

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO COMADRE, GEORGE COMADRE AND DANILO LOZANO, APPELLANTS.*G.R. No. 153559. June 08, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-153559/>**PER CURIAM:**

Appellants Antonio Comadre, George Comadre and Danilo Lozano were charged with Murder with Multiple Frustrated Murder in an information which reads:

That on or about the 6th of August 1995, at Brgy. San Pedro, Lupao, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and by means of treachery and evident premeditation, availing of nighttime to afford impunity, and with the use of an explosive, did there and then willfully, unlawfully and feloniously lob a hand grenade that landed and eventually exploded at the roof of the house of Jaime Agbanlog trajecting deadly shrapnels that hit and killed one ROBERT AGBANLOG, per the death certificate, and causing Jerry Bullanday, Jimmy Wabe, Lorenzo Eugenio, Rey Camat, Emelita Agbanlog and Elena Agbanlog to suffer shrapnel wounds on their bodies, per the medical certificates; thus, to the latter victims, the accused commenced all the acts of execution that would have produced the crime of Multiple Murder as consequences thereof but nevertheless did not produce them by reason of the timely and able medical and surgical interventions of physicians, to the damage and prejudice of the deceased's heirs and the other victims.

CONTRARY TO LAW.[1]

On arraignment, appellants pleaded "not guilty".[2] Trial on the merits then ensued.

As culled from the records, at around 7:00 in the evening of August 6, 1995, Robert Agbanlog, Jimmy Wabe, Gerry Bullanday,[3] Rey Camat and Lorenzo Eugenio were having a drinking spree on the terrace of the house of Robert's father, Barangay Councilman Jaime Agbanlog, situated in Barangay San Pedro, Lupao, Nueva Ecija. Jaime Agbanlog was seated on the banister of the terrace listening to the conversation of the companions of his son.[4]

As the drinking session went on, Robert and the others noticed appellants Antonio Comadre, George Comadre and Danilo Lozano walking. The three stopped in front of the house. While his companions looked on, Antonio suddenly lobbed an object which fell on the roof of the terrace. Appellants immediately fled by scaling the fence of a nearby school.[5]

The object, which turned out to be a hand grenade, exploded ripping a hole in the roof of the house. Robert Agbanlog, Jimmy Wabe, Gerry Bullanday, Rey Camat and Lorenzo Eugenio were hit by shrapnel and slumped unconscious on the floor.[6] They were all rushed to the San Jose General Hospital in Lupao, Nueva Ecija for medical treatment. However, Robert Agbanlog died before reaching the hospital.[7]

Dr. Tirso de los Santos, the medico-legal officer who conducted the autopsy on the cadaver of Robert Agbanlog, certified that the wounds sustained by the victim were consistent with the injuries inflicted by a grenade explosion and that the direct cause of death was hypovolemic shock due to hand grenade explosion.[8] The surviving

victims, Jimmy Wabe, Rey Camat, Jaime Agbanlog and Gerry Bullanday sustained shrapnel injuries.[9]

SPO3 John Barracerros of the Lupao Municipal Police Station, who investigated the scene of the crime, recovered metallic fragments at the terrace of the Agbanlog house. These fragments were forwarded to the Explosive Ordinance Disposal Division in Camp Crame, Quezon City, where SPO2 Jesus Q. Mamaril, a specialist in said division, identified them as shrapnel of an MK2 hand grenade.[10]

Denying the charges against him, appellant Antonio Comadre claimed that on the night of August 6, 1995, he was with his wife and children watching television in the house of his father, Patricio, and his brother, Rogelio. He denied any participation in the incident and claimed that he was surprised when three policemen from the Lupao Municipal Police Station went to his house the following morning of August 7, 1995 and asked him to go with them to the police station, where he has been detained since.[11]

Appellant George Comadre, for his part, testified that he is the brother of Antonio Comadre and the brother-in-law of Danilo Lozano. He also denied any involvement in the grenade-throwing incident, claiming that he was at home when it happened. He stated that he is a friend of Rey Camat and Jimmy Wabe, and that he had no animosity towards them whatsoever. Appellant also claimed to be in good terms with the Agbanlogs so he has no reason to cause them any grief.[12]

