

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ABRAHAM AGSALOG @ PANTO AND JOVITO SIBLAS Y OBAÑA @ BITONG, APPELLANTS.

G.R. No. 141087. March 31, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On automatic review is the decision of the Regional Trial Court of Urdaneta City, Branch 46, finding appellants Abraham Agsalog and Jovito Siblas guilty beyond reasonable doubt of murder for killing Eduardo Marzan y Teñoso (the victim) and sentencing them to death.

The following facts are not disputed.

At about 2:00 p.m. of October 4, 1997, while the victim and his uncle Tony Opiña (Tony) were drinking at the Jessica Mae Videoke located at the San Quintin public market, San Quintin, Pangasinan, a misunderstanding arose between the victim and appellant Siblas who was occupying a table outside the videoke, adjacent to the stall of appellant Agsalog who was then inside.[1] The misunderstanding resulted in the victim slapping appellant Siblas. The escalation of the misunderstanding was prevented, however, when Tony pacified the two. The victim and Tony soon left the premises.

Also on the same day, October 4, 1997, at about 4:30 p.m., as the victim and his distant cousin-neighbor Edwin Opiña (Edwin) were conversing at the terrace of the latter's house in Calomboyan, San Quintin, appellants, on board a tricycle[2] driven by Francisco Aquino, Jr. (Aquino) arrived. Upon entering the gate of the house, appellants summoned the victim[3] who obliged. An exchange of words later ensued between the victim and appellants which resulted in appellant Agsalog stabbing the victim who died as a result thereof.

The postmortem examination conducted by Dr. Rosalina O. Victorio of the Office of the Municipal Health Officer showed that the victim sustained two stab wounds – one at the upper middle portion of his abdomen, and the other at the upper portion of his chest which penetrated the right auricle of his heart.[4] It also showed that the victim had abrasions on the forehead, left eyelid and left cheek[5] which Dr. Victorio surmised came about as a result of the victim's fall after the stabbing.[6] The doctor concluded that the cause of the victim's death was acute hemorrhage due to a stab wound on the right auricle of the heart.[7]

The records show that the day after the stabbing of the victim or on October 6, 1997, Ulyses Soto (Soto),[8] Edwin[9] and Aquino[10] gave their respective sworn statements before the local police authorities on what they witnessed, the substance of which statements Soto and Edwin were later to echo at the witness stand.

Hence, appellants' indictment for murder under an Information[11] alleging:

x x x

That on or about the 4[th] day of October 1997, in the afternoon, at Brgy. Calomboyan, municipality of San Quintin, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bladed weapon (balisong), with treachery and evident

premeditation, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab one EDUARDO MARZAN y TEÑOSO twice on his body which caused his immediate death, to the damage and prejudice of the heirs of said EDUARDO MARZAN y TEÑOSO.

X X X

From the account of prosecution witnesses including eyewitness Edwin, and another eyewitness Soto who was across the road where the stabbing occurred, the following are gathered:

After the victim heeded the call of appellants to talk with them outside the gate of the house, the three walked towards the gate, with the victim sandwiched by appellant Siblas who was at the victim's right side and appellant Agsalog who was at the victim's left side. As Edwin sensed that there was "something unusual,"[12] he followed the three, he trailing behind by about 3 meters.

While appellants and the victim were conversing as they walked, the victim placed his right[13] hand on the left shoulder of appellant Siblas and uttered "Pasensiya kan pare." [14] At that instant appellant Agsalog took a step forward, "tapped" the hand of the victim as he faced him, uttered "Di na kami met la [ka]babainen"[15] and simultaneously drew an already open "balisong" and stabbed the victim at his belly and then at his chest while appellant Siblas, with both hands, held the right wrist and right elbow of the victim.

Realizing what had befallen the victim, Edwin picked up a stone upon which appellant Agsalog warned "You will be next if you do that,"[16] drawing the former to throw the stone away.

Appellant Agsalog invoked self defense. Appellant Siblas denied the existence of a conspiracy.

As related in their brief, appellants gave the following version, quoted verbatim:

