

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN ESCOBER Y GERALDE, MACARIO PUNZALAN, JR., Y GUEVARRA, RICHARD DOE, PETER DOE AND JUAN DOE, ACCUSED. JUAN ESCOBER Y GERALD...

G.R. No. 69564. January 29, 1988

Ponente: FERNAN, J.

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FERNAN, J.:

These consolidated cases originated from the decision rendered by Judge Oscar Leviste in Criminal Case No. Q-22896 of the Regional Trial Court of Quezon City, Branch XCVII, finding the accused-appellants Juan Escobar y Geralde and Macario Punzalan, Jr. y Guevarra guilty beyond reasonable doubt of the crime of Robbery with Homicide, sentencing them to suffer the supreme penalty of DEATH and to pay jointly and severally the heirs of the victims compensatory damages of P12,000.00 for each of the victims and moral damages of P200,000.00. G.R. No. 69564 is the automatic review of the death sentence while G.R. No. 69658 is a petition for review on certiorari of said decision, the recourse taken by accused-appellant Juan Escobar "to cut short that long period of wait for a final resolution of his fate." [1]

Juan Escobar, together with four unidenti-fied persons designated as John Doe, Peter Doe, Richard Doe and Juan Doe, were charged with the crime of Robbery with Homicide before the Regional Trial Court of Quezon City in an Information dated December 9, 1982. He entered a plea of "Not Guilty" with the assistance of counsel Atty. Hipolito de Peralta upon arraignment on March 2, 1983.

On March 29, 1983, the Information was amended to include accused-appellant Macario Punzalan, Jr. as one of the accused therein. He, too, pleaded "Not Guilty" during the arraignment on April 22, 1983, assisted by court-appointed counsel, Atty. Benigno Mariano, who at that time had replaced Atty. Hipolito de Peralta as counsel de parte for Juan Escobar.

A joint trial of the accused ensued. The prosecution presented its evidence, summarized by the Solicitor General in his Consolidated Brief, as follows:

"One of the alleged co-conspirator (sic), Amadeo Abuyen alias Roberto Alorte,[*] was formerly a co-security guard of appellant Juan Escobar at the Bee Seng Electrical Supply, Inc., a family corporation owned by the couple Vicente Chua and Lina Chua. It is located inside a walled compound about 50 meters away from the residence of its owner, at 24 Joy Street, Grace Village, Batintawak, Quezon City. About 4 months prior to the incident, Abuyen was relieved by Domingo Rocero for being always absent and found sleeping while on duty. [pp. 5-8, tsn, Aug.16, 1983; pp. 2-10, tsn, Sept. 14, 1983; pp. 6-8, tsn, April 22, 1983].

"At the time of the incident on December 3, 1982, Rocero's tour of duty was from 7:00 in the morning to 7:00 in the evening. He left his post at about 7:30 P.M. that evening after he was relieved by appellant Juan Escobar. On his way home, he passed by Barangay Balingasa in Balintawak, where he saw Amadeo Abuyen in the store of Colonel Samson drinking beer with three companions, one of whom he later identified as the appellant

Macario Punzalan, Jr. [pp. 4-11, tsn, April 22, 1983].

"After Rocero had left his point, (sic) Vicente Chua went to his office at the Bee Seng Electrical Supply as he usually does after office hours, accompanied by his 13-year old son Irvin and 6-year old daughter Tiffany. On their way, he saw appellant Escobar at his post. At the office, the two children watched a television program, as their father proceeded to the bathroom to take a bath [pp. 10-17, tsn, Sept. 14, 1983].

"Meanwhile, Abuyen and his three companions rode a tricycle and proceeded to the Bee Seng Electrical Supply. Upon alighting thereat, Abuyen knocked at the little door of the gate. Appellant Escobar, peeped thru the hole and opened the door. Then after Abuyen had talked with Escobar, the former asked Punzalan to wait outside, while he (Abuyen) and his two other companions went inside [pp. 4-5, tsn, Nov. 9, 1983].

"At this juncture, the victims' mother, Mrs. Lina B. Chua, left their residence to join her husband and two children. On her way, she noticed that the pedestrian gate was wide open with the appellant Punzalan standing there. She shouted why the gate was opened, but nobody answered. Suddenly, she heard a shot coming from the direction of the garage; and when she looked thereat, she saw Abuyen and the appellant Escobar walking towards the gate. So, she rushed back inside the house to contact her husband through the intercom. But since the intercom was out of order, she hurriedly went outside and met appellant Escobar who volunteered the information 'that he was not hit'. [pp. 9-20, tsn, Aug. 16, 1983].

"Upon the other hand, Vicente Chua was inside the bathroom, when he heard the gunshot. He hurriedly went out and saw her (sic) son Irvin lying on the sofa while her (sic) daughter Tiffany was lying on the floor, both mortally wounded. Beside her (sic) daughter, he saw a scissor blade [Exhibit 'E'] full of blood. He also observed that everything was scattered in his office, with all his drawers opened. Later, he found out that the P5,000.00 cash he kept in one of the drawers was lost [pp. 13-14, 31-36, tsn, Sept. 14, 1983].

"Immediately, he went out and shouted for help from his wife to bring out the car as their children was (sic) stabbed and bleeding. Forthwith, she got one car, while her eldest son drove a second one. After Vicente Chua had brought the two wounded children inside the two cars, they were brought to the Chinese General Hospital where they were pronounced dead upon arrival. [pp. 22-26, tsn, Aug. 16, 1983; pp. 13-14, tsn, Sept. 14, 1983].

"It was about 8:45 in the evening of December 3, 1982 when Police Investigator Oscar Francisco was dispatched to investigate the incident. And, since the victims were already brought to the Chinese General Hospital, he was instructed to proceed thereto. When he arrived at the hospital at past 9:00 o'clock P.M., he found the victims already dead. Whereupon, he conducted a cursory examination of the victims and indicated on two separate sketches (Exhibits 'C' and 'D'), the 12 and 11 stab wounds sustained by Irvin Chua and Tiffany Chua, respectively. From there, he proceeded to the scene of the crime, where he met Corporal Ibuan, Pat. Robanera and a police photographer, who arrived to assist him in the investigation [pp. 3-9, tsn, July 5, 1983].

"Corporal Ibuan handed to Francisco a blood-stained blade of a scissor (Exhibit 'E') which the former said was found beside the pool of blood inside the room where the incident happened. In the course of his investigation, Francisco noticed that the drawers inside the office of Vicente Chua were forcibly opened with its (sic) contents scattered. Upon subsequent interview with Vicente, he likewise learned that cash amounting to P5,000.00 was taken by the culprits in one of said drawers [pp. 9-13, Ibid].

"Thereafter, Francisco invited for questioning at the Police Headquarters appellant Escobar, the security guard on duty then at the Bee Seng Electrical Supply, who voluntarily gave his version of the incident (Exhibit 'F'). Aside from that of Escobar, the written statements of the victims' parents, Vicente Chua and Lina B. Chua, were also taken (Exhibits 'G' & 'H', respectively). Thereafter, Francisco referred on December 8, 1983 [sic] (Exhibit 'I') the result of his investigation to the City Fiscal who wrote at the left hand margin thereon the following notations: 'Detained the accused as prima facie case exist(s) and that accused is probably guilty thereof. No bail recommended.' [pp. 13-23, ibid].

"Subsequently, on the morning of December 10, 1982, the police apprehended the appellant Punzalan, who in a police line-up was readily identified by the victims' mother, Lina Chua, as one of those she saw standing at the open gate of their compound during the night of the incident on December 2 (sic), 1982. Another statement (Exhibit 'F') was, therefore, taken on December 10, 1982 from the victims' mother to supplement the previous statement she gave on December 8, 1982. Also taken on even date were the statements of Security Guard Jesus Zaragosa (Exhibit 'K') and that of Virginia Alorte Abuyen, the mother of one of the suspects, who claimed that her son, Amadeo Abuyen, mentioned to her his four [4] companions, including the herein two appellants, in the commission of the crime. Even appellant Punzalan waived his constitutional rights under custodial investigation and voluntarily and willingly gave his statement (Exhibit 'M'), wherein he did not only admit his participation in the commission of the crime, but also implicated appellant Juan Escobar [pp. 25-26, Ibid; pp. 2-12, tsn, July 6, 1983].

"Thus, in his second referral dated December 13, 1983 [sic] (Exhibit 'J') to the Fiscal, Police Investigator Francisco named the five [5] accused as: Juan Escobar y Geralde, Macario Punzalan, Jr. y Guevarra, Amadeo Abuyen y Alorte, alias Florante Bato, alias Dodong and a certain Peter Doe, albeit, only the herein two appellants were apprehended. [pp. 7-8, tsn, July 6, 1983]."[2]

Thereafter, accused-appellant Juan Escobar took the witness stand to testify in his defense. His testimony is detailed in his Brief, thus:

"Escobar was then a security guard and belonged to the Western Private Detective Security since January 1, 1982 and was assigned at Vising Electrical Supply at Joyce St., Grace Village, Balintawak, Quezon City, owned by Vicente Chua and Lina Saw Chua. On December 3, 1982, at 7 p.m. he reported for work. When his companion left and he arrived (to take over) he cleaned the guardhouse, a routinary work because Mr. and Mrs. Chua did not like to see the guardhouse dirty and also because after the security guard leaves, the security guard on duty must clean it. There was a janitor but the security guards used to clean the guardhouse. As security guard, he had a gun but on this occasion he left it in the locker because he was cleaning the guardhouse. Then when he was to throw the garbage, Alorte arrived and talked to him because he, Alorte alias Abuyen, wanted to, and two men [also accused named Does as they are also still at large] entered and one man [co?accused Punzalan] was left at the gate. Escobar was not able to talk to Alorte alias Abuyen because when Alorte came, one of his companions aimed a gun at Escobar and also a knife and they said they would kill him. He does not know the man who aimed a gun at him. He only knows Alorte because he (Alorte) used to be his co-guard at Vising Electrical Supply. They then asked Escobar to get into (climbed) the pick-up car inside the garage and the other man was pointing a gun at Escobar. Alorte and his companion went up the Vising Electrical Supply. Escobar does not know the real name of Alorte; all the (sic) knows is Roberto Alorte. Escobar does not know the man who was left near the gate but he knows him by face and he was then in the courtroom and he pointed to the person who answered by the name of Macario Punzalan, Jr., his co-accused. Escobar did not see what Punzalan was doing because he, Escobar, was made to climb the vehicle (pick-up). At this point, his gun was in the locker. He was not able to get that gun when these four men entered because a gun was already pointed at him. Alorte took Escobar's gun from the locker because he was formerly a security guard at Vising Electrical Supply for 3 or 4 months. He does not know why Alorte did not continue his work there. After 5 minutes, after the two men went up the office, they came down and talked to the man guarding Escobar and Alorte fired at him. He was not hit for he was able to avoid it and after that, the four men suddenly left. Escobar went down from the pick-up and he heard Vicente Chua calling him and he responded. Chua asked him to call Mrs. Chua at the house because, according to Chua, their children were stabbed. So Escobar went to the house and called Mrs. Chua. When Mr. Chua called him, Alorte and his companions were no longer at the place for, after firing, they hurriedly left. Escobar was able to call Mrs. Chua and she and he, together, returned to Vising Electrical Supply and upon reaching the place, Mr. Chua was shouting and he could not understand him because he was speaking in Chinese. Mrs. Chua went back and got the car, parked it and returned to the office. When Mr. Chua went out of the office, he was bringing his son and placed him at the parked car of the office. When Chua returned to the office (after he called Escobar) and came back out,

