

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO ABINA AND ROMEO ABINA, DEFENDANT-APPELLANTS.***G.R. No. 129891. October 27, 1998*

Ponente: VITUG, J.

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Two accused brothers, Alejandro and Romeo Abina, were convicted of the crime of murder in a decision, dated 06 February 1990, rendered by the Regional Trial Court of Palo, Leyte, Branch 8, and each indictee was sentenced to suffer the indeterminate penalty of imprisonment from ten (10) years and one (1) day of prison mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, for the killing of Eulalio Peliño (Peleño). The convicted accused were also ordered to indemnify the heirs of the victim in the amount of thirty thousand pesos (P30,000.00), to reimburse the sum of ten thousand pesos (P10,000.00) incurred for the victim's interment, and to pay five thousand pesos (P5,000.00) by way of attorney's fees.

The Abinas both appealed to the Court of Appeals. In its decision, promulgated on 21 May 1997, the appellate court affirmed the decision of the trial court with the modification that appellants should be held to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of fifty thousand pesos (P50,000.00). In view of the penalty that it had considered to be appropriate, the Court of Appeals refrained from entering judgment and forthwith certified the case to this Court for review pursuant to Section 13, Rule 124, of the 1985 Rules on Criminal Procedure.[1]

The two appellants, along with Rodolfo Escalante, Rodrigo Caruso (Caroso) and Natividad Abina who remained at large, were charged with the crime of murder before the trial court below in an information that read:

"That on or about the 24th day of June, 1986, in Barrio Rizal, Municipality of Dulag, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, and taking advantage of superior strength, did then and there wilfully and feloniously, and with the use of deadly weapons, attack and assault Eulalio Peliño, inflicting upon the latter a stab wound on the `outer, upper quadrant, right, anterior chest, measuring 7x3x12 cms . . . directed downwards and medially, cutting the upper middle lobe of the right lung', which injury caused the death of the said Eulalio Peliño.

"Act violative of Article 248 of the Revised Penal Code."[2]

When arraigned, both appellants pleaded not guilty to the crime charged.

The 24th of June is the feast day of St. John the Baptist in the Catholic Church calendar and, by tradition, people around Dulag, Leyte, would flock to the Barangay Rizal beach for commemorating the event.

And so it was on the 24th of June 1986 when the townsfolk congregated at the beach area. Among them was Eulalio Peliño, a Philippine Constabulary soldier, who, at around five o'clock that afternoon, unfortunately met

his untimely death in the hands of Rodrigo Caroso. Alleging conspiracy, the prosecution accused appellants Alejandro Abina and Romeo Abina of having committed murder.

The trial court, in its decision of 06 February 1990, gave a full account of the evidence respectively submitted by the prosecution and by the defense.

"1. Paulito Boco, a farmer and resident of Brgy. Salvacion, Dulag, Leyte, testified that at around 5:00 o'clock in the afternoon of June 24, 1986, while he was at the beach taking a bath he saw Eulalio Peleño stabbed by Rodrigo Caruso of Brgy. Rizal, Dulag, Leyte (p. 3, tsn, Hearing, Sept. 8, 1987). He was hit on the right chest. He could not have been mistaken, because he saw it at a distance of only ten meters away from them. There were other people taking a bath and having drinking spree in the persons of Rodrigo Caruso, Rodolfo Escalante, Romeo Abina and Natividad Abina. When asked, he told the Court that he knew Eulalio Peleño for almost three years already. He was a P.C. soldier. (pp. 4-5, tsn, id).

"2. The second witness for the prosecution is Nicanor Gabrino, a resident of Brgy. Rizal, Dulag, Leyte. Being born in that place, he knew Eulalio Peleño, Alejandro Abina, Romeo Abina since childhood. Sometime on June 24, 1986, at around 5:00 o'clock in the afternoon, he was in the beach with Natividad Abina, Alejandro Abina, Romeo Abina, Rodolfo Escalante, Rodrigo Caruso, Eulalio Peleño, Rufino Pogenio and Marciano Tisado, celebrating the St. John the Baptist Feast Day. They took a bath, danced, sang and drank tuba. Later, he dropped out from the group to dip himself in the sea, staying there for three minutes, more or less. Meanwhile, he heard a gunshot report. Immediately, he ran towards the group to verify the matter. He saw Eulalio Peleño down on the ground facing upwards with Natividad Abina sitting on the right lap and holding the neck of Eulalio Peleño and choking him; Alejandro Abina was stepping on the right hand of Eulalio Peleño, holding a pisao with his right hand while Romeo Abina was kneeling on the left lap of Eulalio Peleño also holding a pisao with his left hand. (pp. 5-6, tsn, id). Also present were Rodrigo Caruso and Rodolfo Escalante. It was the latter who grabbed the armalite from Eulalio Peleño and then he pointed the gun warning anyone in the group, not to go near him. (p. 10, tsn id). At this juncture, Alejandro Abina was still stepping on the right hand of Eulalio Peleño, while Romeo Abina was kneeling on the left lap, holding a pisao with his right hand. While Romeo and Alfredo, both surnamed Abina, were armed, they were stopped by Rufino Pogenio who appealed to them, because they were friends. (p. 8 tsn id). However, this appeal did not stop Rodrigo Caruso from delivering the stabbing blow to Eulalio Peleño hitting him on his right chest. Seeing the latter injured, the group moved and retreated to a distance of three meters, while the prostrate Eulalio Peleño slowly stood up and ran away towards the Brgy. Rizal, but he was chased again by Rodrigo Caruso (p. 9 tsn id). Rodolfo Escalante held the gun of Eulalio Peleño who was chasing Peleño on his way towards the road to Brgy. Rizal. (p. 10 tsn id).

