

**PEOPLE OF PHILIPPINES, PLAINTIFF-APPELLE, VS. EDGAR UMADHAY Y TRABASAS, SERGIO UMADHAY Y TRABASAS AND ALBERT UMADHAY Y TRABASAS, ACCUSED-APPELLANTS.**

*G.R. No. 119544. August 03, 1998*

Ponente: KAPUNAN, J.

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**KAPUNAN, J.:**

This is an appeal from the decision of the Regional Trial Court of Iloilo City, Branch 38[1] finding brothers Edgar, Sergio and Albert Umadhay guilty beyond reasonable doubt of the crime of murder for the killing of Gonzalo Jaranilla III and imposing on each one them the penalty of reclusion perpetua and the payment of civil indemnity in the amount of fifty thousand pesos (P50,000.00), actual damages of Twenty-two Thousand Seven Hundred Eleven Pesos (P22,711.00) and cost of suit.

The following information was filed.

That on about November 16, 1992, in the Municipality of Oton, Province of Iloilo, Philippines, within the jurisdiction of this Court, the above-named accused, conspiring, confederating and helping one another, armed with a 20 gauge homemade 'pugakhang' and homemade .38 caliber revolvers, with deliberate intent and decided purpose to kill, by mean of treachery and with evidence (sic) premeditation, did then and there wilfully, unlawfully and feloniously shoot one Gonzalo Jaranilla III with the firearms which the accused were then provided, hitting the victim on the different part of his body which caused his death immediately thereafter.

CONTRARY TO LAW.

Upon arraignment , appellants pleaded not guilty to charge.

Trial on the merits of the case ensued with the prosecution proving the following facts:

On the fateful night of November 16, 1992, Gonzalo Jaranilla III, who was nicknamed Alo, attended the wake of the grandfather of Cenon Rosal, a barangay kagawad of Sta. Clara, Oton, Iloilo. He played mahjong with Ricardo Suyo who called Kardo, and two other players. At about 10:15 in the evening, Alo excused himself and headed fohome because he still had to work the following day as a driver. Rosal volunteered to accompany him in going home but, after walking together for about fifty (50) meters, Alo told Rosal to go back to the wake as he already had Catalino Anas and Andres Caducio for company. Rosal went back to the wake of his grandfather. Upon reaching his house, Rosal heard several gunshots coming from the direction where he left Alo and his companions. This prompted Rosal and the others at the wake to proceed to the place where the gunshots came from.[2]

Meanwhile, at about that time around 10:40 p.m., Alo's wife, Cecilia Gealon Jaranilla, was inside their house waiting for her husband to arrive when she heard the barking of their dogs. Upon opening a window to see if it was Alo whom the dogs were barking at, she saw Albert Umadhay shoot her husband at the back with a long

firearm. Alo fell to the ground. Just then Edgar Umadhay and Sergio Umadhay who were armed with short firearms, and Albert who was still holding the long firearm, went near the fallen Alo and all three Umadhay brother shot him in the head.

Cecilia witnessed the incident from a distance of about three (3) meters.[3] There was then lighted fluorescent lamp in the sala of their house and a 50-watt bulb in front of the house.[4] Cecilia shouted and pleaded to the Umadhay brothers not to kill her husband. She then rushed down the house to help Alo. As she did so, she saw the Umadhay brothers face to face as they passed through the back of the house where they disappeared. Cecilia shouted for help while Alo was moaning in pain[5]

Among those who responded to her shouts for help were Rosal and Kardo who came from the wake some ten (10) meters away from where Alo was shot. Cecilia told Kardo and Rosal to bring Alo to Hospital.[6] Rosal asked Kardo to see if Alo, who was lying on the pathway face down, was still alive. Kardo went by the side of the fallen Alo and told Rosal that he was still alive. Rosal hurriedly got tricycle to bring Alo to the hospital.[7]

They had traveled about half a kilometer[8] when Kardo sensed that Alo wanted to say something. Rosal momentarily stopped the tricycle while Kardo asked Alo who shot him. Alo, holding Kardo's left arm tightly and breathing abnormally, replied in a halting manner, "Edgar, Sergio and Alberto all surnamed Umadhay." Noticing that Alo's wounds were hemorrhaging and he was fast weakening, Rosal drove the tricycle faster to the Aleosan District Hospital.[9] There, the doctor, upon examining Alo's eyes, pronounced him dead on arrival.[10] From the hospital Rosal sent a radio message informing Barangay Captain Lerana about Alo's death.

