

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISA ABDUL, MINYA ABDUL, MALDIS ABDUL, INGGAT DOE, AND JOWEN APPANG, ACCUSED, MINYA ABDUL, ACCUSED-APPELLANT.

G.R. No. 128074. July 13, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision[1] of the Regional Trial Court (RTC) of Basilan, Branch 2, dated July 1, 1996, finding the accused-appellant Minya Abdul guilty beyond reasonable doubt of the crime of Robbery with Double Homicide and Triple Frustrated Homicide in Criminal Case No. 1445-51.

The five accused, including appellant Minya Abdul, were charged with the crime of Robbery with Double Homicide and Triple Frustrated Homicide in an information[2] that reads:

"That on or about the 19th day of August, 1988, and within the jurisdiction of this Honorable Court, viz., at Langil Island, Municipality of Tuburan, Province of Basilan, Philippines, the above-named accused, armed with assorted high powered firearms, conspiring and confederating together, aiding and assisting one with the other, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot at the group of persons composed of Abraham Annudin, Annih Tanjing, Abdulbaser Tanjiri, Idil Sahirul and Suri Jannuh with their firearms, thereby inflicting gunshot wounds upon their bodies which caused the death of Abraham Annudin and Annih Tanjing while the three other companions were mortally wounded. That, taking advantage that the two were mortally wounded, the said accused, took, stole and carried away two (2) M-14 rifles valued at P60,000.00; One (1) M-203 grenade launcher valued at P40,000.00; and One (1) wrist watch and jewelries valued at P5,000.00, or the total amount of P105,000.00, Philippine currency, all belonging to the victims.

Contrary to law."

On January 9, 1995, accused-appellant Minya Abdul was arraigned, and he entered a plea of not guilty to the crime charged.[3] His co-accused Isa Abdul, Minya Abdul, Maldis Abdul, Inggat Doe and Jowen Appang are still at large.

The following are the facts as summarized by the lower court:

"1. That about 5:00 o'clock in the afternoon of August 19, 1988, Minya Abdul, Isa Abdul, Maldis Abdul, Inggat Doe and Jowen Appang, went to Sibago Island, Tuburan, and invited Sahdiya Tanjing, Jubaira Tanjing, Ani Tanjing, Abraham Annudin, Suri Jannuh, Abdulbaser Tanjiri and Idil Sahirul to go with them to Langil also at Tuburan Municipality, Province of Basilan for a luncheon (salo-salo); that these aforementioned persons went with these group of persons because they were friends. And they do not have any inkling in their minds that these five (5) persons have sinister plan against their lives and properties.

2. That while they were at Langil at the store of Hadji Salidon, Minya Abdul and Isa Abdul offered to Ani Tanjing and Abraham Anuddin soft drinks (coke) and biscuits.

3. That while these Ani Tanjing and Abraham Anuddin were drinking the soft drinks, Minya Abdul got the M16 armalite of Ani Tanjing which the latter was carrying, at that time and with the said rifle fired at Ani Tanjing resulting in the latter's instant death; and at the same time Isa Abdul also grabbed the M16 rifle of Abraham Anuddin which the latter was also carrying at that time and with that same armalite, isa Abdul fired at Abraham Anuddin which also resulted in the latter instant death. And Jowen Appang also grabbed the M79 rifle of Idil Sahirul which he also used in firing toward Idil Sahirul and Abdulbaser Tanjiri.

4. That these accused having already armed themselves fired their guns which they took from Ani Tanjing, Abraham Anuddin and from Idil Sahirul, toward Abdulbaser Tanjiri, Suri Jannuh and Idil Sahirul who were already running away when they saw Minya Abdul and Isa Abdul shoot and killed Ani Tanjing and Abraham Anuddin.

5. That after killing Ani Tanjing and Abraham Anuddin, Minya Abdul and Isa Abdul took the necklace of Abraham Anuddin and the wrist watch of Ani Tanjing. And with the three (3) firearms, that of Ani Tanjing, Abraham Anuddin and Idil Sahirul, which these accused got from these victims, the accused left the scene of the shooting."[4]

On July 1, 1996, the lower court rendered its decision finding the accused, Minya Abdul, guilty beyond reasonable doubt of the crime of Robbery with double homicide and triple frustrated homicide, the dispositive portion of which reads:

"WHEREFORE, premises considered, this Court finds the accused, MINYA ABDUL, GUILTY beyond reasonable doubt as principal for the commission of the crime of Robbery with Double Homicide and Triple Frustrated Homicide as defined and penalized under paragraph 1 of Art. 294 of the Revised Penal Code.

And since the crime was committed with the attendance of the aggravating circumstances of evident premeditation, treachery and by a band without any mitigating to offset any of them, hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA.

