

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS DELA CRUZ, DEMEROLD AYADO AND ABECIDUEÑO AJEDO, JR., ACCUSED-APPELLANTS.

G.R. No. 68319, March 31, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an information filed with the then Court of First Instance (now Regional Trial Court) of Cabarroguis, Quirino, on 28 October 1982, accused-appellants Jesus dela Cruz, Demerold Ayado and Abecidueño Ajedo, Jr. were charged with the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

"That on or about the 21st day of July, 1982, in the municipality of Diffun, Province of Quirino, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Jesus dela Cruz, Demerold Ayado and Abecidueño Ajedo, did then and there, wilfully, unlawfully and feloniously by conspiring together and mutually helping one another and by means of treachery and evident premeditation and with the use of bladed instruments and stones attack, assault, strike and stab one Felipe Natura by inflicting upon the latter multiple wounds resulting to (sic) the death of said Felipe Natura therefore.

That the commission of the offense was aggravated by the following circumstances:

1. That accused took advantage of their superiority in numbers (sic);
2. That the crime was committed with insult to or disregard to (sic) the respect due to offended party by reason of his age;
3. That the crime was committed in the (sic) nighttime to facilitate its commission.

CONTRARY TO LAW."[1]

The case was docketed as Criminal Case No. 380.

Upon arraignment, each of the accused entered a plea of not guilty.[2]

At the trial of the case on its merits, the prosecution presented eight (8) witnesses, including eyewitness Antonia Natura, wife of the victim, Felipe Natura. The other prosecution witnesses were Dr. Luis Bergado, Elpidio Bañao, Rolando Natura, Perla Minia, Judge Jose Guirnela, Archibal Afan and Pat. Bienvenido Gumpal.[3] On the other hand, the defense presented the following witnesses: Rodolfo Mabanta, Jessie Tubay, Abecidueño Ajedo, Sr. and accused Jesus dela Cruz.[4]

On 28 May 1984, the trial court promulgated its decision[5] convicting the accused-appellants of the crime charged. The dispositive portion thereof reads as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATION (sic), there is no doubt in the mind of the Court

that the crime of murder has been committed and that the accused Jesus dela Cruz, Demerold Ayado and Abecedueño Ajedo, Jr. are guilty beyond reasonable doubt.

WHEREFORE, this Court hereby sentences Jesus dela Cruz, Demerold Ayado and Abecedueño Ajedo, Jr. to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of Thirty Thousand Pesos (P30,000.00) jointly and severally following the precedent set forth in *People vs. Dela Fuente*, (G.R. Nos. 6351-52) and reiterated in the case of *People vs. Romeo Villanueva, et. al.*, (G.R. No. L-32274), without subsidiary imprisonment in case of insolvency. The detention of the accused shall be fully credited in their favor."

In rendering its verdict and imposing upon the accused-appellants the penalty of reclusion perpetua, the trial court made the following pronouncement:

"The evidence would show that aggravating circumstances were attendant in the commission of the offense. Evidence was taken (sic) of superior strength and the accused employed means to weaken or deprive the victim from a (sic) possible defense. Jesus Dela Cruz with pretense to be friendly, greeted the victim, approached and accosted him, suddenly grabbed from his waist the scythe while the accused Demerold Ayado tapped the victim's shoulder. The accused Jesus Dela Cruz, Demerold Ayado and Abecedueno Ajedo, Jr., acting in concert, mauled and stabbed the victim mercilessly. The victim is an old man although with his helpless wife, is no match to three armed, young men who conspired to maul and stab him to death.

The crime was committed at night time to facilitate its commission. The victim with his wife was (sic) on their way home about 10:00 o'clock in the evening of July 21, 1982. They were surprisingly accosted along the stony road by the accused. It was dead dark that night although the victim's wife was holding a lamp. With the lamp (sic), the wife was holding, would place the victim to (sic) a more vulnerable assault or attack as it has happened.

It was clearly established from the evidence that the accused Jesus Dela Cruz, his co-accused Demerold Ayado and Abecedueno Ajedo, Jr. would point to an evil purpose and design (sic) that of mercilessly stabbing and mauling the victim to death.