"Witness having seen by Rodrigo Caruso, he ran towards another direction where he caught up with Eulalio Peleño after having ran about fifty arms length. Eulalio Peleño asked him 'Tata canor, you bring me to the hospital.' Lorna Gabrino and Romeo Garcia brought the victim Eulalio Peleño to the hospital. (pp. 11-12 tsn id).

"Witness stated that he could not have missed seeing the incident because he was only four meters away from the stabbing of Eulalio Peleño by Rodrigo Caruso. (p. 12 tsn id).

"On cross examination propounded by the defense counsel, Nicanor Gabrino stated that the victim Eulalio Peleño is his nephew, the latter's mother is his first cousin; that he was originally with the group of Eulalio Peleño; that the latter was not drunk, but he fired his gun three times, not successively, but nobody was hurt. He heard the shots while he was taking a bath in the sea. (p. 14 tsn id); that while Peleño was down, he held on the gun; that he did not hear already the gun shots; that he was afraid to stop the attackers of his nephew because they were all armed; that Rufino Pogenio is a distant relative. (pp. 17-19 tsn id).

"3. Major Angel Cordero, a physician by profession, resident of V & G Subdivision, Tacloban City and the

Chief of the PC/INP, Regional Unit, Camp Secretary Ruperto Kangleon former Camp September 21st Movember was stationed at P.C. Hills, Palo, Leyte since March, 1976. He conducted the necropsy report on the cadaver of the person named Eulalio Peleño on the 25th of June, 1986 (Exhs. 'A,' 'A-1' & 'A-2'; pp. 13-14, rec.; pp. 5-7 tsn, Hearing, March 23, 1986). He testified that the injuries sustained was in the form of a stab wound, an open wound caused by a sharp pointed and sharp edged instrument; the wound is a fatal wound because it injured the lungs. (pp. 7-10 tsn id). More, he stated that the immediate cause of death was shock and hemorrhage due to stab wound (Exhs. 'b', p. 79, rec; Exhs. 'C', 'C-1' & 'C-2' & 'C-3', p. 14, rec; pp. 11-13 tsn id).

"4. Another witness for the prosecution is Romeo Garcia, 23 years old, a farmer, and a resident of Brgy. Rizal, Dulag, Leyte. At around 3:00 o'clock in the afternoon of June 24, 1986, he and his cousins Rogelio Pogenio and Joel Asis were in the beach celebrating the Feast of Saint John the Baptist. (p. 4 tsn id).

"From a distance of twenty meters, he caught sight of Eulalio Peleño with another group in the beach consisting of Alejandro Abina, Rodrigo Caruso, Rodolfo Escalante, Rufino Pogenio, Marciano Pesado and Nicanor Gabrino in a drinking spree. At about 5:00 o'clock in the afternoon, while in the seashore he heard gunshot reports which constrained him to look towards the direction where he heard the same. He saw Natividad Abina on top of Eulalio Peleño who was lying down, face up, holding his armalite. (p. 5 tsn id). Alejandro Abina was stepping on the right arm and on the left knee of Eulalio Peleño. Pacifying them was Rufino Pogenio, Rodrigo Caruso, suddenly approached Eulalio Peleño at the head portion and immediately stabbed, hitting him on the right chest. (p. 7 tsn id). Rodolfo Escalante was on the left side of Eulalio Peleño trying to wrest the armalite from him. Armed with 'pisaos' were Alejandro and Romeo, both surnamed Abina, were prevailed upon by Rufino Pogenio not to stab Eulalio Peleño. At a distance from the incident Nicanor Gabrino shouted 'Tio, do not do that' (p. 8 tsn id). Having been released, Eulalio Peleño slowly went away, but he was chased by Rodrigo Caruso. Nicanor Gabrino followed to pacify them, but Rodolfo Escalante struck the shoulders of Eulalio Peleño with an empty bottle and pointed the wrested armalite at them. (p. 9 tsn id). Later, he ran to Brgy. Rizal, Dulag, Leyte. He saw Eulalio Peleño being carried by Nicanor Gabrino. He looked for a motorcycle to ferry Eulalio Peleño to the Provincial Hospital in Palo, Leyte. He died upon arrival in the hospital. (pp. 10-11 tsn id).

