

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BEN AMBROCIO, BENIGNO AMBROCIO, SR., BENIGNO AMBROCIO, JR. (AT LARGE), JOSEPH ANDRADE, AND CARLITO FRANCISCO (AT LARGE), ACCUSED,

G.R. No. 140267. June 29, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In the decision[1] dated April 7, 1999, of the Regional Trial Court of Kalibo, Aklan, Branch 2, in Criminal Case No. 5228, appellants Ben G. Ambrocio, Benigno L. Ambrocio, Sr., and Joseph P. Andrade were found guilty of murder and sentenced to reclusion perpetua. The two co-accused, Benigno (Benny) Ambrocio, Jr., and Carlito Francisco, however, are still at large, so their case was ordered archived pending their arrest.

Appellants and their co-accused were charged on September 17, 1998, by the Office of the Provincial Prosecutor of Aklan of murder allegedly committed as follows:

That on or about the 24th day of February, 1998, in the afternoon, in Barangay Dalipdip, Municipality of Altavas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and abuse of superior strength, being then armed with bolos and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and hack one ROBERTO SANCHEZ thereby inflicting upon the latter physical injuries, to wit:

...

“2.

Hack wound, 5 inches long and 1 inch deep, at the middle portion of the right parietal region of the head with complete fracture of the underlying bone and hitting the brain underneath.

3.

Incised wound, 1 1/4 inches long, at the anterior portion of the right parietal region of the head with incomplete fracture of the underlying bone.

4.

Hack wound, 5 1/2 inches long, from the left frontal region of the head, above the left eyebrow to the right side of the face, cutting the right eyebrow and hitting the right eyeball, with complete fracture of the underlying bone and hitting the frontal region of the brain underneath.

5.

Hack wound, 5 1/2 inches long, from the right frontal region of the head to the left upper jaw, cutting the right eyebrow, the right side of the nose and the left upper lip and with complete fracture of the underlying bones.

6.

Hack wound, 2 1/2 inches long, at the left occipital region of the head with complete fracture of the underlying bones.

7.

Hack wound, 3 inches long and 3 inches deep, at the right side of the back, 8 inches below the right shoulder and with complete fracture of the underlying third rib.

8.

Hack wound, 5 inches long, at the right side of the back and 1 inch below finding No. 7, with complete fracture of the underlying 5th rib and hitting the right lung.

9.

Hack wound, 5 inches long, at the left side of the back, midclavicular line, 10 inches from the left shoulder and with complete fracture of the underlying 12th rib.

10.

Incised wound, 1 1/2 inches long, at the base of the back of the neck at the level of the shoulder with incomplete fracture of the underlying vertebra.

11.

Incised wound, 2 inches long, at the left side of the back, 2 1/2 inches below the left shoulder with incomplete fracture of the underlying bone.

12.

Incised wound, 2 inches long at the back of the left shoulder with incomplete fracture of the underlying bone.

13.

Hack wound, 3 1/2 inches long around the lateral side of the right hand with complete fractures of the underlying bones and cutting all soft tissues underneath the wound at the level of the ringfinger and the littlefinger.

14.

Hack wound, 6 inches long and 1 1/2 inches deep, at the right side of the neck, from below the right ear to the left submandibular region with complete fracture of the underlying bones and cutting the blood vessels at the right side of the neck.

15.

Incised wound, 1 1/2 inches long, at the right side of the chest at the level of the midclavicular region with incomplete fracture of the underlying bone which is the clavicle.

16.

Incised wound, 1 1/2 inches long at the left side of the chest at the parasternal line, 7 inches from the suprasternal notch, 1/2 inch deep and cutting the muscles underneath.

17.

Hack wound, 6 1/2 inches long, at the left forearm, 2 inches below the left elbow and extends from the medial

to the lateral side of the forearm with complete fracture of the ulna underneath.”

as per Post Mortem Examination Report issued by Dr. Gliceria A. Sucgang, M.D., Rural Health Physician of Altavas, Aklan, a copy of which is hereto attached as Annex “A” and made an integral part hereof, and which injuries have caused the death of the victim.

That by reason of the unlawful acts of the accused, the heirs of the victim have suffered actual and compensatory damages in the amount of P50,000.00.

