' ALIBI

Invoking alibi as a defense, accused-appellants argue that it was impossible for them to be in Pasig at the time of the commission of the crime because they were then in Tanay, Rizal on official duty, as members of the PNP force in that town. For this purpose, they cite the PNP logbook, duly signed by them. However, as the trial court pointed out:

"This defense, however, collapsed with the testimony of SPO4 Bias when he affirmed before the Court that travel time between Tanay and Pasig could take less than an hour, especially at nighttime. Moreover, the Court finds wanting the evidence presented by the defense to support its claim that both accused were indeed present at the Tanay PNP Headquarters until about 8:30 p.m. of February 9, 1994.

"Firstly, it was admitted by the defense that the duty log-book and the morning/evening formation sheet do not always reflect the whereabouts of the Tanay PNP members for the day such that even when they have deviated from their regular assignments, no note whatsoever appears on said log-book. Accused were at the Hilltop Headquarters in Taytay from around 9:15 a.m. to 5 p.m. of February 9, 1994 and yet, the duty log-book they submitted in Court show otherwise. In said log-book, the Post/Assignment of accused Acebron was "Intel Optvs/follow-up" while accused Mercado was supposed to be at "Post OP #2." The Court does not believe this log-book is reliable. Secondly, again by the defense' own admission, Tanay PNP members sign their names once on the log-book and this will be enough to confirm their presence or attendance for the entire day. Surely, the possibility that all the PNP members do not in fact arrive at and leave their office at the same time of 8 a.m. and 8 p.m. can not be disregarded. Still, a reading of the entries in the log-book submitted by the defense would somehow suggest this. The physical impossibility of accused Mercado, at least, being in Pasig at around 9 p.m. on February 9, 1994 is not established. The defense of alibi is, therefore, rejected by the Court." [45]

Indeed, alibi is generally regarded with suspicion and is always received with caution, not only because it is inherently weak and unreliable but also because it can be easily fabricated and concocted. For alibi to prosper as a defense, it must be convincing enough to preclude any doubt on the physical impossibility of the presence of the

accused at the locus criminis or its immediate vicinity at the time of the incident.[46] An accused who invokes the defense of alibi must prove (a) his presence at another place at the time of the perpetration of the crime and (b) the physical impossibility for him to be at the scene of the crime.[47]

In this case, even granting that accused-appellants were in Tanay at the time they were supposed to have taken the two prosecution witnesses and the victim to Pasig, it was still not physically impossible for them to be in that place. Pasig is only an hour's drive from Tanay and when traffic is light, as it would generally be late in the evening, the distance could be negotiated in less time. Significantly, when the three young men were taken from Pasig at around 9 o'clock in the evening, accused-appellants had already been discharged from their duties because, by their own admission, the evening formation at the Tanay Police Station ended at around 8:30 that evening.

Above all, given Florencio and Eric's clear and positive identification of accused-appellants as the perpetrators of the crime, the failure of the defense to give any plausible reason for Florencio and Eric to testify falsely against accused-appellants renders the latter's alibi bereft of any probative value.[48]

Their positive identification by the witnesses prevails over their alibi and denial.[49]

VI. ACCUSED-APPELLANTS' CRIMINAL AND CIVIL LIABILITY

Accused-appellants are guilty of kidnapping because, by placing the victim in an enclosed place consisting of the luggage compartment of the car, they detained or otherwise deprived him of his liberty. There was also actual restraint of the victim's liberty when he was taken at gunpoint from Pasig to accused-appellants' apartment in Tanay.[50] The evidence proves that Mercado initiated the kidnapping of the victim. Acebron's subsequent loading of the victim into the car's compartment after tying the latter shows community of criminal purpose with Mercado. However, although both were police officers, they acted in this case in their private capacities.[51]

The crime was committed by accused-appellants on February 9, 1994, after the amendment of the Revised Penal Code on December 31, 1993 by Republic Act No. 7659. Article 267 of the Revised Penal Code, as thus amended, provides:

"Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer;

"The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

"When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed." (Underscoring supplied)

In *People vs. Ramos*,[52] the accused was found guilty of two separate heinous crimes of kidnapping for ransom and murder committed on July 13, 1994 and sentenced to death. On appeal, this Court modified the ruling and found the accused guilty of the "special complex crime" of kidnapping for ransom with murder under the last

paragraph of Article 267, as amended by Republic Act No. 7659. This Court said:

"x x x This amendment introduced in our criminal statutes the concept of 'special complex crime' of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No. 7659." (Underscoring supplied)

Thus, in the case at bar, the trial court correctly found accused-appellants guilty of kidnapping with murder and sentenced each of them to death.

Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[53] that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

It does not matter whether there are circumstances qualifying the killing as murder. Under the last paragraph of Article 267, it is sufficient that the victim is "killed or dies as a consequence of the detention." In any event, the killing of Richard Buama as a consequence of his kidnapping was committed under circumstances which make it murder. His limbs were tied and his mouth gagged before he was taken away. When his body was discovered, his limbs were still tied and his mouth gagged, indicating that treachery attended the killing of Richard Buama.

The trial court awarded P50,000.00 civil indemnity and P100,000.00 by way of moral and exemplary damages to the Buama family as heirs of the deceased Richard Buama pursuant to Articles 2206 and 2230 of the Civil Code. It is not disputed, however, that Richard had not been legally adopted by the Buamas, and so the latter cannot be considered his heirs, the term "heirs" being limited to the deceased's "spouse, legitimate, and illegitimate ascendants and descendants" per the definition of "heirs" under Articles 782 and 2206 of the Civil Code. For this reason, in one case,[54] the award of moral damages for the death of a brother caused by quasi-delict was disallowed. In this case, since the heirs of the deceased Richard Buama are not known, the awards of civil indemnity and moral and exemplary damages to the Buamas should be disallowed.

As to the award of P52,680.00 for actual damages incurred for wake and funeral expenses, only the amount of P22,690.00 is supported by receipts (Exhs. J-2 to J-7). Accused-appellants contend that these receipts constitute hearsay evidence because the witness who identified them, Lourdes Vergara, admitted that she merely collated the same but had otherwise no personal knowledge of the facts pertaining to their issuance.[55] In *People vs. Paraiso*,[56] this Court disregarded the list of burial expenses for being hearsay since it was prepared by the victim's sister-in-law and not by the victim's eldest son who testified thereon. The Court held that actual damages should be based upon competent proof and on the best evidence available.

One receipt (Exh. J-5) for P1,300.00 shows that it was issued by the Immaculate Conception Parish Church in Pasig to Lourdes Vergara, and it was for Richard Buama's burial mass. Another receipt (Exh. J-7), for the amount of P2,210.00 for flowers for Richard Buama's wake, was issued by Lourdes Vergara herself as the owner of the flower shop. These two receipts should be considered competent evidence of the amount of expenses indicated therein, and therefore the total amount of P3,510.00 should be awarded to Lourdes Vergara as actual damages.

VII. ALLEGED HASTE OF THE TRIAL COURT IN DECIDING THE CASE

One last point. Accused-appellants bewail the fact that the trial court rendered its decision just a day after it had

received their Joint Memorandum.[57] Accused-appellants charge that their case was decided with "fantastic, incredible and unbelievable speed" with the result that "grave and serious errors" were committed in convicting them.[58]

This contention has no merit. A review of the trial court's decision shows that its findings were based on the records of this case and the transcripts of stenographic notes taken during the trial. The speed with which the trial court disposed of the case cannot thus be attributed to the injudicious performance of its function. Indeed, a judge is not supposed to study a case only after all the pertinent pleadings have been filed. It is a mark of diligence and devotion to duty that a judge studies a case long before the deadline set for the promulgation of his decision has arrived. The one-day period between the filing of accused-appellants' memorandum and the promulgation of the decision was sufficient time to consider their arguments and to incorporate these in the decision. As long as the trial judge does not sacrifice the orderly administration of justice in favor of a speedy but reckless disposition of a case, he cannot be taken to task for rendering his decision with due dispatch. The trial court in this case committed no reversible errors and, consequently, except for some modification, its decision should be affirmed.

WHEREFORE, the decision of the Regional Trial Court, Branch 156, Pasig City, finding accused-appellants Elpidio Mercado y Hernando and Aurelio Acebron y Adora guilty beyond reasonable doubt of the crime of kidnapping with murder and imposing upon each of them the DEATH PENALTY, is AFFIRMED with the MODIFICATIONS that the awards of P50,000.00 as civil indemnity and P100,000.00 as moral and exemplary damages are DELETED and accused-appellants are ORDERED to pay jointly and severally to Lourdes Vergara the amount of P3,510.00 as reimbursement for the expenses she incurred for the victim's wake and funeral.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for his use in case he decides to exercise his prerogative of mercy.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Per Judge Martin S. Villarama.

[2] RTC Decision, pp. 38-39; Records, pp. 327-328.

[3] Records, p. 1.