The Chief of Police of the Municipality of Oton, Iloilo proceeded to the crime scene and conducted an investigation. He was informed by the victim's widow that it was the Umadhay brothers who killed her husband. Through the help of Barangay Captain Lerana, the Umadhay brothers were located in their house which was just a few meters away from the house of the Jaranillas. Police Chief Tantiado invited the Umadhay brothers to the police station for questioning. At first, the Umadhays refused, but upon the prodding of Barangay Captain Lerana, Edgar and Albert finally agreed to go with Tantiado to the police station.

At the Oton Police Station, Edgar refused to answer questions, invoking his constitutional right to remain silent. However, after talking to him, Edgar finally admitted his participation in the killing of Alo and offered to surrender the firearm he used in the commission of the crime. Thus, Edgar was left detained at the police station.[11]

Albert, while being questioned separately, informed the police that the firearm could be found at the back of the victim's house near the bamboo grove while revolver and the long firearm were hidden in a sack inside the house. The firearms were indeed recovered from the said places as revealed. Thereafter, the police brought Albert together with the firearms to the police station. The next day, a paraffin test was conducted on Albert and Edgar.[12]

While Edgar admitted his participation in killing of Alo, he however interposed self-defense. His brothers, Albert and Sergio, denied having anything to do with the commission of the crime. Their version of what transpired on November 16, 1992 is as follows:

At around 8:00 p.m. of November 16, 1992, Edgar, who revealed in court that the wife of the victim is his first cousin, attended the birthday party of Edgar Gelacio at the sari-sari store of Rey Belga. Among those present were Edwin Capaque, Vicente Bering and Alejandro Capaque. After drinking six bottles of beer at around 10:30 p.m., Edgar went home. Edwin Capaque and Bering, who both decided to attend the wake of the grandfather of Rosal, left the party with Edgar. They walked along the provincial road of Sta. Clara, Oton, Iloilo.

They were passing in front of the house of the Jaranillas, when Alo, who was holding a homemade .20-gauge shotgun with his right and a hand grenade with his left hand, confronted Edgar. Alo pointed the shotgun at Edgar saying, "Edgar, I will kill you." Alo pulled the trigger but the gun failed to fire. As Edgar's companions fled, alo aimed the shotgun once more at Edgar but before he could pull the trigger, Edgar lunged at Alo and wrestled with him for the possession of the gun. Edgar grabbed Alo's left hand and simultaneously twisted Alo's right hand toward his back, with the shotgun's nozzle toward Alo's back. At that precise moment, Alo, whose finger was still at the trigger of the gun, pulled the trigger thereby hitting himself at the back. Alo fell to the ground while the grenade rolled to his side. While Edgar was removing the shotgun from Alo, the latter drew a .38 caliber gun tucked on his waist. Edgar quickly grappled with Alo for its possession. In the course of the struggle Edgar was able to point the .38 caliber gun at Alo's head. Alo pulled the trigger but hit himself on the head. Edgar took the firearm from Alo, hurriedly left and hid the .38 caliber gun at the back of the Jaranilla's house.

