

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO M. CAITOR AND DANIEL R. MERCADO, ACCUSED-APPELLANTS, FEDERICO L. ALAZAS AND FRANCISCO SANTOSIDAD, ACQUITTED, VICTOR E...

G.R. No. 66615. July 26, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Cebu City, 7th Judicial Region, Branch XII which convicted Reynaldo Caitor and Daniel R. Mercado of the crime of murder.

The information dated March 17, 1983, charged Reynaldo M. Caitor, Daniel R. Mercado, Federico L. Alazas, Victor Embuscado, Pepoy Embuscado and Francisco Santosidad with the crime of murder, as follows:

"That on or about the 10th day of March, 1983, at about 10:15 a.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together with Pepoy Embuscado, Victor Embuscado and John Doe, who are still at large and who will be prosecuted separately as soon as apprehended, and mutually helping one another, one of whom was armed with a firearm, with deliberate intent, with treachery and evident premeditation, with intent to kill, did then and there attack, assault and use personal violence upon one Bashier Majid by giving fistic blows and shooting said Bashier Majid on different parts of his body, thereby inflicting upon him the following injuries:

"HEMORRHAGE, SEVERE, SECONDARY TO GUNSHOT WOUND',

as a consequence of which said Bashier Majid died instantaneously.

"Contrary to law."

When arraigned Reynaldo Caitor, Daniel Mercado, Federico Alazas, and Francisco Santosidad pleaded not guilty. Pepoy Embuscado and Victor Embuscado evaded arrest and were still at large at the time of the trial.

The evidence for the prosecution is summarized in the decision of the lower court as follows:

"At about 9:30 o'clock in the morning of March 10, 1983, Felicidad Baybayanon, a fruit vendor, was tending to her fruit store which was on a pushcart parked just a few meters from Gate No. 4 of the Southwestern University, while Marlon Guangko was watching his billiard pool which was near the pushcart of Baybayanon. There were students playing billiard pool and there were others who sat on the pushcart eating chicos bought from Baybayanon's fruit stand. One of the students eating chicos who was sitting on the pushcart was Bashier Majid, a Med-Tech student of Southwestern University. A little later, Benjamin Fernandez arrived coming from his house which is just about 17 meters away from Gate No. 4. At first, he watched the billiard pool game. He saw Bashier Majid sitting on the pushcart which served as a fruit store of Baybayanon. From where he stood, Benjamin Fernandez noticed accused Victor Embuscado and accused Francisco Santosidad at the entrance of Gate No. 4 watching the students entering the gate or coming out of it. He knew Victor Embuscado