Escobar saw him with his son and placed him at the balcony. The two children who were stabbed were carried in two cars because there were only two cars at the driveway. Escobar opened the gate. He does not know to what hospital they went. After that, he called Jeffrey one of the sons of the Chuas, so he could help him (Escobar) call the police. Jeffrey was not able to call the police because when Jeffrey gave him a directory and asked him (Escobar) to look for the telephone number of the police but he told Jeffrey to look it up himself because his eyes were blurred. After 15 minutes, the police came and after that, the owner of the security agency arrived. Other policemen not in uniform also arrived. They interviewed Escobar and forced him to go with them to the police precinct. He refused because the owner of the agency had not then arrived. When owner arrived, he called another security guard to guard the Vising Electrical Supply. The police and the owner of the security brought Escobar to the precinct to get his statement and there the police was forcing him to admit he was the one who robbed and killed the children of the Chuas and he told them: 'I do not know everything.' The testimony of Mrs. Chua that she saw him together with Abuyen (Alorte) inside the garage is not true because he was the one who told Mrs. Chua that their children were being stabbed. When Alorte and his companions left, Mrs. Chua was 'finding (sic) to call' him (Escobar). When he was brought to the precinct, the investigator was typing something. Escobar could recall/remember only his signature. He identified his statement, Exhibit 1 for the defense, Exh. F for the prosecution. He narrated it there exactly. The signature there are his. He knows the police who investigated him but he does not know the person. Escobar was at the precinct when he signed his statement. He was there up (sic) October 3, 1983, the date he testified in court (tsn, 2-13)."[3]

Accused-appellant Macario Punzalan, Jr. likewise testified in his defense. The gist of his testimony is found in his Brief as follows:

"PUNZALAN testified on his own behalf (his direct testimony is found in TSN, pp. 2-35, Nov. 9, 1983). PUNZALAN is a fruit vendor at 'the market of Monumento'. In the afternoon of 3 December 1982, according to PUNZALAN, he accepted the invitation of fugitive ABUYEN/ALORTE for a drink, in a 'place near Abonce Beer House'; ABUYEN/ALORTE was with two companions whom he introduced as his relatives; after several drinks, he was requested to join the group to proceed to another place for which reason they boarded a tricycle; and the group stopped 'at a place with a high gate' because ABUYEN/ALORTE wanted 'to drop by someone' (TSN, pp. 2-11, November 9, 1983). ABUYEN/ALORTE 'knocked at the little door' and the security guard (PUNZALAN identified accused Escobar as the security guard) opened the door and they greeted each other; ABUYEN/ALORTE then instructed PUNZALAN 'to wait for him outside'; and thereafter ABUYEN/ALORTE and his two companions entered the compound (TSN, pp. 11-14, Nov. 9, 1983).

"PUNZALAN further testified that he waited for half an hour for the group; that while waiting he 'heard the mourn (sic) of a child'; that he was then about to enter the premises but he met ABUYEN/ALORTE and his two companions and 'saw them with blood stains in their arms'; that ABUYEN/ALORTE and his companions started running and he followed them; that in response to his query ABUYEN/ALORTE stated that he 'stabbed the two [2] children'; and that they boarded a taxi and he was 'brought back to our place where we are selling apples' (TSN, pp. 14-18, Nov. 9, 1983).

"PUNZALAN was apprehended 'early dawn' of 10 December 1982 at the Monumento market. No lawyer assisted him during his custodial investigation despite the fact that he informed the police officers that he has a lawyer by the name of Atty. Valdez nor was he informed of his constitutional rights to remain silent and to counsel. Nevertheless, the police investigator proceeded to interrogate him. He disclosed that he was invited by Amadeo Abuyen for a drink; and that they drank beer 'in a place near Abonce Beer House'. PUNZALAN asserted that, when Exh. M was presented for his signature, 'he refused to sign' (Exh. 'M') because 'many statements thereon are not correct'; that he nevertheless signed Exh. 'M' because 'he was already tired' and 'was forced to sign it' after they hurt me by boxing me, subjected me to water therapy' and he 'could not endure the pain, when they gave (him) the electric shock treatment'; and that the portions of Exh. 'M' which are incorrect are those identified as Exhs. '11-A and 11-B' (TSN, pp. 19-32, Nov. 9, 1983)."[4]

On January 10, 1984, the decision under review was promulgated. On February 8, 1984, despite his manifestation in open court immediately after the promulgation of the decision that he was appealing the same to this Court, Atty. Mariano filed a motion for reconsideration. This was opposed by the prosecution.

Pending resolution of the motion, Atty. A.E. Dacanay entered his appearance on August 7, 1984 as counsel for accused Escobar, and on August 20, 1984, he filed another motion for reconsideration for the said accused, which was likewise opposed by the pro-secution. After an exchange of pleadings between Atty. Dacanay and the prosecution, the trial court issued an Order dated November 21, 1984 denying the motions. Hence, the petition in G.R. No. 69658 and the automatic review.

In G.R. No. 69658, accused-appellant Juan Escobar contends that:

"RESPONDENT JUDGE GRAVELY ERRED IN RENDERING HIS TWO-PAGE DECISION IMPOSING DEATH SENTENCE IN CULPABLE VIOLATION OF THE CONSTITUTION AND CONSEQUENTLY IT MUST BE REVERSED AND SET ASIDE, ACQUITTING PETITIONER X X X;

"RESPONDENT JUDGE ERRED IN FINDING AND CONCLUDING THAT PETITIONER, TOGETHER WITH HIS CO-ACCUSED PUNZALAN AND THREE OTHERS ACTED 'AS PRINCIPALS BY INDISPENSABLE COOPERATION' CONSIDERING THESE CIRCUMSTANCES: FIRST: (THE) UNLIKELY GARBAGE THROWING REASON OF ACCUSED ESCOBER (PETITIONER) IN OPENING THE GATE OF THE COMPOUND IN QUESTION, AGAINST THE TESTIMONY OF HIS CO-ACCUSED MACARIO PUNZALAN, JR. OF KNOCKING ON THEIR PART; SECOND: 'THE RITUAL IN AVOIDANCE OF SUSPICION OF FIRING A GUN JUST BEFORE THE EXIT OF THE CONSPIRATORS AND VOLUNTEERING THAT HE WAS NOT HIT'; AND THIRD: '(T)HE VERSION OF JUAN ESCOBER (PETITIONER) REGARDING HIS ACTUATION DURING THE HALF-HOUR ROBBERY-HOMICIDE WAS REplete WITH CONTRA-DICTIONS.

"RESPONDENT JUDGE ERRED FURTHERMORE IN CONVINCING PETITIONER TO DEATH AS SUCH PRINCIPAL UNDER THE DECISIONAL LAW ON CRIMINAL CONSPIRACY.

"RESPONDENT JUDGE ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION x x x OF SAID DECISION OF JANUARY 10, 1984."[5]

These assigned errors were reiterated in the Brief for Accused-appellant Juan Escobar filed in G.R. No. 69564.

On his part, Macario Punzalan, Jr. seeks reversal of his conviction on the following grounds:

"PUNZALAN SHOULD BE ACQUITTED; OR AT THE VERY LEAST, HIS CONVICTION SHOULD BE NULLIFIED ON THE GROUND THAT PUNZALAN WAS DENIED HIS RIGHTS TO REMAIN SILENT AND TO COUNSEL IN ALL OF THE THREE PHASES OF THIS CASE: CUSTODIAL INVESTIGATION, PRELIMINARY INVESTIGATION AND TRIAL ON THE MERITS;

"THE LOWER COURT ERRED IN RULING THAT, AS A MATTER OF LAW, PUNZALAN IS ACCOUNTABLE FOR THE CRIME OF ROBBERY;

"THE LOWER COURT ERRED IN RULING THAT THE PRINCIPAL MOTIVE FOR THE CRIME WAS ROBBERY;

"THE LOWER COURT ERRED IN RULING THAT ROBBERY WAS IN FACT COMMITTED;

"THE LOWER COURT ERRED IN NOT ACQUITTING PUNZALAN ON THE GROUND OF REASONABLE DOUBT;

"THERE BEING NO DIRECT EVIDENCE TO SHOW HOW THE CRIME WAS COMMITTED, THE LOWER COURT ERRED, AS A MATTER OF LAW, IN RULING THAT THE COMMISSION OF THE

CRIME WAS ATTENDED WITH THE AGGRAVATING CIRCUMSTANCES OF CRUELTY, NIGHTTIME, TAKING ADVANTAGE OF SUPERIOR STRENGTH, TREACHERY AND IN BAND."[6]

We shall deal first with Escobar's assigned errors, particularly the objection interposed to the form and substance of the decision under review. Accused-appellant Escobar asserts that said decision is null and void for it does not conform with the re-quirement of Section 9, Article X of the 1973 Consti-tution and that it was rendered even before all the stenographic notes of the proceedings had been trans-cribed.

We find merit in this contention. The deci-sion of January 10, 1984 consists of 1-1/2 pages, typed single-space, with a number of handwritten notations and insertions. It reads:

"The AMENDED INFORMATION charged the above-named accused of Robbery with Homicide defined in Article 294 of the Revised Penal Code. It alleged, among others, that on or about December 3, 1982, in Quezon City, said accused conspiring, confe-derating and mutually helping one another, with intent to gain and by means of violence and intima-tion against persons robbed Vicente Chua y Ching by entering the premises of No. 24 Joy St. Grace Village, Quezon City and taking therein P5,000.00 and (sic) by reason or on the occasion of said robbery employed personal violence upon minors Irvin Chua y Saw and Tiffany Chua y Saw, stabbing them and inflicting thereby multiple serious mortal wounds directly causing their immediate deaths, to the damage of their heirs.

"Prosecution evidence consisted of the testimonies of Vicente Chua, Mrs. Lina Chua, Domingo Rocero, Oscar Francisco, Amado V. Ramos, Teodoro Ibulan, Abelardo V. Lucero and Dr. Josefina Qua, and Exhibits 'A' to 'Z' with sub-exhibits,; while Defense evidence consisted of the testimonies of the two named accused above and some exhibits, contained in Pages 1 to 454 of the Records, Volume 2, Vol. 1 and 3.