There is no mitigating circumstance to offset the two aggravating circumstances of taking advantage of superior strength (sic) and night time to facilitate its commission."

Accused-appellants filed a notice of appeal on 4 June 1984.[6] However, on 5 June 1984, they filed a petition for new trial alleging therein excusable neglect on their part in looking for the other eyewitness, Dionisio B. Millo, whose "new address is newly discovered," and that the testimony of said witness is so vital and important that it could alter the judgment of conviction.[7] On 8 June 1984, they filed a motion to withdraw their appeal as the same was incompatible with their petition for new trial. They also prayed that their petition for new trial be given due course.[8]

On 6 July 1984, the trial court denied[9] the petition for new trial since the statement or affidavit of Dionisio B. Millo could not be considered newly discovered evidence as it "existed during all the time when the case was heard;" besides, even if it were to be admitted, it would not alter the judgment of conviction.

Hence, on 20 July 1984, accused-appellants re-filed their notice of appeal.

The antecedent facts, as succinctly stated in the Appellee's Brief,[10] are as follows:

"In the evening of July 21, 1982, Antonio (sic) Natura and her husband, Felipe Natura, went to the house of Councilman Francisco Ponceja located at Barangay Magsaysay, Diffun, Quirino. They were accompanied by Perla Minia (pp. 5-6, tsn, Dec. 13, 1982).

They arrived at Councilman Ponceja's house, but he was not around so they conversed with Councilman

Ponseja's wife who was there (p. 6, tsn, Ibid.).

Afterwards, Antonia Natura, her husband Felipe Natura and Perla Minia left Ponseja's house and returned to their house (p. 7, tsn, Ibid.).

On their way home, they met the three accused, Jesus de la Cruz, Demerold Ayado and Abecedueño Ajedo, who were standing by the road (p. 7, tsn, Ibid.). Antonia Natura recognized them as she was carrying an oil lamp.

Upon meeting them, accused Jesus de la Cruz said, 'Good evening (Tatang) father'. Felipe Natura answered, 'Good evening my son (Barok)' (p. 7, tsn, Ibid.).

Then, Jesus de la Cruz said to Felipe Natura, 'you, after the election, as if you hate me already.' Felipe Natura answered, 'No my son, you forget that already.' At this juncture, accused Demerold Ayado tapped the shoulder of Felipe Natura, while Jesus de la Cruz at that same moment shouted, 'Vulva of your mother' and suddenly boxed Felipe Natura. Demerold Ayado, joined by Abecedueño Ajedo, likewise, boxed Felipe Natura. While the three accused were boxing and mauling Felipe, Antonia Natura pleaded for the three accused to stop but the three accused did not listen to her (pp. 8-9, tsn, Ibid.).

When Antonia's pleas remained unheeded, she shouted for help, but nobody came to their succor. At that juncture, accused Demerold Ayado took hold of the front dress of Antonia and shouted at her saying, 'Vulva of your mother, we are going to kill you now. You ask help from your sons-in-law' (p. 11, tsn, Ibid.).

Antonia struggled to free herself and when her front dress was released from the hands of Demerold Ayado, she ran back to the house of Ponseja for help (p. 11, tsn, Ibid.).

When no one was around the house to help her, Antonia returned to the place where her husband Felipe Natura was being mauled and maltreated. Demerold Ayado, upon seeing Antonia ran after her, and so the latter ran away again (p. 12, tsn, Ibid.).

After the lapse of several minutes, when Antonia noticed that everything was quiet, she returned to the place where her husband was, but the three accused were no longer there. She embraced her husband and noticed blood on his face and body. She ran again to look for help. This time she went to the house of her godson, Elpidio Bañao, who was at home. She informed him that her husband was mauled by the three accused. When Elpidio Bañao and Antonia Natura returned to the scene of the crime, her husband was no longer there (pp. 13-14, tsn, Ibid.).

She began to shout. Meanwhile, her godson looked around, and noticed that there was light in the house of Councilman Ponseja and he learned that Felipe Natura was brought there (p. 15, tsn, Ibid.).

Elpidio and Antonia went to the house of Ponseja and there she saw her husband prostrate with blood all over his face and body (p. 15, tsn, Ibid.).

