

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CALOMA TABAG, SARENAS TABAG, MARCELINO TABAG, FERNANDO MAGLINTE, JR., ARTEMIO AWOD, LAUREÑO AWOD, ROMEO AGUIPO, LEOPOLDO LEONC...

G.R. No. 116511. February 12, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

At about 10:00 p.m. of 11 March 1984 in Sitio Candiis, Barangay Cabidanan, New Corella, Davao, the spouses Welbino Magdasal, Sr., and Wendelyn Repalda Magdasal, together with their children Welbino, Jr., and Melisa, were massacred in their home allegedly by members of the Integrated Civilian Home Defense Force (ICHDF).

On 14 March 1984, Aniceto Magdasal and Marciana Magdasal, parents of Welbino Magdasal, Sr., reported the incident to the Municipal Mayor of Asuncion, Davao, and to the police authorities of New Corella. They executed a joint affidavit on that date “to request the authorities concerned to follow up said incident and to conduct proper investigation to the end in view that justice will prevail.”[1] Later, they, together with one Lucrecio Dagohoy, executed sworn statements before the police authorities of New Corella.[2] Yet, the identities of the killers remained unknown.

The first light on the case was shed on 27 February 1985 when Sergio Doctolero, barangay captain of Buan, Asuncion, Davao, executed a sworn statement[3] declaring that a member of the ICHDF, Romeo Guipo, had confessed to him that it was the team led by Sarenas Tabag that massacred the Magdasals. The real break came three days before the first anniversary of the massacre when Ernesto Mawang, a member of that team, gave his sworn statement[4] naming those involved in the massacre. Not long after, another member thereof, one Pablo Oca, likewise gave a sworn statement[5] corroborating Mawang’s statements.

On 15 July 1985, an information for murder against accused Coloma Tabag, Sarenas Tabag, Marcelino Tabag, Fernando Maglinte, Jr., Artemio Awod, Romeo Aguipe, Leopoldo Leoncio, and Ernesto Mawang was filed with the Municipal Trial Court (MTC) of New Corella, Davao.[6] Accompanying the information were the abovementioned joint affidavit, sworn statements, and death certificates of the victims. The information was docketed as Criminal Case No. 897.[7]

After examining, through searching questions, witnesses Pablo Oca and Sergio Doctolero, Judge Napy Agayan issued a warrant for the arrest of the accused. No bond was recommended for their temporary liberty, since they were charged with a capital offense and the evidence of guilt was strong.[8]

On 21 August 1985, accused Sarenas Tabag surrendered to Judge Agayan.[9] The others could not be arrested; hence, an alias warrant for their arrest was issued.[10]

Sarenas Tabag waived submission of his counter-affidavit and preliminary investigation. Finding probable cause against him, the MTC ordered on 28 August 1985 the transmittal of the record of the case to the Office of the

Provincial Fiscal and the commitment of Sarenas at the Provincial Jail.[11]

After appropriate proceedings, an information[12] was filed with the Regional Trial Court (RTC) of Tagum, Davao, charging the abovenamed accused with the crime of multiple murder. The accusatory portion thereof reads as follows:

That on or about March 11, 1984, in the Municipality of New Corella, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, all members of the ICHDF, conspiring, confederating and mutually helping with Coloma Tabag, Marcelino Tabag, Fernando Maglinte, Jr., Artemio Awod, Laureño Awod, Romeo Aguipo, Leopoldo Leoncio and Ernesto Mawang, who are all still at large, with treachery and evident premeditation and with intent to kill, armed with garand, armalite and carbine, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Welbino Magdasal, Sr., Wendelyn Magdasal, Welbino Magdasal, Jr. and Melisa Magdasal, thereby inflicting upon them injuries which caused their death and further causing actual, moral and compensatory damages to the heirs of the victims.

The commission of the foregoing offense is attended by the aggravating circumstance of superior strength, nighttime and in band committed with the aid of armed men.

Contrary to law.

The case was docketed as Criminal Case No. 6364 and raffled to Branch 2 of the said court.

