

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR CARRIAGA, COSME CARRIAGA AND BEN PALIS, ACCUSED-APPELLANTS.

G.R. No. 135029. September 12, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This is an appeal from the decision,[1] dated February 27, 1998, of the Regional Trial Court (Branch 30), Bambang, Nueva Vizcaya, finding appellants Nestor Carriaga, Cosme Carriaga and Ben Palis guilty of Murder, sentencing each of them to suffer the penalty of reclusion perpetua and to pay in solidum to the heirs of the deceased the amount of P49,713.75 as actual expenses, P50,000.00 as death indemnity, P50,000.00 for lost income and P100,000.00 as moral damages.

The facts are as follows:

On March 4, 1994, appellants Nestor Carriaga, Cosme Carriaga and Ben Palis were charged with Murder in an Information, docketed as Criminal Case No. 755, which reads:

That on or about 2:30 P.M. of December 3, 1993, at Sitio Nabetangan, Barangay Canabay, Municipality of Dupax del Sur, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating together and mutually helping one another, by means of treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and hack Ernesto de Guzman, inflicting mortal wounds on the different parts of his body, causing his untimely death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[2]

Upon arraignment on May 6, 1994, all three appellants pleaded not guilty.[3] Thereupon, trial ensued.

The prosecution presented eight witnesses, namely: Lita de Guzman, Albino[4] de Guzman, Ernesto de Guzman, Jr., SPO4 Johnny Baguidudol,[5] SPO1 Saulo Fontanilla, SPO4 Alfredo Dotimas and Dr. Pepito Balgos. SPO4 Alfonso dela Cruz testified as rebuttal witness for the prosecution.

The facts established by the prosecution are as follows:

On December 1, 1993, at around 10:00 in the morning, victim Ernesto de Guzman, Sr. (Ernesto, for brevity) confided to his brother, Albino de Guzman, that appellants Cosme and Nestor Carriaga were grabbing his (Ernesto's) land and that they threatened to kill him.[6] Ernesto became the object of their ire since he started to improve the river as a source of livelihood. On one occasion, the appellants Carriaga brothers told Ernesto not to continue working the area or else something might happen to him and his family. Appellant Ben Palis accused Ernesto of informing the police that the Carriaga brothers owned guns.[7]

On December 3, 1993, at around 2:30 in the afternoon, Ernesto was sleeping in their house in Sitio

Nabetangan,[8] Brgy. Canabay, Dupax del Sur, Nueva Vizcaya. His wife Lita was washing the dishes and his twelve-year old son Ernesto, Jr. was listening to a radio program. Lita stopped washing the dishes when she sensed somebody enter the house. She then saw appellants Cosme and Nestor, each holding a bolo, and Palis, standing by the door, with both hands placed at his back. Lita shouted "Apay" (Why). Upon hearing the shout, Ernesto, Jr. peeped and saw the three appellants. Nestor and Cosme went directly to where Ernesto was sleeping and immediately began hacking him. Cosme first hacked Ernesto and hit him on the right leg. Lita tried to help her husband, but Nestor pushed her aside and attempted to hack her as well. She was able to evade the hacking and exited through the second door near the wash area.[9] In the meantime, Ernesto, Jr. saw Nestor go to his father and hack the latter's head, followed by Cosme who gave Ernesto another hack on the head. Still not content, Nestor hacked Ernesto at the back. Ernesto, Jr. became so scared that he jumped out of the window and scampered away. Lita who was running and crying for help, heard her son, saying "Inay, Inay, wait for me". Thus, she waited for him, after which, they both ran. They then heard a vehicle approaching. Thinking that the killers might have boarded the same, Lita and Ernesto, Jr. hid among the tall grasses. When they peeped, they saw the three appellants in the front seat of a blue passenger jeepney. After the vehicle passed, the two continued to run until they reached the poblacion. Lita instructed her son to go to his uncle and report what had happened. As told, Ernesto, Jr. informed his uncle Balbino about the incident.[10] Lita proceeded to PNP Station Commander Baguidudol of Dupax del Sur and reported the matter.[11]

SPO4 Johnny Baguidudol, SPO1 Saulo Fontanilla and SPO4 Alfredo Dotimas were at the police station when Lita reported that her husband was hacked by the appellants. The three officers immediately proceeded with her to the crime scene in order to investigate. They saw Ernesto sprawled on the floor, lying face up near the bed, bathed in blood and undoubtedly dead. Lita told SPO4 Baguidudol who the perpetrators were and where they were headed. He called up his co-policemen at the station and instructed them to apprehend the appellants. SPO1 Fontanilla prepared a sketch of the crime scene. SPO4 Dotimas called on some neighbors to help in bringing the body of the victim to the poblacion for autopsy and embalmment. The three appellants were apprehended by SPO4 Alfonso dela Cruz.[12] SPO4 Baguidudol and his companions returned to the station and conducted further investigation. Upon questioning, Nestor admitted that he hacked the victim, while Cosme and Palis kept their silence. The following day, the police officers executed a Joint Affidavit in connection with the case.[13]

Dr. Pepito Balgos conducted an autopsy on the victim. Portions of his Report read:

III. EXTERNAL AND INTERNAL EXAMINATION:

INCISED WOUNDS:

-

6 cms. long located over the R shoulder involving the skin, soft tissues and muscle.

-

10 cms. long located over the R upper arm involving the skin, soft tissues and muscle.

-

8 cms. long located over the chest below the L breast involving the skin, soft tissues and muscle.

-

5 cms. long located over the thigh R involving the skin, soft tissues and muscle.

LACERATED WOUNDS: aileen

-

8 cms. and 4 cms. long located over the R wrist involving the skin, soft tissues and muscle with fracture of the wrist bones.

-

5 cms. long located over the back R involving the skin, soft tissues and muscle.