to be a member of the security force of SWU. Fernandez then proceeded to Gate No. 4 where Victor Embuscado and Santosidad were, and at this point, he saw accused Pepoy Embuscado, Reynaldo Caitor and Daniel Mercado conversing with each other at the lobby of the Engineering Building about six meters away from Gate No. 4. He knew that these three accused were members of the Security Force of SWU. A little later, these three accused walked towards Gate No. 4 and Pepoy Embuscado told Caitor and Mercado saying: 'That one, that one in stripe blue' at the same time pointing to Bashier Majid who was then wearing a striped blue shirt. Then Mercado and Caitor answered: 'Is he the one wearing striped blue?' When Reynaldo Caitor (also known as 'Boy Hiyong') saw Benjamin Fernandez, Caitor said: 'Jie, (Meaning Benjamin Fernandez), is he your friend?' (Caitor pointing to Bashier Majid) and Fernandez answered that he (meaning Majid) is a friend of Bagis, Fernandez, Tallo and Pang who were near Majid at that time. Pepoy Embuscado then went out of the gate followed by Daniel Mercado, Reynaldo Caitor and Victor Embuscado. Santosidad was the last to follow as he was ordered by Daniel Mercado to follow them he being the guard. They proceeded to where Bashier Majid was seated on the pushcart. Mercado and Caitor pulled Majid from where he was seated while Pepoy Embuscado looked around the pushcart as if looking for something. Finding nothing, Pepoy Embuscado joined Mercado and Caitor in pulling Majid and bodily pushing him towards Gate No. 4. Upon seeing this, Baybayanon shouted saying: 'Tabang!' meaning 'Help!', but nobody helped except Marlon Guangko who tried to hug Majid but he was elbowed by Pepoy Embuscado who then pulled out from his waist a revolver saying 'You have nothing to do with this!'. They continued to drag and push Majid towards Gate No. 4 and as they were nearing the gate, accused Federico Alazas went out of the gate and helped pull Majid towards the gate. As the accused and Majid passed the gate, Mercado ordered Santosidad to close the gate. Nevertheless, Fernandez remained at the gate and through the slit between the two shutters of the gate, he saw Majid being mauled and boxed by Caitor, Mercado, Alazas and Victor Embuscado, while Pepoy used the butt of his revolver in hitting the head of Majid and thereafter Pepoy Embuscado shot Majid with his revolver three times, two of which found their mark on the face and on the chest of Majid which were both fatal thus causing his death. Fernandez saw the shooting of Majid by Pepoy Embuscado but Guangko and Baybayanon did not, although the latter two heard three bursts of a gun in the immediate vicinity of Gate No. 4. While the four accused ran away from the scene of the shooting towards the Medicine Building, accused Alazas was seen taking a piece of plywood and placing it near the body of Majid in such a way that it sheltered the body of Majid from the heat of the sun.

"Bashier Majid was brought to the Sacred Heart Hospital by the students who tried to help him but nothing could be done anymore. Bashier Majid was dead. x x x"

On March 10, 1983, the body of the deceased Bashier Majid was examined by Dr. Tomas P. Refe, the Senior Medico Legal Officer of the National Bureau of Investigation at Cebu City. The necropsy report submitted by Dr. Refe contained the following findings:

"Pallor, lips and nailbeds.

"Abrasion, linear, 1.5 cms., posterior aspect, upper third, forearm, right.

"Contuse abrasions: 5.0 x 9.0 cms., forehead, left side; 3.0 x 4.0 cms., zygomatic region, left side; 2.0 x 3.0 cms., nasal region, left side; 1.0 x 1.0 cms., ala nasi region, left side; 3.0 x 5.0 cms., maxillary region, left side; 1.0 x 1.5 cms., lateral angle of the mouth, left side; two (2) in number, both measuring 1.0 x 2.0 cms., posterior aspect, lower third, forearm, right.

"Lacerated wound, gaping, 1.0 cms., parietal region, right side.

"Wounds, gunshot:

"I ENTRANCE — ovaloid, edges irregular, longest axis running upwards and posteriorly, 0.5 x 0.6 cms., with contuse abraded collar, 0.1 cm. wide at its upper border and 0.2 cm. wide at its lower border and specks of gunpowder tattooing over an area 10.0 x 12.0 cms., located at the maxillary region, left side, 11.5 cms., from the

anterior median line, 5.0 cms. in front at the level of the left external auditory meatus; directed backwards, upwards and from left to right; involving the skin and soft tissues, fracturing the skull at the floor of the middle cranial fossa, left side, lacerating severely the substance of the brain along its route, finally a fragmented and deformed copper jacketed bullet is lodged and recovered in the parietal lobe of the brain, right side.

"II ENTRANCE — ovaloid, edges irregular, longest axis running downwards and medially, 0.5 x 0.6 cms., with contuse abraded collar 0.1 cm. wide at its lower border and 0.2 cm. wide at its upper border, located at the lower anterior chest wall, left side, level of the upper chondral portion of the 8th rib, 6.0 cms. from the anterior median line and 115.0 cms. from the left heel; directed backwards, downwards and from left to right; involving the skin and soft tissues, perforating the diaphragm left side, piercing the left lobe of the liver, severing the abdominal aorta, then changing its course slightly forwards, piercing through the right lobe of the liver, finally a copper jacketed bullet is lodged and recovered lying in the abdominal cavity at the posterior aspect of the liver, right side.