CONTRARY TO LAW.[2]

Because their co-accused remained at large, only herein appellants were arraigned. Assisted by counsel de parte, appellants Benigno Ambrocio, Sr. and Joseph Andrade denied the charge and pleaded not guilty. Appellant Ben Ambrocio, for his part, pleaded self-defense.[3] Trial on the merits then commenced.

The following is the summary of testimonies by witnesses for the prosecution.

(1) DIEGO MASANGYA testified that at around 1:30 p.m. of February 24, 1998, a certain Roger Domingo reported that he found coconut lumber which could have been felled without permit, in a construction site in Sitio Nasunog, Dalipdip, Altavas, Aklan.[4] As barangay captain of Dalipdip, part of Masangya’s duties was to issue permits to cut coco lumber. He investigated the report and instructed Elienito[5] Gervacio, a member of the Lupong Tagapamayapa, to verify Domingo’s report and to wait for him at Sitio Nasunog.[6]

At around 2:00 p.m., Masangya recalled, he was accompanied by the victim, Roberto Sanchez, to Sitio Nasunog. There they saw the pile of coconut lumber beside the road near the construction site.[7] He noticed that in the house under construction, there was a drinking spree going on amongst the five accused – Carlito Francisco, Joseph Andrade, Benigno Ambrocio, and his sons Ben and Benny.[8] They alighted from the motorcycle. Ben Ambrocio walked towards the two until Ben was six meters away from them with only the construction site’s bamboo fence separating them. He heard Ben ask, “What are you doing there, captain?” He noticed that Ben and his companions were already drunk.[9] He replied, “Who are you to question me? I am the barangay captain here.” Upon hearing this reply, the other four accused came down from the house, and all five jumped over the fence. With their bolos drawn, the five approached them. Sanchez suggested that they talk things over calmly, saying, “We will just talk peacefully.” Without warning, Ben suddenly hacked Sanchez at the back.[10]

Masangya testified that at that point, he shouted to the victim, “Berto, you run away.” He himself sped off, but Benigno Ambrocio, Francisco and Andrade pursued him. They failed to overtake him.[11] Sanchez, however, was not so lucky. Before he could run away, he suffered another blow. This time Benny Ambrocio struck him at the back with his bolo. The victim fell. All the five accused then gathered around Sanchez and continued hacking him to death. Afterwards, they carried his body to the area where it was later found.[12]

Masangya added that he witnessed the entire incident while he hid behind a thicket.[13] Soon thereafter, at around 4:00 p.m., he reported the incident to the Altavas police. There he saw Joseph Andrade who also reported the incident. Initially, Masangya only implicated the Ambrocios.[14] He included Andrade and Francisco in a supplemental report made one day after the killing.[15]

(2) ELIENITO GERVACIO testified that upon instruction from Masangya, he proceeded to the construction site on foot. He arrived there at around 1:15 p.m. and found around twenty pieces of coco lumber. He saw all the five accused in the construction site located ten meters away from the pile of coco lumber, but he did not attempt to approach them because he saw they were drinking. Forty-five minutes later he recalled hearing the sound of a motorcycle, from which he saw Masangya and Sanchez alight. He did not speak to the two because all the accused were approaching the duo, while demanding why Masangya was there. Gervacio said Masangya replied,

“Why are you asking me when I am going somewhere else?” He remembered Sanchez say, “We will just talk peacefully.” Suddenly, he saw Ben Ambrocio hit Sanchez at the back with his bolo.[16] Gervacio said he heard Masangya shout at Sanchez to run, but Sanchez could not because by then Benny had struck Sanchez at the back. The other three accused chased Masangya but were unable to catch up with him. They returned to Sanchez, who meanwhile had fallen to the ground because of the two blows he received. He saw all five carry Sanchez to the feeder road where his body was later found. Afterwards, he saw all the five return to the construction site.[17]

Gervacio said that the group did not see him, nor did they talk to him.[18] On cross examination, he stated that after the incident, he accompanied Masangya to the police station where they reported the incident. The police took only Masangya’s testimony. He also admitted that Edison Gervacio, who testified for the defense, is his brother.[19]

(3) DR. GLICERIA A. SUCGANG, the physician who conducted the post-mortem examination of the victim, testified that out of the 17 hack and incised wounds suffered by the victim, the most fatal was wound No. 14, the hack wound at the right side of the victim’s neck. She affirmed that the wounds could have been caused by five different bolos while the victim was standing.[20] On cross examination however, she also opined that it was possible only one bolo could have been used in inflicting all the wounds. She also stated that in certain cases, there were some victims who, despite the wounds they suffered, still ran for some distance before they succumbed to the wounds.[21]

In their defense, appellants contended that they merely defended themselves from Masangya and Sanchez’s unlawful aggression. According to appellant Ben, he hacked Roberto Sanchez in self-defense. The following is the summary of the testimonies by appellants and witnesses presented by the defense.