Appellant Danilo Lozano similarly denied any complicity in the crime. He declared that he was at home with his ten year-old son on the night of August 6, 1995. He added that he did not see Antonio and George Comadre that night and has not seen them for quite sometime, either before or after the incident. Like the two other appellants, Lozano denied having any misunderstanding with Jaime Agbanlog, Robert Agbanlog and Jimmy Wabe.[13]

Antonio's father, Patricio, and his wife, Lolita, corroborated his claim that he was at home watching television with them during the night in question.[14] Josie Comadre, George's wife, testified that her husband could not have been among those who threw a hand grenade at the house of the Agbanlogs because on the evening of August 6, 1995, they were resting inside their house after working all day in the farm.[15]

After trial, the court a quo gave credence to the prosecution's evidence and convicted appellants of the complex crime of Murder with Multiple Attempted Murder,[16] the dispositive portion of which states:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- Finding accused Antonio Comadre, George Comadre and Danilo Lozano GUILTY beyond reasonable doubt of the complex crime of Murder with Multiple Attempted Murder and sentencing them to suffer the imposable penalty of death;
- Ordering Antonio Comadre, George Comadre and Danilo Lozano to pay jointly and severally the heirs of Robert Agbanlog P50,000.00 as indemnification for his death, P35,000.00 as compensatory damages and P20,000.00 as moral damages;
- Ordering accused Antonio Comadre, George Comadre and Danilo Lozano to pay jointly and severally Jimmy Wabe, Rey Camat, Gerry Bullanday and Jaime Agbanlog P30,000.00 as indemnity for their attempted murder.

Costs against the accused.

SO ORDERED.

Hence, this automatic review pursuant to Article 47 of the Revised Penal Code, as amended. Appellants contend that the trial court erred: (1) when it did not correctly and judiciously interpret and appreciate the evidence and thus, the miscarriage of justice was obviously omnipresent; (2) when it imposed on the accused-appellants the supreme penalty of death despite the evident lack of the quantum of evidence to convict them of the crime

charged beyond reasonable doubt; and (3) when it did not apply the law and jurisprudence for the acquittal of the accused-appellants of the crime charged.[17]

Appellants point to the inconsistencies in the sworn statements of Jimmy Wabe, Rey Camat, Lorenzo Eugenio and Gerry Bullanday in identifying the perpetrators. Wabe, Camat and Eugenio initially executed a Sinumpaang Salaysay on August 7, 1995 at the hospital wherein they did not categorically state who the culprit was but merely named Antonio Comadre as a suspect. Gerry Bullanday declared that he suspected Antonio Comadre as one of the culprits because he saw the latter's ten year-old son bring something in the nearby store before the explosion occurred.

On August 27, 1995, or twenty days later, they went to the police station to give a more detailed account of the incident, this time identifying Antonio Comadre as the perpetrator together with George Comadre and Danilo Lozano.

A closer scrutiny of the records shows that no contradiction actually exists, as all sworn statements pointed to the same perpetrators, namely, Antonio Comadre, George Comadre and Danilo Lozano. Moreover, it appears that the first statement was executed a day after the incident, when Jimmy Wabe, Rey Camat and Lorenzo Eugenio were still in the hospital for the injuries they sustained. Coherence could not thus be expected in view of their condition. It is therefore not surprising for the witnesses to come up with a more exhaustive account of the incident after they have regained their equanimity. The lapse of twenty days between the two statements is immaterial because said period even helped them recall some facts which they may have initially overlooked.

Witnesses cannot be expected to remember all the details of the harrowing event which unfolded before their eyes. Minor discrepancies might be found in their testimony, but they do not damage the essential integrity of the evidence in its material whole, nor should they reflect adversely on the witness' credibility as they erase suspicion that the same was perjured.[18] Honest inconsistencies on minor and trivial matters serve to strengthen rather than destroy the credibility of a witness to a crime, especially so when, as in the instant case, the crime is shocking to the conscience and numbing to the senses.[19]

Moreover, it was not shown that witnesses Jimmy Wabe, Rey Camat, Lorenzo Eugenio and Gerry Bullanday had any motive to testify falsely against appellants. Absent evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimony is thus worthy of full faith and credit.

