

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOCEL BEJO, ACCUSED-APPELLANT.

G.R. No. 138454. February 13, 2002

Ponente: PUNO, J.

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PUNO, J.:

While this is not the Court's first time to see life so cheapened as to be snuffed out because of a driving altercation, the senseless killing is not any less appalling.

On January 17, 1997, an information was filed against the accused Jocel Bejo and Harold Bejo, viz:

“The undersigned Assistant City Prosecutor accuses JOCEL BEJO and HAROLD BEJO, both of New Road, Barangay Banica, Roxas City, Philippines, of the crime of Murder, defined and penalized under Art. 248 of the Revised Penal Code in relation to Section 6 of R.A. No. 7659, committed as follows:

That on or about the 5th day of November, 1996, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with a knife, respectively, with intent to kill and without justifiable motive, did then and there wilfully, unlawfully and feloniously, attack, assault and stab one JUAN BACUTA, thereby inflicting upon the latter the following stab wounds, to wit:

- Stab wound, 1.5 cm. in width and 8 cm. depth, located at the right side of the thyroid area;
- Stab wound, 7 cm. in length, thru and thru to the lung, located at the right infra clavicular anterior axillary line;
- Superficial wound, 2 cm. width located at the left mid-abdominal region;
- Superficial wound, 3 cm. width, located at the right index finger, posterior.

which stab wounds caused the instantaneous death of the said Juan Bacuta.

The offense is qualified by the circumstance of abuse of superior strength and aggravated by treachery (alevosia).

That as a direct consequence of the unlawful acts of the accused, the heirs of the victim suffered actual, moral and other damages in the amount as may be awarded by the Court under the new Civil Code of the Philippines.

CONTRARY TO LAW.”[1]

The accused pleaded not guilty. Trial ensued. Harold Bejo was acquitted, hence this appeal involves only the accused Jocel Bejo.

The prosecution evidence shows that at the time Bacuta was killed, witness Nestor Astorga was a resident of Legaspi St., Ilaya, Roxas City. Since 1994, he had been staying in a house owned by Nestor and Emelinda Bartolo along that street. Juan Bacuta, the victim, was his neighbor.

On November 5, 1996, at about 11:30 in the evening, Astorga was in front of the bamboo gate of their house. An owner-type jeep was parked at the side of Legaspi Street where Astorga's house stood. Behind the wheel was Juan Bacuta. Astorga was about six meters from the right side of the jeep. A short heated exchange took place between Bacuta and two passersby, Jocelyn Bejo and Marivic Cornel. The latter two were accompanied by the accused Jocel Bejo and Remuel Cornel. Astorga overheard Jocelyn Bejo complaining to Bacuta, "When you are running (sic) your jeep you seem to be the owner of the road, why you want to fight?" Marivic Cornel added, "If you want to fight, get down from your jeep and you will see what you want." Suddenly, Jocel Bejo, who was then on the left side of Juan Bacuta, boarded the back of the jeep. Remuel Cornel who was at the right side of the jeep also immediately boarded its front right side. Jocel Bejo and Remuel Cornel stabbed Bacuta at the same time, Jocel Bejo from behind and Remuel Cornel while seated to Bacuta's right. Jocel Bejo used a nine-inch knife in stabbing Bacuta on the upper right chest at a downward angle. Cornel, on the other hand, used a seven-inch weapon to stab Bacuta at the upper right chest, just below the shoulder. After Jocel Bejo stabbed Bacuta, he jumped off the jeep and went to his companions standing at the left side of the jeep. Remuel Cornel also jumped off the jeep and ran towards the corner of Legaspi and Ellieta Streets. But Jocel Bejo called back Cornel and after conversing briefly, they both ran towards the Divine Jesus Memorial Park. The wounded Bacuta got off the jeep and ran towards their house in Ellieta street. Astorga clearly witnessed the stabbing incident as Bacuta's jeep was well-lighted by a 100-watt bulb hanging on the branch of a lumboy tree, about six meters from the ground. The bulb was owned by Emelinda Bartolo, the owner of the house where Astorga was staying. The headlights of Bacuta's jeep were also lighted. Sometime on November 19 or 20, Astorga saw Bacuta's remains in the latter's house.[2]