(1) Appellant BEN AMBROCIO testified that he and his co-accused (except for Carlito Francisco, a transient visitor) were building the Ambrocio family’s house. At 3:00 p.m. on February 24, 1998, Masangya and Sanchez arrived at the construction site and without any provocation from the appellants, the two destroyed the bamboo fence of the construction site. Ben recalled Masangya barged into their house and asked, “Why are you continuing the construction when I had caused this to be burned already?” Ben replied, “Why did you cause to have it burned when it is not yours and this house is ours.” Masangya responded by pointing a gun at him and pulled its trigger three times. The gun, however, jammed and did not fire.[22]

Ben remembered Sanchez unsheathed his bolo and tried to hit him but Sanchez missed. He said he defended himself with a bolo, and hit Sanchez’s left hand. Sanchez ran downhill and challenged him to fight on. As Masangya fled downhill, Ben said he chased Sanchez and they fought. He insisted he alone hacked Sanchez several times because he was consumed by anger, stemming from the fact that Masangya and Sanchez had burned their house before.

Ben said that after the incident, he went home. The next day, he surrendered to the police station in Barangay Ipil, Batan. He was issued a certification regarding his voluntary surrender.[23]

Ben contends that none of the other accused were involved in the hacking incident. According to him, Francisco was a mere transient who took temporary shelter in the construction site. Andrade stayed on the roof. His brother Benny arrived only after the incident. Ben said that his father Benigno attempted to pacify the quarreling group but failed.

(2) Appellant BENIGNO L. AMBROCIO, SR., testified that Sanchez and Masangya arrived on a motorcycle on the day of the incident. The two challenged Ben, Joseph and he to a fight. Masangya pointed his gun at Ben while Sanchez unsheathed his bolo. Sanchez tried to hack Ben but failed, and Ben retaliated. He said Masangya pointed

his gun at Ben and pulled the trigger three times, but it did not fire. Benigno claimed he then parried the gun, and hit the gun's lock that the cylinder was dislodged and three bullets fell. Unarmed, Masangya ran downhill with Sanchez. When Sanchez challenged Ben, Ben hacked Sanchez to death. Benigno said he stayed behind unable to run, because his feet were swelling from arthritis.[24]

(3) Appellant JOSEPH ANDRADE testified that he was on top of the roof when Masangya and Sanchez arrived. Masangya shouted why they were still building when he had the house torched before. At that moment, he saw Masangya point a gun at Ben, while Sanchez attempted to hack Ben. The entire time Joseph claims, he stayed on the rooftop. He only went down after Ben and Sanchez ran downhill. Later, he accompanied Rosita Ambrocio to the police station to report the matter.[25]

(4) Witness ROSITA AMBROCIO, wife of appellant Benigno, testified that on the day of the incident, she was at the family home located 70 meters from the construction site of their new house. She and Benny, her eldest son, were on the way to the construction site when they heard a commotion. Upon reaching the place, she saw Masangya poking a gun at her other son, Ben.[26] Her testimony corroborated appellants' story.

Afterwards, Andrade and she reported the incident to the police.[27] She brought along the three bullets that fell from Masangya's gun and gave them to the police. The police kept the bullets and made an entry about them in the blotter.[28] Around seven policemen accompanied her to the scene of the crime. She said the police officers took pictures of the scene, and checked the body of the deceased.[29]

She added that their house was indeed burned last November 9, 1997. She showed pictures of the burned site,[30] and the certification of the fact in the police blotter.[31]

(5) LAURA DOMINGUEZ testified that she has been a resident of Dalipdip for 25 years already. On the day of the incident, at 3:00 p.m., she was on a cart with her daughter on the feeder road en route home. She knew all the accused because they were her barriomates.[32]

While in the cart, she heard shouts coming from the construction site, and she stopped the cart. She saw the barangay captain and Ben Ambrocio fighting. The barangay captain was holding a gun.[33] She corroborated the story of the other defense witnesses. In addition, she said that she knew Elienito Gervacio, but she did not see him anywhere near the area when the incident happened.[34]