-

14 cms. long located over the occiput involving the scalp with fracture of the occipital bone and injuring the brain tissues.

-

10 cms. long located over the occiput involving the scalp with fracture of the occipital bone underneath and injuring the brain tissues.

-

8 cms. long located over the occiput, 1 cm. below injury no. 4 involving the scalp with fracture of the occipital bone underneath and injuring the brain tissues.

-

13 cms. long located over the R leg involving the skin, soft tissues and muscle with fracture of the tibia and fibular bones underneath.

IV. CAUSE OF DEATH:

Severe hemorrhagic shock due to leg and head injuries secondary to multiple incised and lacerated wounds.[14]

According to Dr. Balgos, the long incised wounds on the left breast and on the right thigh, as well as the three lacerated wounds on the occiput, that is, at the back area of the head, caused a lot of blood loss which resulted in the death of the victim. Further, he testified that since there were two kinds of wounds inflicted on the victim – incised and lacerated – it is probable that at least two weapons were used, one plain cut, sharp edged instrument, and another instrument which is not too sharp so as to have produced the jagged portion of the wounds.[15]

On the other hand, the defense presented six witnesses, namely: appellants Nestor Carriaga, Ben Palis and Cosme Carriaga, as well as Mariano Bombongan,[16] Dr. Ernesto Calla and Teodoro Bombongan.[17]

Appellant Nestor Carriaga admits hacking the victim but invokes self-defense. According to him, at around 2:00 in the afternoon of December 3, 1993, while he was grazing his carabao near the house of Manang Lita (Ernesto's wife), he saw Ernesto cutting grass. Ernesto invited him over to his house and so, before heading home, appellant dropped by the former's house. Lita and Ernesto, Jr. were not inside the house. His co-appellants, Palis and Cosme, were not with him during that time.[18] Because Ernesto promised to tell him something while he was grazing his carabao, he asked Ernesto what he wanted to say to him. To his surprise, Ernesto said, "You Carriaga are greedy." He told Ernesto that he should better head home. As he turned his back on Ernesto, the latter hacked him at the back portion of his head. When he looked back, he saw that Ernesto was about to hack him a second time, so he immediately unsheathed his bolo and retaliated by hacking Ernesto on the legs. Ernesto jumped towards him, but appellant was able to hack him again. Ernesto fell on his left side. He could no longer remember how many times he hacked Ernesto as his mind went blank. At that moment, he thought he was going to die. After

the encounter, appellant headed home, walking slowly. On his way home, he met Palis who helped him reached his house where he treated his injuries with herbal medicine. Moments later, Palis and Cosme, accompanied him to the hospital in Dupax where he was attended to in the hospital for about an hour. From the hospital, Cosme surrendered him to the municipal hall where the latter was slapped, punched and kicked by Station Commander Baguidudol several times.[19]

The physical examination conducted by Dr. Ernesto Calla of the Dupax District Hospital showed that Nestor sustained hacking wounds on the left temporal area and on the region of the occiput. The medical report reveals that on December 3, 1993, the date that Ernesto was killed, Nestor was treated at the Out-Patient Department of the hospital for "Hacking wound 4 cm. Left Temporal Area" and "Hacking wound 3 cm. Occipital Area".[20] Dr. Calla further remarked that the physical injuries sustained by appellant required medical attendance for a period of not more than nine days.[21]

Appellants Ben Palis and Cosme Carriaga interpose the defenses of denial and alibi. According to Palis, on December 3, 1993, he was at Brgy. Canabay, Dupax del Sur, Nueva Vizcaya to see his ricefield, after which, he proceeded to the house of Doro Bombongan where he played the game of cards, tong-it, with Mariano Bombongan and Cosme. They played from 9:00 in the morning until 2:30 in the afternoon, after which, he walked home to their house at Brgy. Canabay. He stayed home for around 15 minutes, then he headed to their other house at the poblacion. On his way, he met the bloodied Nestor. He accompanied the latter to his home and treated his wound. Then, he went to Cosme's house, around 60 meters away, to inform him about his brother. Cosme rode on his vehicle, and, together, they brought Nestor to the hospital at Dupax del Norte where the latter was treated for around 40 minutes. Then they surrendered him to the Dupax del Sur Police Station. Nestor was invited inside the office of the Police Investigation Officer while he and Cosme waited in the vehicle for about an hour. After the investigation of Nestor, the policemen called for them and they stayed in the office until the arrival of the station commander. When Station Commander Baguidudol arrived, he maltreated them and asked them why they killed Ernesto. Although they insisted that it was Nestor who killed Ernesto, they were all put in prison and have not left the cell since that time. Palis denies that he was present in the crime scene.[22]

Appellant Cosme Carriaga corroborated the testimony of Palis. In addition, he testified that they surrendered Nestor to the police because the latter admitted to them that he had engaged in a hacking incident with Manong Pilog, referring to Ernesto. Further, Cosme related that investigation officer dela Cruz invited them to go inside the office because the relatives of Ernesto who were then in the police station might harm them. To his surprise, however, the station commander kicked him and slapped Palis, while saying "why did you kill my dog?". Cosme claimed that the victim was a police asset who conducted surveillance. Like Palis, Cosme denied that he hacked the victim. He stressed that complainants Lita and Ernesto, Jr. were just taught by the station commander on what to say.[23]

Brothers Mariano and Teodoro Bombongan corroborated the testimony of Palis and Cosme that both played tong-it in Teodoro's house from 9:00 in the morning until 2:30 in the afternoon.[24]

The trial court ruled that the culpability of the appellants had been established beyond reasonable doubt. It held that Nestor was not able to demonstrate by clear and convincing evidence the existence and concurrence of the circumstances needed to prove self-defense, while Cosme's and Palis' reliance on alibi and denial are weak defenses as they are easily susceptible of concoction. The trial court found that the prosecution proved by direct and circumstantial evidence the culpability of the three as well as the presence of conspiracy and treachery. The dispositive portion of the trial court's decision reads:

WHEREFORE, premises considered, finding the accused, Nestor Carriaga, Cosme Carriaga and Ben Palis, GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the

Revised Penal Code, all three accused are hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

They are likewise ordered to pay in solidum to the heirs of the victim the amounts of P49,713.75, as actual expenses; P50,000.00, as mandatory death indemnity; P50,000.00 for the income the victim would have had earned by himself for his family; and, P100,000.00, as moral damages.

