

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON DELIM, LEON DELIM, MANUEL DELIM ALIAS “BONG” (AT LARGE), ROBERT DELIM (AT LARGE), AND RONALD DELIM ALIAS “BONG”, ACCUSE...

G.R. No. 142773. January 28, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court on automatic review is the Decision,[1] dated January 14, 2000, of the Regional Trial Court, Branch 46, Urdaneta City, finding accused-appellants Marlon Delim, Leon Delim and Ronald Delim guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer the supreme penalty of death. The court also ordered accused-appellants to pay, jointly and severally, the heirs of the victim the sums of P75,000.00 as moral damages and P25,000.00 as exemplary damages.

Accused-appellants Marlon, Ronald and Leon, together with Manuel alias “Bong” and Robert, all surnamed Delim, were indicted for murder under an Information dated May 4, 1999 which reads:

“That on or about January 23, 1999, in the evening at Brgy. Bila, Sison, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with short firearms barged-in and entered the house of Modesto Delim and once inside with intent to kill, treachery, evident premeditation (sic), conspiring with one another, did then and there, wilfully, unlawfully and feloniously grab, hold, hogtie, gag with a piece of cloth, brought out and abduct Modesto Delim, accused Leon Delim and Manuel Delim stayed in the house guarded and prevented the wife and son of Modesto Delim from helping the latter, thereafter with abuse of superior strength stabbed and killed said Modesto Delim, to the damage and prejudice of his heirs.

CONTRARY to Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659.”[2]

Only accused-appellants Marlon (Bongbong), Leon and Ronald, all surnamed Delim, were apprehended. Accused Robert and Manuel remain at-large.

At their arraignment, Marlon, Ronald and Leon, with the assistance of their counsel, pleaded not guilty to the charge.

At the trial, the prosecution established the following relevant facts[3]—

Marlon, Manuel and Robert Delim are brothers. They are the uncles of Leon Delim and Ronald Delim. Modesto Manalo Bantas, the victim, was an Igorot and a carpenter. He took the surname Delim after he was “adopted” by the father of Marlon, Manuel and Robert. However, Modesto’s wife, Rita, an illiterate, and their 16-year old son, Randy, continued using Manalo Bantas as their surname. Modesto, Rita and Randy considered Marlon, Robert, Ronald, Manuel and Leon as their relatives. Manuel and Leon were the neighbors of Modesto. Marlon, Robert and Ronald used to visit Modesto and his family. Modesto and his family and the Delim kins resided in Barangay Bila, Sison, Pangasinan.

On January 23, 1999, at around 6:30 in the evening, Modesto, Rita and Randy were preparing to have their supper in their home. Joining them were Modesto and Rita's two young grandchildren, aged 5 and 7 years old. They were about to eat their dinner when Marlon, Robert and Ronald suddenly barged into the house and closed the door. Each of the three intruders was armed with a short handgun. Marlon poked his gun at Modesto while Robert and Ronald simultaneously grabbed and hog-tied the victim. A piece of cloth was placed in the mouth of Modesto.[4] Marlon, Robert and Ronald herded Modesto out of the house on their way towards the direction of Paldit, Sison, Pangasinan. Rita and Randy were warned by the intruders not to leave the house. Leon and Manuel, who were also armed with short handguns, stayed put by the door to the house of Modesto and ordered Rita and Randy to stay where they were. Leon and Manuel left the house of Modesto only at around 7:00 a.m. the following day, January 24, 1999.

As soon as Leon and Manuel had left, Randy rushed to the house of his uncle, Darwin Niño, at Sitio Labayog, informed the latter of the incident the night before and sought his help for the retrieval of Modesto. Randy was advised to report the matter to the police authorities. However, Randy opted to first look for his father. He and his other relatives scoured the vicinity to locate Modesto to no avail. They proceeded to Paldit, Sison, Pangasinan, around 200 meters away from Modesto's house, to locate Modesto but failed to find him there. On January 25, 1999, Randy and his relatives returned to the housing project in Paldit, Sison, Pangasinan to locate Modesto but again failed to find him there. On January 26, 1999, Randy reported the incident to the police authorities.

At around 3:00 in the afternoon of January 27, 1999, Randy, in the company of his relatives, Nida Pucal, Pepito Pucal, Bernard Osias and Daniel Delim, returned to the housing project in Paldit, Sison, Pangasinan and this time they found Modesto under thick bushes in a grassy area. He was already dead. The cadaver was bloated and in the state of decomposition. It exuded a bad odor. Tiny white worms swarmed over and feasted on the cadaver. Randy and his relatives immediately rushed to the police station to report the incident and to seek assistance.

When informed of the discovery of Modesto's cadaver, the local chief of police and SPO2 Jovencio Fajarito and other policemen rushed to the scene and saw the cadaver under the thick bushes. Pictures were taken of the cadaver.[5] Rita and Randy divulged to the police investigators the names and addresses of Marlon, Ronald, Robert, Leon and Manuel, whom they claimed were responsible for the death of Modesto. Rita and Randy were at a loss why the five malefactors seized Modesto and killed him. Rita and Randy gave their respective sworn statements to the police investigators.[6] Police authorities proceeded to arrest Marlon, Ronald, Robert, Manuel and Leon but failed to find them in their respective houses. The police officers scoured the mountainous parts of Barangays Immalog and Labayog to no avail.

The cadaver was autopsied by Dr. Maria Fe L. De Guzman who prepared her autopsy report, which reads:

“SIGNIFICANT EXTERNAL FINDINGS:

- Body - both upper extremities are flexed
- both lower extremities are flexed
- (+) body decomposition
- (+) worms coming out from injuries
- 10 x 10 ml. GSW, pre-auricular area, right
- 20 x 20 ml. GSW, mandibular areas, right
- 10 x 10 ml. GSW, maxillary area, right

- 10 x 10 ml. GSW, below middle nose, directed upward (POE)
- 30 x 40 ml. GSW, mid parieto – occipital area (POEx)
- 2 x 1 cms. lacerated wound, right cheek
- 1 x 1 cm. stabbed wound, axillary area, left
- 1 x 1 cm. stabbed wound, lateral aspect M/3[rd] left arm
- 1 x 1 cm. stabbed wound, lateral aspect D/3[rd], left arm
- 1 x 1 cm. stabbed wound, medial aspect M/3[rd], left arm
- 1 x 1 cm. stabbed wound, medial aspect D/3[rd], left arm
- #3; 1 x 1 cm. in line with each other, stabbed wound, medial aspect, M/3rd, left forearm
- 1 x 1 cm. stabbed wound, medial aspect, D/3[rd], left forearm
- 10 x 6 cms. Inflamed scrotum
- penis inflamed

SIGNIFICANT INTERNAL FINDINGS:

- no significant internal findings

CAUSE OF DEATH:

- GUN SHOT WOUND, HEAD.”[7]

The stab wounds sustained by Modesto on his left arm and forearm were defensive wounds. The police investigators were able to confirm that Marlon, Ronald, Robert, Leon and Manuel had no licenses for their firearms.[8]

Records of the PNP Criminal Investigation and Detection Group in Baguio City show that Marlon had pending cases for robbery in the Regional Trial Court of Baguio City in Criminal Case No. 16193-R, and for robbery in band in Criminal Cases Nos. 9801 and 9802 pending with the Regional Trial Court in Urdaneta, Pangasinan.[9]

To exculpate themselves, Marlon, Ronald and Leon interposed denial and alibi.[10]

Ronald claimed that on January 23, 1999, he, his wife and children, his mother, his brothers and sisters were in their house at Asan Norte, Sison, Pangasinan about two kilometers away from Modesto’s house.

He denied having been in the house of Modesto on January 23, 1999 and of abducting and killing him. He theorized that Rita and Randy falsely implicated him upon the coaching of Melchor Javier who allegedly had a quarrel with him concerning politics.

Leon for his part averred that on January 23, 1999, he was in the house of his sister, Hermelita Estabillo at No. 55-B, Salet, Laoag City, Ilocos Norte where he had been living since 1997 after leaving Asan Norte, Sison, Pangasinan. Since then, he had been working for Sally Asuncion at a hollow-block factory in that city where he was a stay-in worker.

Sally Asuncion corroborated Leon’s alibi. She testified that Leon Delim never went home to his hometown in Pangasinan during his employment. His sister, Hermelita Estabillo, likewise averred that on January 23, 1999, his brother was at her house to give her his laundry. She claimed that the distance between Laoag City and Bila,

Sison, Pangasinan can be traversed in six hours by bus. Leon presented a Barangay Certificate to prove that he was a resident of Laoag City from January 1998 up to February 1999.[11]

Marlon asserted that he was on vacation in Dumaguete City from December 26, 1998 up to January 29, 1999. During his stay there, he lived with his sister, Francisca Delim. Upon his return to Manila on January 29, 1999, he immediately proceeded to Baguio to visit his cousin. Marlon denied setting foot in Bila, Sison, Pangasinan after his sojourn in Dumaguete City.