"In view of the foregoing evidence, and considering the memoranda of both parties, the arguments and authori-ties cited therein, this Court finds that the material allegations of the above information are facts, and that accused Juan Escobar y Geralde and Macario Punzalan, Jr. y Guevarra are guilty of the charges of Robbery with Double Homicide, as principals by indispensable cooperation as defined in Article 17, par. 3, with no mitigating circumstances, and attended by aggravating circumstances of cruelty, nighttime to insure the commission of the crime, taking advantage of number and superior strength, treachery, in band, among others, and that the defenses and excuses of the accused are unnatural, incredible, contradictory and uncorroborated. The circumstances pointing to the (sic) this fact, among others, are the following: The unlikely garbage throwing reason of accused Juan Escobar in opening the gate of the compound in question, against the testimony of his co-accused Macario Punzalan, Jr. of knocking on their part; the ritual in avoidance of suspicion of firing a gun just before the exit of the co-conspirators of Juan Escobar, and volunteering the information that he was not hit. The version of Juan Escobar regarding his actuation during the half-hour robbery homicide was replete with contradictions. Macario Punzalan admitted being fetched by, going with and talking to, immediately prior to taking a tricycle to the said compound, and later acting as lookout for, his co-conspirators. The Court finds further that the group took some drinks, not to get drunk admittedly, and therefore to strengthen their resolve the better to commit the crime planned.

"WHEREFORE, this Court declares Juan Escobar y Geralde and Macario Punzalan, Jr. GUILTY beyond reasonable doubt of the crime charged in the amended information, this Court holding firmly that when a hired security guard opens the compound under his protection to four men who turn out to be robbers and murderers or when a former security guard accompanies and meets with said malefactors immediately before the commission of the offense and stands guard at the gate and flees with said malefactors then the burden of proof is shifted to him to exculpate and excuse himself by clear, satisfactory and convincing evidence, which the named accused failed to do, but succeeded only in insulting this Forum of Truth with their ridiculous (sic) justifica-tions for the brutal and merciless killing of innocent and helpless children on the occasion of that robbery in question, of being 'held--up' at gunpoint, of coincidentally being in the act of throwing garbage and being fired at but not getting hit but not knowing so many vital details a truthful witness would certainly not

forget, among others, thus that this court after a total appreciation of all the evidence on record is convinced that there being apple (sic) circumstances present that could only possibly point to the guilt of said accused for the most heinous (sic) crime that deserves the highest penalty, Hereby sentences the said accused Juan Escobar y Geralde and Macario Punzalan, Jr. to the legal punishment provided by Article 294, Paragraph 1 of the Revised Penal Code of the Philippines, which is DEATH and orders the said accused further to pay the heirs of their victims compensatory damages of P12,000.00 each, jointly and severally, and moral damages of P200,000.00 to the said heirs, jointly and severally.

“SO ORDERED. QUEZON CITY, January 10, 1984.”[7]

Section 9, Article X of the 1973 Constitution directed that:

"Every decision of a court of record shall clearly and distinctly state the facts and the law on which it is based x x x."

The above-quoted decision falls short of this standard. The inadequacy stems primarily from the respondent judge's tendency to generalize and to form conclusions without detailing the facts from which such conclusions are deduced. Thus, he concluded that the material allegations of the Amended Information were the facts without specifying which of the testimonies or exhibits supported this conclusion. He rejected the testimony of accused-appellant Escobar because it was allegedly replete with contradictions without pointing out what these contradictions consist of or what "vital details" Escobar should have recalled as a credible witness. He also found the crime to have been attended by the aggravating circumstances of cruelty, nighttime, superior strength, treachery, in band, "among others", but did not particularly state the factual bases for such findings.

As enunciated by this Court in the case of *Hernandez v. Colayco*, 64 SCRA 480, reiterating *Montelibano v. Director of Lands*, 21 Phil. 449; *Alindogan v. Insular Government*, 15 Phil. 168; *City of Manila v. Insular Government*, 9 Phil. 71; *Enriquez v. Enriquez*, 3 Phil. 746; *Braga v. Millora*, 3 Phil. 458:

"Without the concrete relation or statement in the judgment of the facts alleged and proved at the trial, it is not possible to pass upon and determine the issue raised in litigation, inasmuch as when the facts held to be proved are not set forth in a judicial controversy, it is impossible to administer justice, to apply the law to the points argued, or to uphold the rights of the litigant who has the law on his side.

"It is not sufficient that the court or trial judge take into account the facts brought out in an action suit, the circumstances of each question raised, and the nature and conditions of the proofs furnished by the parties. He must also set out in his decision the facts alleged by the contending parties which he finds to have been proven. The conclusions deduced therefrom and the opinion he has formed on the issues raised; then only can he intelligently set forth the legal grounds and considerations proper in his opinion for the due determination of the case."

As it is written, the decision renders a re-view thereof extremely difficult. Without a particularization of the evidence, testimonial or documentary, upon which the findings of facts are based, it is practically impossible for the appellate court to determine whether or not such findings were sufficiently and logically supported by the evidence re-lied upon by the trial court.

Were it not for its dire consequences, we would have appreciated the efforts shown by respondent judge to administer justice in this case in the most speedy and expeditious manner. He obviously took to heart our admonition that judges do not have to wait for the transcription of stenographic notes before rendering judgments but can rely on the notes of the proceedings personally taken by them. For this is what respondent judge did. The records show that he took copious notes of the testimonies of the witnesses on which he apparently based his decision, as the transcript of the stenographic notes were not yet complete at the time of the rendition of the

judgment. In fact, the review of the case suffered some delay due to the failure of stenographer Eduardo Bober to submit to this Court the transcript of stenographic notes of some hearings.

Speed in the administration of justice, how-ever, is not the sole concern of courts and judges. More than this is the essentiality of justice and fairness which is the primordial objective of the courts. Respondent judge lamentably disregarded the latter for the former.

The decision of January 10, 1987 calls to mind the decision rendered by another trial court in the case of *People v. Banayo*, 129 SCRA 725, regarding which We said:

"At the onset, this Court takes a rather dim view of the apparently indifferent attitude displayed by the trial court towards a murder case it has tried as shown by the rendition of a decision, the body which contains only 63 lines spread out over less than three typewritten pages, double-spaced and wide-margined. While brevity should characterize a court's decision and length is not necessarily determinative of its quality, the lower court in deciding this murder case nonetheless should have outlined in greater and more satisfactory detail the evidence presented by both prosecution and the defense, the facts as found by the trial judge based on the evidence on record and the jurisprudence and the authorities supporting the court's decision.

"This trial judge failed to do. There is not one single citation of authority in the decision. The issues raised by the appellant include allegations of concocted testimony, the nature of a dying declaration, premeditation, conspiracy, treachery and superior strength. The issues raised are quite serious and they deserved better treatment." [Underscoring supplied].

With the finding that the decision of January 10, 1984 does not conform to the requirements of Section 9, Article X of the 1973 Constitution, the case should have been remanded to the court a quo for the rendition of a new judgment. However, since the records of the case, including all evidence necessary for a determination of the innocence or guilt of the accused-appellants are now before Us, We deem it wise to render judgment in this case in order to accord the accused-apellants their right to a speedy disposition of their cases.[8]

The prosecution's theory is that Juan Escobar is a principal by indispensable cooperation in the crime of robbery with homicide. In support thereof, it tried to prove that Escobar's actuations during the incident in question were done with the knowledge of and pursuant to said nefarious plan. These acts consist of: [1] his alleged act of opening the gate of the compound to his co-conspirators; [2] his having been seen by Mrs. Lina Chua behind Alorte/Abuyen, the alleged mastermind, after the gunshot; and [3] his having volunteered the information to Mrs. Chua that he was not hit. The prosecution further attempted to show that the gun-firing was a mere ritual in avoidance of suspicion and that Escobar's version of the incident is too replete with contra-dictions to merit belief.

After a thorough review of the evidence, We find that the guilt of Juan Escobar has not been proved beyond reasonable doubt.

The act of opening a gate upon hearing a knock is by itself an innocent gesture. One who imputes an evil motive or purpose thereto must prove his allegations convincingly. In the case at bar, even if the version of Macario Punzalan, Jr. that Escobar opened the gate at the knock of the alleged mastermind Amadeo Abuyen/Roberto Alorte were to be believed, the same would not constitute sufficient and convincing proof that Escobar had knowledge of the nefarious plan. The worse that could be attributed to him is lack of better judgment or laxity in the performance of his duties as a security guard in having failed to exercise the minimum precaution dictated by his occupation to exclude from the premises being guarded persons who have not demonstrated any legitimate reason for getting in. For it must be remembered that having been co-employees, Escobar knew Abuyen/Alorte. It was there-fore not surprising that he should open the gate for him. In fact, even Domingo Rocero, the security

guard who replaced Abuyen/Alorte and who was not as familiar with Abuyen/Alorte admitted in his Sworn Statement having allowed Abuyen/Alorte into the compound thus:

“20. T-Mula ng manungkulan ka sa Bee Seng Electrical Supply, ilang beses mo ng nakita si Roberto Alorte sa malapit sa iyong pinagguaguardiayahan?

S- Dalawang beses ko na po siyang nakita sa lugar na iyon, una noong buwan ng Septyembte at pangalawa noong buwan November 1982.

“21. T-Ano ang dahilan at nakikita mo siya sa lugar na iyan?

S-

Una binisita niya ako at pangalawa mayroon siyang kasamang babae at hindi ko na siya pinapasok sa loob ng Bee Seng Electrical Supply.”[9]

The facts of the case likewise do not support the prosecution's theory that the gun-firing incident was a mere ritual in avoidance of suspicion. We share the keen observation of counsel for Escobar that "x x x it is not a 'common experience' that a person allows himself to be shot by a gun. He would be the stupidest person on earth if he allows that x x x to avoid sus-picion that he was in cohorts [sic] with 'malefactors'. The least or perhaps the safest way for that evil pur-pose is to allow himself to be rendered ineffective, i.e., by tieing [sic] him up, mauling him or wounding him so he would live if he were a conspirator. To allow him to be shot by a gun is too risky a 'ritual' for he might get killed.”[10]

Besides, the robbery and homicide were perpetrated within a span of 5-10 minutes, not half an hour as found by the trial court, a time too short to enable Abuyen/Alorte and Escobar to contrive such a ritual or scenario, or if it were a pre-conceived plan, for Abuyen/Alorte to have remembered it considering the unexpected appearance of Lina Chua at the scene and the need for immediate escape.

Even assuming arguendo that the gun was fired in the air and not at Escobar, the same could have been done to scare Lina Chua away from the scene of the crime rather than to divert suspicion from Escobar.