The Provincial Warden is directed to transport all three accused to the National Penitentiary as soon as possible and to make a report to the Court about the matter.

SO ORDERED.[25]

On appeal to this Court, appellant Palis contends that the lower court erred in holding that he was a co-conspirator to the crime of murder for rendering "moral assistance" to his co-accused[26] while appellants Nestor and Cosme raise the following Assignment of Errors:

- THE LOWER COURT ERRED IN ACCORDING FULL CREDENCE TO THE TESTIMONIES OF THE TWO ALLEGED EYEWITNESSES, LITA DE GUZMAN AND ERNESTO DE GUZMAN, JR.
- THE LOWER COURT ERRED IN COMPLETELY DISCARDING THE DEFENSE OF ALIBI RAISED BY ACCUSED COSME CARRIAGA.
- THE LOWER COURT ERRED IN COMPLETELY DISCARDING THE DEFENSE OF SELF-DEFENSE RAISED BY THE ACCUSED NESTOR CARRIAGA.
- THE LOWER COURT ERRED IN NOT FINDING THAT THE GUILT OF THE ACCUSED, NESTOR AND COSME CARRIAGA, HAD NOT BEEN PROVEN BEYOND REASONABLE DOUBT.
- IN ANY EVENT, THE LOWER COURT ERRED IN REFUSING TO APPRECIATE THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED.[27]

This Court shall resolve the following issues: (1) whether or not the trial court erred in giving credence to the testimonies of prosecution witnesses Lita and Ernesto, Jr.; (2) whether or not the trial court erred in disregarding appellant Nestor's claim of self-defense; (3) whether or not the trial court erred in not giving credence to appellants Cosme's and Palis' defense of alibi and denial; (4) whether or not conspiracy has been established by the prosecution; and (5) whether or not the trial court erred in not appreciating the mitigating circumstance of voluntary surrender.

Anent the first issue: As often happens in criminal cases on appeal, this Court is asked to disregard the testimony of the prosecution witnesses for being incredible, and, instead, give full credence to those of the defense witnesses. When faced with the issue of credibility, the Court ordinarily defers to the factual assessment made by the trial court, the latter being in a better position to decide the question because it had the full opportunity to observe directly the deportment and manner of testifying on the witness stand.[28]

Appellants contend that the trial court erred in giving credence to the testimonies of prosecution witnesses Lita and Ernesto, Jr. arguing that the testimonies of the two are inconsistent for whereas Lita testified that appellant Nestor was the first who hacked the victim on the right leg, Ernesto, Jr. declared that it was appellant Cosme.

After going over the records of the case, the Court finds that while Lita was ambivalent as to who between Nestor and Cosme hacked her husband first, Ernesto, Jr. was positive and categorical in testifying that it was Cosme who hacked his father first and the Carriaga brothers took turns in hacking his father, Ernesto, who was oblivious of the initial attack as he was sleeping.

Appellants fail to convince the Court on this matter. Witnesses testifying on the same event do not have to be

consistent in every detail considering the inevitability of differences in their recollection, viewpoint or impression; total recall or perfect symmetry is not required as long as the witnesses concur on material points.[29]

Both Lita and Ernesto, Jr. positively recognized the three appellants as the assailants of Ernesto. They have known the appellants even before the incident and therefore they could not have been mistaken as to their identities. They unwaveringly declared that they saw the Carriaga brothers each holding a bolo enter their house while Ben Palis stood guard at the door. They were firm in their identification of appellants even under rigid cross-examination.

Appellants further contend that Ernesto, Jr.'s credibility is suspect given the contradictions in his sworn statement and his testimony in court. In his sworn declaration, Ernesto, Jr. stated that after witnessing Cosme hack the right leg of his father, he didn't see what transpired after that, but on the witness stand, he narrated the sequence of the hack blows inflicted by the Carriaga brothers upon his father. Appellants insist that the blow-by-blow account given by Ernesto, Jr. on the witness stand is a sure sign of fabrication.

We are not persuaded. As already stated, Ernesto, Jr. knew the appellants as friends of his father.[30] His detailed narration on the witness stand of the events of December 3, 1993 is worthy of belief. He was consistent even on cross-examination. That he remembered the sequence of blows delivered by the appellants on his father is not far-fetched. Human experience tells us that a first-hand experience of a twelve-year old seeing the dastardly killing of his own father by people known to him as friends of his father will surely be etched in his memory.

Further, sworn statements, which are ex parte, are often incomplete and inaccurate because of partial suggestion or want of suggestions and inquiries, without the aid of which the witness may be unable to recall all connected circumstances.[31] It is axiomatic that as between the sworn statement and the testimony of the complainant given in court, the latter is given more weight.[32]

Appellants further insist that the testimony of Lita and Ernesto, Jr. are incredible because while both of them testified that the victim was lying on his right side when he was hacked, the autopsy report reveals that most of the wounds sustained by the victim were on his right side.

We are not convinced. Indeed, both Lita and Ernesto, Jr. testified that Ernesto was lying on his right side when he was hacked. Lita saw the first hack inflicted on the leg of the victim. She testified thus:

COURT

Q:

Will you point to that body of your husband that was hacked by Cosme Carriaga?