On cross examination, she said that on her way downhill, she saw Rosita Ambrocio.[35] She also said she did not see Andrade and Francisco nor Benny in the area where she was the entire time.[36]

(6) EDISON GERVACIO testified that Elienito Gervacio and he were brothers. On that day of the incident, February 24, 1998, he was at Elienito's house from 10:00 a.m. to 4:00 p.m. Elienito arrived only at 11:30 a.m. They ate lunch together, and afterwards they talked. He stressed that at no time in the afternoon of February 24, 1998, did Elienito leave the house.[37] When they finished talking at around 4:00 p.m., his brother escorted him to the highway to get a ride home.[38] He said they learned of the incident at around 4:30 p.m.[39] He admitted that Consoling Francisco, his sister-in-law who is the wife of the accused Carlito Francisco,[40] asked him to testify.

(7) SPO1 ISAAC CLARITE testified that on February 24, 1998, he was the Desk Officer/Investigator of the Altavas Police Station. That afternoon, he said, Rosita Ambrocio reported a hacking incident that happened in Dalipdip. He recorded the report in the police blotter.[41] He recalled that she also turned over three live ammunition of a .357 caliber magnum revolver.[42] A moment later, Diego Masangya arrived at the police station to report the incident.[43]

On cross examination, SPO1 Clarite said that he saw traces of blood from the feeder road to where the body was lying, a distance of some seven (7) to eight (8) meters.[44] He was certain that the blood was from the feeder road and not from the construction area. He added that no gun or bolo was recovered from the crime scene.[45]

(8) SPO2 JESUS DURAN DOMINGUEZ testified that on February 25, 1998, Ben Ambrocio voluntarily surrendered to him at the Batan police station. He recorded the surrender in the police blotter. On cross examination, Dominguez stated that when Ben surrendered, Ben explained he was afraid to surrender to the Altavas Police station that was why he surrendered to the Batan station instead. Dominguez did not detain Ben. Instead he informed the Altavas police station of Ben's surrender. Representatives of the Altavas Station took custody of Ben the following day. In the Batan station, Ben stayed inside the police station but outside the jailhouse.[46]

On rebuttal, MASANGYA testified that he did not own nor possess a gun. He claimed he did not even know how to handle one. He said the police did not question nor confront him about the bullets which the Ambrocios submitted to the police.[47]

Further, he denied that Sanchez unsheathed his bolo during the incident. Neither did he know what happened to said bolo because when he returned to the scene, only the scabbard was left. The bolo was missing. He also denied castigating the accused regarding their rebuilding of their house. On the contrary, he said, all the accused jumped at him and Sanchez as soon as they arrived and when they were actually still on the road. He said the feet of the accused hit the fence as they rushed over it in a drunken rage, and that is how the fence broke. He added that when this happened, he had not even turned off his motorcycle's engine. Masangya said he was certain that Joseph Andrade participated in the hacking of the victim. He remembered telling Andrade, who was a tanod in Dalipdip, but Andrade responded by attempting to hack the victim, instead. He was certain Carlito Francisco also joined in the hacking of the deceased, Sanchez, because when he told Francisco to stop, Francisco instead attempted to hack Masangya.[48]

The trial court disbelieved the defense, and found the prosecution's version credible. It sentenced appellants as follows:

WHEREFORE, the Court finds the three (3) accused, BEN G. AMBROCIO, BENIGNO L. AMBROCIO [Sr.] and JOSEPH P. ANDRADE, GUILTY beyond reasonable doubt of MURDER and hereby imposes upon each one of them the penalty of RECLUSION PERPETUA.

Further, the said three (3) accused are hereby ordered to jointly and severally pay to the heirs of the victim Roberto C. Sanchez the amount of P50,000.00 for the latter's death.

Furthermore, the Court orders that the three (3) above-named accused be credited in the service of their sentence with the full time during which they have undergone preventive imprisonment.

And finally, let the case against the two (2) accused BENNY AMBROCIO and CARLITO FRANCISCO, who are still at large, be ARCHIVED to be revived upon their apprehension.

With COSTS against the accused.

