

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO IBASAN, SR., ALIAS "LORING"; ALEJANDRO
IBASAN, JR., ALIAS "INTSIK"; ALEJANDRO IBASAN II,
ALIAS "BOY"; AND ALEJANDRO ...**

G.R. No. 61652. June 22, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before us, on appeal is a decision of the Circuit Criminal Court, Dagupan City, Third Judicial District, convicting Alejandro Ibasan, Sr., alias "Loring"; Alejandro Ibasan, Jr. alias "Intsik"; Alejandro Ibasan II alias "Boy" and Alejandro Ibasan III alias "Tito" of the crime of murder. The dispositive portion of the decision reads:

"WHEREFORE, the Court hereby finds all the four (4) accused, namely: Alejandro Ibasan, Sr., alias 'Loring', Alejandro Ibasan, Jr., alias 'Intsik', Alejandro Ibasan II, alias 'Boy', and Alejandro Ibasan III, alias 'Tito', GUILTY beyond reasonable doubt of the, crime of murder, and pursuant to law, hereby sentences each of them to suffer the medium penalty of reclusion perpetua (life imprisonment), to indemnify the heirs of the victim, Leoncio Balolong in the amount of P12,000.00, plus P12,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"Let this case be archived as against accused Juan Ibasan, alias 'John', who is presently confined in the National Mental Hospital, without prejudice to its reinstatement as against said accused, upon motion of the prosecution and return to sanity of said accused."

The original information dated June 8, 1978 charged the appellants with the crime of homicide, together with two others, Juan Ibasan, alias "John" and Demetrio Ibasan alias "Etring". However, upon a finding that accused Juan Ibasan alias "John" was mentally unfit to stand trial, proceedings as against him were suspended pending the recovery of his sanity, hence, his non-inclusion in these proceedings. On the other hand, Demetrio Ibasan alias "Etring" died prior to final judgment in the lower court and the case against him was accordingly dismissed.

After the information was filed but before the accused could be arraigned, a motion to amend the charges to murder and for the presentation of additional evidence convinced the Fiscal to conduct a reinvestigation. A notice of reinvestigation was issued by the District State Prosecutor, upon proper authority of the Dagupan City Fiscal, with the advice that he "will conduct a reinvestigation of the above-entitled case on Wednesday, August 9, 1978, x x x."

On July 27, 1978, pending reinvestigation of the case, accused Alejandro Ibasan, Jr., alias "Intsik" filed a motion to be arraigned ahead of his co-accused to enable him to leave for employment abroad as seaman for a period of ten (10) months. He assured the court that his departure was not intended to avoid the case and that he needed employment badly as the only source of livelihood to sustain his family. The following day, July 28, 1978, he filed a written manifestation and waiver to wit:

"COMES NOW the accused Alejandro Ibasan, Jr. in the above-entitled case through counsel and to this

Honorable Court most respectfully manifests:

"1. That he filed a motion dated July 27, 1978 for an early arraignment as to him alone, ahead of his other co-accused based upon the grounds stated in said motion;

"2. That he is aware of the move of the Fiscal to reinvestigate this case to determine whether there is basis to amend the charge from HOMICIDE to MURDER;

"3. That in case his motion is granted and is arraigned ahead of his co-accused, he is willing to withdraw his plea on the charge of HOMICIDE and will enter a plea of NOT GUILTY to the charge of MURDER in case the Fiscal finally decide to amend the charge;

"4. That he is expressly waiving the defense of double jeopardy which otherwise will be available to him in case the charge is amended from HOMICIDE to MURDER in view of his early arraignment.'

"WHEREFORE, premises considered, it is most respectfully prayed that this manifestation be favorably acted upon."

The same was filed through counsel Benigno M. Gubatan. The motion was granted and accused Alejandro Ibasan, Jr. alias "Intsik" was accordingly arraigned on July 28, 1978 with a plea of NOT GUILTY to homicide. Subsequently, he left for abroad after waiving his right to be present during the proceedings.