That the gun-firing was not a ritual and that Escobar was not a part of the criminal plan are further bolstered by the statement made by Macario Punzalan during the preli-minary investigation, and the extra-judicial statement of the alleged mastermind Abuyen/Alorte dated April 16, 1986, sub-mitted by the prosecution as Exhibit B during the separate trial of said Abuyen/Alorte. The pertinent portion of Macario Punzalan's statement reads:

"FISCAL: Ito ba si Abuyen at saka si Juan Escobar at Abuyen ay matagal ng magkakilala?

PUNZALAN: Hindi ko po alam, sir, dahil po sa guardiya po dati yung Alorte.

FISCAL: Ito ba ang kasalukuyang guardia [referring to Escobar]

PUNZALAN: Oho, siya po ang naka guardia noon. [duty]

FISCAL: Noong pagkatapos ng pag--uusap nila ano pa ang ginawa? Kung mayroon pa?

PUNZALAN: Hindi ko na po nakikita sir.

FISCAL: Ito ng umakyat kayo sa bahay ay sumama ba?

PUNZALAN: Hindi ho, nasa ibaba po rin ako sir.

FISCAL: Ito [referring to Escobar] nakita mong umakyat?

PUNZALAN: Hindi ho, kung бага sa ano ay pinapapatay ho sa akin ni Abuyen ni Alorte.

FISCAL: Bakit?

PUNZALAN: Ewan ko po, hindi ko po alam ang dahilan.

FISCAL: Pero hindi mo naman pinatay.

PUNZALAN: Hindi po.

FISCAL: Bakit?

PUNZALAN: Ewan ko po, dahil hindi ko po alam nga ang dahilan, sir, kasi po ay gusto kung mahuli yung Abuyen, sapagkat iyon pong talaga ang utak eh."[11]

On the other hand, Amadeo Abuyen's extrajudicial statement reads in part:

"x x x Pagkatapos ay sumakay kami sa tricycle at nakarating kami sa bahay ni Mr. Chua ng bandang alas 8:00 ng gabi ng petsa 3 ng Desiyembre. Pagdating namin doon ay kumatok ako at binuksan naman ako ng guwardia dahil kakilala ko. Kinumusta ko muna siya kong paano ang buhay-buhay niya. Habang nagkakamustahan kami ay bigla ko siyang tinutukan ng aking baril sinabi ko sa kanya na pasensiya na siya. Pinakuha ko ngayon kay DON?DON iyong baril na .22 kalibre sa lalagyan nito. Pagkatapos ay sabay pumasok si DON-DON at si REY sa opisina ni Mr. chua. Ako naman ay pumuesto sa labas ng opisina at sa gate ay si KUMANG. Nang nakapuesto na ako sa pintuan ay pumalag itong guwardiya na si Escobar na hindi naman pala ginapos nitong si KUMANG. Nang makita ko ay binaril ko siya pero hindi siya tinamaan. Noong matapos kong barilin si ESCOBER ay niyaya ko na sila at tumakbo na kami x x x".[12]

These exculpatory statements although emanating from alleged co-conspirators and therefore may ordinarily be

considered "polluted", deserve credence. Punzalan's statement, it must be observed, is not even responsive to the question being asked. The spontaneous and candid manner by which it was given lends credence to his statement that Abuyen/Alorte wanted Escobar killed. This statement, together with the statement of Abuyen/Alorte that he himself fired at Escobar although the latter was not hit, unwittingly corroborates Escobar's version that the gun was aimed at him. That Escobar was not thereby hit should not be taken as conclusive proof that the gun-firing was a mere ritual because the same could be easily occasioned by a poor aim and/or the hurried manner of its execution.

On the other hand, We see no reason why Abuyen/Alorte should absolve Escobar of any complicity in the crime if this were not the truth. The usual practice is for a conspirator to exculpate himself and pass on the blame to a co-conspirator, particularly in a case such as this where the crime charged is indeed very grave and serious. However undesirable a person may seem, there may be left in him a sense of justice and fairness. Without passing judgment on Abuyen/Alorte, We believe that it was this sense of justice and fairness that moved him to disclose the truth in his extra-judicial confession.

Escobar's unilateral offer of the information that he was not hit does not prove either that he was a co-conspirator. It was but natural that he would want to inform and assure his superior who is presumed to be concerned with his safety and well-being. The motivation attached to said act by the prosecution is therefore too conjectural and far-fetched to pass the test of logic and reason.

The only evidence of the prosecution which may lead to a conclusion of Escobar's complicity is the testimony of Mrs. Lina Chua that upon hearing a shot, she looked at the garage where the shot sounded to have come from and saw Abuyen/Alorte walking towards the gate with Escobar about a meter behind.

We have reasons to doubt the veracity and/or accuracy of this statement. We observe that Mrs. Lina Chua was the last among the prosecution witnesses to give her statement to the police. She gave her statement on December 8, 1983 when none of the accused had been apprehended. So soon after the violent incident her appreciation of what she saw may have been faulty when she attributed the blame on Escobar whose lack of better judgment and laxity in the performance of his job resulted in the tragic event.

Taken in conjunction with the extra-judicial confession of Abuyen/Alorte quoted above, Mrs. Chua's narration of the situation would suffer from inaccuracy, aside from being susceptible to other interpretations. Abuyen/Alorte declared that immediately after the shooting, he called his companions and ran away from the scene of the crime. Punzalan's testimony was of the same tenor, i.e., that Abuyen/Alorte and his companions started running and he [Punzalan] followed them. This was precisely the moment when the malefactors were fleeing from the scene of the crime, and at which point Escobar could have felt safe enough to emerge from the pick-up where he was held captive. Thus, Mrs. Chua claims to have seen Escobar about a meter behind Abuyen/Alorte, who was not walking, but running away from the scene of the crime.

Indeed, it was not unlikely for Mrs. Chua to misinterpret the situation she described having seen. She was then in an agitated condition on seeing the pedestrian gate of the compound open, which was Escobar's duty to keep closed. Moreover, from the relative positions of Mrs. Chua, Abuyen/Alorte and Escobar, the line of vision of Mrs. Chua was such that it would be difficult for her to determine for certain the distance between Abuyen/Alorte and Escobar and whether the latter was merely walking behind the former or in fact chasing him.

Additionally, in her testimony on August 1, 1986 in the separate trial of Abuyen/Alorte, she declared that "they [referring to Abuyen/Alorte and Escobar] were walking towards the gate; they were 'nagmamadali' [in a hurry]".^[13] This description given by Lina Chua does not jibe with the impression gathered from her previous statement of seeing Escobar "walking" behind Abuyen/Alorte. The element of speed injected into the "walking"

by the descriptive term "nagmamadali" corroborates Abuyen/Alorte's declaration that after firing the gun, he ran away from the scene of the crime, and this can be interpreted to mean that Escobar was indeed chasing Abuyen/Alorte.

"The fact that the accused was at the scene of the crime at the time of its commission is not, by itself, sufficient to establish his criminal liability. To hold the accused guilty as co-principal in the crime charged, the existence of conspiracy between the accused and the actual killers, must be shown, and the same degree of proof required for establishing the crime is required to support a finding of the presence of the conspiracy, i.e., it must be shown to exist as clearly and convincingly as the commission of the crime itself." [14]

The prosecution evidence is glaringly wanting in this regard. It failed to prove beyond reasonable doubt that [1] Escobar had knowledge of the criminal design and [2] that his acts during the commission of the crime, such as the opening of the gate and having been behind Abuyen after the gunshot, were performed pursuant to said nefarious plot. This being the case, the prosecution's reliance on the alleged inconsistencies in Escobar's testimony regarding his actuations during the incident at bar can not improve its case. To convict on this basis is repugnant to the constitutional right of the accused to be presumed innocent until the contrary is proved [15] and its corollary rule that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense. [16]

Indeed, the accidents of Escobar being on duty during the commission of the crime and his having opened the gate to persons who turned out to be robbers and killers make him an easy suspect. A less discerning mind could have been blinded by these suspicions and compassion for the two hapless victims. But convictions can never rest on mere suspicions, however, grave and serious.

We now turn to Macario Punzalan's case. He contends having been denied his rights to remain silent and to counsel during the custodial investigation, the preliminary investigation and the trial on the merits.

Punzalan's extra-judicial statement [17] is prefaced by the following:

"PAGPAPAUNAWA NG KARAPATAN SA ILALIM NG SALIGANG BATAS NG PILIPINAS.

Ikaw ngayon ay nasa ilalim ng pagtatanong sa himpilang ito ng pulisya hinggil sa isang usaping kinasasangkutan mo sa salang PAGNANAKAW NA MAY KASAMANG PAGPATAY. Bago ka tanungin ng anomang, ipinauunawa ko muna sa iyo at pinagpa-paalalahanan ka ng iyong mga karapatan sa ilalim ng Saligang Batas ng Pilipinas, tulad ng mga sumusunod:

- Ikaw ay may karapatang manatiling tahimik at huwag magsalita o magbigay ng salaysay kung hindi mo nais.

- Ikaw ay may karapatang magkaroon ng paglilingkod ng isang abogado na iyong mapipili. Kung hindi mo kayang kumuha ng abogado, at nais mong magkaroon ng paglilingkod nito maglalaan ng isa para sa iyo ang hukuman na hindi mo na kailangang bayaran ang paglilingkod nito.

- Ikaw ay may karapatan na huwag magbigay ng anomang pahayag na maaaring gamiting katibayan laban sa iyo.

"4. Hindi ka maaaring pilitin, o gamitan ng anomang uri ng karahasan o pamimilit para ikaw ay magbigay ng salaysay.

Tanong - Pagkatapos na malaman mo, maipaunawa sa iyo at mapagpaalalahanan ka ng iyong mga karapatan sa ilalim ng Saligang Batas ng Pilipinas, nahahanda ka bang magbigay ng isang malaya at kusang loob ng salaysay?

Sagot - Opo.

Tanong - Nahahanda kang magbigay ng salaysay kahit na walang abogado na sumusubaybay sa iyo habang ikaw ay sinisi-yasat?

Sagot - Opo.

Tanong - Lubos mo bang naunawaan na ikaw ay hindi maaaring pilitin or gamitan ng anomang uri ng karahasan upang maging saksi laban sa iyong sarili?

Sagot - Opo.

Tanong - Sa kabila ng lahat ng mga karapatang ipinaunawa sa iyo, magbibigay ka pa rin ba ng salaysay?

Sagot - Opo.

Sgd. Macario G. Punzalan, Jr."