The trial court is likewise correct in disregarding appellants' defense of alibi and denial. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity.[20]

Apart from testifying with respect to the distance of their houses from that of Jaime Agbanlog's residence, appellants were unable to give any explanation and neither were they able to show that it was physically impossible for them to be at the scene of the crime. Hence, the positive identification of the appellants by eyewitnesses Jimmy Wabe, Jaime Agbanlog, Rey Camat and Gerry Bullanday prevails over their defense of alibi and denial.[21]

It was established that prior to the grenade explosion, Rey Camat, Jaime Agbanlog, Jimmy Wabe and Gerry Bullanday were able to identify the culprits, namely, appellants Antonio Comadre, George Comadre and Danilo Lozano because there was a lamppost in front of the house and the moon was bright.[22]

Appellants' argument that Judge Bayani V. Vargas, the Presiding Judge of the Regional Trial Court of San Jose

City, Branch 38 erred in rendering the decision because he was not the judge who heard and tried the case is not well taken.

It is not unusual for a judge who did not try a case to decide it on the basis of the record for the trial judge might have died, resigned, retired, transferred, and so forth.[23] As far back as the case of *Co Tao v. Court of Appeals*[24] we have held: “The fact that the judge who heard the evidence is not the one who rendered the judgment and that for that reason the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous.” This rule had been followed for quite a long time, and there is no reason to go against the principle now.[25]

However, the trial court’s finding of conspiracy will have to be reassessed. The undisputed facts show that when Antonio Comadre was in the act of throwing the hand grenade, George Comadre and Danilo Lozano merely looked on without uttering a single word of encouragement or performed any act to assist him. The trial court held that the mere presence of George Comadre and Danilo Lozano provided encouragement and a sense of security to Antonio Comadre, thus proving the existence of conspiracy.

We disagree.

Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Settled is the rule that to establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.[26]

A conspiracy must be established by positive and conclusive evidence. It must be shown to exist as clearly and convincingly as the commission of the crime itself. Mere presence of a person at the scene of the crime does not make him a conspirator for conspiracy transcends companionship.[27]

The evidence shows that George Comadre and Danilo Lozano did not have any participation in the commission of the crime and must therefore be set free. Their mere presence at the scene of the crime as well as their close relationship with Antonio are insufficient to establish conspiracy considering that they performed no positive act in furtherance of the crime.

Neither was it proven that their act of running away with Antonio was an act of giving moral assistance to his criminal act. The ratiocination of the trial court that “their presence provided encouragement and sense of security to Antonio,” is devoid of any factual basis. Such finding is not supported by the evidence on record and cannot therefore be a valid basis of a finding of conspiracy.

Time and again we have been guided by the principle that it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.[28] There being no conspiracy, only Antonio Comadre must answer for the crime.

Coming now to Antonio’s liability, we find that the trial court correctly ruled that treachery attended the commission of the crime. For treachery to be appreciated two conditions must concur: (1) the means, method and form of execution employed gave the person attacked no opportunity to defend himself or retaliate; and (2) such means, methods and form of execution was deliberately and consciously adopted by the accused. Its essence lies in the adoption of ways to minimize or neutralize any resistance, which may be put up by the offended party.

Appellant lobbed a grenade which fell on the roof of the terrace where the unsuspecting victims were having a drinking spree. The suddenness of the attack coupled with the instantaneous combustion and the tremendous impact of the explosion did not afford the victims sufficient time to scamper for safety, much less defend themselves; thus insuring the execution of the crime without risk of reprisal or resistance on their part. Treachery

therefore attended the commission of the crime.

It is significant to note that aside from treachery, the information also alleges the “use of an explosive”[29] as an aggravating circumstance. Since both attendant circumstances can qualify the killing to murder under Article 248 of the Revised Penal Code,[30] we should determine which of the two circumstances will qualify the killing in this case.

When the killing is perpetrated with treachery and by means of explosives, the latter shall be considered as a qualifying circumstance. Not only does jurisprudence[31] support this view but also, since the use of explosives is the principal mode of attack, reason dictates that this attendant circumstance should qualify the offense instead of treachery which will then be relegated merely as a generic aggravating circumstance.[32]

Incidentally, with the enactment on June 6, 1997 of Republic Act No. 8294[33] which also considers the use of explosives as an aggravating circumstance, there is a need to make the necessary clarification insofar as the legal implications of the said amendatory law vis-à-vis the qualifying circumstance of “by means of explosion” under Article 248 of the Revised Penal Code are concerned. Corollary thereto is the issue of which law should be applied in the instant case.