Taking the witness stand, Corazon Alolor, another resident of Legaspi Street, narrated that on November 5, 1996, at about 11:30 in the evening, she was about to sleep on the second floor of her house. She heard a commotion outside so she opened her window to find out what it was all about. The part of the street where there was a commotion was lighted by a 100-watt bulb hanging from a lumboy tree branch about three meters from the ground, directly above a parked roofless jeep. From her house, the jeep was at the other side of the road, about six meters away. Juan Bacuta was behind the wheel of the jeep.

She saw Harold Bejo on Bacuta's left side, holding him on the chest with both hands. Jocel Bejo and Remuel Cornel jumped off the jeep, the former from the back of the jeep, the latter from the jeep's front right side. Bacuta struggled to break free from Harold Bejo to alight from the jeep. Both Jocel Bejo and Remuel Cornel held bloodstained knives while Harold Bejo's knife also had a little bloodstain. The three men had two female companions. The assailants then ran to the Divine Jesus Memorial Park and the two female companions also ran away. The bloodied Bacuta was left slumped behind the wheel. Later, he got off the jeep and ran away shouting "Anoy, Anoy, Anoy", then fell to the ground. Alolor knew Harold Bejo as she met him about two weeks prior to November 5, 1996 when he repaired his tricycle in front of her store. She also knew Jocel Bejo as he usually passed in front of her house.[3]

Emelinda Bartolo also took the witness stand. She has been a resident of Legaspi Street, Ilaya, in the eastern part of Roxas City since 1977 and a Barangay Kagawad therein. Her house is about six meters from the edge of Legaspi Street and had a farm at the back. Near their farm is a farm owned by Israel Bejo, the father of the accused Jocel Bejo. She personally knew the brothers Harold and Jocel Bejo, the latter since he was a small boy. Both used to drive a tricycle for a living. She also knew the victim, Bacuta, as he was their neighbor since 1977.

In the evening of November 5, 1996, Emelinda was with her husband in their tricycle, entering the gate of their house. She saw Jocel and Jocelyn Bejo with some other companions along the street, a short distance from their fence. When the Bartolos were already inside their house, Emelinda prepared supper for her husband. At about 11:30, while she was facing her husband who was then eating his supper, a jeep suddenly stopped in front of their

house, right before a lumboy tree by the roadside. She also heard voices of women who sounded in trouble. She told her husband that she would check who was outside and looked out their window. She saw two men on the jeep, one on the right side, while the other, Jocel Bejo, was standing at the back of the roofless jeep. The driver of the jeep was stooped behind the wheel. The man on the right side jumped off the jeep with a knife in hand, and Jocel Bejo also jumped off from the back left side of the jeep, likewise carrying a knife. Another man stood at the left side of the driver of the jeep, but she did not recognize him because the driver of the jeep covered him. The three men had two female companions, Jocelyn Bejo, sister of the accused Jocel Bejo, and Marivic Cornel. The three men ran towards Banica. The driver then alighted from the jeep and ran with his body stooped forward and his left hand holding the base of his neck and his right hand holding his stomach. Emelinda came out of their house and saw a pool of blood on the jeep's driver's seat. She asked from the people gathered around the jeep who was the man stabbed, and they replied that it was Juan Bacuta. She asked Nestor Astorga to look inside the jeep to check if a knife was left behind, but there was none.