"Elicited from him on cross examination questions by the defense counsel was that when he heard three gunshots, he looked at the group of Eulalio Peleño, and saw that he was being maltreated by the Abina brothers and other members of the group; that he did not see Serapia Abina, the mother of the Abina brothers in the beach; that he did not know that she lost consciousness, because of the gunshot reports; that the latter stopped firing when Rodolfo Escalante wrested the armalite; that Peleño was already wounded before he ran away. (pp. 5-7 tsn id). More, he admitted that while Rodrigo Caruso was stabbing Eulalio Peleño, Rodolfo Escalante was grabbing the armalite. It was only when he saw the armalite taken from Eulalio Peleño that he ran away and proceeded to the barrio. (p. 8 tsn id). He stated further that his affidavit was executed before then Fiscal Dacuyan after the other affiants have submitted their sworn statements he has never been called at the INP Station of Dulag, Leyte. (p. 9 tsn id).

"5. The last witness Vivancia Peleño, 52 years old, married, housekeeper and a resident of Brgy. Salvacion, Dulag, Leyte, testified that Eulalio Peleño is her son. He died on June 24, 1986 of stabbed wounds inflicted by Rodrigo Caruso at around 5:00 o'clock in the afternoon (p. 3 tsn, Hearing, Aug. 23, 1988). She followed her son at the Provincial Hospital already dead. It is observed that while she was testifying she was crying, and stated further that seeing her son already dead, she lost her consciousness; that it was the first time she lost a son of stabbing. More, she informed the Court that her sufferings when quantified is for P60,000.00. Her son left a wife, a child and an unborn child. (pp. 5-6 tsn id). At the time of his death, her son Eulalio Peleño was receiving P1,200.00 a month; for having been forced to litigate she retained a lawyer for P5,000.00 and for every appearance of the counsel de parte in Court, she gives him P300.00; and for expenses coming to Court and filing of this case she incurred P15,910.00. For other miscellaneous expenses in the case, she spent

P7,334.65; and the expenses for the wake until the 40-day novena prayers for the deceased was P17,334.65, or a total of P33,244.65 which are not receipted. The receipted expenses from Funeraria Gomez amounted to P2,100.00 plus P240.00 (pp. 7-10 tsn id).

"The defense pointed to Rodolfo Caruso who is still at large as the person who killed the deceased while they were in the beach. The two accused however denied any participation in the killing of the victim and interposed the defense of alibi, declaring that they were not in the scene of the incident as they were in the sea taking a bath. They presented the following defense witnesses -

"1. Patrolman Carlos Raagas of the INP, Dulag, Leyte since 1974 to the present was after having trained as field investigator in 1983, he conducted an investigation in relation to the death of one Eulalio Peleño which he reduced to writing. He brought the original copy which was compared with the xerox copy by private prosecutor, Atty. Gemeniano Laus. (pp. 3-5 tsn, Hearing, Nov. 16, 1988). The basis of his report are the affidavits executed by the witnesses. (Exhs. `1`, `1-A`; pp. 151-152, rec.; p. 6 tsn id).

"Elicited on cross examination questions propounded by the private prosecutor, Atty. Laus, is that the source of the information as to the report marked Exhibit `1` was from the group drinking during the celebration of St. John the Baptist Day, but he could not recall the names of the four persons because they were being harassed by soldiers. They were arrested on June 24, 1986, midnight. (p. 8 tsn id). He conducted the investigation in Brgy. Rizal in the morning of June 25, 1986 (pp. 7-8 tsn id); that he did not identify the military men. He however investigated Alejandro Abina, Natividad Abina Escalante. The latter informed him that it was Rodrigo Caruso who stabbed the victim on the upper left of the chest. (pp. 9-10 tsn id). The Necropsy Report (Exh. `A`) however shows that the victim Eulalio Peleño was stabbed at the right portion of the chest; he admitted that it was a clerical error committed by the typist in his investigation report which he signed. (pp. 11-12 tsn id). He also admitted that he did not ask the persons to execute sworn statements as to the facts they told him during the investigation in the beach (p. 13 tsn id); that his findings in the report were his personal conclusion only; that the alleged harassment of the military were not blottered nor reported with the police; that he was asked personally for their protection, but it was not reported to the Station Commander; that they only patrolled the area and he did not notice any untoward incident. (pp. 14-15 tsn id).

