

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELFIN MOLINA AND ADOLFO MOLINA, ACCUSED-APPELLANTS.

G.R. No. 59436. August 28, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the November 7, 1981 decision of the then Court of First Instance of Abra, Second Judicial District, Branch II, presided by Hon. Leopoldo B. Gironela, finding herein appellants Adolfo Molina and Delfin Molina guilty beyond reasonable doubt as principals of the crime of Murder, the decretal portion of which reads:

"IN VIEW OF THE FOREGOING, the Court finds and holds Adolfo Molina and Delfin Molina guilty beyond reasonable doubt as principals of the crime of Murder, as charged in the Information, and are hereby sentenced to suffer the penalty of RECLUSION PERPETUA, and to indemnify jointly the heirs of the victim the sum of P14,000.00 plus P4,000.00 as actual damages and P4,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency, and to pay the costs of the proceedings.

"For lack of sufficient evidence, Sotero Molina is Acquitted."

In an Information dated March 5, 1981, the Provincial Fiscal of Abra charged Sotero Molina and his two (2) sons, Adolfo Molina and Delfin Molina, of the crime of Murder, allegedly committed as follows:

"That on or about November 9, 1980, in Barangay Cabaroan, Municipality of Tayum, Province of Abra, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating and mutually helping one another, without any justifiable cause with intent to kill, with treachery and evident premeditation and while armed with stones and bolo (unrecovered), did then and there, willfully, unlawfully and feloniously stone, hack and bolo one Mariano Molina, hitting him on the head and other parts of his body, causing multiple chop wounds and lacerations, which injuries caused his death shortly there-after."

When arraigned on June 30, 1981, all accused, assisted by counsel, pleaded not guilty.

At the trial, the prosecution presented five (5) witnesses who testified as follows:

1. Beato Molina testified that accused Sotero Molina is his father and accused Delfin Molina and Adolfo Molina are his brothers, while deceased Mariano Molina is his uncle because he (Mariano) is the brother of his father; that at around 7:00 o'clock in the evening of November 9, 1980, while in their house, he noticed that some persons were maltreating someone near the house of his brother Eugenio Molina. To ascertain the identity of the person being maltreated, he went out from their house, but while still in their porch, or about 40 meters distance from them, he saw his brothers, Delfin and Adolfo, maltreating a person whom he failed to recognize. He was able to see them because of the light of the electric bulb coming from an open window in the house of Clara Molina illuminating the place. When he was about 15 meters from them, he was met by Delfin who flashed a flashlight at him. When he moved back, he fell down to the ground and Delfin hacked him, hitting his feet. He immediately stood up and ran to their house but Delfin followed him to the foot of their stairs. He did not know the reason why Delfin hacked him. He did not see his father Sotero Molina that evening but he saw his brother Adolfo Molina.

After about half an hour, policemen arrived and he learned from them that his uncle Mariano Molina was killed and that his body was near the house of his brother Eugenio Molina. He confirmed that he gave a written statement in connection with the incident to Pat. Constancio Echave on November 11, 1980 (TSN, Hearing of July 14, 1981, pp. 2-18).

2. Clara Molina testified that accused Sotero Molina is her father-in-law, and accused Delfin Molina and Adolfo Molina are her brothers-in-law. Her husband, Eugenio Molina, is the son of Sotero Molina, and the brother of Delfin and Adolfo, while deceased Mariano Molina is her uncle-in-law, being the brother of accused Sotero Molina. Around 7:00 o'clock in the evening of November 9, 1980, while she was putting her small child to sleep, her brother-in-law Delfin arrived in their house where he spat three times, after which he went down southward. Later, Delfin returned and challenged her husband to come out. Sotero Molina, the father, took Delfin away and when they were beside the house of Adolfo, another son, Sotero called Adolfo. A few moments thereafter, Delfin and Adolfo were beside their house and Delfin shouted to her husband "Vulva of your mother, you are only squatter here" after which stones were thrown at their house. Later, there was silence. Hearing footsteps from the western side of their house, she peeped through their window and saw Delfin and Adolfo stoning Mariano Molina about two armslength away from their house. Adolfo's stone hit Mariano in the head; and when Mariano turned around, Delfin hacked him with a bolo three (3) or more times. Adolfo also hacked Mariano two (2) or more times. She was able to observe the incident because one of them was holding a flashlight, although she was not sure who was holding the flashlight and their electric bulb above the window where she was peeping was lighted. She did not know where Sotero Molina was when Delfin and Adolfo were hacking Mariano. While the incident was taking place, she shouted "They killed Tata Mariano." She shouted for help three times, but nobody responded. About an hour later, police officers called at their house to inform them of the death of Mariano. They then took Mariano's cadaver to his house. The following morning, she was investigated at the Municipal Hall of Tayum by the same policemen who came to their house on the night of the incident and she gave a sworn statement (Exhibit "D").