Emelinda saw the events unfold before her eyes as the place was well-lighted by a 100-watt bulb directly above the jeep, hanging from a branch of the lumboy tree in front of the jeep. There was also light coming from the headlights of the jeep and Bartolo's house.[4]

Dr. Victoria B. Arcenas, Medical Officer IV of the City Health Office, testified. Her competence as an expert on wounds was admitted by the defense. On November 6, 1996, she conducted a post mortem examination on the body of Juan Bacuta and prepared a Post Mortem Examination Report.[5] The report indicated that the victim sustained four wounds, viz:

- "1. Stab wound, 1.5 cm. in width and 8 cm. depth, located at the right side of the thyroid area;
2. Stab wound, 7 cm. in length, thru and thru to the lung, located at the right infra clavicular anterior axillary line;
3. Superficial wound, 2 cm. width located at the left mid-abdominal region;
4. Superficial wound, 3 cm. width, located at the right index finger, posterior."[6]

Dr. Arcenas explained that the first wound was a superficial stab wound located at the right side of the neck. It may have been caused by a sharp pointed instrument like a knife. The second wound was a penetrating fatal stab wound inflicted on the right side of Bacuta's body, which hit the right lung. The wound could have also been inflicted by a sharp pointed instrument like a knife. The third was a superficial wound at the left side of the abdomen. The fourth wound on the right index finger was also superficial. Both the third and fourth wounds were lacerated wounds possibly inflicted by sharp-edged instruments. The wounds caused severe bleeding and shock which led to the death of the victim. Dr. Arcenas issued a Certificate of Death[7] stating that the cause of Bacuta's death was hemorrhagic shock secondary to stab wound. Dr. Arcenas opined that it was possible for the first wound to have been inflicted by an assailant at the right side of the victim, and the second wound by an assailant behind the victim. The trajectory of the first wound was from right to left, while the second wound was horizontal from right to left. It was possible that the wounds were inflicted by different sharp instruments.[8]

In his defense, the accused Jocel Bejo denied the charges against him and pointed to Remwel Cornel as the assailant of Juan Bacuta. On November 5, 1996, at around 11:30 in the evening, Jocel Bejo was at Beb's Karaoke Bar along Legaspi Street, Ilaya, Roxas City. He was with his siblings Harold Bejo and Jocelyn Bejo, the latter's common law husband Remwel Cornel, and Daryl and Marivic Cornel. They were drinking beer to celebrate Remwel Cornel's birthday. In the later part of his testimony, however, he testified that the bar's security guard refused them entry to the bar as there was no electricity at that time. The group thus told the guard that they would just leave. At this juncture, Remwel Cornel unsheathed a knife from the waist of his pants. He held it with his left

hand and covered it with his shirt. He was angry because he was not able to drink all the beer he wanted. They all then proceeded home.

While the group was walking home along Legaspi Street, and Remwel Cornel was crossing the street, a jeep crossed his path and ran over his left foot. He angrily confronted the driver and asked him why he ran over his left foot. The driver, Juan Bacuta, stopped the jeep in front of Emelinda Bartolo's house and answered back, "Why?", then pulled from his back a firearm similar to that of a policeman's. Remwel boarded the front right side of the jeep while Daryl got on at the back and stood there as the jeep had no roof. Remwel stabbed Bacuta with a knife on the right side of the stomach while Daryl stabbed Bacuta from behind also using a knife and inflicted a wound on his neck. The accused Jocel Bejo saw blood coming out of both stab wounds. Bacuta was able to draw his firearm, but was stabbed before he could shoot. Bacuta got off the jeep and ran away. In another part of his testimony, however, the accused Jocel Bejo testified that he did not see Daryl stab Bacuta as he immediately ran away after Jocel Bejo stabbed Bacuta and the two were still in the jeep.