When Elpidio noticed that Felipe Natura was still breathing, he hired a vehicle and brought Felipe to the Quirino Provincial Hospital (p. 15, tsn, Ibid.).

The next morning, Felipe Natura died (p. 18, tsn, Ibid.)."

Accused-appellants Demerold Ayado and Abecedueño Ajedo, Jr. put up the defense of alibi, while accused-appellant Jesus dela Cruz interposed the justifying circumstance of self-defense.[11]

In this appeal, accused-appellants assign the following errors:[12]

"I

THE TRIAL COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL BECAUSE THE HEREIN ACCUSED-APPELLANTS WERE PREJUDICED AND PREVENTED FROM FAIRLY PRESENTING THEIR DEFENSE DUE TO THE SERIOUS ERROR ON THE PART OF THEIR ATTORNEY WHO FAILED TO EXERT SUFFICIENT EFFORTS TO BRING THE VITAL WITNESS TO TESTIFY IN COURT.

II

THE TRIAL COURT ERRED IN CONVICTING ALL THE HEREIN ACCUSED-APPELLANTS FOR (sic) MURDER AND IMPOSING A SENTENCE OF LIFE IMPRISONMENT ON THE STRENGTH OF THE TESTIMONY OF A LONE 'WOMAN WITNESS', THE WIFE OF THE DECEASED, AND THAT NOBODY CORROBORATED HER TESTIMONY OR VERSION OF THE CASE.

III

THE TRIAL COURT ERRED IN ITS FINDINGS AND CONCLUSION THAT A CONSPIRACY EXISTED AMONG THE APPELLANTS IN THE COMMISSION OF MURDER BECAUSE THE PREVAILING DOCTRINE IN OUR JURISDICTION IS THAT CONSPIRACY MUST BE SHOWN TO EXIST AS CLEARLY AND CONVINCINGLY AS THE COMMISSION OF THE OFFENSE ITSELF.

IV

THE TRIAL COURT ERRED IN INCLUDING THE HEREIN APPELLANTS: DEMEROLD AYADO AND ABECIDUEÑO AJEDO IN THE CONVICTION OF THE CRIME OF MURDER NOTWITHSTANDING AN INSUFFICIENCY OF EVIDENCE ADDUCED AND PRESENTED AGAINST THEM AS IN FACT THE PROSECUTION FAILED TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT."

1. The first assigned error is without merit. Accused-appellants candidly admit in their Brief that the main objective of their petition for new trial is "to present either Dionisio Millo or Teofilo Cielo to testify and corroborate the version of Jesus dela Cruz." The latter is a witness for the defense.[13] In their petition for new trial, however, accused-appellants mention only the name of Dionisio Millo. Millo appears to have been investigated by police corporal Bienvenido Gumpal on 26 July 1982. He signed a sworn statement on said date before the Municipal Judge of Diffun, Quirino,[14] which the prosecution marked and offered in evidence as Exhibit "I".[15] They invoke excusable negligence for their failure to present Millo as a witness allegedly because he could not be reached by the subpoena issued on March 1984 as he had changed his address.[16] The records disclose, however, that at the hearing on 11 April 1984 for the continuation of the presentation of evidence for the defense, counsel for the accused-appellants, upon resting his case, expressly waived the presentation of Millo and any other witness. Thus:

"ATTY. RUBEN Z. FLORES --

I am intending to present one witness for the defense, your Honor, but I think that he is not yet in Court so we are constrained to rest this case, your Honor. With the presentation of the witnesses for the accused, witness no. 1 -- Rodolfo Mabanta, no. 2 -- Jessie Tubay, no. 3 -- Abecedueño Ajedo, Sr. and the accused Jesus dela Cruz without any documentary evidence, your Honor, we are resting our case for the defense."[17]

The trial court correctly denied the petition for new trial. Under Section 2, Rule 121 of the Rules of Court, a new trial may be granted based on any of the following grounds:

"a) That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights

of the defendant; and

b) That new and material evidence has been discovered which the defendant could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment."

