

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY SUMALPONG, JOSEPH LUMUNGGO, MELCHOR FERNANDO AND BILLY LAKSINTO, ACCUSED, GERRY SUMALPONG AND MELCHOR FERNANDO, ACCUSED-...

G.R. No. 124705. January 20, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Court finds occasion to reiterate the time-settled rule that the attendant circumstances in the commission of a crime must be proved as solidly as the offense itself, and any doubt as to their presence must be resolved in favor of the accused. In the clear absence of any generic aggravating circumstance attending the murder, appellants may be sentenced only to reclusion perpetua, not death as imposed by the trial court.

The Case

In an Information[1] dated January 17, 1994, Cotabato City Prosecutor Ortillano D. Tan charged Gerry Sumalpong, Joseph Lumunggo, Melchor Fernando and Billy Laksinto with the crimes of murder and frustrated murder[2] allegedly committed as follows:

“That on or about January 12, 1994, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with sharp-pointed instruments, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab with said weapons Arola Dilangalen and Mohammad Managili,[3] thereby inflicting upon Arola Dilangalen mortal wounds which caused his death, and inflicting upon Mohammad Managili mortal wounds which could have caused his death, thus the accused have performed all the acts of execution which would have produced the crime of murder as a consequence but which, nevertheless, did not produce it by reason of the timely medical assistance rendered to Mohammad Managili which prevented his death.”

Appellants Gerry Sumalpong and Melchor Fernando pleaded not guilty.[4] Accused Joseph Lumunggo and Billy Laksinto could not be arraigned, since they were at large. After due trial, the Regional Trial Court of Cotabato City, Branch 14[5] convicted both appellants of the crime charged in its Decision[6] dated December 27, 1995, the dispositive portion of which reads:

“WHEREFORE, in the light of all the foregoing, the Court finds the guilt of Accused Gerry Sumalpong and Melchor Fernando established beyond reasonable doubt and therefore guilty of the offense charged in the information and hereby sentences each of them for the death of Arola Dilangalen to suffer the penalty of DEATH and to indemnify the heirs of Arola Dilangalen jointly and severally, in the amount of [o]ne hundred thousand pesos (P100,000.00) as and for exemplary damages.

For the wounding of Mohammad Managuili, the accused are each sentenced to suffer the penalty of 17 years, 4 months and one day to twenty years of Reclusion Temporal in its maximum period, with the accessories of the

law and to pay the said victim, jointly and severally, the amount of [f]ifty thousand pesos (P50,000.00) as and for actual and moral damages.

Let the entire records of this case together with the transcript of stenographic notes be forwarded to the Supreme Court immediately for review.

No costs.”[7]

The Facts

Version of the Prosecution

After a thorough perusal of the evidence proffered by both the prosecution and the defense, we find the facts as narrated by the trial court to be fairly reflective of the evidence for the prosecution. The relevant portions are hereinbelow reproduced:

“x x x [On] January 12, 1994 at about 8:00 o’clock in the evening, Arola Dilangalen and Mohammad Managuili escorted home their friend, Jukaris Buan at Nayon Shariff Kabunsuan, Cotabato City taking a service owned by a certain Nong Fred. Only Jukaris Buan alighted upon reaching home and thereafter, the owner of the service vehicle together with Arola Dilangalen and Mohammad Managuili returned way back home. Arola Dilangalen and Mohammad Managuili alighted at 4J Pizza House along Notre Dame Avenue to take merienda. After both took merienda, they went out of the pizza parlor to go home. While waiting for a tricycle to take them home, they saw four (4) men near an electric post around five (5) meters away at the other side fronting the 4J pizza parlor, who suddenly and simultaneously stabbed them. Arola Dilangalen died of hemorrhage and antecedent multiple wounds as shown in the Death Certificate marked as ‘Exhibit A’. Mohammad Managuili sustained stab wounds on the right ant[er]ior-axillary line as shown in the Medical Certificate which was marked as ‘Exhibit B’.”[8]

Managuili was initially brought to an emergency hospital, then transferred to the Cotabato Regional Hospital where his wound was sutured by Dr. Pearlle Sibud.[9] He was confined there until January 14, 1994,[10] the same day on which Police Officer Bernard Tayong brought before him five persons, including Appellant Gerry Sumalpong, for identification purposes. Sumalpong was positively identified by Managuili as one of the assailants.[11]

Bai Farida Dilangalen, mother of Victim Arola, testified that, upon learning that her son was stabbed to death, she collapsed and felt grief, while her husband suffered hypertension. She estimated that they spent P70,000[12] for the burial of her son and for other ceremonies for the dead under the Muslim tradition.