Since the other accused had remained at large, the court proceeded with the case against Sarenas Tabag only. At his arraignment on 11 December 1985, he entered a plea of not guilty.[13]

On 3 March 1987, the prosecution filed a motion to dismiss the case as against Ernesto Mawang because it found after a thorough re-assessment of the prosecution's evidence that he "does not only appear to be less guilty, but he appears not responsible in any way in the commission of the crime charged.... [He] has not participated in the killing of the victims, he has not fired any shot nor has lunged any bolo to the victims, and his presence in the crime scene was not voluntary on his part." [14] The court granted the motion and ordered the immediate release of Mawang from detention.[15]

In the meantime, accused Coloma Tabag, Artemio Awod, Laureño Awod, and Romeo Aguipo were arrested.[16] All of them entered a plea of not guilty at their arraignment.[17]

On 19 October 1989, accused Laureño Awod and Artemio Awod, together with three others, escaped from the Provincial Jail. Upon being informed of this incident,[18] the trial court continued the proceedings as against Sarenas Tabag, Coloma Tabag, and Romeo Aguipo only.[19]

The witnesses presented by the prosecution were Pablo Oca, Sergio Doctolero, Aniceto Magdasal, Pablo Babagonyo (a member of the Philippine National Police [PNP]), Marciana Magdasal, and Enrique Bermejo (Administrative Officer of the PNP of New Corella, Davao), with Doctolero recalled as rebuttal witness. On its part, the defense presented Sarenas Tabag, Romeo Aguipo, Coloma Tabag, and Alfredo Galocino, with Sarenas Tabag and one Ricardo Agrade called as sur-rebuttal witnesses.

On 7 January 1992, the trial court promulgated its decision,[20] dated 19 December 1991, the dispositive portion of which reads:

WHEREFORE, finding the accused Sarenas Tabag, Coloma Tabag and Romeo Aguipo or Guipo guilty beyond reasonable doubt of the crime of four (4) counts of Murder defined and penalized under Article 248 of the Revised Penal Code, for the deaths of Welbino Magdasal, Sr., Wendelyn Magdasal, Welbino Magdasal, Jr. and Melisa Magdasal, each of them is sentenced to suffer four (4) indivisible prison terms of RECLUSION

PERPETUA, to suffer all the accessory penalties provided for by law and to pay the costs.

They are further condemned to jointly and severally indemnify the heirs of their victims in the total sum of FOUR HUNDRED THOUSAND (P400,000.00) PESOS as moral damages; SIX THOUSAND (P6,000.00) as attorney's fees to Marciana Magdasal, mother of the late Welbino Magdasal, Sr., and FOUR THOUSAND (P4,000.00) PESOS as actual and compensatory damages.[21]

The material operative facts established by the evidence for the prosecution was summarized by the Office of the Solicitor General in the Brief for the Appellee as follows:

On March 11, 1984, at around 9:00 o'clock in the evening, Pablo Oca was in the CHDF detachment in Barangay Buan, Asuncion, Davao. (p. 5, TSN, September 10, 1986) Also present were Marcelino Tabag, appellant Sarenas Tabag, appellant Coloma Tabag, Artemio Awod, Laureño Awod, Ernesto Mawang, Romeo Guipo and Fernando Maglinte, all members of the CHDF. (p. 6, Ibid.) While there, appellant Sarenas talked to his son, Marcelino Tabag, and his brother, appellant Coloma Tabag (Ibid.) Thereafter, Sarenas told the group to go on patrol. (pp. 7 and 14, Ibid.) Pablo asked Marcelino where they were going but the latter kicked him in the buttocks, and told him to "just keep quiet and follow." (p. 15, Ibid.)

Marcelino led the group to Barangay Cadi-is, Asuncion,* Davao. (p. 7, Ibid.) The group reached Cadi-is at 11:00 o'clock in the evening (p. 17, Ibid.). Upon reaching the house of Welbino Magdasal, the group stood to observe for a while. (p. 12, TSN, January 18, 1988) Pablo Oca was posted as lookout five meters away from the house. (p. 17, Ibid. and p. 18, TSN, September 10, 1986)

After some time, Fernando Maglinte went up the house and knocked at the door. (p. 17, Ibid.) The door was opened and Welbino Magdasal went out of the house. (p. 17, TSN, January 13, 1988) Marcelino ordered his companions to open fire at Welbino. (p. 24, TSN, September 10, 1986) The children who were inside the house started shouting. (p. 10, Ibid.) Three men from Marcelino's group went up the house and stabbed to death Welbino's wife, Wendelyn, and their two children, Welbino, Jr., and Melisa. (Ibid.)