The second ground, which is invoked by the accused-appellants, has the following requisites: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[18]

None of these requisites is present in the instant case. Accused-appellants knew all the while that Millo had executed a sworn statement, Exhibit "I", which was duly attached to the records. This is the best evidence of the nature of his testimony. Accordingly, if they honestly believed that his testimony was vital for the defense, they should have presented him. The records do not at all show that diligent efforts were exerted by the accused-appellants to bring the witness before the court. As an after-thought, they now ascribe to their previous counsel acts of impropriety and negligence in not presenting Millo. A painstaking review of the records fails to disclose any basis for such an unfair accusation. More importantly, accused-appellants themselves openly admit that the testimony of Millo would only be corroborative of the testimony or version of Jesus dela Cruz. Such a statement is fatal to their cause because it amounts to an admission that the third requisite for a new trial is absent. Being merely corroborative, the testimony of Millo can be dispensed with.

There is, moreover, another insurmountable obstacle which prevented favorable action on the petition for new trial. As stated earlier, accused-appellants filed their Notice of Appeal on 4 June 1984, a copy of which was received by the Office of the Provincial Fiscal on that same day.[19] The following day, the accused-appellants filed their petition for new trial. In criminal cases, an appeal is deemed perfected upon the filing of the notice of appeal. Upon the perfection of the appeal, the trial court loses its power to modify or set aside the decision, or order a new trial.[20] All it can do is to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated in the appeal.[21] This does not mean, however, that an accused is thereafter forever barred from filing a petition for new trial. In an appropriate case, he may file it with the appellate court.[22]

While it is true that accused-appellants filed on 8 June 1984 a motion to withdraw their appeal to save their petition for review, the records do not show that the trial court favorably acted on it. Besides, a notice of appeal, once filed, cannot be validly withdrawn to give way to a motion for reconsideration or a petition for new trial since, as above stated, the filing of the notice perfected the appeal and the court thereby lost its jurisdiction over the case; hence, it can no longer act on either the motion or the petition. The only valid withdrawal of an appeal would be one where an accused decides to serve the sentence.[23]

2. Being interrelated, as they hinge on the issue of credibility of witnesses, the second and fourth assigned errors shall be discussed jointly. Under these assigned errors, accused-appellants claim that the testimony of Antonia Natura, the lone eyewitness, should not have been believed because of the bias and prejudice that would result from her being the victim's wife; moreover, the judge who penned the decision only heard the witnesses for the defense, while two (2) other judges heard the evidence for the prosecution. Hence, the former could not have observed the demeanor of the prosecution's lone eyewitness. It is further claimed that accused-appellants Demerold Ayado and Abecidueño Ajedo, Jr. were not positively identified; thus, their defense of alibi should have been given credence by the trial court.

There is no merit to these claims.

Antonia Natura's relation to the victim does not necessarily disqualify her on the grounds of bias and undue interest.[24] There is absolutely nothing in our laws to disqualify a person from testifying in a criminal case in which the said person's relative was involved, if the former was really at the scene of the crime and was a witness to the execution of the criminal act.[25]

Additionally, the testimony of a lone eyewitness, if positive, reasonable and credible, is sufficient to support a conviction especially if the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner.[26] Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate.[27] In the case at bar, the trial court found the testimony of Antonia Natura convincing and trustworthy enough to warrant a conviction. We find no reason to disturb such finding as there is no showing that exceptions to the rule on conclusiveness of findings of facts of trial courts exist.

The fact that the judge who penned the decision did not hear the case in its entirety -- he only had the chance to hear and observe the defense witnesses -- is not a compelling reason to jettison his findings and conclusion considering that the full record was available to him for his perusal.[28] In the case of *People vs. Abaya*,[29] We said:

"x x x And the mere fact that Judge Alfredo C. Flores did not preside at the trial of this case in its entirety, having taken over only when the last defense witness was to be presented, did not detract from the validity, much less the correctness, of his decision. The full record was available to him. It is evident from the knowledgeable and analytical decision he has written that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses with the seasoned perceptiveness he has developed as a trial judge."

An examination of the trial judge's decision reveals that he meticulously and carefully examined each and every testimony of all the witnesses. This is readily apparent from his sixty-seven (67) page decision where the testimonies of all the witnesses were summarized and evaluated.