Version of the Defense

Both appellants denied participation in the crime. Each gave his respective alibi. According to Melchor Fernando,[13] he worked continuously at his employer’s shop, making balusters, from 7:00 a.m. to 10:00 p.m. on January 12, 1994, with only ten-minute breaks for his lunch and supper. He denied previously knowing his co-accused and claims that the first time he saw the latter was in the city jail.[14] Appellant Fernando’s statement was corroborated by his father. The latter testified that, from the porch of their house, he saw Melchor working at the shop, which was only a few meters away, about 8:30 p.m. until almost 11:00 p.m. on January 12, 1994.[15] Melchor’s employer, Mr. Lauro Navarro, also confirmed[16] that said accused worked with him from 7:00 a.m. to past 10:00 p.m. that day. Most significant was his explanation of their work procedure. He said that, in making balusters, they had to wait for four (4) hours from the time they poured mixed cement into the molding until it hardened. Melchor would usually go home to eat and sleep during the waiting time, and Navarro would just wake him up when his services were needed again.

The other accused, Gerry Sumalpong, claimed that he was at home reading in the evening of January 12,

1994.[17] This was confirmed by his father[18] and another witness, Arnel Hinaut, who allegedly saw Sumalpong between seven and eight o'clock that evening reading a book at the balcony of their house.[19] Sumalpong and his father added that when the police presented them in a lineup for identification purposes at the hospital on January 14, 1994, Managuili, before whom they were presented, failed to identify Sumalpong as one of the assailants.[20]

Ruling of the Trial Court

In refusing to give credence to the defenses of Appellants Sumalpong and Fernando, the court a quo ratiocinated:

“x x x The Court cannot consider the alibi of Gerry Sumalpong seriously. First, 8:00 o'clock is still early in the evening and it[']s unusual for a college student to sleep at said time; Second, the testimony of Arnel Hinaut cannot be given credence for as jeepney conductor, he does not even know Notre Dame Avenue and 4J pizza house but knows Notre Dame University, when in truth and in fact, Notre Dame University is along Notre Dame Avenue and it is impossible for a jeepney plying Awang to Super, vice versa not passing the intersection of Notre Dame Avenue and Quezon Avenue (Parang road); Third, in the penultimate part of the affidavit of PO1 Bernard Tayong which was earlier quoted and affirmed by the latter, Gerry Sumalpong claimed that he was allegedly buying a pack of sliced mango when he saw Joseph Lumunggo, Melchor Fernando and Billy Laksinto, helping or conspiring [with] one another in assaulting the two victims with their respective knife [sic] which means that Gerry Sumalpong was at the scene of the crime and in fact one of the perpetrators. This was affirmed by PO1 Tayong when he conducted another investigation at the crime scene and where the couple Rolando and Mona Dumaldal confided to him that on the evening of the stabbing incident, they saw four (4) male persons namely Gerry Sumalpong, Joseph Lumunggo, a ceratin [sic] Peryong and one male person unknown to them running to the interior portion near Sto. Niño Chapel and that he saw Joseph Lumunggo inserting a knife in his waistline but that these [sic] couple refused to testify for reasons known only to them. Fourth, that he is a student of Dela Vida College, which is about 20 meters from the 4J Pizza house, and a resident of Fatima II which is around 150 meters away from Dela Vida College, thus, their house is walking distance to their school and to the crime scene; Lastly, Gerry Sumalpong was positively identified by Mohammad Managuili as the one who stabbed him.

x x x x x x x x

The Court cannot give credence to said alibi of Melchor Fernando. First, he testified that he worked continuously [sic] from 7:00 o'clock in the morning to 10:00 o'clock in the evening except for meal breaks which was [sic] about 20 minutes but his neighbor-employer testified that while waiting for the ballusters [sic] to harden which is about four (4) hours, they did not have work thus his neighbor-worker/helper Melchor Fernando went home, slept and woke him up if his services was [sic] needed; Second, his neighbor-employer testified that they had (3) three pourings on said date but Melchor Fernando, testified that they had four (4) pourings; Third, it is hard to believe that his father, Elpidio Fernando, after a hectic day's work being a mason watched him working from 8:30 to almost 11:00 o'clock in the evening; Fourth, the residence of Accused Melchor Fernando is just a few minutes ride from the scene of the crime; Fifth, in the testimony of PO1 Bernard Tayong, Melchor Fernando is one of the three persons named by Accused Gerry Sumalpong, who helped or conspired one another in assaulting the two victims which means that accused Gerry Sumalpong knows Melchor Fernando and other perpetrators of the crime; Lastly, Melchor Fernando was positively identified by victim Mohammad Managuili as one of the four persons who attacked them.”[21]

