

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONIL ABUNDO Y CALVO; BRIXCIO CALVO (AT LARGE); HENRY AGO (DECEASED); AND ROLANDO BOLAMBOT Y VELASCO, ACCUSED,**

*G.R. No. 138233. January 18, 2001*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

This is an appeal from the Decision[1] dated January 6, 1998 of the Regional Trial Court of Butuan City, Branch 4, in Criminal Case No. 7157, finding accused-appellants Ronil Abundo y Calvo and Rolando Bolambot y Velasco guilty beyond reasonable doubt of the crime of Murder.

On January 27, 1997, accused Ronil Abundo y Calvo, Rolando Bolambot y Velasco, Brixcio Calvo, and Henry Ago were charged with the crime of Robbery with Homicide in an Information which reads, to wit:

"That on or about the 26[th] of August, 1996, at 2:30 o'clock in the afternoon, more or less, at Sitio Ampay, San Antonio, RTR, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping with one another, with intent to gain, armed with a .38 caliber revolver and daggers/hunting knives and by means of force and violence, did then and there willfully, unlawfully and feloniously take, steal, and carry away one (1) unit chainsaw bearing Serial No. 12810247, Stihl brand worth P34,000.00 belonging to Alberto Martinez, without his knowledge and consent and against his will, to the damage and prejudice of the said Alberto Martinez.

That on the occasion of said robbery and for the purpose of enabling them to take, steal or carry the above-mentioned article, said accused, in furtherance and in pursuance of their conspiracy, did then and there, taking advantage of their superior strength and with intent to kill, treacherously attack, assault and employ personal violence upon Alberto Martinez and Ramil Eugenio with the use of one (1) .38 caliber revolver, and bladed weapons with which they conveniently armed themselves, inflicting mortal wounds on different parts of their bodies, directly causing their death.

CONTRARY TO LAW".

Upon arraignment, accused Ronil Abundo and Rolando Bolambot entered a plea of not guilty to the crime charged, while accused Brixcio Calvo and Henry Ago remained at large.

During the trial, the prosecution presented the following witnesses: (1) Allan Martinez, an eyewitness to the killing; (2) Dr. Wilfredo Mallonga, the Municipal Health Officer who conducted the post-mortem examination on the corpses of the victims; and, (3) Bernarda Martinez, the widow of victim Alberto Martinez.

Allan Martinez testified that on August 26, 1996 at about 7:00 in the morning, he went to the house of his uncle, Alberto Martinez, who hired him to haul lumber in Sitio Ampay, Barangay San Antonio, Municipality of Remedios Trinidad Romualdez (RTR), Agusan del Norte. Allan and Alberto, together with Antonio Martinez, Ramil Eugenio, Jessie Sambaan, and Jerry Deloso, left for Sitio Ampay, bringing with them a chainsaw, ropes, and other things they needed for cutting and hauling lumber. The group arrived at Sitio Ampay at about 10:00 in

the morning of the same day, and started felling a tree and cutting the same into pieces using a chainsaw. At about 2:00 in the afternoon, the group began hauling the lumber.[2] Thirty minutes later, while the members of the group were spread out, Allan Martinez saw four men approaching Alberto Martinez and his son-in-law Ramil Eugenio who were at that time connecting the chain of the chainsaw. Allan recognized the four men as Ronil Abundo, Rolando Bolambot, Brixcio Calvo and Henry Ago.[3] Abundo suddenly shouted "Dapa! Taas ang kamot!"[4] (Drop to the ground! Raise your hands!) and immediately shot Alberto Martinez who was in a squatting position facing Ramil Eugenio.[5] Allan slowly hid himself behind the "mote-mote" vines, while his three other companions ran away.[6] From his hiding place which was merely two and a half (2 ½) meters away from the crime scene,[7] Allan saw Alberto Martinez "roll over" after being hit by the bullet "somewhere in his right eye".[8] Abundo then followed Alberto and stabbed him.[9] Meanwhile, accused Rolando Bolambot began stabbing Ramil Eugenio, while Henry Ago and Brixcio Calvo served as "look-outs".[10] After seeing Bolambot stab Ramil three times, Allan slowly crawled out of his hiding place and headed towards the "poblacion" in San Antonio.[11] He went to the house of Alberto Martinez and told Cristina, the daughter of Alberto and wife of Ramil Eugenio, about the killings, but did not reveal the identities of the assailants.[12] Three days later, Allan Martinez disclosed to Bernarda Martinez, the wife of Alberto, that the killers of her husband and son-in-law are Ronil Abundo, Rolando Bolambot, Brixcio Calvo and Henry Ago.[13]