The trial court rendered judgment finding accused-appellants guilty of murder. The dispositive portion of the trial court's decision reads:

“WHEREFORE, JUDGMENT OF CONVICTION beyond reasonable doubt is hereby rendered against Ronald Delim, Marlon Delim and Leon Delim (for) the commission of Aggravated Murder, an offense defined and penalized under Article 248 of the Revised Penal Code, as amended by R.A. 7659 and the Court sentences Marlon Delim, Ronald Delim and Leon Delim to suffer the penalty of DEATH, to be implemented in the manner as provided for by law; the Court likewise orders the accused, jointly and solidarily, to indemnify the heirs of Modesto Delim the sum of P75,000.00 as moral damages, plus the amount of P25,000.00 as exemplary damages.

The Branch Clerk of Court is hereby ordered to transmit the entire records of this case to the Honorable Supreme Court, and to prepare the mittimus fifteen (15) days from date of promulgation.

The Jail Warden, Bureau of Jail Management and Penology, Urdaneta District Jail, Urdaneta City is hereby ordered to transmit the persons of Marlon, Ronald and Leon, all surnamed Delim to the New Bilibid Prisons, Muntinlupa City, fifteen days from receipt of this decision.

SO ORDERED.”[12]

The trial court appreciated treachery as a qualifying circumstance and of taking advantage of superior strength, nighttime and use of unlicensed firearms as separate of aggravating circumstances in the commission of the crime. Marlon, Ronald and Leon, in their appeal brief, assail the decision alleging that:

“I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT CONSPIRACY EXISTED IN THE CASE AT BAR.

III

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANTS' DEFENSE OF ALIBI.”[13]

Before resolving the merits of the case at bar, we first resolve the matter of whether the crime charged in the Information is murder or kidnapping. During the deliberation, some distinguished members of the Court opined that under the Information, Marlon, Ronald and Leon are charged with kidnapping under Article 267 of the Revised Penal Code and not with murder in its aggravated form in light of the allegation therein that the accused “willfully, unlawfully and feloniously grab(bed), h(e)ld, hog-tie(d), gag(ged), with a piece of cloth, brought out and abduct(ed) Modesto Delim (while) Leon Delim and Manuel Delim stayed in the house (and) guarded and prevented the wife and son of Modesto Delim from helping the latter.” They submit that the foregoing allegation

constitutes the act of deprivation of liberty of the victim, the gravamen in the crime of kidnapping. They contend that the fact that the Information went further to charge accused with the killing of the victim should be of no moment, the real nature of the criminal charge being determined not from the caption or the preamble of the Information nor from the specification of the law alleged to have been violated – these being conclusions of law – but by the actual recital of facts in the complaint or information. They further submit that since the prosecution failed to prove motive on the part of Marlon, Ronald and Leon to kill Modesto, they are not criminally liable for the death of the victim but only for kidnapping the victim.

It bears stressing that in determining what crime is charged in an information, the material inculpatory facts recited therein describing the crime charged in relation to the penal law violated are controlling. Where the specific intent of the malefactor is determinative of the crime charged such specific intent must be alleged in the information and proved by the prosecution. A decade ago, this Court held in *People v. Isabelo Puno, et al.*,^[14] that for kidnapping to exist, there must be indubitable proof that the actual specific intent of the malefactor is to deprive the offended party of his liberty and not where such restraint of his freedom of action is merely an incident in the commission of another offense primarily intended by the malefactor. This Court further held:

“x x x. Hence, as early as *United States vs. Ancheta*, and consistently reiterated thereafter, it has been held that the detention and/or forcible taking away of the victims by the accused, even for an appreciable period of time but for the primary and ultimate purpose of killing them, holds the offenders liable for taking their lives or such other offenses they committed in relation thereto, but the incidental deprivation of the victims’ liberty does not constitute kidnapping or serious illegal detention.”^[15]

If the primary and ultimate purpose of the accused is to kill the victim, the incidental deprivation of the victim’s liberty does not constitute the felony of kidnapping but is merely a preparatory act to the killing, and hence, is merged into, or absorbed by, the killing of the victim.^[16] The crime committed would either be homicide or murder.

What is primordial then is the specific intent of the malefactors as disclosed in the information or criminal complaint that is determinative of what crime the accused is charged with--that of murder or kidnapping.

Philippine and American penal laws have a common thread on the concept of specific intent as an essential element of specific intent crimes. Specific intent is used to describe a state of mind which exists where circumstances indicate that an offender actively desired certain criminal consequences or objectively desired a specific result to follow his act or failure to act.^[17] Specific intent involves a state of the mind. It is the particular purpose or specific intention in doing the prohibited act. Specific intent must be alleged in the Information and proved by the state in a prosecution for a crime requiring specific intent.^[18] Kidnapping and murder are specific intent crimes.

Specific intent may be proved by direct evidence or by circumstantial evidence. It may be inferred from the circumstances of the actions of the accused as established by the evidence on record.^[19]

Specific intent is not synonymous with motive. Motive generally is referred to as the reason which prompts the accused to engage in a particular criminal activity. Motive is not an essential element of a crime and hence the prosecution need not prove the same. As a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder.^[20] The history of crimes shows that murders are generally committed from motives comparatively trivial.^[21] Crime is rarely rational. In murder, the specific intent is to kill the victim. In kidnapping, the specific intent is to deprive the victim of his/her liberty. If there is no motive for the crime, the accused cannot be convicted for kidnapping.^[22] In kidnapping for ransom, the motive is ransom. Where accused

kills the victim to avenge the death of a loved one, the motive is revenge.

In this case, it is evident on the face of the Information that the specific intent of the malefactors in barging into the house of Modesto was to kill him and that he was seized precisely to kill him with the attendant modifying circumstances. The act of the malefactors of abducting Modesto was merely incidental to their primary purpose of killing him. Moreover, there is no specific allegation in the information that the primary intent of the malefactors was to deprive Modesto of his freedom or liberty and that killing him was merely incidental to kidnapping.[23] Irrefragably then, the crime charged in the Information is Murder under Article 248 of the Revised Penal Code and not Kidnapping under Article 268 thereof.

The threshold issue that now comes to fore is whether or not the prosecution mustered the requisite quantum of evidence to prove that Marlon, Ronald and Leon are guilty of murder.

In criminal prosecutions, the prosecution is burdened to prove the guilt of the accused beyond cavil of doubt. The prosecution must rely on the strength of its own evidence and not on the weakness of the evidence of the accused. The proof against the accused must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.[24]

In the case at bar, the prosecution was burdened to prove the corpus delicti which consists of two things: first, the criminal act and second, defendant's agency in the commission of the act.[25] Wharton says that corpus delicti includes two things: first, the objective; second, the subjective element of crimes.[26] In homicide (by dolo) and in murder cases, the prosecution is burdened to prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident, natural cause or suicide; and (c) that defendant committed the criminal act or was in some way criminally responsible for the act which produced the death.[27] To prove the felony of homicide or murder, there must be incontrovertible evidence, direct or circumstantial, that the victim was deliberately killed (with malice); in other words, that there was intent to kill. Such evidence may consist inter alia in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim. If the victim dies because of a deliberate act of the malefactor, intent to kill is conclusively presumed.

The prosecution is burdened to prove corpus delicti beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence.[28]

In the case at bar, the prosecution adduced the requisite quantum of proof of corpus delicti. Modesto sustained five (5) gunshot wounds. He also sustained seven (7) stab wounds,[29] defensive in nature. The use by the malefactors of deadly weapons, more specifically handguns and knives, in the killing of the victim as well as the nature, number and location of the wounds sustained by said victim are evidence of the intent by the malefactors to kill the victim with all the consequences flowing therefrom.[30] As the State Supreme Court of Wisconsin held in *Cupps v. State*: [31]

"This rule, that every person is presumed to contemplate the ordinary and natural consequences of his own acts, is applied even in capital cases. Because men generally act deliberately and by the determination of their own will, and not from the impulse of blind passion, the law presumes that every man always thus acts, until the contrary appears. Therefore, when one man is found to have killed another, if the circumstances of the homicide do not of themselves show that it was not intended, but was accidental, it is presumed that the death of the deceased was designed by the slayer; and the burden of proof is on him to show that it was otherwise."

The prosecution did not present direct evidence to prove the authors of the killing of Modesto. It relied on circumstantial evidence to discharge its burden of proving the guilt of accused-appellants of murder.

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[32] What was once a rule of account respectability is now entombed in Section 4, Rule 133 of the Revised Rules of Evidence which states that circumstantial evidence, sometimes referred to as indirect or presumptive evidence, is sufficient as anchor for a judgment of conviction if the following requisites concur:

“x x x if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt.”[33]

The prosecution is burdened to prove the essential events which constitute a compact mass of circumstantial evidence, and the proof of each being confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion: the guilt of accused for the offense charged.[34] For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[35] If the prosecution adduced the requisite circumstantial evidence to prove the guilt of accused beyond reasonable doubt, the burden of evidence shifts to the accused to controvert the evidence of the prosecution.

In the present case, the prosecution mustered the requisite quantum of circumstantial evidence to prove that accused-appellants, in confabulation with their co-accused, conspired to kill and did kill Modesto:

- Randy Bantas testified that Marlon and Ronald barged into the house of Modesto, each armed with a handgun. Marlon poked his gun on Modesto while Ronald hog-tied Modesto. They then seized Modesto and herded him out of his house:

“FISCAL TOMBOC: What were you doing then at that time in your house?