On the basis of the fiscal's reinvestigation, an amended information dated August 30, 1978 was filed charging all accused with the crime of murder as follows:

"That on or about May 31, 1978 at Bonuan Gueset, Dagupan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, treachery, evident premeditation, and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously assault, maul and hit Leoncio Balolong at the back of his head and other vital parts of his body with a piece of bamboo, stones, empty bottles of beer, pepsi cola, coke, dagger, hollow block and wooden bench, which caused his death, to the damage and prejudice of his heirs in the sum of P12,000.00.

The crime was committed by a band."

The remaining accused were arraigned under the above information and all entered their plea of "not guilty" to the charge of MURDER.

Upon his return and with the aid of a new counsel, Atty. Salvador Vedaña, Alejandro Ibasan, Jr., filed a motion to quash the information on the ground that the filing of the amended information constituted double jeopardy, as he had already been arraigned and had pleaded not guilty under the original information for HOMICIDE, and the same had been dismissed without his consent when the new information was filed for the graver offense of MURDER. He further maintained that his earlier waiver of the defense of double jeopardy was of no moment, the same having been done prior to arraignment. He stated that it was not possible then for him to waive jeopardy which had not yet attached.

Denying said motion, the court reasoned that by his own acts the accused was estopped to interpose the defense of double jeopardy and that his manifestation was express consent on his part to the amendment of the original information. The court stated that the defense of double jeopardy was never intended to be a tool for the benefit of one who had intentionally misled and confused the court for his own escape to go abroad. Furthermore, there being no plea under the amended information, double jeopardy had not yet attached. Accused's motion for reconsideration was likewise denied.

Subsequently, accused Juan Ibasan alias "John", through his own counsel, also filed a motion to quash the amended information on the ground of accused's insanity. The motion was denied and, as earlier stated, accused Juan Ibasan was committed to the National Mental Hospital for observation and treatment. The trial as against him was suspended until such time as he is certified mentally fit to stand trial.

Trial proceeded against the rest of the accused except Demetrio Ibasan alias "Etring" the case against him having been dismissed after his death.

The prosecution evidence tended to prove that:

"x x x On May 31, 1978, at about 6:00 P.M., while Leoncio Balolong was walking (with his cousin Alberto Balolong) along the road towards Balolong Street, at Bonuan Gueset, Dagupan City Juan Ibasan, alias 'John', who was armed with a baseball bat (1 meter long), hit Leoncio Balolong (who was then unarmed) suddenly with said bat once on top of his head, holding the bat with both hands. Upon being hit by the baseball bat, Leoncio ran away, but he was pursued by Alejandro Ibasan III, alias 'Tito', who then struck Leoncio with a baseball bat (1 meter long) hitting him on the left leg, causing Leoncio to fall to the ground. Upon seeing his cousin Leoncio fall to the ground, Alberto Balolong ran away.

"After Leoncio fell to the ground after being hit on the leg by accused Alejandro Ibasan III, alias 'Tito', accused Alejandro Ibasan II, alias 'Boy', who was armed with the dagger (Exh. J), which is double bladed, sharp pointed and about 8" long with 4" handle and a leather scabbard, stabbed Leoncio several times with said dagger on the breast, causing him (Leoncio) to gasp for breath and disabling him. All the six (6) accused threw stones (bigger than the size of a fist) at Leoncio, then accused Alejandro Ibasan, alias 'Boy' and Juan Ibasan, alias 'John', held the hands of Leoncio and dragged him inside their (Ibasan's) yard, passing through the steel gate fronting the Ibasan's residence, adjacent to their sari-sari store (Exh. E). Inside the yard, all the six (6) accused again hit Leoncio several times with bottles of beer, coke and with a wooden leg of a bench hitting him on the head, breast and abdomen (57 tsn., Sept. 8, 1981). A few minutes later, Dagupan City policemen arrived at the place and they brought Leoncio to the Pangasinan Provincial Hospital. At the time of the arrival of said policemen, all the six (6) accused were no longer at the crime scene as they have already fled."