The trial court also found the presence of treachery in the sudden and simultaneous attack against the victims “who were unarmed and unsuspecting.” It also believed that there was conspiracy among the accused. But, without any explanation, it found that evident premeditation aggravated the crime. Thus, it imposed upon both accused-appellants the penalty of death for the fatal stabbing of Arola Dilangalen and reclusion temporal maximum for the wounding of Mohammad Managuili, with damages. Hence, this appeal.[22]

Assignment of Errors

In the appellants' brief[23] dated January 3, 1997 and prepared jointly by their respective counsels,[24] the following alleged errors in the assailed Decision were assigned:

I. The lower court erred in totally crediting the identification made by the prosecution witness of the appellants as the perpetrators of the crime charged.

II. The lower court erred in totally discrediting the defense of very strong alibi interposed by the appellants.

III. The lower court erred in finding the appellants guilty of conspiracy; affidavit of prosecution witness PO1 Tayong is purely hearsay.

IV. The lower court erred in not acquitting appellants on the ground that his guilt was not proved beyond reasonable doubt.

V. The lower court erred in not finding that Appellant Melchor Fernando is entitled to mitigating circumstance of voluntary surrender.

VI. The lower court erred in totally admitting in evidence the medical certificates issued by the physicians."

Simply stated, the issues raised by the appellants are the following:

- Sufficiency and credibility of prosecution evidence
- Strength of appellants' defense of alibi
- Presence of conspiracy
- Appreciation of voluntary surrender in favor of Appellant Fernando

Inasmuch as a review of decisions imposing death opens the whole record, we exercise judicial discretion in reevaluating the trial court's finding that evident premeditation aggravated the felony, upon which it based its imposition of the capital penalty.

This Court's Ruling

The appeal is partly meritorious. After a thorough review of the evidence and the applicable law, we find that evident premeditation and voluntary surrender were wrongly appreciated by the trial court.

While affirming the criminal culpability of both appellants, we remind trial judges to be more circumspect in justifying their conclusions particularly in offenses punishable by death. The judicial taking of life cannot be lightly treated. The duty of the courts is to discover the truth based on facts and solid evidence adduced by the parties; not on surmises, conjectures and dialectics. Conclusions must always be supported by the quantum of proof required by law -- proof beyond reasonable doubt in criminal offenses.

First Issue: Sufficiency and Credibility of Prosecution Evidence

In the matter of examining real evidence and assessing the credibility of witnesses, the well-entrenched rule is that the findings of the trial courts deserve great weight and high respect, since they are in a better position than appellate tribunals in appreciating the same.[25] In *People vs. Cayabyab*,[26] this Court elaborated:

"x x x [T]he issue on which witness is to be believed is one best addressed by a trial court rather than by an appellate tribunal. Having the advantage of directly observing witnesses, 'the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. That

record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.’ Thus, his factual findings are accorded high respect and are generally not disturbed by the appellate court unless found to be clearly arbitrary or unfounded. x x x”[27]

In any event, because death was imposed by the trial court, we waded through the entire records only to conclude that it correctly appreciated the main evidence (but not, we stress, that involving evident premeditation and voluntary surrender).

Appellants primarily assail the credence given by the court a quo to their identification by the surviving victim, Mohammad Managuili. They aver instead that on the night in question, it was dark and Managuili supposedly saw the assailants only for the first time during said incident. They posit that in order to positively recognize any of the aggressors under limited visibility, the witness should be familiar with the latter’s facial features.[28]

We find no merit in these contentions. The surviving victim positively and unequivocally pointed to Appellant Sumalpong as his assailant and to Appellant Fernando as one of those who attacked the deceased, Arola Dilangalen. We find no reason to doubt Managuili’s testimony, since there was only a five-meter distance between him and Sumalpong who, with his group, was beside an illuminated mercury lamppost. We quote relevant portions of the surviving victim’s testimony:

“Q At what point of Notre Dame Avenue did you wait for a tricycle to bring you home?

A At the front of the 4J Pizza House.

Q For how long did it take you to wait for a tricycle?

A About a minute, sir. One minute.

Q After waiting for tricycle to ride in going home for about one minute, what happened?

A Someone approached us, sir.

Q Who approached you while waiting for tricycle in going home in front of 4J Pizza House?

A Four (4) persons, sir.