Dr. Wilfred Mallonga, the Municipal Health Officer who conducted the post-mortem examination on the corpses of the victims, testified that Alberto Martinez sustained three stab wounds and one gunshot wound,[14] while Ramil Eugenio sustained seven stab wounds, six of which were located at the back.[15] He further testified that the gunshot wound sustained by Alberto (wound no. 4), located at the right side of his temple, was directed "slightly downward" and could have come "from above" the victim,[16] thus corroborating the testimony of Allan Martinez as to the direction and location of the gunshot wound inflicted by Ronil Abundo on Alberto.

Bernarda Martinez testified that at 5:00 in the afternoon of August 26, 1997, she was on her way home from Cabadbaran when she met her daughter Cristina along the road, and was told by the latter that Alberto Martinez and Ramil Eugenio were still in Sitio Ampay, and that their chainsaw was stolen.[17] Bernarda went to the RTR police station, but was denied assistance, so she went to the detachment of the CAFGU where she was assisted by a certain Rodrigo Calvo.[18] Calvo accompanied Bernarda back to her house where they found Allan Martinez, Jessie Sambaan and accused Ronil Abundo.[19] Bernarda requested Calvo and the latter three to go to Sitio Ampay to find out what happened to her husband and son-in-law. At 5:00 am the next day, Bernarda was presented with the dead bodies of the victims. Three days after the incident, Bernarda was informed by Allan Martinez as to the identities of the assailants.[20]

For their part, the accused-appellants Ronil Abundo and Rolando Bolambot interposed denial and alibi.

Abundo testified that on August 26, 1996, he was at the CAFGU detachment in Barangay San Antonio, RTR, Agusan del Norte, from 6:00 in the morning until 4:00 in the afternoon when Bernarda Martinez came and asked his assistance in rescuing Alberto Martinez and Ramil Eugenio who were held hostage by unidentified armed men in Sitio Ampay.[21] Abundo told Bernarda that he would just meet her at her house as soon as he is relieved from duty.[22] After Bernarda left, Allan Martinez and Barangay Chairman Virgilio Dawirao arrived and likewise sought Abundo's help in rescuing Alberto and Ramil.[23] The three of them, together with one Rodrigo Calvo, went to the house of Bernarda. Later, Abundo, Allan, and two other persons went to Sitio Ampay where they discovered the dead bodies of Alberto and Ramil lying on the ground. [24]

Accused Bolambot also took the witness stand, and testified that on the day of the commission of the crime, he was working as a carpenter at the house of Flora Ago, the mother of his co-accused Henry Ago, from 7:00 to 11:00 in the morning, and from 1:00 to 4:00 in the afternoon.[25] This was corroborated by the testimony of

defense witness Flora Ago.[26]

After trial, the court a quo rendered judgment dated January 6, 1998, the dispositive portion of which reads:

"WHEREFORE, the Court finds the evidence of the prosecution insufficient to prove the charge of robbery with homicide as it has not conclusively proven that the primary object of the accused in committing the crime was robbery. The Court, however, finds accused Ronil Abundo y Calvo and Rolando Bolambot y Velasco guilty beyond reasonable doubt of the crime of MURDER defined in Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659 qualified by treachery and accordingly sentences each of the accused to suffer the penalty of imprisonment of from twenty (20) years to Forty (40) years of reclusion perpetua together with the accessory penalties provided for by law.

"They shall be imprisoned at the Davao Prison and Penal Farm at Panabo, Davao del Norte and entitled to the benefits of their preventive imprisonment crediting in the service of their sentence the full time during which they have undergone preventive imprisonment if they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners conformably with Art. 29 of the Revised Penal Code, as amended.

"Accused Ronil Abundo y Calvo is ordered to indemnify the heirs of Alberto Martinez the amount of P50,000.00. Accused Rolando Bolambot y Velasco is likewise ordered to indemnify the heirs of Ramil Eugenio the same amount of P50,000.00. In addition, both accused are hereby ordered to pay in solidum the amount of Sixteen Thousand Pesos (P16,000.00) representing burial expenses and expenses incurred during the 9-day wake as well as the amount of P5,300.00 representing funeral services.