R.A. No. 8294 was a reaction to the onerous and anachronistic penalties imposed under the old illegal possession of firearms law, P.D. 1866, which prevailed during the tumultuous years of the Marcos dictatorship. The amendatory law was enacted, not to decriminalize illegal possession of firearms and explosives, but to lower their penalties in order to rationalize them into more acceptable and realistic levels.[34]

This legislative intent is conspicuously reflected in the reduction of the corresponding penalties for illegal possession of firearms, or ammunitions and other related crimes under the amendatory law. Under Section 2 of the said law, the penalties for unlawful possession of explosives are also lowered. Specifically, when the illegally possessed explosives are used to commit any of the crimes under the Revised Penal Code, which result in the death of a person, the penalty is no longer death, unlike in P.D. No. 1866, but it shall be considered only as an aggravating circumstance. Section 3 of P.D. No. 1866 as amended by Section 2 of R.A. 8294 now reads:

Section 2. Section 3 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

Section 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives. The penalty of prision mayor in its maximum period to reclusion temporal and a fine of not less than Fifty thousand pesos (P50,000.00) shall be imposed upon any person who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess hand grenade(s), rifle grenade(s), and other explosives, including but not limited to “pillbox,” “molotov cocktail bombs,” “fire bombs,” or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person.

When a person commits any of the crimes defined in the Revised Penal Code or special law with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance. (shall be punished with the penalty of death is DELETED.)

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With the removal of death as a penalty and the insertion of the term “xxx as an aggravating circumstance,” the unmistakable import is to downgrade the penalty for illegal possession of explosives and consider its use merely as an aggravating circumstance.

Clearly, Congress intended R.A. No. 8294 to reduce the penalty for illegal possession of firearms and explosives.

Also, Congress clearly intended RA No. 8294 to consider as aggravating circumstance, instead of a separate offense, illegal possession of firearms and explosives when such possession is used to commit other crimes under the Revised Penal Code.

It must be made clear, however, that RA No. 8294 did not amend the definition of murder under Article 248, but merely made the use of explosives an aggravating circumstance when resorted to in committing “any of the crimes defined in the Revised Penal Code.” The legislative purpose is to do away with the use of explosives as a separate crime and to make such use merely an aggravating circumstance in the commission of any crime already defined in the Revised Penal Code. Thus, RA No. 8294 merely added the use of unlicensed explosives as one of the aggravating circumstances specified in Article 14 of the Revised Penal Code. Like the aggravating circumstance of “explosion” in paragraph 12, “evident premeditation” in paragraph 13, or “treachery” in paragraph 16 of Article 14, the new aggravating circumstance added by RA No. 8294 does not change the definition of murder in Article 248.

Nonetheless, even if favorable to the appellant, R.A. No. 8294 still cannot be made applicable in this case. Before the use of unlawfully possessed explosives can be properly appreciated as an aggravating circumstance, it must be adequately established that the possession was illegal or unlawful, i.e., the accused is without the corresponding authority or permit to possess. This follows the same requisites in the prosecution of crimes involving illegal possession of firearm^[35] which is a kindred or related offense under P.D. 1866, as amended. This proof does not obtain in the present case. Not only was it not alleged in the information, but no evidence was adduced by the prosecution to show that the possession by appellant of the explosive was unlawful.

It is worthy to note that the above requirement of illegality is borne out by the provisions of the law itself, in conjunction with the pertinent tenets of legal hermeneutics.

A reading of the title^[36] of R.A. No. 8294 will show that the qualifier “illegal/unlawful ...possession” is followed by “of firearms, ammunition, or explosives or instruments...” Although the term ammunition is separated from “explosives” by the disjunctive word “or”, it does not mean that “explosives” are no longer included in the items which can be illegally/unlawfully possessed. In this context, the disjunctive word “or” is not used to separate but to signify a succession or to conjoin the enumerated items together.^[37] Moreover, Section 2 of R.A. 8294,^[38] subtitled: “Section 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives”, clearly refers to the unlawful manufacture, sale, or possession of explosives.

What the law emphasizes is the act’s lack of authority. Thus, when the second paragraph of Section 3, P.D. No. 1866, as amended by RA No. 8294 speaks of “the use of the aforementioned explosives, etc.” as an aggravating circumstance in the commission of crimes, it refers to those explosives, etc. “unlawfully” manufactured, assembled, dealt in, acquired, disposed or possessed mentioned in the first paragraph of the same section. What is per se aggravating is the use of unlawfully “manufactured ... or possessed” explosives. The mere use of explosives is not.