"2. Alejandro Abina, 37 years old, married, businessman, a resident of Brgy. Rizal, Dulag, Leyte testified that at about 4:30 o'clock in the afternoon of June 24, 1986, he was in the beach with his brothers, sisters, mother, cousins and other relatives namely, Natividad Abina Escalante, Romeo Abina, Teresita Abina, Rosalia Abina, Antonio Abina, Rodrigo Caruso, Lalang Cagara, Cesario Cagara Pundavela and Serapia Cagara Abina celebrating the feast of St. John. Later, Eulalio Peleño, a constabulary soldier and Rufino Pogenio joined their group. He saw the latter poured a pail of sea water to Eulalio Peleño who instinctively fired his armalite rifle. Immediately, thereafter Eulalio Peleño jumped to their place and pointed the gun to their group asking them who poured the sea water on him. Irked by the fact that nobody answered, he pointed his gun to Rodolfo Caruso and struck him with the handle thereof. Rodolfo Caruso allegedly appealed to Eulalio Peleño stating `brother-in-law do no do that, the gun might fire and we will die'. He then pushed Rodrigo Caruso and repeated his question who among the people in the group poured sea water on him. (pp. 2-6 tsn, Hearing, April 17, 1989). Answering Peleños query was Rufino Pogenio stating that he was the one who poured sea water on him and that the others were not at fault. Immediately, they grappled with each other with Nicanor Gabrino pacifying them. The gun fired towards the ground. Being relatives, Eulalio Peleño, Rufino Pogenio and Nicanor Gabrino left the place towards a nearby hut. (pp. 7-8 tsn id). At around 4:00 o'clock in the afternoon of June 24, 1986, the trio reappeared and Eulalio Peleño fired his gun towards their group. then, he saw Rodrigo Caruso chasing Eulalio Peleño, but he did not know what happened with the duo. (pp. 9-10 tsn id). Then he observed the mouth of his mother bubbling. She was shocked. He and the members of the group tried to revive his mother by giving her the first aid. (pp. 11-12 tsn id). He returned to the sea to resume his bath. he only heard that Eulalio Peleño died of stab wounds inflicted by Rodrigo Caruso. (pp. 13-14 tsn id).

"He denied the testimony of Romeo Garcia that he was stepping on the left knee at the time the deceased was

stabbed. Romeo Garcia could not have seen him stepping on the left knee because he left earlier than he. (pp. 15-16 tsn id).

"On cross examination, Alejandro Abina, admitted that he was one of the witnesses confronted by Pat. Carlos Raagas about the case; that he did not narrate to him what he related in Court, because he did not ask him; that the only thing he told Pat. Raagas was that Rodrigo Caruso chased Eulalio Peleño. (pp. 18-19 tsn id); that he told the Court that he did not know anything about the stabbing of Eulalio Peleño because he was at the sea taking a bath; that he only saw Rodrigo Caruso stabbed Eulalio Peleño; he learned that the latter was killed when he returned from the sea and that Rufino Pogenio informed him that he heard the firing of the gun for the second time but he did not see Eulalio Peleño actually firing the armalite rifle because he was taking a bath in the sea. (pp. 2-3 tsn, Hearing, Jan. 18, 1989); that Eulalio Peleño was not carrying an armalite rifle; that Rodrigo Caruso was armed with a short bolo when he was chasing Eulalio Peleño for about 100 meters more or less from the place he was setting in Court. (pp. 4-5 tsn id); that when Rodrigo Caruso was chasing Eulalio Peleño, Romeo Abina and his wife Gina Briones Abina went home already; that it was not the first time he saw his mother's mouth bubbling because she has a heart disease (pp. 6-7 tsn id). They went home at around 5:00 o'clock in the afternoon; that it was Rufino Pogenio who informed him of the stabbing of Eulalio Peleño by Rodrigo Caruso and that he did not know where the rifle was. (p. 8 tsn id).