And to pay the heirs of Ani Tanjing and Abraham Anuddin the sum of P150,000.00 which was the total value of the three (3) firearms, One (1) gold necklace and One (1) wrist watch taken by the accused from their victims. And another sum of P500,000.00 as moral and exemplary damages.

With respect to the case against his co-accused namely: Isa Abdul, Maldis Abdul, Inggat Doe and Jowen Appang, who are still at large, the case against them is hereby held pending due to non-arrest.

But considering the uncertainty as to when they could be arrested, then the record of this case is hereby ordered to the archive unless of course when the accused shall interposed an appeal in which case the same shall be subject to the appellate court where the appeal is directed. However, the alias warrant for the arrest of the aforementioned four (4) accused is hereby issued.

The Provincial warden of the Province of Basilan where the accused is presently detained is hereby directed to bring the person of MINYA ABDUL to San Ramon Penal Colony at San Ramon, Zamboanga City, for further detention and disposition.

IT IS SO ORDERED."[5]

Hence, this appeal where the accused-appellant assigns the following errors:

- THE REGIONAL TRIAL COURT ERRED IN CONVICTING THE ACCUSED BASED SOLELY ON THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE UTTERLY UNRELIABLE AND REplete WITH INCONSISTENCIES.
- THE PROSECUTION FAILED TO ESTABLISH THE FACT OF DEATH OF THE DECEASED VICTIMS AND THE CERTAINTY OF THE INJURIES SUSTAINED BY THE OTHER VICTIMS.[6]

Accused-appellant raised the defense of denial and alibi.

He denies that he, together with his co-accused Isa Abdul, Maldis Abdul, Inggat Doe and Jowen Appang shot and killed Abraham Anuddin and Annih Tanjing and that they shot and wounded Abdulbaser Tanjiri, Idil Sahirul and Asuri Jannuh. He also denies stealing the two (2) M14 rifles, the M203 grenade launcher, the watch and the jewelry belonging to the victims. In fact, he does not know Abraham Anuddin, Annih Tanjing and Idil Sahirul. He claims that on August 19, 1988, he was at the house of one Param in the Camlian family compound in Sta. Catalina, Zamboanga City. Accused-appellant also argues that he cannot be convicted of the crime charged since the fact of death was not conclusively proven. He contends that the prosecution failed to establish the fact of death of the deceased since no death certificate or testimony of an Imam was presented in court. In addition, he argues that the lower court should not have relied on the testimonies of the prosecution witnesses since they were inconsistent and not credible.[7]

The issues on appeal are whether the accused-appellant participated in the commission of the crime which occurred on August 19, 1988 at Langil Island and whether the prosecution has established the fact of death and injuries of the victims beyond a reasonable doubt.

We rule affirmatively.

The defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[8] A positive identification of the accused made by an eyewitness prevails over such a defense.[9] In the present case, accused-appellant was positively identified by two eyewitnesses who were among those present when the incident occurred, Sahdiya Tanjing and Asuri Jannuh.

Sahdiya Tanjing's testimony is clear and straightforward. At about five o'clock in the afternoon of August 19, 1988, she was at Langil Island, Tuburan, with the group of Sahdiya Tanjing, Jubaira Tanjing, Annih Tanjing, Abraham Annudin, Asuri Jannuh, Abdulbaser Tanjiri and Idil Sahirul upon the invitation of Minya Abdul, Isa Abdul, Maldis Abdul, Inggat Doe and Jowen Appang when she witnessed the shooting:

"FISCAL LEGASPI TO SAHDIYA TANJING:

Q. What were your companions doing in a store at Langil Island?

A. We were invited by them for a picnic and to buy crabs.

Q. Who invited your group to go to Langil Island?

A. Isa, sir.

Q. What is the family name?

A. Isa Abdul.

Q. Does he has any other companions?

A. Minya Abdul, sir.

Q. Who else?

A.

Maldis Abdul, Inggat Doe and Jowen Appang.

Q. Now, they invited you at Langil, Tuburan. What did they bring with them?

A. They sent a word in the morning saying that we were going to buy crabs and ordering us to come at 3:00 o'clock in the afternoon.

Q.

Did you arrive there at 3:00 o'clock?

A. Yes, sir, while we were already there, they borrowed the firearm for testing and thereafter, Minya shot Abraham.

Q. Who borrowed the firearm?

A. Minya and Isa, sir.

Q. And from whom did they borrow the firearm?

A. From the late Abraham.

Q. And after borrowing the firearm from Abraham, what did this Isa or Minya Abdul do with the firearm?

A. After borrowing the firearms, saying that they will test it and then he shot Abraham, hitting on the side and fired at his head and smashed with a stone.

Q. What about the rest of the group of Isa Abdul, what did they do?

A. I do not anymore know, sir, because we ran towards the other side of the island and then we requested to ferry us in going home.