After the massacre, Marcelino's group went back to their detachment at Barangay Buan. (Ibid.) Upon arrival, appellant Sarenas asked Marcelino, "Is it finished" to which the latter answered, "Yes, it is finished." (p. 11, Ibid.) Sarenas inquired further, "Did you gather the CHDF?" (Ibid.) Sarenas warned each member of Marcelino's group to keep quiet about the incident and threatened to shoot whoever will squeal. (p. 11, and 16, Ibid.)

As a result of the massacre, the entire family of Welbino died. Welbino's mouth was shattered and his intestines protruded out. (p. 9, TSN, April 12, 1989) Wendelyn's left leg and left arm were twisted. (Ibid.) Welbino, Jr. sustained wounds on his face and stab wounds in his chest. (Ibid.) Melisa was likewise wounded and died in the hospital. (Ibid.) A total of thirty-two empty shells of M16 spent bullets were recovered from the scene of the massacre. (p. 4, TSN, January 5, 1990)

This summary is faithfully borne out by the transcripts of the testimonies of the prosecution witnesses; hence, we adopt it as our own.

It was further established through the testimony of Pablo Oca that after talking to his son Marcelino and brother Coloma, Sarenas called for the other members of the ICHDF and instructed them to go on patrol. While on the way to New Visayas, Marcelino separated from the others. The latter, nevertheless, followed him to Sitio Candiis and then to the house of the victims.[22]

Alibi and denial were the defenses interposed by accused Sarenas Tabag, Coloma Tabag, and Romeo Aguipo.

Sarenas Tabag was the head of the ICHDF team in question. He was enlisted into it when he was the barangay captain of Buan, Asuncion, Davao. The team was to serve only in the municipality of Asuncion; its specific "area

of operation” were the barangays of Buan, New Visayas, and Sunlon, all in Asuncion. All the members of the team took orders from him.[23] On 11 March up to 12 March 1984, he was with Cpl. Gafod on a military operation of the 37th Infantry Battalion in New Visayas and Sunlon, Asuncion, Davao. Aside from Cpl. Gafod, he was with Laureño Awod, Artemio Awod, Marcelino Tabag, Ernesto Mawang, Fernando Maglinte, Jr., Pepito Tabag, and Cortez Tabag. Sarenas asserted that he could not have conducted a briefing, as some of his men, particularly Coloma Tabag and Pablo Oca, were in Mawab.[24] Sarenas likewise denied having asked Marcelino after the killing, “Human na?” and having threatened those who patrolled on that fateful night that anybody who squeals would be shot with a clip of bullets. Sarenas also testified that Pablo Oca could not have been at the detachment on the night of 11 March 1984, as he was relieved of his post as a member of the ICHDF as early as 24 December 1983 for having discharged seven clips from his garand rifle while drunk.[25] This then provided Oca’s motive to testify against him (Sarenas).[26] Sarenas further declared that members of his family were massacred by suspected members of the NPA.[27]

Coloma Tabag declared that on 11 March 1984, he was in Mawab, Davao del Norte, panning for gold. He went there on 4 March 1984 with his two children. Mawab is more than twenty kilometers away from Barangay Buan, Asuncion, Davao del Norte.[28]

Romeo Aguipo testified that at 10:00 p.m. of 11 March 1984, he was at the copra drier in Barangay Buan “watching the copra.” He said he was there from 9 March to 12 March 1984. The copra drier was only two kilometers away from the ICHDF detachment.[29]

The trial court gave full faith to the version of the prosecution and disregarded that of the defense. As to the motive of accused Sarenas Tabag, the trial court stated:

Fourth: Sarenas Tabag also declared that his family, sometime before March 11, 1984, was massacred and his suspects were the members of the New Peoples’ Army.

The Magdasals, who first resided in Buan, Asuncion, transferred to Sunlon, Asuncion, which was infested with members of the New Peoples’ Army, according to Sarenas Tabag.

Sunlon being infested with members of the New Peoples’ Army, Welbino Magdasal, Sr. and/or his family could easily be suspected or he and his family must be members of the New Peoples’ Army.