[O]n or about 1:00 o'clock in the afternoon of October 4, 1997, Agsalog was in his stall with Siblas in front of the Jessica Mae Videoke. Agsalog heard loud noise coming from the Jessica Mae Videoke. When he went out of his stall, he saw Nola Matsumoto [owner of the videoke-bar] in-between Siblas and [the victim] trying to prevent further troubles from erupting. After that incident, Tony Opiña stood up and told [the victim] "Vulva of your mother, you just slapped people, let us go home." After the lapse of 10 minutes, [the victim] with his brother, Jun Marzan returned to the Jessica Mae Videoke. Jun Marzan asked Nola who was at fault and she replied, "your brother is at fault". Then the two (2) brothers left the place. But before leaving, [the victim] told Siblas that he would return, which he did after about 3 minutes. [The victim], on his return, shook his hands with Siblas, to settle their differences, and as a gesture of reconciliation, [the victim] invited both Siblas and Agsalog to their house for drinks as he is butchering a goat. Agsalog and Siblas accepted the invitation to go there after school hours. Then Agsalog and Siblas, after a few minutes, proceeded to the San Quintin National High School to resume their duties as teachers. At about 4:30 in the afternoon of the same day, Agsalog and Siblas riding in a tricycle driven by one Aquino arrived at the house of Ex-Brgy. Chairman Juan Opiña [father of Edwin Opiña] at Brgy. Calonboyan, San Quintin, Pangasinan. Agsalog saw [the victim] sitting alone at the terrace of the house of Opiña. Agsalog, then asked [the victim] "Bok where is the pulutan? I will get the drinks." [The victim] stood up and retorted "Vulva of your mother, you could easily be baited." Agsalog thought that [the victim] is only joking, so he said to [the victim], "Bring the pulutan out and we will get the drinks." [The victim] instead replied, "Vulva of you mother, you look like pulutan." Agsalog said, "Bok, you do not even respect us". Then [the victim] came down from the terrace and tried to grab Agsalog which the latter ward off. Both Agsalog and Siblas went out of the yard towards the tricycle to leave but '[the victim] followed them. Then, [the victim] pushed Siblas and Agsalog, saying, "Vulva of your mother, are you going to fight me?" At this stage, [the victim] was drawing a balisong from his waist and when he was about to thrust his balisong into Agsalog's body, Agsalog also drew a knife and swung his arm, hitting [the victim's] body once. But still [the victim] grabbed Agsalog by the shoulder but Agsalog pushed him with his left arm. [The victim], then turned and went into the yard of Opiña. Agsalog saw Edwin Opiña came out of the house and

picked some stones, going near them, Aagsalog told Edwin, “Don’t go near-Don’t go near (warning to us). x x x (Emphasis and italics in the original; underscoring supplied)

Brushing aside appellants’ version, the trial court, by Decision of October 7, 1999, found them guilty beyond reasonable doubt of murder, the dispositive portion of which is quoted verbatim:

WHEREFORE, JUDGMENT of CONVICTION beyond reasonable doubt is hereby rendered against Abraham Aagsalog and Jovito Siblas of the crime of aggravated Murder and the Court sentences AGSALOG and SIBLAS to suffer the penalty of DEATH to be implemented in the manner as provided for by law; to pay the heirs of the victim, jointly and solidarily, the amount of P200,000.00 as actual damages; P75,000.00 as moral damages and P30,000.00 as exemplary damages and attorney’s fees in the amount of P10,000.00 and all accessory penalties of the law.

The Branch Clerk of Court is hereby ordered to prepare the mittimus and to transmit the entire records of this case to the Hon. Supreme Court of the Philippines for automatic review fifteen days from date of promulgation.

The Jail Warden, BJMP, is hereby ordered to transmit the living body of accused Aagsalog and Siblas to the National Bilibid Prisons, Muntinlupa City, fifteen (15) days from receipt of this Decision.[17] (Underscoring supplied)

Hence, this automatic review, appellants ascribing to the trial court the following assignment of errors:

I

GRANTING WITHOUT ADMITTING THAT THE PROSECUTION’S CASE IS CREDIBLE, THE LOWER COURT GRAVELY ERRED IN CONCLUDING THAT ACCUSED-APPELLANTS CONSPIRED IN KILLING THE VICTIM AS WELL AS IN APPRECIATING AGAINST THEM THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

II

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE AUTOPSY REPORT AND SWORN STATEMENT OF ANOTHER ALLEGED EYEWITNESS WHICH, IF CONSIDERED, WOULD HAVE BEEN FAVORABLE TO ACCUSED-APPELLANTS.

III

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING IN FAVOR OF ACCUSED-APPELLANTS THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.[18]

Appellant Aagsalog having admitted stabbing the victim, the third assignment of error shall first be considered.

For the justifying circumstance of self-defense to be appreciated, the following circumstances must concur.

- Unlawful aggression
- Reasonable necessity of the means employed to prevent or repel it.
- Lack of sufficient provocation on the part of the person defending himself.[19]

Unlawful aggression is present when peril to one’s life, limb or right is either actual or imminent.[20]

Appellant Aagsalog claims that as reflected in their above-quoted version in their brief, there was unlawful aggression on the part of the victim – that as appellants “were out of the yard towards the tricycle to leave,” the victim followed and pushed them, challenged them to a fight, after saying “vulva of your mother,” and thereafter

drew a balisong which he was “about to thrust” at him (appellant Agsalog). Appellant Siblas’ following testimony, quoted verbatim, does not corroborate such claim of aggression on the victim’s part, however, he (appellant Siblas) having merely witnessed the victim holding the shoulder of appellant Agsalog which the latter ward off, followed by the two pushing each other.