Q. Did you see this Isa Abdul shot Abraham Anuddin?

A. I saw, sir. As a matter of fact, five (5) of them shot at him and there was also a person who fired upon from a house but I do not know who is that person.

Q. What about this Ani Tanjing, who shot him?

A. Isa and Maldis, sir.

Q. Did you see this Isa and Maldis shot Ani Tanjing?

A. Yes, sir, I was there standing, sir.

Q. After shooting this Abraham Anuddin and Ani Tanjing by Isa Abdul, Minya Abdul, and Maldis Abdul, what else did they do?

ATTY. PRINCIPE:

We object, your Honor, because the witness did not testify as to the shooting of the three other respondents, your Honor.

COURT:

Sustained.

Q.

What weapon did Isa Abdul and Maldis Abdul use in shooting Ani Tanjing?

A. The same firearms used in firing Abraham.

Q. What kind of firearm?

A.

M14.[10]

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Q. Why do you know?

A. They were the ones who borrowed the firearms, sir.

Q. So the ones who borrowed the firearms from Abraham was only Isa Abdul?

A. Minya Abdul, sir.

Q. You made mention in the direct examination that you only saw Minya Abdul taking the necklace from the neck of Abraham Anuddin?

A. Yes, sir, but the ones who fired personally was he.

Q. Who he?

A. It was Minya, sir, who fired upon him and after his death, he got his necklace.

Q. Who was him?

A. It was Minya who fired at Abraham.

Q. So it was not Isa Abdul and Maldis Abdul who fired at Abraham?

A. They were aiding one with the other, your Honor.

Q.

You made mention that you have an affidavit signed before the Clerk of Court. In your Affidavit, you made mention that, 'Isa Abdul told Abraham Anuddin if he could see and touched and test his M-14 rifle'?

A. Yes, sir.

Q. And without hesitation, Abraham Anuddin with complete trust and confidence handled over his M-14 rifle?

A. Yes, sir.

Q. And Isa Abdul, later sprayed Abraham Anuddin and Ani Tanjing with said rifle?

A. Yes, sir.

Q. And you only saw the other respondents getting the firearms as well as the necklace and the wristwatch?

A. Yes, sir.

Q. And you only knew this because after Isa Abdul and Maldis Abdul shot Abraham Anuddin and Ani Tanjing, you ran away?

A. Yes, sir.

Q. You made mentioned here again that the jewelries, the watch, M203 rifle, M79 and M14 rifles, the value of which is P105,000.00. Why do you know that?

A. Because that is the amount that was used in purchasing it, sir.

Q. Were you present when they purchased these firearms?

A. It was me, your Honor, who bought the necklace.

Q. But not the firearms?

A. Yes, sir.[11]

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Q. How long will it take you from Sibago to Langil Island?

A. About twenty (20) minutes, your Honor.

Q. What time did the incident occurred?

A. 5:30.

Q. So it was yet clear?

A. Yes, sir.

Q. And because it is clear, you are very positive that Isa Abdul and Maldis Abdul was the one who shot Abraham Anuddin and Ani Tanjing?

A. It was Minya Abdul who fired at Abraham and Isa Abdul who fired at Ani Tanjing.

Q. So you are inconsistent with your affidavit that it was Isa Abdul who fired at Abraham Anuddin?

A. They were aided and assisting one with the other, the three (3) brothers, sir.[12]

On redirect examination:

FISCAL LEGASPI TO SAHDIYA TANJING:

Q.

You testified in the direct examination that it was Isa Abdul and Maldis Abdul who shot this Abraham Anuddin, and in the cross-examination, you said that it was Minya Abdul who shot Abraham Anuddin, is that correct?

A.

The three (3) of them brothers were the ones who shot, sir. Isa, Minya and Maldis, all surnamed Abdul.[13]

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COURT:

Q. Who borrowed the firearms?

A. Isa.

Q. From whom did he borrow the firearms?

A. From Ani.

Q. What kind of firearms did Isa borrow from Ani?

A. M14.

Q. And what did Isa do with the firearms?

A. After borrowing the firearms, he shot Ani?

Q. Ani was hit? What part of his body was hit?

A. From the left side of his body and then on head.

Q. Ani fell down?

A. Yes, sir.

Q. When Ani fell down, what did Isa do to him?

A. They fired simultaneously at Isa.

Q. When Ani fell down, what did Isa do in the body of Ani?

A. I do not know anymore, your Honor, because I already hide.

Q. Where was Abraham when Isa borrowed the gun of Ani and upon taking hold of the gun, Isa shot Ani?

A. Abraham was just there. And after shooting Ani, he ran and they also shot him and he was hit in the left side of his body.

