

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MATEO GREGORIO Y CARPIO A.K.A. &#8220;JHUN TAYO&#8221;; ALBERTO GREGORIO Y CARPIO A.K.A. &#8220;TONGE&#8221; (DECEASED) AND JUANCHO OSORIO Y DELA PAZ, ACCUSED.**

*G.R. No. 153781. September 24, 2003*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

This is an appeal from the decision[1] of the Regional Trial Court of Pasig City, Branch 265, in Criminal Case No. 113892-H, finding appellants Mateo Gregorio and Juancho Osorio guilty beyond reasonable doubt of the crime of Murder, and sentencing each of them to suffer the penalty of reclusion perpetua, and to indemnify the heirs of the victim the amounts of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

On May 25, 1998, an Amended Information for Murder was filed against Mateo Gregorio y Carpio, a.k.a. "Jhun Tayo," Alberto Gregorio, a.k.a. "Tonge", and Juancho Osorio y Dela Paz. The Information reads:

On or about January 23, 1998, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused conspiring and confederating together and mutually helping and aiding one another, armed with guns, with intent to kill, and with abuse of superior strength and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault, and shoot Juanito Regacho y Gamboa, thereby inflicting upon said Juanito Regacho y Gamboa fatal shot wounds, which directly caused his death.

Contrary to law.[2]

The three accused were arraigned on different dates and pleaded not guilty.[3] They filed a Petition for Bail, which was denied by the trial court in its Order dated May 16, 2001.[4]

In the meantime, accused Alberto Gregorio died[5] on July 23, 2000, while the Petition for Bail[6] was being heard.

Trial on the merits thereafter ensued.

Prosecution witnesses Henry Ginez and Pablo Bihasa testified that at 10:40 p.m. of January 23, 1998, they saw the victim, Juanito Regacho, standing in front of a store owned by a certain Bobit on Kalayaan Street, Ususan, Taguig, Metro Manila. They heard the victim's wife, Francisca, ask him to come inside their house, located three meters away from the store. Juanito remained in front of the store.

Moments later, a tricycle pulled up and appellant Juancho Osorio alighted. He drew a gun and fired at Juanito, but the latter was able to parry Juancho's hand. Juanito then ran to the alley towards his house.

Juancho then pointed the gun at the bystanders, who scampered towards a parked jeepney and hide.

Meanwhile, appellant Mateo Gregorio came out from a nearby alley and fired his gun in the air. He approached

appellant Juancho Osorio and asked, "Nasaan na?" Both appellants followed the victim to the alley. Thereafter, gunshots were heard.

Prosecution witness Ignacio Lopeña, Jr. declared that earlier that day, Alberto Gregorio and the victim had a heated altercation after they came from a mahjongan on the day the crime happened. He heard Alberto challenge the victim, "Kung gusto mo, tapusin na natin ito."

Ignacio Lopeña, Sr., testified that he was awakened when he heard a gunshot. He went outside the house and saw Mateo Gregorio running after the victim, who was his brother-in-law. Appellants followed the victim into an alley. Thereafter, he heard gunshots coming from the alley. Appellants came out of the alley still holding their guns.

The victim died in front of the door of his house. Ignacio, Sr. asked the bystanders to help his sister-in-law bring the victim to the hospital. The victim was brought to the Cruz-Rabe Hospital but he was pronounced dead on arrival.

Dr. Emmanuel L. Aranas, who performed the post-mortem examination, found that the victim sustained four gunshot wounds. The wounds in the right lobe of the liver and the lower lobe of the right lung were fatal. He testified that the cause of the victim's death was the gunshot wounds on the torso.[7]

PO3 Conrado Mapili, the officer who responded to the shooting incident, learned from the residents that Mateo Gregorio, Alberto Gregorio and an unidentified person were the suspects in the killing of the victim. He conducted a follow-up investigation and took the statements of the prosecution witnesses which led to the filing of the instant criminal case.

In his defense, appellant Mateo Gregorio narrated that on the night of the crime, he was on his way home after getting the gun which somebody pawned to him. He admitted that he fired said gun in the air because Ignacio, Sr., brother-in-law of the victim, was meddling in a heated altercation between the victim and Alberto Gregorio. He saw the victim run away and afterwards he heard gunshots. He saw the gunman board a tricycle. On the whole, he denied any participation in a conspiracy to kill the victim.

Joemar Gregorio, nephew of Mateo, corroborated the latter's testimony. He learned from his mother that his uncle, Alberto Gregorio, had an altercation with the victim. He saw Mateo Gregorio who had just alighted from a tricycle. They heard gunshots and ran away.