The information in this case does not allege that appellant Antonio Comadre had unlawfully possessed or that he had no authority to possess the grenade that he used in the killing and attempted killings. Even if it were alleged, its presence was not proven by the prosecution beyond reasonable doubt. Rule 110 of the 2000 Revised Rules on Criminal Procedure requires the averment of aggravating circumstances for their application.^[39]

The inapplicability of R.A. 8294 having been made manifest, the crime committed is Murder committed “by means of explosion” in accordance with Article 248 (3) of the Revised Penal Code. The same, having been alleged in the Information, may be properly considered as appellant was sufficiently informed of the nature of the accusation against him.^[40]

The trial court found appellant guilty of the complex crime of murder with multiple attempted murder under Article 48 of the Revised Penal Code, which provides:

Art. 48. Penalty for complex crimes. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means of committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The underlying philosophy of complex crimes in the Revised Penal Code, which follows the pro reo principle, is intended to favor the accused by imposing a single penalty irrespective of the crimes committed. The rationale being, that the accused who commits two crimes with single criminal impulse demonstrates lesser perversity than when the crimes are committed by different acts and several criminal resolutions.

The single act by appellant of detonating a hand grenade may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered only as a single crime in law on which a single penalty is imposed because the offender was impelled by a “single criminal impulse” which shows his lesser degree of perversity.[41]

Under the aforecited article, when a single act constitutes two or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances, including the generic aggravating circumstance of treachery in this case.[42] Applying the aforesaid provision of law, the maximum penalty for the most serious crime (murder) is death. The trial court, therefore, correctly imposed the death penalty.

Three justices of the Court, however, continue to maintain the unconstitutionality of R.A. 7659 insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

Finally, the trial court awarded to the parents of the victim Robert Agbanlog civil indemnity in the amount of P50,000.00, P35,000.00 as compensatory damages and P20,000.00 as moral damages. Pursuant to existing jurisprudence[43] the award of civil indemnity is proper. However, the actual damages awarded to the heirs of Robert Agbanlog should be modified, considering that the prosecution was able to substantiate only the amount of P18,000.00 as funeral expenses.[44]

The award of moral damages is appropriate there being evidence to show emotional suffering on the part of the heirs of the deceased, but the same must be increased to P50,000.00 in accordance with prevailing judicial policy.[45]

With respect to the surviving victims Jaime Agbanlog, Jimmy Wabe, Rey Camat and Gerry Bullanday, the trial court awarded P30,000.00 each for the injuries they sustained. We find this award inappropriate because they were not able to present a single receipt to substantiate their claims. Nonetheless, since it appears that they are entitled to actual damages although the amount thereof cannot be determined, they should be awarded temperate damages of P25,000.00 each.[46]

WHEREFORE, in view of all the foregoing, the appealed decision of the Regional Trial Court of San Jose City, Branch 39 in Criminal Case No. L-16(95) is AFFIRMED insofar as appellant Antonio Comadre is convicted of the complex crime of Murder with Multiple Attempted Murder and sentenced to suffer the penalty of death. He is ordered to pay the heirs of the victim the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P18,000.00 as actual damages and likewise ordered to pay the surviving victims, Jaime Agbanlog, Jimmy Wabe, Rey Camat and Gerry Bullanday, P25,000.00 each as temperate damages for the injuries they sustained. Appellants Gregorio Comadre and Danilo Lozano are ACQUITTED for lack of evidence to establish conspiracy,

and they are hereby ordered immediately RELEASED from confinement unless they are lawfully held in custody for another cause. Costs de oficio.

In accordance with Section 25 of Republic Act 7659 amending Article 83 of the Revised Penal Code, upon finality of this Decision, let the records of this case be forwarded to the Office of the President for possible exercise of pardoning power.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna and Tinga, JJ., concur.
Callejo, Sr., J., see concurring and dissenting opinion.

[1] Rollo, p. 17.

[2] Record, pp. 27-29.

[3] Also referred to as Jerry Bullanday in the records.

[4] TSN, October 12, 1995, p. 4; March 6, 1996, p. 3; March 21, 1996, p. 2; July 10, 1996, pp. 2-3.

[5] TSN, October 12, 1995, p. 5; March 6, 1996, pp. 2-3; July 10, 1996, pp. 2-4.