SO ORDERED.[49]

The trial court found the prosecution's evidence clear, convincing, and credible. It cited Masangya's testimony for his candor.[50] The trial court especially found the following pieces of evidence too strong to be ignored:

1)

SPO1 Isaac Clarite's testimony that traces of blood were discovered leading from the road to the spot where

the cadaver was found. This fact bolsters the prosecution's claim that the hacking took place right at the road from where the five accused transferred the corpse;

2)

The number, location and direction of the injuries suffered by the victim, which strongly suggest more than one person took part in inflicting the wounds;

3)

The continuing evasion from arrest by co-accused Benny Ambrocio and Carlito Francisco, belying their claims that they are innocent, and that Ben Ambrocio alone was guilty;

4)

The demonstration made in court, wherein Benigno Ambrocio, Sr., parried a loaded gun but the bullets did not fall, showing the defense's allegations about the gun allegedly used by the barangay captain Masangya, were highly improbable.[51]

The trial court held that conspiracy attended the killing. The accused acted in concert when they approached Masangya and Sanchez with drawn bolos just before the hacking attack.[52] An apparent "division of labor" existed among them as to who would take care of barangay captain Masangya while the victim, Sanchez, was being hacked. Their bayanihan efforts facilitated the transfer of the victim's corpse from the road to the thicket.[53]

The lower court also found that treachery was present to qualify the killing to murder. The first blow on the victim's back was so sudden that it took the victim by surprise. Even granting the victim was aware of the possible dangers when they accosted appellants, the victim was definitely not expecting a treacherous attack, considering that he was in the middle of pacifying everyone. The trial court said that at the moment of the attack, the victim Sanchez was totally defenseless. The attack was carried out in such a manner that Sanchez was deprived of the opportunity to at least draw his own bolo and defend himself.[54]

In the instant appeal, appellants now assail the lower court's judgment, alleging the following errors:

- THE LOWER COURT ERRED IN ITS FINDINGS OF FACT AND OF LAW WHEN IT RULED THAT HEREIN ACCUSED-APPELLANTS CONSPIRED IN KILLING THE VICTIM;
- THE LOWER COURT ERRED IN ITS FINDINGS OF FACT AND OF LAW WHEN IT APPRECIATED THE AGGRAVATING CIRCUMSTANCE OF TREACHERY AGAINST HEREIN ACCUSED-APPELLANTS;
- CONSEQUENTLY, THE LOWER COURT ERRED IN ITS FINDINGS OF FACT AND OF LAW WHEN IT CONVICTED HEREIN ACCUSED-APPELLANTS OF THE CRIME CHARGED, SPECIFICALLY PARAGRAPH 1, ART. 248, REVISED PENAL CODE.[55]

The main issues for resolution are: whether the appellants' guilt has been proved beyond reasonable doubt; and whether the killing of Roberto Sanchez was attended by conspiracy and treachery.

Appellants contend that it was only Ben Ambrocio who killed the victim, and that he did it in self-defense, and out of fear for his own safety. They aver that the incident would not have transpired at all if not for the unlawful aggression and provocation on the part of Masangya and Sanchez. They assail the trial court's heavy reliance on Masangya's testimony, which they claim is self-serving. Moreover, they stress that Joseph Andrade and Rosita Ambrocio, who is Benigno's wife, also immediately reported the incident to the police. When the policemen arrived at the scene of the crime, Benigno and Joseph were also there. They claim that these circumstances are

contrary to the usual behavior of persons who had just committed a crime, hence, these circumstances negate the accusation that Benigno and Joseph participated in the commission of the crime.[56]

The appellee, through the Office of the Solicitor General (OSG), counters that the evidence presented by the prosecution established all the elements of murder. The prosecution witnesses clearly identified all the accused. This fact belies the claim that it was Ben Ambrocio alone who killed the victim. The OSG invokes the doctrine in *People v. Go-od*[57] that mere averment of non-participation of the other accused does not suffice to overcome the positive identification of the malefactors by prosecution witnesses.[58]

Appellants question the trial court's finding that the prosecution witnesses are credible. After a careful scrutiny of the testimonies of witnesses for the prosecution as well as the defense we find that the prosecution witnesses have established in detail how each of the accused participated in the killing. Their testimonies corroborated each other on material points. These testimonies inculcating the appellants could not have been merely fabricated. Witnesses Masangya and Gervacio were particularly candid, detailed and straightforward as to compel belief in the truth and sincerity of their testimonies for the prosecution.