Appellant Juancho Osorio denied involvement in the killing. He testified that on January 23, 1998 at about 9:00 p.m., his family watched the amateur singing contest and the gay beauty pageant at the fiesta in their barangay (Wawa, Tuktukan, Taguig). He stayed until 1:00 a.m. the following day. He testified that he could not afford to buy a gun because he just drove a tricycle to earn a living for his family. He did not even know how to use a gun. He claimed that he did not know Mateo Gregorio and Alberto Gregorio at the time of the incident.

On February 26, 2002, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, this Court finds accused MATEO GREGORIO y CARPIO a.k.a. "Jhun Tayo" and Accused JUANCHO OSORIO y DELA PAZ, GUILTY beyond reasonable doubt of the crime of MURDER for the death of Juanito Regacho y Gamboa and hereby sentences each of them to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the deceased, Juanito Regacho y Gamboa, the sum of SEVENTY-FIVE THOUSAND (P75,000.00) PESOS as indemnity; FIFTY THOUSAND (P50,000.00) PESOS as moral damages, without subsidiary imprisonment in case of insolvency; and to pay the costs.

SO ORDERED.[8]

Appellants raised the following assignment of errors:

- THE LOWER COURT'S FINDING AND CONCLUSION OF FACTS ARE CONTRARY TO THE EVIDENCE ON RECORD.
- THE LOWER COURT ERRED IN CONVICTING BEYOND REASONABLE DOUBT BOTH ACCUSED FOR THE CRIME OF MURDER.[9]

The first assignment of error has no merit.

While there was no direct evidence of the commission of the crime, the evidence presented by the prosecution constitute circumstantial evidence sufficient to warrant appellants' conviction. The following requisites for circumstantial evidence to sustain a conviction were met, to wit:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.[10]

The evidence for the prosecution established the following facts:

- There was a heated altercation between Alberto Gregorio, brother of appellant Mateo Gregorio, and the victim. Ignacio, Jr. heard Alberto challenge the victim, "Kung gusto mo tapusin na natin ito." Alberto went home while the victim stayed in front of the store which was only three meters from their house.
- Juancho Osorio alighted from a tricycle, aimed the gun at the victim and fired but the victim was able to parry his hand.
- Juanito pointed the gun at the bystanders who ran and hid behind a parked jeepney.
- Mateo Gregorio came out of the alley and asked Juancho Osorio, "Nasaan na?"
- Mateo and Juancho followed the victim to the alley.
- Witnesses heard gunshots coming from the alley.
- Mateo and Juancho came out of the alley still holding their guns.
- Appellants Mateo and Juancho ran away.

The above circumstances indeed form an unbroken chain which leads to a fair and reasonable conclusion that appellants were the perpetrators of the crime. It has been held that facts and circumstances consistent with guilt and inconsistent with innocence constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.[11]

The Information charged the appellants with conspiracy in killing the victim. Conspiracy must be proved as convincingly as the criminal act itself. Like any element of the offense charged, conspiracy must be established by proof beyond reasonable doubt.[12] Conspiracy may be shown through circumstantial evidence; deduced from the mode and manner in which the offense was perpetrated; or inferred from the acts of the accused pointing to a joint purpose and design, a concerted action, and a community of interest.[13]

In the case at bar, the appellants undoubtedly showed unanimity in purpose in attacking the victim. Juancho Osorio fired a gun at the victim. Then, Mateo Gregorio approached Juancho Osorio and asked, "Nasaan na?" Appellants together followed the victim who ran inside an alley. Appellants came out from the alley. Afterwards, they ran away. The prosecution was able to establish that appellants conspired in killing the victim through these

specific acts which unmistakably indicate a common purpose and design.

Appellant Juancho Osorio's contention that his identification was merely suggested by the residents is without basis. The wife of the victim and the prosecution witnesses positively identified him as one of the perpetrators of the crime although they did not know his name when they reported the incident. Witnesses need not know the names of the accused as long as they recognized their faces. What is important is that the witnesses are positive as to the perpetrators' physical identification from their own personal knowledge.[14]

Notably, prosecution witnesses Henry Ginez and Pablo Bihasa positively identified the appellants as the culprits, too. They were not in any degree related to the victim. Positive identification by independent witnesses who have not been shown to have any reason or motive to testify falsely must prevail over simple denials and unacceptable alibi of the appellants.[15]

Moreover, appellants fled from the scene of the crime after the shooting incident. Juancho Osorio was arrested on January 8, 1999 at Tambak, Taguig, Metro Manila while Mateo Gregorio was arrested on May 1, 1998 in Sucat, Parañaque City. It has been settled that flight of an accused is an indication of his guilt or of a guilty mind.[16] Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion.[17]

Once again, we reiterate the rule that findings of fact of the trial court carry great weight and are entitled to respect on appeal absent any strong and cogent reason to the contrary, since it is in a better position to decide the question of credibility of witnesses. In the determination of the veracity of the testimony, the assessment by the trial court is accorded the highest degree of respect and will not be disturbed on appeal unless it is seen to have acted arbitrarily or with evident partiality. [18] We find no reason to reverse the conclusions of the trial court as regards the guilt of the appellants.