Despite rigid cross-examination, Clara Molina insisted that during the hacking incident, she did not see Sotero Molina at the scene of the crime. Reminded of her supposed answer to Question No. 10 in Exhibit "D", that Sotero Molina was the one who held the flashlight while Delfin and Adolfo hacked and stoned Mariano Molina to death, she admitted that she read Exhibit "D" and after reading, she signed it but she steadfastly declared that she did not make that portion of her supposed statement. In fact, she does not know why it was typewritten there. She ventured that they must have made a mistake (TSN, Hearing of August 24, 1981, pp. 93-120). On the other hand, she was positive that she saw Delfin Molina hack Mariano and Adolfo stoned Mariano because of the light from the window of her house and from the flashlight focused towards Mariano (Ibid., p. 123).

3. Dr. Isabelo Lucas testified that around 9:45 in the evening of November 9, 1980, upon request of the police authorities, he conducted an autopsy on the remains of the late Mariano Molina and found the following:

"1. Lacerated wound, Y-shaped 1 inch long per extremety located at the hair line center of the forehead. Scalp deep.

"2. Lacerated wound 2 x 3 inches located at the left parietal region fracturing the underlying bone.

"3. Chop wound 4 inches long along the left parietal region chopping the parietal bone and reached the brain substance.

"4. Stab wound 1 inch long at the right mastoid exposing the underlying bone.

"5. Chop wound 4 inches long starting from the left cheek going downward towards the area below left corner of the mouth. Skin deep.

"6. Chop wound starting from the left lower jaw going downwards, forward and backward cutting a portion of the left ear and completely cutting the mandibular bone and into the neck cutting the carotid artery and jugular vein.

"7. Chop wound 3 inches long running along the right shoulder towards the tip of the right scapula. Depth limited to the musculature.

"8. Chop wound 3 inches long at the left scapular region cutting the underlying bone and reached the thoracic cavity.

"9. Chop wound 6 inches in length going perpendicular to the long axis of the body at the lumbar region, left, starting from the left vertebral line towards the left flank reaching the abdominal cavity and where the descending portion of the large intestine comes out.";

that the injuries were inflicted with the use of three (3) instruments; the lacerated wounds were caused by a blunt instrument like a stone or a piece of wood: but the chop wounds were caused by a bolo; and the stab wounds may have been caused by a sharp-pointed instrument. He attributed the cause of death to hemorrhage.

On cross-examination, he stated that it is possible that wound No. 1 could have been caused when the victim stumbled on a stone, if he fell directly on it, but opined that wound No. 2 on the head cannot be caused by a fall because then the wound would be limited only to the scalp and not a fracture. In this case, the skull was broken; and that wounds No. 4, 5, 6 to 9 may also be caused by the same bolo if that bolo has a 1 inch width at the end. He opined that the victim could have died even if attended to by a physician because he had only a few minutes to live due to hemorrhage (Ibid., pp. 57-66).

4. Constancio Echave testified that he is a member of the INP stationed at Tayum, Abra: that on November 9, 1980, between 7:30 to 8:00 o'clock, while he was on duty, he received a report from Danilo Castillo that there was a stabbing incident at Barangay Cabaroan, Tayum. He proceeded to the crime scene with Pat. Mariano Jacquias and Eduardo Bringas. Beato Molina pointed to them the spot where the victim was and they saw the cadaver sprawled more or less two (2) meters away from the post of the house of Clara Molina. They called for Dr. Lucas and brought the cadaver to the house of the victim. At the Office of the Station Commander at Tayum, he conducted a written investigation and questioned Martina Molina, Clara Molina and Beato Molina. He brought them to the Municipal Judge for subscription of their statement and after preparing all the papers, he filed the complaint (Ibid., pp. 133-151).