ATTY. SANSANO, JR (counsel for both appellants):

x x x

Q

When your co-accused Abraham Agsalog entered the yard, what happened next?

A

Eduardo Marzan met him. (Siblas answering)

Q

What [did] Abraham Agsalog do when he went there?

A

He told us, “Vulva of your mother. You could easily be baited.”

Q

What prompted Marzan said those words?

A

I do not know why he said that, sir.

Q

What did Abraham Agsalog answer, if any?

A

“How come, Bok.”

Q

What was the reply of Marzan, if any, to what Agsalog said?

A

“When it comes to cocktails (“pulutan”) you are so fast.”

Q

What did Agsalog answer, if any?

A

“How come, Bok, you get it and we eat now.”

Q

After the reply of Agsalog, what did Marzan do?

A

“Vulva of your mother,” he said.

Q

What did you do with that Marzan told you and Agsalog?

A

After a while, Agsalog made an invitation.

Q

What was that invitation?

A

He said, “If that is the thing, let’s go home.”

Q

What did Marzan do when you were invited by Agsalog to go home?

A

When Agsalog turn, Marzan held the right shoulder of Agsalog.

Q

What [did] Marzan do when he held that shoulder of Agsalog?

A

“When I am talking to you, do not turn your back.”

Q

What did Agsalog do?

A

Agsalog warded his hand, sir.

Q

When Agsalog warded the hand of Marzan, what did Marzan do?

A

He continued to hold, sir.

Q

What did Agsalog told with what Marzan did to him?

A

He warded it, sir.

Q

What happened next?

A

I went out first and then Aagsalog followed, sir.

Q

What happened between Aagsalog and Marzan when you went ahead?

A

On the street they pushed each other, sir.

Q

What happened when they pushed each other?

A

Marzan told him, "You are liar."

Q

To whom he addressed that?

A

To Aagsalog, sir.

Q

What did Aagsalog do?

A

Marzan pushed Aagsalog and they pushed each other.

Q

And what did Aagsalog do when he was pushed by Marzan?

A

Things happened fast, sir. When I walk, I did not see the other things and the last thing that I saw when I look back, I saw Marzan going back.

Q

How about Aagsalog, where was he when you saw Marzan?

A

He was on the street, sir.

Q

Did you come to know what happened to Marzan?

A

About his stabbing, sir.

Q

Where were you anyway when Aagsalog, your co-accused, stabbed Marzan?

A

Maybe 3 to 4 meters away from them.

Q

In relation to Marzan, where were you at the time of the stabbing?

A

The same distance, sir.

Q

At what particular direction to the place of Marzan?

A

From right side of Eduardo Marzan, sir.

Q

How about this witness Edwin Opiña, do you know where he was at that time?

A

Yes, sir.

Q

Where was he at the time?

A

Maybe he was 2 to 3 meters to the left, sir.

Q

What was he doing there at the time?

A

He was in possession of a stone, sir.

Q

What did he do when he was in possession of a stone?

A

He was holding two stones, sir.

Q

He did nothing on those two stones?

A

He was only in possession of those stones, sir.

Q

This witness Edwin Opiña testified in court that when your co-accused Agsalog stabbed the victim you were holding the right hand of Marzan. What can you say about this?

A

That is not true, sir.

x x x[21] (Emphasis and underscoring supplied)

Even assuming, however, that the victim indeed held the shoulder of appellant Agsalog, albeit the prosecution claimed it was appellant Siblas' right shoulder which the victim held, that could not have constituted actual or imminent peril to appellant Agsalog's life, limb or right, especially in light of appellant Siblas testimony that after that stage of the incident, the victim and appellant Agsalog pushed each other. It is unthinkable for appellant Siblas to have missed witnessing the alleged attempt of the victim to stab appellant Agsalog if indeed there was such an attempt.

Absent thus any corroboration by independent and competent evidence of appellant Agsalog's claim of unlawful aggression on the part of the victim, it is extremely doubtful, hence, it cannot prosper.[22]

There being no unlawful aggression, there is no self-defense, complete or incomplete.[23]

That the stabbing could not have been carried out in self-defense draws reinforcement from the failure of appellant Agsalog, a high school teacher at that, to report the incident to police authorities. In fact, when he was arrested on October 6, 1997, at 9:00 p.m., he "refused to sign." [24]