The defense of alibi of accused-appellants Abecedueño Ajedo, Jr. and Demerold Ayado was dismissed by the trial court in this wise:[30]

"The accused Demerold Ayado and Abecedueno Ajedo, Jr. would want the Court to believe that at the time of the commission of the offense charged in the evening of July 21, 1982 (sic), were at Campamento, Diffun, Quirino, about five (5) kilometers away from Magsaysay, Diffun, Quirino. It was established, however, that the distance could be negotiated by hiking in just an hour. The defense, to bolster the theory, presented Rodolfo Mabanta, stating that Demerold Ayado and Abecedueno Ajedo, Jr. did not leave the house (house of Abecedueno Ajedo, Jr.) in Campamento, Diffun, Quirino, on the evening of July 21, 1982, because of an existing barangay curfew ordinance that nobody could go out at night. However, according to the same witness, this presumption was just his opinion and belief. Defense presented another witness in the person of Abecedueno Ajedo, Sr., father of the accused Abecedueno Ajedo, Jr., and incumbent Barangay Captain of Campamento, Diffun, Quirino, who testified of (sic) the existence of a Barangay curfew ordinance-resolution No. 4-81 marked as Exhibit "1" for the defense, that the accused Demerold Ayado and Abecedueno Ajedo, Jr. slept and stayed in his house for three (3) days and remembers (sic) that in the evening of July 21, 1982, he was in his house together with the accused Demerold Ayado and Abecedueno Ajedo, Jr. Witness further remembers of (sic) two violators of said curfew ordinance-Resolution No. 4-81 who were accordingly punished. He further stated that Demerold Ayado and his son, Abecedueno Ajedo, Jr. never went out of the house at night during their stay for three days in his house because they were tired. In the evening of July 21, 1982, he presumed that Demerold Ayado and Abecedueno Ajedo, Jr. to have (sic) slept in their room in his house because he himself that time was asleep.

The Court took note of the fact that the witness Abecedueno Ajedo, Sr. is the father of the accused Abecedueno Ajedo, Jr. and the distance between Campamento, Diffun, Quirino and Magsaysay, Diffun, Quirino, is just five (5) kilometers which could be negotiated by hiking for just an hour. This puts to nought (sic) the defense of alibi."

It is a well-entrenched doctrine that alibi is an inherently weak defense especially when the accused is positively identified.[31] Furthermore, for the defense of alibi to prosper, it is not enough that the accused-appellants are able to show that they were somewhere else when the crime was committed; they must likewise demonstrate that it was physically impossible for them to have been at the scene of the crime.[32] In the instant case, Ajedo and Ayado were positively identified by a witness; furthermore, the trial court concluded that the place where they supposedly were at the time of the incident is only five (5) kilometers away from the scene of the crime, a distance which they could easily negotiate in one (1) hour by hiking. It was not, therefore, impossible for the two to be at the scene of the crime.

This Court cannot likewise accept the plea of self-defense of accused-appellant Jesus dela Cruz. In a long line of cases, it has been held that where the accused admits to the killing of the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself.[33] As the burden of proof is shifted to him, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution.[34]

The version of Jesus dela Cruz on what transpired that fateful night is summarized by the trial court as follows:[35]

"With respect to the accused Jesus Dela Cruz, he invoked self-defense. This is his version. In the evening of July 21, 1982, coming from the house of one Anikki, followed (sic) the victim Felipe Natura and his wife, Antonia Natura. Greeting (sic) the victim 'good evening' only to be answered angrily 'you are the man whom I have been waiting for a long time'. Immediately, the victim grabbed his waist, boxed his forehead and fell down. He (accused) stood up and tried to run away but the victim holding a scythe, chased him, hitting him on his left arm. Accused and the victim grappled for the possession of the scythe and in the course of the grappling, the victim was stabbed. He did not know, however, how he stabbed the victim. The victim could no longer stand up because of what he did to him. During the grappling between him and victim Felipe Natura, Antonia Natura, wife of the victim, held his shirt and boxed him. That Felipe Natura wanted to kill him because he turned down the request of the victim to kill his political adversary, Rubenciano Ayado (accused's stepfather), before the barangay election held on May 17, 1982."