[6] TSN, October 12, 1995, pp. 5-7; March 6, 1996, pp. 4-5; March 21, 1996, p. 3; July 10, 1996, p. 3.

[7] TSN, March 21, 1996, pp. 4-6.

[8] Record, pp. 10-11.

[9] TSN, October 12, 1995, p. 10; March 6, 1996, p. 10; March 21, 1996, p. 5; July 10, 1996, pp. 6-7.

[10] Record, p. 299.

[11] TSN, August 28, 1998, pp. 7-9.

[12] TSN, August 5, 1998, pp. 2-8.

[13] TSN, December 3, 1998, pp. 3-10.

[14] TSN, January 7, 1999, pp. 7-8; April 9, 1999, pp. 6-8.

[15] TSN, July 30, 1999, pp. 3-5.

[16] Penned by Judge Bayani V. Vargas of the Regional Trial Court of San Jose City, Branch 39.

[17] Rollo, pp. 67-68.

[18] *People v. Del Valle*, G.R. No. 119616, 14 December 2001, 372 SCRA 297.

[19] *People v. Patalin*, G.R. No. 125539, 27 July 1999, 311 SCRA 186; citing *People v. Agunias*, G.R. No. 121993, 12 September 1997, 279 SCRA 52.

[20] *People v. Abundo*, G.R. No. 138233, 18 January 2001, 349 SCRA 577.

[21] *People v. Francisco*, G.R. Nos. 134566-67, 22 January 2001, 350 SCRA 55.

[22] TSN, July 10, 1996, p. 4; March 21, 1996, p. 4.

[23] *People v. Escalante*, G.R. No. L-37147, 22 August 1984, 131 SCRA 237.

[24] 101 Phil. 188, 194 (1957).

[25] *People v. Rabutin*, G.R. Nos. 118131-32, 5 May 1997, 272 SCRA 197.

[26] *People v. Tabuso*, G.R. No. 113708, 26 October 1999, 317 SCRA 454.

[27] *People v. Bolivar*, G.R. No. 108174, 28 October 1999, 317 SCRA 577.

[28] *People v. Capili*, G.R. No. 130588, 8 June 2000, 333 SCRA 354.

[29] Defined as – a sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report. *United Life, Fire and Marine Insurance, Inc. v. Foote*, 22 Ohio St. 348, 10 Am Rep 735, cited in *Bouvier's Law Dictionary*, Third Revision, Vol. 1; also defined in *Wadsworth v. Marshall*, 88 Me 263, 34 A 30, as a “bursting with violence and loud noise, caused by internal pressure.”

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

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

x x x x x x x x

- By means of inundation, fire, poison, explosion, shipwreck, stranding or a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin. (Underscoring supplied)

[31] *People v. Tayo*, G.R. No. L-52798, 19 February 1986, 141 SCRA 393, citing *People v. Guillen*, 85 Phil. 307; *People v. Gallego and Soriano*, 82 Phil. 335; *People v. Agcaoili*, 86 Phil. 549; *People v. Francisco*, 94 Phil. 975.

[32] *People v. Tintero*, G.R. No. L-30435, 15 February 1982, 111 SCRA 704; *People v. Asibar*, G.R. No. L-37255, 23 October 1982, 117 SCRA 856.

[33] Entitled: An Act Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled “Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes.”

[34] Representative Roilo Golez, in his sponsorship speech, laid down two basic amendments under House Bill No. 8820, now R.A. 8294:

- reduction of penalties for simple illegal possession of firearms or explosives from the existing reclusion perpetua to prision correccional or prision mayor, depending upon the type of firearm possessed;

- repeal of the incongruous provision imposing capital punishment for the offense of illegal possession of firearms and explosives in furtherance of or in pursuit of rebellion or insurrection.

The same rationale was the moving force behind Senate Bill 1148 as articulated by then Senator Miriam Defensor Santiago in her sponsorship speech:

The issue of disproportion is conspicuous not only when we make a comparison with the other laws, but also

when we make a comparison of the various offenses defined within the existing law itself. Under P.D. No. 1866, the offense of simple possession is punished with the same penalty as that imposed for much more serious offenses such as unlawful manufacture, sale, or disposition of firearms and ammunition.