In their second assignment of error, appellants fault the trial court for failure to consider the implications of the findings in the autopsy report, and the sworn statement of Aquino wherein he stated, as follows, quoted verbatim:

x x x

No. 67 Q: What other things happened if any? A: Abraham Agsalog and Mr. Siblas entered the yard of Mr. Juan Opiñawherein Eduardo Marzan is sitting threat and Abraham Agsalog and Mr. Siblas called Eduardo Marzan and they talked to each other. Not long after, they traded words at the top of their voice and I notice that they were fighting. Then I saw Abraham Agsalog and Mr. Siblas ran towards the East direction being chased by Edwin Opiña and Ronald Opiña but Abraham Agsalog who was holding a fan knife (balisong) aimed to Ronald Opiña and caution[ed] them not to intervene.

x x x (Underscoring supplied)

With respect to the autopsy report, appellants contend that the fatal (second) stab wound which hit the right auricle of the victim's heart was not inflicted by appellant Agsalog. Thus they explain:

The Autopsy Report (Exh. "G", "G-1" and "G-2") indicated that there were two (2) stab wounds, one which was inflicted medially on the upper middle portion of the abdomen, just above the navel that pierced the upper lobe of the lung, The other was directed downwards at the upper portion of the chest penetrating the right auricle of the heart and is the cause of death. The thrust through the abdomen, which is medially inflicted, is assumed that the knife is held level with the hand. On the other hand, the knife thrust through the chest, as it is on the downward stroke is assumed that the knife is held perpendicular to the hand. At the heat of the moment, it is not conceivable that the wielder of the knife changed the stance and grasp of the knife of the second thrust. The knife thrust inflicted on the abdomen is admitted by the accused Agsalog, but he claimed only one thrust. As for the knife thrust through the chest, Agsalog denied ever inflicting it. The deceased is taller by 4 – 5 inches

than Aagsalog, the knife thrust medially on the abdomen with the knife held level to the hand is expected for a smaller person. But a knife thrust on a downward stroke on the upper portion of a taller person is impossible to be inflicted by a smaller assailant. The fatal stab is not done by Aagsalog.[25] (Underscoring supplied)

The claim that appellant Aagsalog inflicted only the wound on the victim's abdomen does not persuade, given Edwin's and Soto's positive claims in their respective sworn statements and at the witness stand that said appellant twice stabbed the victim. That the wound of the victim on his chest was "on a downward stroke" need not rule out its infliction by a smaller person facing him. It is possible that that wound on the chest was inflicted while the victim stooped in pain after being stabbed in the abdomen, or that appellant Aagsalog raised his hand to insure that he would reach and stab the chest of the already wounded taller victim. Whatever it was, the fact remains that Edwin and Soto categorically declared that appellant Aagsalog twice stabbed the victim.

With respect to the sworn statement of Aquino,[26] appellants contend that the same shows that the "incident [which] was preceded by a fight" and culminated in a spur of the moment stabbing was an act of self-defense and "negates and likewise belies the testimony of Edwin Opiña [that he (Edwin) was with the deceased at the terrace when appellants arrived] and provides a doubtful ground to convict accused-appellants of murder."

There is nothing in Aquino's statement, however, from which to infer that there was unlawful aggression on the victim's part such that self defense may be considered. Neither is there a declaration that the victim was alone at the terrace when appellants arrived.

At all events, appellants bewail the non-presentation by the prosecution of the doctor (who prepared the Autopsy Report) and of Aquino, thus denying them, so they claim, the opportunity to propound questions upon them.

The non-presentation by the prosecution of the doctor and Aquino as witnesses during the trial was the prerogative of the prosecution. If appellants wanted to question the two, nothing prevented them from presenting them as their own witnesses, but they did not.

In denying that conspiracy existed and that treachery and evident premeditation attended the stabbing, appellants proffer as follows, quoted verbatim:

Assuming sans admitting that Edwin Opiña's testimony is credible, Siblas, while holding Marzan's hands, could not have expected Aagsalog to stab Marzan. It bears to stress that barely three (3) hours before the incident, at the Jessica Mae Karaoke Bar, Marzan slapped Siblas in the face. Siblas could only have thought that Marzan would do the same thing again to him when without warning, Marzan put his right hand on his shoulder. Marzan was very much taller and stouter than either of the two (2) accused-appellants. As such, under the circumstances, it was but natural for Siblas react and to hold Marzan's right hand to prevent impending harm. When Aagsalog saw them, he could have perceived that Marzan intended to harm his friend such that he went on his way to stab Marzan. But on all indications, Siblas never knew nor acquiesced to Aagsalog's design.