In contrast, we find that the appellants' version of the incident appears contrived. Their claim that parrying a .357 caliber revolver could cause its chamber to disengage was belied by actual demonstration done in open court, which showed it was highly improbable. Appellants also claim that the victim was hacked by co-appellant Ben Ambrocio in self-defense, and that the initial hacking was done by him alone within the construction site. But this claim is refuted by the testimony of SPO1 Isaac Clarite. He testified under oath that blood was found only on the road up to the thicket. There were no traces of blood in the construction area.[59]

Weighing carefully the contrasting versions of the prosecution and the defense, the trial court found the appellants' submission far from credible. On this score, we are in agreement with the trial court. For it had the opportunity to observe the demeanor of the witnesses, and was in the best position to appreciate the credibility of the witnesses and of their testimonies. Based on the records of the case before us, we see no reason to disturb the trial court's findings and conclusion that appellants hacked and killed the victim, Roberto Sanchez beyond a shadow of doubt.

Moreover, appellant Ben Ambrocio's claim of self-defense is bereft of merit. For self-defense to prosper, the following elements must be duly proved: (a) unlawful aggression; (b) reasonable means employed to repel the victim's unlawful aggression; and (c) lack of sufficient provocation on the appellants' part.[60] When self-defense is invoked, the accused admits the killing of the victim, and the accused has the burden to justify such killing.[61] Here, we find that appellant Ben Ambrocio failed to discharge his burden adequately.

Worth stressing, no unlawful aggression on the part of Sanchez, the victim, or of Masangya, has been sufficiently shown. In any event, the means employed by appellants could not, by any stretch of the imagination, be deemed reasonable and necessary. The means used, which was simultaneous and repeated hacking ensured with certainty the victim's death. Eloquent proof in this regard is the finding that the victim sustained no less than seventeen hack and incised wounds, which proved mercilessly fatal.

Lastly, the flight of co-accused Benigno Ambrocio, Jr., and Carlito Francisco from the moment this case was filed and up to the present is indicative of their guilt. Settled is the rule that flight of an accused, when unexplained, is a circumstance from which an inference of guilt may be drawn.[62]

Now, as to the issue of conspiracy. Appellants' claim the facts of this case belie the presence of conspiracy. Appellants say that they had bolos with them because they were constructing a house. They allege that it was Masangya and Sanchez who started the confrontation by calling out to them in a confrontational way. They add

that the two were armed with a gun and a bolo, which were unnecessary, if the duo were merely to inspect the coco lumber. According to appellants, the death of Sanchez was a result of the unwarranted provocation by both Masangya and Sanchez. Additionally, they cite the police blotter report filed by Masangya, which initially made mention only of the Ambrocios.[63]

The OSG counters that the killing was a concerted effort of all the five accused. The OSG points out that as testified to by the prosecution witnesses, all the accused helped to consummate the offense. Co-accused Andrade and Francisco further participated in carrying the hacked body of the victim towards the thicket where the body was eventually found. All these established the participation of appellants and the co-accused. These circumstances show that they acted in concert, and conspiracy existed among them.[64]

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[65] It may be appreciated even if there is no direct evidence to show an actual agreement to commit the crime, when the acts and attendant circumstances surrounding the commission of the crime reflect a common design, thus making all the accused co-principals in the crime committed. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of all the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[66] It is not even necessary to show that all the conspirators actually hit and killed the victim, because once conspiracy is established, an act of one is the act of all.[67]

The trial court based its finding that conspiracy existed on the appellants' actions at the time of the commission of the crime which showed a unity of purpose amongst them.[68] A division of labor among appellants and co-accused occurred: Ben and Benny took care of Sanchez, while the other three pursued Masangya. When all the accused carried the body of Sanchez from the road to the thicket, it showed their unity of purpose – to end his life and hide his corpse. Thus, as co-conspirators, they must all be liable for the death caused even if not all may have dealt a fatal blow on the victim.