While the Cornels were stabbing Bacuta, the accused Jocel Bejo, Harold Bejo, and their two female companions were on the other side of the street. Jocel Bejo was about six meters away from the left side of the jeep and the two ladies were at some distance ahead of him and Harold. The accused shouted at Remwel to stop stabbing Bacuta as the latter was a barriomate. After Remwel stabbed Bacuta, the accused Jocel Bejo immediately ran home with Harold as he was afraid of Remwel and did not want to be implicated in the killing of Bacuta. The Bejo brothers slept in their house that night and went to school the following day. The accused Jocel Bejo did not know what happened to Remwel Cornel after the stabbing incident as he did not inquire from him nor from his sister Jocelyn. Nor did he know that Juan Bacuta died on November 6, 1996 as a result of the attack and learned of his death only when he was arrested in connection with the instant case.[9]

Harold Bejo also testified. On November 5, 1996, at about 11:30 in the evening, he was walking along Legaspi Street, Ilaya, with Jocel Bejo, Jocelyn Bejo and her live-in partner Remwel Cornel, Daryl Cornel, and Marivic Cornel. Remwel and Daryl were drunk. The group was walking towards Beb's Karaoke Bar in Legaspi Street to celebrate Remwel Cornel's birthday. Upon reaching the bar, Remwel Cornel asked permission from the bar's security guard if they could drink at least three bottles of beer, but the guard answered in the negative as there was no electricity at that time. Thereupon, the group started for home. The brothers Jocel and Harold Bejo walked on one side of the road while the rest of the group walked on the other side, with the two ladies walking ahead. When the Bejo brothers were near the Roman Catholic Cemetery, a jeep driven by Juan Bacuta suddenly made a u-turn in front of Remwel Cornel. The jeep's right tire ran over Remwel Cornel's left foot, prompting Remwel to confront Juan Bacuta and ask, "Sir, why did you hit me?" The driver responded, "Why what?" and pulled out a firearm similar to that used by the police and pointed it forward. Remwel suddenly got on the front right side of the jeep and stabbed Bacuta with a knife. Daryl Cornel boarded the back of the jeep and also stabbed the driver on the neck with a knife.

While the Cornels were stabbing Bacuta, the Bejo brothers stood at the other side of the road. From there, they saw the bloodied knives of the assailants. Harold and Jocel ran home in New Road, Banica and slept. The following morning, the brothers went to school. They did not see Remwel Cornel after that fateful night even though he lived only about a hundred meters from the Bejos. Harold Bejo denied holding Bacuta while Remwel was stabbing him (Bacuta) as he (Harold) was on the other side of the road. He also denied that his brother Jocel had a knife that evening and stated that only Remwel and Daryl Cornel carried knives that night. Harold personally knew Juan Bacuta as the latter's brother lived near his house at New Road. Although there was no electricity on the night of November 6, 1997, Bacuta's jeep was well-lighted as its headlights were on and there was light on the jeep's dashboard.[10]

The defense also presented Jocelyn Bejo. On November 5, 1996, at about 11:30 in the evening, Jocelyn was walking from Beb's Karaoke Bar along Legaspi Street, Roxas City, with her live-in partner Remwel Cornel, Jocel Bejo, Harold Bejo and Marivic Cornel. They were supposed to celebrate Remwel's birthday, but as there was a brownout, they decided to go home. They walked along Legaspi Street, with Remwel and Daryl Cornel walking on the left side of the road and the rest of the group walking on the other side of the road. Suddenly, an owner-type jeep made a u-turn and stopped near Remwel and Daryl Cornel. The latter confronted the driver and asked why he seemed to want to run them over. The driver of the jeep, who at that time she did not recognize as Juan Bacuta, appeared to pull out a firearm from his side and to point it at Remwel and Daryl. In response, Remwel got on the jeep and stabbed Bacuta on the chest using a one-foot long knife which was tucked in his waist. Daryl also boarded the back of the jeep and stabbed Bacuta with a knife of about the same length. Jocelyn was about ten meters away from the jeep. As there was no electricity in Legaspi Street, the scene of the crime was lighted only by the jeep's headlights and a bulb inside the jeep. After witnessing the stabbing, Jocelyn ran towards the direction of her house and shouted, "Run, run now, because they already stabbed the driver." She reached her house but Remwel and Daryl Cornel did not. She and Remwel at that time lived together, but Remwel had already abandoned her by the time she testified. She denied being accused of killing Bacuta and executing an affidavit in relation to the instant case. When confronted with a counter-affidavit she executed, however, she admitted that she was implicated in Bacuta's death.[11]