Noteworthy is the fact that except for an additional question in Escobar's extra-judicial statement[18], the latter carried the same quoted prefatory statement. This, to our mind, indicates the lack of zeal and initiative on the part of the investigating officers to fully and truly inform Punzalan of his rights to remain silent and to counsel during the custodial investigation. The identical manner by which the police sought to in-form Escobar and Punzalan of their constitutional rights shows a blatant disregard for individual com-prehensive ability arising from differences in intelligence level, educational background and personal experiences. No effort was exerted to see to it that Punzalan really understood what was being told, considering his low educational attainment of Grade 2 Elementary level. The so-called "informing" done by the police in the case at bar was nothing more than a superficial and mechanical act, performed not so much to attain the objectives of the fundamental law as to give a semblance of com-pliance thereto. Besides, the phraseology used by the police respecting the appointment of counsel de oficio for Punzalan was misleading. It gives the impression that the services of a counsel de oficio can be availed of by Punzalan only during the court proceedings, not during the custodial investigation.

Not having been fully and truly informed of his right to counsel, the waiver appearing in Punzalan's extra judicial statement cannot be con-sidered intelligently made. For this reason, aside from the fact that it was done without the assist-ance of counsel, said waiver is not valid.[19] Needless to say, the extrajudicial confession is inadmissible in evidence.[20]

With respect to Punzalan not having been represented by counsel during the preliminary inves-tigation, suffice it to say that such irregularity which amounts to an absence of preliminary investi-gation, should have been raised before the trial court. Philippine jurisprudence is uniform and consistent in ruling that:

"The question of absence of a proper preliminary investigation is also better inquired into by the Court below. When so raised, this Court, speaking through Mr. Justice Claudio Teehankee, has held that the trial Court is called upon 'not to dismiss the information but hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation. As stressed in *People vs. Casiano*, 1 SCRA 478 (1961), this is the proper procedure since the 'absence of such investigation did not impair the validity of the Information or otherwise render it defective. Much less did it affect the jurisdiction of the Court of First Instance.' The right to

a preliminary investigation, being waivable does not argue against the validity of the proceedings, the most that could have been done being to remand the case in order that such investigation could be conducted.

“x x x the proper forum before which absence of preliminary investigation should be ventilated is the Court of First Instance, not this Court. Reason is not wanting for this view. Absence of preliminary investigation does not go to the jurisdiction of the court but merely to the regularity of the proceedings. It could even be waived. Indeed, it is frequently waived. These are matters to be inquired into by the trial court, not an appellate court.”[21]

While it may be conceded that it would have been more judicious for the trial court to appoint a counsel de oficio for Punzalan other than the counsel de parte of his co-accused Escobar, such failure did not constitute prejudicial error to warrant nullification of the proceedings taken against Punzalan. There is no evidence that Atty. Mariano was biased in favor of Escobar to the prejudice of Punzalan. The records show that Atty. Mariano defended both accused with equal zeal and vigor and that Punzalan was able to present his defense well. In fact, it was Punzalan's version of having knocked that the trial court believed. In the final analysis, the only prejudice Punzalan might have suffered was the failure of Atty. Mariano to cross-examine Escobar on the latter's testimony regarding Punzalan's presence at the scene of the crime.[22] Escobar's testimony, however, was merely corroborative of the testimonies of Lina Chua and Domingo Rocero, witnesses for the prosecution who were cross-examined by Atty. Mariano.[23]

Prosecution witnesses Vicente Chua and Lina Chua had established the fact of robbery and we are convinced beyond reasonable doubt that Punzalan knew of such plan. It is incredible that his three companions would fetch him on the pretext of drinking beer and just bring him along to the scene of crime, thereby risking another eyewitness to the perpetration thereof. Punzalan's flight from the scene of the crime with his companions and his failure, if he were truly innocent, to report to the police what he knew about the crime after reading it in the newspapers further demonstrate his knowledge of the plan.

While it has been established that Punzalan's participation in the crime was to act as a look-out, and as such, he did not participate in the killing of the two help-less victims, he cannot evade responsibility therefor. Well-established is the rule in this jurisdiction that whenever a homicide has been committed as a consequence of or on the occasion of a robbery, all those who took part as principals in the commission of the robbery are also guilty as principals in the special complex crime of robbery with homicide although they did not actually take part in the homicide unless it clearly appeared that they endeavored to prevent the homicide.[24]

WHEREFORE, the decision dated January 10, 1984 in Criminal Case No. Q-22896 of the Regional Trial Court of Quezon City is hereby SET ASIDE. Accused-appellant Juan Escobar y Geralde is hereby ACQUITTED of the crime of Robbery with Homicide and his immediate release from confinement is ordered, unless detained for some other crimes. Accused-appellant Macario Punzalan, Jr. y Guevarra is hereby found guilty beyond reasonable doubt as principal in the complex crime of Robbery with Homicide and is accordingly sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victims in the amount of P60,000.00.

SO ORDERED.

Yap, Narvasa, Cruz, Paras, Gancayco, Bidin, and Cortes, JJ., concur.

Teehankee, C.J., with a brief concurrence.

Gutierrez, Jr., J., concurs in a separate opinion.

Melencio-Herrera, Padilla and Sarmiento, JJ., joins the dissenting and concurring opinion of Justice Feliciano.

Feliciano, J., dissents and concurs in a separate opinion.

[1] p. 3, Petition, Rollo in G.R. No. 69658

[*] Amadeo Abuyen alias Roberto Alorte was subsequently apprehended, tried and convicted by the same trial court. His appeal is also before this Court.

[2] pp. 4-10, Consolidated Brief, p. 376, Rollo in G.R. No. 69564

[3] pp. 100-103, Rollo in G.R. No. 69564

[4] pp. 163-165, Rollo in G.R. No. 69564

[5] pp. 10-11, Rollo, G.R. No. 69658

[6] pp. 167-168, Rollo in G.R. No. 69564

[7] pp. 608-609, Original Records, Vol. I

[8] Sec. 16, Article IV, 1973 Constitution and Sec. 16, Art. III, 1987 Constitution

[9] Exh. "A", Folder of Exhibits, p. 2

[10] pp. 38-39, G.R. No. 69658, Rollo

[11] pp. 64-66, Folder of Exhibits, Original Records, Volume 3, Underscoring supplied

[12] pp. 154 and 171, G.R. No. 69658, Rollo

[13] tsn, August 1, 1986, p. 132

[14] People vs. Sabilano, 132 SCRA 83

[15] Sec. 19, Art. IV, 1973 Constitution

[16] People vs. Bihasa, 130 SCRA 62; People vs. Castelo, 133 SCRA 667 and People vs. Magallanes, 147 SCRA 92

[17] Exh. "M", pp. 22-23, Folder of Exhibits, Original Records, Vol. 3

[18] Exh. "F", p. 7, Folder of Exhibits, Original Records, Vol. 3.

[19] People vs. Galit, 135 SCRA 465; People vs. Pascual, Jr., 109 SCRA 192 and People vs. Rojas, 147 SCRA 169.

[20] Constitution, Article IV, Sec. 20.

[21] Ilagan vs. Enrile, 139 SCRA 349.

[22] People vs. Encipido, 146 SCRA 478

[23] See People vs. Nierra, 96 SCRA 1

[24] People vs. Rogel, 4 SCRA 807; People vs. Atencio, 22 SCRA 88; People vs. Pujinio, 27 SCRA 1186; People vs. Puno, 56 SCRA 659; People vs. Berberino, 79 SCRA 694; People vs. Umbao, 103 SCRA 233; People vs. Tabian, 120 SCRA 571; People vs. Solis, 128 SCRA 217; People vs. Gapasin, 145 SCRA 178

CONCURRING OPINION

TEEHANKEE, C.J.:

I concur in toto with the judgment of the Court (a) holding that the 1-1/2 page, single-spaced, decision of the trial court presided by Judge Oscar Leviste, sentencing the accused at bar to the supreme penalty of death without specification of the evidence, testimonial and documentary, upon which his conclusions finding them guilty had been based falls short of the constitutional requirement that every decision of a court of justice clearly and distinctly state the facts and the law on which it is based; (b) acquitting the accused Juan Escobar of the crime of robbery with homicide on the ground that his guilt has not been proved beyond reasonable doubt; and (c) finding the other accused Macario Punzalan, Jr. guilty beyond reasonable doubt as principal in the complex crime of robbery with homicide and imposing upon him the penalty of reclusion perpetua in view of the abolition of the death penalty under the 1987 Constitution.

a)

This brief concurrence is just to restate that the whole Court en banc is unanimous as to the utter failure of the trial judge's 1-1/2 page decision to conform to the mandatory constitutional requirement that a decision must clearly state the facts and the law on which it is based. Normally, in such cases, the case would have to be remanded to the court a quo for the rendition of a new judgment that does conform to the constitutional mandate but the Court, since all the briefs have been filed, opted to review the record and the evidence and to render judgment accordingly in order to avoid further delay in the disposition of the case on the merits;

b)

The whole Court en banc is likewise unanimous in its judgment finding the accused Macario Punzalan, Jr. guilty beyond reasonable doubt of the crime of robbery with homicide, even as it reaffirms the settled doctrine in Criminal Law that whenever a homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as conspirators in the commission of the crime of robbery are also guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide under the basic principle that once a conspiracy or community of criminal design is shown, then the actual mode of participation in a crime of any of the accused, whether he be a lookout posted outside the scene of the robbery, is of no moment, since the act of one conspirator is the act of all. This has been the consistent doctrine of the Court applied since the early 1907 case of *U.S. vs. Macalalag* and most recently affirmed in the 1987 case of *People vs. Pecato* as traced by Mr. Justice Feliciano in his scholarly separate opinion; and

c)

The ten-to-four division among the members of the Court is confined to the case of accused Juan Escobar with ten members voting to acquit him and four members dissenting from his acquittal. On my part, I have given him the benefit of the doubt and voted for his acquittal. The superior and immutable rule is that the guilt of an accused must be proven beyond reasonable doubt by virtue of the constitutional presumption of his innocence, which presumption must prevail unless overturned by clear, competent and credible proof. Here, as discussed in the extensive main opinion of the Court ably penned by Mr. Justice Fernan, the evidence as to the existence of a conspiracy between the accused Juan Escobar and the robbers-killers and as to his participation in the crime of robbery appears to be inadequate and therefore failed to produce the required moral certainty of his guilt.

CONCURRING

GUTIERREZ, JR., J.:

While acknowledging the impeccable logic behind the concurring and dissenting opinion of Justice Florentino P. Feliciano, I regret I cannot join him completely.

I entertain reasonable if not grave doubt as to the complicity of Juan Escobar in the robbery and in the killing of two children while the robbery was underway. It is an easy task after a crime has been consummated for us to surmise how the mind of an accused should have operated during crucial moments and to state how an accused should have behaved to avoid the possibility of his being implicated as a co-principal and conspirator. Unfortunately, things do not always work logically and according to predictable patterns of behaviour in real life. The minds of ordinary persons (and I see nothing special, extraordinary, or superior about the accused security guard), seldom behave in predictable ways. Seemingly negligent or even inexplicable behaviour is not necessarily a badge of guilt. Not every security guard who opens a gate when he should keep it closed can be accused of complicity in a crime even if evil persons choose that particular moment of indiscretion to barge into the premises. I agree with Justice Fernan that from the records of this case, the guilt of Juan Escobar has not been proved with the degree of certainty required under our penal laws.