A:

On this portion (Witness pointing the middle portion of her right leg, between the knee and the ankle and witness using [her] index finger to line or to draw about 5 inches long).[33]

Ernesto, Jr. also witnessed the initial hack, followed by several other hacks on the back and occipital region of the head inflicted by appellants Nestor and Cosme.

The hack wounds on Ernesto's right side as well as at the back and occiput do not contradict the testimonies of Lita and Ernesto, Jr. that Ernesto was lying on his right side when he was hacked. Ordinary human experience and common sense dictate that the sleeping victim must have been awakened after he was hacked the first time on the leg and therefore, with utmost degree of certainty, he must have moved as a natural reaction which explains why he sustained hacking wounds on different parts of his body. In fact, he was later on found sprawled on the floor face up. Besides, the claim of appellants that the victim could not have sustained wounds on the right side if it

were true that he was lying on his right side is a mere collateral matter which does not impair the weight of the testimonies of the prosecution witnesses taken in their entirety. It does not demolish the commission of the crime of murder and the positive identification of the malefactors.

In *People vs. Aquino*, the Court held that the trial judge's assessment of the credibility of witnesses will be disturbed only if he plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or if the trial court acted arbitrarily.^[34] None of said exceptions have been shown to exist in the instant case. Thus, we find no reason to disturb the trial court's evaluation and assessment of the credibility of Lita and Ernesto, Jr., the same not being tainted by any arbitrariness or palpable error.

Appellants furthermore argue that since Dr. Balgos found the incised and lacerated wounds inflicted upon the victim were caused by two different instruments, then the prosecution witnesses lied when they testified that Nestor and Cosme used the same type of weapon, a bolo. Apparently, appellants misconstrued the testimony of Dr. Balgos, to wit:

Q:

In your findings, there are 2 kinds of wounds, isn't it?

A:

Yes, Incised and Lacerated Wound[s].

Q:

Do you want to tell the Court that there might be 2 weapons used in the killing?

A:

It is probable.

Q:

What kind of weapon is used when the wound is incised?

A:

The character of a wound that is incised is that, it is plain cut edges, so, a weapon that is sharp or has sharp edge is a possible or probable weapon used.

Q:

How about a weapon used on wounds which are lacerated in character?

A:

The character of a lacerated wound, it is not clean cut and there is a jagged portion of the wounds and it may be caused or probably caused by not too sharp instrument.

.....

COURT

Q:

Is it possible for a very strong bladed instrument to cause lacerated wound? A sharp edge instrument or weapon, may it cause lacerated wound as reflected in the cadaver that you autopsied?

A:

It is not possible.

Q:

Is it possible for a jagged edge instrument to cause incised wound that are clean cut?

A:

No.[35]

Clearly therefrom, what Dr. Balgos asserted on the witness stand was that, considering the types of wounds inflicted, it was probable that there were two weapons used to inflict the fatal wounds. He did not testify that there are two different kinds of weapons or that the weapons used could not have been both bolos. The doctor's testimony does not preclude the possibility that one bolo had a sharp edge causing the incised wounds while the other was a bolo that was not too sharp thus causing jagged, lacerated wounds.

Finally, in their effort to discredit the credibility of Lita and Ernesto, Jr., appellants belabored on the involvement of the police in the fabrication of charges against them. This contention is unfounded and deserves scant consideration. Appellant Cosme himself testified that the police, particularly Station Commander Baguidudol, had no motive to falsely impute the cold-blooded slaying of the victim to them, as there has been no animosity or bad blood between them.[36]

It is a settled rule that proof beyond reasonable doubt does not connote absolute certainty; it means that degree of proof which, after an investigation of the whole record, produces moral certainty in an unprejudiced mind of the accused's culpability; it signifies such proof that convinces and satisfies the reason and conscience of those who are to act upon it that appellant is guilty of the crime charged.[37]

As to the second issue: Appellant Nestor claims self-defense. Self-defense is a time-worn excuse resorted to by an appellant in appealed criminal cases.[38]

Under par. 1, Article 11 of the Revised Penal Code, there are three requisites to prove the claim of self-defense, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

It is a settled rule that when an accused admits killing the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he acted in self-defense; and as the burden of the evidence is thus shifted to him, he must rely on the strength of his own evidence and not on the weakness of the prosecution.[39]

Appellant Nestor contends that unlawful aggression came from the victim with no provocation on his part. He

testified thus:

FISCAL BALGOS

Q:

What transpired next?

A:

After uttering those statements, I told him, if you are like that, I better go home, and when I turned my back to him, that was the time he hacked me on my head. (witness pointing to the back portion of his head.)

Q:

How many times did Ernesto de Guzman hack you?

A:

Only once, sir.

Q:

After that what happened next?

A:

After he hacked me, I looked at my back and I saw him and he will again hack me, so what I did is, I tasked my bolo on my waist line and hacked him also, sir.

Q:

What part of his bolo was hit by you?

A:

His legs, sir.

Q:

What was the position of Ernesto de Guzman when you hit his legs?

A:

He was standing and his right foot was a little bit placed in front of his left foot and beside him is a table or a bed, sir.

Q:

After hitting his legs, what happened next?

A:

He jumped towards me and again attempted to hack me, sir.

Q:

What did you do?

A:

I hacked him and he fell down on his left side, sir, and I left.

Q:

Where did you go, when you said you left?

A:

I went home, sir.[40] (Emphasis supplied)

But on cross-examination, he vacillated and stated that he could not recall if he hacked the victim twice, that he lost control of himself and he could not recall how many times he hacked the victim, thus:

Q:

How many times did you hack Mr. de Guzman?

A:

I cannot recall how many hacks I have inflicted on him, sir.

Q:

Is it not that yesterday, you said that the first time you hacked him was at his right leg?

A:

Yes, sir.