Edgar went home and narrated everything that had transpired to his mother two siblings, Albert and Sergio, and his children. Thirty minutes later, Barangay Captain Lerana, Chief of Police Tantiado and other policemen arrived in their house. Cecilia identified Edgar, Albert and Sergio as the killers of her husband. The three brothers were brought to the police station for investigation where Edgar admitted commission of the crime.[13] Edgar attributed his refusal to buy the firearm Alo had offered to him as the motive behind Alo's attempt on his life.[14] Edgar also told Albert and the policemen where he hid the firearms. Having admitted being involved with the shooting incident, Edgar was detained at the Oton Police Station.[15]

Vicente Bering corroborated Edgar's story. Bering testified that when Alo suddenly approached Edgar and told the latter that he would kill him, the two were about a meter distant from each other. He himself was about meters away from Alo. After the first gunfire, he and his companion, Edwin Alejandro, scampered away. At that time, there was no moon, and there were no electric lights along the road and in the Jaranilla's house.[16]

According to Sergio and Albert Umadhay, their brother Edgar awakened them at around 10:45 p.m. Edgar told them and their mother what had happened and intimated to them his intention to surrender to the police authorities and the barangay captain. Later, Barangay Captain Lerana, Chief of Police Tantiado and some policemen arrived at their house and invited them to the Oton Police Station for investigation. Upon Edgar's instruction, Albert accompanied Barangay Captain Lerana to the places where the firearms were hidden. Albert turned the firearms over to Tantiado. On November 17, 1992, Edgar and Albert were subjected to paraffin tests but Sergio, who was not implicated by Cecilia Jaranilla, did not undergo the test.

The paraffin tests yielded positive results for the presence of nitrates on Edgar's body. Albert was found negative.[17]

To establish the violent character of the victim, the defense presented Barangay Captain Lerana as witness. According to him, everyone in the barangay was afraid of Alo who was violent and a troublemaker. On September 11, 1991, one Ricardo Tiva complained to him that Alo had inflicted physical injuries upon him. The complaint was docketed as Barangay Case No. 13 in the Record Book of Barangay Cases.[18] An information for murder was also filed against Alo as Criminal Case No. 16157[19] before the Regional Trial Court of Iloilo City.[20]

To prove that the firearms belonged to Alo, the defense put on the witness stand his neighbor, Jesus Mauricio, to whom Alo allegedly offered to sell a gun. On November 15, 1992, Alo again offered him a pistol. Mauricio refused to buy it because he had no money. Confronted with the gun seized from the accused, Mauricio could not say that it was the same gun Alo offered to sell, adding that it looked like the firearm Alo showed him.[21]

On November 11, 1994, the trial rendered the questioned decision. It gave credence to Cecilia and her testimony

notwithstanding her relationship to the victim. The trial noted that she "was able to narrate the incident in a straightforward and categorical manner with convincing details consistent with human nature and the normal course of things." Much weight was also given to the testimony of the medico-legal expert, Dr. Tito Doromal on the nature, type and location of the gunshot wounds which was more in accord with the version of the prosecution. The trial court held that the Umadhay brothers, "armed with firearms, shot mercilessly Gonzalo in uninterpreted sequence hitting him on the head and neck portions as well as in the thoraco-abdominal regions" and, therefore, all of them should be considered as conspirators in the design to kill the victim.

In his appeal, appellants assigned the following errors allegedly committed by the trial court:

1. THE LOWER COURT GROSSLY ERRED IN GIVING CREDENCE TO THE VERSION OF THE PROSECUTION, IT BEING GROSSLY WANTING IN FACTUAL BASIS AND ONE NOT IN ACCORD WITH THE FINDINGS OF THE MEDICO-LEGAL WHO CONDUCTED THE AUTOPSY ON THE CADAVER OF THE LATER GONZALO JARANILLA III.
2. THE LOWER GRAVELY ERRED IN NOT ACQUITTING ACCUSED EDGAR UMADHAY WHO HAS CLEARLY ESTABLISHED ALL THE ELEMENTS OF SELF-DEFENSE IN THE CASE AT BAR.
3. THE LOWER COURT GROSSLY ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

Anent the first assigned error, appellants assert that in giving credence to the prosecution evidence, the trial court erroneously relied on the dying declaration of the victim.[22] They claim that due to the severity, nature and character of the victim's wounds, he could not have been able to give a dying declaration. They stress that a person with the injuries sustained by the victim could not have been able to move and talk intelligently "by reason of body paralysis and want of consciousness." [23]

The autopsy conducted by the rural health physician of Oton, Dr. Vicente Carreon on November 17, 1992 revealed that the victim sustained the following wounds:

1. Gunshot wound - anterior area, left aural, direction-horizontal
2. Gunshot wound - left lower chin, slug fragment taken to SPO3 R. Panique
3. Pugakhang wound - with powder burns, right lumbar area posterior.