A

We were eating, sir.

Q

You said we, who were your companions eating then at that time?

A

My father, my mother and the two children and myself, sir.

Q

While taking your supper that time, do you recall if there was anything unusual that happened at that time?

A

When we were about to start to eat three armed men entered our house.

Q

Do you know these three armed men who entered your house?

A

Yes, sir.

Q

Who are they, name them one by one?

A

Marlon Delim, Robert Delim and Ronald Delim.

Q

Are these three persons inside the courtroom now?

A

Two of them, sir.

Q

Who are these two who are inside the courtroom?

A

Marlon and Ronald, sir.

Q

Will you please stand up and point to them?

A

(Witness is pointing to a person seated on the bench inside the courtroom, who, when his name was asked answered Marlon Delim. Likewise, witness is pointing unto a person seated on the bench inside the courtroom, who, when his name was asked he answered Ronald Delim).

Q

You said that these two armed persons entered your house, what kind of arm were they carrying at that time?

A

Short handgun, sir.

Q

When these three armed persons whom you have mentioned, armed with short firearms, what did they do then when they entered your house?

A

They took my father, sir.

Q

Who took your father?

A

Marlon Delim, Robert Delim and Ronald Delim, sir.

Q

When these three persons took your father, what did you do then?

A

None, sir.

COURT: How did they get your father?

A

They poked a gun and brought him outside the house, sir.

FISCAL TOMBOC: Who poked a gun?

A

Marlon Delim, sir.

Q

Again, Mr. Witness, will you point to the person who poked a gun?

A

(Witness is pointing to Malon (sic) Delim, one of the accused).

Q

After bringing your father out from your house, what transpired next?

A

Manuel Delim and Leon Delim said, 'Stay in your house,' and guarded us.

COURT: You said your father was taken out, who?

A

Marlon, Robert and Ronald, sir.

FISCAL TOMBOC: Where did these three persons bring your father?

A

I do not know where they brought my father, sir.

COURT: Was your father taken inside your house or outside?

A

Inside our house, sir.

Q

You said that Marlon poked a gun at your father, is that correct?

A

Yes, sir.

Q

What did Ronald and Robert do while Marlon was poking his gun to your father?

A

Ronald and Robert were the ones who pulled my father out, sir.”[36]

Randy’s account of the incident was corroborated by his mother, Rita, who testified:

“PROSECUTION TOMBOC: You said during the last hearing that on January 23, 1999 at around 6:30 in the evening while preparing for your supper three (3) armed men entered inside your house, who were these three (3) men who entered your house?

A

I know, Marlon, Bongbong and Robert, sir.

ATTY. FLORENDO: We just make of record that the witness is taking her time to answer, Your Honor.

PROSECUTOR TOMBOC: You said that Marlon Delim, Robert Delim and Bongbong entered your house, are these three (3) persons who entered your house in Court now?

A

They are here except the other one, sir.

Q

Will you please step down and point to the persons who entered your house?

A

Witness is pointing to Marlon Delim, Robert Delim is not in Court and Bongbong is Ronald Delim.

Q

After these three (3) armed men entered your house, what happened then?

A

My husband was brought out, sir.

Q

What is the name of your husband?

A

Modesto Delim, sir.”[37]

- 2. Randy said that when Marlon and Ronald barged into their house, Leon, armed with a handgun, acted as a lookout when he stood guard by the door of the house of Modesto and remained thereat until 7:00 a.m. of the next day:

“FISCAL TOMBOC: When your father was pulled out from your house by these three persons, what did you and your mother do while these three persons were taking out of your house?

A

We did not do anything because Manuel and Leon Delim guarded us.

COURT: Where, in your house?

A

Yes, sir.

FISCAL TOMBOC: From that very time that your father was pulled out by these three persons Marlon, Robert and Ronal (sic), where were Leon and Manuel then?

A

They were at the door, sir.

COURT: Why do you know that they were guarding you?

A

Because they were at the door, sir.

FISCAL TOMBOC: What was their appearance that time when these two persons were guarding you, these Leon and Manuel?

A

They were armed, sir.

Q

What do you mean by armed?

A

They have gun, sir.

Q

What kind of firearm?

A

Short firearm, sir.

Q

By the way, where are these Leon and Manuel now, if you know?

A

Leon is here, sir.

Q

About Manuel?

A

None, sir.

Q

Will you please stand up and point at Leon, Mr. Witness?

A

(Witness pointed to a person seated on the bench inside the courtroom, who when his name was asked, answered, Leon Delim).”[38]

- Rita and Randy were ordered by Leon not to leave the house as Ronald and Marlon left the house with Modesto in tow. Rita and Randy were detained in their house up to 7:00 a.m. of January 24, 1999 to prevent them from seeking help from their relatives and police authorities.

- Randy likewise testified that on January 27, 1999, at about 3:00 p.m., the cadaver of Modesto was found under the thick bushes in a grassy area in the housing project located about 200 meters away from the house of Modesto. The cadaver exuded bad odor and was already in the state of decomposition:

“Q

So what did you do then on January 27, where did you look for your father?

A

The same place and at 3:00 o’clock P.M., we were able to find my father.

COURT: Where?

A

At the housing project at Paldit, Sison, Pangasinan, sir.

FISCAL TOMBOC: Do you have companions at that time when you were able to look for your father on January 27, 1999 at 3:00 o’clock P.M.?

A

Yes, sir.

Q

Who?

A

My Aunt, sir.

Q

What is the name of your Aunt?

A

Nida Pucal, sir.

Q

Who else?

A

Pepito Pucal, Bernard Osias and Daniel Delim, sir.

COURT: When you found your father, what was his condition?

A

He was dead, sir.

COURT: Go ahead.

FISCAL TOMBOC: You said that he was already dead, what was his appearance then when you saw him dead?

A

He has bad odor, sir, in the state of decomposition (sic)."[39]

The testimony of Randy was corroborated by Dr. de Guzman who testified that the cadaver of Modesto was in a state of decomposition, with tiny white worms crawling from his wounds, and that his penis and scrotum were inflamed. The victim sustained five gunshot wounds and defensive wounds on the left arm and forearm:

"PROS. TOMBOC:

Q

Will you please tell the Honorable Court your findings, Doctora?

WITNESS:

A

First finding: Upon seeing the cadaver, this is the position of the body, both upper extremities are flexed and both lower extremities are flexed (Nakakukot).

Q

How many days had already elapsed when you autopsied the cadaver of the victim, Doctora?

A

Four (4) days upon the recovery of the body, sir.

Q

And what was your findings Doctora?

A

The body was already under the state of decomposition, sir, with foul odor and there were so many worms coming out from the injuries, there were tiny white worms, sir.

Q

What else did you observe Doctora?

A

Upon seeing the cadaver I asked the relative to refer it to the NBI sir. Actually the victim was an igorot (sic) and they have tradition that they will bury immediately. Whether they like it or not I should do it, sir.

Q

What else Doctora?

A

And the penis was inflamed (sic), the scrotum was also inflamed (sic), sir.

And for the head injuries there was 10 x 10 ml. GSW pre-auricular area, right; there was also 20 ml x 20 ml. GSW, mandibular area, right; I cannot also determine the exit.

Q

So there were two (2) gunshot wounds (GSW) Doctora?

A

Yes sir.

And there was also 10 x 10 ml. GSW, maxillary area, right; there was also 10 x 10 ml. GSW, below middle nose, directed upward (POE); and there was also 30 x 40 ml. GSW, mid parieto-occipital area (POEx).

Q

How many all in all are the gunshot wound?

A

Five (5) sir.

And also there was 2 x 1 cms. Lacerated wound, right cheek; 1 x 1 cm. stabbed wound, axillary area, left; 1 x 1 cm. stabbed wound, lateral aspect M/3rd, left arm; 1 x 1 cm. stabbed wound lateral aspect D/3rd, left arm; 1 x 1 cm. stabbed wound, medial aspect M/3rd, left arm; 1 x 1 cm. stabbed wound, medial aspect D/3rd, left arm; and #3; 1 x 1 cm. in line with each other, stabbed wound, medial aspect, M/3rd, left forearm.

Q

How many stabbed wound are there Doctora?

A

There were seven (7) stabbed wounds, sir.

Q

Those stabbed wounds were defensive wounds, Doctora?

A

Yes sir.”[40]

The state of decomposition of the cadaver, with tiny white worms swarming and feasting on it and the distention of his scrotum and penis are evidence that the cadaver was in the stage of putrefaction and that the victim had been dead for a period ranging from three to six days.[41] Admittedly, there are variant factors determinative of the exact death of the victim. An equally persuasive authority states:

“Chronological Sequence of Putrefactive Changes Occurring in Tropical Region:

Time Since Death

Condition of the Body

48 hours

Ova of flies seen. Trunk bloated. Face discolored and swollen. Blisters present. Moving maggots seen.