Agustin Hari-on also testified for the defense. In the afternoon of November 5, 1996, he went to the back of the Mason Cemetery in Barangay Banica, Roxas City, as he was going to work on an image of the Virgin Mary in a chapel there. After finishing his work, he stopped by a store at the side of the cemetery to drink with his friends. At about 11:00 in the evening, he headed for home and passed through Legaspi Street. When he was in front of the Roman Catholic Cemetery, he saw an oncoming jeep which made a u-turn. He also saw the oncoming Bejo siblings, Jocel, Harold, and Jocelyn walking along Legaspi Street, on the same side of the road where he was walking. The siblings were about nine meters away from the jeep across the street. On cross-examination, however, Hari-on testified that there was no woman at the scene.

Hari-on continued to walk home, but looked back to his right as his attention was drawn to the jeep when he heard Remwel Cornel say, "Why did you run over me?" The driver of the jeep retorted, "Why, what do you want?" Remwel Cornel boarded the right front side of the jeep and with his right hand stabbed the driver. Daryl Cornel got on at the back of the jeep and stabbed the driver from behind. Hari-on was about ten meters away from the jeep on the other side of the road. In another part of his testimony, however, he stated that he could have been 100 meters away from the jeep. When Hari-on came face-to-face with the Bejo siblings, he told them to go home. Jocel and Harold looked nervous and ran towards the direction of their house. Hari-on personally knew the Bejo brothers and Remwel and Daryl Cornel. Hari-on continued walking home as he was afraid that he would also be stabbed. It was dark at that time because there was no electricity and it was raining, but there was light coming from a bulb near the base of the jeep's steering wheel. The headlights of the jeep were also on. Hari-on also testified that the jeep had a roof. But when confronted with the testimony of Remwel Cornel that the jeep was roofless, he stated that he did not notice if the jeep did or did not have a roof. Later, he said that only the front of the jeep had a roof covering the driver and the front passenger seat. Hari-on learned the following morning that the driver of the jeep was Juan Bacuta.[12]

Finally, the defense presented Joel Miranda. On November 5, 1996, at about 11:30 in the evening, Miranda was on his way home from work in Fuentes Drive to New Road, Barangay Banica. He was a cement mixer at the Capiz Doctor Hospital, and the workers therein were sent home that night at 10:30 because there was a brown-out. About an hour or so later, at about 11:30, Miranda walked at the old Roman Catholic Cemetery in Legaspi Street, Roxas City. He saw a private jeep and two men, one was Remwel Cornel and the other was Daryl Cornel.

Miranda was about eight meters from the jeep which was illuminated only by its headlights in the dark night. Remwel asked the driver of the jeep, "Why do (sic) you run-over us?", then got on the jeep and stabbed the driver, Juan Bacuta, several times with a knife. Daryl also got on the back part of the jeep and stabbed Bacuta on the base of the neck likewise with a knife. The accused Jocel and Harold Bejo and their elder sister were also in the vicinity of the old cemetery, about ten meters away from the jeep. They were running about ten meters ahead of Miranda and were not holding any knives. Miranda personally knew Jocel Bejo and Remwel Cornel as he used to pass by their houses. Miranda also met Agustin Hari-on in Legaspi Street that night. Miranda continued walking home.[13]