Q. Who shot Abraham?

A. They, the three (3) brothers but I could not identify as to who among them.

Q. You mean to say that all the three (3) accused were armed at that time?

A. No, sir, only Ani and Abraham who were with firearms. And then they grabbed the firearms of Abraham before shooting them.

Q. What kind of firearms of Abraham?

A. M14

Q. And according to you, somebody grabbed the firearms of Abraham. Who was the person who grabbed the firearms of Abraham?

A. Maldis, Minya and Isa.

Q. You mean to say, three (3) of them who got the firearms of Abraham?

A. Yes, sir.

Q. You actually saw them?

A. Yes, your Honor.

Q. When was the grabbing of the firearms took place, after Isa had shot Ani or before Isa shot Ani?

A. When Ani already fell down, your Honor.

Q. When Isa shot Ani, how far was Abraham to Isa and Ani?

A. A little bit farther, your Honor, approximately from here to that corner.

COURT:

Around ten (10) meters.

Q. Which corner, here or there?

A. The corner near the door, your Honor.

COURT:

Ten meters.

Q. When Isa shot Ani, do you know what did Abraham do?

A. Abraham ran and then they fired at him (Abraham).

Q. And when Abraham ran from the scene of the crime, was he carrying any firearms?

A. He took it, sir, and then they grabbed his firearms.

Q. How far was Abraham able to run after the accused overtake him and took over his firearms?

A. It was just very near, your Honor. He was able to run.

Q. Abraham was not able to fire his firearms?

A. None, sir.[14]"

Sahdiya's testimony was corroborated by Asuri Jannuh, also an eyewitness, to wit:

"FISCAL LEGASPI TO ASURI JANNUH:

Q. When you arrived at the store and the group of Isa Abdul was there, was there any conversation by your group and the group of Isa Abdul?

A. Yes, sir.

Q. Now, what was that conversation?

A. The borrowing of the firearms.

Q. Who borrowed the firearms?

A. Minya.

Q. From whom did he borrow the firearms?

A. From Ani.

Q. You are referring to Ani Tanjing?

A. Yes, sir.

COURT

Q. What kind of firearms?

A. M14.

FISCAL LEGASPI

Q. Now, did this Ani Tanjing acceded to the request that his firearms M14 be borrowed by Minya Abdul?

A. Yes, sir.

Q. And what was the purpose of Minya Abdul in borrowing the firearms of Ani Tanjing?

ATTY. PRINCIPE:

Objection, incompetent, your honor.

COURT:

If he knows, let the witness answer.

A. He borrowed the firearms and shot immediately Ani.

Q. What happens to Ani Tanjing after he was shot by Minya Abdul?

A. He died.

Q. Now, after Minya Abdul shot this Ani Tanjing and he died, what else this Minya Abdul and his group do to your group?

A. He got the watch.

COURT:

Q. Whose watch?

A. That of Ani, your honor.

FISCAL LEGASPI:

Q. Who got the watch?

A. Minya.

Q. Did you see this Minya Abdul got the watch of Ani Tanjing?

A. Yes, sir.

Q. Now, after the shooting of Ani Tanjing, what else did this Minya Abdul and his group do to the rest of your group, if any?

A. None, sir, after firing at him, he got the watch.

Q. What about the firearms of Ani Tanjing, M14, what happened to that?

A. He got it.

Q. Now, what happened to this Abraham Anuddin after the shooting incident?

A. He was fired upon by Isa.

Q. What happens after Isa Abdul fired at Abraham Anuddin, what happened to Abraham Anuddin?

A. He died."[15]

Asuri Jannuh further stated that after Annih and Abraham were killed, accused-appellant and his co-accused shot at the remaining members of their group:

"FISCAL LEGASPI:

Q. Now, where did this Inggat get the firearm, which he shot at Abdulbaser Tanjiri?

A. From behind of Abdulbaser.

Q.

You have your companion Sahirul, what did he do on the shooting of Ani Tanjing and Abraham Anuddin and the wounding of Abdulbaser Tanjiri, what did this Iddil Sahirul do?

A. He was fired upon by Jowen.

Q. You are referring to this Jowen Appang?

A. Yes, sir.

Q. Whose gun did he use in shooting this Iddil Sahirul?

A. The firearm of Iddil Sahirul, which he took.

FISCAL LEGASPI:

Q.

You said that there are only three (3) firearms in your group and the owners were Abraham Anuddin, Ani Tanjing and Abdulbaser Tanjiri. These are two (2) M14 and one (1) M-79. Now, where did this Jowen Appang got the firearm that he used to shoot Iddil Sahirul?

A. From behind of Abraham.

Q. Now, you said that this Abdulbaser Tanjiri was shot by Inggat and this Iddil Sahirul was shot by Jowen Appang. Now, did they die in the shooting?