"The case against accused Henry Ago and Brixcio Calvo are ordered placed in the archives until the above-named accused who are still at large shall have been arrested. Let warrants for their arrest be issued furnishing the lead agencies of the government tasked with the enforcement of the law copy of the warrants.

"IT IS SO ORDERED."[27]

On February 3, 1998, the court a quo issued an Order amending its earlier Decision which inadvertently omitted the testimony of Rolando Bolambot, and declared, thus:

"xxx xxx xxx

"If the Court considers this testimony of Rolando Bolambot, which the court failed to locate at the time it was preparing the decision because the transcript of stenographic notes were not properly marked, the said testimony cannot alter or modify the finding of the Court that the said accused are guilty as found by the Court."[28]

Hence, this appeal where the accused-appellants raise the following assignment of errors:

#### ASSIGNMENT OF ERRORS

#### THE TRIAL COURT ERRED:

### I.

IN NOT RULING THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE ACCUSED-APPELLANTS RONIL ABUNDO AND ROLANDO BOLAMBOT TO BE AT THE SCENE OF THE CRIME AT SITIO AMPAY, SAN ANTONIO, RTR AND PARTICIPATE IN THE KILLING OF ALBERTO MARTINEZ AND RAMIL EUGENIO AT 2:30 O'CLOCK P.M., 26 AUGUST 1996 SINCE RONIL ABUNDO HAD BEEN AT THE DETACHMENT CHECKPOINT, AT THE POBLACION OF SAN ANTONIO 6:00 A.M. TO 4:00 O'CLOCK P.M. THAT SAME DAY SERVING AS CAFGU, AND ROLANDO BOLAMBOT HAD WORKED AS CARPENTER ON THE HOUSE OF FLORA AGO SITUATED ONE (1) KILOMETER

FROM THE POBLACION OF SAN ANTONIO FROM 7:00 O'CLOCK A.M. TO 4:00 O'CLOCK P.M. WITH BREAK 11:00 O'CLOCK A.M. TO 1:00 O'CLOCK P.M. WHEN RESUMED UP TO 4:00 O'CLOCK P.M. SAME DAY.

II.

IN RULING THAT LONE EYE-WITNESS ALLAN MARTINEZ IS ALLEGEDLY A CREDIBLE WITNESS.

III.

IN RULING THAT ALLAN MARTINEZ ALLEGEDLY SAW ALBERTO MARTINEZ AND RAMIL EUGENIO BEING KILLED 2:30 P.M. 26 AUGUST 1996 AT AMPAY, SAN ANTONIO, RTR AND THE ASSAILANTS ALLEGEDLY WERE RONIL ABUNDO AND ROLANDO BOLAMBOT, TOGETHER WITH HENRY AGO AND BRIXCIO CALVO.

IV.

IN RULING THAT ALLAN MARTINEZ POSITIVELY IDENTIFIED THE ACCUSED-APPELLANT RONIL ABUNDO AND ROLANDO BOLAMBOT TOGETHER WITH OTHER ACCUSED HENRY AGO AND BRIXCIO CALVO AS THE ASSAILANTS.

V.

IN RULING THAT ALLEGED EYE-WITNESS ALLAN MARTINEZ DID NOT HAVE ANY EVIL MOTIVE, BIAS OR MALICE IN TESTIFYING AGAINST ACCUSED-APPELLANTS RONIL ABUNDO AND ROLANDO BOLAMBOT AND THE OTHER TWO ACCUSED HENRY AGO AND BRIXCIO CALVO, AND IN POINTING THEM AS KILLERS.

VI.

IN NOT VACATING AS NULL AND VOID THE CHALLENGED DECISION OF 6 JANUARY 1998 CONVICTING THE ACCUSED-APPELLANTS ABUNDO AND BOLAMBOT HEREIN BUT MERELY AMENDING IT FOR MANIFEST LACK OF DUE PROCESS BY THE ORDER DATED 3 FEBRUARY 1998 IN VIOLATION OF SECTION 1, ARTICLE III, 1987 CONSTITUTION BECAUSE IT OMITTED BY NEGLIGENCE OF THE COURT TO TAKE INTO ACCOUNT IN THE MAKING OF THE SAID DECISION THE TESTIMONY OF ROLANDO BOLAMBOT IN THE TRIAL ON 18 JULY 1997 (RECORDS) WHOM THE TRIAL COURT WRONGLY BELIEVED DID NOT TESTIFY WHEN IN TRUTH AND IN FACT HE DID TESTIFY ON 18 JULY 1997.