The prosecution relied on the testimony of two eyewitnesses, Domingo Paris and Agustina Redoban, both of whom positively identified all the accused. Domingo Paras testified that while all the six (6) accused were mauling Leoncio Balolong, they shouted "Vulva of your mother, we are going to kill you" and that accused Alejandro Ibasan, Sr., alias "Loring" addressed accused Juan Ibasan, alias "John", Alejandro Ibasan II alias "Boy", Alejandro Ibasan III alias "Tito" and shouted "You finish him" while the accused continued mauling Leoncio.

Prosecution witness Agustina Redoban corroborated the testimony of Domingo Paras in all its material points and furthermore, declared that upon seeing Leoncio Balolong already prostrate on the ground, she told the six (6) accused to stop beating him but they refused to heed her plea. She also heard Alejandro Ibasan, Jr., alias "Intsik" state that "Whoever will testify in this case should be killed."

For its part, the defense introduced evidence to prove the following: On May 31, 1978, at about 5:00 p.m., Leoncio Balolong and his cousin, Alberto Balolong, came looking for accused Alejandro Ibasan, Sr., alias "Loring" at the latter's store. Leoncio was asking Loring to come out in a loud voice. Leoncio was carrying with him a balisong tucked on his right waist. Accused Demetrio Ibasan, alias "Etring" told Leoncio that his father was asleep. This made Leoncio angry. Leoncio then told Demetrio "Vulva of your mother", "let your father come out." Demetrio then picked up a stone and thereupon, Leoncio drew his balisong (Exh. J). Demetrio Ibasan, sensing the presence of an imminent danger, immediately got hold of an empty bottle and with it hit Leoncio again, this time hitting the latter on the center forehead, as a result of which blood oozed from his head (tsn., March 15, 1982, p. 175).

During the altercation between Demetrio Ibasan and Leoncio Balolong, Alberto Balolong fled and he did so at the moment Leoncio Balolong fell down. Felisa Ibasan, wife of accused Alejandro Ibasan, Sr., and Linda Ibasan, his daughter, scurried upstairs to the house where they cried, and woke up Loring Ibasan (tsn., March 15, 1982, pp. 178-179). Soon Loring Ibasan came out of the house and told his son, Demetrio Ibasan to kill Leoncio Balolong probably because the latter might kill them all if he survives. Loring Ibasan, in order to insure the death of Leoncio Balolong, himself got a 2 feet long and 2 inches thick piece of wood and with it, hit said Leoncio Balolong who was already lying flat, several times (tsn., March 15, 1982, pp. 100-101). At that moment when Alejandro Ibasan began to hit Leoncio several times, the latter was not moving anymore and it was difficult to say whether he was already dead according to their eyewitness Angel Paras (tsn., March 15, 1982, pp. 181-182). This same eyewitness stated that he left the place after Alejandro Ibasan, alias "Loring" hit Leoncio Balolong with a piece of wood (tsn., March 15, 1982, p. 182). He then went to the other side of the road and that he did not bother to report the incident to the police for fear that he might get involved (tsn., March 15, 1982, p. 183).

Not long after, two policemen arrived. The two policemen went inside the yard of the Ibasans, and thereafter brought the bleeding body of Leoncio Balolong and put him down immediately in front of the steel gate while the said policemen waited for a ride (tsn., March 16, 1982, p. 171). After about five minutes, the policemen were able to get a ride, a passenger jeepney, on which they loaded the body of Leoncio Balolong and left (tsn., March 16, 1982, p. 172) for the Pangasinan Provincial Hospital (tsn., October 12, 1981, p. 75; tsn., October 23, 1981, p. 87).

After bringing the body of Leoncio Balolong to the Pangasinan Provincial Hospital, the two policemen hurriedly went back to the scene of the crime to make their investigation. Later, Demetrio Ibasan, who is actually one of the accused, (but whose case had been previously dismissed because of his death), voluntarily and willingly went along with the police and submitted himself for their investigation (tsn., November 9, 1981, p. 107). In fact, at the police sub-station, he admitted to Patrolman Rolando Coquia in the presence of Patrolman Rolando Valdez, that he was the one who killed Leoncio Balolong and that no one else was responsible for it (tsn., November 9, 1981, p. 108).