According to Dr. Carreon, the first wound was located at the left ear, the second wound at the lower chin and the wound inflicted by the pugakhang at the right lumbar area of the victim. The bullet did not exit from the first wound which was fatal. He found a fragment of a slug [24] from the second gunshot wound that was also fatal. He opined that the third wound was caused by pugakhang because it was "rounded, corrugated (sic), and more or less two (2) cms. In diameter." It was a fatal wound. There were powder burns around the third wound. [25]

The following day, November 18, 1992, Dr. Tito Doromal, medico-legal officer of the Iloilo Metropolitan District Command, conducted another postmortem examination on the body of the victim. His report [26] showed that the victim sustained three (3) wounds at the head and neck:

1. BULLET WOUND, 0.6 x 0.3 cm., in dia., with blackening of tissues around 1 x 0.3 cm., in dia., left inferior angle of mandible 4 cms., from the anterior median line, 143 cms., from the left heel, penetrating muscle tissue, making a comminuted of the left and right mandible and the slug was possibly extracted by the rural physician of Oton, Iloilo at the right anterior mandibular bone.

The direction of the wound is left to right slightly downward.

2. BULLET WOUND, 0.7 x 0.6 cm., in dia., with blackening of tissues around 1.2 x 0.8 cm., in dia., left post-auricular area, 13 cms., from the posterior median line, 153 cms., from the left heel, with powder burns 4.5 x 3 cm., in dia., involving the supero-posterior portion of the left pinna, fracturing the left temporal bone, left mastoid bone, left inferior parietal bone, left frontal bone, left mastoid bone with superior extension from the left temporal bone, upward to the left, superior parietal bone, joining the fracture on the left frontal bone. Comminuted open fracture, left parieto-occipital bone, lacerating the left temporal lobe of the brain and the deformed slug lodged extracted and recovered at the left occipital lobe of the brain.

The direction of the wound is backward, upward, medially.

3. BULLET WOUND, 0.7 x 0.6 cm., in dia., with blackening of tissues around 1.2 x 0.9 cm., in dia., left anterior auricular area, 13 cms., from the anterior median line, 150 cms., from the left heel, penetrating muscle tissue, fracturing the greater wing, left sphenoid bone, left lateral foramen magnum, lacerating the left temporal lobe of the brain, where the deformed slug lodged, extracted and recovered.

The direction of the wound is forward, upward.

Dr. Doromal also found an incision, 9.2 cm. Long, in a left to right direction, at the submandibular area. On the thoraco-abdominal region, he found a "pellet wound" that he described as:

x x x multiple, ranging from 0.1 to 0.2 cm., in dia., with a diameter of 11 x 215 cm., in dia., with one big central hole 4.3 x 3 cm., in dia., with blackening of tissues around and slapping (sic) off of epidermis, right posterior lumbar area, 8 cms., from the posterior median line, 98 cms., from the right heel, penetrating muscle tissue, non-perforating. One (1) plastic wad was extracted and recovered in front of the 2nd lumbar vertebra, right and twenty-two (22) small pellets on the muscle tissues around the right posterior lumbar region.

The direction of the wound is forward, slightly upward.

At the witness stand, Dr. Doromal testified that the first wound on the head and neck areas that affected the muscle and bone was not that fatal and proper surgical intervention could have saved the victim. He opined that the assailant could have been on the left side of the victim considering the direction of the bullet. Because there were no powder burns, the victims could have been more than twenty-four (24) inches from the assailant. The second wound behind the left ear had no exit and it was fatal. Dr. Doromal recovered a deformed slug<sup>[27]</sup> from the left occipital region. He discovered a powder burn 4.5 x 3 cm. in diameter and therefore it was a "contact wound" with the firearm around four (4) to six (6) inches away. Aside from the brain, the second wound affected the skull and it was possible that the assailant could have been on the left side of the victim.