VII.

IN UNDULY CURTAILING THE RIGHT OF THE ACCUSED-APPELLANTS RONIL ABUNDO AND ROLANDO BOLAMBOT THROUGH THEIR COUNSEL TO CROSS-EXAMINE PROSECUTION WITNESSES ALLAN MARTINEZ AND BERNARDA MARTINEZ AND IN UNJUSTLY DEPRIVING ACCUSED-APPELLANTS OF THEIR RIGHT TO BE ASSISTED BY THE UNDERSIGNED COUNSEL IN THE OFFER AND INITIAL PART OF THE DIRECT TESTIMONY OF BERNARDA MARTINEZ BY PROVINCIAL PROSECUTOR GODOFREDO ABUL JR. DURING THE TRIAL ON 23 JUNE 1997 RESULTING TO THEIR PREJUDICE AND DAMAGE CONSISTING OF THE FAILURE OF COUNSEL TO OBJECT TO THE DISCREPANCY BETWEEN THE ACTUAL OFFER AND THE TESTIMONY OF BERNARDA.

VIII.

IN NOT ACQUITTING THE ACCUSED-APPELLANTS ABUNDO AND BOLAMBOT FOR INSUFFICIENCY OF EVIDENCE AGAINST THEM.

In the first assignment of error, accused-appellants contend that the testimonies of both prosecution and defense witnesses show the physical impossibility on the part of the accused-appellants to be at the scene of the crime at 2:30 p.m. on August 26, 1996, specified by eyewitness Allan Martinez to be the time of the killing of Alberto

Martinez and Ramil Eugenio. Ronil Abundo's alibi is that on the said date he was at the CAFGU detachment at the poblacion of San Antonio from 6:00 a.m. until 4:00 p.m. At 4:00 p.m., he was approached by Bernarda Martinez at the detachment and was asked by the latter to help in rescuing her husband and son-in-law in Sitio Ampay. Abundo argues that if he were in Ampay at 2:30 p.m., he cannot possibly be at the CAFGU detachment at 4:00 p.m. as the travel time by foot from Sitio Ampay to the detachment is two and a half (2 ½) hours, not one and a half (1 ½).

Bolambot, on the other hand, alleges that he was working as a carpenter at the house of Flora Ago from 7:00 to 11:00 a.m. and from 1:00 to 4:00 p.m., hence it was physically impossible for him to be at Sitio Ampay at 2:30 p.m.

The contentions are untenable.

For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity.[29] The contention of Ronil Abundo that he was at the detachment from 6:00 a.m. up to 4:00 p.m., uncorroborated by any witness, is self-serving and unworthy of credence. Even if Abundo were at the detachment at 4:00 p.m. where he was allegedly approached by Bernarda, it was not physically impossible for him to be at the crime scene at 2:30 p.m. as it was not sufficiently established that the travel time from Sitio Ampay to the CAFGU detachment at the poblacion of San Antonio is two and a half (2 ½) hours. According to the defense, the testimony of eyewitness Allan Martinez that the crime was committed at 2:30 p.m. and that he reached the house of Bernarda Martinez at 5:00 p.m. proves that the travel time is two and a half hours. We do not agree. Allan saw the four accused approach the victims at 2:30 p.m. Although the crime was carried out immediately, Allan "slowly crawled" out of his hiding place to avoid being seen by the assailants.[30] He then took a different route, that is, "through the thickets and forests" to avoid encountering any person on his way back to the poblacion.[31] These factors must have considerably slowed down the travel of Allan, thus negating the conclusion that the travel time from Sitio Ampay to the poblacion is two and a half hours. It should likewise be considered, as stated by the accused-appellants themselves in their Brief, that the time as stated by the witnesses was merely an approximation, "not as exact as [that seen] on a time piece,"[32] for most of them, if not all, have no time pieces. Moreover, if we were to believe the testimony of accused Abundo that at 4:00 p.m. he was approached by Bernarda Martinez, and ten minutes later by Allan Martinez at the CAFGU detachment, the travel time from Sitio Ampay to the poblacion would only be about one and a half (1 ½) hours.