Q:

After hitting his leg, he jumped towards you and attempted to hack you but you hacked him that's why, Mr. de Guzman fell, is it not?

A:

Yes, sir.

Q:

So, do you want to tell the Court that you only hacked Mr. de Guzman twice?

A:

I cannot recall, sir.[41]

On re-direct examination, he further fumbled:

Q:

During the cross-examination, you stated that after hitting Ernesto de Guzman, Sr. on his leg, you could no longer recall how many times you hacked the said victim, is that correct?

A:

Yes, sir.

Q:

Kindly tell us why you could no longer recall how many times did you hack him?

A:

Because after hacking him at the second time, as if I have a blank mind because what I knew is that I am going to die, sir.[42]

Appellant Nestor's defense is not only inherently weak but it is countervailed by the physical evidence presented by the prosecution. The Autopsy Report shows that the victim sustained four incised wounds located on the right shoulder, right upper arm, below the left breast and right thigh, three lacerated wounds on right wrist, right back, and right leg, and another three lacerated wounds on the occiput region of the head. If appellant Nestor's claim that unlawful aggression came from Ernesto is true, the wounds sustained by the victim prove that he did not stop hacking the victim after he (appellant) had rendered Ernesto helpless when the latter fell as a result of the second hacking in which case his claim of self-defense must fail. The nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.[43] A person making a defense has no more right to attack an aggression when the unlawful aggression has ceased.[44]

Likewise, the infliction of incised and lacerated wounds on the victim prove that two weapons were used thus demolishing appellant Nestor's testimony that he alone hacked the victim. Self-defense is unavailing to an accused where the nature of the injuries sustained by the victim ineluctably shows that the latter was attacked by several assailants armed with weapons of various kinds used not by the former alone.[45] The incised and lacerated wounds readily show that two weapons were used in killing the victim which in turn confirm the testimonies of Lita and Ernesto, Jr. that Nestor and Cosme hacked Ernesto.

Moreover, the fact that appellant Nestor sustained a 4 cm. wound on the left temporal area and 3 cm. wound on the occipital area which took only forty five minutes to treat[46] does not necessarily support his claim that he acted in self-defense. The mere fact that an accused was wounded would not necessarily mean that he acted in self-defense or that he was not the aggressor.[47]

Considering the foregoing and the positive testimonies of Lita and Ernesto, Jr. identifying the three appellants as the assailants of the victim, we agree with the trial court in not giving credence to appellant Nestor's declaration that he killed the victim in self-defense and that appellants Cosme and Palis were not with him when Ernesto was hacked to death.

On the third issue: Appellants Cosme and Palis deny that they participated in the hacking but insist on the alibi that they were in the house of Doro Bombongan playing tong-it from 9:00 in the morning until 2:30 in the afternoon of December 3, 1993. For alibi to prosper, however, it is not enough for the accused to prove that he was elsewhere when the crime was committed, but he must also show that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[48] As an element of a credible alibi, physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[49]

In the case at bar, although appellants Cosme and Palis claim that they were playing cards in a friend's house at the time of the commission of the crime, they failed to show that it was physically impossible for them to have been at the victim's house at the time Ernesto was hacked. Appellant Cosme himself admitted that the house of Doro Bombongan is located at Sitio Nabetangan, the same place where the victim resided and was hacked to death.[50] They could have easily left and proceeded to the house of Ernesto and then went back to Doro's house. Thus, in the light of the positive identification of appellants as the perpetrators of the crime, their defense of denial and alibi cannot be sustained.[51]

As to the fourth issue: We find that the trial court did not err in ruling that there was conspiracy among the three appellants in the commission of the crime of Murder. The elements of conspiracy are: (1) two or more persons came to an agreement; (2) the agreement concerned the commission of a felony; and (3) the execution of the felony was decided upon.[52] For the prosecution to establish conspiracy, we considered the following rules:

- The well-settled rule is that conspiracy must be proven as clearly as the commission of the offense itself.[53]
- Proof of previous agreement among the malefactors to commit the crime would be unnecessary to establish conspiracy when by their overt acts it would be deduced that they conducted themselves in concert with one another in pursuing their unlawful design.[54]
- Conspiracy may be inferred from the acts of the accused before, during and after the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments.[55]

The prosecution has established beyond reasonable doubt that the appellants were in conspiracy in killing the victim. Based on the positive and convincing testimonies of Lita and Ernesto, Jr., the prosecution had established that all three appellants entered the house of Ernesto unannounced, without prior permission. With the use of bolos, appellants Nestor and Cosme went to the sleeping Ernesto and hacked him repeatedly and mercilessly while appellant Palis watched and stood by the door of the house; after which, all three of them left Ernesto's house and together, rode in a jeepney. The rule is that when the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy.[56] Appellants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the crime is clear. Cosme and Nestor delivered the hack blows upon the victim while Palis placed himself by the door of the house. The fact that Palis did not hack the victim does not negate his participation in the conspiracy. His act of barging into the house of Ernesto with appellants Nestor and Cosme who were armed with bolos and standing by the door while his two companions hack Ernesto to death was a willful act or an act of complicity showing unity of purpose and design to kill Ernesto. There exists no doubt that there was conspiracy among appellants Nestor, Cosme and Palis. It is not necessary that all the participants deliver the fatal blow, as the act of one is the act of all.[57]

However, under the facts of the case, we deem it necessary that we distinguish the nature of the participation of appellants Nestor, Cosme and Palis.

Article 17 of the Revised Penal Code provides:

Art. 17. Principals. - The following are considered principals:

- Those who take a direct part in the execution of the act.
- Those who directly force or induce others to commit it.
- Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Thus, in the commission of a crime by two or more persons, those who take direct participation are principals by direct participation under paragraph 1 above; those who directly force or induce others to commit the crime are principals by induction under paragraph 2 above; while those who cooperate in the commission of the crime by another act without which the commission of the offense would not have been accomplished are principals by indispensable cooperation under paragraph 3 of Article 17 as above-quoted.