"3. Serafia Abina, 64 years old, married, fish vendor and a resident of Brgy. Rizal, Dulag, Leyte, testified that at around 3:00 o'clock in the afternoon of June 24, 1986, she and her children Rosalia Abina, Natividad Abina and Romeo Abina were in the sea taking a bath. Later, she went home and Romeo Abina and his wife arrived (p. 2 tsn, Hearing, Jan. 23, 1989); that Romeo Abina requested her to go back to the beach to help in keeping the utensils they used. she obliged while Romeo Abina and his wife left for Tacloban City. Upon reaching the beach, she heard a gun report from behind. She turned her back. She saw Nicanor Gabrino and Rufino Pogenio holding the gun upward as she heard Rufino Pogenio saying 'you kill me because I was the one at fault.' Immediately, upon seeing, she lost consciousness and when she recovered she found herself in the house. When she left the beach at around 3:00 o'clock in the afternoon, she did not see Eulalio Peleño, Nicanor Gabrino and Rufino Pogenio in the beach. At the time she heard the gun report, her son Alejandro Abina was in the sea taking a bath. she knew Eulalio Peleño because she is the son of her cousin. (pp. 3-4 tsn id).

"On cross examination questions propounded by the counsel of the prosecution, it was elicited that she did not know that Eulalio Peleño was killed. She likewise did not see who killed him. (p. 4 tsn id).

"4. Pat. Uldarico Garcia, Jr., 33 years old, married, member of the INP, Dulag, Leyte, resident of that municipality, testified that at around 5:00 o'clock in the afternoon of June 24, 1986, he was on duty when Mrs. Teresita Abina Basilan reported that a P.C. soldier has been firing his gun at Brgy. Rizal, Dulag, Leyte. He asked a policeman to look for Sgt. Abarrientos, their Station Commander (pp. 2-4 tsn, Hearing, Jan. 24, 1989). He entered the report in the police blotter as entry No. 6496 dated 6/24/86; time at 17.45 H. or 5:45 P.M., p. 331, which stated that Eulalio Peleño, a P.C. soldier on or about 241700-H, June 1986 at the beach of Brgy. Rizal, Dulag, Leyte, the complainant alleged that the offender indiscriminately fired his issued M-16 rifle pointing to a group of persons celebrating the St. John's Feast Day. (Exh. 2, p. 153, rec).

"On cross examination questions propounded by counsel for the prosecution he admitted that he only came to know the complainant Teresita Abina Basilan as the sister of the accused Alejandro Abina on June 25, 1986 after the case was filed. She was in the company of many people. he recognized Teresita but it was time for his relief; that the relief on duty was already there to take over; that he forgot the name of the relieving officer (pp. 8-9 tsn id). He stated that Teresita and her companions were there to visit Natividad Abina Escalante who was detained for safekeeping because she was involved in the killing of Eulalio Peleño; that he did not know any development of the case except for having blotted the incident (p. 10 tsn id). He likewise read into the record that a firearm, one M-16 rifle which has a Serial No. 173950 with one empty shell and one long magazine with 13 live ammunitions which was disarmed by her from said P.C. soldier was surrendered by subject Natividad Abina, 36 years old, married and a resident of Brgy. Rizal, Dulag, Leyte, the alleged suspect in stabbing one

Eulalio Peleño, a P.C. soldier of Brgy. Rizal, Dulag, Leyte. Subject is presently detained for safekeeping and for final investigation (pp. 11-12 tsn id; p. 331 of the Police Blotter). He also claimed that it is only a draft of the Station Commander because he was the responding officer (p. 13 tsn id).

"He likewise admitted on cross-examination questions propounded by the counsel for the prosecution that it was the commanding officer who received the report and the surrender of the firearm at 8:30 o'clock in the morning by Natividad Abina Escalante; that he was still on duty at the time but because it was the station commander who made the draft of the investigation on Natividad Escalante (pp. 14-15 tsn id) the draft was written by the station commander in the log book. It was confirmed by him that Natividad Abina Escalante was brought to the police station for the killing of a P.C. soldier Eulalio Peleño and detained for safekeeping (pp. 16-17 tsn id).

"5. Teresita Abina Basilan, 28 years old, married, housekeeper and a resident of Brgy. Rizal, Dulag, Leyte, testified that at around 2:00 o'clock in the afternoon of June 24, 1986, she and her brothers Alejandro Abina, Romeo Abina and sisters Natividad Abina Escalante and Rosalia Abina were in the sea at Brgy. Rizal, Dulag, Leyte, taking a bath. Also with them was alias Dodong. Meanwhile, Rufino Pogenio and Nicanor Gabriano joined them in the drinking spree. Then Rufino Pogenio poured water on Eulalio Peleño who got surprised, peeved and angry. Immediately, thereafter he allegedly fired his gun and he pointed his gun to the people around. Pacifying him was Nicanor Gabrino after which they left to the nipa hut. Romeo Abina, on the other hand, went home even as Nicanor Gabriano and Eulalio Peleño returned to the beach (pp. 2-3 tsn, March 6, 1989). She heard Nicanor Gabriano saying to Eulalio Peleño, 'if you kill somebody, you just kill me' and when she looked back, she saw the duo grappling for the possession of the armalite, so she ran away towards the Police Headquarters in the Municipal Building of Dulag, Leyte, to seek assistance from the policemen to pacify Eulalio Peleño who promised to go to the scene. As she went home she met her mother going to the beach (p. 4 tsn id).