For the plea of self-defense to prosper, it is necessary that the following circumstances must concur: (a) unlawful aggression, (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack of sufficient provocation on the part of the person defending himself.[36]

In the instant case, the unlawful aggression came not from the victim but from the accused-appellants. The version of Dela Cruz is simply incredible. If We were to subscribe to it, then the victim would have sustained only one (1) injury -- the stab wound. The autopsy report[37] belies this. As indicated therein, the victim suffered the following injuries:

"Head

A. External = Generalized Contusion of the Head

= Hematoma around both eyes

= Conjunctival Hemorrhage both eyes

= Lacerated wound of both upper & lower lips from the root of the teeth to the outside

= Upper Rt. -- Incisor teeth missing Upper Rt. -- Lateral Incisor missing

Upper Left -- canine (sic) teeth missing

= Stab wound -- Rt. Cheek (sic) – 4 inches long

= Stab wound -- Left anterior digastric triangle 1 cm. long x 2 inches deep.

B. Internal

1. Skull opened

= No signs of crack or fracture

= Hematoma -- parieto-occipital region (R&L)

2. Subdural hemorrhages (sic)

x x x

Abdomen

A. External = Stab wound about 1 inch long at the Rt. Hypochondrium

B. Internal

1. Penetrating the lower edge of the right lobe of liver 2 cm. thru & thru & also the left lobe of the liver.

2. Perforating the hepatic flexure of the colon 2 cm. long"

x x x

According to Dr. Luis Bergado, the stab wound could have been caused by a knife or sharp-pointed instruments, while the other injuries could have been caused by severe blows from blunt instruments such as a piece of wood, bare fists, or a stone.[38]

On the other hand, Dela Cruz claimed that since he merely sustained a wound on his left thumb, he did not bother to seek medical treatment.[39] This claim of injury, however, does not inspire belief. As correctly held by the trial court:

"He merely reported the alleged wound to a Policeman of Diffun, Quirino. He could not remember the Policeman to whom he reported. There was no medical certificate to prove the wound allegedly sustained by him. During the trial when he testified, he tried to show to the Court a very insignificant scar on the left hand between the thumb and the forefinger. The alleged scar, the Court observed, is very insignificant and almost unnoticeable. It is not improbable that the scar might be the scar of a self-inflicted wound. Again, the Court hardly believe (sic) this version."

3. The trial court was correct in holding that there existed a conspiracy among the accused-appellants.

Conspiracy need not be established by direct evidence but may be inferred and proven from the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interest.[40] Otherwise stated, it may be deduced from the mode and manner in which the offense was perpetrated.[41]

The following established facts, as correctly summarized by the People in its Brief, establish beyond reasonable

doubt the presence of conspiracy:

- "1. The crime was committed at night time to facilitate its commission. The victim and his wife were on their way home at 10:00 o'clock in the evening when they were accosted by the three accused who were together (p. 7, tsn, Dec. 13, 1982).
2. Jesus de la Cruz, pretended to be friendly with Felipe Natura by greeting him. He then drew out his scythe (kumpay) from his waist with which he hacked the victim while the other accused Demerold Ayado tapped the victim's shoulder (pp. 8-9, tsn, Ibid.).
3. Then the three accused, acting in concert, mauled and stabbed the victim mercilessly (pp. 8-9, tsn, Ibid.).
4. While the victim was being mauled, his wife began to plead for mercy, but instead, one of the accused, Demerold Ayado, took hold of her dress and told her that he is going to kill her, and because of this she ran away (p. 11, tsn, Ibid.).
5. While she was running, she was chased by Demerold Ayado, but she was able to evade him (p. 11, tsn, Ibid.).
6. Accused Demerold Ayado returned to the place where the victim was and joined his co-accused in beating the victim.
7. The three accused then left together leaving behind them the dying victim (p.12, tsn, Ibid.)."

Thus, the convergence of wills of the accused-appellants in carrying out a common unlawful purpose amply justified the imputation to all of them the act of any one of them.[42]

The information alleges evident premeditation and treachery as the qualifying circumstances and superiority, nighttime and disregard of age as generic aggravating circumstances.