Thus, the defense tried to show that the aggressor was Leoncio Balolong and that, in self-defense, Demetrio Ibasan, alias "Etring", now deceased, had to hit Leoncio with a stone and an empty bottle. Likewise, Alejandro Ibasan, Sr., alias "Loring" had to hit Leoncio with a piece of wood, but Leoncio was, by then dead from Etring's blows.

The other accused-appellants interposed the defense of alibi. Alejandro Ibasan, Jr. alias "Intsik" alleged that at the time of the commission of the crime, he was attending the Perpetual Help Novena and mass, it being a Wednesday, with his wife. His alibi was reiterated by two of his friends who testified in his behalf. Alejandro Ibasan II, alias "Boy" and Alejandro Ibasan III alias "Tito" alleged that at the time of the incident, they were at the house of their uncle, Juan Ibasan alias "John" feeding and watching his poultry and that they had attended to their duties therein without leaving said premises.

After the trial, the court found the four appellants guilty as charged. Hence, this appeal.

The accused-appellants interposed the following assignments of errors:

I. - THE LOWER COURT ERRED IN NOT DISMISSING THE CASE AS AGAINST THE ACCUSED ALEJANDRO IBASAN, JR., ON THE GROUND OF DOUBLE JEOPARDY.

II. - THE LOWER COURT ERRED IN ACTIVELY PARTICIPATING IN AND/OR CONDUCTING THE EXAMINATION OF WITNESSES AS THOUGH IT WERE THE PROSECUTION, AND IN DEPRIVING THE DEFENSE FROM PRESENTING OTHER MATERIAL WITNESSES BY GIVING HOPE AND IMPRESSIONS WHICH TURNED OUT TO BE FALSE AFTER ALL.

III. - THE LOWER COURT ERRED IN ITS APPRECIATION OF THE FACTS AS PRESENTED, AND IN MAKING CONCLUSIONS NOT SUPPORTED BY THE EVIDENCE AS ADDUCED.

IV. - THE LOWER COURT ERRED IN NOT DISMISSING THE CASE AS AGAINST ALL THE ACCUSED AFTER THE PROSECUTION HAD RESTED ITS CASE AND UPON MOTION TO DISMISS FILED BY DEFENSE BASED ON THREE VALID GROUNDS.

V. - THE LOWER COURT ERRED IN NOT ACQUITTING THE FOUR REMAINING ACCUSED AFTER THE TERMINATION OF THE TRIAL ON THE GROUND THAT THE PROSECUTION UTTERLY FAILED TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

VI. - THE LOWER COURT ERRED IN DENYING THE FOUR CONVICTED ACCUSED OF THEIR RIGHT TO BAIL, THEIR RIGHT TO HAVE THEIR CASE TRANSFERRED TO ANOTHER SALA OR OTHER COURT OF COMPETENT JURISDICTION, AND THEIR RIGHT TO BE DETAINED IN THE LOCAL JAIL PENDING THEIR APPEAL INSTEAD OF IN THE NATIONAL PENITENTIARY AT MUNTINGLUPA.

Pending appeal, notice was received by this Court about the death of accused Alejandro Ibasan, Sr., alias "Loring" while confined in the New Bilibid Prisons in Muntinlupa. The case against him was dismissed insofar as his criminal liability was concerned.

At the outset, it is important to note the very peculiar facts which had given rise to the first issue. First of all, we find quite unusual that the accused Alejandro Ibasan, Jr., alias "Intsik" was allowed to leave the country while standing charged with the serious crime of homicide. His claim of innocence did not preclude the possibility of his jumping bail while abroad and not returning to answer the charges against him. The accused was allowed to be arraigned earlier than his co-accused even as the circumstances of murder were being reinvestigated.

Second, it was error for the court to allow the advance arraignment of Intsik for homicide when the prosecution was still re-investigating the case to determine the possibility of amending the information to murder. Intsik should have been arraigned for murder and afterwards could have been convicted either of homicide or murder as may be proven, the former being an offense necessarily included in the crime charged.

We cannot sanction the conduct of the fiscal and the court. They should be more prudent and cautious in the performance of their duties.