Q What are these four persons who approaced [sic] you, male or female?

A Male, sir.

Q Where did they come from?

A At the other side of the 4J Pizza House.

Q Before these four men approached you, how far were they from you when you saw them?

A About five (5) meters, sir.

Q Now, when these 4 men approached you, what did they do?

A They stabbed us, sir.

Q You said there were four (4) men who approached you about 5 meters away in front of the 4J Pizza House, if these four men would be shown to you, would you be able to re-identify them?

A Yes, sir.

Q Now right inside the courtroom, please inform the Honorable Court whether you could recognize any or all of the four men who approached you on that evening of January 12, 1994 if they are inside the courtroom?

A Yes, sir.

Q Please point with your finger any or all of the four men if they are inside the courtroom.

A The two of them, sir.

MR. ARUMPAC:

Witness pointing to the accused who when asked their names answered Gerry Sumalpong and Melchor Fernando.

X X X X X X X X

ATTY. DILANGALEN:

What about the other two, can you see them inside the courtroom?

A They are not here, sir.

Q You said that you were approached by these four men, what did they do when these four men which included these two accused when they approached you?

A They stabbed us.

Q Who stabbed you?

A That one, sir.

Q You are referring to Gerry Sumalpong?

A Yes, sir.

X X X X X X X X

Q Now, you said Gerry Sumalpong was with the three other men or boys, what did these three other men do on that evening to you and Arola Dilangalen?

A They stabbed Arola Dilangalen.

X X X X X X X X

Q How did you recognize Gerry Sumalpong and the other accused on that evening when they stabbed you?

A Because there was a light, sir.

Q What kind of light was there at the time the accused stabbed you?

A A mercury post, sir.”[29]

During his cross-examination, Managuili stood firm on his declarations:

“ATTY. CEDEÑO:

Mohammad Managuili, you did not see of course who stabbed really Arola Dilangalen at that evening?

A I saw, sir.

COURT:

Who are those you saw who stabbed him?

A One of them is that one, Fernando.

COURT:

Witness pointing to the accused.

Proceed.

ATTY. CEDEÑO:

Is it not[,] Mohammad Managuili[,] that Melchor Fernando was only there as a companion but without holding a knife or without a weapon?

A He had a knife, sir.

x x x x x x x x

[Q] Are you sure that Melchor Fernando was holding a knife or only his companions?

A I am sure, sir.

Q Is it not true that the other two companions of Melchor Fernando were the ones who attacked Arola Dilangalen and not Melchor because Melchor was right behind on the other side?

A No, sir. The three of them attacked Arola.”[30]

Neither did he falter when the trial court itself asked clarificatory questions. Rather, his additional declarations served to strengthen the credibility of his version of the incident:

“COURT:

At the time of the incident, did you see the face of Fernando and the other three companions?

A Yes, Your Honor.

Q How did you see them?

A Because there was a light.

Q Where were those four persons at that time you saw them?

A In front of the 4J Pizza House. On the other side of the road fronting the 4J Pizza House.

Q Now, what were they doing at the time you saw them in front of the opposite side of the 4J Pizza House?

A They were standing near the electric post, Your Honor.

x x x x x x x x

Q The four of them approached you and Arola Dilangalen?

A Yes, You Honor.

Q Did they attack you simultaneously?

A Yes, Your Honor.

Q Who approached first among the group of Gerry Sumalpong?

A The three persons, Your Honor.

Q They attacked Arola Dilangalen?

A Yes, Your Honor.

Q And you are sure that Gerry Sumalpong was the one who attacked you?

A Yes, Your Honor.”[31]

Manifest in the attack employed by the offenders was treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[32] Two conditions must concur: (1) the means, method and form of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) such means, method or form of execution was deliberately and consciously adopted by the accused.[33]

From the testimony of Managuili who himself was one of the victims, he and his companion were waiting for a tricycle ride when the four accused, who were only five meters across the street, approached them. Without any warning or provocation whatsoever, Sumalpong suddenly stabbed Managuili in the chest, while the three others ganged up on Arola who immediately fell to the ground.[34] All the four accused were armed, while the two victims were not. Both victims, with nary an inkling of danger, had absolutely no chance to defend themselves, much less to retaliate. The attack was undisputably sudden and unexpected. The essence of treachery is the suddenness and unexpectedness of the assault without the slightest provocation on the part of the person attacked.[35] Clearly, in this case the onslaught was treacherous.

Appellants also allege that SPO1 Tayong’s testimony was evasive, “wanting in candor and alacrity,” and “replete with I cannot recall answers when asked about certain material details of the incident.”