It can thus be said that accused-appellants never consciously adopted the 'means,' 'methods' or 'forms' by which Aagsalog killed the victim. The stabbing of the victim cannot be considered as sudden and unexpected to the point of incapacitating him to repel or escape it. In fact, the victim sustained only two (2) stab wounds. Had accused-appellants indeed have a preconceived plan to kill Marzan, the latter would have suffered more stab wounds. The crime was impulsively done at the spur of the moment. It should be borne in mind that the prosecution miserably failed to prove that accused-appellants hatched a conspiracy beforehand to kill Marzan. Their meeting was only casual and at the very least, the attack was done impulsively. Such being the case, the killing of the victim is not at all treacherous . . . [27]

On the assailed finding that there was conspiracy between appellants, anchored on appellant Siblas' holding, at the time appellant Aagsalog attacked the victim, of the right elbow and wrist of the victim who admittedly was

very much bigger than them: As the prosecution claims that the victim placed his right hand on the left shoulder of appellant Siblas (the defense claims it was the shoulder of appellant Aagsalog which the victim held), and the stabbing was sudden and swift, appellant Siblas' holding of the victim's elbow and wrist may not necessarily have meant to restrain the victim in order to insure that he would not put up a fight or defense. The holding of the victim's right wrist and elbow by appellant Siblas could have been done in the course of the removal thereof from Siblas' shoulder. At any rate, there is no showing that had not appellant Siblas held the victim's wrist and elbow, appellant Aagsalog would not have succeeded in stabbing the victim.

Conspiracy, which requires the same quantum of proof to prove the guilt of an accused, was thus not clearly established.

That conspiracy was not proven to have existed does not of course necessarily free appellant Siblas from liability. If appellant Siblas' holding of the victim's elbow and wrist constituted a crime in and by itself, then he should be held criminally liable. Appellant Siblas' aforesaid act, under the proven circumstance, did not, however, amount to criminal offense giving rise to his individual culpability therefor.

As for the qualifying circumstance of evident premeditation, for it to be appreciated, the following requisites should be proven: (1) the time when the offender determined to commit the crime, (2) an overt act manifestly indicating that the culprit had clung to his determination, and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act.[28]

While the victim slapped appellant Siblas hours before the stabbing and it is thus not improbable for appellants to have hatched a plan to avenge the same, still, the circumstances as presented by the prosecution fail to show evident premeditation, which must be based upon external acts and not presumed from mere lapse of time.[29]

In the case of *People v. Peralta*: [30]

The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. The elements of treachery are: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted. It does not follow that a sudden and unexpected attack is tainted with treachery for it could have been that the same was done on impulse, as a reaction to an actual or imagined provocation offered by the victim. Provocation of the appellant by the victim negates the presence of treachery even if the attack may have been sudden and unexpected. (Citations omitted)

The testimony of prosecution eyewitness Edwin that when appellants arrived at his yard and called for the victim, appellant Aagsalog "sounded like he was mad," must surely have put the victim on guard, given the fact that a few hours before he slapped appellant Siblas.

There is thus reasonable doubt on whether treachery and evident premeditation attended the commission of the crime.

The crime committed was then only homicide.

As regards the damages awarded by the trial court, the amount of P200,000.00 for actual damages appears to have been partly based on the claim of Virgilio Padilla,[31] the victim's brother-in-law, that the total amount of P157,000.00 was incurred for burial expenses.

Jurisprudence dictates that the award of actual damages must, however, be duly substantiated by receipts.[32] An examination of the records shows that the alleged burial expenses was not duly receipted. It must thus be disallowed.

The heirs of the victim are, however, entitled to an award of civil indemnity in the amount of P50,000.00 which needs no proof other than the victim's death.[33]

As to the award by the trial court of P75,000.00 as moral damages, consistent with prevailing jurisprudence,[34] the crime committed being homicide, the amount must be reduced to P50,000.00.

Finally, the award of P10,000.00 as attorney's fees must be deleted in view of the failure of the trial court to explicitly state in the body of its decision the legal basis therefor. The power of courts to grant damages and attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[35]

WHEREFORE, the appealed decision of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 46 is hereby MODIFIED.

Appellant Abraham Aagsalog is found GUILTY beyond reasonable doubt of HOMICIDE as defined under Article 249 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of Six (6) Years and One (1) Day of prision mayor as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of reclusion temporal as maximum, with the accessory penalties provided by law; and he is ordered to pay the heirs of the victim, Eduardo Marzan, the amount of P50,000.00 civil indemnity and another P50,000.00 as moral damages.

Appellant Jovito Siblas Y Obaña @ Bitong is hereby ACQUITTED of the charge and is hereby ordered immediately RELEASED from confinement, unless he is being lawfully held in custody for another cause.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Vitug J., on official leave.

Ynares-Santiago, J., see dissenting opinion

Sandoval-Gutierrez, J., maintains there was conspiracy between appellants, and joins J. Ynares-Santiago's dissenting opinion.

[1] TSN, July 15, 1998 at 7.

[2] TSN, February 16, 1998 at 7-8.

[3] TSN, February 24, 1998 at 5.

[4] Exhibits "G"- "G-2," Records at 6-8.

[5] Exhibit "G," Records at 8.