On rebuttal, PO3 William Limjuco, Jr. testified. On November 6, 1996, the day following the stabbing incident, he was assigned at the Roxas City police station. He and four other police officers were assigned to investigate the killing of Juan Bacuta. At 9:00 that morning, Limjuco's investigating team went to the crime scene in Legaspi Street. They were able to talk to Nestor Astorga, Corazon Alolor, Emelinda Bartolo, Rafael Bicular and City Councilor Victor Arcenas. From their interview of these people, they gathered that the suspects in the killing of Juan Bacuta were Remwel Cornel, Daryl Cornel, Marivic Cornel, Jocel Bejo, Harold Bejo and Jocelyn Bejo. The team proceeded to the residences of the suspects and were able to talk to Mr. and Mrs. Israelito Bejo, the parents of Jocel and Harold Bejo. The couple informed them that their sons were in school, Jocel in Ramon Arnaldo High School and Harold in Tanque High School. The team then proceeded to the house of Remwel Cornel and Jocelyn Bejo, then to Daryl and Marivic Cornel's abode. They brought these four suspects to the police station for investigation. The witnesses earlier interviewed identified the four as those present at the crime scene the night before. Nestor Astorga pointed to Remwel Cornel as one of those behind the killing of Bacuta. He also identified Jocel Bejo and Harold Bejo as Bacuta's assailants through the police station's picture gallery which included file photos of the Bejo brothers.

The investigating team then proceeded to Jocel and Harold Bejos' schools to verify if the brothers were attending classes in their respective schools. Principal Caberoy of Ramon Arnaldo High School escorted them to the adviser and teacher of Jocel; they were told that Jocel was absent that day. They inquired about Jocel's schedule of classes and asked where he was supposed to be at that time and checked whether he was attending class. It was about 9:30 in the morning. They did not find him in his assigned classroom. Limjuco personally knew Jocel Bejo as he was a suspect in the death of a certain Javier and he was previously detained at the police station. Next, the investigating team proceeded to the Tanque High School. They talked to the school principal and proceeded to the classroom where Harold was supposed to be attending classes. They checked the classroom but he was nowhere to be found. They also asked the teacher and students if he came to school, but they said that he did not. Limjuco also personally knew Harold prior to November 6, 1996. The following day, the team again went to the residence of the Bejos, but again, Jocel and Harold were not home. The brothers also did not attend the preliminary investigation of the instant case.[14]

The trial court upheld the version of the prosecution insofar as Jocel Bejo was concerned and acquitted Harold Bejo, viz:

"WHEREFORE, in view of all the foregoing, this Court finds and declares accused Jocel Bejo GUILTY beyond reasonable doubt of the heinous crime of murder as defined and punished under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to imprisonment of reclusion perpetua, together with its accessory penalties, and to indemnify the heirs of the deceased, Juan Bacuta, in the sum of P100,000.00.

For failure of the prosecution to prove his guilt beyond reasonable doubt, this Court finds and declares accused Harold Bejo INNOCENT and hereby acquits him from the charge of murder in this case.

In the service of his sentence consisting of deprivation of liberty, accused Jocel Bejo, being a detention prisoner who does not appear to be otherwise disqualified, shall be credited with the full time of his confinement under preventive imprisonment, provided he voluntarily agrees in writing to abide by the same disciplinary rules imposed on convicted prisoners, pursuant to Article 29 of the Revised Penal Code." [15]

Hence, this appeal with the lone assignment of error, viz:

"... the court a quo erred in convicting the accused-appellant Jocel Bejo of the crime of Murder and in sentencing him to imprisonment of RECLUSION PERPETUA, despite clear and convincing evidence that it was a certain Remwel Cornel who killed and stabbed the victim, Juan Bacuta." [16]

The appeal is unmeritorious.