"Hemorrhage, intracranial, extensive, severe.

"Hemoparitoneum , 1.400 cc.

"Hemothorax, left side, 500 cc.

"Heart chambers, empty of blood.

"Lungs, congested and edematose, cut sections show reddish congested cut surfaces.

"Brain and other visceral organs, moderately pale.

"Stomach, full of partially digested rice and other food materials.

"CAUSE OF DEATH: Hemorrhage, severe, secondary to gunshot wounds.

"REMARKS: Two (2) pieces copper jacketed bullet submitted to the Ballistics Section for examination."

The accused-appellants on the other hand claim that there was no conspiracy between them and the Embuscado brothers in the killing of Bashier Majid and pointed to the latter as the only persons responsible for the death of Bashier. The defense evidence is summarized in the decision of the lower court as follows:

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"x x x We gather from the testimony of Fermin Rendon, Daniel Mercado and Reynaldo Caitor that at about 10:00 o'clock in the morning of March 10, 1983 at Fermin Rendon, a student of SWU, was copying notes of his classmate at the ground floor of the Engineering Building about seven to eight meters from Gate No. 4. Caitor and Mercado were in the vicinity of Gate No. 4 as well as the security guard and two other persons. Caitor was there because he had instructions from his immediate boss, Mr. Roberto Inoferio, to watch for developments in the campus on the third day of student demonstration because earlier that morning, a student named Billamil Hasan was found to have a pen-gun in his possession. Upon the other hand, Daniel Mercado was there because he was instructed to look-see for any happening, apprehensive as they were, because that was the third day of the student demonstration in the SWU campus. While Caitor and Mercado were thus conversing, they allegedly heard a voice saying, 'If you don't allow me to check your bag, you will not be allowed to enter!' The voice was that of the security guard on duty, accused Francisco Santosidad, and the person to whom these words were addressed to, was Bashier Majid. Majid was about to enter the gate allegedly bringing a bag slung on his shoulder. Santosidad wanted to inspect the bag but Majid allegedly refused and insisted in getting inside the gate so the guard grabbed the bag and in the process, he was outbalanced and he fell to the ground holding Majid's bag. Caitor and Mercado then held Majid telling him to go with them to the office. All so suddenly, Pepoy Embuscado came from behind Majid obviously very mad, and telling Caitor and Mercado to get out of his way, as he was holding a revolver with his two hands outstretched, pointing it to

Majid. Caitor said, 'Poy don't, Poy! What is this?', while Mercado said, 'Poy, Poy, don't, Poy!' but Pepoy Embuscado persisted saying, 'You have nothing to do with this. Get away from here!' So Caitor and Mercado let loose Majid and they moved backward and immediately Pepoy Embuscado fired three shots from his gun hitting Bashier Majid. Caitor laid prone on the ground while Mercado ran towards the Medicine Building. As Caitor looked up, he saw Poy Embuscado and Victor Embuscado running away from the scene of the shooting. Caitor stood up and ran away towards the lobby and up to the Engineering Building. After a little while, Caitor went back to the scene of the shooting as many students were already surrounding Bashier Majid who at this time was lying prostrate on the ground. Mercado also went back to the scene of the shooting. Then, Patrolman Rafael Apurado arrived followed by Federico Alazas. The policeman inquired who shot Majid and somebody in the crowd said, 'They already ran away.' Apurado requested Caitor and Mercado to get an ambulance so they went to the Sacred Heart Hospital nearby but the driver of the ambulance was not around. They went back and saw that Majid was already bodily carried by the students, then later loaded on a Volkswagen and brought to the hospital. Bashier Majid was already dead on arrival at the hospital."