In the present case, it is clear that appellants Nestor and Cosme are principals by direct participation. Both of them with the same purpose and design hacked Ernesto repeatedly to kill the victim.

The question is: What is the nature of participation of appellant Palis? It is an established fact borne by the prosecution evidence that the three appellants went inside the house of Ernesto without prior notice or permission from the occupants of the house; that appellant Palis merely stood by the door of the house while his co-appellants hacked Ernesto to death; that he left the scene of the crime together with the other appellants; and that they were altogether found riding in a jeepney and arrested by the police. That Palis just stood by the door without saying anything cannot therefore be considered as a mere passive presence that would have negated his participation as a conspirator. However, there are no other facts established by the prosecution that would prove beyond reasonable doubt that appellant Palis committed acts in the killing of Ernesto that would categorize him as a principal by induction, by direct participation or by indispensable cooperation. What is certain from the facts established by the prosecution, is that he had the same purpose and design as the other appellants as shown by the fact that he went inside the house of the victim, uninvited and unannounced together with his co-appellants Nestor and Cosme who were armed with bolos; and that after the hacking, he left the house together with appellants Nestor and Cosme and rode a jeepney together.

In such case, we apply our ruling in *People vs. Ubiña* where we held that when an accused does not fall under any of the three concepts defined in Article 17 of the Revised Penal Code, he may only be considered guilty as an accomplice.[58]

Before the Court proceeds to resolve the fifth issue, it is necessary that the Court should pass upon the question whether or not appellants are guilty of treachery and abuse of superior strength.

We hold that the killing of Ernesto was attended by treachery. There is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make.[59] Two elements must therefore concur: (1) the means of execution employed gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.[60]

The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation

on his part.[61]

The victim in this case was caught by surprise when the assailants suddenly entered his house and attacked him while he was asleep. Thus, he had no chance to fight back or defend himself. The number of the victim's wounds and his relative position when found dead by the police emphasized further the existence of treachery.[62] The victim was hacked in the occiput region of his head, on the shoulder, arm, chest, thigh, leg and at the back. The means, method and form of the attack in this case were, therefore, consciously adopted and effectively prevented the victim from employing a defense against his attackers.

The attendant circumstance of treachery qualified the killing to murder as defined in paragraph 1 of Article 248 of the Revised Penal Code.

In determining the proper penalty to be imposed, the next step is to determine the presence of any aggravating or mitigating circumstance. Since treachery attended the killing, abuse of superior strength alleged in the Information is absorbed by said circumstance.[63] The Court finds no other aggravating circumstance that was alleged in the Information and proven by the prosecution.

We come now to the fifth issue: whether or not the trial court erred in refusing to consider the mitigating circumstance of voluntary surrender in favor of the appellants. The answer is in the negative. To benefit an accused, the following requisites must be proven: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[64] A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt, or he wishes to save them the trouble and expense necessarily incurred in his search and capture. The jeep in which the appellants were riding was flagged down by SPO4 de la Cruz.[65] The fact alone that they did not resist but went peacefully although reluctantly with the police officer does not mean that they voluntarily surrendered.[66]

At the time of the commission of the crime on December 3, 1993, Article 248 of the Revised Penal Code provided that the penalty for murder is reclusion temporal in its maximum period to death.[67] Considering that the crime was not attended either by aggravating or mitigating circumstance, the penalty to be imposed against the appellants Carriaga brothers, as principals by participation, should be reclusion perpetua, pursuant to Art. 64 (1) of the Revised Penal Code[68]; while pursuant to Articles 52, 64 (1) and 77 of the same Code, the imposable penalty against appellant Palis, as an accomplice, is prision mayor in its maximum period to reclusion temporal in its medium period, or 10 years and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, and in the absence of aggravating or mitigating circumstance, the minimum imposable penalty is the period anywhere from 6 years, 1 month and 11 days to 8 years and 20 days of prision mayor, to the period anywhere from 12 years, 5 months and 11 days to 14 years, 10 months and 20 days of reclusion temporal, as the maximum imposable penalty.

We now consider the civil liability of appellants. Jurisprudence dictates that appellants should be ordered to pay his legal heirs the amount of P50,000.00 as indemnity[69] for the death of Ernesto de Guzman.

In addition to the civil indemnity, the heirs of the deceased are entitled to moral damages. Lita de Guzman testified that the death of her husband caused her sadness, fright and sleepless nights.[70] Recent jurisprudence fixes the award of moral damages at P50,000.00[71] and therefore the amount of P100,000.00 must accordingly be reduced.

The crime was committed in the dwelling of the victim. Dwelling, although proven, could not aggravate the crime because said circumstance was not alleged in the Information in violation of Section 8, Rule 110 of the Revised

Rules of Criminal Procedure.[72] However, insofar as the civil aspect of the case is concerned, the presence of this aggravating circumstance entitles the heirs of the victim to exemplary damages in the amount of P20,000.00.[73]

For actual damages, the prosecution was able to prove only the amount of P12,439.00 covering funeral and burial expenses (Exhs. B to B-3) and not P49,713.75 as found by the trial court. The electric bills, food for the 9 and 40 days of prayer and other miscellaneous expenses were not proven by competent evidence. However, recent jurisprudence allows the award of temperate damages instead of actual damages in the amount of P25,000.00 where the prosecution was not able to prove all the expenses incurred by the heirs of the victim by reason of his death.[74]

Although the amount of P100,000.00 for loss of income awarded by the trial court in favor of the heirs of the victim was not assailed by appellants, the amount awarded would have to be modified pursuant to the formula followed in *People vs. Napalit*,[75] to wit:

Net earning capacity

=

$\frac{2}{3} \times (80 - \text{age of the victim at the time of his death})$

x

a reasonable portion of the annual net income which would have been received by the heirs for support