[6] TSN, February 9, 1998 at 6.

[7] Exhibit "G," Records at 8; TSN, February 9, 1998 at 8-9.

[8] Exhibit "D," Records at 10.

[9] Exhibit "E," Records at 13.

[10] Exhibit "F," Records at 14-15.

- [11] Records at 2.
- [12] TSN, February 24, 1998 at 7.
- [13] Id. at 9.
- [14] Ibid.
- [15] Id. at 31, which was therein translated as “You have no respect for us.”
- [16] TSN, February 24, 1998 at 11.
- [17] Records at 299-300.
- [18] Rollo at 73-74.
- [19] Article 11 par. 1, Revised Penal Code.
- [20] People v. Recto, 367 SCRA 390 (2001) citing People v. Crisostomo, 108 SCRA 288 (1981).
- [21] TSN, September 24, 1998 at 4-7.
- [22] People v. Cabical, G.R. No. 148519, May 29, 2003.
- [23] People v. Samson, 189 SCRA 700 (1990).
- [24] Vide Records at 26.
- [25] Rollo at 84-85.
- [26] Exhibit “F,” Records at 14-15.
- [27] Rollo at 79-80.
- [28] People v. Peralta, 350 SCRA 198 (2001).
- [29] U.S. v. Ricafor, 1 Phil. 173 (1902).
- [30] Supra at 210-211.
- [31] TSN, May 22, 1998 at 3.
- [32] Tomas Hugo v. Hon. Court of Appeals and the People of the Philippines, G.R. No. 126752, September 6, 2002.
- [33] People v. Delim, G.R. No. 142773, January 28, 2003.
- [34] People v. Sayaboc, G.R. No. 147201, January 15, 2004 citing People v. Bajar, G.R. No. 143817, October 27, 2003.
- [35] Ranola v. Court of Appeals, 322 SCRA 1 (2000)

DISSENTING OPINION

YNARES-SANTIAGO, J.:

I would like to express my reservations on the majority opinion's ruling that the attendant circumstance of treachery is not present in the slaying of the victim Eduardo Marzan in order to qualify the crime to murder, and that no conspiracy existed between Agsalog and Siblas in the stabbing of the victim on October 4, 1997.

I am constrained to register my dissent on two grounds: first, the presence of the attendant circumstance of treachery (alevosia) in the case at bar as inferred from the acts of appellant Abraham Agsalog to qualify the crime to murder; and second, the applicability of the doctrine of implied conspiracy to implicate co-appellant Jovito Sablas to the killing of Eduardo Marzan.

The essence of treachery is that the attack comes without warning, done in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[1] The test of treachery may thus be expressed as follows: Did the assailant consciously or deliberately employ means, methods or forms in the execution of the criminal act which tended directly and especially to ensure the execution thereof without risk to the assailant himself arising from the defense which the victim might make? If in the affirmative, treachery can be appreciated to qualify the crime to murder.

Two conditions must concur in order for alevosia to be appreciated (a) the assailant employed means, methods or forms in the execution of the criminal act which gives the person attacked no opportunity to defend himself or retaliate; and (b) the said means, methods or forms of execution were deliberately or consciously adopted by the assailant.

The basis for treachery has reference to the means and ways employed in the commission of the crime.[2] This aggravating circumstance is applicable only to crimes against persons, where the mode of attack was consciously adopted.[3] Treachery should be taken into account even if the deceased was face to face with his assailant at the time the blow was delivered, where it appears that the attack was not preceded by a dispute and the offended party was unable to prepare himself for his defense.[4]

Treachery, whenever present and alleged in the information, qualifies the killing of the victim and raises it to the category of murder.[5] The killing of the victims is qualified with treachery, when the shooting was sudden and unexpected, and the victims were not in a position to defend themselves.[6]

In the case at bar, treachery should be appreciated to qualify the crime to murder against appellant Abraham Agsalog. It may be gleaned from the records that at or about 4:30 p.m. on October 4, 1997, appellant Agsalog, while walking on the left side of the victim, Eduardo Marzan, towards the front gate of the victim's house, suddenly moved one step forward, raised his shirt and drew a beinte nueve knife, executed a turn around and stabbed the victim twice, hitting the latter in the abdomen and chest.[7] Co-appellant Jovito Siblas was walking on the right side of the victim. It should be noted that the previous altercation which occurred at or around 2:00 p.m. in Jessica Videoke at San Quintin Public Market, San Quintin, Pangasinan was between the victim and co-appellant Siblas, and not involving appellant Agsalog. While walking towards his front gate, the victim, Eduardo Marzan, even apologized for the incident to co-appellant Siblas when he said, "Pasensiya ka na Pare" to manifest his desire to reconcile differences. From this fact alone, it may be observed that the victim did not possess a retaliatory disposition, but rather a conciliatory mood. Not even the slightest provocation on the part of the victim may be manifested, moments before his untimely death.