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On December 17, 1983, the lower court found the existence of conspiracy between Reynaldo Caitor, Daniel Mercado, Pepoy Embuscado and Victor Embuscado and con-victed the accused-appellants of the crime of murder. Federico Alazas and Francisco Santosidad were acquitted on grounds of reasonable doubt. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered finding the accused Reynaldo Caitor and Daniel Mercado, guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code. There being no mitigating nor aggravating circumstance, the penalty shall be in the medium period. Consequently, Reynaldo Caitor and Daniel Mercado are each sentenced to suffer the penalty of Reclusion Perpetua and to jointly and severally indemnify the heirs of Bashier Majid in the sum of P12,000.00, and each to pay 1/6 of the costs of this action.

"With respect to the accused Federico Alazas and Francisco Santosidad they are hereby acquitted on the ground that their guilt was not established beyond reasonable doubt. The Cebu METRODISCOM or the City Warden, or whoever is in custody of the accused Federico Alazas and Francisco Santosidad, is hereby ordered to release them immediately from further custody unless they are being detained for some other crime.

"Let the record of this case be placed in the archive subject to be recalled to the regular calendar of the Court anytime that accused Victor Embuscado and Pepoy Embuscado or either one of them shall have been arrested and brought to the jurisdiction of this Court."

Accused-appellants Reynaldo Caitor and Daniel Mercado now raise the following assignments of errors in this appeal:

ERROR NO. I

THE HONORABLE TRIAL COURT ERRED IN FINDING THAT CONSPIRACY EXISTS BETWEEN THE APPELLANTS MERCADO AND CAITOR WITH THE ACCUSED EMBUSCADO BROTHERS.

ERROR NO. II

THE HONORABLE TRIAL COURT ERRED IN FINDING THE APPELLANTS GUILTY IN THE KILLING OF BASHIER MAJID.

The appellants argue that there was no conspiracy between them and Pepoy Embuscado when the latter shot Bashier Majid. According to them, the testimonies of Benjamin Fernandez, Marlon Guangko and Felicidad Baybayanon that all the accused took turns in kicking, boxing, and mauling Bashier Majid are belied by the findings of Dr. Tomas Refe in his Necropsy Report.

The appellants' contentions have no merit. The existence of conspiracy was proven by the number of indefinite acts of the appellants which were all aimed towards the accomplishment of a common unlawful purpose. Benjamin Fernandez testified that:

"Q On March 12, 1983 at about 9:30 in the morning, do you recall where you were?

"A I was looking at the billiard table." (tsn., June 20, 1983, p. 7)

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"Q How long did you stay at the billiard pool table?

"A Only for about three minutes. I did not stay there long.

"Q Where did you go then?

"A I went near gate 4 where Santosidad and Embuscado were."

(tsn., June 20, 1983, pp. 16-17)

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"Q

While thereat, where were you facing?

"A I was facing the lobby of the Engineering building.

"Q Were there persons at the lobby of the Engineering building while you were facing there?

"A There were.

"Q Please tell this Honorable Court who were the persons whom you know at the lobby of the Engineering building on March?

"A Those I saw at the lobby of the Engineering building were Pepoy Embuscado, Reynaldo Caitor and Daniel Mercado.

"Q What were they doing in the lobby?

"A As if they were discussing and they were facing in front of each other.

(tsn., June 20, 1983, pp. 17-18)

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"Q You said they were facing each other talking. How long did they talk, if you know?

"A It did not take them long to talk and they immediately proceeded to the place where Francisco Santosidad and Victor Embuscado were sitting."

(tsn., June 20, 1983, p. 19)

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"Q You said that they went near the place where Francisco Santosidad and Victor Embuscado were. When they went at gate 4 near the aforementioned persons, what did they do, if they did anything?

"A Pepoy Embuscado pointed to someone outside.

"Q

Who was pointed out, if you know?

"A He pointed to the one seated on the pushcart.

"Q Did Pepoy, Embuscado say anything while pointing out somebody outside?

"A He was talking to Boy Hiyong and Daniel Mercado.

"Q What did he say?

"A 'That one', at the same time pointing to that person outside the gate. 'That one! That one in stripe blue!'

"Q Who was that person wearing stripe blue shirt?

"A They pointed to Bashier Majid who was seated on the pushcart.