Appellant Alejandro Ibasan, Jr. would have us dismiss the case against him for murder on the ground of double jeopardy.

The prosecution, sustained by the court a quo, contended that the requisite of double jeopardy to wit:

xxx xxx xxx

"(4) That the defendant had been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent."

is not present under the circumstances of the case. It argued that since the accused had earlier filed a written manifestation and waiver of his right to be present as well as his right to the defense of double jeopardy, the first information had been amended with the accused's express consent.

The appellant maintains otherwise. He states that the element of time plays an important role in considering when such "express consent" should be given. He submits that the express consent must be given after the accused had already entered a plea and not before. Was there double jeopardy?

At the time that the accused executed his waiver, the right to the defense of double jeopardy for murder did not

yet exist. For jeopardy to attach, it is necessary that the defendant has been arraigned and has pleaded to the charge because it is from that moment that the issues for trial are deemed joined. Before that, the accused is not in danger of being validly convicted, hence he is not yet in jeopardy (*People v. Turla*, 50 Phil. 1001). If the accused has not yet been arraigned for either homicide or murder, a motion to quash and a waiver of the right to the defense of double jeopardy would be premature. Jeopardy attaches - (a) upon valid indictment, (b) before a competent court, (c) after arraignment and (d) after plea (*People v. Ylagan*, 58 Phil. 851). The defendant, not having been arraigned and not having pleaded to either charge when the waiver of his right to the defense of double jeopardy was made, the same produces no legal effect. There could have been no valid waiver for there was nothing to waive. There is no double jeopardy in this case.

Appellant Alejandro Ibasan, Jr. was arraigned and he pleaded "NOT GUILTY" under the original information for homicide. He was never arraigned for Murder. Hence, the proceedings below, while for the charge of murder insofar as the other accused were concerned, were only for homicide as regards Alejandro Ibasan, Jr. The treachery which qualified the crime to murder was, for him, an aggravating circumstance. No mitigating circumstance was proved during trial.

Coming now to the appellants' second assignment of error, we find the same to be without merit. It is not denied that the court had at certain points conducted its own questioning during the proceedings. The records, however, show that the court's questions did not amount to interference as to make the case for the prosecution and deprive the accused of their defense. The questions of the judge addressed to the witnesses and the accused were merely to clarify certain points and confirm certain statements. The number of times that a judge intervenes is not necessarily an indication of bias. It cannot be taken against a judge if the clarificatory questions he propounds happen to reveal certain truths which tend to destroy the theory of one party.

As held in the case of *Ventura v. Yatco* (105 Phil. 287) "Judges are not mere referees like those of a boxing bout, only to watch and decide the results of a game; they should have as much interest as counsel in the orderly and expeditious presentation of evidence, calling attention of counsel to points at issue that are overlooked, directing them to ask questions that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses, etc."

A judge may properly intervene in the trial of a case to promote expedition and avoid unnecessary waste of time or to clear up some obscurity (*People v. Catindihan*, 97 SCRA 196; Par. 14 Canons of Judicial Ethics; Administrative Order No. 162 dated August 1, 1946, 42 O.G. 1803). In this respect, the record shows no irregularity in the conduct of the trial judge.

As to the alleged deprivation of the appellants' right to present other material witnesses, we find the same without basis. The appellants alleged that they had intended to present two witnesses, namely: Atty. Gubatan and Atty. Esteves. However, the judge had expressed displeasure against the appearance of the two witnesses when the defense requested that they be subpoenaed, to wit:

"COURT

"You know, Esteves is a persona non grata in this court. He filed a case against me in Lingayen. I don't like to see his face. Never, forever, never in my whole life. Gubatan, Ancheta, Esteves, as far as I am concerned, they are already buried a long time. (con't. of order) Subpoena the following: Erlinda Reloseman, Bonuan Gueset, Dr. Dominador Gutierrez, c/o GSIS Dagupan City." (tsn., March 16, 1982, p. 196).