Again, appellants’ contentions are without merit. A police officer is not expected to remember all details of every incident he investigates. The “material” details that the defense tried to elicit from SPO1 Tayong referred to the identities of (1) the duty desk sergeant who informed him of the stabbing incident on the night of January 12, 1994; (2) the other investigators who proceeded to the scene of the crime upon receipt of the information; and (3) the waitresses at the 4J Pizza House from whom he learned the identities of the victims and their having been brought to the hospital. Obviously, these are not material to what actually transpired, who the culprits were, and the involvements of the suspects.[36]

Appellants further impugn as hearsay the statements made by SPO1 Tayong in his affidavit. A certain Rolando Dumaldal supposedly informed SPO1 Tayong that he saw Joseph Lumunggo, Gerry Sumalpong, a certain Peryong and an unidentified person leaving the scene of the crime shortly after the stabbing incident, with Lumunggo hiding a knife in his waistline. Tayong also claimed that during the investigation of Appellant

Sumalpong, the latter declared that he was buying sliced mango when he saw Joseph Lumunggo, Billy Laksinto and Melchor Fernando stabbing the two victims.

Indeed, such declarations by the investigating police officer cannot be admitted in evidence against the appellants, for they are purely hearsay. Dumaldal should have been presented in court to testify on what he actually saw, and the defense given an opportunity to cross-examine him. As regards the alleged statement of Sumalpong imputing the crime to his three co-accused, it cannot be taken as an extrajudicial admission or confession, since he was under investigation when he supposedly made such statement, and it does not appear that he was assisted by counsel or that he waived the presence of one at the time.[37] Nonetheless, the conviction of both appellants does not rest on the testimony of SPO1 Tayong alone. Even without such evidence, appellants' culpability is sufficiently proven by the clear and unequivocal testimony of the surviving victim, who was not shown to have been actuated by any ill motive.

The appellants also assail the admission of the death certificate issued by Dr. Zacarias Pabiona, municipal health officer, as evidence of the cause of death of Arola Dilangalen. According to Dr. Pabiona, he based his entry on Arola's cause of death (hemorrhage and antecedent multiple stab wounds) merely on the police report without seeing the victim's body.[38] The death certificate, however, was offered by the prosecution only to prove the fact of Arola's death, and not the cause thereof. As regards the latter, it was sufficiently established by the prosecution that three of the accused, among them Appellant Fernando, simultaneously stabbed Arola who was thereafter brought to the emergency hospital but was declared dead on arrival. This unbroken chain of events leads us to no other conclusion than that Arola's death resulted from his stab wounds.[39]

Lastly, appellants, in their Reply Brief, belatedly cite an initial flash report of the police who made a spot investigation a few minutes after the incident took place. They allege that a correct appreciation of this report would further cloud the testimony of the prosecution's sole eyewitness because of the discrepancies between the two. The report[40] adverted to, which has been part of the records of the trial court, was however not properly identified and offered as evidence. It is elementary that this Court, as a reviewing body, cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document; much less, accord it evidentiary value.

On the other hand, we find one contention of the appellants to be meritorious: they could not be convicted of frustrated murder for the injuries inflicted upon the surviving victim, because the prosecution failed to prove that his injuries would have caused his death if no timely medical assistance were rendered to him. Dr. Sibud, the attending physician, simply conducted a "restoration and suturing of the wound," and the medical certificate showed that Managuili was confined at the hospital on January 12-14, 1994. No evidence was offered to establish that his stab wound ("Right Ant. Axillary Line Non Penetrating")[41] was so serious as to have caused his death were it not for the timely medical assistance given him. Where the wound inflicted on the victim is not as severe as to cause his death, the offender not having performed all the acts of execution that would have brought it about, the crime is only attempted murder.[42]

Second Issue: Defense of Alibi

Contending that the prosecution failed to prove their guilt beyond reasonable doubt and to overcome the constitutional presumption of innocence in their favor, appellants insist on their common defense of alibi. In the face of the clear and positive identification of the appellants by the surviving victim himself, alibi becomes unworthy of credence. No jurisprudence in criminal cases is more settled than that alibi is the weakest of all defenses, for which reason it should be rejected when the identity of the accused is sufficiently and positively established by credible eyewitnesses to the crime.[43]