(tsn., June 20, 1983, pp. 20-21)

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"ATTY. PAREDES:

"Q Now, going back to that gate 4 where you said you talked with Boy Hiyong. After Boy Hiyong asked you whether you know the person sitting on a pushcart wearing stripe blue shirt, what happened?

"A Pepoy went out of the gate first followed by Daniel Mercado, Reynaldo Caitor, Victor Embuscado. Francisco Santosidad was the last.

ATTY. PAREDES:

"Q Do you know in what direction they were going when they went out of gate 4?

"A They were in the direction of the place where Bashier Majid was sitting.

"Q

Were they able to reach the place where Bashier Majid was sitting?

"A Yes, sir, they were able to reach the place.

(tsn., June 20, 1983, pp. 26-27)

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"Q When they reached the place where Bashier Majid was sitting, what happened?

"A They let Bashier Majid stand and Daniel Mercado was holding both hands of Bashier Majid. They held him; they let him stand and Pepoy Embuscado was looking through the pushcart and since he did not see anything in the pushcart, they pulled him.

COURT:

"Q When you said 'they', who were these men who pulled Bashier Majid?

"A

Daniel Mercado and Reynaldo Caitor." (tsn., June 20, 1983, pp. 28-29)

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COURT:

"Q You mean you heard no complaint and no words as if resisting the alleged acts of the accused?

"A When they pulled him, when they helped each other pulled him, Marlon Guangko approached them and told them this: 'Bay, do not do anything to him; he is our friend.'"

(tsn., June 20, 1983, p. 30)

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"Q

You said that Marlon Guangko approached Bashier and Daniel Mercado and Boy Hiyong. What happened when they approached these persons?

"A I saw that when Marlon Guangko was there, Boy Hiyong just pushed him aside." (tsn., June 20, 1983, p. 32)

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ATTY. PAREDES:

"Q You said that Felicidad Baybayanon was there also. What, if anything, did she do if she did anything, when he was pulled by Pepoy Embuscado, Daniel Mercado and Boy Hiyong?

"A She only said this: 'What crime had he done, why you mauled him; you ganged up on him.

ATTY. PAREDES:

"Q

So what happened after that, after you said Dicky Alazas met them and helped in pulling Bashier Majid?

"A They were able to bring him inside the gate of Southwestern University.

"Q When they were already inside, what happened?

"A I peeped and I saw them ganged up on him and hitting him on different parts of his body. (witness pointing to his waist, to his face)."

(tsn., June 20, 1983, pp. 33-34)

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ATTY. PAREDES:

"Q

You used the word 'they' in refer-ring to the persons who mauled Bashier Majid. Whom are you referring to when you used the word 'they'?

"A Boy Hiyong, Daniel Mercado, Dicky Alazas and Victor Embuscado.

"Q Then what transpired next?

"A Bashier Majid was only covering his face as if he was feeling pain and Pepoy Embuscado pulled out a revolver and with this revolver he used it in hitting the forehead of Bashier Majid.

COURT

"Q What part of the revolver hit Bashier Majid?

"A The handle, Your Honor.

COURT:

"Q

Where was Majid hit!

"A On his head because blood was already oozing, Your Honor.

ATTY. PAREDES:

"Q After Bashier Majid was pistol-whipped by Pepoy Embuscado, what happened?

WITNESS:

"A After Pepoy Embuscado hit Bashier Majid on the forehead and when he was already about to bend, Pepoy Embuscado shot Bashier Majid.

(tsn., June 20, 1983, pp. 35-36)

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Marlon Guangko corroborated the testimony of Benjamin Fernandez. He positively identified the accused-appellants together with the Embuscado brothers as the persons who dragged Bashier Majid from the pushcart towards Gate 4 of the Southwestern University. He testified that:

"Q - While you were there watching your billiard pool table, did you witness an unusual incident?

"A - Yes, sir.

"Q - What was that?

"A - While I was watching my mini billiard pool table, I heard a shout: 'Bay, ayaw hilabit' meaning 'Bay don't do anything'.