"Q:

Was there anyone else who went to that detachment to request assistance in going to Ampay?

A:

Only Tata [Allan] Martinez and Nanay Narda.

Q:

Who came first Allan Martinez or Bernarda Martinez?

A:

It was Nanay Bernarda who came first and who told us that Tatay was being held hostage by an unidentified persons (sic) in the mountain of Ampay.

Q:

What time was that?

A:

About 4:00 o'clock, more or less, in the afternoon.

Q:

So, what time did Allan Martinez go to the detachment?

A:

That was about 4:00 o'clock also, more or less, in the afternoon together with Barangay Captain Dawirao.

Q:

If Bernarda Martinez went to that detachment at 4:00 o'clock and Tata also went there with Barangay Captain Dawirao at about 4:00 o'clock they must have seen each other at the detachment, is that correct?

A:

No, Sir, that couldn't be because there was a gap of about ten (10) minutes. When Nanay Bernarda left for San Antonio that was the time that Allan Martinez and company arrived." [Emphasis supplied][33]

If Allan left the crime scene sometime after 2:30 p.m., let us say at about 2:40 p.m., and was already at the detachment at 4:10 p.m., the travel time from Sitio Ampay to the CAFGU detachment would only be one and a half (1 ½) hours.

Accused-appellants presented witness Flora Ago who testified that Bolambot was doing carpentry work at her house at the time of the commission of the crime. The court a quo did not find Flora Ago to be a credible witness.[34] Flora Ago is the mother of Henry Ago, the co-accused of Bolambot. At the time she testified, Henry Ago was at large.[35] Flora Ago herself admitted that she received some monetary consideration from the mother of Bolambot in exchange for her testimony.[36] Even if it were true that Bolambot worked as a carpenter at Flora's house on that fateful day, it is entirely possible that Bolambot slipped out at 1:00 p.m., committed the crime at Sitio Ampay at 2:30, and then immediately returned to work at Flora's house. As it is, the defense of alibi of the accused-appellants will not hold water. Alibi, though a weak defense, may occasionally prove to be a good plea; however, if there is even the least chance that the accused was present at the scene of the crime, as in this case, the defense of alibi will not prosper.[37]

We will resolve the second, third, fourth, fifth and eight assignments of error jointly as they involve similar and/or related issues.

Accused-appellants point out certain inconsistencies in the testimony of eyewitness Allan Martinez, and question his credibility on the ground of the belated disclosure of the identities of the assailants.

It is well-settled that minor inconsistencies in the testimony of a witness[38] do not detract from its essential credibility as long as it is on the whole coherent and intrinsically believable.[39] Inaccuracies may in fact suggest that the witness is telling the truth and has not been rehearsed.[40] The testimony of Allan Martinez as to pertinent matters is clear, coherent and satisfactory. He positively identified the accused-appellants Abundo and Bolambot as the perpetrators of the crime. Hence, we sustain the trial court in giving credence to his testimony.

The disclosure by Allan Martinez of the identities of the assailants three (3) days after the incident does not diminish the credibility of his testimony. Eyewitnesses have a natural tendency to remain silent rather than imperil their own lives and those of their families.[41] It is clear from the evidence on record that Allan kept silent for

fear of reprisal from the accused. In the testimony of Bernarda Martinez, she disclosed that after Allan told her of the identities of the assailants, he warned her not to divulge the information for the reason that "they might kill all of us".[42] Two days after the killing, accused Henry Ago asked Allan if he knew who the killer was.[43] Thereafter, Allan was "invited" by Ago to go with him to the house of Mayor Soliva where he was again asked to reveal the identity of the killers.[44] In both instances, Allan pretended not to know.[45] During the whole period of the wake of the two victims, the four accused were present almost every night, with Ronil Abundo carrying an armalite, while the three others carried double-bladed weapons tucked at their waists.[46] After the wake, Allan availed of the Witness Protection Program of the Department of Justice. When asked why he did not return anymore to Barangay San Antonio, Allan answered, "I was afraid".[47] Finding the reluctance of Allan to reveal the identity of the killers justified, the court a quo held thus:

"It is not difficult to understand why Allan Martinez was afraid to divulge the identities of the suspects for when a person can deliberately kill another whom he affectionately calls "Tatay",[48] it cannot be doubted that he can kill with impunity the witnesses to his felonious act. Moreover, Allan Martinez knew that Ronil Abundo was a member of the CAGU assigned as such in the same Brgy. of San Antonio where Allan Martinez lives. This fact undoubtedly compounded his fear."[49]

The accused-appellants attribute as ill-motives of Allan Martinez the latter's relationship to the victim Alberto Martinez who was his uncle, and the accused-appellants' being "the bodyguards of Mayor Nilo Soliva of RTR and associated with Nani Abejo with whom the deceased family (sic) including Allan Martinez had allegedly some business differences or account to settle".[50]

A close relationship of a witness to the victim does not necessarily give rise to a false testimony.[51] Besides, Allan likewise considers two of the accused, Rolando Bolambot and Henry Ago, as his cousins.[52] As for the contention that Allan is implicating the accused-appellants for being the bodyguards of the Mayor and associated with a person with whom Allan had some business differences or account to settle, the same fails to convince us, and we find such averment too frivolous to merit an extended discussion. Without any motive to falsely testify, witness Allan Martinez becomes all the more credible.

Accused-appellants aver that their presence during the entire wake just proves their innocence, as they could have easily fled if they really were the perpetrators of the crime.

This contention is unmeritorious.

Although flight of the accused is competent evidence which would tend to establish his guilt,[53] failure to flee is not a conclusive proof of his innocence. Some culprits remain in the vicinity of the crime scene so as to create a semblance of normalcy, careful not to arouse the suspicion of the community.[54]

Accused-appellants further claim lack of motive on their part to kill Alberto Martinez and Ramil Eugenio. This argument deserves scant attention in view of the well-settled rule that lack of motive does not preclude conviction when the accused has been positively identified as the author of the crime, considering that nowadays, it is a matter of judicial knowledge that persons have been killed or assaulted for no reason at all.[55]

Anent the sixth error, we reject the contention of the accused-appellants that the testimony of Rolando Bolambot was not considered by the lower court in making the appealed decision. It is true that the court a quo inadvertently excluded the testimony of Bolambot in writing the decision dated January 6, 1998 due to improper marking of the transcript of stenographic notes. However, upon realizing its mistake, the lower court immediately amended its Decision through an Order dated February 3, 1998 where it evaluated the testimony of Bolambot.[56] Nevertheless, the lower court ruled that the testimony of Bolambot "cannot alter or modify the finding of the Court that the said accused are guilty xxx." [57]

After a careful and thorough examination of the records of this case, we find the seventh assignment of error completely unmeritorious. Accused-appellants were actually given sufficient time to cross-examine the witnesses of the prosecution. We agree with the statements made by the Solicitor-General in his Brief, to wit:

"In the case of witness Allan Martinez, appellants' counsel cross-examined him on June 16, 1997. Appellants' counsel requested for continuance on the following day. The following day, counsel was late but when he arrived he was allowed to cross-examine Martinez again for more than an hour (TSN, June 17, 1997, pp. 19-20)

"In the case of witness Bernarda Martinez, appellants' counsel cross-examined her on June 26, 1997 for more than one (1) hour although the court granted only one (1) hour. Appellants' counsel asked for additional time and the court granted additional 20 minutes (TSN, June 26, 1997, pp. 17-22).

"It appeared to the trial court that appellants' counsel was delaying the proceedings when after cross-examining the witnesses for more than one (1) hour each, counsel wanted to have more time to ask important questions. The court noted that appellants' counsel consumed his allotted time asking irrelevant questions and only to ask for more time to ask important questions (Ibid.).

"Appellants have to be aware of the mandate of the trial court judges that they conduct the trial with utmost dispatch, with judicious exercise of the court's power to control the trial to avoid delay (SC Circular No. 1-89, II (b)). This explains why the court was strict about time."[58]

Considering that strict enforcement by the trial court with time constraints appears to be reasonable, and was applied equally to both the prosecution and the defense,[59] we find no reason to disturb the court's observations.