But appellants question the trial court's finding of treachery, saying that they were provoked by Masangya and the victim Sanchez, and stressing that daytime attack and frontal but impulsive confrontation among adversaries negate treachery.[69]

For appellee, the OSG contends that the trial court did not err when it ruled that treachery was present, but if such cannot be appreciated, then abuse of superior strength should be considered to have attended the killing. The OSG says that the weapons used and the location of the wounds showed intent to kill which made it impossible for the victim to resist or escape.[70] Assuming that treachery was not present, because the victim was aware of the impending peril arising from the exchange of words between the appellants and Masangya, the OSG says that abuse of superior strength must be appreciated to have attended the killing, as the appellants took advantage of their numerical superiority.[71]

On this point, we agree with the OSG. It was established that when Masangya and Sanchez arrived at the scene of the crime, they had a heated argument or exchange of words with appellant Ben Ambrocio, who was holding a bolo. Ben was six meters away from Sanchez, the victim. Said heated exchange prompted the appellants and co-accused to jump over the fence. They promptly surrounded Masangya and Sanchez. Noteworthy, this incident took place in broad daylight. The victim Sanchez could not have missed the import of what was happening: the bolo held by the appellants and co-accused meant danger to his life. Like Masangya, Sanchez had an opportunity to escape from the tension-filled situation. Unfortunately, unlike Masangya, he did not succeed to run away. Nevertheless, where a killing is preceded by an argument or quarrel, treachery can no longer be appreciated, as the victim could be said to have been forewarned and could anticipate aggression from the assailants.[72]

But while we agree that treachery might not have attended the killing of Sanchez, we rule that there was abuse of superior strength that should be appreciated as an aggravating circumstance on the part of appellants. Abuse of superior strength is present when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked.[73]

Superiority in number does not necessarily amount to the aggravating circumstance of taking advantage of superior strength. But in this case, it has been shown that the aggressors cooperated in such a way as to secure the advantage of their numerical strength and advantage. There is proof of the relative numerical strength of the aggressors and the assaulted, a ratio of 5 to 2. There is also proof that the aggressors simultaneously assaulted the deceased. When all five accused, armed with bolos, joined forces to attack and pursue Sanchez and Masangya, in a concerted effort, they definitely abused their superiority in number and in arms. Since this aggravating circumstance was alleged in the information and duly proved, it qualifies properly the killing to murder.[74]

The penalty for murder, under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, is “reclusion perpetua to death.” For appellants Benigno L. Ambrocio, Sr., and Joseph Andrade, since no aggravating and no mitigating circumstances were proved, the applicable provision is Art. 63, par. 2 of the Revised Penal Code.[75] As for appellant Ben Ambrocio, we find in his favor the mitigating circumstance of voluntary surrender,[76] to which Art. 63, par. 3 of the Revised Penal Code[77] applies. On all of them, the imposition of the penalty of reclusion perpetua is appropriate under the circumstances.[78]

As to damages, the award by the trial court of P50,000 as civil indemnity to the heirs of the victim is correct and should be sustained. In addition, considering the wound inflicted on the victim that caused his death, and the anguish suffered by the victim’s heirs, moral damages in the amount of P50,000 should also be awarded.[79]

WHEREFORE, the decision of the Regional Trial Court of Kalibo, Aklan, Branch 2, in Criminal Case No. 5228, finding appellants BEN G. AMBROCIO, BENIGNO L. AMBROCIO, SR., and JOSEPH P. ANDRADE GUILTY beyond reasonable doubt of murder, imposing on each the penalty of reclusion perpetua with all its accessories is AFFIRMED with MODIFICATION. Appellants are ORDERED jointly and severally, to pay the heirs of the victim, Roberto Sanchez, P50,000.00 as civil indemnity and another P50,000 as moral damages.

Let a copy of this Decision be furnished to the Director of the National Bureau of Investigations (NBI) and the Director-General of the Philippine National Police (PNP), for the arrest of accused BENIGNO AMBROCIO, JR., and CARLITO FRANCISCO so that they could be brought before the bar of justice. Costs de oficio.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.

Austria-Martinez, J., on leave.

* also referred to as “Benny”, in some parts of the records.

[1] Records, pp. 115-126.

[2] Id. at 1-3.

[3] Id. at 52.

[4] TSN, 19 January 1999, pp. 18-21 (Diego Masangya).

[5] “Elenito” in other parts of the records.

[6] Supra, note 4.