The third wound was on the "front portion of the left ear." It also affected the skull and the brain. It had no exit wound but Dr. Doromal recovered one (1) slug at the left temporal lobe of the brain. Dr. Doromal believed that the slug was from a .38 cal. Revolver. There was a "blackening of tissues" which looked like a powder burn and therefore it was possible that the muzzle of the gun was less than twenty-four (24) inches from the head. As in the two other wounds, the assailant could have been on the left side of the victim. Dr. Doromal opined that the rural health physician who extracted a slug could have caused the fourth clean-cut wound.

The wound at the thoraco-abdominal region or the chest and abdomen area was located at the back portion thereof. It had no exit wound. Dr. Doromal recovered from the same wound one (1) plastic wad and twenty-two (22) small pellets. The wound affected the lumbar vertebra and "possibly the spinal column" and therefore, because it would have caused paralysis of the victim, it was a fatal wound. The wound could have been caused by an assailant who was more than twenty-four (24) inches away from the back of the victim and who possibly used a 20-gauge shotgun. He stressed that "grappling of the gun" by the assailant and the victim could not have caused

wounds Nos. 1, 2 and 3 on the head and neck areas as if they are facing each other considering that these wounds were found on the left side of the victim. Similarly, the pellet wound at the back of the victim could not have been caused by grappling for the gun between the victim and the assailant even granting that the latter was stronger than the former.[28]

The word "fatal" has been defined "as causing death; deadly or mortal.[29] Hence, Dr. Doromal's opinion that the head wounds were fatal could not necessarily mean that the victim died instantaneously after the assault. In fact, there is nothing in Dr. Doromal's testimony that paralysis from which to imply that the victim's wounds rendered his ability to speak totality nil. In this case, Kardo categorically testified that Alo was "still in good condition" as he cuddled the victim who held on tightly to Kardo's left arm, at the crime scene.[30] Alo even intimated to Kardo and Rosal the identity of his assailants, although at this time, the victim was fast weakening, prompting Kardo to tell Rosal that he felt that the victim was slipping down the tricycle seat.[31] Then, as alo held on to Kardo's left arm, the latter noticed him breathing abnormality. All these transpired while the tricycle was still a kilometer away from the hospital.[32]

For a dying declaration to be admissible in evidence, these requisites must concur: (1) that death is imminent and the declarant is conscious of that fact; (2) that the declaration refers to the cause and the surrounding circumstances of such death; (3) that the declaration relates to facts which the victim is competent to testify to; (4) that the declarant thereafter dies, and (5) that the declaration is offered in a criminal case wherein the declarants death is the subject of inquiry.[33] The degree and seriousness of the wounds and the fact that death supervened shortly thereafter, may be considered as substantial evidence that the declaration was made by the victim with the full realization that he was in a dying condition.[34] The victim's dying declaration having satisfied all these requisites, it must be considered as an evidence of the highest order because, at the threshold of death, all thoughts of fabricating lies are stilled. A victim's utterance after sustaining a mortal wound may be considered pure emanations of the incident.[35]

Appellants contend that Cecilia's testimony that her husband had already fallen to the ground when appellants Sergio and Edgar Umadhay shot him to death "runs counter to the findings" of Dr. Doromal that, by the wounds he sustained, the victim's assailants must have been on his left side.[36] This contention is bereft of merit. Cecilia testified as follows:

Q

What happened when you opened the window?

A

I saw with my eyes that Albert Umadhay shot Gonzalo Jaranilla III, at the back.

Q

What happened to Gonzalo Jaranilla III, when he was shot at the back by Albert Umadhay?

A

He sat down.

Q

What happened next?

A

And then he felt (sic) on the ground and it was then that Edgar, Sergio and Albert went near him and shot him on the head.[37]

On cross-examination, she testified:

Q

Where were you when you saw Albert Umadhay shot your husband?

A

I was in the window.

Q

after your husband was shot, what did you do?

A

I ran downstairs and shouted at him not to shoot my husband again.