72 hours

Whole body grossly swollen and disfigured. Hair and nails loose. Tissues soft and discolored.”[42]

The lapse of two or three to four days from the seizure of the victim in the evening of January 23, 1999 to the discovery of his cadaver which was already in the state of putrefaction in the afternoon of January 27, 1999, about 200 meters away from his house, is consistent with and confirmatory of the contention of the prosecution that the victim was killed precisely by the very malefactors who seized him on January 23, 1999.

- When police authorities went to the residences of all the malefactors, the latter had flown the coop and were nowhere to be found:

“COURT:

In connection with this case, you investigated the wife and son of Modesto Delim?

A

Yes, sir.

Q

In the course of the investigation did you come to know who were the suspects?

A

Yes, sir, she elaborated that the suspects were their neighbors, Marlon Delim and his brothers, sir.

Q

What are the names of the brothers?

A

Manuel Delim, Leon Delim I cannot remember the others, sir.

Q

By reason of that information were you able to apprehend any of them for investigation?

A

No, sir.

Q

Why?

A

Because when we were dispatched by the Chief of Police no Delim brothers could be found, they all left the place, sir.

Q

In what place did you look for the brothers Delim?

A

Within the vicinity, sir.

Q

In what place?

A

Brgy. Bila and the place where the crime was committed in Brgy. Bila and the place where the cadaver was found in Paldit, sir.

Q

Where did you look for the Delim brothers?

A

Nearby barangays, Immalog, sir.

Q

Wherelse (sic)?

A

Labayog, Sison, sir.

Q

Wherelse?

A

In mountainous part of Immalog, part of Tuba Benguet, sir.

Q

What was the result?

A

Negative result, sir.”[43]

- Leon was the neighbor of Modesto and Rita while Marlon and Ronald used to go to the house of Modesto and Rita:

“COURT:

These Leon and Manuel Delim are they known to you prior to that day, January 23, 1999?

A

Yes, sir, I know them.

Q

Why do you know Manuel and Leon prior to January 23, 1999?

A

They are my neighbors, sir.

Q

How about Marlon, Robert and Bongbong do you know them before January 23, 1999?

A

I know them, sir.

Q

Why do you know them?

A

They used to go to our house, sir.

Q

I noticed that Marlon, Bongbong, Robert, Manuel and Leon are all Delims and your husband's name is Modesto Delim are they related with each other?

A

Yes, sir.”[44]

The sudden disappearance of Marlon, Ronald and Leon from their houses in Barangay Bila, Sison is strong circumstantial evidence of their guilt for the death of Modesto. Although flight after the commission of an offense does not create a legal presumption of guilt, nevertheless, the same is admissible in evidence against them and if not satisfactorily explained in a manner consistent with their innocence, will tend to show that they, in fact, killed Modesto.[45]

It is true that the prosecution failed to prove motive on the part of the malefactors to abduct and kill Modesto. Indeed, Randy and Rita testified that they were not aware of any misunderstanding or grudge between Modesto on the one hand and Marlon, Ronald and Leon and their co-accused on the other before the incident, or any motivation on the part of the three malefactors to cause harm to Modesto. Nonetheless, it cannot thereby be concluded that a person or persons other than Marlon, Ronald and Leon were criminally responsible for the death of the victim. It is a matter of judicial notice that nowadays persons have killed or committed serious crimes for no reason at all.[46] In this case, the inscrutable facts are that Marlon and Ronald, each of whom was armed with a handgun, forcibly took Modesto from his house at the gunpoint, hogtied, put a piece of cloth in his mouth and after Ronald and Marlon had left the house with Modesto in tow, Rita heard three gunshots or so and the cadaver of Modesto was found concealed under the bushes and already in a state of putrefaction in the afternoon of January 27, 1999. Modesto sustained several gunshot wounds and died because of a gunshot wound on the head. The criminal acts and the connection of Marlon, Ronald and Leon with said acts having been proved by the prosecution beyond reasonable doubt, the act itself furnishes the evidence, that to its perpetration there was some causes or influences moving the mind.[47] The remarkable tapestry intricately woven by the prosecution should not be trashed simply because the malefactors had no motive to kill Modesto.

Ranged against the evidence of the prosecution, the burden of evidence shifted on Marlon, Ronald and Leon to rebut the same and explain what happened to the victim after taking him from his house in the evening of January 23, 1999. They may have freed the victim shortly after taking him, or the victim may have been able to escape and that thereafter a person or some other persons may have killed him. However, Marlon, Ronald and Leon failed to give any explanation. Instead, they merely denied having seized and killed the victim and interposed alibi as their defense.

Leon is equally guilty for the death of Modesto because the evidence on record shows that he conspired with accused-appellants Marlon and Ronald and accused Robert and Manuel in killing the victim.

There is conspiracy when two or more persons agree to commit a felony and decide to commit it.[48] Conspiracy must be proven with the same quantum of evidence as the felony itself, more specifically by proof beyond reasonable doubt. Conspiracy is not presumed. It may be proved by direct evidence or by circumstantial evidence. Conspiracy is deducible from the acts of the malefactors before, during and after the commission of the crime which are indicative of a joint purpose, concerted action and concurrence of sentiment.[49] To establish conspiracy, it is not essential that there be proof as to the existence of a previous agreement to commit a crime.[50] It is sufficient if, at the time of the commission of the crime, the accused had the same purpose and were united in its execution. If conspiracy is established, the act of one is deemed the act of all. It matters not who among the accused actually shot and killed the victim.[51] This is based on the theory of a joint or mutual agency ad hoc for the prosecution of the common plan:

“x x x The acts and declarations of an agent, within the scope of his authority, are considered and treated as the acts and declarations of his principal. ‘What is so done by an agent, is done by the principal through him, as his mere instrument.’ *Franklin Bank of Baltimore v. Pennsylvania D. & M. Steam Navigation Co.*, 11 G. & J. 28, 33 (1839). ‘If the conspiracy be proved to have existed, or rather if evidence be given to the jury of its existence, the acts of one in furtherance of the common design are the acts of all; and whatever one does in furtherance of the common design, he does as the agent of the co-conspirators.’ *R. v. O’Connell*, 5 St.Tr. (N.S.) 1, 710.”[52]

In the eyes of the law, conspirators are one man, they breathe one breath, they speak one voice, they wield one arm and the law says that the acts, words and declaration of each, while in the pursuit of the common design, are the acts, words and declarations of all.[53]

In the case at bar, Marlon, Ronald and Leon arrived together in the house of Modesto, each armed with a handgun. Marlon and Ronald barged into said house while Leon stood guard by the door thereof. After Marlon and Ronald had left with Modesto in tow, Leon stood by the door and warned Randy and Rita not to leave the house. Leon stood guard by the door of the house until 7:00 a.m. of January 24, 1999 when he left the house. The overt acts of all the malefactors were so synchronized and executed with precision evincing a preconceived plan or design of all the malefactors to achieve a common purpose, namely the killing of Modesto. Irrefragably, the tasks assigned to Leon in the commission of the crime were – (a) to act as a lookout; (b) to ensure that Rita and Randy remain in their house to prevent them from seeking assistance from police authorities and their relatives before their mission to kill Modesto shall have been a *fait accompli* as well as the escape of Marlon and Ronald.[54] Patently, Leon, a lookout for the group, is guilty of the killing of Modesto.[55] Leon may not have been at the *situs criminis* when Modesto was killed by Marlon and Ronald nevertheless he is a principal by direct participation.[56] If part of a crime has been committed in one place and part in another, each person concerned in the commission of either part is liable as principal. No matter how wide may be the separation of the conspirators, if they are all engaged in a common plan for the execution of a felony and all take their part in furtherance of the common design, all are liable as principals. Actual presence is not necessary if there is a direct connection between the actor and the crime. [57]

Ronald, Marlon and Leon, however, assail the testimonies of Randy and Rita alleging that the same were marred by inconsistencies:

- Randy initially stated that he did not know where the assailants brought his father. Later however, Randy claimed that the malefactors proceeded to the direction of Paldit, Sison, Pangasinan;

- Rita on the other hand identified Leon, Marlon and Ronald as those who barged into their house. She later changed her testimony and declared that it was Robert, together with Marlon and Ronald who barged into the house;
- Rita likewise testified that two men stood outside the house guarding them. Later, she testified that after the three men brought out the victim, the two other accused entered the house and guarded them there;
- Rita claimed that she went out to look for her husband the next day, or on January 25, 1999, and she was accompanied by her son Randy. However, Randy testified that he was alone when he looked for his father from January 24 to 26, 1999.[58]

We do not agree with Marlon, Ronald and Leon. Case law has it that the findings of facts of the trial court, its calibration of the collective testimonies of witnesses and its assessment of the probative weight thereof and its conclusions culled from its findings are accorded by the appellate court great respect, if not conclusive effect, because of its unique advantage of observing at close range the demeanor, deportment and conduct of the witnesses as they give their testimonies before the court. In the present case, the trial court gave credence and full probative weight to the testimonies of the witnesses of the prosecution. Moreover, there is no evidence on record that Randy and Rita were moved by any improper or ill motive in testifying against the malefactors and the other accused; hence, their testimonies must be given full credit and probative weight.[59] The inconsistencies in the testimonies of Rita and Randy do not render them incredible or their testimonies barren of probative weight. It must be borne in mind that human memory is not as unerring as a photograph and a person's sense of observation is impaired by many factors including the shocking effect of a crime. A truth-telling witness is not always expected to give an error-free testimony considering the lapse of time and the treachery of human memory. What is primordial is that the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of his testimony.[60] Variations on the testimony of witnesses on the same side with respect to minor, collateral or incidental matters do not impair the weight of their united testimony to the prominent facts.[61] Inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony.[62]