[4] Id., p. 20.

[5] TSN, April 5, 1994, pp. 2-29; TSN, April 19, 1994, pp. 3-41; TSN, May 4, 1994, pp. 2-32.

[6] TSN, May 4, 1994, pp. 1-34.

[7] TSN, May 11, 1994, pp. 1-37; TSN, May 18, 1994, pp. 2-29 (transcribed by Floriza R. Detas Armas); TSN, May 18, 1994, pp. 2-18 (transcribed by Gina A. Talaro).

[8] TSN (Maria Buama), May 25, 1994, pp. 3-19; TSN (Lourdes Vergara), June 1, 1994, pp. 3-11.

[9] TSN, June 1, 1994, pp. 25-55.

[10] TSN, June 8, 1994, pp. 2-14.

[11] TSN, June 15, 1994, pp. 2-34.

[12] Exhs. 8 to 11 (Mercado).

[13] TSN, June 15, 1994, pp. 32-62.

[14] TSN, June 22, 1994, pp. 4-37.

[15] TSN, June 22, 1994, pp. 38-49.

[16] Supplemental Brief for Accused-Appellants, pp. 1-2; Rollo, pp. 389-390.

[17] 335 Phil. 343 (1997).

[18] 297 SCRA 754 (1998).

[19] *Id.*, p. 772.

[20] *Id.*, pp. 781-783.

[21] RECORD OF THE HOUSE OF REPRESENTATIVES (February 10, 1993), p. 671; quoted in Appellee's Supplemental Brief, p. 17.

[22] 311 SCRA 81, 93-94 (1999).

[23] Quoted in the Appellee's Supplemental Brief, p. 20.

[24] *Supra* at 383-384.

[25] 321 Phil. 279 (1995).

[26] *Id.*, p. 346.

[27] *People vs. Dianos*, 297 SCRA 191 (1998).

[28] *People vs. Manuel*, 298 SCRA 184 (1998).

[29] *People vs. Lozano*, 296 SCRA 403 (1998).

[30] *People vs. Abangin*, 297 SCRA 655 (1998).

[31] Joint Appellants' Brief, pp. 92-97; Rollo, pp. 200-210.

[32] *People vs. Cleopas*, G.R. No. 121998, March 9, 2000.

[33] *People vs. Leangsiri*, 322 Phil. 226, 250-251 (1996).

[34] *People vs. De Castro*, 322 Phil. 374, 382 and 384 (1996).

[35] See *People vs. Geguira*, G.R. No. 130769, March 13, 2000 citing *People vs. Resagaya*, 153 Phil. 634 (1973).

[36] *People vs. Rivera*, 295 SCRA 99, 109 (1998).

[37] *Id.*, citing *People vs. Resagaya*, *supra* at p. 643 and *People vs. Alcantara*, 144 Phil. 623, 633 (1970).

[38] *People vs. Geguira*, *supra*.

[39] *People vs. Agbayani*, 348 Phil. 341, 367 (1998) citing *People vs. Marcelo*, 223 SCRA 24, 36 (1993) and *People vs. Enciso*, 223 SCRA 675, 686 (1993).

- [40] People vs. Villamor, 354 Phil. 396, 407 (1998).
- [41] Rule 133, sec. 4; People vs. Llaguno, 349 Phil. 39, 58 (1998).
- [42] 317 Phil. 31, 51 (1995).
- [43] People vs. Gungon, 351 Phil. 116, 131 (1998).
- [44] People vs. Silvestre, 314 Phil. 397, 416 (1995).
- [45] RTC Decision, pp. 33-34; Records, pp. 322-323.
- [46] People vs. Tulop, 352 Phil. 130, 150 (1998).
- [47] People vs. Magpantay, 348 Phil. 107, 112 (1998).
- [48] See People vs. Ramos, 297 SCRA 618, 640 (1998).
- [49] People vs. Herbias, 333 Phil. 422, 431 (1996).
- [50] People vs. Gungon, *supra* at 134.
- [51] People vs. Santiano, 299 SCRA 583, 597 (1998).

[52] 297 SCRA 618 (1998).

[53] 267 SCRA 682 (1997).

- [54] Receiver for North Negros Sugar Co., Inc. vs. Ybañez, 24 SCRA 989 (1968).
- [55] TSN, p. 14, June 1, 1994.
- [56] G.R. No. 127840, Nov. 29, 1999.
- [57] Appellant's Joint Brief, pp. 125-129; Rollo, pp. 233-237.
- [58] *Id.*, pp. 126-128.

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