I would also like to make some observations about the Court's apparently unqualified adherence to the precedent in the 1907 case of *U.S. v. Macalalad* (9 Phil. 1) and the list of decisions from 1926 to 1957 cited in the separate opinion of Justice Feliciano. A conspirator should not necessarily or automatically be found guilty of everything that happens while the crime, object of the conspiracy, is being committed.

It would seem that unless a conspirator endeavors to prevent the other crime committed on the occasion of the principal crime, object of the conspiracy, he would be guilty as a principal in the complex crime or other crime even if he had absolutely no part in it. I may have no statistics to prove it but I believe that conspiracy improperly handled could send more innocent persons to jail than any other principle in criminal law. For instance, many accused persons protesting they had nothing to do with a crime have been convicted of malversation or estafa simply because the documents evidencing the crime somehow passed their hands. A person who is in a stupor or is simply not paying any attention during a drinking party where the details of a robbery, carnapping, or murder are planned could, in the hands of a brilliant prosecutor, be convicted of the resulting crime and all its consequences.

I believe that appellant Punzalan in this case is guilty of robbery with homicide. My observations are simply aimed at an unqualified adherence to the principle that the accused must always endeavor to prevent the other crime to be freed from complicity in a crime he knew nothing about. Or that he must run away and leave his companions before the second crime is committed. Every case must be judged on its separate facts and notwithstanding conspiracy in the planned crime, a person may still be acquitted of the other crime about which he had no knowledge at all. For instance, if the innocent victims of the vicious killing in this case had been the children of Punzalan, certainly he cannot be held guilty of parricide. Or if a band of robbers rape a woman inside a house not knowing he is the wife of their lookout, the rule on all conspirators being equally responsible for all the consequences or happenings during the commission of the planned crime should not apply. The precedents from *Macalalad* are impressively cited by my learned colleague but I believe all judges should still be cautioned to look beyond the unqualified rule and ascertain carefully whether the lookout or anybody else similarly situated should be automatically convicted for something about which he was completely ignorant. The consequences of sending an innocent person to jail for a crime where he had no participation are too horrible to be left simply to the operation of an unqualified rule.

DISSENTING AND CONCURRING OPINION

FELICIANO, J.:

With regret, I am compelled to dissent from the opinion written by Mr. Justice Fernan to the extent that it would acquit Juan Escobar. I would, upon the other hand, like to add somewhat to the reference made in the majority opinion to the rule on the basis of which Punzalan is correctly held liable for robbery with homicide.

We consider first the proposed acquittal of Juan Escobar.

The prosecution theory, as found by the majority opinion, was that Juan Escobar was a principal by indispensable cooperation in the crime of robbery with homicide. According to the majority opinion, the prosecution sought to prove that Escobar joined in the community of design, a conspiracy, which was shown in respect of the other accused, by referring to the following particular acts of Escobar:

"[1] [Escobar's] alleged act of opening the gate of the compound to his co-conspirators;

[2] his having been seen by Mrs. Lina Chua behind Abuyen, the alleged mastermind, after the gun shot; and

[3] his having volunteered the information to Mrs. Chua that he was not hit."

The prosecution further urged that the firing of a hand gun by Abuyen was a mere "ritual" designed to avoid or deflect suspicion from Escobar and that Escobar's version of the incident [was] too replete with contradictions "to merit belief".

The opening of the gate of the Chua compound to the malefactors by Escobar was absolutely indispensable for the commission of the crime of robbery and for the killing of the two (2) children of Mr. and Mrs. Vicente Chua in the course thereof. In abstracto, the act of opening a gate upon hearing a knock is, of course, an innocent gesture. It is important to bear in mind, however, that Escobar was a security guard; that he had seen and recognized Abuyen through the peephole in the pedestrians' gate before opening that gate; and surely the least that can be expected of a security guard, who is on guard duty at night time, is that he must exclude from the premises being guarded persons who have not demonstrated any lawful reason for wanting to enter such premises. If one assumes that Escobar had not joined the criminal conspiracy, it was at the very least utterly reckless for him to have opened the gate under the circumstance in this case. The fact that Escobar was acquainted with Abuyen was no justification for letting Abuyen and his gang come in. Upon the other hand, the circumstance that Escobar knew Abuyen suggests at least the probability that Escobar was indeed part of the criminal conspiracy; if Escobar was totally unacquainted with Abuyen, that probability would not of course exist. It must further be noted that Escobar himself, who had thoughtfully left his gun in a locker before opening the gate of the compound,[1] did not claim that he had been coerced by Abuyen and his companions into opening the gate of the compound.[2] If he had in fact been forced into opening the gate by Abuyen and company, it would have been the simplest and most natural thing in the world for him to have said so. Abuyen, the brains of the conspiracy, however, conveniently explained later that he had pointed his gun at Escobar, almost apologetically, after Escobar had opened the small gate and let Abuyen and the other malefactors into the compound.

Mrs. Lina Chua testified that upon hearing a shot, and thereupon turning to the garage from whence the sound of the shot came, she saw Abuyen walking towards the gate with Escobar about a meter behind.[3] It must not escape notice there was no suggestion by any witness that Escobar was then chasing and trying to capture Abuyen, which a security guard faithful to his duties might be expected at least to try to do. The majority opinion does try to suggest that because Mrs. Lina Chua, in the separate trial of Abuyen, had said that Abuyen and Escobar "were walking towards the gate; they were in a hurry (nagmamadali)", Escobar could be regarded as

"indeed chasing Abuyen/Alorte". Escobar himself had not claimed that he had somehow summoned his courage and sought to capture Abuyen immediately after Abuyen had, according to Escobar, fired a shot at him but had missed. Thus, the suggested interpretation would seem unreal and excessively generous to Escobar. There was also no evidence that Escobar was trying to flee or hide himself from Abuyen. The net effect, if the testimony of Mrs. Lina Chua is to be believed at all, was that Escobar was acting in concert with Abuyen, presumably to facilitate the escape of Abuyen and his companions.

Clearly, the testimony of Mrs. Chua was critical for the prosecution. The majority opinion, however, rejects totally the testimony of Mrs. Chua as "suffer[ing] from inaccuracy and as "being susceptible to other interpretations" in the premises, when "taken in conjunction with the extrajudicial confession of Abuyen". It must be observed, with respect, that the majority opinion so discarded Mrs. Chua's testimony upon the totally speculative ground that "it is not contrary to human psychology and experience", that Mrs. Lina Chua having lost two (2) of her children to the robbers, would in seeking vengeance deliberately and baselessly implicate Escobar in the robbery and the killings as a "sacrificial lamb." There appears no basis for this speculation at all. Moreover, the rejection of Mrs. Chua's testimony runs counter to the prevailing jurisprudence which has been summed up in the following terms in *People v. Roxas*:

"x x x Neither is the relationship of Victorino and Paterno to the deceased sufficient to render their testimony doubtful nor enough to discredit their credibility. The credibility of witnesses cannot be assailed as prejudiced simply because of their close relation to the victim. For it is not to be lightly supposed that the relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they know to be innocent." [4]

It was part of the prosecution theory that Abuyen had fired a shot, presumably in the air, in order to create the impression that Escobar was not part of the conspiracy. Escobar claimed that the shot had been fired at him while he was inside the van in the garage, and advised Mrs. Chua that he had not been hit by the shot. [5] The first point that may be noted in this connection is that if the robbers had really wanted to kill Escobar in order to prevent Escobar's later identifying them, there was absolutely nothing to prevent them from doing so. The two (2) young children of Mrs. Chua had been stabbed to death brutally to prevent them from identifying the robbers; yet, if Escobar is to be believed, the robbers made no more than a token, half hearted, effort to insure that Escobar, an adult male and a security guard, would not identify them. Escobar was not even tied up and blindfolded. It is hence difficult to appreciate the "keen observation" of Escobar's counsel that Escobar would be the "stupidest person on earth" if he allowed himself "to be shot by a gun --- to avoid suspicion that he was in cahoots with the malefactors". Escobar was in fact not wounded at all. No bullet hole was found in the van where Escobar claimed to have been crouching when Abuyen shot at him. [6] Upon the other hand, a shot fired in the air can only be regarded as a cheap method for supporting a profession of innocence on the part of Escobar. Escobar's counsel was simply begging the question.

In the majority opinion, reliance is placed upon statements made by co-accused Macario Punzalan during the preliminary investigation, and upon an extrajudicial statement of Abuyen (accused in a separate criminal case) to support the position that the gun play was not mere play-acting and that Escobar was not part of the criminal conspiracy. The statements coming from Punzalan and Abuyen must, however, be taken with great caution. For it must be recalled that the testimony of accomplices -- principals, confederates or conspirators -- while admissible and competent, comes from a "polluted source". Consequently, as Mr. Justice Malcolm cautioned, such testimony must be "scrutinized with care. It is properly subject to grave suspicion. If not corroborated, credibility is affected." [7] It should also be pointed out that the statement of Punzalan adduced in this connection in the majority opinion, appears disjointed and totally unrelated to the question in response to which it was given. The

statement of Punzalan, in other words, would appear, not "spontaneous and candid" (as suggested in the majority opinion) but rather to have been deliberately thrown in for the purpose of exculpating Escobar. Thus:

FISCAL: Ito ng umakyat kayo sa bahay ay sumama ba?

PUNZALAN: Hindi ho, nasa ibaba po rin ako sir.

FISCAL: Ito [referring to Escobar] nakita mong umakyat?

PUNZALAN: Hindi ho, kung бага sa ano ay pinapapatay ho sa akin ni Abuyen ni Alorte.

FISCAL:

Bakit?

PUNZALAN: Ewan ko po, hindi ko po alam ang dahilan.

FISCAL: Pero hindi mo naman pinatay.

PUNZALAN: Hindi po.

FISCAL: Bakit?

PUNZALAN:

Ewan ko po, dahil hindi ko po alam nga ang dahilan, sir, kasi po ay gusto kong mahuli yung Abuyen, sapagkat iyon pong talaga ang utak eh. " (Emphases supplied)

To accept and to accord full credence to statements of proven conspirators to all appearances designed to avoid suspicion from settling on Escobar, who had made the robbery and double homicide possible to begin with, while rejecting as biased the testimony of Mrs. Lina Chua solely because she was the mother of the slain children, must seem a strange situation indeed. If one must, without requiring proof, impute a "sense of justice and fairness" to Abuyen from whose mind the conspiracy sprang and whose hands and arms were splattered with the blood of the two (2) young children of Mrs. Lina Chua, one ought not, it is submitted, to assume casually that Mrs. Lina Chua was bereft of that same "sense of justice and fairness."