Moreover, the testimony of a witness should be construed in its entirety and not in truncated terms and the true meaning of answers to isolated questions propounded to a witness is to be ascertained by due consideration of all the questions propounded to the witness and his answers thereto.[63]

Randy's testimony that he did know where the malefactors brought his father is not inconsistent with his testimony that Ronald and Marlon brought his father towards the direction of Paldit, Sison, Pangasinan. Randy may not have known the destination of accused-appellants but he saw the direction to which they went. While it may be true that when asked to identify the three who barged into their house, Rita pointed to Leon as one of them, however, Rita had been consistent throughout her testimony that those who barged into their house were Ronald and Marlon. Leon's counsel never cross-examined Rita and impeached her testimony on her identification of Leon as one of those who barged into their house to give her an opportunity to explain her perceived inconsistency conformably with Rule 132, Section 13 of the Revised Rules of Evidence which reads:

“Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.”[64]

Hence, the presentation of the inconsistent statements made by Rita is insufficient for the desired impeachment of

her.[65] As to whether Rita and Randy were together in looking for Modesto or Leon merely stood guard by the door of the house or entered the house are inconsequential. The fact is that Leon stood guard throughout the night to prevent Rita and Randy from seeking assistance for the seizure and killing of Modesto.

This Court is convinced, as the trial court was, that the respective testimonies of Randy and Rita bear the earmarks of truth and sincerity. Despite intense and grueling cross-examination, they responded with consistency upon material details that could only come from a firsthand knowledge of the shocking events which unfolded before their eyes. The Court thus finds no cogent reason to disregard the findings of the trial court regarding their credibility.

Marlon, Ronald and Leon contend that the trial court committed a reversible error in not giving credence and probative weight to their evidence to prove their defense of alibi. They aver that their collective evidence to prove their defense is strong.

We do not agree. Case law has it that the defense of alibi is one of the weakest of defenses in criminal prosecution because the same is easy to concoct between relatives, friends and even those not related to the offender.[66] It is hard for the prosecution to disprove. For alibi to merit approbation by the trial court and this Court, Marlon, Ronald and Leon are burdened to prove with clear and convincing evidence that they were in a place other than the situs criminis at the time of the commission of the crime; that it was physically impossible for them to have committed the said crime.[67] They failed to discharge their burden. Moreover, Rita and Randy positively and spontaneously identified Marlon, Ronald and Leon as the culprits. The house of Ronald, where he claimed he was when the crime was committed, was only two kilometers away from the house of Modesto and can be negotiated by a tricycle. Leon failed to adduce any documentary evidence to prove his employment by Sally Asuncion. The barefaced fact that he was a resident of Laoag City does not constitute proof that he was in Laoag City on the day of the commission of the crime. With respect to Marlon, he failed to adduce evidence aside from his self-serving testimony that he resided in, left Dumaguete City and arrived in Manila on January 29, 1999.

The trial court convicted Marlon, Ronald and Leon of murder with the qualifying circumstance of treachery in the killing of Modesto. The trial court likewise appreciated nighttime and abuse of superior strength and the use of unlicensed firearms as separate aggravating circumstances. The Office of the Solicitor General contends that indeed treachery was attendant in the killing of Modesto. Hence, Marlon, Ronald and Leon are guilty of murder defined in and penalized by Article 248 of the Revised Penal Code.

The Court however finds that Marlon, Ronald and Leon are guilty only of homicide defined in and penalized by Article 248 of the Revised Penal Code.

Qualifying circumstances such as treachery and abuse of superior strength must be alleged and proved clearly and conclusively as the crime itself. Mere conjectures, suppositions or presumptions are utterly insufficient and cannot produce the effect of qualifying the crime.[68] As this Court held: "No matter how truthful these suppositions or presumptions may seem, they must not and cannot produce the effect of aggravating the condition of defendant." [69] Article 14, paragraph 16 of the Revised Penal Code provides that there is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might make. For treachery to be appreciated as a qualifying circumstance, the prosecution is burdened to prove the following elements: (a) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; (b) the means of execution is deliberately or consciously adopted.[70] Although the victim may have been defenseless at the time he was seized but there is no evidence as to the particulars of how he was assaulted and killed, treachery cannot be appreciated against the

accused.[71] In this case, the victim was defenseless when seized by Marlon and Ronald. However, the prosecution failed to present any witness or conclusive evidence that Modesto was defenseless immediately before and when he was attacked and killed. It cannot be presumed that although he was defenseless when he was seized the victim was in the same situation when he was attacked, shot and stabbed by the malefactors. To take advantage of superior strength means to purposely use force that is out of proportion to the means of defense available to the person attacked.[72] What is primordial, this Court held in *People v. Rogelio Francisco*[73] is that the assailants deliberately took advantage of their combined strength in order to consummate the crime. It is necessary to show that the malefactors cooperated in such a way as to secure advantage from their superiority in strength.[74] In this case, the prosecution failed to adduce evidence that Marlon and Ronald deliberately took advantage of their numerical superiority when Modesto was killed. The barefaced facts that the malefactors outnumbered Modesto and were armed while Modesto was not does not constitute proof that the three took advantage of their numerical superiority and their handguns when Modesto was shot and stabbed.[75]

In sum then, we believe that Marlon, Ronald and Leon are guilty only of Homicide defined in and penalized by Article 249 of the Revised Penal Code with reclusion temporal in its full period.

Although the special aggravating circumstance of the use of unlicensed firearms was proven during the trial, there is no allegation in the Information that Marlon, Ronald and Leon had no license to possess the firearm. Lack of license to possess a firearm is an essential element of the crime of violation of PD1866 as amended by Republic Act No. 8294, or as a special aggravating circumstance in the felony of homicide or murder.[76] Neither can dwelling, although proven, aggravate the crime because said circumstance was not alleged in the Information as required by Rule 110, Section 8 of the Revised Rules of Court.[77] Although this rule took effect on December 1, 2000, after the commission of the offense in this case, nonetheless it had been given retroactive effect considering that the rule is favorable to the accused.[78]

There being no modifying circumstances in the commission of homicide, Marlon, Ronald and Leon should be meted an indeterminate penalty, the minimum of which shall be taken from the entirety of prision mayor, ranging from 6 years and one day to 12 years and the maximum period of which shall be taken from the medium period of reclusion temporal, ranging from 14 years, 8 months and one day to 17 years and 4 months.

Consequently, the award for damages in favor of the heirs of the victim should be modified. The sum of P75,000.00 awarded as moral damages should be reduced to P50,000.00 in accordance with prevailing jurisprudence.[79] The amount of P25,000.00 as exemplary damages is in order.[80] In addition, civil indemnity in the amount of P50,000.00 should be awarded without need of proof, likewise in consonance with prevailing jurisprudence.[81]

IN LIGHT OF ALL THE FOREGOING, the decision of the trial court is AFFIRMED with MODIFICATION. Accused-appellants Marlon Delim, Ronald Delim and Leon Delim are hereby found guilty beyond reasonable doubt of the felony of Homicide defined in and penalized by Article 249 of the Revised Penal Code. There being no modifying circumstances in the commission of the crime, each of accused-appellants is hereby meted an indeterminate penalty of from ten (10) years and one (1) day of prision mayor in its maximum period as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period as maximum. Accused-appellants are hereby ordered to pay, jointly and severally, to the heirs of the victim the amount of P50,000.00 by way of civil indemnity, the amount of P50,000.00 by way of moral damages and the amount of P25,000.00 by way of exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Mendoza, Panganiban, Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Azcuna, JJ., concur.

Vitug, J., see separate opinion.

Ynares-Santiago, and Sandoval-Gutierrez, JJ., joins the dissent of J. Vitug.

[1] Penned by Judge Modesto C. Juanson.

[2] Records, p. 1.

[3] Prosecution presented four witnesses, namely, Rita Bantas, Randy Bantas, Dra. Maria Fe de Guzman and SPO2 Jovencio Fajarito.

[4] Records, Exhibit "C."

[5] Records, Exhibits "C" and "C-1."

[6] Records, Exhibits "D" and "B."

[7] Records, Exhibit "A."

[8] Records, Exhibit "E."

[9] Records, p. 34.

[10] Accused-appellants testified and presented, as witnesses, Sally Asuncion, Hermelita Estabillo, Estelita Delim and Flor Delim.

[11] Records, Exhibit "2."

[12] RTC Decision, pp. 9-10; Records, pp. 166-167.

[13] Rollo, p. 51.

[14] 219 SCRA 85 (1993).

[15] *People v. Puno, et al.*, supra.