The accused-appellants were charged with Homicide in the Information filed against them, but were convicted of Murder by the lower court for lack of evidence to prove the element of robbery. A careful examination of the records of this case yields not even an iota of evidence to prove that robbery was the main purpose of the accused-appellants and that the killings were committed by reason or on the occasion of robbery. Hence, the accused-appellants can only be convicted of either Homicide or Murder.

As we held in the case of *People vs. Pacala*:<sup>[60]</sup>

"It is well-settled that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide."[61]

Treachery is one of the circumstances that qualify a simple Homicide to Murder.<sup>[62]</sup> Treachery exists "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 insure its execution, without risk to himself arising from any defense which the offended party might make."<sup>[63]</sup> In the case before us, treachery is clearly attendant to the killings. When the accused-appellants came, the victims were busy connecting the chain of their chainsaw. Alberto Martinez was in a squatting position facing Ramil Eugenio who was assisting him in connecting the chain. Accused-appellant Ronil Abundo suddenly shouted "Dapa! Taas ang kamot!" (Drop to the ground! Raise your hands!) and immediately shot Alberto Martinez who was still in a squatting position.<sup>[64]</sup> Alberto "rolled over" after being hit by the bullet, but Abundo followed and stabbed him. Meanwhile, accused-appellant Bolambot immediately stabbed Ramil Eugenio, who, like his father-in-law Alberto was caught by surprise by the assailants. Bolambot was seen by

eyewitness Allan Martinez continuously stab Ramil Eugenio three times. The post-mortem examination of the body of Ramil Eugenio yields a total of seven stab wounds, six of which were located at the back. The suddenness of the attack of the accused-appellants rendered the victims unable to put up a defense. Moreover, such attack was unexpected by the victims from the assailants, one of whom, Ronil Abundo, was intimately known to victim Alberto Martinez, and even calls the latter "Tatay". It is clear, therefore, that treachery attended the commission of the crime, and that the trial court correctly qualified the killings to the crime of murder.

Accordingly, we find no reversible error on the part of the trial court which would warrant a reversal of the judgment of conviction.

WHEREFORE, the questioned Decision convicting the accused-appellants Ronil Abundo and Rolando Bolambot of the crime of Murder and sentencing them to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of the victims is hereby AFFIRMED.

**SO ORDERED.**

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Penned by Judge Cipriano B. Alvizo, Jr.

[2] TSN dated June 11, 1997, p. 9.

[3] Ibid.

[4] TSN dated June 16, 1997, p. 10.

[5] TSN dated June 11, 1997, p. 10.

[6] Ibid., pp. 12 to 13.

[7] Id., p. 13.

[8] Id., p. 11.

[9] Id.

[10] Id., pp. 11 to 12.

[11] Id., pp. 12, 16 to 17.

[12] Id., p. 17.

[13] Ibid., p. 27.

[14] TSN dated June 17, 1997, pp. 8 to 10. Although there were five (5) wounds indicated in the Postmortem Examination Certificate of Alberto Martinez [RTC Records, p. 13], Dr. Mallonga testified that wound nos. 4 and 5 are actually one continuous wound, one of which is an entrance point and the other an exit point.

[15] Ibid., pp. 11 to 15.

[16] Id., p. 11.

[17] TSN dated June 23, 1997, pp. 7 to 8.

[18] Ibid., pp. 7 to 9.

[19] Id., pp. 8 to 11.

[20] Id., p. 16.

[21] TSN dated July 15, 1997, pp. 5 to 7.

[22] Ibid., p. 7.

[23] Id.

[24] Id., p. 9.

[25] TSN dated July 18, 1997, pp. 6 to 7.

[26] TSN dated August 11, 1997, p. 4.

[27] RTC Decision, pp. 16 to 18; Rollo, pp. 192 to 194. Later, an Order dated March 12, 1999 was issued by the court a quo, dismissing the case against Henry Ago who died on October 8, 1998. [RTC Records, p. 268]

[28] RTC Order dated February 3, 1998; Rollo, pp. 196.

[29] People vs. Platilla, 304 SCRA 339 (1999), at p. 352, citing People vs. Galapin, et. al., G.R. No. 124215, July 31, 1998; People vs. Cawaling, et. al., G.R. No. 117970, July 28, 1998; People vs. Aranjuez, 285 SCRA 466 (1998); et. al.

[30] TSN dated June 11, 1997, pp. 14 to 15.

[31] Ibid., p. 16.

[32] Appellants' Brief, p. 34; Rollo, p. 108.