Since the family of Sarenas Tabag was a victim of a massacre by the New Peoples’ Army, the killing of Welbino Magdasal, Sr. and the members of his family must be the retaliation of Sarenas Tabag perpetrated through his men who were CHDF members.[30]

In support of its conclusion that four counts of murder were committed, the trial court rationalized that

the deaths of Welbino Magdasal, Sr., Wendelyn Magdasal, Welbino Magdasal, Jr. and Melisa Magdasal resulted not [from] a single act punishable as complex crime under Article 48 of the Revised Penal Code but [from] a series of acts ... with the qualifying aggravating circumstances of either treachery, evident premeditation, or superior strength having been taken advantage of.[31]

It opted to consider evident premeditation to qualify the killing to “multiple murder” and considered treachery, nighttime, and band as generic aggravating circumstances.[32]

From the judgment of conviction, only accused Sarenas Tabag and Coloma Tabag filed their notice of appeal.[33]

On 8 August 1995, after filing his Appellant’s Brief,[34] accused Coloma Tabag died at the Davao Prison and Penal Farm.[35] Accordingly, in the resolution of 21 February 1996, we ordered the dismissal of the case against him.

Only the appeal of accused Sarenas Tabag is left for our determination.

In his Appellant's Brief, accused Sarenas Tabag contends that the trial court erred in

1. CONVICTING THE ACCUSED-APPELLANT SARENAS TABAG NOT BECAUSE OF THE WEAKNESS OF THE PROSECUTION'S EVIDENCE BUT BECAUSE OF THE WEAKNESS OF THE DEFENSE'S EVIDENCE;
2. CONVICTING THE ACCUSED-APPELLANT SARENAS TABAG AS CONSPIRATOR OR CONFEDERATE, THE ALLEGATION OF CONSPIRACY NOT HAVING BEEN ESTABLISHED BEYOND REASONABLE DOUBT;
3. NOT ACQUITTING ACCUSED-APPELLANT SARENAS TABAG ON THE GROUND THAT HE IS EXEMPTED FROM CRIMINAL LIABILITY UNDER ARTICLE 11, (5) & (6), OF THE REVISED PENAL CODE.

The first assigned error is without basis. The trial court convicted him primarily on the basis of the evidence for the prosecution. If at all the trial court considered the weakness of the evidence of the defense, it was merely to show that the massive proof of guilt was not shaken by the "brazen and unmitigated lies of the accused and their witnesses." [36]

Regarding Tabag's second assigned error, we have held time and again that conspiracy need not be established by direct proof. It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of intent. [37] It must, however, be shown to exist as clearly and as convincingly as the offense itself. [38]

Indeed, Sarenas was not at the scene of the massacre at the time it was committed. His alibi was firmly established not only through his evidence but also by the testimony of prosecution witness Pablo Oca. That fact, notwithstanding, we are convinced that Sarenas was not just a co-conspirator; he was the mastermind of the massacre or the principal by inducement. His role was established with moral certainty by weighty circumstantial evidence.

Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction if (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. As jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time, inconsistent with any other hypothesis except that of guilty. [39]

In the instant case, the following circumstances were duly proven:

1. Sarenas was the leader of the ICHDF team in Barangay Buan, Asuncion, Davao.
2. Before the massacre in question, members of Sarenas' family were massacred by persons whom he believed were members of the NPA. Sarenas suspected the Magdasals to be members of the NPA. [40]
3. Prosecution witness Pablo Oca and the other accused were members of Sarenas' team; as such, they took orders from Sarenas. On his cross-examination, Sarenas proudly admitted of his authority to give orders. [41]

4. At about 9:00 p.m. of 11 March 1984, Sarenas' team met at the ICHDF Detachment in Barangay Buan where Sarenas gave a briefing to his son Marcelino and brother Coloma.
5. After the briefing, Sarenas instructed the team to go on patrol in New Visayas and "some distance away." Marcelino and Coloma led the team.
6. The area of operation of Sarenas' team is comprised of the barangays of Buan, New Visayas, and Sunlon, all of Asuncion, Davao.
7. Somewhere along the way, instead of patrolling their area of operation, Marcelino proceeded toward Sitio Candiis, Barangay Cabidanan, Asuncion, Davao.
8. Pablo asked Marcelino where they were going, but the latter kicked the former on his buttocks and told him just to keep quiet and to follow.
9. Upon reaching Sitio Candiis, the team proceeded to the house of the victims. Marcelino Tabag ordered Pablo Oca to serve as "look-out," while Marcelino, Coloma Tabag, Fernando Maglinte, Laureño Awod, Artemio Awod, and Romeo Aguiro fired their garands toward the victims' house. Then Marcelino, Coloma, Laureño, and Artemio went up the house and started stabbing Welbino's wife and children.[42]
10. After the massacre, the team returned to its detachment in Barangay Buan. Upon arrival thereat, Sarenas asked his son Marcelino whether it was finished, and the latter answered in the affirmative.[43]
11. After Marcelino made the report to his father that "it [was] finished," the members of the team were gathered. Sarenas forthwith warned them against squealing, otherwise the squealer would be shot.[44]