The victim was not in a position to defend himself against the swift, sudden and unexpected aggression of appellant Agsalog, who took out his knife and stabbed the victim to death. The unsuspecting victim was unarmed and defenseless against two persons. He had no idea whatsoever of the impending assault on his person as shown

by his casual and conciliatory behavior while talking to appellants. More importantly, the victim did not foresee the fatal stabbing.

Appellant Agsalog's surprise attack did not afford the opportunity for the unarmed victim to defend himself. He consciously or deliberately adopted the means of attack to accomplish the execution of the criminal act, thus establishing moral certainty that alevosia was present to qualify the killing of Eduardo Marzan to murder.

Granting arguendo, that a previous altercation involved assailant and victim, treachery can still be appreciated, provided there is a lapse of time between the altercation and the attack. In *People v. Montemayor*, a unanimous Court, speaking through Justice Romeo J. Callejo, Sr., held:[8]

There may be still treachery even if before the assault, the assailant and the victim had an altercation and a fisticuff where, after the lapse of some time from the said altercation, the assailant attacked the unsuspecting victim without affording him of any real chance to defend himself. In this case, the appellant, armed with a gun, shot the victim as the latter was conversing with his wife and Beverly's other guests in front of the gate of the latter's house. The victim was unarmed. The attack of the appellant was sudden. The victim had no inkling that the appellant had returned, armed with a gun.

The altercation between the victim and co-appellant Sillas at Jessica Videoke transpired at 2:00 p.m. while the fatal stabbing involving appellants occurred at about 4:30 p.m. at the foot of the gate of the victim's house. There was a lapse of time between the altercation and the assault of approximately two and a half hours. In other words, the time interval between the altercation and the assault was sufficient to lower the victim's defenses and set the stage for the unexpected attack by appellant Agsalog.

Alevosia was present in this case as the assailant launched a surprise attack, suddenly taking his knife from under his shirt. The unprovoked and unsuspecting victim was afforded no real chance to defend himself.

Even if the assailant frontally attacked the victim, treachery can be appreciated. The case of *People v. Prieto*[9] is illustrative:

Treachery was attendant because the appellant suddenly and without provocation, stabbed Geraldo twice on the chest and abdomen when the unarmed victim opened the door to his house. The bare fact that the appellant was facing the victim when the latter was stabbed does not preclude treachery.

In *People v. Perez*,[10] the Court held:

That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. The settled rule that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the latter to defend himself or to retaliate.

In resolving whether there was a conspiracy between the two appellants, a brief discussion on the principle is appropriate at this point.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[11] It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them.[12] Conspiracy may be proved by direct or circumstantial evidence. Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. In the absence of direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint

purpose and design, concerted action, and community of interest.[13] It need not matter who inflicted the mortal wound, as the act of one is the act of all, and each of the actors incurs the same criminal liability. There is collective criminal responsibility in conspiratorial acts.

Conspiracy is implied when the accused had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.[14] It is manifested in the coordinated acts of the assailants, of one of them holding the hand of the victim while another was stabbing him and a third delivering fist blows on different parts of the body of the victim, and, when the victim was able to escape, of giving chase and the first accused shooting the deceased five (5) times.[15]

In the present case, the doctrine of implied conspiracy should be applied against co-appellant Jovito Siblas. The records reflect that co-appellant Siblas, while nearing the gate of the victim's house, and simultaneously with the forward, lunging movement of appellant Aagsalog, unexpectedly held the right hand of the victim with his two hands; one hand on the wrist, and the other hand holding the left hand just above the elbow of the victim.[16] The act of suddenly holding the victim's hand, simultaneously or contemporaneously to the stabbing of the victim by appellant Aagsalog, rendered the victim immobile, vulnerable and prone to attack. This act of Siblas evinces a common design, concerted action and unity of purpose with Aagsalog's thrusting of the knife. It exhibited a closeness and coordination in the manner of execution of Aagsalog's criminal act against the victim who was utterly defenseless.

In conspiracy, it is immaterial who inflicted the fatal wounds. Conspirators have collective criminal responsibility. In this case, both appellants are collectively liable for the crime as they acted in unison; by their very actions, appellants conspired with each other to kill the victim. The acts of both appellant Aagsalog and his co-appellant, Siblas, show a closeness and coordination in the manner of execution as to undoubtedly indicate a commonality of design and unity of purpose in killing the victim, Eduardo Marzan. The acts of appellants show unanimity in design, intent and execution of the attack on the victim, making Siblas criminally liable as co-conspirator and co-principal of the fatal stabbing of Eduardo Marzan. Verily, the act of Aagsalog by legal contemplation is the act of siblas.