5. Martina Molina testified that her husband Mariano died on November 9, 1980. Around 7:00 P.M. of the said date, she was in their house when she heard people shouting. From them, she learned that her husband died. The peace officer brought the cadaver of her husband beside the house of Eugenio Molina, to their house. She recalled that her husband and his brother Sotero Molina have a misunderstanding about a piece of land which her husband delivered to Sotero Molina for the latter to work on but when her husband wanted to take back the land, Sotero Molina refused to return it. The case was referred to the Agrarian Reform Office. Sotero Molina won and her husband acceded, so that she does not know the reason why her husband was killed. She narrated that during a pre-wedding celebration in their neighborhood, there was a stone-throwing incident. When the stone-throwing incident subsided, her husband went out of the house and there and then met his brutal fate. Her husband was 64 years old when he died. She spent more than P4,000.00 up to the time of the burial; and she gave a sworn statement to the police in connection with the death of her husband (Ibid., pp. 76-91).

The defense of Sotero Molina is denial; that is, he did not participate in the act. Adolfo Molina's defense is alibi; that is, at the time of the incident, he was at Pagala, Bucay, Abra: while Delfin Molina admitted having killed his uncle but in self-defense.

The defense presented seven (7) witnesses, including the accused themselves:

1. Accused Sotero Molina testified that the two (2) other accused, Delfin Molina and Adolfo Molina are his sons, while deceased Mariano Molina was his brother; that he has no participation in the killing of his brother because at about 7:00 o'clock in the evening of November 9, 1980, he and his wife were in the house of their neighbor Benito Brioso, about 200 meters away from their house, attending the in-innapet (pre-wedding) ceremony. When they left their house to attend the ceremony, Delfin was in their house but when they returned, he was no longer in the house. Instead, they saw peace officers in their place and he came to know of the death of his brother on the following day. He saw Delfin Molina also on the following day at the house of CHDF Bernardino Tabaniag in Siwasiw, Bucay who surrendered Delfin at Camp Juan Villamor. He filed a case against his brother in the Agrarian Office because his brother wanted to get back the land he is working on and the Agrarian Office ruled in his favor. Before the death of his brother, they were in good terms. Clara Molina is married to his son Eugenio Molina. She testified against the appellants because she is not close to them: she is closer to the deceased Mariano. He did not know the reason why Delfin killed his brother; and that he did not see his son Adolfo on the night of the incident (Ibid., pp. 157-179).

2. Accused Delfin Molina testified that on the night of November 9, 1980, while he was on his way to see the fishnets in the river and near the house of his brother Eugenio and his sister-in-law Clara Molina, somebody whose face he did not recognize, appeared from behind the trunk of a mango tree and hacked the flashlight he was holding. When he dropped the flashlight, he unsheathed his bolo. The person rushed to him and tried to hack him but he grappled with him and hacked him several times. He left the place without identifying the person he had hacked and quickly returned to his house but on his way, he was met by his brother Beato. When Beato was about 3 arms length, he raised his hand holding a stone. Seeing his brother Beato about to throw the stone, he tried to evade it and in the process he fell down. While thus lying down on the ground, his brother Beato came near him and kicked him. He tried to evade his kicks, and he used his bolo to parry the kicks but he did not hack Beato. When Beato left him, he went to their house. While he was already in their house, he heard someone shouting "Tata Anno was killed." Afraid of his brothers and of his father, he left and went to the house of their relative Junior Tagura at Asito, Tayum, Abra. Early in the morning of the following day, he went to the house of his friend CHDF Bernardo Tabaniag at Nagbalitangan, Bucay, a neighboring barrio of Siwasiw, and told Tabaniag that he had mistakenly killed his Uncle Mariano Molina. He requested Tabaniag to accompany him to surrender. He surrendered to Captain Mariano at Camp Juan Villamor on November 13, 1980. At Camp Juan Villamor, he saw his brother Adolfo Molina, although on the night of November 9, 1980, he had not seen Adolfo. He assailed the statement of Clara Molina that Adolfo killed Mariano Molina as not true and alleged that Clara Molina implicated his father Sotero and his brother Adolfo because she and her husband are jealous of Adolfo who is closer to the family.