From the foregoing, it is clear that Sarenas had the motive to eliminate Welbino Magdasal, Sr., and his family. The briefing was on a matter which he could neither openly discuss nor entrust to others who were not of his confidence. He thus chose for the purpose no less than his son Marcelino and brother Coloma. Then, as the subsequent developments showed, the briefing turned to none other than an instruction to get rid of the Magdasal family or "to finish" them off. If it were otherwise, Marcelino would not have led the team to a place outside of its area of operation, or to Sitio Candiis of Barangay Cabidanan, in another municipality, where the house of the victims was located. Sarenas knew exactly where Marcelino should lead the team and what it was expected to do. He even waited at the detachment in Barangay Buan for the team's return, and upon its return he asked Marcelino whether "it's finished." When Marcelino assured him that it was, Sarenas warned the other members of the team not to talk about or reveal the massacre, otherwise the squealer would be killed. None did, not until nearly a year later.

All told, the concordant combination and cumulative effect[45] of the foregoing circumstances more than satisfy the requirements of Section 4, Rule 133 of the Rules of Court.

In his third assigned error, accused Sarenas Tabag invokes paragraphs 5 and 6, Article 11 of the Revised Penal Code, which provide for justifying circumstances.[46] He contends that being a member of the ICHDF involved in the battle against insurgency, he was in the performance of an official duty or function duly authorized by law[47] and that he is, therefore, exempt from criminal liability.

This assigned error is not predicated on a hypothesis that even granting *arguendo* that he was a co-conspirator with the other accused in the massacre of the Magdasals he would still be "exempt" from any criminal liability because he was in the performance of an official duty or function duly authorized by law. Not being so, he thus admits that he was a co-conspirator. The slip may be showing much, or that the conscience has unwittingly told the truth. Yet, we shall not put Sarenas on a bind or be too harsh to him for the imprecise formulation of this

assigned error.

In no way can Sarenas claim the privileges under paragraphs 5 and 6, Article 11 of the Revised Penal Code, for the massacre of the Magdasals can by no means be considered as done in the fulfillment of a duty or in the lawful exercise of an office or in obedience to an order issued by a superior for some lawful purpose. Other than “suspicion,” there is no evidence that Welbino Magdasal, Sr., his wife Wendelyn, and their children were members of the NPA. And even if they were members of the NPA, they were entitled to due process of law. On that fateful night of 11 March 1984, they were peacefully resting in their humble home expecting for the dawn of another uncertain day. Clearly, therefore, nothing justified the sudden and unprovoked attack, at nighttime, on the Magdasals. The massacre was nothing but a merciless vigilante-style execution.

As to the crime committed, we agree with the trial court that in killing Welbino Magdasal, Sr., his wife Wendelyn, and their children Welbino, Jr., and Melisa, the accused committed four separate crimes of murder, which are charged in the information. There was no challenge thereon on the ground that the information charges more than one offense.[48] Accordingly, the accused could be properly convicted of four counts of murder.

As to the circumstance which qualified the killings to murders, we differ with the view of the trial court. It should be treachery,[49] not evident premeditation,[50] as ruled by the latter. The evidence for the prosecution failed to satisfy two of the three requisites of evident premeditation, viz., (a) the time when Sarenas determined to commit the crime, (b) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[51] On the other hand, treachery was established beyond cavil. Accused Marcelino Tabag, Coloma Tabag, Fernando Maglinte, Laureño Awod, Artemio Awod, and Romeo Aguipto suddenly fired their high-powered firearms toward Welbino Magdasal, Sr., and thereafter, they went upstairs and stabbed his wife Wendelyn and his children Welbino, Jr., and Melisa. The victims, all unarmed, were caught by surprise and were in no position to offer any defense. There can be no doubt in any one’s mind that the accused employed means, methods, or forms in the execution of the killings which tended directly and specially to ensure their execution, without risk to themselves arising from the defense which the offended party might make.[52]