"Q - From what direction did that voice come from?

"A - That was the voice of one coming from the pushcart."

(tsn., June 21, 1983, pp. 83-84)

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"Q -

When you heard the voice 'don't harm him', what did you do?

"A - I Went near them."

(tsn., June 21, 1983, p. 86)

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"Q - After you heard the voice, what transpired after you approached them?

"A - They pulled Bashier Majid and so I intervened saying, 'he is my friend' but Boy Hiyong brushed me aside.

"Q - You used the word 'they' when referred to the persons who pulled Bashier Majid from the pushcart, who were the persons who pulled Bashier Majid from the pushcart?

"A -

Pepoy Embuscado, Victor Embuscado, Boy Hiyong, Daniel Mercado and Federico Alazas."

(tsn., June 21, 1983, p. 87)

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"Q - To what direction was Bashier Majid pulled?

"A - Towards the Engineering Building."

(tsn., June 21, 1983, p. 95)

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"Q - Don't you know what happened after that?

"A -

Yes, I know.

"Q - What was that?

"A - I heard a shot.

"Q - How many shots did you hear?

"A - Three shots.

"Q - What happened after that?

"A - There were persons who were looking, talking and running so I went and I saw Bash already dead."

(tsn., June 21, 1983, pp. 97-98)

Likewise, Felicidad Baybayanon testified that she saw the accused-appellants with the other accused dragging Bashier Majid from the pushcart towards Gate No. 4 of the Southwestern University and brushing aside Marlon Guangko when the latter went to the rescue of Bashier. She testified that:

"Q. After you bought Snow Bear candies, did you witness any unusual inci-dent?

"A. When I looked back I saw Pepoy Embuscado pulling Bashier Majid.

"Q. Aside from Pepoy Embuscado, did you see any other person there?

"A. Yes.

"Q. Please tell this Honorable Court who were they?

"A. Boy Hiyong, Daniel Mercado and Victor Embuscado."

(tsn., June 27, 1983, p. 13)

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COURT:

"Q. When Bashier Majid was pulled by Pepoy Embuscado, did you hear anything spoken either by Pepoy Embuscado or Bashier Majid?

"A. I heard.

COURT:

"Q What did he say?

"A. Bashier said, 'Tabang, Nang!' (Nang, help me!)"

(tsn., June 27, 1983, pp. 19-20)

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COURT:

"You said Bashier Majid said, 'Tabang, Nang' or addressing you, did you in effect help him?

"A. I called for Marlon.

(tsn., June 27, 1983, p. 20)

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"Q. You said that you saw also Victor Embuscado there, what if anything did Victor Embuscado do when you saw him?

"A. He was holding the hair of Bashier Majid and pulled him.

"Q. Whose hair was held by Victor?

"A.

The hair of Bashier.

"Q. What did he do with the hair of Bashier Majid?

"A. He pulled the hair of Bashier.

"Q. You also said that you saw Boy Hiyong, what if anything did Boy Hiyong do when you saw him?

"A. He was holding the collar of the T-shirt of Bashier Majid.

"Q. You said you saw Daniel Mercado, what if anything did Daniel Mercado do when you saw him?

"A. He pulled the hand of Bashier Majid.

"Q. He was pulled towards where?

"A.

Towards the gate of the Engineering Building of SWU.

"Q. By the way, you said in answer to the question of the Honorable Presiding Judge that you called Marlon Guangko to help Bashier Majid, what did Marlon do when you called him for help?

"A. He hugged Bashier Majid by holding his waist."

(tsn., June 27, 1983, pp. 21-22)

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"Q. Immediately after Bashier Majid was inside the gate or Gate Four of the Southwestern University, what happened next?

"A. Daniel Mercado shouted, 'close the gate!'"

(tsn., June 27, 1983, p. 27)

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"Q. After the gate was closed, what happened next?

"A. Not long after, there was a shot.

"Q. How many shots did you hear?

"A. Three.

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"Q. After you heard the shots, what did you do?

"A.