On cross-examination, he stated that his house is three (3) meters from the house of the spouses Eugenio and Clara Molina; and that Mariano Molina's house is around 30 meters away. When he moved backward and tried to unsheath his bolo, he did not know the identity of the person who tried to harm him because the flashlight was put off. He admitted that there was a light inside the house of Clara Molina but outside the house, it was dark. He did not know how many times he hacked the person who tried to harm him because he only stopped hacking when said person fell to the ground. However, aside from hacking, he did nothing more. He reiterated that his brother Adolfo was not present then; that the injury on his head apparently was caused by a blunt instrument, maybe, to due to a fall when his head struck a stone. He did not try to ascertain the identity of the person he hacked because of fear and self-preservation. He left their place after the incident and when the peace officers arrived, he was not there anymore. He did not surrender the bolo because it got lost when he went away from their place. It did not occur to him to surrender himself to the peace officers in their place, because of fear of Beato Molina who

testified against him and his brother Adolfo (Ibid., pp. 19-43).

3. Bernardo Tabaniag, a CHDF of Bucay, Abra since 1978, corroborated the testimony of Delfin Molina, that on November 10, 1980, the latter went to see him in Bucay, and told him that he had mistakenly killed his uncle. Delfin requested that he be brought to the P.C. Headquarters to surrender. Hence, the witness surrendered Delfin to Captain Mariano at Camp Juan Villamor (Ibid., pp. 181-189).

4. Accused Adolfo Molina testified that it is not true that he helped and confederated with his brother Delfin Molina and his father Sotero Molina in killing his uncle Mariano Molina. On November 9, 1980, he was invited by Felix Tambalong to accompany him to Pagala, Bucay, Abra, to get Felix's share of corn from his in-laws. They started at around 3:00 o'clock p.m. and reached Pagala at 6:00 o'clock p.m. However, they were not able to get the corn because Tambalong's in-laws were not present. They returned to Tayum at past 6:00 o'clock p.m. and reached the place at around 9:00 o'clock p.m. On their way from Bucay to Tayum, they met Fred de la Cruz, his wife and a lady from Wayya, aboard their Ford Fiera. They were invited to ride on the jeep but they could not wait and so they continued walking. They reached Tayum and proceeded to the house of Felix Tambalong. At 6:00 o'clock in the morning of November 10, 1980, he went home but near their house, he met Pat. Echave who asked him where he came from. Pat. Echave also told him that his younger brother, Delfin, killed their uncle. Not able to find his brother, he went home. From their house, he went to see the cadaver of his uncle, but he was called by Pat. Echave who took him to Tayum, where he was detained for one (1) night. The following morning, he was brought to Camp Juan Villamor. On November 13, 1980, Delfin Molina surrendered. Delfin was surprised to see him there because Delfin knew he (Delfin) was the one responsible for the death of their uncle. He assailed as not true the testimony of Clara Molina that he and his brother Delfin killed their uncle, and attributed the same to Clara's anger and jealousy because Adolfo is close to his father and could help the latter in working on the land. Likewise, he claimed that the testimony of Beato Molina is not true, as Beato has resentment against him because Beato is jealous of him for working with his father on the land, the produce of which Beato would like to take for himself (Ibid., pp. 189-202; 44-54).

5. Felix Tambalong corroborated the testimony of Adolfo Molina: that they were indeed at Pagala at 6:00 o'clock p.m. on November 9, 1980 but were unable to get corn from his father-in-law; that on their way home, they met Flora de la Cruz and company who offered to pick them up on their return trip but they arrived at Tayum ahead at about 9:00 o'clock p.m. because they continued walking and that Adolfo slept in their house and left at 6:00 o'clock the following morning. Later, he heard that Adolfo was apprehended by the police (Ibid., pp. 204-217).

6. Flora de la Cruz further corroborated the testimonies of Adolfo Molina and Felix Tambalong that she and her husband met the two in Barrio Pinpinas and invited them for a ride back to Tayum but the latter could not wait and went ahead. She later learned that Adolfo was charged with the death of his uncle. It did not occur to her mind, however, to tell the Barangay Captain or the police that she saw Adolfo Molina at Pinpinas at that time (TSN. pp. 68-73).