The emotional outburst of the presiding judge is rather unfortunate. Even if a judge sincerely believes that a counsel is deliberately exasperating or inciting him through the introduction of witnesses publicly known to be personally anathema to the judge and not because their testimony may prove or disprove matters in issue, the

judge should avoid any unseemly display of shortness of temper or other unbecoming behaviour. A judge should not allow himself to be led by counsel or witnesses into showing that he can be moved by pride, prejudice, passion, or pettiness in the performance of his official functions (*Austria v. Masaquel*, 20 SCRA 1247). It is precisely during such trying moments that a judge should be studiously careful about his conduct and in the measures he takes to uphold the court's authority and dignity. However, the actuations of the trial judge showing some impatience against the appellants did not preclude them from adequately presenting their case. We have examined the records carefully and we find that the appealed decision was not based on any matters improperly elicited by the trial judge during his examination of the witnesses nor has it been affected by the quoted remarks. Appellants were given all the opportunity to present their evidence.

Neither did the initial refusal of the trial judge to subpoena the two supposed witnesses prevent their being presented in court if they were really willing to testify for the defense. There are remedies available to parties for such situations. In fact, the records show that, later, the trial judge was amenable to their being present in court as witnesses and it was the defense which found no more need for the testimony:

"ATTY. FALLARME

"We are intending to present another witness especially Atty. Gubatan and Atty. Esteves, but I think there is no need, so we are closing our evidence and may we be given a chance to close tomorrow, your Honor." (Tsn., April 19, 1982, p. 269)

The appellants state that they did not take certain steps they should have taken because the presiding judge had impressed upon the accused and counsel "that the case of the prosecution was weak and that it was not airtight nor foolproof, and that eventually he was going to acquit the accused."

The following statement of the trial court:

"COURT

"I would suggest to counsel that since this case have been pending for the past 7 to 8 years and its record is about 4 to 6 inches thick, that trial of this case will continue Mondays and Tuesdays every week so that the innocent will be set free and that the guilty will be put to jail. x x x Why prolong this agony? x x x." (tsn., March 16, 1982, p. 195) (*Italics supplied by the defense*).

is no indication that the accused would eventually be acquitted. The statement shows no bias nor intention to give false hopes to either party. The judge merely expressed the need for a speedy trial. The statement should not be relied upon as a suggestion that the case for the defendants was stronger than the case for the prosecution.

Notwithstanding any remarks of any judge, a lawyer should continue giving his client entire devotion to the latter's interest, warm zeal in the maintenance and defense of his rights and the exertion of the lawyer's utmost learning and ability appropriate for the circumstances. Notwithstanding any impressions that counsel may have about the predispositions of a judge, the client is entitled to the benefit of any remedy and defense that is authorized by law. The lawyer should assert every such remedy or defense (*Canon 15, Canons of Professional Ethics; Javier v. Cornejo*, 63 Phil. 293 (1936); *In re Tionko*, 43 Phil. 191 (1922); *In re Oliva*, 103 Phil. 312 (1958); *Lualhati v. Albert*, 57 Phil. 86 (1932); *Toguib v. Tomol, Jr.* GR. Adm. Case No. 554, Jan. 3, 1969; *People v. Macellones*, GR. No. 33639, Feb. 28, 1975; *Tan Kui v. Court of Appeals*, GR. No. 36808, Nov. 29, 1973, See *Agpalo, Legal Ethics*, 1980, pp. 147-186.)

The second assignment of error has no merit but nonetheless we take this opportunity to remind members of the bench that judges' undue interference, impatience, or participation in the examination of witnesses or a severe attitude on the court's part towards the witnesses, especially those who are excited or terrified by the unusual circumstances of a trial may tend to prevent the proper presentation of the cause or ascertainment of

the truth in respect thereto. (*People v Catindihan*, 97 SCRA 196). Thus, a judge should exercise more care and patience in conducting a case, his right to intervene to be used sparingly, if at all. He must bear in mind that witnesses may be easily intimidated by an overly inquisitive judge considering the unusual circumstances which they find themselves in, especially when testifying in criminal cases.