Time and again, we have also held that the defense of alibi can prosper only if the accused satisfactorily demonstrates the physical impossibility of his presence at the scene of the crime or within its immediate vicinity when the incident happened.[44] For clarity, we will demonstrate why the aforesaid doctrines militate against both appellants. Inevitably inviting suspicion, to begin with, is Appellant Fernando's claim that he worked continuously from 7:00 a.m. until 10:00 p.m. on January 12, 1994 with only ten-minute breaks for meals. No ordinary human being can sustain any nonstop work; much less, mixing cement and cleaning molders continuously for fifteen hours in one day. Twenty-one-year-old Fernando did not exhibit superhuman stamina that would convince us of the truth of his claim. Besides, he was contradicted by his own employer who testified that, in making balusters, workers had to wait about four hours for the cement to dry up, during which interval Fernando would usually go home to sleep. Moreover, the shop was only a few minutes' ride to the locus criminis. In addition, during the cross-examination of the surviving victim (Managuili), Fernando's counsel[45] tried to elicit from him the admission that Accused Fernando was merely in the company of the assailants but did not participate in the attack.[46] This line of defense runs counter to the alibi interposed by the appellant himself. And even if the appellant's testimony was corroborated by his father, it does not become more plausible since it is supported merely by an immediate relative and not by disinterested, credible persons.[47]

As regards Appellant Sumalpong, his claim that he was only studying in their house when the incident took place was not sufficiently corroborated by independent and credible persons. His father testified on direct examination that they went to sleep at ten o'clock in the evening of January 12, 1994, but during cross-examination he said that he slept at eight o'clock. Such fickle testimony is definitely not worthy of credence. If he did sleep at the latter time, he is still not competent to testify on his son's activities thereafter, considering that the stabbing incident reportedly occurred after 8 p.m. We therefore find Appellant Sumalpong's alibi undeserving of belief.

Third Issue: Conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[48] Evidence need not establish the actual agreement among the conspirators showing a preconceived plan or motive for the commission of the crime.[49] Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective, is sufficient.[50] When conspiracy is established, the act of one is the act of all regardless of the degree of participation of each.[51]

A conclusion on conspiracy therefore depends greatly on factual findings. It is a legal aphorism that the findings of facts of a trial judge are entitled to great weight and generally should not be disturbed on appeal unless certain facts of substance and value were overlooked or misappreciated which, if considered, may affect the outcome of the case.[52] In the case at bar, we find no compelling reason to reverse the findings and conclusions of the trial court on the presence of conspiracy. From the acts of appellants, it appears that they had a single criminal design -- to kill or injure both Managuili and Dilangalen. Their overt acts point to the mutuality of their unlawful intent.

Fourth Issue: Voluntary Surrender

For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) the offender had not been actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[53]

The claim of Appellant Fernando that he voluntarily surrendered to the barangay captain who turned him over to the police is belied by the testimonies of his own father and the barangay captain himself. Elpidio Fernando stated[54] in court that in the evening of February 1, 1994, about seven to eight armed persons came to their house to arrest his son Melchor. Although the latter was inside their house, Elpidio refused to present him even when the

barangay captain arrived. On the other hand, Barangay Captain Vicente Catacata testified^[55] that he first persuaded Appellant Melchor's father prior to persuading Melchor himself on the morning of February 3, 1994 to surrender to his custody. He also guaranteed said accused's safety if he surrendered to the police authorities.

The above circumstances cannot be equated with spontaneous and voluntary surrender to a person in authority. The police had priorly tried to arrest Fernando, but he did not yield himself to them; instead, he implicitly allowed his father to conceal his presence. Then, the barangay captain came, and only with the assurance of safety did he submit himself to the former. His "surrender," therefore, was not of his own knowing and unconditional accord as required by law. It has been held that if the only reason for the accused's supposed surrender is to ensure his safety, his arrest being inevitable, the surrender is not spontaneous and, hence, not voluntary.^[56] It is also settled that voluntary surrender cannot be appreciated where the evidence adduced shows that it was the authorities who came looking for the accused.^[57]

Fifth Issue: Evident Premeditation

The court a quo, after discussing the attendance of treachery, merely enumerated the requisites of evident premeditation citing *People vs. Muyano*,^[58] then proceeded to explain its finding of conspiracy. No ratiocination was made on how it came to appreciate premeditation *conocida* under the circumstances of the case. An examination of the records indeed reveals the lack of evidence showing its presence.