- [7] Id. at 5.
- [8] Id. at 11-12, 22.
- [9] Id. at 11-12.
- [10] Id. at 8, 27-30.
- [11] Id. at 9-10.
- [12] TSN, 20 January 1999, pp. 11-12 (Elieito Gervacio).
- [13] TSN, 19 January 1999, p. 11 (Diego Masangya).
- [14] Id. at 31-32.
- [15] Exhibit “B”, Records, p. 6.
- [16] TSN, January 20, 1999, pp. 4-8, 16-18 (Elieito Gervacio).
- [17] Id. at 8-12.
- [18] Id. at 14, 18.
- [19] Id. at 23-24.
- [20] TSN, 18 January 1999, pp. 6-7 (Gliceria Sucgang).
- [21] Id. at 10-12.
- [22] TSN, 1 February 1999, pp. 15-18 (Ben Ambrocio).
- [23] Id. at 19-22.
- [24] TSN, 9 February 1999, pp. 16-21 (Benigno Ambrocio).
- [25] Id. at 13.
- [26] TSN, 27 January 1999, pp. 8-10 (Rosita Gregorio-Ambrocio).
- [27] Id. at 17-18.
- [28] Id. at 18-19; Exhibit “6”, Records, p. 23.
- [29] Supra, note 26 at 22; Exhibits “7-7B”, Records, pp. 24-26.
- [30] Exhibits “7-A” & “7-B”, Records, pp. 25-26.
- [31] Supra, note 26 at 14-16; Exhibit “4”, Records, p. 21.
- [32] TSN, 28 January 1999, pp. 20-22 (Laura De Jose Dominguez).
- [33] Id. at 23-24.
- [34] Id. at 26-28.
- [35] TSN, 1 February 1999, p. 5 (Laura De Jose Dominguez).
- [36] Id. at 9.
- [37] TSN, 1 February 1999, pp. 3-5 (Edison Gervacio).

- [38] Id. at 6.
- [39] Id. at 10a.
- [40] Id. at 11.
- [41] TSN, 9 February 1999, p. 4 (SPO1 Isaac Clarite).
- [42] Id. at 7-8.
- [43] Id. at 5-6.
- [44] Id. at 9-10.
- [45] Id. at 10.
- [46] TSN, 23 February 1999, pp. 3-10 (SPO2 Jesus Duran Dominguez).
- [47] TSN, 9 March 1999, pp. 7-8 (Diego Masangya).
- [48] Id. at 9-15.
- [49] Records, pp. 125-126.
- [50] Rollo, pp. 26-27.
- [51] Id. at 27.
- [52] Id. at 28.
- [53] Ibid.
- [54] Id. at 29.
- [55] Id. at 52-53.
- [56] Id. at 57-58.
- [57] G.R. No. 134505, 9 May 2000, 331 SCRA 612.
- [58] Id. at 618.
- [59] See TSN, 9 February 1999, pp. 9-10 (SPO1 Isaac Clarite).
- [60] Revised Penal Code, Art. 11.
- [61] People v. Cabical, G.R. No. 148519, 29 May 2003, 403 SCRA 268, 274.
- [62] People v. Bensig, G.R. No. 138989, 17 September 2002, 389 SCRA 182, 196.
- [63] Rollo, pp. 54-55.
- [64] Id. at 107, 110.
- [65] Revised Penal Code, Art. 8, par. 2.
- [66] People v. Peralta, G.R. No. 133267, 8 August 2002, 387 SCRA 45, 63.
- [67] People v. Sicad, G.R. No. 133833, 15 October 2002, 391 SCRA 19, 34.
- [68] People v. San Pascual, G.R. No. 137746, 15 October 2002, 391 SCRA 49, 64, quoting Sison v. People, G.R.

Nos. 108280-83 & 114931-33, 16 November 1995, 250 SCRA 58, 80.

[69] Rollo, pp. 55-57.

[70] Id. at 114.

[71] Id. at 115.

[72] People v. Buluran, G.R. No. 113940, 15 February 2000, 325 SCRA 476, 487. See also People v. Tadeo, G.R. Nos. 127660 & 144011-12, 17 September 2002, 389 SCRA 20, 27-28.

[73] People v. Garcia, G.R. No. 132915, 6 August 2002, 386 SCRA 263, 274.

[74] Revised Penal Code. ART. 248. Murder. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

...

[75] ART. 63. Rules for the application of indivisible penalties. –

...

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

...

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[76] ART. 13. Mitigating circumstances. – The following are mitigating circumstances:

...

- That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

...

[77] ART. 63. Rules for the application of indivisible penalties. –

...

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

...

- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

[78] See People v. Amazan, G.R. Nos. 136251, 138606 & 138607, 16 January 2001, 349 SCRA 218, 237.

[79] People v. Delmo, G.R. Nos. 130078-82, 4 October 2002, 390 SCRA 395, 437-438.

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