The evidence for the prosecution is insufficient to establish the elements of evident premeditation, to wit: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused had clung to his felonious determination, and (c) a lapse of time between the determination and execution sufficient to allow the accused to reflect upon the consequences of his act.[43]

Treachery, however, was duly established.

Treachery is present when a crime against a person is committed employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[44] For treachery to be present, two (2) conditions must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) that said means of execution was deliberately or consciously adopted.[45] As adverted to above, accused-appellant Dela Cruz initially pretended to be friendly with the victim; he then suddenly grabbed the scythe from the victim's waist while accused-appellant Ayado tapped the victim on his shoulder. Thereupon, they mauled and stabbed the victim. The friendly gesture was a clever ploy to gain the trust of the victim, remove from his mind any suspicion as to the motive of the accused-appellants or make him feel secure in the thought that nothing untoward would happen to him, and place him in utter helplessness and complete inability to prepare for any defense or offer any resistance, thus insuring themselves against the possible risk of harm arising from any defense which the victim may put up.

While indeed there was abuse of superior strength, this aggravating circumstance should, however, be deemed absorbed in treachery.[46] The same goes for the circumstance of nighttime.[47]

The aggravating circumstance of disregard of age may not likewise be taken into account. Although at the time of his death, the victim was 50 years old[48] and the accused-appellants Dela Cruz, Ayado and Ajedo were 29, 18 and 18 years of age, respectively,[49] there is no sufficient evidence to prove that they deliberately intended to offend or insult the age of the victim. For this aggravating circumstance to be appreciated, it is necessary that there be such a deliberate intent.[50]

It follows, therefore, that no generic aggravating circumstance may be appreciated against the accused-appellants. Upon the other hand, they failed to prove any mitigating circumstance.

The crime of murder is punished by reclusion temporal maximum to death.[51] There being no mitigating or aggravating circumstances obtaining in this case, and following the doctrine enunciated in *People vs. Muñoz*,[52] the medium of the penalty, which is reclusion perpetua, should be imposed upon the accused-appellants.[53] The trial court is correct in this regard. Per recent rulings of this Court, the indemnity should, however, be increased to P50,000.00.[54]

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, subject to the modification as to the indemnity which is hereby increased from P30,000.00 to P50,000.00.

Costs against the accused-appellants.

SO ORDERED.

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

[1] Rollo, 11.

[2] *Id.*, 73.

[3] *Id.*, 82.

[4] *Id.*, 88.

[5] Rollo, 12-67.

[6] Original Records, 370.

[7] *Id.*, 371.

[8] *Id.*, 380.

[9] Original Records, 389-392.

[10] Rollo, 111.

[11] Rollo, 59.

[12] *Id.*, 92; Appellants' Brief, A-B, 16, 19, 39 and 43.

[13] Appellants' Brief, 18. Emphasis supplied.

[14] Original Records, 379.

[15] *Id.*, 10 to 10-A.

[16] Original Records, 373-374.

[17] TSN-Magat, 11 April 1984, 2.

[18] MORAN, M., Comments on the Rules of Court, vol. 4, 1980 ed., 340-341.

[19] Original Records, 370.

[20] People vs. Buyson Lampa, 58 Phil. 757 [1933]; Director of Prisons vs. Teodoro, 97 Phil. 391 [1955]; People vs. Villanueva, 17 SCRA 272 [1966]; Alama vs. Abbas, 18 SCRA 836 [1966]; Section 7, Rule 120, Rules of Court.

[21] Evaristo vs. Lastrilla, 110 Phil. 181 [1960].

[22] Section 2, Rule 125, in relation to Section 14, Rule 124 of the Rules of Court.

[23] Section 12, Rule 122, Rules of Court.

[24] People vs. Salazar, 58 SCRA 467 [1974]; People vs. Javier, 182 SCRA 830 [1990]; People vs. Legaspi, 151 SCRA 670 [1987]; People vs. Atencio, 156 SCRA 242 [1987].

[25] People vs. Baduya, 182 SCRA 57 [1990].