In the absence of proof of living expenses, the net income is deemed to be 50% of the gross income.[76]

In the case at bar, Ernesto was 42 years old at the time of his death.[77] His wife testified that he earns P4,000.00 a month as a bulldozer operator and that he works for nine months in a year,[78] amounting to an annual income of P36,000.00. Thus, by reason of the death of the victim, the heirs should be awarded the amount of P456,000.00 for loss of earning capacity, computed as follows:

Net earning capacity = $\frac{2}{3} \times (80 - 42) \times [P36,000.00 - \frac{1}{2} (P18,000.00)]$

= $\frac{2}{3} \times (38) \times P18,000.00$

= $25.3333333 \times P18,000.00$

= P455,999.999[79]

The total amount of the civil damages in is P601,000.00. Under Articles 109 and 110 of the Revised Penal Code[80], to wit:

Art. 109. Share of each person civilly liable. – If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond.

Art. 110. Several and subsidiary liability of principals, accomplices, and accessories of felony –315 Preference in payment. – Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable.

The subsidiary liability shall be enforced, first against the property of the principals; next, against that of the accomplices; and lastly, against that of the accessories.

Whenever the liability in solidum or the subsidiary liability has been enforced, the person by whom payment

has been made shall have a right of action against the others for the amount of their respective shares.

appellants Carriaga brothers as principals should be held liable in solidum for the amount of P500,000.00 and appellant Palis, as an accomplice, should be held primarily liable for the amount of P101,000.00. The subsidiary liability of all of the appellants shall be enforced in accordance with the above-quoted provisions of Article 110.

WHEREFORE, the decision of the Regional Trial Court of Bambang, Nueva Vizcaya (Branch 30) in Criminal Case No. 755 is AFFIRMED with the following MODIFICATIONS: Nestor Carriaga and Cosme Carriaga are found GUILTY of the Crime of MURDER beyond reasonable doubt as principals and each of them are sentenced to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties appurtenant thereto. Ben Palis is found GUILTY beyond reasonable doubt of the crime of Murder as an accomplice and sentenced to suffer imprisonment, after applying the Indeterminate Sentence Law and in the absence of any aggravating or mitigating circumstance, for a period of 6 years, 1 month and 11 days of prison mayor as the MINIMUM to 12 years, 5 months and 11 days of reclusion temporal as the MAXIMUM.

As to the civil aspect of the case: Appellants are ordered to pay the heirs of Ernesto de Guzman the total amount of Six Hundred and One Thousand Pesos (P601,000.00) broken down as follows: Fifty Thousand Pesos (P50,000.00) as civil indemnity for the victim's death; Twenty-Five Thousand Pesos (P25,000.00) as temperate damages; Fifty Thousand Pesos (P50,000.00) as moral damages; Twenty Thousand Pesos (P20,000.00) as exemplary damages; and Four Hundred Fifty-Six Thousand Pesos (P456,000.00) for loss of income of the deceased victim.

Appellants Nestor and Cosme Carriaga, as principals shall be primarily liable and in solidum among themselves in the amount of Five Hundred Thousand Pesos (P500,000.00) while appellant Ben Palis is primarily liable in the amount of One Hundred and One Thousand Pesos (P101,000.00). The subsidiary liability of all of them shall be enforced in accordance with Article 110 of the Revised Penal Code.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Judge Vincent Eden C. Panay.

[2] Rollo, p. 7; Records, p. 17.

[3] Records, p. 21.

[4] Also spelled as "Valvino" in the Records.

[5] Also known as "Johnny Bagidudol" in the Records.

[6] TSN (Balbino de Guzman), July 13, 1995, p. 3.

[7] TSN (Lita de Guzman), September 14, 1994, pp. 7-8.

[8] Also spelled as "Nabettangan" in the Records.

[9] TSN (Lita de Guzman), July 6, 1994, p. 4; September 13, 1994, pp. 2-4.

[10] TSN (Ernesto de Guzman, Jr.), August 31, 1995, pp. 3-12; November 8, 1995, pp. 2-5.

- [11] TSN (Lita de Guzman), September 14, 1994, p. 4.
- [12] TSN (SPO4 Alfonso dela Cruz), July 17, 1997, p. 4.
- [13] TSN (SPO4 Johnny Baguidudol), December 12, 1995, pp. 3-10; TSN (SPO1 Saulo Fontanilla), February 27, 1996, pp. 4-16; TSN (SPO4 Alfredo Dotimas), February 29, 1996, pp. 2-5.
- [14] Autopsy Report (Exh. "H"); Records, p. 7.
- [15] TSN (Dr. Pepito Balgos), March 20, 1996, pp. 3-11.
- [16] Also spelled as "Bonbongan" in the Records.
- [17] Also known as "Doro Bonbongan" in the Records.
- [18] TSN (Nestor Carriaga), July 17, 1996, p. 6.
- [19] TSN (Nestor Carriaga), July 17, 1996, pp. 2-6; July 18, 1996, p. 5; July 23, 1996, pp. 2-4.
- [20] Exh. "2"; Records, p. 184.
- [21] Ibid.
- [22] TSN (Ben Palis), October 22, 1996, pp. 2-8; December 3, 1996, pp. 6-11.
- [23] TSN (Cosme Carriaga), December 4, 1996, pp. 2-7.
- [24] TSN (Mariano Bonbongan, Sr.), August 26, 1996, p. 3; TSN (Teodoro Bonbongan), March 12, 1997), pp. 3-5.
- [25] Rollo, pp. 82-83; Records, pp. 260-261.
- [26] Appellant's Brief, p. 9; Rollo, p. 141.
- [27] Appellant's Brief (for accused-appellants Nestor and Cosme Carriaga), p. 8; Rollo, p. 217.
- [28] People vs. Melendres, Jr., G.R. No. 134940, April 30, 2003; People vs. Alipar, 354 SCRA 590, 597 (2001).
- [29] People vs. Pulusan, 290 SCRA 353, 374 (1998).
- [30] TSN (Ernesto de Guzman, Jr.), August 31, 1995, p. 7.
- [31] People vs. Matugas, G.R. Nos. 139698-726, February 20, 2002, citing People vs. Acala, 307 SCRA 330 (1999) and People vs. Castillo, 261 SCRA 493 (1996); People vs. Narvaez, G.R. No. 140759, January 24, 2002.
- [32] People vs. Matugas, G.R. Nos. 139698-726, February 20, 2002, citing People vs. Acala, 307 SCRA 330 (1999) and People vs. Conde, 252 SCRA 681 (1996).
- [33] TSN (Lita de Guzman), December 8, 1994, p. 4.
- [34] People vs. Aquino, 366 SCRA 266, 276 (2001).
- [35] TSN (Dr. Pepito Balgos), March 20, 1996, pp. 9-10.
- [36] TSN (Cosme Carriaga), February 25, 1997, p. 6.
- [37] People vs. Degamo, G.R. No. 121211, April 30, 2003, citing People vs. Mariano, 345 SCRA 1, 16 (2000).
- [38] People vs. Maalat, 275 SCRA 206, 211 (1997).