The trial court likewise erred in appreciating nighttime and band as generic aggravating circumstances. Under the facts of this case, nighttime or nocturnity was absorbed in treachery, since it was evidently an integral part of the peculiar treacherous means and manner adopted to ensure the execution of the crimes, or that it facilitated the treacherous character of the attack.[53] Band or cuadrilla was likewise absorbed in treachery.[54]

Aside from disregarding nighttime and band as aggravating circumstances, we also give accused Sarenas Tabag the benefit of the mitigating circumstance of voluntary surrender. For, as evidenced by a certification issued by Judge Napy Agayan, Sarenas Tabag voluntarily surrendered himself before the warrant for his arrest was served on him.

The penalty for murder at the time the accused committed the four separate crimes of murder was reclusion temporal in its maximum period to death. There being one mitigating circumstance without any aggravating circumstance to offset it, and applying the Indeterminate Sentence Law, the penalty imposable in each case is prision mayor in its maximum period to reclusion temporal in its medium period, as minimum, to reclusion temporal in its maximum period, as maximum.

As to the civil liabilities, the award of P400,000.00 “as moral damages” is not correct. Current case law fixes the indemnity for death at P50,000.00. Moral damages may also be recovered in criminal cases under Article 2219 of the Civil Code. Marciana Magdasal, mother of Welbino Magdasal, Sr., left to the discretion of the trial court the quantification of her sufferings caused by the death of her son, daughter-in-law, and two grandchildren. Since Marciana’s husband did not testify as to his moral suffering, any award for moral damages must be in favor of

Marciana only, and an award of P10,000.00 in each of the four counts of murder is adequate. Hence, the total indemnity to be awarded to the heirs of the victims shall be P200,000.00, and the aggregate moral damages to be awarded to Marciana Magdasal shall be P40,000.00.

Finally, the trial court also erred in not proceeding with the case against Laureño Awod and Artemio Awod after their successful escape on 19 October 1989 while in preventive detention. They had already been arraigned. Therefore, pursuant to the last sentence of paragraph (2), Section 14, Article III of the Constitution,[55] trial against them should continue and upon its termination, judgment should be rendered against them notwithstanding their absence unless, of course, both accused have died and the fact of such death is sufficiently established. Conformably with our decision in *People v. Salas*,[56] their escape should have been considered a waiver of their right to be present at their trial, and the inability of the court to notify them of the subsequent hearings did not prevent it from continuing with their trial. They were to be deemed to have received notice. The same fact of their escape made their failure to appear unjustified because they have, by escaping, placed themselves beyond the pale and protection of the law. This being so, then pursuant to *Gimenez v. Nazareno*,[57] the trial against the fugitives, just like those of the others, should have been brought to its ultimate conclusion. Thereafter, the trial court had the duty to rule on the evidence presented by the prosecution against all the accused and to render its judgment accordingly. It should not wait for the fugitives' re-appearance or re-arrest. They were deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.

It is obvious that the trial court forgot our rulings in *Salas* and *Nazareno*. We thus take this opportunity to admonish trial judges to abandon any cavalier stance against accused who escaped after arraignment, thereby allowing the latter to make a mockery of our laws and the judicial process. Judges must always keep in mind *Salas* and *Nazareno* and apply without hesitation the principles therein laid down, otherwise they would court disciplinary action.

WHEREFORE, the appealed decision of Branch 2 of the Regional Trial Court of Tagum, Davao, in Criminal Case No. 6364 is AFFIRMED, with the modification (1) sentencing accused-appellant SARENAS TABAG in each of the four crimes to an indeterminate penalty of Twelve (12) years and One (1) day of reclusion temporal, as minimum, to Seventeen (17) years, Four (4) months, and One (1) day of reclusion temporal, as maximum; and (2) deleting the award of P400,000.00 as moral damages and awarding, in lieu thereof, (a) P200,000.00 as indemnity for the deaths of Welbino Magdasal, Sr., Wendelyn Repalda Magdasal, Welbino Magdasal, Jr., and Melisa Magdasal, payable to the heirs of the victims; and (b) P40,000.00 as moral damages, payable to Marciana Magdasal.

The Resolution of 21 February 1996 dismissing the case as against accused Coloma Tabag because of his death is hereby reiterated.