We find no merit in the appellants' third and fifth assignments of errors. The lower court correctly appreciated the facts of the case and the testimonies of the witnesses. The appellants' point out alleged inconsistencies in the prosecution witnesses' testimonies vis-a-vis their sworn statements. They also seek to discredit the prosecution witness Domingo Paras because of his relationship with Gregorio Balolong, the deceased's father. The appellants state that the prosecution witnesses' statements are conflicting, exaggerated, perjured, prejudiced, evasive, and apparently dubious. Furthermore, the defense relies on the alleged counter-affidavit of Agustina Redoban, an eyewitness for the prosecution, recanting her earlier statements to the police.

An examination of the records shows no compelling reason to disbelieve the testimonies of the prosecution witnesses. The inconsistencies to which the appellants advert are but minor discrepancies which do not affect the weight of the witnesses testimonies where they all coincide in the matter of identity of the accused and in the narration of all material facts. Minor discrepancies do not render testimony incredible and cannot destroy the probative value of the consistent testimony of the witnesses on how the six (6) perpetrators had assaulted and mauled the victim to death. (*People v. Pajenado*, 69 SCRA 172; *People v. Lopez*, 80 SCRA 18; *People v. Llanto*, 88 SCRA 8; *People v. dela Cruz*, 91 SCRA 525; *People v. Yutila*, 102 SCRA 264; *People v. Hinlo*, 102 SCRA 472; *People v. Garcia*, 105 SCRA 325; *People v. Canizares*, 107 SCRA 296; *People v. Muñoz*, 107 SCRA 313; *People v. Demate*, 113 SCRA 353; *People v. Millora*, 119 SCRA 417; *People v. Barros*, 122 SCRA 34; *People v. dela Rosa*, 102 SCRA 147). It is settled that some minor inconsistencies become themselves indices of truth, a sign of veracity of the statements of unlearned and untutored eyewitnesses. (*People v. Paculba*, 124 SCRA 383; *People v. Cardinas*, 118 SCRA 458). According to the trial court, the prosecution witnesses testified in a clear, positive, straightforward, truthful, and convincing manner. The witnesses remained consistent on cross-examination. We see no reason to doubt the lower court's finding that they are more credible. Having been eyewitnesses to a frightful event as the killing of a fellow human, minor inaccurate expressions or honest mistakes in observation are not fatal. Differences in some details from nervous, rattled, and scared eyewitnesses cannot be avoided. It cannot be expected that these witnesses under such strain and pressure could pay particular attention and remember each and every detail no matter how trivial. Thus, whether the weapon used is referred to as a bat or a club is a matter of semantics. The fact remains that the deceased was hit by a one meter long wooden truncheon and mauled to death. Also, whether or not the beating of the victim had first occurred inside or outside the fence of the Ibasans is immaterial, the fact is the former was beaten both inside and outside of the premises of the Ibasans' yard. The fact is clear that the deceased was mauled and beaten with pieces of wood, bottles, and a dagger or balisong, the weapons used being properly established by the evidence on record. Also, the fact remains that the victim died at the hands of the accused all of whom were positively identified.

Anent the alleged relationship of a prosecution eyewitness to the deceased's father, we reiterate the oft-repeated rule that relationship of witnesses does not necessarily affect credibility. (*People v. Ruiz*, 93 SCRA 739; *People v. Puesce*, 87 SCRA 130). Relationship to the victim by itself, does not prove that a witness is prejudiced and biased when, as in this case, said testimony is not only clear and natural, but is corroborated substantially by the other findings of the trial court. There is moreover the absence of an improper motive actuating the witness to testify falsely against the accused. (*People v. Abejuela*, 92 SCRA 503; *People v. Veloso*, 92 SCRA 515). And as to eyewitness Agustina Redoban, her friendship with the victim standing alone is not proof of prejudice (*People v. Campana*, 24 SCRA 271), the same not being a sufficient motive for witnesses to testify falsely against an accused (*People v. Salcedo*, 122 SCRA 54). As we stated in one case, the fact that two of the prosecution's witnesses were sheltered and fed by the deceased father's victim does not prove that said witnesses perjured in recounting what they saw. It is well-known that witnesses to killings usually do not want to undergo the trouble and inconvenience of going to court and being exposed to reprisal.