7. Josefina B. Molina, wife of the accused Adolfo Molina, also tried to corroborate the testimony of her husband: that around 3:00 o'clock in the afternoon of November 9, 1980, Felix Tambalong fetched her husband and they went to Pagala, Bucay, Abra to get corn; that her husband did not sleep in their house that night, but the following morning, when she arrived from the pre-wedding ceremony, her husband was already in their house. When she asked where he slept, he answered that he slept in Tayum. After they had taken their lunch, a policeman arrived to pick up her husband. She followed them to the municipal building in Tayum. Her husband was detained without any Warrant of Arrest because according to them, he was one of the suspects. They told her that if Delfin Molina will appear, they will release her husband, but when Delfin surrendered, they did not release her husband. She also alleged that Clara Molina and Beato Molina testified against her husband because they are nursing a grudge

against him (TSN, pp. 218-226).

After trial, the court a quo rendered a decision dated November 7, 1981, acquitting Sotero Molina, but convicting herein appellants Delfin Molina and Adolfo Molina.

From the said decision, appellants assigned the following errors:

1. THE COURT A QUO GRAVELY ERRED IN NOT TAKING INTO CONSIDERATION THE PLEA OF SELF-DEFENSE OF ACCUSED DELFIN MOLINA AND IN FINDING HIM GUILTY OF THE CRIME OF MURDER AND SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA;
2. THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED ADOLFO MOLINA OF THE CRIME OF MURDER WITHOUT TAKING INTO CONSIDERATION HIS DEFENSE OF ALIBI AND IN SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA; AND
3. THE COURT A QUO GRAVELY ERRED IN TAKING INTO CONSIDERATION THE BIASED TESTIMONY OF CLARA MOLINA AND FAILED TO CONSIDER THE CONTRADICTORY STATEMENTS MADE BY HER IN COURT AND HER STATEMENT DURING THE PRELIMINARY EXAMINATION.

Appellant Delfin Molina admitted the killing of the deceased Mariano Molina, but claimed that the same was made in self-defense. Having admitted the killing, the accused assumed the burden of showing legal justification therefor. He has to substantiate the justifying circumstance invoked (*Sacay v. Sandiganbayan*, 142 SCRA 597 [1986]).

The three requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself (Art. 11, par. 1, R.P.C.; *People v. Batas*, 176 SCRA 46 [1989]). The burden of proof in self-defense is upon the accused (*People v. Picardal*, 151 SCRA 170 [1987]). He must rely on the strength of his own evidence, and not on the weakness of the prosecution for even if it were weak, it could not be disbelieved after the accused admitted the killing (*People v. Talaboc*, 30 SCRA 87 [1969]). He must establish his claim by clear and convincing evidence (*Andres v. Court of Appeals*, 151 SCRA 268 [1987]).

In the instant case, appellant Delfin Molina failed to establish his claim of self-defense by clear and convincing evidence. His version of the incident is unbelievable. It is undisputed that the victim was a 64-year-old man. His attackers were young men armed with bolos and stones while the victim though alleged to have been armed with a bolo, the supposed weapon was never found by the authorities, either at the scene of the crime or elsewhere. Neither was it shown that any effort was exerted to locate it. Not being able to establish convincingly that the deceased was armed at that time, the claim of self-defense cannot be sustained. When the victim was not armed at the time of the incident, the claim of self-defense cannot be sustained (*People v. Dollantes*, 151 SCRA 592 [1987]), especially where the victim was the only one who sustained fatal or serious wounds while his attackers Delfin and Adolfo Molina emerged without even a scratch (*People v. Salcedo*, 151 SCRA 220 [1987]).

Moreover, the conduct of appellant Delfin Molina is not consistent with one who killed in self-defense. He was not even interested to verify the identity of his attacker, but instead fled to Siwasiw, Bucay, Abra. Verily, it is well established that the accused's flight from the scene of the crime is a strong indication of guilt (*People v. Anquillano*, 149 SCRA 442 [1987]; *People v. Marquez*, 153 SCRA 700 [1987]; *People v. Astor*, 149 SCRA 325 [1987]).