The accused-appellant assails the factual findings of the trial court with respect to the identity of Juan Bacuta's assailants. He admits being present at the scene of the crime but points to Remwel Cornel and Daryl Cornel as the culprits. In upholding the factual findings of the trial court, we adhere to the well-entrenched rule that findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons because of the trial court's unique opportunity to observe the witnesses firsthand and to observe their demeanor, conduct, and attitude under grueling examination. [17] The prosecution witness Nestor Astorga clearly saw the accused-appellant stab Bacuta on the chest while he (Jocel Bejo) was on board the left back portion of Bacuta's owner-type jeep and Bacuta was on the driver's seat of the jeep. The other witnesses, Alolor and Bartolo, in unmistakable terms, also identified Jocel Bejo as the assailant who jumped off the left back portion of the jeep carrying a bloodstained knife. All three witnesses were innocent residents along Legaspi Street where the stabbing incident took place. They had no reason to falsely testify against the accused-appellant. Their testimonies are worthy of full faith and credit. [18] We find no reason to disturb the factual findings of the trial court. In light of the prosecution witnesses' positive identification of the accused Jocel Bejo, the latter's denial of the charge against him and his attempt to point to Remwel Cornel and his brother Daryl Cornel as the assailants of Juan Bacuta must prove futile. The running case law is that positive identification of the accused will prevail over the defense of denial. [19]

That there was conspiracy between the accused-appellant and Remwel Cornel is also clearly borne out by the records. Thus, it is not decisive whether the accused-appellant or Remwel Cornel delivered the fatal blow which penetrated Bacuta's lung. In conspiracy, the act of one is the act of all. [20] There is conspiracy among perpetrators of a crime when there is a unity in purpose and intention in the commission of a crime. [21] It does not require a previous plan or agreement to commit assault as it is sufficient that at the time of such aggression, all the accused manifested by their acts a common intent or desire to attack. [22] Without a shadow of doubt, Juan Bacuta's assailants, including the accused Jocel Bejo, did not previously conceive of a plan to attack Bacuta. The assailants' encounter with Bacuta along Legaspi Street was purely coincidental. This notwithstanding, at the time of the attack, the accused Jocel Bejo and Remwel Cornel manifested their common purpose to kill Bacuta by getting on Bacuta's jeep almost at the same time and stabbing him simultaneously on the chest and getting off the jeep almost at the same time. The unity of the two assailants continued even after the stabbing. When Remwel Cornel ran away from the crime scene, Jocel Bejo called him back and after briefly conversing, they ran together towards the Divine Jesus Memorial Park. The trial court correctly pointed out, viz:

"However, it has not escaped notice by the court that there was no evidence showing that the violent and deadly attack on the deceased by Jocel Bejo and his companion was the product of a prior or pre-existing conspiracy between them to kill the victim. What happened was obviously the tragic result of a casual encounter between the deceased and his assailants. But, of course, it is well-entrenched in our jurisprudence that conspiracy need not be proved by direct evidence, and proof of previous agreement to commit the crime is

not also essential to establish conspiracy - it may be inferred from acts of the accused, whose conduct before, during and after the commission of the crime can show its existence (*People v. Languire*, 252 SCRA 213). For conspiracy to exist it is not essential that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the accused had the same purpose and were united in its execution. It may be shown by the simultaneous and contemporaneous acts of the accused (*People v. Habilla*, 252 SCRA 471).

In the instant case, the concerted action of accused Jocel Bejo and his companion who might have been Remwel Cornel of simultaneously climbing up the jeep of the deceased and stabbing him in rapid succession, and then jumping from the jeep and fleeing from the scene of the crime and running together towards the same direction clearly showed a common design and community of purpose which positively and unmistakably established a conspiracy between them to kill Juan Bacuta.” (emphasis supplied)[23]

We disagree, however, with the trial court's finding that the attack upon Bacuta was treacherous. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms of execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the victim might make.[24] It must be clearly shown that the method of assault adopted by the aggressor was deliberately chosen to accomplish the crime without risk to the aggressor.[25] We have ruled that treachery cannot be appreciated against the accused where the crime was the result of a casual encounter and the accused had no time to reflect on the method of execution of the crime.[26] In the instant case, the meeting between the accused-appellant's group and the victim was obviously a casual encounter. The impulsive stabbing followed a brief heated argument between the group and Bacuta regarding the latter's driving. While the attack may have been sudden, the circumstances show that the casual, brief, and tension-filled encounter did not afford the accused-appellant an opportunity to plan and deliberately adopt the method of assault as to accomplish the crime without risk to himself. He simply used whatever weapon he had on hand. To our mind, therefore, treachery cannot be appreciated.