A. They were only wounded.

Q. In the case of Abdulbaser Tanjiri that was shot by Inggat, what part of his body was hit?

A. On his right hand.

Q. Where else aside from his hand?

A. On his arm.

Q. What about this Iddil Sahirul, where was he hit?

A. On his nose bridge.

Q. Did he suffer other wounds aside from his nostril?

A. None.

FISCAL LEGASPI:

Q. What about you, what did you do when there was firing or shooting?

A. They fired upon us.

Q. Who shoot you?

A. Minya.

Q. But what kind of weapon did he use?

A. M14.

Q. And where were you hit?

A. On the right forearm and at the back.

Q. At your back. Will you please show that to this Court?

A.

(Witness showing his scar at the back on the left side, which is about 3 inches in length. The bigger scar is about 1 ½ inch and the small scar is ½ inch and in the arm it is an even scar, the length is approximately about 5 or 6 inches and the width is about 2 ½ inches and it is sutured.)

Q. What other injuries did you suffer?

A. And also on the right thigh, which measures about.., or it is elongated scar, the length is about 2 inches and the width is about an inch.

FISCAL LEGASPI:

Q. And are there other injuries?

A. No more.

Q. After you suffered all those injuries, did you consult a physician?

A. Yes, sir.

Q. Do you know the name of the doctor?

A. No.

COURT:

Q. Where were you treated?

A. At Pagadian.

Q. Why do you have to go to Pagadian since the incident happened at Langil, Tuburan?

A. We were afraid of them.

Q. To whom are you afraid of?

A. Minya Abdul, your Honor.

Q. Why were you afraid of them?

A. They were trying to kill us."[16]

The identity of accused-appellant as a participant in the shooting was indubitably established. He was positively identified in court by the two eyewitnesses:

"FISCAL LEGASPI TO SAHDIYA TANJING:

Q. If he is in Court, you will be able to identify him?

A. Yes, sir.

Q. Please point.

A. He is not here, only Minya is present.

Q. What about Minya Abdul?

A.

(Witness pointed at the person who is seated in the prisoner's bench and who answered by the name of Minya, but his real name is not Minya.)"[17]

While Asuri Jannuh testified that:

"FISCAL LEGASPI TO ASURI JANNUH:

Q. Do you know all these persons you mentioned? Do you know them personally?

A. Yes, sir.

Q. Now, if they are in court, you will be able to identify them?

A. Yes, sir.

Q. Now, please identify who is that person sitting at the left side, what is his name?

A. Minya Abdul, sir. (Witness pointed to the person seated at the prisoner's bench, who answered by the name of Minya Abdul.)

Q. Are you sure of that?

A. Yes, sir."[18]

The denial of accused-appellant cannot prevail over the positive declarations of the prosecution witnesses that he participated in the commission of the crime. Like the defense of alibi, a denial is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that the accused-appellant was at the scene of the incident and was one of the victim's assailants and perpetrators of the crime.[19]

More important, it was not alleged nor proven that the witnesses were motivated to falsely implicate the accused in the commission of such a serious crime. The absence of evidence showing any improper motive on the part of the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive exists, and that their testimonies are worthy of full faith and credit.[20] Jubaira Tanjing's testimony that her family and the family of the accused had no misunderstanding prior to the incident[21] is un rebutted and bolsters the fact that the prosecution witnesses had no motive to falsely implicate the accused-appellant in the crime.

Finally, we reject accused-appellant's claim that the prosecution failed to prove the fact of death of the victims for the reason that no death certificate or testimony of an imam or Muslim priest was presented in court to prove the fact of death of Annih and Abraham. The absence of a death or burial certificate does not negate the fact of the killing[22] since corpus delicti can be proved by testimonial evidence[23] Corpus Delicti is the body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man or the charred remains of a house burned down.[24] In a derivative sense, it means the substantial fact that a crime has been committed and is made up of two elements: a.) that a certain result has been proved; and b.) that some person is criminally responsible for the act.[25] In the present case, the eyewitnesses established the fact of death of the victims at the hands of the three brothers Isa Abdul, Minya Abdul and Maldis Abdul:

"COURT TO SAHDIYA TANJING:

Q. After the three (3) accused shot Abraham, what did the three (3) accused do with the body of Abraham?

A. Minya got the necklace then thereafter, smashed his head with a stone.

Q. Who smashed the head of Abraham with a stone?

A. The group of Isa and Minya. They are assisting one with the other.

Q. And at that time, these three (3) accused were shooting Abraham and Ani and smashing their heads with stones, you were at the kitchen of the store of Saridul?