On the other hand, appellant Adolfo Molina's defense is alibi, claiming to be in Tayum at the time of the incident.

Alibi is the weakest of all defenses especially in the light of clear, positive, and precise evidence tending to identify the culprit and in the absence of ill-motive on the part of the eye-witnesses (People v. Magdueno, 144 SCRA 210 [1986]; People v. Parilla, 144 SCRA 454 [1986]; People v. Arbois, 24 SCRA 141 [1985]).

Clara Molina recounted in detail how Adolfo stoned and hacked the victim to death barely two (2) armslength away from her house where she was. She could not be mistaken in her identification because there was an electric bulb inside her house illuminating the scene of the crime as well as the light from the flashlight held by one of the appellant's. Aside from the absence of any evidence of ill-motive on her part to implicate appellants in the commission of such a grave offense, her forthright testimony was corroborated by Beato Molina, brother of the appellants.

Considering the close family ties among Filipinos, it is quite inconceivable that a witness would attribute the commission of a grave offense as murder to his own brother and/or brother-in-law if such is not true. Such testimony can only proceed out of a sense of righteous indignation and a desire to see that justice be done.

On the other hand, the defense witnesses themselves admitted that it is only 12 kms. from Cabaroan, Tayum, Abra to Pagala, Bucay, Abra. Hence, it was correctly observed by the trial court that it was not physically impossible for Adolfo to be at the scene of the crime considering the availability of transportation vehicles plying between Cabaroan, Tayum and Pagala, Abucay, Abra.

Appellants try to impeach the testimony of Clara Molina, the eyewitness for the prosecution, by alleging inconsistency in her statements given to Pat. Constancio Echave on November 10, 1980 and those taken by the Municipal Judge during the preliminary examination which read as follows:

"10. Q. What is the participation of Sotero Molina in the death of Mariano Molina?

A. He was the one with a flashlight when Delfin and Adolfo hacked and stoned him, sir. (SS of Clara Molina y Vasquez given to Pat. Constancio Echave on Nov. 10, 1980 – Exh. D, Translation, p. 7, Records).

Q. Who of the two was holding the flashlight when they were hacking Mariano Molina?

A. At that time, it was Adolfo Molina who was holding the flashlight. (SS of Clara Molina taken by the Municipal Judge during preliminary examination on January 12, 1981 – Exh. 2-A, p. 18, Record).

Q. While they were inflicting injuries on the person of Mariano Molina, did not (sic) their father Sotero Molina get (sic) down from the house to stop them from killing Mariano Molina?

A. No sir. I did not see him to (sic) go to the place where they killed Mariano Molina." (SS of Clara Molina taken on Jan. 12, 1981; Exh., 2-B; p. 18, Rec.)

Appellants alleged that the foregoing inconsistencies create a doubt as to whether or not there was positive identification of the assailants. But as earlier stated, on cross-examination, Clara Molina clearly stated that there was error in her supposed statement in Exhibit "D" because she did not see Sotero Molina at the scene of the crime. She testified as follows:

"Q. You stated during the direct examination that during the hacking of Mariano Molina, this Sotero Molina, one of the accused was not there, am I right?

A. I did not see him sir.

Q. But in your statement Exhibit "D", question No. 10 and I read: (See question No. 10 in Exhibit "D"). Do you remember if this question was asked of you Madam witness? Translation.

Q. What was the participation of Sotero Molina in the death of Mariano Molina? And your answer was: He

was the one who held the flashlight while Delfin and Adolfo hacked and stoned him. That was your answer, is it not, Madam witness?

A. I did not see Sotero Molina at the time, sir.

Q. So that this question No. 10 and answer No. 10 in your statement is not correct, am I right? (p. 46, t.s.n., Aug. 24, 1981)

A. That is not true because I did not see Sotero Molina.

Q. So that this statement made by you here, is it not true?

"Fiscal Flores:

Already answered, not correct question No. 10.

Court:

Q. Or the truth of the matter is, you just wanted to save now Sotero Molina, your father-in-law from being implicated in the offense with which they are charged?