While each of the acts of Escobar cited by the prosecution might not, considered in isolation from the others, be sufficient to show participation in the common criminal design, it is submitted that where those acts are considered together, and viewed in the light of what Abuyen, Punzalan and their other two companions did, and did not do, they constitute more than adequate basis for not overturning the conclusion of the trial court that

Escobar was guilty. After all, it was not this Court but the trial judge who examined all the evidence and listened to all the testimony, and his conclusion, even if too cryptically set down on paper, must be given great weight.

We turn to Macario Punzalan whom the majority opinion finds guilty of robbery with homicide. There is no question that Punzalan participated in the common design to commit robbery. He acted as lookout for the gang of robbers. He did not go upstairs to the house which was ransacked and where the victims were slain; unlike Abuyen, he did not take part in the actual stabbing of the two (2) innocent children of Vicente and Lina Chua. Even so, the majority opinion, stressing that Punzalan's participation in the conspiracy to commit robbery was conclusively shown, rightly held him responsible for robbery with double homicide.

Because the above rule on this matter and its underlying ratio have not always been well understood and because a handful of decisions of this Court contain language or have reached results which, at first glance, may seem at variance with the rule above referred to, it should be useful to examine in some detail the development of that rule and to mark out its present scope and shape.

The rule correctly applied by the Court was unanimously reaffirmed by the Court en banc most recently in *People v. Pecato* (G.R. No. L-41008, 18 June 1987) in the following terms:

"The crime committed by the accused is Robbery with Homicide as defined and penalized under Article 294 (1), of the Revised Penal Code. Felix Larong was shot to death during the robbery. We have repeatedly held that: (A)s long as homicide resulted during or because of, the robbery, even if the killing is by mere accident, robbery with homicide is committed; it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime that has to be taken into consideration. (*People vs. Guiapar*, No. L-35465, May 31, 1984, 129 SCRA 539, 553-554 [1984].) Further, whenever a homicide has been committed as a consequence of or on the occasion of a robbery, all those who took part as principals in the commission of the crime are also guilty as principals in the special complex crime of robbery with homicide although they did not actually take part in the homicide unless it clearly appeared that they endeavored to prevent the homicide. (*Id.*, 554, citing: *People vs. Bautista*, 49 Phil. 389 [1926]; and *U.S. vs. Macalalad*, 9 Phil. 1 [1907].) In this instance, the evidence on record is bereft of any showing that any of the accused tried to prevent the killing of Felix Larong. What is shown instead is that they merely stood watching and did nothing when one of their companions shot the victim. (T.s.n., session of October 21, 1974, 29; Deposition, *id.*, 3, 5.) Additionally, the term 'homicide' in robbery with homicide should be understood as a generic term and includes murder. (*People vs. Revotoc*, No. L-37425, July 25, 1981, 106 SCRA 22 [1981].)

x x x x x x x x"

(Underscoring supplied.)

The rule so reiterated in *Pecato* was first elaborated upon as long ago as 8 October 1907 in *U.S. v. Macalalad*, 9 Phil 1. Mr. Justice Carson, speaking for the Supreme Court, said:

"x x x While it does not appear that this defendant [*Fructuoso Esguerra*] himself struck the fatal blow which caused the death of *Rufino Calderon*, he must be adjudged guilty as principal of the complex crime of robbery with homicide with which he is charged, it having been proved that he was present, aided, abetted, and took part therein. The testimony of the witnesses for the prosecution fully establishes the guilt of the defendant as a principal in the commission of the robbery, and, even were we to disregard his confession, which he repudiated at the trial of the case, and wherein he admitted he was present at the killing of *Rufino Calderon*, we would, nevertheless, be compelled to find him guilty of the crime of *robo con homicidio* (robbery with homicide). The supreme court of Spain, interpreting the provisions of the Penal Code touching the complex crime of *robo con homicidio*, has frequently decided that, where the complex crime has been committed, all those who took part as principals in the commission of the robbery are guilty as principals in the commission of the crime of *robo con homicidio*, unless it appears that they endeavored to prevent the unlawful killing. (Decisions of the

supreme court of Spain, April 30 and February 23, 1872, and June 19, 1890. See also Viada, vol. 3, pp. 347, 354, and 356).

Accepting as true the exculpatory statements of the accused in his repudiated confession, it does not appear therefrom that he made any genuine effort to prevent the murder of Rufino Calderon.

xxx xxx xxx"[8]

(Underscoring supplied.)

The rule in Macalalad was consistently followed until 1925 when U.S. v. Basisten, 47 Phil 493 (1925) was decided. In Basisten, Mr. Justice Romualdez wrote, for the Court:

"The liability of the other appellants Andres Pasquin, Placido Heusca, Vicente Caballero and Alejandro Picate, consist in having conspired and taken part in the robbery. They must not be held responsible for the homicide which was not the subject matter of their conspiracy and in which they did not have any intervention, for it was performed by Emilio Huesca alone. The proper punishment, therefore, for them is the penalty for robbery in band within the limits of which the trial court has imposed upon them."[9]

But in 1926, barely one year after Basisten had deviated from Macalalad, the Supreme Court went back to the Macalalad rule. In People v. Bautista, the Court, through Mr. Justice Johnson, invoked and applied the Macalalad rule without even mentioning the deviation in Basisten:

"xxx xxx xxx

In the first place it may be said that the evidence adduced during the trial of the cause clearly shows that the appellants are guilty of the crime of robbery with homicide and must therefore be punished in accordance with the provisions of paragraph 1 of Article 503 of the Penal Code. It is clearly established that the appellants, together with an armed band of more than four persons, committed a robbery and that on the occasion of such robbery a homicide was committed. The crime which they committed therefore falls clearly within the provisions of said article. (Decision of the Supreme court of Spain, July 13, 1871; 3 Viada, Commentaries on the Penal Code, p. 347.) Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide."[10]

From 1926 to 1967, the Macalalad doctrine was applied and reapplied many times by the Court. The following list does not purport to be exhaustive:

- People v. Morados, 70 Phil. 558 (1940);
- People v. de la Rosa, 90 Phil. 365 (1952);
- People v. Libre, 93 Phil. 5 (1953);
- People v. Lingad, 98 Phil. 5 (1955);
- People v. Mangulabnan, G.R. No. L-8919, 28 September 1956; 52 O.G. 6532 (1956);
- People v. Gardon, 104 Phil. 371 (1958);
- People v. Carunungan, 109 Phil. 534 (1960);
- People v. Flores de Garcia, 111 Phil. 393 (1961); and
- People v. Rogel, 4 SCRA 807 (1962).

In 1967, *People v. Pelagio*,^[11] was decided. Here, *U.S. v. Basisten*, was indeed cited by the Court. A close scrutiny of the facts in *Pelagio* will, however, show that the result there reached does not really represent a departure from the *Macalalad* rule which as noted above, had been reiterated many times since the 1925 *Basisten* case.

Pancho Pelagio and five (5) others conspired to rob a particular house in G. Villanueva St., Pasay City. Only Pelagio and three (3) others actually carried out the robbery as planned. Pelagio acted as the lookout and posted himself at the gate of the house; two (2) others actually entered the victim's premises; the fourth was ordered to hail and hold a taxi in readiness for the getaway. The robbery was carried out as planned. But, when the two (2) robbers who had gone up the house came down and out into the street, they failed to find Pelagio at the gate. The two (2) robbers hurried to the next block where they found the fourth conspirator waiting for them inside a taxi. The two (2) robbers boarded the taxi. As the taxi was about to leave, however, a jeepney arrived from the opposite direction and blocked the taxi's way. A man alighted from the jeepney and started towards the taxi. One of the robbers recognized the man as a police officer and ordered his companions to shoot which they did, killing the police officer. Pelagio later explained to his associates that he had fled before the two (2) robbers had completed their job because he, Pelagio, had seen someone slip out of the house being robbed apparently to summon the police. In a *per curiam* decision, the Supreme Court modified the conviction of Pelagio from robbery with homicide to simple robbery. The Court said:

"Even the decision under appeal recites that when Arcadio Balmeo and Oscar Caymo hurried out of the victim's house after the robbery. Pancho Pelagio had evidently fled from his lookout post because the pair, Balmeo and Caymo, failed to locate him at the gate where he was supposed to have stationed himself. To be sure, the said decision itself renders the account that it was only Balmeo and Caymo who walked together from the said house to the corner of Villanueva and F. Fernando Streets where then they saw Armando Manalang waiting for them in a taxi and that it was only when these three had taken to the said taxi, and the cab was about to leave, that the shooting of Pat. Trinidad happened. When the homicide was committed, therefore, Pancho Pelagio could not have had the least intervention or participation as might justify penalizing him likewise for the said killing. So far as the records disclose, the conspirators were agreed only on the commission of robbery; there is no evidence that homicide besides was determined by them when they plotted the crime. All these warrant the exclusion of Pancho Pelagio from any responsibility for the said killing. (*People vs. Basisten, et al.*, 47 Phil. 493) x x x"

Clearly, Pelagio, having fled from the scene of the robbery, had abandoned the conspiracy and dissociated himself from his co-conspirators even while the robbery was still in process and certainly before the unfortunate policeman arrived on the scene as the robbers were about to escape in a taxi. Because of such abandonment and dissociation, the conspiracy, whatever may have been the subject thereof, was over and done with, so far as concerned Pelagio. Abandonment and dissociation are clear equivalents of efforts to prevent the homicide which, under *Macalalad*, would exculpate one from liability for the homicide but not for the robbery.

It may be observed that very soon after *Pelagio*, the Supreme Court resumed application and reiteration of the *Macalalad* rule. Thus, e.g.:

- (1) *People v. Atencio*, 22 SCRA 88 (1968);
- (2) *People v. Pujinio*, 27 SCRA 1186 (1969);
- (3) *People v. Puno*, 56 SCRA 659 (1974);
- (4) *People v. Sumayo*, 70 SCRA 448 (1976);
- (5) *People v. Navasca*, 76 SCRA 70 (1977);

- (6) *People v. Page*, 77 SCRA 348 (1977);
- (7) *People v. Berberino*, 79 SCRA 694 (1977);
- (8) *People v. Cristobal*, 91 SCRA 71 (1979);
- (9) *People v. Umbao*, 103 SCRA 233 (1981);
- (10) *People v. Veloso*, 112 SCRA 173 (1982);
- (11) *People v. Tabian*, 120 SCRA 571 (1982);
- (12) *People v. Solis*, 128 SCRA 217 (1984);
- (13) *People v. Guiapar*, 129 SCRA 539 (1984); and
- (14) *People v. Gapasin*, 145 SCRA 178 (1986).