(People v. Medrana, 110 SCRA 130).

The alleged inconsistencies between witness Redoban's testimony in open court and her statements in pre-trial affidavits, are not marks of untrustworthiness or wilful falsehood (People v. Bermoy, 105 SCRA 106). It is a matter of judicial notice and experience that, not infrequently, affidavits are prepared in haste and are almost always incomplete and inaccurate (People v. Gonzales, 99 SCRA 697). Greater weight is accorded the statements given on the witness stand where both prosecution and defense counsel could more thoroughly question the witness.

The appellants would have us dismiss the case or acquit accused Juan Ibasan alias "John" on the ground of insanity. They argue that the trial court erred in denying their motion to quash. Section 2 of Rule 117 of the Rules of Court provides among the grounds for a motion to quash: "That the defendant is insane". When after an examination into the mental condition of the accused, it appears that the defendant is insane at the time of the trial, the court is under a legal duty to suspend the proceedings and to order the commitment of the accused to an asylum. The fundamental reason behind this may be taken from the very fact that if the accused were insane, he would never have a fair trial; the assistance that the law provides would be an empty ceremony (US v. Guendia, 37 Phil. 337). The trial court acted fully in accordance with the law.

Appellants, however, maintain that at the hearing on the motion to quash, the evidence presented tended to show that accused Juan Ibasan was insane before, during, and after the commission of the crime, as well as at the time of trial, and should be exempt from criminal liability. This is properly a matter to be considered as a matter of defense during a full-blown trial to determine the guilt of the accused. For the same to be properly passed upon in the motion to quash, defendants should have invoked Subsection g, Section 2 Rule 117, to wit:

xxx xxx xxx

(g) That it contains averments which, if true, would constitute a legal excuse or justification;

xxx xxx xxx

They did not do so.

The fourth assignment of error has no merit.

Defendants' sixth assignment of error that the lower court erred in denying - (1) bail to the accused on appeal, (2) their right to have their case transferred to another sala or court of competent jurisdiction, and (3) their right to be detained in the local jail pending their appeal instead of the National Penitentiary in Muntinlupa, cannot be sustained.

Section 4, Rule 114 provides:

"After conviction by the Court of First Instance defendant may, upon application, be bailed at the discretion of the court."

This discretion will not be disturbed absent any showing of abuse or arbitrariness on the part of the trial court. (Reyes v. Court of Appeals, 83 Phil. 658) There is no such showing in the case at bar.

As for their detention at the National Penitentiary rather than the local jail, the appellants are national prisoners and are correctly detained at the New Bilibid Prisons in Muntinlupa, Rizal, pending the resolution of their appeal.

The transfer of the case, after judgment in the lower court, cannot be sanctioned. No law or rule permits the same. Appeal is an adequate remedy to correct whatever errors may have been committed by the lower court.

WHEREFORE, in view of the foregoing, the judgment appealed from is hereby AFFIRMED insofar as appellants Alejandro Ibasan II, alias "Boy" and Alejandro Ibasan III alias "Tito" are concerned, with the modification that the indemnity for the heirs of the victim, Leoncio Balolong, is raised from Twelve Thousand (P12,000.00) to Thirty Thousand (P30,000.00) Pesos in accordance with the ruling laid down by this Court in *People v. de la Fuente*, 126 SCRA 518. The judgment of the court a quo as to them is AFFIRMED in all other respects. Insofar as appellant Alejandro Ibasan, Jr. alias "Intsik" is concerned, we find him GUILTY beyond reasonable doubt of the crime of homicide and hereby sentence him to an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS, and ONE (1) DAY of reclusion temporal as maximum, and order him to indemnify the heirs of the victim jointly and solidarily with the other accused-appellants. The resolutions dismissing the cases against Demetrio Ibasan, Sr., alias "Loring" are reiterated. The late Alejandro Ibasan, Sr., remains civilly liable, his death having occurred pending appeal. He is likewise ordered to indemnify the heirs of Leoncio Balolong together with the other accused-appellants. SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

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