I proceeded towards the store beside the Engineering Building and since there were steps going down I went down the steps and peeped thru an opening of the gate of the Engineering Building.

"Q.

Peeped thru what?

"A. I peeped thru the lower portion of the gate of the Engineering Building."

(tsn., June 27, 1983, pp. 28-29)

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ATTY. PAREDES:

"Q. What did you see inside when you peeped thru the gate?"

"A. I saw Bashier Majid lying face up with hands outstretched."

(tsn., June 27, 1983, pp. 31-32)

In fact, the above testimonies were corroborated by Francisco Santosidad, the security guard who was assigned to Gate No. 4 of the Southwestern University and who was himself one of the accused in the lower court. Thus:

Atty. Ceniza:

"While you were doing your duty, what was or can you recall if you noticed any unusual incident that happened outside Gate 4, Mr. Santosidad?"

"A. Yes.

"Q. Tell the Court what was that?"

"A. At first a lady got inside the gate and when this lady got inside I closed the gate but not fully closed it and later I saw somebody outside the gate who was forced to go inside the gate of the Engineering Building by some persons."

(tsn., October 6, 1983, pp. 62-63)

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"Q.

Were they able to force that person to get inside the gate?"

"A. Yes."

(tsn., October 6, 1983, p. 64)

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COURT:

"Who was that person whom Mercado and Caitor were forcing to get inside the gate of SWU?

"A That student who was shot, Your Honor.

(tsn., October 6, 1983, p. 64)

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Atty. Ceniza:

"After the group entered the gate, did you hear any word spoken by any-one of them?

"A. Yes.

"Q. What did you hear?

"A. They shouted, 'Guard, you close the gate'.

COURT:

"Who said that?

"A. Daniel Mercado.

Atty. Ceniza:

What did you do when you were ordered to close the gate?

"A. Because of fear I closed the gate.

COURT:

"This is the second time you mentioned of fear. Why are you mentioning of fear here when you are a security guard?

"A. Because I noticed that they were angry at me, Your Honor."

(tsn., October 6, 1983, p. 66)

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Atty. Ceniza:

"Were you able to close the door of Gate 4 Mr. Santosidad?

"A. Yes, because of fear I was able to close the door but then it suddenly opened so I pushed it back again to close the door and that was the time I heard shots."

(tsn., October 6, 1983, p. 67)

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COURT:

"How many shots did you hear?

"A. Two or three shots. Because I was afraid, I cannot recall anymore, Your Honor."

(tsn., October 6, 1983, p. 68)

We agree with the observation of the Solicitor General that the accused-appellants and the Embuscado brothers,

as members of the Southwestern University security force must have been impelled by the common desire to go after the leaders of the student demonstration and Bashier Majid was one. In fact, before the shooting incident, the leaders of the student demonstrations were under very close surveillance by the four (4) accused.

The foregoing background of the crime coupled with the unimpeached testimonies of the three prosecution witnesses and corroborated by the testimony of one of the accused, indisputably show that the accused-appellants acted in concert with their co-accused Pepoy Embuscado and Victor Embuscado in killing Bashier Majid. The presence of conspiracy is evident since the appellants took part in the deed and cooperated with one another showing a unity of purpose and criminal intent. In *People v. Plandez*, (132 SCRA 69), we held that:

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"x x x 'conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests, and such unity of purpose and concert of action serve to establish the existence of the conspiracy and the criminal liability as principals of the conspirators. x x x."

Against these straightforward testimonies of the three (3) prosecution witnesses, the accused-appellants could only present a defense of denial and even concocted a story about a blue bag containing a "barong" and a "moslem bolo" being in the possession of Bashier Majid as he was about to enter the premises of the university.

Santosidad, the accused security guard who was assigned at Gate No. 4 and who allegedly grabbed the blue bag, denied having seen that bag in the possession of Bashier Majid nor having grabbed it from him. On the contrary, Santosidad categorically testified that he was instructed by Mr. Inoferio, the head of the Office of Students Affairs to tell to the media people that Bashier was carrying a blue bag containing a "barong" and a "moslem bolo" as he was about to enter the university premises and that he grabbed this bag. He testified that:

Atty. Paredes:

"And you were given instructions inside the office of Robert Inoferio, is that correct?