"The prosecution's counsel elicited from Teresita Abina Basilan that when she went to the Police Headquarters at around 5:00 o'clock in the afternoon, she rode in a motor vehicle. She negotiated the distance of about a kilometer from the place of the incident that when she left, she did not know what happened.

"6. The last witness for the defense is the accused Romeo Abina, 31 years old, married, fish vendor and resident of Brgy. Rizal, Dulag, Leyte. He testified that on June 24, 1986, at about 3:30 o'clock in the afternoon he was at the seashore of Brgy. Rizal, Dulag, Leyte with his family, Rosalia Abina, Natividad Abina Escalante, Teresita Abina, Alejandro Abina, Antonio Abina, Rosita Abina and Rodrigo Caruso taking a bath. Another group consisting of Eulalio Peleño, Nicanor Gabrino, Cesario Pundavela, Clara Cagara and Virginia Rabandaban joined them in the singing with Alejandro Abina playing the guitar. Later, Nicanor Gabrino brought a pail of water and poured it to Rufino Pogenio who likewise went to the sea and rinsed himself. Rufino Pogenio as he got out from the sea, brought a pail of water and poured the same to Eulalio Peleño who surprised, fired his armalite and then he poked his armalite rifle on Rodrigo Caruso. The latter warned his brother-in-law Eulalio Peleño not to do it because it might kill people (pp. 2-3 tsn, Hearing, April 19, 1989). Eulalio Peleño resented the pouring of water on him and retorted - if somebody is aggrieved he can challenge him. Rufino Pogenio, the culprit who poured the pail of water also stated that if you want to kill a person, kill me because I was the one who did it. Nicanor Gabrino pacified them and the trio departed to a nearby hut (p. 4 tsn id). On time to ask him to go home to Tacloban City is his wife. They passed by his mother's house to change their clothes and to ask his mother to go to the beach and help in bringing home the utensils they used (p. 5 tsn id). He also revealed to the Court that he is a relative of the deceased Eulalio Peleño, because the latter's father and his mother are relatives. He was also arrested in connection with the case (p. 6 tsn id). Likewise, he admitted on cross examination that he is a cousin of Rodrigo Caruso who stabbed Eulalio Peleño; that the mother of Rodrigo Caruso is the sister of his father while Rodolfo Escalante is a nephew because his mother Natividad Abina Escalante is his sister.

"From their testimonies, the two accused insist that they did not participate in the killing of the deceased

Eulalio Peleño because they were in the sea taking a bath."[3]

Evaluating the evidence before it, the trial court gave its nod to the version given by the prosecution; the court concluded:

"After a careful and a judicious evaluation of the testimonies for and against the accused, the Court persuaded by the narration of the witnesses for the prosecution is the more credible story (sic). Not only did they appear convincing with their straightforward answers, but theirs were more coherent and believable versions. They saw the deceased being stabbed by Caruso and later on chased the deceased when the latter stood up and slowly ran away. While they admitted that deceased Eulalio Peleño, a P.C. soldier, fired his gun towards the ground, there were no persons hurt. There was the assault made by all the accused as they ganged him up; such possession of his gun nor firing of his gun proved to be of no use because of the superior strength of all the accused through their unity of purpose to weaken and disarm him because they were all armed with `pisaos'. More in number and armed with `pisaos' the accused took advantage effectively of their superior and unbeatable strength."[4]

The Abina brothers appealed the case to the Court of Appeals, where appellants contended that not one of the prosecution witnesses "was aware of what really happened." [5] Still professing their innocence, appellants bewailed the finding by the trial court of conspiracy between appellants and Caruso who, concededly, was the only person who actually stabbed the victim.

In affirming the conviction of appellants by the trial court, the Court of Appeals [6] noted that while the physical act of stabbing Eulalio could well be attributed to Caruso alone, the fact, however, that appellants were holding the victim to the ground when Caruso delivered the fatal thrust indicated a concerted action enough to show conspiracy. Thus, the Court of Appeals held:

"In view of all the foregoing, We find no reason to depart from the well-settled rule on the primacy of the trial court's findings (People v. Vinas, Sr., 245 SCRA 448; people v. Reoveros, 247 SCRA 628). The issue in this case before Us being essentially factual, after a careful review of the evidence on hand, We are persuaded that the findings of the court a quo on the relative weight thereof, and its conclusion of accused-appellants' guilt as a consequence of that evaluation, have to be respected and sustained (People v. Barquilla, supra). Hence, We agree with and uphold the findings of the trial court that indeed the accused-appellants are guilty beyond reasonable doubt of the crime of murder.