[16] In *People v. Ancheta, et al.*, 1 Phil. 165 (1902), it was held that where the victim was kidnapped by the malefactors and brought to a place where he was killed by another malefactor, the crime was murder because the primary intention of the malefactors was to kill him. In *People v. Cajayon, et al.*, 2 Phil. 570, the victim was taken from his house and brought to another province where he was killed, the Court ruled that the malefactors were guilty of murder. In *People v. Quinto*, 82 Phil. 467, the victim was taken by the malefactors from his house in Floridablanca, Pampanga and brought to Gumain River where he was killed, this Court held that the crime was murder. In *People v. Juan Bulatao*, 82 Phil. 743, the victim was taken from his house and was found dead the following morning, this Court held that the malefactors were guilty of murder. In *People v. Francisco Moreno*, 85 Phil. 731, the victim was taken from his house in Aguilar, Pangasinan and brought to Mangatarem, Pangasinan where he was killed, we ruled that the offenders were guilty of murder, not kidnapping.

[17] *People v. Garland*, 627 NE 2d 377.

[18] *State v. Mundy*, 650 NE 2d 502.

- [19] 21 Am Jur 2d, Criminal Law, pp. 214-215.
- [20] Cupps v. State, 97 Northwestern Reports, 210.
- [21] Wharton, Criminal Law, Vol. 1, p. 215.
- [22] People v. Manliguez, et al., 206 SCRA 812 (1992).
- [23] Records, p. 1.
- [24] People v. Dramayo, et al., 42 SCRA 59 (1971).
- [25] Gay v. State, 60 Southwestern Reporter, 771 (1901).
- [26] Ibid., note 22.
- [27] Wharton, Criminal Law, Vol. 1, pp. 473-474, citing Lovelady v. State, 14 Tex. App. 545).
- [28] People v. William Fulinara, et al., 247 SCRA 28 (1995).
- [29] Records, Exhibit "A."
- [30] Warren v. State, 41 Southern Reporter 2d 201 (1949); State v. Roger, 182 Southwestern Reporter 2d 525 (1949).
- [31] 97 Northwestern Reporter, 210 (1903).
- [32] Francisco, the Revised Rules of Court of the Philippines, Part II, Vol. VII, 1991 ed.
- [33] Supra.
- [34] People v. Elizaga, et al., 23 SCRA 449 (1968).
- [35] People v. Casingal, et al., 243 SCRA 37 (1995).
- [36] TSN, Bantas, pp. 4-6, August 18, 1999.
- [37] TSN, Delim, pp. 2-3, September 21, 1999.
- [38] Ibid., pp. 7-8, August 18, 1999.
- [39] TSN, Bantas, pp. 12-13, August 18, 1999.
- [40] TSN, De Guzman, pp. 5-6, August 16, 1999.
- [41] Wharton & Stille, Medical Jurisprudence, Vol. III, p. 39.
- [42] Casper, Forensic Medicine, cited by Modi, Medical Jurisprudence and Toxicology, 12 ed., 157, p. 134.
- [43] TSN, Fajarito, pp. 5-6, August 17, 1999.
- [44] TSN, Delim, p. 5, September 21, 1999.
- [45] People v. Erardo, 277 SCRA 643 (1997).
- [46] People v. Valdez, 304 SCRA 611 (1999).
- [47] Cupps v. State, supra.
- [48] Article 8, Revised Penal Code.

- [49] *People v. Abordo, et al.*, 321 SCRA 23 (1999).
- [50] *People v. Naredo, et al.*, 276 SCRA 489 (1997).
- [51] *People v. Sequiño, et al.*, 264 SCRA 79 (1996).
- [52] *State v. Carbonne, et al.*, 91 Atlantic Reporter, A.2d 571.
- [53] *Territory v. Goto*, 27 Hawaii 65 (1923).
- [54] The detention of Rita and Randy in their house was only incidental to the consummation of the killing of Modesto. Hence Marlon, Ronald and Leon are not liable for serious illegal detention (*United States v. Sol, et al.*, 9 Phil. 265 (1907)).
- [55] *People v. Diaz, et al.*, 167 SCRA 239 (1988).
- [56] *People v. Santos*, 84 Phil. 97 (1949); *People v. Escobar*, 157 SCRA 541 (1988); *People v. Nacional*, 248 SCRA 122 (1995).
- [57] Wharton, Criminal Law, Vol. 1, p. 341.
- [58] *Supra*, p. 15; Rollo, p. 65.
- [59] *People v. Estepano, et al.*, 307 SCRA 701 (1999).
- [60] *People v. Biñas*, 320 SCRA 22 (1999).
- [61] *People v. Lucena*, 356 SCRA 90, 102 (2001).
- [62] *People v. Dando*, 325 SCRA 406, 424 (2000).
- [63] Francisco, Revised Rules of Court, Part II, Vol. VII, 1991 ed.
- [64] *Supra*.
- [65] *People v. De Guzman*, 288 SCRA 346 (1998).
- [66] *Naval v. Panday, et al.*, 275 SCRA 654 (1997).
- [67] *People v. Cañete, et al.*, 287 SCRA 490 (1998).
- [68] *People v. Garcia*, 258 SCRA 422 (1996).
- [69] *United States v. Perdon*, 4 Phil. 143 (1905) cited in *People v. Torejas*, 43 SCRA 158 (1972).
- [70] *People v. Silvestre*, 307 SCRA 68 (1999).
- [71] *People v. Durante*, 53 Phil. 363 (1929); *People v. Amanse*, 80 Phil. 424 (1948); *People v. Villaruel*, 87 Phil. 826 (1950); *People v. Silvestre, supra*.
- [72] Albert's Commentaries on the Revised Penal Code, 1981 ed., Vol. 1, p. 396.

[73] 234 SCRA 333 (1994).

- [74] *People v. Elizaga*, 86 Phil. 365 (1950).
- [75] *People v. Ibañez, Jr.*, 56 SCRA 210 (1974).
- [76] *People v. Ave*, G.R. No. 137274-75, October 18, 2002.

[77] SEC. 8. Designation of the offense.—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[78] *People v. Salvador*, G.R. No. 132481, August 14, 2002, p. 15.

[79] *People v. Agunias, et al.*, 279 SCRA 52 (1997).

[80] *People v. Catubig*, 363 SCRA 621 (2001).

[81] *People v. Mejares*, *supra*, p. 13.

SEPARATE OPINION

VITUG, J.:

Circumstantial evidence has been defined as that which relates to a series of facts other than the fact in issue which, by experience, are found to be so associated with such fact that, in relation of cause and effect, they lead to a veritable conclusion. There should, for circumstantial evidence to warrant a criminal conviction, be a) more than one circumstance; b) proof of the facts from which the inference is derived; and c) a clear showing that the combination of all the circumstances can aptly support a conviction beyond reasonable doubt.[1] The use of circumstantial evidence in criminal cases, prompted by sheer necessity, has long been an accepted practice but with one important caveat - it must be used with utmost care and, when its exacting standards are not met, it is correctly ignored.

On 04 May 1999, the following Information was filed against Marlon, Leon, Manuel, Robert and Ronald, all surnamed Delim; viz:

“That on or about January 23, 1999 in the evening at Brgy. Bila, Sison, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused armed with short firearms barged in and entered the house of Modesto Delim and once inside with intent to kill, treachery, evident premeditation, conspiring with one another, did then and there, willfully, unlawfully and feloniously grab, hold, hog-tie, gag with a piece of cloth, brought out and abduct Modesto Delim, (while) accused Leon and Manuel Delim stayed in the house (and) guarded and prevented the wife and son of Modesto Delim from helping the latter, thereafter with abuse of superior strength stabbed and killed said Modesto Delim, to the damage and prejudice of his heirs.

“Contrary to Article 248, Revised Penal Code, as amended by Republic Act No. 7659.”[2]

The evidence would show that Modesto Delim was forcibly abducted from his residence by appellants, all armed, on the night of 23 January 1999. But to say that the same group was also responsible for his death, days later, or that his violent end was the consequence of the abduction, and nothing more, would be to unduly put to risk our standard of moral certainty required for all convictions.

It was approximately six-thirty on the evening of 23 January 1999. Three armed men suddenly barged into the house of Modesto Delim in Brgy. Bila, Sison, Pangasinan. Modesto, who was then about to take his supper with his wife Rita Manalo Bantas, his teen-age son Randy Manalo Bantas, and his two grandchildren, was suddenly seized by the intruders. Randy identified the malefactors to be their neighbors - Marlon, Robert, and Ronald, all surnamed Delim. Without any word, the trio went straight for Modesto. Randy saw Marlon poke a gun at his father while Ronald and Robert held back his arms and brought him outside the house. Two more armed cohorts,

namely, Manuel and Leon, both also surnamed Delim, stood guard by the door. No words were uttered to interrupt the heavy silence except when one of the two men told the stunned family members to stay where they were. All through the night, both Manuel and Leon Delim kept watch outside the door and only left at around seven o'clock in the morning of the next day.