[26] People vs. De la Cruz, 148 SCRA 582 [1987]; People vs. Javier, supra.; People vs. Francia, 154 SCRA 495 [1987], citing People vs. Martinez, 127 SCRA 260 [1984].

[27] People vs. Boduso, 60 SCRA 60 [1974].

[28] People vs. Umbrero, 196 SCRA 821 [1991].

[29] 185 SCRA 419 [1990].

[30] Rollo, 59-61.

[31] People vs. Esmael, 37 SCRA 601 [1971]; People vs. Mercado, 38 SCRA 168 [1971]; People vs. Bagasala, 39 SCRA 236 [1971]; People vs. Catubig, 195 SCRA 505 [1991]; People vs. Cayago, 158 SCRA 586 [1988]; People vs. Mandapat, 196 SCRA 157 [1991].

[32] People vs. Brioso, 37 SCRA 336 [1971]; People vs. Diaz, 55 SCRA 178 [1974]; People vs. Ybañes Jr., 56 SCRA 210 [1974]; People vs. Baylon, 57 SCRA 114 [1974]; People vs. Salazar, 58 SCRA 467 [1974]; People vs. Mandapat, supra.; People vs. De Guzman, 194 SCRA 618 [1991]; People vs. Catubig, supra.

[33] People vs. Gadiana, 195 SCRA 211 [1991]; People vs. Maceda, 197 SCRA 499 [1991]; People vs. Bayocot, 174 SCRA 285 [1989]; People vs. Acusar, 82 Phil. 490 [1948].

[34] AQUINO, R.C., The Revised Penal Code, vol. I, 1987 ed., 132, citing several cases.

[35] Rollo, 63-65.

[36] Article 11(1), Revised Penal Code.

[37] Exhibit "D".

[38] Decision of the trial court, 11-24; Rollo, 22-24.

[39] Id., 64.

[40] *People vs. Lunar*, 45 SCRA 119 [1972]; *People vs. Custodio*, 47 SCRA 289 [1972]; *People vs. Mori*, 55 SCRA 382 [1974]; *People vs. Cardenas*, 56 SCRA 631 [1974].

[41] *People vs. Pudpud*, 39 SCRA 618 [1971]; *People vs. Alviar*, 59 SCRA 136 [1974].

[42] *People vs. Peralta*, 25 SCRA 759 [1968].

[43] *U.S. vs. Gil*, 13 Phil. 530 [1909]; *U. S. vs. Bañagale*, 24 Phil. 69 [1913]; *People vs. Ardisa*, 55 SCRA 245 [1974]; *People vs. Obenque*, 147 SCRA 488 [1987]; *People vs. Manalo*, 148 SCRA 98 [1987].

[44] Section 16, Article 14, Revised Penal Code.

[45] *People vs. Mabubay*, 185 SCRA 675 [1990].

[46] *People vs. Develos*, 16 SCRA 46 [1966]; *People vs. Agustin*, 16 SCRA 467 [1966]; *People vs. Layson*, 30 SCRA 92 [1969]; *People vs. Abletes*, 58 SCRA 241 [1974].

[47] *People vs. Pinca*, 4 SCRA 574 [1962]; *People vs. Gongora*, 8 SCRA 472 [1963]; *People vs. Enot*, 6 SCRA 325 [1962].

[48] Exhibit "D"; Original Records, 4.

[49] *Id.*, 16-18.

[50] AQUINO, *op. cit.*, 311, citing *People vs. Mangsant*, 65 Phil. 548 [1938]; *People vs. Limaco*, 88 Phil. 35 [1951].

[51] Article 248, Revised Penal Code.

[52] 170 SCRA 107 (1989).

[53] Article 64(1), Revised Penal Code.

[54] *People vs. Sison*, 189 SCRA 643 [1990]; *People vs. Sazon*, 189 SCRA 700 [1990]; *People vs. Narit*, 197 SCRA 334 [1991]; *People vs. Tiozon*, 198 SCRA 368 [1991]; *People vs. Barba*, G.R. No. L-50433, 13 November 1991; *People vs. Lee*, G.R. No. 66848, 20 December 1991.

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