[33] TSN dated July 15, 1997, pp. 22 to 23.

[34] RTC Decision, p. 9; Rollo, p. 34.

[35] Henry Ago remained at large during the trial of this case by the lower court, and died on October 8, 1998, more than eight (8) months after the judgment of the court was rendered. [RTC Records, pp. 265 to 267]

[36] TSN dated August 11, 1997, pp. 8 to 9.

[37] People vs. Enriquez, 281 SCRA 103 (1997), at p. 117.

[38] During the Preliminary Investigation of this case conducted by Judge Lilia Andrade Corvera of the Fourth Municipal Circuit Trial Court of Cabadbaran-Remedios Trinidad Romualdez (RTR), Agusan del Norte, Allan Martinez testified that he hid behind the "grass"; during the trial, Allan changed this to "mote-mote" vines. He likewise changed his answer to the question of whether or not he saw Ronil Abundo stab Alberto Martinez from "No" to "Yes". [RTC Record, p. 21.]

[39] People vs. Ocampo, 218 SCRA 609 (1993), at p. 617 citing People vs. Ansing, 196 SCRA 374 (1991).

[40] People vs. Echegaray, 257 SCRA 561 (1996), at p. 572 citing People vs. Jaymalin, 214 SCRA 685, 690 to 691 (1992).

[41] People vs. Jamiro, 279 SCRA 290 (1997) at pp. 302 to 303. People vs. Cabiles, 248 SCRA 207 (1995) at p. 217.

[42] TSN dated June 23, 1997, at p. 16.

[43] TSN dated June 11, 1997, p. 29.

[44] Ibid.

[45] Id.

[46] TSN dated June 23, 1997, p. 14.

[47] TSN dated June 11, 1997, p. 30.

[48] Accused-appellant Ronil Abundo calls Alberto Martinez "Tatay" and Bernarda Martinez "Nanay". [TSN dated July 15, 1997, p. 4]

[49] RTC Decision, p. 7; Rollo, p. 32.

[50] Appellants' Brief, p. 78; Rollo, p. 152.

[51] People vs. Asto, 277 SCRA 697 (1997) at pp. 708 to 709, citing People vs. Patamama, 250 SCRA 603 (1995).

[52] TSN of the Preliminary Investigation conducted by Judge Lilia Andrade Corvera of the Fourth Municipal Circuit Trial Court of Cabadbaran-RTR, Agusan del Norte, on witness Allan Martinez, dated October 22, 1996, p. 3.; RTC Records, p. 21. However, Rolando Bolambot denied having any relation with Allan Martinez. [TSN dated July 18, 1997, at p. 17]

[53] People vs. Castor, 216 SCRA 410 (1992), at p. 420.

[54] People vs. Ocampo, 218 SCRA 609 (1993), at p. 618.

[55] People vs. Canete, 287 SCRA 490 (1998), at p. 496, citing People vs. Cabodoc, 263 SCRA 187 (1996), which further cited People vs. Mandapat, 196 SCRA 157, 165 (1991) and People vs. Ilaoa, 233 SCRA 231, 236 (1994); People vs. Canceran, 229 SCRA 581 (1994), at p. 587; People vs. Cabarrubias, 223 SCRA 363 (1993), at p. 370, citing People vs. Caranzo, 209 SCRA 232 (1992).

[56] Rollo, pp. 195 to 196.

[57] Ibid.

[58] Appellee's Brief, pp. 19 to 20; Rollo, pp. 225 to 226.

[59] TSN dated June 11, 1997, p. 21.

[60] 58 Phil 370 (1974), at pp. 377 to 378, citations omitted.

[61] See also People vs. Teodoro, 280 SCRA 384 (1997), at pp. 397 to 398; People vs. Laurente, 255 SCRA 543 (1996), at p. 568; People vs. Cadevida, 219 SCRA 218 (1993), at p. 228; and, People vs. Nimo, 227 SCRA 69 (1993), at pp. 85 to 86.

[62] Articles 248 and 249 of the Revised Penal Code.

[63] People vs. Basao, 310 SCRA 743 (1999), at p. 776.

[64] In the case of People vs. Tingson, 47 SCRA 243 (1972), where accused Tingson suddenly shot the victim who was unarmed and in a squatting position, this Court found treachery to be present.

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