A. No, sir. I really did not know why that was typewritten there.

"Atty. Barbero:

Q. But before you signed this you read your statement?

A. That portion of my statement, I did not make that portion of that statement perhaps they may have committed a mistake, sir.

Q. So they were only two (2) at that time, Adolfo and Delfin Molina?

A. Yes, sir." (p. 47, tsn, id.).

(Underscoring supplied).

Pertinent to the foregoing testimony is the ruling of this Court that an affidavit being taken ex parte is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject (*People v. Alcantara and Guinto*, 151 SCRA 327 [1987]). The contradictions, if any, may be explained by the fact that an affidavit will not always disclose the whole facts and will oftentimes and without design incorrectly describe without the deponent detecting it, some of the occurrences narrated (*People v. Andaya*, 152 SCRA 571 [1987]).

Furthermore, assuming that Clara Molina's statement regarding Sotero Molina's participation in the offense charged should be discredited as false, the same does not render the rest of her testimony false. The rule is already well-established that the testimony of a witness may be believed in part and disbelieved in part depending upon the corroborative evidence and the probabilities and improbabilities of the case. The court may accept such of the witness' testimony as it may deem proper notwithstanding his false statements. If part of a witness' testimony is found true, it cannot be disregarded entirely (*People v. Pacabes*, 137 SCRA 159 [1985]).

As correctly observed by the trial court, the narrations of Clara Molina and Beato Molina are confirmed by the testimony of Dr. Isabelo Lucas and his autopsy report. The latter stated that wounds Nos. 1 and 2 were caused by a blunt instrument, while the rest of the wounds were caused by a bolo. Furthermore, the number, nature and

locations of the wounds are positive indications that the culprit is more than one (Rollo, p. 12). Thus, as ruled by this Court, an eyewitness' account that jibes with the autopsy findings is credible (People v. Encipido, 146 SCRA 478 [1986]).

Finally, it is a well-settled rule that where the issue is one of credibility of the witness, the appellate court will generally not disturb the findings of the trial court, unless some facts or circumstances may have been overlooked that may otherwise affect the result of the case for it is the peculiar province of the trial court to determine the credibility of the witness while testifying because of its superior advantage in observing the conduct and demeanor of the witness while testifying (People v. Caoile, 61 SCRA 73; People v. Ligon, 152 SCRA 419 [1987]). Hence, as a general rule, where a factual issue hinges on the credibility of witnesses, the factual findings of the trial court will not be disturbed (People v. Garufil, 152 SCRA 468 [1987]).

The trial court correctly appreciated the presence of the qualifying circumstance of treachery. The victim, a 64-year-old man, who ventured into the night alone and unarmed can be reasonably presumed not to have expected that he will be assaulted by his own nephews. As described by Clara Molina, Adolfo's stone hit the victim on the head and when the latter turned, Delfin hacked him with a bolo three or more times while Adolfo also hacked him with a bolo two or more times. In fact, the attack was so swift and sudden. Clara testified that everything happened around three (3) minutes (TSN, Hearing of August 24, 1981, p. 30; Records, p. 103). This Court had ruled that there is treachery in a sudden and unexpected attack which renders the victim unable to defend himself by reason of the suddenness and severity of the attack (People v. Fernandez, 154 SCRA 30 [1987]). Likewise, it was also held that treachery was present when appellants took turns in stabbing the victim who was caught by surprise and did not have time to defend himself (People v. Dollantes, supra). Hence, taking into account their concerted action and the nature and location of the injuries inflicted upon the deceased, the trial court found Delfin Molina and Adolfo Molina equally guilty of the offense. As ruled by this Court, denial of conspiracy is belied where appellants are members of one family and the attack was done by them suddenly and simultaneously; all the appellants took part in inflicting injuries upon the deceased which all proved to be fatal; and after the attack and seeing the victim lying prostrate on the ground, they all left at the same time. All the accused are guilty of murder qualified by treachery (People v. Paras, 147 SCRA 596 [1987]).

WHEREFORE, finding no reversible error committed by the trial court, the judgment of conviction is AFFIRMED but modified as to the amount of civil liability for the victim's death which should be increased to P50,000.00.

SO ORDERED.

Gutierrez, Jr., (Chairman), Davide, Jr., and Romero, JJ., concur.
Feliciano, J., on leave.

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