Soon after Manuel Delim and Leon Delim had left, Randy immediately sought the help of his Uncle Darwin Niño who forthwith told him to bring the matter to the authorities. But it was only two days later that, in the company of his Uncle Melchor, Randy finally reported the incident to the police. In the meantime, the distressed son scoured the vicinity of Paldit, Pangasinan, to look for his father. He was nowhere to be found. Days passed. Then, one day, he stumbled upon the decomposing body of his father at a thick grassy portion of a housing project in Paldit, Sison, Pangasinan, some 200 meters from their house. Dr. Ma. Fe Lagmay de Guzman, who conducted the autopsy, found the corpse riddled with five fatal gunshot wounds, seven stab wounds and several "defensive" wounds.

The victim's surviving spouse Rita Manalo Bantas and son Randy Manalo Bantas could not understand why anyone would want Modesto killed. The family was completely unaware of any possible motive for the nabbing and killing of Modesto Delim or of any bad blood between Modesto and the five indictees.

On 14 January 2000, the Regional Trial Court of Urdaneta City, Branch 46, rejecting the defense of alibi, convicted Ronald, Marlon, and Leon for murder; it held:

"WHEREFORE, judgment of conviction beyond reasonable doubt is hereby rendered against Ronald Delim, Marlon Delim and Leon Delim (for) the commission of Aggravated Murder, an offense defined and penalized under Article 248 of the Revised Penal Code, as amended by R.A. 7659 and the Court sentences Marlon Delim, Ronald Delim and Leon Delim to suffer the penalty of death, to be implemented in the manner as provided for by law; the Court likewise ordered the accused, jointly and solidarily, to indemnify the heirs of Modesto Delim the sum of P75,000.00 as moral damages, plus the amount of P25,000.00 as exemplary damages."[3]

In assailing the finding of guilt beyond reasonable doubt by the court a quo, appellants stress on what they claim to be inconsistencies in the testimony of Randy Manalo Bantas and that of Rita Manalo Bantas. I agree with my colleagues that the trial court has not erred in regarding the so-called inconsistencies as being minor and trivial that hardly can affect the credibility of the witnesses. The narration given by Randy Manalo Bantas and Rita Manalo Bantas at the witness stand, identifying each of the appellants and detailing their individual participation in the incident, could not have been more spontaneous and straightforward; thus -

Testimony of Randy Manalo Bantas

"Q.

While taking your supper that time, do you recall if there was anything unusual that happened at that time?

"A.

When we were about to start to eat, three armed men entered our house.

"Q.

Do you know these three armed men who entered your house?

"A.

Yes, sir.

“Q.

Who were they, name them one by one.

“A.

Marlon Delim, Robert Delim and Ronald Delim.

“Q.

Are these three persons inside the courtroom now?

“A.

Two of them, sir.

“Q.

Who are these two who are inside the courtroom?

“A.

Marlon and Ronald, sir.

xxx xxx xxx

“Q.

You said that these two armed persons entered your house; what kind of arms were they carrying at that time?

“A.

Short handguns, sir.

“Q.

When these three armed persons whom you have mentioned, armed with short firearms, what did they do when they entered your house?

“A.

They took my father, sir.

“Q.

Who took your father?

“A.

Marlon Delim, Robert Delim and Ronald Delim, sir.

“Q.

When these three persons took your father, what did you do then?

“A.

None, sir.

“COURT:

How did they get your father?

“A.

They poked a gun and brought him outside the house, sir.

“FISCAL TOMBOC:

Who poked a gun?

“A.

Marlon Delim, sir.

“xxx xxx xxx

“Q.

After bringing your father out from your house, what transpired next?

“A.

Manuel Delim and Leon Delim said, ‘Stay in your house,’ and guarded us.

“COURT:

You said your father was taken out, who?

“A.

Marlon, Robert and Ronald, sir.

“FISCAL TOMBOC:

Where did these three persons bring your father?

“A.

I do not know where they brought my father, sir.

“COURT:

Was your father taken inside your house or outside?

“A.

Inside our house, sir.

“Q.

You said that Marlon poked a gun at your father, is that correct?

“A.

Yes, sir.

“Q.

What did Ronald and Robert do while Marlon was poking his gun at your father?

“A.

Ronald and Robert were the ones who pulled my father out, sir.

“FISCAL TOMBOC:

When your father was pulled out from your house by these three persons, what did you and your mother do while these three persons were taking your father out of your house?

“A.

We did not do anything because Manuel and Leon Delim guarded us.

“xxx xxx xxx

“FISCAL TOMBOC:

What was their appearance that time when these two persons were guarding you, these Leon and Manuel?

“A.

They were armed, sir.

“Q.

What do you mean by armed?

“A.

They have [a] gun, sir.

“Q.

What kind of firearm?

“A.

Short firearm, sir.

“xxx xxx xxx

“FISCAL TOMBOC:

You said that you were guarded by Leon and Manuel, how long did these two persons guard you in your house?

“A.

Up to the morning, sir.

“Q.

You know what time?

“A.

Yes, sir, [seven o'clock].

“xxx xxx xxx

“Q.

When [seven o'clock] arrived, you said that they guarded you up to [seven o'clock], what did these two, Leon and Manuel, do then?

“A.

They left, sir.

“Q.

Do you know where they went?

“A.

No, sir.”[4]

Testimony of Rita Manalo Bantas

“PROSECUTOR TOMBOC

You said during the last hearing that on January 23, 1999 at around 6:30 in the evening while preparing for your supper three (3) armed men entered inside your house, who were these three (3) men who entered your house?

“A

I know, Marlon, Bongbong and Robert, sir.

“xxx xxx xxx

“PROSECUTOR TOMBOC

You said that Marlon Delim, Robert Delim and Bongbong entered your house, are these three (3) persons who entered your house in Court now?

“A

They are here except the other one, sir.

“Q

Will you please step down and point to the persons who entered your house?

“A

Witness is pointing to Marlon Delim, Robert Delim is not in Court and Bongbong is Ronald Delim.

“Q

After these three (3) armed men entered your house, what happened then?

“A

My husband was brought out, sir.

“xxx xxx xxx

“PROSECUTOR TOMBOC

Who brought your husband out of your house on January 23, 1999 at 6:30 in the evening?

“A

Marlon Delim, Bongbong and Robert Delim, sir.

“Q

Then after Marlon Delim, Bongbong and Robert Delim brought your husband out what transpired next?

“A

The two (2) stayed at the door of our house to guard us, sir.

“Q

Who were these two (2) persons who guarded you?

“A

Leon and Manuel, sir.

“xxx xxx xxx

“COURT

You said the two (2) Leon and Manuel stayed at the door guarding you, is that correct?

“A

Yes, sir.

“Q

What made you say that you are guarded by them?

“A

Because they have guns with them, sir.

“PROSECUTOR TOMBOC

Do you know what kind of firearm were they holding?

“A

I don't know, sir.

“Q

But you can describe whether long or short firearm?

“A

Short firearms, sir.

“Q

What did you do then when these two (2) armed persons guarded you in your house?

“A

We did not do anything because we were afraid, sir.

“COURT

These Leon and Manuel Delim are they known to you prior to that day, January 23, 1999?

“A

Yes, sir, I know them.

“Q

Why do you know Manuel and Leon prior to January 23, 1999?

“A

They are my neighbors, sir.

“Q

How about Marlon, Robert and Bongbong do you know them before January 23, 1999?

“A

I know them, sir.

“Q

Why do you know them?

“A

They used to go to our house, sir.

“xxx xxx xxx

“Q

You said that Leon and Manuel Delim guarded the door of your house, how long did they stay there?

“A

The whole night up to [seven] o'clock the following morning when they left the house, sir.

“Q

You said they left, do you know where they proceeded?

“A

I don't know where they [went], sir.

“Q

How about you, what did you do then when the two persons left your house?

“A

I stayed at home because I [was] afraid, sir.

“COURT

When the 3 persons brought your husband out did Modesto Delim go with them voluntarily?

“A

No, sir.

“Q

Why do you say [that] he did not go voluntarily?

“A

Because they held his hand and brought him outside, sir.

“PROSECUTOR TOMBOC

You said they held the hand of your husband, will you please demonstrate how he was brought outside?

“A

They held the 2 hands placed at the back and they brought outside my husband, sir.

“Q

Who among the 3 men held the hands of your husband?

“A

Marlon, Bongbong and Robert, sir.

“COURT

Did your husband resist when they held the hand?

“A

He did not resist, sir.”[5]

Between the positive identification made by the eyewitnesses and the bare denial of appellants, there is scarcely any serious doubt but that decisive weight must be given to the positive testimony of Randy Manalo Bantas and Rita Manalo Bantas.[6] The defense of alibi, being one that can easily be fabricated, is inherently weak and cannot be expected to withstand the positive identification made by credible witnesses.