For evident premeditation to aggravate a crime, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between determination and execution, to allow himself to reflect upon the consequences of his act.^[59] The solicitor general correctly observed that these requisites were not duly established by the prosecution. ^[60]

Absent any clear and convincing evidence establishing the presence of evident premeditation or other aggravating or mitigating circumstances, the penalty imposable for the murder of Arola Dilangalen is reclusion perpetua. As aptly stated by the solicitor general:

"Article 63, paragraph 2 of the Revised Penal Code provides that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. Under Section 6 of R.A. 7659, the penalty for [m]urder is reclusion perpetua to death. Hence, the lesser penalty of Reclusion Perpetua should be applied on appellants for the crime of [m]urder."^[61]

The penalty for the attempt on the life of Mohammad Managuili, on the other hand, is prision mayor in its medium period.^[62] Applying the Indeterminate Sentence Law, the penalty imposable against appellants is four (4) years and two (2) months of prision correccional medium, as minimum, to ten (10) years of prision mayor medium, as maximum.

Damages

The trial court ordered the accused-appellants "to indemnify the heirs of Arola Dilangalen jointly and severally, in the amount of [o]ne hundred thousand pesos (P100,000.00) as and for exemplary damages" and "to pay x x x victim [Mohammad Managuili], jointly and severally, the amount of [f]ifty thousand pesos (P50,000.00) as actual and moral damages."

Time and again, we have reminded lower courts that indemnity is different from other damages. Civil indemnity is automatically granted to the offended party or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of the crime and the appellant's culpability therefor.^[63] Actual or moral damages may be additionally granted upon sufficient proof that the private complainant is legally

entitled thereto. Exemplary damages may also be awarded if the crime was committed with one or more aggravating circumstances duly proven.[64]

In accordance with prevailing jurisprudence, civil indemnity in the amount of P50,000 should be awarded to the heirs of Arola Dilangalen. Said victim's mother also satisfactorily established the family's moral sufferings due to the violent death of her son. We find the grant of P25,000 as and for moral damages justified. Her claim for actual damages in the amount of P70,000 is, however, not backed by evidence like official receipts.

The other victim, Mohammad Managuili, lengthily testified on the incidents before, during and after the assault on him and Arola, but he failed to offer any proof of the actual damages and/or moral sufferings he may have incurred as a result thereof. There being no evidence to serve as our basis, we cannot determine whether he is entitled to any damages and, if so, how much. Thus, we cannot award him any.

WHEREFORE, premises considered, the assailed Decision is hereby MODIFIED. Appellants Gerry Sumalpong and Melchor Fernando are found GUILTY of:

- murder for which they are each SENTENCED to reclusion perpetua and ORDERED to pay jointly and severally the heirs of Arola Dilangalen civil indemnity in the amount of P50,000 and moral damages of P25,000; and
- attempted murder for which they are each SENTENCED to four (4) years and two (2) months of prison correccional, as minimum, to ten (10) years of prison mayor, as maximum.

Both sentences shall be served successively. Costs against appellants.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and Martinez, JJ., concur.

[1] Records, pp. 1-2; Rollo, pp. 4-5.

[2] Docketed as Criminal Case No. 2228.

[3] "Managuili" in the records, TSNs and pleadings.

[4] On February 9, 1994; records, p. 24.

[5] Presided by Executive Judge Japal M. Guiani.

[6] Rollo, pp. 18-32.

[7] Assailed Decision, pp. 14-15; Rollo, pp. 31-32.

[8] Ibid., pp.9-10; *ibid.*, pp. 26-27.

[9] TSN, October 21, 1994, p. 7.

[10] Medical certificate issued by the Cotabato Regional Hospital; records, p. 9.

[11] TSN, March 24, 1994, pp. 7-8.

[12] TSN, July 12, 1994, pp. 7-12.

[13] TSN, March 28, 1995, pp. 8-15, 29-38.

[14] Ibid., p. 27.

[15] TSN, March 1, 1995, pp. 5, 9-12.

[16] TSN, November 25, 1994, pp. 8-10, 15-24.

[17] TSN, September 14, 1995, p. 4.

[18] TSN, August 30, 1995, p. 4.

[19] TSN, August 29, 1995, pp. 5-8.

[20] TSN, September 14, 1995, pp. 7-8; August 30, 1995, p. 7.

[21] Assailed Decision, pp. 10-12; Rollo, pp. 27-29.

[22] This case was deemed submitted for resolution upon receipt by the Court of appellants' Reply Brief on November 21, 1997.

[23] Rollo, pp. 37-89.

[24] Atty. Melquiades Cedeño for Appellant Melchor Fernando, and Atty. Arturo Ba. Fernando for Appellant Gerry Sumalpong.