Q

And what happened after that?

A

When Albert Umadhay shot Gonzalo Jaranilla, he fell on the ground and it was then that Sergio and Edgar went near him and shot him.

Q

How far were you from these Sergio Umadhay and Edgar Umadhay when they shoot (sic) your husband?

A

Very near.

Q

Around how many meters?

A

Maybe two (2) meters.

Q

What was (sic) firearms did they use?

A

I saw that they used short firearms.

Q

Did you see the exhibits of firearms before this Court?

A

Yes, sir.

Q

There were only two (2) firearms, how many firearms were used by the accused?

A

Three (3) firearms were used, only two (2) were surrendered.[38]

Dr. Doromal's conclusion that the victim's assailants were to the left of the victim does not contradict Cecilia's testimony. By the fast succession of events, it may not even be amiss to say that the victim turned his head after he agonizingly fell down from the first bullet fired by Albert that hit his back and it was then that Edgar and Sergio shot him in the head. In other words, he could have fallen on the ground on the right side of his face thereby exposing the left side. In fact, the quite general testimony of Cecilia on the shooting incident could engender so many possibilities on the movements of the victim that caused the entry of bullets on the left side of his face and neck. Nevertheless, while both the prosecution and the defense failed to elicit a more vivid description on the assault and the position of the victim as bullets were pumped on him, such failure does not derail the established facts that Cecilia was able to see the incident and that appellants were the perpetrators thereof.[39] Again, it is notable that the defense failed to dent Cecilia's credibility. Appellant Edgar's admission that she is their first cousin in fact bolsters the conclusion that she could have spoken of nothing but the truth. However, as if attempting to shift attention from her testimony, the defense pounced on the irrelevant aspect of the victim's character, not realizing perhaps, that by his testimony, Edgar belied his own story that it was he alone who perpetrated the crime. Thus, he testified on cross-examination:

Q

You said also that when this Gonzalo Jaranilla pulled his .38 cal. You again grappled with him for the possession of this .38 cal.?

A

Yes, sir, we grappled with it.

Q

And you said you were able to twist his hand and you were able to point his hand at his head?

A

Yes, Sir.

Q

And you said that while the gun was pointed at the head of Gonzalo Jaranilla was able to squeeze the trigger again?

A

Yes, Sir.

Q

You did not help Gonzalo Jaranilla III squeeze the trigger?

A

No, Sir.

Q

How many times did Gonzalo Jaranilla III squeeze(d) the trigger of the gun?

A

Only once.

Q

And after squeezing the trigger, you said you picked up the gun of Gonzalo Jaranilla?

A

Yes, Sir. (*Italic supplied.*)[40]

Appellant Edgar Umadhay's testimony that the victim squeezed the trigger only once with the nozzle of the gun at his head is belied by the postmortem report showing three wounds sustained by the victim. The examining physician did not believe that the wounds sustained by the victim were the result of the victim and his assailant's acts of grappling for possession of the gun. Edgar's incredible story boasting of his immense strength that made him overpower the victim whom he admitted to be taller than he is[41] simply taxes one's credulity. It was no more than a ploy to absorb the culpability of his equally guilty brothers.

In the same vein, appellant Edgar Umadhay's self-defense theory is unbelievable. In the first place, he apparently failed to consider that where an accused foists self-defense to prove that he killed the victim to save his life, the burden of proof is shifted to him. He must rely on his own evidence and not on the weakness of the prosecution's.[42] Having admitted the killing, he has to justify the taking of the victim's life by the standards of the law for such absolution.[43] While appellant Edgar's testimony on the alleged initial assault by the victim was corroborated by Vicente Bering, the rest of the incident was established solely by appellant's testimony. Its self-serving nature cannot therefore be discounted.