"The court a quo, however, erred in the penalty imposed upon the appellants and in applying the Indeterminate Sentence Law. Inasmuch as the killing of Eulalio Peleño happened on June 24, 1986, or long before Republic Act No. 7659 took effect on January 31, 1994 (sic), the penalty for murder then was reclusion temporal maximum to death. In the absence of any mitigating or aggravating circumstances, accused-appellants should have been sentenced to reclusion perpetua being the medium period. Considering such penalty to be imposed upon the appellants, the Indeterminate Sentence Law does not apply by virtue of Section (2) thereof (People v. Oga-Oga, 133 SCRA 530 cited in CRIMINAL LAW by A. Padilla, Bk. I [vol. II], 13th ed. [1988], p. 223). Lastly, the award for civil indemnity should be increased to Fifty Thousand Pesos (P50,000.00) in accordance with the prevailing jurisprudence (People v. Barquilla, supra; and People v. Acuña, supra)." [7]

Upon the elevation of the records of the case, the Court, conformably with Rule 124, Section 13 of the Rules of Court, [8] issued a Resolution advising appellants that they could file an additional brief with the Court and, if such additional brief is filed, to require the Office of the Solicitor General to file an additional appellee's brief. On 03 October 1997, the Public Attorney's Office submitted its manifestation to the effect that its argument for the exculpation of appellants on the ground of reasonable doubt had been adequately discussed in the appellants' brief previously filed with the Court of Appeals and that, "in the interest of criminal justice," [9] appellants should be acquitted of the crime. On 19 November 1997, the Court noted that manifestation. [10]

Undisputedly, it was one Rodrigo Caruso who delivered the fatal thrust to the victim. Appellants might thus be held liable only if, on the basis of proof beyond reasonable doubt, conspiracy among appellants and Caruso, as so duly alleged in the information, could be said to have been established, for, in order to make an accused liable equally with the co-author of the crime, the plot should be proven by the same quantum of evidence as solidly as the physical act constituting the crime itself.[11] While it is not necessary that the prior agreement to commit the crime[12] be proved only by direct evidence, e.g., the mode and manner in which the offense was perpetrated, the conditions and chain of events attending its commission, as well as the acts executed to establish it, nevertheless, should convince the court of its existence beyond reasonable doubt. When these circumstances, indicative of the common design to accomplish a common purpose and objective, would have been convincingly shown should conspiracy be deemed to have then been duly established.[13]

In this case, the facts pictured by the prosecution to the Court would show that appellants, with their sister, were pinning down Eulalio when Rodrigo Caroso dealt him with the fatal stab. Nothing else was shown to convey a coordinated action to commit the criminal act. Simultaneity alone, however, would not be enough to demonstrate the concurrence of will or the unity of action and purpose that could be the basis for collective responsibility of two or more individuals particularly if, such as here, the incident occurred at the spur of the moment,[14] for, in conspiracy, there should be a conscious design to perpetrate the offense.[15]

In *People vs. Jorge*,[16] where the prosecution witness saw appellant and another man holding the hands of the victim while a woman went on to stab him, the Court said:

"Unity of purpose and unity in the execution of the unlawful objective are essential to establish the existence of conspiracy. In this case, no unity of purpose was shown. The only involvement of appellant was his holding of the hand of Palma when he was stabbed by Bernales on the left chest. There was no other evidence to show unity of design. The simultaneousness of the act of stabbing the victim by Bernales with the holding of the hand of the same victim by appellant does not of itself demonstrate concurrence of wills or unity of purpose and action. For, it is possible that the appellant had no knowledge of the common design, if there was any, nor of the intended assault until the victim was actually stabbed. The thrust could have been made at the spur of the moment, totally unexpected by appellant. The mere holding of the victim's hand does not necessarily prove intention to kill. If the tragedy was a chance stabbing, there can be no conspiracy to speak of. Perhaps it would have been different if the victim was stabbed more than once and appellant still held on to the hand of the victim. That would have indicated intent to kill and a community of purpose and design. But the evidence does not show that appellant knew that Bernales had a knife; that she intended to use it to stab the victim; and, even if she had such intention and appellant knew it, that he held the victim's hand to insure the effectiveness and fatality of Bernales' attack." (Italics supplied.)