In *People v. Ramil Gutierrez, et al.*, [17] we ruled that in conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim, since the act of each conspirators in furtherance of the common objective is the act of all:

What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim. The act of each conspirator in furtherance of the common purpose in contemplation of law is the act of all.

The act of co-appellant in holding the victim's right hand and elbow showed that he concurred in the criminal design of the actual assailant, Abraham Aagsalog. Having joined in the criminal conspiracy, co-appellant Jovito Siblas in effect adopted as his own the criminal design of co-conspirator, appellant Aagsalog. Chief Justice Hilario G. Davide, Jr., writing for the Court in *People v. Manalo*, [18] made this succinct observation:

Indeed, the act of the appellant of holding the victim's right hand while the victim was being stabbed by Dennis shows that he concurred in the criminal design of the actual killer. If such act were separate from the stabbing, appellant's natural reaction should have been to immediately let go of the victim and flee as soon as the first stab was inflicted. But appellant continued to restrain the deceased until Dennis completed his attack.

Conspiracy was evident from the acts of the four accused, with two of them seizing the victim's arms and holding him immobile, one holding his back, and another thrusting a knife on the victim. These acts

indubitably point to a joint purpose, concerted action and community of interest. Having joined in the criminal conspiracy, appellant in effect adopted as his own the criminal design of his co-conspirators. Hence, as a co-conspirator whose participation emboldened the actual killer and contributed to the success of the common design, appellant is liable as a co-principal in the killing of Rodrigo.

When there is conspiracy, treachery attends against all conspirators, although only one did the actual stabbing of the victim.[19]

Lastly, it is a well-settled principle that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great weight and respect, even finality, on appeal unless the trial court has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case.[20] Since no reversible error was committed by the court a quo in its evidentiary findings on treachery and conspiracy, the lower court's appreciation of the foregoing in sustaining a murder conviction for both appellants must be upheld.

The penalty for murder is reclusion perpetua to death.[21] In view of the fact that no mitigating or aggravating circumstances attended the commission of the crime, the proper penalty to be meted under the Revised Penal Code is reclusion perpetua.[22]

Appellants should pay the heirs of the victim Eduardo Marzan civil indemnity ex delicto in the amount of P50,000.00[23] and P50,000.00 as moral damages,[24] all in conformity with prevailing case law.

ACCORDINGLY, I vote to AFFIRM the decision of the Regional Trial Court of Urdaneta City, Branch 46, finding appellants Abraham Agsalog @ Panto and Jovito Siblas y Obaña @ Bitong guilty beyond reasonable doubt of the crime of murder with the MODIFICATION that their sentence be reduced to reclusion perpetua and order them to pay the heirs of Eduardo Marzan P50,000.00 as civil indemnity ex delicto and P50,000.00 as moral damages.

[1] People v. Grefaldia, G.R. Nos. 121631-36, 30 October 1998, 298 SCRA 337.

[2] L.B. Reyes, Revised Penal Code, Book One (15th Ed., 2001), p. 409.

[3] Id. at 410.

[4] U.S. v. Cornejo, 28 Phil. 457, 461 (1914).

[5] People v. Limaco, 88 Phil. 35 (1951).

[6] People v. Aguilar, 88 Phil. 693 (1951).

[7] TSN, Direct Testimony of Ulyses Sotto, 16 February 1998, p. 13.

[8] G.R. No. 125305, 18 June 2003.

[9] G.R. No. 141259, 18 July 2003.

[10] G.R. No. 134485, 23 October 2003.

[11] Art. 8, Par. 2, Revised Penal Code.

[12] People v. Talla, G.R. No. 44414, 18 January 1990, 181 SCRA 133, 148; People v. Monroy, 104 Phil. 759, 764 (1958), citing People v. Abrina, 102 Phil. 695 (1957).

[13] People v. Pelopero, G.R. No. 126119, 15 October 2003.

[14] Supra note 2 at 498.

[15] *People v. Carpio*, G.R. Nos. 82815-16, 31 October 1990, 191 SCRA 108, 118.

[16] Supra note 8 at 11.

[17] G.R. No. 142905, 18 March 2002.

[18] G.R. No. 144734, 7 March 2002.

[19] *People v. Ong*, G.R. No. L-34497, 30 January 1975, 62 SCRA 174, 211.

[20] *People v. Romero*, G.R. No. 145166, 8 October 2003; *People v. Inggo*, G.R. No. 140872, 23 June 2003 citing *People v. Galam*, G.R. No. 114740, 15 February 2000, 325 SCRA 489, 496-497. See supra note 18.

[21] Art. 248, No. 1, Revised Penal Code.

[22] Art. 63, No. 2, Revised Penal Code.

[23] *People v. Garcia*, G.R. No. 145505, 14 March 2003.

[24] *People v. Matore*, G.R. No. 131874, 22 August 2002.

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