[25] People vs. Cascalla, 240 SCRA 482, January 25, 1995; People vs. Morales, 241 SCRA 267, February 13, 1995; People vs. Acuña, 248 SCRA 668, October 2, 1995; Son vs. Son, 251 SCRA 556, December 29, 1995; People vs. Nardo, G.R. No. 100197, April 4, 1997.

[26] G.R. No. 123073, June 19, 1997, per Panganiban, J.

[27] Ibid., pp. 17-18, citing People vs. De Guzman, 188 SCRA 405, 410-411, August 7, 1990, per Cruz, J.

[28] Appellants' Brief, pp. 13-18; Rollo, pp. 52-57.

[29] TSN, March 23, 1994, pp. 8-11.

[30] Ibid., pp. 22-23.

[31] Ibid., pp. 21-22.

[32] Article 14, No. 16, Revised Penal Code; People vs. Belga, 258 SCRA 583, 598, July 11, 1996.

[33] People vs. Belga, *ibid.*; People vs. Landicho, 258 SCRA 1, July 3, 1996.

[34] TSN, March 23, 1994, p. 12.

[35] People vs. Quinao, G.R. No. 108454, March 13, 1997; People vs. Cogonon, G.R. No. 94548, October 4, 1996.

[36] See People vs. Ang Chun Kit, 251 SCRA 660, December 29, 1995; People vs. Zervoulakos, 241 SCRA 625, February 23, 1995; People vs. Pacapac, 248 SCRA 77, September 7, 1995.

[37] People vs. Lucero, 244 SCRA 425, May 29, 1995; People vs. Simon, 234 SCRA 555, July 29, 1994; People vs. Bondoc, 232 SCRA 478, May 23, 1994; People vs. Januario, G.R. No. 98252, February 7, 1997; People vs. Serzo Jr., G.R. No. 118435, June 20, 1997.

[38] TSN, March 24, 1994, pp. 9-10.

- [39] See *People vs. Landicho*, 258 SCRA 1, July 3, 1996.
- [40] Records, p. 49.
- [41] Medical certificate, *supra*.
- [42] *People vs. Nardo*, *supra*; *People vs. Maguikay*, 237 SCRA 587, October 14, 1994.
- [43] *People vs. Namayan*, 246 SCRA 646, July 18, 1995; *People vs. Cabresos*, 244 SCRA 362, May 26, 1995.
- [44] *People vs. De Roxas*, 241 SCRA 369, February 16, 1995; *People vs. Sanchez*, 250 SCRA 14, November 16, 1995.
- [45] Atty. Melquiades Cedeño.
- [46] TSN, March 23, 1994, pp. 22-23.
- [47] *People vs. Ledesma*, 250 SCRA 166, November 20, 1995; *People vs. Panganiban*, 241 SCRA 91, February 6, 1995.
- [48] *People vs. Lopez*, 249 SCRA 610, October 30, 1995; *People vs. Abarri*, 242 SCRA 39, March 1, 1995.
- [49] *People vs. Polangco*, 251 SCRA 503, December 26, 1995.
- [50] *People vs. Asoy*, 251 SCRA 682, December 29, 1995; *People vs. De Leon*, 245 SCRA 538, July 3, 1995.
- [51] *People vs. Mallari*, 241 SCRA 113, February 6, 1995; *People vs. Solon*, 244 SCRA 554, May 31, 1995; *People vs. Tatum Sr.*, 250 SCRA 313, November 24, 1995.
- [52] *People vs. Ballagan*, 247 SCRA 535, August 23, 1995; *People vs. Gapasan*, 243 SCRA 53, March 29, 1995.
- [53] *People vs. Decena*, 235 SCRA 67, August 4, 1994.
- [54] TSN, March 1, 1995, pp. 6-8.
- [55] TSN, February 24, 1995, pp. 5-8.
- [56] *People vs. Camahalan*, 241 SCRA 558, February 22, 1995.
- [57] *People vs. Flores*, 237 SCRA 653, October 19, 1994.
- [58] 235 SCRA 184, August 5, 1994.
- [59] *People vs. Baydo*, G.R. No. 113799, June 17, 1997, citing *People vs. Halili*, 245 SCRA 340, 352, June 27, 1995.
- [60] Appellee's Brief, p. 30.
- [61] *Ibid.*, p. 32.
- [62] Art. 248, in relation to Arts. 51 & 61, no. 2, of the Revised Penal Code.
- [63] In crimes of rape and those resulting in the death of the victim.
- [64] *People vs. Caballes*, G.R. Nos. 102723-24, June 19, 1997. See also pertinent articles in the Civil Code on damages, particularly Arts. 2206, 2217, 2219 & 2230.

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