The prosecution's evidence, however, supports a finding of abuse of superior strength. The accused Jocel Bejo and Remwel Cornel positioned themselves on the left and right sides of Juan Bacuta, respectively, to ensure he had no way out of the jeep as he was behind the wheel. With synchronicity, the accused Jocel Bejo boarded the back of the jeep while Remwel Cornel got on its front right part beside the driver's seat, and the two, with knives, stabbed the unarmed Bacuta almost at the same time. In *People v. Diamonon*,[27] we held that there was abuse of superior strength when the two assailants, armed with knives, cooperated in such a way as to secure advantage from their combined superiority in strength and took turns in stabbing the unarmed victim.

With respect to the damages, the trial court was correct in ordering the accused-appellant to indemnify the victim's heirs P100,000.00, P50,000.00 of which as civil indemnity and the other P50,000.00 as moral damages.

IN VIEW OF THE FOREGOING, we AFFIRM the decision of the trial court with the MODIFICATION that the accused-appellant is found guilty of the crime of Murder qualified by abuse of superior strength and not treachery. The accused-appellant is sentenced to suffer the penalty of imprisonment of reclusion perpetua with all its accessory penalties and to pay the victim's heirs P50,000.00 as civil indemnity and P50,000.00 as moral damages. Costs against the accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.

[1] Rollo, p. 2.

- [2] TSN, Nestor Astorga, February 19, 1997, pp. 3-22.
- [3] TSN, Corazon Alolor, January 19, 1997, pp. 23-39.
- [4] TSN, Emelinda Bartolo, March 4, 1997, pp. 3-24.
- [5] Exhibit "A"; Original Records, p. 149.
- [6] Ibid.
- [7] Exhibit "B"; Original Records, p. 150.
- [8] TSN, Dr. Victoria Arcenas, March 10, 1997, pp. 3-15.
- [9] TSN, Jocel Bejo, March 20, 1997, pp. 5-40.
- [10] TSN, Harold Cornel, April 10, 1997, pp. 6-35.
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- [12] TSN, Agustin Hari-on, September 29, 1997, pp. 3-30.
- [13] TSN, Joel Miranda, November 19, 1997, pp. 3-21.
- [14] TSN, PO3 William Limjucu, Jr., April 21, 1997, pp. 4-21.
- [15] Rollo, pp. 37-38; Decision, pp. 10-11.
- [16] Rollo, p. 58; Appellant's Brief, p.12.
- [17] *People v. Perreras*, G.R. No. 139622, July 31, 2001, citing *People v. Gemoya*, 342 SCRA 63 (2000).
- [18] *People v. Muerong*, G.R. No. 132318, July 6, 2001, citing *People v. Revenes*, 284 SCRA 634, 641 (1998).
- [19] *People v. Mendoza*, G.R. No. 134004, December 15, 2000, citing *People v. Gallego*, 338 SCRA 21 (2000).
- [20] *People v. Tumayao, et al.*, G.R. No. 137045, April 16, 2001.
- [21] *People v. Madulen, et al.*, G.R. No. 140277, June 6, 2001, citing *People v. Lising*, 285 SCRA 595 (1998).
- [22] *Id.*, citing *People v. Robedillo*, 286 SCRA 379 (1998).
- [23] Rollo, p. 31; Decision, p. 9.
- [24] *People v. Perreras*, G.R. No. 139622, July 31, 2001, citing *People v. Amazan*, G.R. Nos. 136251, 138606-7, January 16, 2001; *People v. Bato*, G.R. No. 127843, December 15, 2000.
- [25] *People v. Bacho*, 171 SCRA 458 (1989); see also *People v. Velaga, Jr.*, 199 SCRA 518 (1991).
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