Appellants, indeed, might have wanted to insure the immobility of Eulalio since both of them and their sister were on top of the victim; however, it would seem that they did so not to facilitate the stabbing of the victim by Rodrigo Caroso but to prevent Eulalio from further firing his firearm. Immediately prior to the incident, Eulalio had apparently exhibited a belligerent attitude totally extraneous to the festive mood at the beach. The pouring of water on people, the act that infuriated Eulalio, was an old practice observed by the town people to celebrate St. John the Baptist's day. After Rufino had doused water over Eulalio, the latter started firing his armalite until people, including appellants herein, tried to calm him down. While Rodolfo appeared to have brandished the firearm after wresting it away from Eulalio, he, however, just held on to it without firing the gun.

The strong likelihood that appellants were not impelled by a criminal intent to kill Eulalio could be shown by the fact that they themselves did not inflict any harm[17] on the victim despite the fact that, according to the prosecution, each of them was armed with a pisao, a local sharp and short bolo, which they could have very well used against Eulalio.[18] In fact, appellants, evidently stunned by the action of Caroso, forthwith released their

hold on Eulalio, retreated to a distance of around three meters and desisted from joining Rodrigo Caroso who went on to pursue the wounded Eulalio.

Considering the absence of unity of purpose between appellants, on the one hand, and Rodrigo Caroso, on the other, as well as the utter lack of proof that appellants have been aware of any intention on the part of Caroso to kill Eulalio, neither may appellants be considered principals by indispensable cooperation or accomplices in the commission of the crime. Again, in *People vs. Jorge*,^[19] the Court has said:

"Neither can the appellant be considered a principal by indispensable cooperation, nor an accomplice in the crime of murder. To be a principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another act without which it would not have been accomplished. In order that a person may be considered an accomplice, the following requisites must concur: (a) community of design, i.e., knowing that criminal design of the principal by direct participation, he concurs with the latter in his purpose; (b) he cooperates in the execution of the offense by previous or simultaneous acts; and (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

"The cooperation that the law punishes is the assistance knowingly or intentionally rendered, which cannot exist without previous cognizance of the criminal act intended to be executed. It is therefore required in order to be liable either as a principal by indispensable cooperation, or as an accomplice, that the accused must unite with the criminal design of the principal by direct participation. x x x." (Italics supplied.)

At all events, where the fate of a person rests solely upon circumstances capable of two or more inferences, one of which is consistent with the presumption of innocence while the other is compatible with guilt, courts will not hesitate to tip the scales of justice in favor of the accused. The presumption of innocence must prevail and the court must acquit.^[20]

WHEREFORE, the Decision of the Court of Appeals and that of the trial court is hereby REVERSED and SET ASIDE and appellants Alejandro Abina and Romeo Abina ACQUITTED of the crime of murder for lack of proof beyond reasonable doubt that they conspired with Rodrigo Caroso in its commission. Accordingly, their immediate release from custody is ordered unless they are held for another cause.

Let a copy of this Decision be furnished the Department of Justice and the Philippine National Police for the apprehension and prosecution of Rodrigo Caroso (Caruso) in accordance with law.

SO ORDERED.

Davide, Jr., Panganiban and Quisumbing, JJ., concur.

Bellosillo, J., on leave.

[1] CA Rollo, pp. 119-120.

[2] Records, p. 34.

[3] Ibid., pp. 34-A-34-K.

[4] RTC Decision, p. 14.

[5] CA Rollo, p. 55.

[6] Associate Justice Arturo B. Buena concurred in by Associate Justices Ma. Alicia Austria-Martinez and Romeo J. Callejo, Sr.

[7] Decision pp. 9-10.

[8] The last paragraph of this rule states: "Whenever the Court of Appeals should be of the opinion that the penalty of reclusion perpetua or higher should be imposed in a case, the Court after discussion of the evidence and the law involved, shall render judgment imposing the penalty of reclusion perpetua or higher as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review."

[9] Rollo, p. 9.

[10] Ibid., p. 10-A.

[11] People vs. Andal, 279 SCRA 474, 492.

[12] People vs. Salvador, 279 SCRA 164, 177.

[13] People vs. Nuñez, 276 SCRA 9, 21.

[14] People vs. Quitlong, G.R. No. 121562, July 10, 1998.

[15] Sabiniano vs. Court of Appeals, 319 Phil. 92, 99.

[16] 231 SCRA 693, 698.

[17] In People vs. De los Reyes (215 SCRA 63), the Court held that to extricate himself from criminal liability, the conspirator must have performed an overt act to dissociate or detach himself from the unlawful plan to commit the felony.

[18] People vs. Silvestre, 314 Phil. 397, 416.

[19] Supra at p. 699.

[20] People vs. Gomez, et. al., 210 SCRA 432.

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