A. I was already on the ground, your Honor.

COURT:

Q. How did you reach the ground?

A. Passing through the other side, sir.

Q. What happened to the boy of Abraham and Ani, after they were killed by the three (3) accused?

A. Their faces could no longer be identified because of the result of the smashing of the wound, sir."[26]

The alleged inconsistencies pointed out by the accused-appellant in his brief, e.g. 1.) that the testimony of Jubaira Tanjing to the effect that Isa Abdul borrowed the M14 of Annih Tanjing and shot the latter while Minya Abdul grabbed the firearm of Abraham Anuddin and also shot the latter is contrary to the testimony of Sahdiya Tanjing who claimed that it was Isa Abdul and Maldis Abdul who shot Abraham Anuddin and Annih Tanjing respectively; 2.) that Sahdiya Tanjing and Jubaira Tanjing failed to mention the name of Minya Abdul in their respective affidavits but stated that Minya participated in the commission of the crime in their respective testimonies; and 3.) that Sahdiya Tanjing testified on direct examination that Halima Tanjing was with them at Langil Island but stated during her cross-examination that said Halima was not with them are not sufficient to overturn the finding of guilt of the accused-appellant.

First of all, a conspiracy existed between the accused-appellant, Isa Abdul, Maldis Abdul, Jowen Appang, and Inggat Doe. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[27] It need not be proved by direct evidence but may be inferred from the acts of the accused[28]; it may be deduced from the mode and manner in which the offense was perpetrated when such point to a joint purpose and design, concerted action and community of interest.[29] Evidence shows that the accused-appellant, together with Isa Abdul, Maldis Abdul, Jowen Appang, and Inggat Doe all acted in concert, one performing one part and the other performing another part so as to execute the crime of robbery with homicide. Annih Tanjing was deceived into loaning his gun for the purpose of testing and examination. Once he was disarmed, he was immediately shot and killed. Almost simultaneously, Abraham Anuddin's and Abdulbaser Tanjiri's guns were grabbed from them and they were also shot at, killing Abraham and wounding Abdulbaser as a result. When the other members of Annih and Abraham's group ran, the accused-appellant and his co-accused shot at them. Thereafter, they smashed the faces of Annih and Abraham to the point that their faces could no longer be recognized. Then, the accused-appellant and his co-accused left and brought with them the firearms, a watch and a necklace which they took from the dead bodies. The chronology of events coupled with the simultaneous execution of disarming the victims clearly shows that there was a unity of purpose and unity in the execution of the unlawful acts to enable them to commit the crime of robbery with homicide. Moreover, Sahdiya Tanjing emphasized that the accused-appellant together with Isa and Maldis Abdul aided each other.[30] It is therefore irrelevant as to who amongst them took Annih Tanjing's gun or Abraham Anuddin's gun or as to who shot Annih Tanjing or Abraham Anuddin since in a conspiracy, the act of one is the act of all.[31]

Secondly, the fact that Sahdiya Tanjing and Jubaira Tanjing failed to mention Minya's name in their affidavits

will not affect their credibility since affidavits are oftentimes incomplete and are generally inferior to the testimony of the witness in open court.[32]

Finally, the presence or absence of Halima Tanjing at the scene of the crime is irrelevant as this fact is not at issue in the present case. Halima Tanjing is not an accused or a victim, and was not a presented witness, whose presence or absence at the scene of the crime would be material for purposes of determining the guilt or innocence of accused-appellant.

This Court has ruled on countless occasions that the trial court is in the best position to determine facts and to assess the credibility of witnesses as it is in a unique position to observe the witnesses' deportment while testifying which opportunity the appellate court is denied on appeal; unless the trial court has failed to appreciate certain facts and circumstances which would materially affect the result of the case[33], this Court will respect the findings and conclusions of the trial court provided that they are supported by substantial evidence on record.[34] After a careful examination of the records, we find no reason to disturb the findings of the trial court.

We come to the imposition of the proper penalty. The lower court erred in convicting the accused of the crime of robbery with double homicide and triple frustrated homicide. There is no crime of robbery with multiple homicide under the Revised Penal Code.[35] The crime is still robbery with homicide notwithstanding the number of homicides committed on the occasion of a robbery[36] since the homicides or murders and physical injuries committed on or on occasion or by reason of the robbery are merged in the composite crime of "robbery with homicide"[37]. The same crime is committed even if rape and physical injuries are also committed on the occasion of said crime.[38] However, when two or more persons are killed on the occasion of the robbery, the additional killings should be appreciated as an aggravating circumstance to avoid the anomalous situation where, from the standpoint of the gravity of the offense, robbery with one killing would be on the same level as robbery with multiple killings.[39]

The court a quo appreciated evident premeditation as an aggravating circumstance. For evident premeditation to be appreciated, the following must be proved:

- 1.) the time when the accused determined to commit the crime;
- 2.) an act manifestly indicating that the accused has clung to his determination; and
- 3.) sufficient time between such determination and execution to allow him to reflect upon the consequences of his act.[40]