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It was only during the years of martial law – 1972 and 1983 – that the penalty for illegal possession made a stratospheric leap. Under P.D. No. 9 promulgated in 1972 – the first year of martial law – the penalty suddenly became the mandatory penalty of death, if the unlicensed firearm was used in the commission of crimes. Subsequently, under P.D. No. 1866, promulgated in 1983 – during the last few years of martial law – the penalty was set at its present onerous level.

The lesson of history is that a democratic, constitutional, and civilian government imposes a very low penalty for simple possession. It is only an undemocratic martial law regime – a law unto itself – which imposes an extremely harsh penalty for simple possession.

[35] In crimes involving illegal possession of firearm, two requisites must be established, viz.: (1) the existence of the subject firearm and, (2) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess. See: *People v. Solayao*, G.R. No. 119220, 20 September 1996; *People v. Lualhati*, 234 SCRA 325 (1994); *People v. Damaso*, 212 SCRA 547 (1992).

[36] An Act Amending the Provisions of Presidential Decree No. 1866, as amended, entitled “Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and For Relevant Purposes.”

[37] This follows a similar construction used in Article 344 of the Revised Penal Code which states in part that “the offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon complaint by the offended party or her parents, grandparents, or guardian, nor in any case, if the offender has been expressly pardoned by the above-mentioned persons, as the case may be.” In this context, “or” has the same effect as the conjunctive term “and.”

[38] Subtitled: “Section 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives” where the modifier “unlawful” describes the manufacture, sale, etc. of, among others, explosives.

[39] 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 offenses, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. – Cause of the accusation. – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offenses is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[40] *People v. Manansala*, G.R. No. 147149, 9 July 2003; *People v. Paulino*, G.R. No. 148810, 18 November 2003.

[41] *People v. Sakam*, 61 Phil. 27; *People v. Manantan*, 94 Phil. 831.

[42] *People v. Guillen*, G.R. No. L-1477, 18 January 1950.

[43] *People v. Delim*, G.R. No. 142773, 28 January 2003.

[44] RTC Record, Vol. 1, p. 170, Exhibit 'J'; TSN, 21 March 1996, p. 10.

[45] *People v. Caballero*, G.R. Nos. 149028-30, 2 April 2003; *People v. Galvez*, G.R. No. 1300397, 17 January 2002; TSN, March 21, 1996, p. 11.

[46] *People v. Abrazaldo*, G.R. No. 124392, 7 February 2003.

CONCURRING AND DISSENTING OPINION

CALLEJO, SR., J.:

I concur with the majority that the appellant Antonio Comadre is guilty of murder for the death of Robert Agbanlog, and multiple attempted murder for the injuries sustained by the other victims. I dissent, however, from the ruling of the majority that the killing of Agbanlog is qualified by the use of explosives and not by treachery.

Under Section 3 of P.D. No. 1866 which took effect on June 29, 1983, any person who commits any of the crimes defined in the Revised Penal Code with the use of explosives, detonation agents or incendiary devices which results in the death of a person shall be sentenced to suffer the death penalty.[1] However, with the onset of the 1987 Constitution, the imposition of the death penalty was suspended.

Under paragraph 3, Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the use of explosives in killing a person is a circumstance which qualifies the killing to murder, the imposable penalty for which is reclusion perpetua to death. When the crimes were committed by the appellants on August 6, 1995, Rep. Act No. 7659 was already in effect. But while the case was pending, Rep. act No. 8294 was approved on June 6, 1997. Section 2 of the latter law provides that when a person commits any of the crimes defined in the Revised Penal Code with the use of explosives, detonation agents or incendiary devices which results in the death of any person or persons, the use of such explosives, etc. shall be considered as an aggravating circumstance:

When a person commits any of the crimes defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance.

Paragraph 3 of Article 248 of the Revised Penal Code, as amended by Rep Act No. 7659, was, thus, amended by Section 2 of Rep. Act No. 8294. Under the latter law, the use of a hand grenade in killing the victim was downgraded from being a qualifying circumstance to a mere generic aggravating circumstance. Considering that Section 2 of Rep. Act No. 8294 is favorable to the appellant, the same should be applied retroactively.[2] Considering the factual milieu in this case, the generic aggravating circumstance of the use of explosives is absorbed by the qualifying circumstance of treachery.

[1] Any person who commits any of the crime defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons shall be punished with the penalty of death.

[2] ART. 22. Retroactive effect of penal laws. – Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

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