Secondly, the number of wounds sustained by the victim, three on the head and neck and one at the back, demonstrated a determined effort of the assailants to kill him.[44] On the other hand, appellant Edgar Umadhay did not sustain any injury. It is well-settled that the nature and number of wounds inflicted by the assailant are considered important incidents which disprove a plea of self-defense.[45]

Thirdly, appellant Edgar Umadhay's acts of taking flight and failing to inform the authorities after the incident is antithetical to his claim of self-defense. If indeed the shooting was accidental, then appellant Edgar would have come to the victim's aid and taken him to a hospital instead of abandoning him and escaping.[46] He could have reported the incident to the police authorities. His acts therefore cannot be put these within the ambit of our jurisprudential doctrine that the flight of an accused discloses a guilty conscience.[47]

Relying on the ruling in *People v. Amaguin*,[48] appellants contend that the mitigating circumstance of voluntary surrender should be credited in their favor because "surrender to a person in authority such as the barangay captain, is more than sufficient" compliance with the law.[49] As this Court said in that case, where the appellant surrendered after a week from the commission of the crime, the following elements must be present in order that voluntary surrender may be appreciated: (a) the offender has not been actually arrested; (b) the offender surrendered himself to a person in authority, and (c) the surrender must be voluntary.[50] These elements have not been fulfilled in the case.

The record shows that after Cecilia Jaranilla had pinpointed appellants as the assailants to the police, the latter and the barangay captain went to appellants' house to invite them for investigation. Appellants did not go to the

police or to the barangay captain to surrender. As appellant Edgar himself admitted, he had the intention to surrender to the authorities but such intention was never realized because the police arrested him and his brothers at their house.[51] Such intention was therefore never implemented by appellant Edgar's own volition. Thus, in *People v. Flores*,[52] where the accused did not offer any resistance and peacefully went with the police who came to the factory looking for him, the Court ruled that he did not surrender voluntarily to the police because "(w)ith the police closing in, (he) actually had no choice but to go with them." For voluntary surrender to be appreciated, it must be spontaneous and made in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses necessarily included in his search and capture. The fact of appellants' arrest, even if made before the issuance of a warrant therefore, belies any claim of voluntary surrender because the element of spontaneity is absent.[53]

The defenses of alibi and denial interposed by appellants Albert and Sergio Umadhay must fail. Their claim of being at their house, even if true, did not preclude their having been at the crime scene that was only a short distance away.[54] Besides, alibi cannot prevail over the positive and unequivocal declaration of the prosecution eyewitness, Cecilia Jaranilla, that they were the authors of the crime.[55] Cecilia had no evil motive or particular prejudice against appellants when she pointed to them as the persons who shot her husband. Visibility was clear as there was enough illumination coming from the 50-watt electric bulb in front of their house as well as the fluorescent lamp inside that lit the place when she opened the window. She could not have been mistaken on appellants' identities considering that they are her cousins who lived in the same neighborhood. Moreover, experience shows that oftentimes a startling occurrence creates an indelible impression in the mind that can be recalled vividly.[56] In this case, Cecilia's clear memory on the identity of her husband's assailants was even bolstered by his dying declaration to Kardo and Rosal.

The trial court correctly appreciated treachery as a qualifying circumstance in the killing of Gonzalo Jaranilla III. The suddenness of the attack upon the back of the victim, that was witnessed by his wife, in conjunction with the number, nature and location of the wounds he sustained, characterized the treacherous execution of the criminal act. An unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack, constitutes *alevosia*. [57]

Conspiracy was alleged in the information and duly proved at the trial. In conspiracy, it is not necessary to show that all the conspirators actually killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.[58]

Article 248 of the Revised Penal Code penalizes the crime of murder with the penalty of reclusion temporal in its maximum period to death. In the absence of any mitigating or aggravating circumstances, the penalty that shall be imposed is the medium period of said penalty or reclusion perpetua.[59]

WHEREFORE, the herein questioned decision imposing upon each of appellants Edgar, Sergio and Albert, all surnamed Umadhay, the penalty of reclusion perpetua and the payment of civil indemnity of P50,000.00 and actual damages P22,711.00 for which they shall be solidarily liable, is hereby **AFFIRMED**. Costs against appellants.

### **SO ORDERED.**

Narvasa, C.J., Romero, and Purisima, JJ., concur.