- [39] *People vs. Bates*, G.R. No. 139907, March 28, 2003, citing *People vs. Belaje*, 345 SCRA 604 (2000).
- [40] TSN (Nestor Carriaga) July 17, 1996, pp. 3-4.
- [41] TSN (Nestor Carriaga), July 18, 1996, p. 5.
- [42] TSN (Nestor Carriaga), July 23, 1996, p. 2.
- [43] See *People vs. Aliben*, G.R. No. 140404, February 27, 2003.
- [44] *Pepito vs. Court of Appeals*, 310 SCRA 128, 143 (1999).
- [45] *People vs. Moreno*, 273 SCRA 307, 316 (1997).
- [46] Exh. "Z", supra; TSN (Nestor Carriaga), July 17, 1996, p. 4.
- [47] *People vs. Tumaob, Jr.*, 291 SCRA 133, 140 (1998).
- [48] *People vs. Acosta*, 371 SCRA 181, 190 (2001), citing *People vs. Lachica*, 316 SCRA 443 (1999).
- [49] *Ibid.*, citing *People vs. De Labajan*, 317 SCRA 566 (1999).
- [50] TSN (Cosme Carriaga), February 25, 1997, p. 2.
- [51] *People vs. Siguin*, 299 SCRA 124, 139 (1998).
- [52] *People vs. Lago*, 358 SCRA 440, 446 (2001).
- [53] *People vs. Quilaton*, 324 SCRA 670, 684 (200).
- [54] *People vs. Adrales*, 322 SCRA 424, 435 (2000); *People vs. Nullan*, 305 SCRA 679, 701 (1999).
- [55] *People vs. Manes*, 303 SCRA 231, 242 (1999).
- [56] *People vs. Geronimo*, 53 SCRA 246, 254 (1973).
- [57] See *People vs. Campomanes*, G.R. No. 132568, February 6, 2002.
- [58] 97 Phil. 515, 534 (1955).
- [59] Art. 14, par. 16, REVISED PENAL CODE..
- [60] *People vs. Caraig*, G.R. Nos. 116224-27, March 28, 2003.
- [61] *People vs. Vallador*, 257 SCRA 515, 527 (1996).
- [62] *Caraig case*, supra.
- [63] *People vs. Acosta, Sr.*, G.R. No. 140402, January 28, 2003; *People vs. Baldogo*, G.R. Nos. 128106-07, January 24, 2003.
- [64] *Luces vs. People*, G.R. No. 149492, January 20, 2003.
- [65] TSN (SPO4 Alfonso dela Cruz), July 17, 1997, p. 15.
- [66] *People vs. Nanas*, 363 SCRA 452, 471 (2001).
- [67] Under R.A. No. 7659, which took effect on December 31, 1993, murder is now punishable with reclusion perpetua to death.

[68] Section 2 of the Indeterminate Sentence Law provides that the Act does not apply to persons convicted of offenses punished with death penalty or life imprisonment.

[69] E.g., *People vs. Tejero*, G.R. No. 135050, April 19, 2002.

[70] TSN (*Lita de Guzman*), December 7, 1994, p. 2.

[71] *People vs. Bates*, G.R. No. 139907, March 28, 2003.

[72] *People vs. Delim*, G.R. No. 142773, January 28, 2003.

[73] *People vs. Delos Santos*, G.R. No. 134525, February 28, 2003, citing *People vs. Durohom*, G.R. No. 146276, November 21, 2002; *People vs. Castellano, Sr.*, G.R. No. 139412, April 2, 2003.

[74] *People vs. Lee*, G.R. No. 116326, April 30, 2003.

[75] G.R. Nos. 142919 and 143876, February 4, 2003 citing *People vs. Barnuevo*, 366 SCRA 243, 253 (2001).

[76] *Ibid.*

[77] TSN (*Lita de Guzman*), September 14, 1994, p. 19.

[78] TSN (*Lita de Guzman*), September 14, 1994, pp. 15-18.

[79] *Napalit case*, *supra*.

[80] Art. 109. Share of each person civilly liable. – If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond.

Art. 110. Several and subsidiary liability of principals, accomplices, and accessories of felony – Preference in payment. – Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable.

The subsidiary liability shall be enforced, first against the property of the principals; next, against that of the accomplices; and lastly, against that of the accessories.

Whenever the liability in solidum or the subsidiary liability has been enforced, the person by whom payment has been made shall have a right of action against the others for the amount of their respective shares.

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