Absent any of these requisites, evident premeditation cannot be appreciated.[41]

We are not convinced that evident premeditation was sufficiently proven. The prosecution's evidence did not clearly establish beyond reasonable doubt two of the three requisites of evident premeditation, viz., a.) the time when Abdul and his co-accused determined to commit the crime; and b.) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act. Although there are badges of premeditation in the present case, we can only speculate as to the time elements required to appreciate evident premeditation. Evident premeditation must be established by clear and positive evidence and cannot be inferred nor presumed no matter how logical and probable such inferences or presumptions might be.[42]

The lower court also appreciated treachery as an aggravating circumstance. 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 specifically to insure its execution without risk to himself arising from the defense which the offended party might make.[43] Treachery can be appreciated as an aggravating circumstance in crimes complexed with crimes against persons[44] provided that the two elements of treachery concur: (1) the

employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution is deliberately or consciously adopted.[45] As can be seen from the facts of the case, the mode of attack was sudden and unexpected. The accused-appellant and his cohorts, relying on the friendship they had with their victims, deceived them into voluntarily giving their firearms to the accused-appellant for the purpose of testing and examining said firearms. Thereafter, accused-appellant together with Isa Abdul, suddenly, without warning, shot their victims who were not aware of the danger against them and were not in a position to defend themselves. The court a quo therefore correctly found the presence of treachery as an aggravating circumstance.

The court a quo also found the aggravating circumstance of band attendant in the present case. The court stated that:

"It is true that before the inception of the shooting and the robbing only Inggat Doe and Jowen Appang were armed with garand rifle. And it was only when Minya Abdul was able to get the armalite of Ani Tanjing and Isa Abdul was able to get the armalite rifle of Abraham Anuddin and Maldis Abdul was able to grab the M79 of Idil Sahirul, that the shooting took place and after the shooting, they took the personal belongings of the victims; that the crime was consummated. But however, this does not deviate from the facts that the five (5) accused have armed themselves before they shot and killed their intended victims. Without doubt, therefore, this crime was committed by a band."[46]

We do not agree with the court's reasoning. An offense is deemed committed by a band when more than three armed malefactors shall have acted together in the commission thereof.[47] This presupposes that from the onset four of the malefactors were already armed in order to facilitate the commission of the crime. In the present case, only two of the five malefactors were armed at the start of the commission of the offense. At any rate, even assuming that the aggravating circumstance of band was attendant in the commission of the crime, it is absorbed by treachery.[48]

The crime of robbery with homicide is a special complex crime punishable under Article 294 of the Revised Penal Code with reclusion perpetua to death. Considering the presence of treachery and the additional killing as aggravating circumstances, the maximum penalty of death would be imposable under Article 63 of the revised Penal Code. However, since the crime was committed on August 19, 1988 which is prior to the enactment of Republic Act No. 7659 entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes" which reimposed the death penalty, the imposable penalty is reclusion perpetua.[49] Reclusion perpetua is a single indivisible penalty which shall be imposed regardless of the attending aggravating or mitigating circumstances.[50]

The lower court also ordered the accused-appellant to pay the heirs of the late Annih Tanjing and Abraham Anuddin the sums of P150,000.00 representing the three firearms, the necklace and the wristwatch taken from the victims and P500,000.00 as moral and exemplary damages.[51]

We delete the award of moral damages to the heirs of Annih Tanjing and Abraham Anuddin in the absence of proof[52] of mental or physical suffering on the part of their heirs but order the accused-appellant to pay the heirs of Annih Tanjing and Abraham Anuddin the amount of P50,000.00 each as death indemnity as this is in accord with prevailing jurisprudence.[53] We cannot award actual damages in favor of those who were injured during the shooting in the absence of any proof thereof.

Lastly, we modify the order for the reparation of the stolen guns, wristwatch and necklace. An ordinary witness cannot establish the value of jewelry[54] and the trial court can only take judicial notice of the value of goods which are matters of public knowledge or are capable of unquestionable demonstration[55] The value of guns or

jewelry is not a matter of public knowledge nor is it capable of unquestionable demonstration and in the absence of receipts or any other competent evidence besides the self-serving valuation made by the prosecution witnesses, we cannot award the reparation for the stolen guns and jewelry.

WHEREFORE, the appealed decision of the Regional Trial Court is hereby MODIFIED, and the accused-appellant is found GUILTY OF ROBBERY WITH HOMICIDE and is sentenced to RECLUSION PERPETUA. Accused-appellant is further ordered to pay the heirs of Annih Tanjing and Abraham Anuddin P50,000.00 each as death indemnity.