Randy Manalo Bantas, who was in the house when the five intruders entered their abode and took his father away, could not have been mistaken in identifying the malefactors who not only were neighbors but also had family ties with them as well. According to Randy and Rita Manalo Bantas, it was appellant Leon Delim, together with Manuel Delim (at large), who stood guard at their house after the others, appellant Marlon Delim, Robert Delim (at large) and appellant Ronald Delim, took Modesto away on the early evening of 23 January 1999. Leon and Manuel stayed well into the night and left only at seven o’clock in the morning of the next day. The certificate of residency issued by the barangay captain of Salet, Laoag City, only confirmed that Leon Delim was a co-resident of the barangay but it did not establish with any degree of certainty that Leon Delim had not left Laoag City on the day of the incident. Appellant Ronald Delim, in his case, said that he was home at Asan Norte with his family when the abduction and the brutal slaying of Modesto Delim occurred. Ronald himself confirmed, however, that Asan Norte was a mere ten-minute bicycle ride from the victim’s house at Paldit, Pangasinan. Alibi, to be believed, must invariably place the accused at such location as to render it physically impossible for him to be at the place of the crime and, let alone, to commit the same. The claim, upon the other hand, of appellant Marlon Delim that he was at Dumaguete City during the fateful day of 23 to 24 January 1999 remained to be just a bare assertion; it was not corroborated even by his sister in Dumaguete whom, he said, he worked for.

The evidence would indeed point out that Marlon, Ronald and Robert seized Modesto Delim from his house while Leon and Manuel stood guard and stayed at the door of the victim’s house. Randy Manalo Bantas and Rita

Manalo Bantas, however, could only testify on the participation of each of the malefactors in the abduction of Modesto Delim but not on what might have happened to him thereafter. In arriving at its verdict convicting appellants for “aggravated murder,” the trial court considered the act of the accused of forcibly taking Modesto Delim from his house as being likewise enough to substantiate the killing by them of the victim. The conclusion could rightly be assailed. The accounts of Randy and his mother Rita would indicate that the forcible taking of Modesto was carried out in absolute silence, with not one of the five intruders uttering any word which could give a clue on the reason for the abduction and, more particularly, whether the same was carried out for the purpose of killing Modesto. The two witnesses were unaware of any existing grudge between the malefactors and the victim that could have prompted them to violently snuff out the life of the latter. While the motive of an accused in a criminal case might generally be immaterial, not being an element of the crime, motive could be important and consequential when the evidence on the commission of the crime would be short of moral certainty.[7]

In sustaining the conclusion of the trial court that the five accused also snuffed out the life of Modesto Delim, the ponencia relied on circumstantial evidence testified to by Randy Bantas. He recounted that, on the early evening of 23 January 1999, Marlon and Ronald barged into the house of Modesto, each armed with a handgun. Marlon poked his gun on Modesto while Ronald hog-tied Modesto. They then seized Modesto and herded him out of the house. Leon, armed with a handgun, acted as a lookout by standing guard by the door of the house of Modesto until seven o’clock in the morning of the next day. Rita and Randy were ordered by Leon not to leave the house as Ronald and Marlon left the house with Modesto in tow. On the afternoon of 27 January 1999, the cadaver of Modesto was found under the thick bushes in a grassy area in the housing project located about 200 meters away from the house of Modesto, exuding bad odor and in a state of decomposition.

The above recitals all point to only one established fact, i.e., that the accused forcibly took Modesto Delim from his residence to an unknown destination on the night of 23 January 1999, would be scanty to support a conclusion that the five, ‘aside from abducting the victim, likewise killed him. There was an unexplained gap in what ought to have been a continuous chain of events. The body bore several defensive wounds, which could give rise to the not too unlikely scenario that Modesto might have ultimately been released by his abductors sometime before he was killed.

Recognizing that circumstantial evidence is as strong as the weakest link, this Court is bound not to ignore all other possibilities.[8] It would seem to me that what has instead been shown and established beyond reasonable doubt is the guilt of appellants for the crime of kidnapping and serious illegal detention, the whereabouts of the victim - the immediate consequence of the abduction - for “more than three days” from the time of his abduction not having been accounted for. The allegation in the Information that the accused “willfully, unlawfully and feloniously grab(bed), h(e)ld, hog-tie(d), gag(ged), with a piece of cloth, brought out and abduct(ed) Modesto Delim (while) Leon Delim and Manuel Delim stayed in the house (and) guarded and prevented the wife and son of Modesto Delim from helping the latter,” constitutes the act of deprivation of liberty and the gravamen in the crime of kidnapping. Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, provides:

“Article 267. Kidnapping and serious illegal detention. Any private individual who shall kidnap or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

“1. If the kidnapping or detention shall have lasted more than three days.

“2. If it shall have been committed simulating public authority.

“3. if any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

“4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, a

female or a public officer.

“The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense.

“When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.”

The fact that the Information went further to charge the accused with the killing of the victim should be of no moment, the real nature of the criminal charge being determined not from the caption or the preamble of the Information nor from the specification of the law alleged to have been violated - these being conclusions of law - but by the actual recital of facts in the complaint or information.[9]

In meting upon appellants the supreme penalty of death, the trial court has appreciated five aggravating circumstances of treachery, abuse of superior strength, nighttime, dwelling, and use of unlicensed firearms. The Information specifies treachery, abuse of superior strength and evident premeditation as being the aggravating circumstances in the commission of the crime. Treachery and superior strength, however, only pertain to crimes against persons. The crime of kidnapping, failing as it does within the classification of crimes against liberty, is aggravated neither by treachery nor superior strength. The aggravating circumstance of evident premeditation can be appreciated when it is shown that the culprits have previously reflected on the crime, or that they have prepared appropriate means to execute it, coolly taking into account its consequences. The evidence is deficient in this respect. The aggravating circumstances of nighttime, dwelling and use of unlicensed firearms, not having been alleged in the information, cannot be considered. The Revised Rules of Criminal Procedure, rendered effective on 01 December 2000,[10] requires aggravating circumstances, whether ordinary or qualifying, to be specified in the complaint or information.

The crime of kidnapping is punishable by reclusion perpetua to death. There being neither aggravating nor mitigating circumstance that can be appreciated, the punishment that should be imposed is the lesser penalty of reclusion perpetua than the penalty of death.[11]

Now, on the civil aspect of the case. The law places abundant protective shields in order to ensure that no man shall be made to account for a crime he might not have committed or be adjudged guilty and meted a punishment without him having first been afforded a full opportunity to defend his cause. Thus, a conviction is pronounced only upon proof beyond reasonable doubt, preceded by an arraignment where he pleads on the basis of a complaint or information that specifies the gravamen of the offense and the circumstances that are said to aggravate it and then the trial where evidence is adduced by the parties. For purposes of the civil liability, as well as its extent, civil law principles, however, are applied, and damages might be accorded to the aggrieved party upon a mere preponderance of evidence. There is, I believe, enough justification, albeit inadequate for purposes of a criminal conviction, to hold appellants responsible and civilly liable for the death of Modesto Delim whose body was found riddled with bullets a few days after being forcibly abducted by appellants.

Consonantly, appellants should be held liable, jointly and severally, for civil indemnity of P50,000.00 for the death of the victim, moral damages in an equal amount for the mental anguish suffered by his heirs and P25,000.00 exemplary damages because of the attendance of aggravating circumstances that were established albeit not allowed to be considered in meting out the sentence for the crime. Thus, in *People vs. Catubig*,[12] the Court has said:

“The term ‘aggravating circumstances’ used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the

public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

“Relevantly, the Revised Rules on Criminal Procedure, made effective on 01 December 2000, requires aggravating circumstances, whether ordinary or qualifying, to be stated in the complaint or information.

“xxx xxx xxx

“A court would thus be precluded from considering in its judgment the attendance of ‘qualifying or aggravating circumstances’ if the complaint or information is bereft of any allegation on the presence of such circumstances.

“The retroactive application of procedural rules, nevertheless, cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity of said rules. Thus, in the case at bar, although relationship has not been alleged in the information, the offense having been committed, however, prior to the effectivity of the new rules, the civil liability already incurred by appellant remains unaffected thereby.”

WHEREFORE, I vote for the modification of the decision of the Regional Trial Court, Branch 46, of Urdaneta City by instead holding appellants Ronald Delim, Marlon Delim and Leon Delim guilty beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention, defined and penalized by Article 267 of the Revised Penal Code, and imposing on each of them the penalty of reclusion perpetua, as well as by ordering said appellants to pay, jointly and severally, the heirs of Modesto Delim the amounts of P50,000.00 civil indemnity, P50,000.00 moral damages and P25,000.00 exemplary damages, with costs de oficio.

[1] Section 4, Rule 133, Rules of Court

[2] Rollo, p. 7.

[3] Rollo, p. 9.

[4] TSN, Randy Manalo Bantas, 18 August 1999, pp. 4-9.

[5] TSN, Rita Delim, 21 September 1999, pp. 2-7.

[6] People vs. Lacap, G.R. No. 139114, 23 October 2001.

[7] People vs. SPO1 W. Leano, et al., G.R. No. 138886, 09 October 2001.

[8] People vs. Tolentino, 166 SCRA 469.

[9] People vs. Resayaga, 159 SCRA 426; Oca vs. Jimenez, 5 SCRA 425; U.S. vs. Lin San, 17 Phil 273.

[10] People vs. Bragat, G.R. No. 134490, 04 September 2001. Section 8, Rule 110 of the Rules of Court now provides:

“Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.”

[11] Article 63 of the Revised Penal Code provides –

“Art. 63. Rules for the application of indivisible penalties. – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

“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:

“xxx xxx xxx

“2) when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[12] 23 August 2001.

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