- [1] Presided by Judge David A. Alfeche, Jr.
- [2] TSN, April 29, 1993, pp. 3-7.
- [3] TSN, June 18, 1993, pp. 4-5.
- [4] TSN, July 18, 1993, pp. 6-7.
- [5] TSN, June 18, 1993, pp. 5-6.
- [6] Id., at 6.
- [7] TSN, April 29, 1993, pp. 7-8.
- [8] Id., at 9.
- [9] TSN, May 5, 1993, p. 25.
- [10] TSN, April 29, 1993, p.9; May 5, 1993, pp. 20-24.
- [11] TSN, May 20, 1993, pp. 4-10.
- [12] TSN, May 5, 1993, pp. 5-13.
- [13] TSN, August 27, 1993, pp. 2-19.
- [14] Id., at 20.
- [15] Id., at 21.
- [16] TSN, June 17, 1994, pp. 7-9.
- [17] TSN, June 24, 1994, pp. 2-20; June 30, 1994, p. 24.
- [18] Exh. 7.
- [19] Exh. 4.
- [20] TSN, May 11, 1994, pp. 2-11.
- [21] TSN, July 8, 1994, pp. 2-7.
- [22] Appellant's Brief, pp. 7-8.22
- [23] Id., at 11.
- [24] Exh. E.
- [25] TSN, April 22, 1993, pp. 5-9.
- [26] Exh. D.
- [27] Exh. E.
- [28] TSN, May 5, 1993, pp. 5-13.
- [29] 16 WORDS AND PHRASES 448 citing *Boye v. State*, 121 N.W. 445, 84 Neb. 407.
- [30] TSN, May 5, 1993, p. 30.
- [31] TSN, April 29, 1993, p. 9.

[32] TSN, May 5, 1993, p. 23.

[33] *People v. Padoa*, 267 SCRA 64, 73 (1997).

[34] *People v. Apa-ap, Jr.*, 235 SCRA 468 (1994); *People v. Briosio*, 147 Phil. 291, 296 (1971).

[35] *People v. Morin*, *Supra*, at p. 839 citing *People v. Almeda*, 209 Phil. 393 (1983) and *People v. Montilla*, 211 SCRA 119 (1992).

[36] Appellant's Brief, pp. 13-14.

[37] TSN, June 18, 1993, pp. 4-5.

[38] TSN, July 16, 1993, pp. 8-9.

[39] In her sworn statement of November 20, 1992, or barely four days after the incident, before the municipal trial court of Oton, Cecilia swore that her husband was "urinating with his back facing" Albert Umadhay when the latter shot him (Exh. 5).

[40] TSN, August 27, 1993, p. 18.

[41] *Id.*, at 14.

[42] *People v. Uribi*, 182 SCRA 624, 639 (1990).

[43] *People v. Bigcas*, 211 SCRA 631, 638 (1992).

[44] *People v. Rivero*, 312 Phil. 420, 428 (1995).

[45] *People v. Camahalan*, 311 Phil. 637 (1995).

[46] *People v. Cruz*, 213 SCRA 611 (1992).

[47] *People v. Rivera*, 221 SCRA 647 (1993).

[48] G.R. Nos. 54344-45, January 10, 1994, 299 SCRA 166.

[49] Appellant's Brief, p. 19.

[50] *Supra*, at 177.

[51] TSN, August 27, 1997, p. 19.

[52] G.R. Nos. 103801-02, October 19, 1994, 237 SCRA 653, 662.

[53] *People v. Devaras*, L-48009, February 3, 1992, 205 SCRA 676, 695.

[54] *People v. Sator*, 268 SCRA 136, 150 (1997).

[55] *People v. Letigio*, 268 SCRA 227, 244 (1997).

[56] *People v. Daquipil*, 310 Phil. 327, 343-344 (1995).

[57] *People v. Alvarez*, 267 SCRA 266, 277 (1997).

[58] *People v. Dinglasan*, 267 SCRA 26, 45 citing *People v. Francisco*, 319 Phil. 635, 645 (1995).

[59] Art. 64(1), Revised Penal Code.

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