However, appellants cannot be convicted of murder. The qualifying circumstances of treachery and abuse of superior strength were not sufficiently established by the prosecution.

The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, without the slightest provocation on the part of the victim.[19] Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. It must be shown by clear and convincing evidence that this qualifying circumstance was consciously sought by the assailants.[20]

The actual killing of the victim occurred in an alley and was no longer seen by the prosecution witnesses. Hence, there is no way of determining whether the elements of treachery and abuse of superior strength were met.

Undisputedly, there was no testimony as to how the attack was initiated in the case at bar. In the same way that there was nothing in the testimonies of the eyewitnesses for the prosecution which would prove that appellants pondered upon the mode or method to insure the killing.

Superiority in numbers is not necessarily superiority in strength[21] Although the two appellants used guns to kill the unarmed victim, nonetheless, the prosecution failed to establish that there was indeed a deliberate intent to take advantage of superior strength.

The crime committed by appellants is homicide. Under Article 249 of the Revised Penal Code, homicide is punished by reclusion temporal. There being no mitigating or aggravating circumstance, the penalty shall be imposed in its medium period. Appellants are entitled to the benefits under the Indeterminate Sentence Law, and

may thus be sentenced to an indeterminate penalty, the minimum term of which shall be taken from the penalty next lower in degree, namely, prision mayor. Thus, appellants may be sentenced to an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

Finally, the trial court awarded to the heirs of the victim civil indemnity in the amount of P75,000.00 and moral damages in the amount of P50,000.00. In accordance with prevailing judicial policy, the civil indemnity must be reduced to P50,000.00.[22] The award of moral damages has no factual basis. However, the heirs of the victim should be awarded temperate damages of P25,000.00, it appearing that they are entitled to actual damages but the amount thereof cannot be determined because of the absence of receipts to prove the same.[23]

WHEREFORE, in view of the foregoing, the appealed decision of the Regional Trial Court of Pasig City, Branch 265 in Criminal Case No. 113892-H, is MODIFIED. As modified, appellants Mateo Gregorio y Carpio a.k.a. "Jhun Tayo" and Juancho Osorio y Dela Paz are found guilty beyond reasonable doubt as principals of the crime of Homicide and are each sentenced to suffer the indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. They are further ordered to pay, jointly and severally, the heirs of the deceased the amounts of P50,000.00 as civil indemnity and P25,000.00 as temperate damages. Costs de oficio.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.  
Azcuna, J., on leave.

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[1] Penned by Judge Edwin A. Villasor.

[2] Records, p. 45.

[3] Alberto Gregorio was arraigned on May 25, 1998, Records, p. 38; Mateo Gregorio on October 16, 1998, Records, p. 88 and Juancho Osorio on January 18, 1999, Records, p. 139.

[4] Records, pp. 308-321.

[5] Certificate of Death, Records, p. 231.

[6] Records, pp. 126-129.

[7] Records, p. 281.

[8] Records, p. 458.

[9] Rollo, p. 70.

[10] Rule 133, Section 5, Rules on Evidence.

[11] *People v. Garcia, et al.*, G.R. No. 138470, 1 April 2003, citing *People v. Dacibar*, 382 Phil. 618 (2000) and *People v. Gaballo*, G.R. No. 133993, 13 October 1999, 316 SCRA 881.

[12] *People v. Guittap, et al.*, G.R. No. 144621, 9 May 2003, citing *People v. Leaño*, G.R. No. 138886, 366 SCRA 774, 788.

[13] *People v. Caraig*, G.R. Nos. 116224-27, 28 March 2003.

[14] People v. Clidoro, G.R. No. 143004, 9 April 2003, citing People v. Dinamling, G.R. No. 134605, 12 March 2002.

[15] People v. Lamsing, 248 SCRA 471, 477 (1995).

[16] People v. Bracamonte, 327 Phil. 172 (1996).

[17] People v. Landicho, et al., G.R. No. 116600, 3 July 1996.

[18] People v. Atadero, et al., G.R. Nos. 135239-40, 12 August 2002, citing People v. Mendoza, 327 SCRA 695 (2000).

[19] People v. Hate, G.R. No. 145712, 24 September 2002.

[20] People v. Asis, G.R. No. 118936, 9 February 1998, citing People v. Daquipil, 240 SCRA 314, 332-222 (1995) and People v. Casingal, 243 SCRA 37 (1995).

[21] People v. Balictar, G.R. No. 29994, 20 July 1970, 91 SCRA 500, 510.

[22] People v. Delada, Jr., G.R. No. 137406, 26 March 2003, citing People v. Verde, 362 Phil. 305 (1999).

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

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