Upon finality of this decision, let certified true copies thereof be furnished to the Chief, Philippine National Police, for possible appropriate action considering the nature of the firearms subject of the present case.

SO ORDERED.

Vitug, Panganiban, and Purisima, JJ., concur.

Romero, J., abroad on official business leave.

[1] Penned by Judge Salvador A. Memoracion, Rollo, pp. 17-36.

[2] Record, p. 1.

[3] Record, p. 20.

[4] Rollo, at p. 28.

[5] Rollo, at pp. 35-36.

[6] Appellant's Brief, p. 2; Rollo, at p. 54.

[7] Appellant's Brief, at pp. 2-12.

[8] People vs. Realin, G.R. No. 126051, January 21, 1999 at p. 13.

[9] People vs. Nialda, G.R. No. 115946, April 24, 1998 at p. 11; People vs. Realin, Supra.

[10] T.S.N., January 24, 1995 at pp. 5-8.

[11] T.S.N., January 24, 1995 at pp. 16-19.

[12] T.S.N., January 24, 1995 at p. 22.

[13] T.S.N., January 24, 1995 at p. 23.

[14] T.S.N., January 24, 1995, at pp. 34-38.

[15] T.S.N., May 31, 1995 at pp. 9-11.

[16] T.S.N., May 31, 1995, at pp. 13-16.

[17] T.S.N., January 24, 1995, at p. 15.

[18] T.S.N., May 31, 1995, pp. 6-7.

[19] People vs. Baniel, 275 SCRA 472 at pp. 483-484 [1997].

[20] People vs. Lapinoso, G.R. No. 122507, February 25, 1999 at p. 14.

- [21] T.S.N., January 25, 1995, at p. 25.
- [22] *People vs. Comendador*, 100 SCRA 155 at p. 171 [1980]; *People vs. Kalim*, 81 Phil 107 at p. 111 [1948].
- [23] *Ibid.*
- [24] *People vs. Cabodoc*, 263 SCRA 187 at 202 [1996]; *People vs. Barlis*, 231 SCRA 426 at p. 442 [1994].
- [25] *Ibid.*
- [26] T.S.N., January 24, 1995, at pp. 38-39.
- [27] Article 8, par. 2, The Revised Penal Code.
- [28] *People vs. Baccay*, G.R. No. 120366, January 16, 1998 at p. 9.
- [29] *People vs. Cara*, 283 SCRA 96 at pp. 105-106 [1997].
- [30] T.S.N., January 24, 1995, at p. 22.
- [31] *People vs. Enriquez*, 281 SCRA 103 at p. 121 [1997].
- [32] *People vs. Banela*, *Supra*, at p. 7.
- [33] *People vs. Batidor*, G.R. No. 126027, February 18, 1999 at p. 10.
- [34] *People vs. Mahinay*, G.R. No. 122485, February 1, 1999 at p. 16; *People vs. Banela*, G.R. No. 124973, January 18, 1999 at p. 5.
- [35] *People vs. Pulusan*, G.R. No. 110037, May 21, 1998 at p. 21.
- [36] *Ibid.*
- [37] *People vs. Mateo, Jr.*, 179 SCRA 303 at p. 323 [1989]; *People vs. Pedroso*, 115 SCRA 599 at p. 609 [1982].
- [38] *Ibid.*
- [39] *People vs. Pedroso*, *Supra*.
- [40] *People vs. Bahenting*, G.R. No. 127659, February 24, 1999, p. 8; *People vs. Realin*, G.R. No. 126051, January 21, 1999, p. 14.
- [41] *People vs. Bahenting*, *Supra*.
- [42] *People vs. Villanueva*, 265 SCRA 216 at p. 226 [1996].
- [43] Revised Penal Code, Article 14 (16); *People vs. Tavas*, G.R. No. 123969, February 11, 1999 at p. 13.
- [44] Ramon C. Aquino. *The Revised Penal Code*, Vol. III, 1997 ed. at pp. 124-125 citing cases.
- [45] *People vs. Tavas*, *Supra* at p. 12; *People vs. Dorado*, G.R. No. 122248, February 11, 1999, at p. 9.
- [46] Decision, pp. 18-19.
- [47] Article 14 (6), Revised Penal Code.
- [48] *People vs. Tabag*, 268 SCRA 115 at p. 132 [1997].
- [49] *People vs. Pulusan*, *Supra* at p. 22.

[50] Article 63, Revised Penal Code.

[51] Decision, p. 19.

[52] People vs. Baccay, G.R. No. 120366, January 16, 1998 at p. 11.

[53] People vs. Verde, G.R. No. 119077, February 10, 1999 at p. 17.

[54] Galian vs. State Assurance Co., 29 PHIL 413 at p. 418 [1915].

[55] People vs. Martinez, 274 SCRA 259 at pp. 272-273 [1997].

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