The trial court is ordered to continue with the proceedings in Criminal Case No. 6364 as against accused Laureño Awod and Artemio Awod if they are still alive, in accordance with the principles laid down in *People v. Salas* and *Gimenez v. Nazareno*.

Costs against accused-appellant Sarenas Tabag.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), Criminal Case No. 6364, 15.

[2] OR, 16-19.

- [3] Exhibit “C”; Id., 12-14.
- [4] Exhibit “B”; Id., 10.
- [5] Exhibit “A” and Exhibit “1”; Id., 8.
- [6] Id., 6-7.
- [7] Id.
- [8] Id., 31.
- [9] Id., 32.
- [10] Id., 40.
- [11] Id., 43.
- [12] Id., 1-2.

[13] OR., 50.

- [14] Id., 103.
- [15] Id., 107.
- [16] Id., 112.
- [17] Id., 116, 121.
- [18] Id., 240.
- [19] Aguipo also escaped on 19 November 1988 but was recaptured on 25 November 1988 [Id., 203-204].
- [20] OR., 322-333; Rollo, 20-31. Per Judge Pedro T. Casia.
- [21] Id., 332-333; Id., 30-31.
- * Should be Sitio Candiis, Barangay Cabidianan, New Corella, Davao (TSN, 13 January 1988, 12; TSN, 19 September 1990, 15).
- [22] TSN, 10 September 1986, 7.
- [23] TSN, 19 September 1990, 5-8; 15; 18-19.
- [24] Id., 13-14.
- [25] Id., 12-13.
- [26] Id., 26.
- [27] Id., 7, 19.
- [28] TSN, 19 December 1990, 6-9.
- [29] TSN, 31 October 1990, 6.
- [30] OR, 331-332; Rollo, 29-30.

[31] Id., 332; Id., 30.

[32] Id.; Id.

[33] OR, 338, 339.

[34] Filed on 12 May 1995 [Rollo, 67].

[35] Id., 163-164.

[36] OR, 332; Rollo, 30.

[37] *People v. Canillo*, 236 SCRA 22, 41-42 [1994].

[38] *People v. Garcia*, 215 SCRA 349, 361 [1992].

[39] *People v. Tiozon*, 198 SCRA 368, 381 [1992]; *People v. Alvero*, 224 SCRA 16, 27 [1993]; *People v. De la Cruz*, 229 SCRA 754, 764-765 [1994].

[40] Accused Sarenas did not refute or deny in his Appellant's Brief the trial court's finding that the Magdasals moved from Barangay Buan to Barangay Sunlon, an NPA infested barangay, and that therefore they would easily be suspected as members of the NPA; hence, the massacre was in retaliation for the massacre of Sarenas' family.

[41] TSN, 19 September 1990, 18-19.

[42] TSN, 10 September 1986, 10; 18-21.

[43] Id., 10-11.

[44] TSN, 10 September 1986, 11.

[45] *People v. De la Cruz*, *supra* note 39, at 763.

[46] It provides:

ART. 11. Justifying circumstances. -- The following do not incur any criminal liability:

x x x

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

[47] Brief for Accused-Appellant Sarenas Tabag, 15; Rollo, 51 et seq.

[48] Section 3(e), Rule 117, Rules of Court.

[49] Article 14(16), in relation to Article 248(1), Revised Penal Code.

[50] Article 14(13), in relation to Article 248(5), Id.

[51] The third requisite is the presence of an act manifestly indicating that the accused has clung to his determination (*People v. Narit*, 197 SCRA 334, 349 [1991]; *People v. Barba*, 203 SCRA 436, 458 [1991]; *People v. Buka*, 205 SCRA 567, 587 [1992].

[52] Article 14(16), Revised Penal Code; *People v. De la Cruz*, 207 SCRA 632, 649-650 [1992]; *People v. Garcia*, 209 SCRA 164, 178 [1992]; *People v. Ybeas*, 213 SCRA 793, 805 [1992].

[53] RAMON C. AQUINO, The Revised Penal Code, vol. 1 [1987 ed.], 336, citing cases.

[54] AQUINO, op.cit., 341, citing cases.

[55] Said sentence reads as follows:

SEC. 14 ...

(2)... However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[56] 143 SCRA 163, 167 [1986].

[57] 160 SCRA 1, 6-7 [1988].

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