"A. Yes.

"Q. And you testified also that you were taught by 'them', whom are you referring to when you used the word 'them'?

"A. Mr. Inoferio and a companion of his inside the office but since it was Mr. Inoferio who gave me the instructions I was only looking at him."

(tsn., October 6, 1983, pp. 84-85)

xxx xxx xxx

"Q. One of the things he taught you was this. . . please correct me if I am wrong. . . Mr. Inoferio said: 'I have here a blue bag and there is a television crew that will arrive and you will tell them that this bag containing the

'barong' was brought by Bashier Majid.' That was the instruction, was it?

"A. That is right. That was his instruction to me, Sir.

"Q.

And you followed this instruction because you were afraid that you might be harmed by them?

"A. Yes, because there in the office I cannot do anything."

(tsn., October 6, 1983, pp. 85-85)

xxx xxx xxx

Atty. Paredes:

"So you were forced to declare publicly that you confiscated a blue bag and a 'barong' from Bashier Majid even if it were not true?

"A. Even if it were not true but I was forced to declare that before the media people."

(tsn., October 6, 1983, pp. 86-87)

COURT:

"Why did you consider the testimony of Caitor that you grabbed that bag from Bashier Majid as if you were being implicated by them?

"A. Because that was what he testified here that I was the guard who got that blue bag from Bashier Majid and that later I fell to the ground.

COURT:

"Because that was the truth then regarding this blue bag?

"A. The truth Your Honor is that I never got hold of that blue bag.

COURT:

"And was there any grappling for the possession of this bag between you and Bashier Majid immediately before he was shot?

"A. No, I did not get a blue bag from him, your Honor."

(tsn., October 6, 1983, pp. 99-100)

The dubious introduction of the blue bag as evidence and the testimony of Santosidad, greatly affected the credibility of the accused-appellants and considerably weakened the defense evidence.

The accused-appellants further argue that the following incidents which happened immediately after the shooting negates the existence of conspiracy between them and the Embuscado brothers: (1) the Embuscado brothers took flight; (2) the accused-appellants remained at the vicinity of Gate No. 4 of the Southwestern University and assisted Pat. Rafael Apurado; (3) when Daniel Mercado, Reynaldo Caitor, Federico Alazas and Atty. Jose Aznar went to the office of Philippine Constabulary. General Olano on March 13, 1983, the accused-appellants were not aware that they were implicated in the shooting of Bashier Majid; (4) it was only after the informal investigation conducted by General Olano and after they were asked to proceed to Police Captain Romeo Colina that they were informed of their being implicated in the shooting incident; (5) they asked for the deferment of the trial after the arrest of the Embuscado brothers as they believed that the Embuscado brothers would readily admit that the shooting of Bashier Majid was of their own making and not of the rest of the accused; and (6) in their desire to have the Embuscado brothers arrested, the accused-appellants even secured a picture of Pepoy Embuscado, had it enlarged, copied and gave the copies to PC Major Degamo, Captain Castor and other PC officers.

The introduction of the blue bag as evidence clearly shows the accused-appellants' intention, in concert with Mr. Inoferio of the Office of the Students Affairs, to conceal the commission of the crime.

The act of the accused-appellants in not leaving the place of shooting and even helping Sgt. Apurado while the Embuscado brothers took flight, the fact that they pretended not to be aware that they were implicated in the shooting, and that while in jail even secured a picture of Pepoy Embuscado to help the police arrest him do not exculpate them from the proved criminal liability and, in fact as intimated by the Solicitor General, these acts form part of their plan to escape criminal responsibility.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the modification that the indemnity is increased to THIRTY THOUSAND PESOS (P30,000.00), and one-half (1/2) of the costs shall be paid by each of the accused-appellants.

SO ORDERED.

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

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