Clearly, the Court did not abandon the Macalalad rule by promulgating *Pelagio*, as Mr. Justice Antonio had mistakenly supposed in his concurring opinion in *People v. Adriano*.^[12] Examination of the cases listed above will show, further, that the Macalalad rule, while it originated in a case involving a band (*en cuadrilla*), has in fact not been limited by the Court to situations where a band was present. Indeed, the great majority of the above cases are conspiracy cases where the technical elements of a band^[13] were absent.

We turn to *People v. Abalos*,^[14] and *People v. Adriano*,^[15] which also need to be considered. A close examination of the facts will show that Abalos and Adriano do not represent true departures from the 1907 Macalalad rule.

In *Abalos*, the accused Abalos and Mendiola, after along drinking bout with two (2) other comrades, got into a taxi and directed the driver to take all four of them to the Arty Subdivision, Valenzuela, Bulacan, in the early hours of the morning. Abalos was seated beside the driver; the other three (3) were in the back seat. Two (2) of the four (4) comrades got off before reaching the subdivision. Abalos and Mendiola then directed the driver to enter the subdivision. Abalos signalled Mendiola that he would hold up the driver. Abalos drew out a knife and held it at the driver's neck. Mendiola at the same time demanded the driver's earnings and boxed him three (3) times on the back. The driver refused to surrender his earnings and apparently tried to fight back. Abalos, infuriated by the driver's resistance, plunged his seven and a half inch blade through the driver's right cheek. Unnerved by the sudden, profuse bleeding of the wounded driver, Abalos and Mendiola hastily left the taxicab, forgetting all about the driver's earnings, and fled. The taxi driver suffered a massive hemorrhage which brought on death. Abalos and Mendiola were convicted by the trial court of attempted robbery with homicide. The Supreme Court through then Mr. Justice Aquino upheld the conviction of Abalos but found Mendiola guilty only of attempted robbery, citing in this connection *U.S. v. Basisten*. The reference to *Basisten* in this case, however, appears quite unnecessary for the Court had explicitly found a few pages back that there in fact was no conspiracy at all, whether for robbery (holdup) or for homicide. Mr. Justice Aquino wrote:

"As already noted [Abalos] said in his confession that he was intoxicated when he stabbed the cab driver, he and his companions had been drinking continuously sometime before the crime was perpetrated. Intoxication mitigates his liability. It was not habitual nor intentional (Article 15, Revised Penal Code). The holdup was not the offspring of planning and deliberation. It was a fatal improvisation dictated by an impromptu impulse."^[16](Underscoring Supplied)

Since there was neither conspiracy nor the presence of a band, there was in point of fact no occasion for application of the doctrine of Macalalad nor of the *Basisten* case. Both Abalos and Mendiola were simply principals by direct participation in the attempted robbery.

People v. Adriano involved the horrifying slaughter of five (5) security guards of the Rice and Corn Administration. The security guards were hacked with an ax, one by one, as they lay hogtied on the floor. The malefactors numbered about eleven (11) in all. The trial court found four (4) guilty of the crime of robbery with homicide. The precise question before the Court was whether the decision of the trial court holding four (4) persons, including one Leonardo Bernardo, guilty of robbery with homicide and sentencing them to death should be affirmed or whether Leonardo Bernardo should be held guilty of robbery merely. A majority of six (6) justices plus one (1) concurring justice held that Leonardo Bernardo was guilty of simple robbery. Six (6) other members of the Court voted for affirmance in toto of the trial court's judgment.[17] The facts in Adriano as found by the Court showed that there were two (2) conspiracies: one for the commission of robbery, which included Leonardo Bernardo and all the other malefactor;[18] another, smaller, one for the commission of the multiple murder, which did not include Leonardo Bernardo. The per curiam decision read, in relevant part:

"x x x The awareness that just one of them being known and arrested would lead to the apprehension of the other participants in the robbery, the common design of liquidating the possible witnesses to avoid the grim possibility of their being all brought before the bar of justice entered the minds of those specifically named above, and moved to act accordingly. Quite obviously Mariano Domingo did nothing to prevent the killing which he himself hinted at as the next practical move to take following the consummation of the robbery. The conspiracy to kill, born of the exigency of the situation, therefore clearly involved Apolonio Adriano, Mario San Diego, Mariano Domingo and possibly Pedro Miranda who is yet to be apprehended. Their respective acts clearly were directed to the same object and for the same purpose. Once the conspiracy is established, which may be done by mere circumstantial evidence, as direct evidence is not so easily obtainable (People vs. Candado, 84 SCRA 508; People vs. Cabiling, 74 SCRA 285; People vs. Mejia, 55 SCRA 453; People vs. Cariño, 55 SCRA 516; People vs. Cadag, 2 SCRA 388), the conspirators are all liable as co-principals, regardless of the extent and character of their respective participation in the commission of the crime (People vs. Candado, 84 SCRA 508; People vs. Pilonas, 84 SCRA 167).

The Court, however, finds Leonardo Bernardo seemingly unaware of the intention to kill the guards. The idea of killing them arose only when Mariano Domingo called the attention of Apolonio Adriano to his being known by the guards, being one of them. By that time, the robbery had been consummated, the jeep driven by him (Leonardo Bernardo) with Plate No. J-14362, was already loaded with bags and carton boxes containing the stolen money. x x x

x x x It was clearly only at the spur of the moment, so to speak, that Mariano Domingo and Apolonio Adriano, joined by Mariano San Diego and Pedro Miranda, thought of having to kill the guards, entirely without the knowledge of Leonardo Bernardo. x x x."[19] (Underscoring supplied.)

Because Leonardo Bernardo was not part of the smaller and later conspiracy (to kill the five guards) within the larger conspiracy (to rob the treasury of the Rice and Corn Administration), he was found guilty of robbery only and his sentence reduced from death to reclusion perpetua. Thus, the result reached in Adriano is compatible with the Macalalad-Pecato doctrine.

What may be stressed, in resume, is that the result reached by the Court in respect of the accused Punzalan is in line with the rule first elaborated in U.S. v. Macalalad (1907) and most recently reaffirmed in People v. Pecato (1987). U.S. v. Basisten, a case whose rule was overturned the very next year after it was promulgated, was in fact an aberration. That the Court has today affirmed once more the Macalalad-Pecato doctrine evidences its discriminating regard for settled rules.

That the Court has reaffirmed Macalalad-Pecato is important for another reason. To have disregarded Macalalad-Pecato would have come too close to discarding the basic rule on conspiracy, that is, once a conspiracy or community of criminal design is shown, then the concrete modality of participation in a crime becomes

secondary for determination of liability - "the act of one is the act of all". To require affirmative proof that the subject of the conspiracy in this case embraced not just robbery but also the double homicide, is to lose sight of the fact that conspiracy, in the nature of things, is almost always only indirectly or circumstantially shown, by proof of concerted acts rather than by, e.g., a written plan of action. To require such affirmative proof would also be to impose a very heavy (and quite unnecessary) burden on our law enforcement agencies, a burden which under present circumstances of rampant violent crime and severely limited governmental resources, may well be an insupportable one. Our law on conspiracy is infused, in important degree, with the objective of deterring conspiracies to commit crimes and the implementation of such conspiracies. A man's capacity for inflicting harm is magnified when he joins a conspiracy to commit crime (whether or not a band, in the technical sense of Article 296, Revised Penal Code, materializes). The threat to society posed by a criminal group is greater than the sum total of the particular acts of the individual members of the group. The result here reached by the Court in respect of Punzalan may be seen to reinforce the capability of our law to achieve that objective of deterrence.

Finally, there appears nothing unfair or illiberal about holding a man, who knowingly joins a conspiracy to commit a crime, responsible for all the crimes which are causally connected with the conspiracy.[20] No one complains about the same rule in tort law. One who joins a criminal conspiracy in effect adopts as his own the criminal designs of his co-conspirators; he merges his will into the common felonious intent. A person who embraces a criminal conspiracy is properly held to have cast his lot with his fellow conspirators and to have taken his chances that a co-conspirator may get rattled, that a victim may unexpectedly decide to resist and fight back, or that something else may go awry, and third persons may get killed or injured in the course of implementing the basic criminal design. To free himself from such liability, the law requires some overt act on the part of the conspirator, to seek to prevent commission of the second or related felony or to abandon or dissociate himself from the conspiracy.

I vote to affirm the judgment of the trial court that both Juan Escobar and Macario Punzalan, Jr. are guilty beyond reasonable doubt as principals in the crime of robbery with homicide and that accordingly, both should be sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victims in the amount of P60,000.00 and to pay moral damages to such heirs in the amount of P200,000.00.

[1] Original TSN, p. 4, 3 October 1983.

[2] Id., pp. 10-11, 24 October 1983.

[3] Id., pp. 2-3, 5 December 1983.

[4] 73 SCRA 583 at 590 (1976); underscoring supplied. See also *People v. Ruiz*, 93 SCRA 739 (1979) and *People v. Puesca*, 87 SCRA 130 (1978).

[5] Original TSN, p. 22, 16 August 1983.

[6] Id., p. 17, 25 November 1983.

[7] *U.S. v. Remigio*, 37 Phil. 599 at 610 [1918]. See also *U.S. v. Ambrosio*, 17 Phil. 295 [1910] and *People v. Alto*, 26 SCRA 342 [1968].

[8] 9 Phil. 1 at 6 (1907). See also *U.S. v. Santos*, 4 Phil 189 (1905) which anticipates the *Macalalad* case.

[9] 47 Phil 493 at 495-496 (1925).

[10] 49 Phil 389 at 396 (1926).

[11] 20 SCRA 153 (1967).

[12] Mr. Justice Antonio wrote:

"Although in *People v. Rogel*, 4 SCRA 807, this Court abandoned the ruling in *People v. Basisten*, 47 Phil. 493 (1925) and reverted to the former doctrine enunciated in *U.S. v. Macalalad*, 9 Phil. 1, reiterating the rule that whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide, this Court abandoned that rule in the subsequent case of *People v. Pelagio*, 20 SCRA 153. In that case, this Court reverted to *People v. Basisten*, supra, and held that where the appellant conspired to commit robbery and he acted as lookout during the commission of the robbery, but after the robbery was consummated and as the other conspirators were leaving the scene of the crime, they encountered a policeman whom they killed, the lookout is guilty only of robbery with intimidation and not of robbery with homicide. As this Court stated therein:

"* * * When the homicide was committed, therefore, Pancho Pelagio could not have had the least intervention or participation as might justify penalizing him likewise for the said killing. So far as the records disclose, the conspirators were agreed only on the commission of robbery; there is no evidence that homicide besides was determined by them when they plotted the crime. All these warrant the exclusion of Pancho Pelagio from any responsibility for the said killing (*People v. Basisten*, et al., 47 Phil. 493). Considering that those who actually participated in the robbery were only three, Pancho Pelagio included, and only one of them was armed, the same evidently was not "in band" (Art. 296, Revised Penal Code). This being the case, then it would indeed be irregular or questionable to hold Pancho Pelagio similarly responsible as Caymo and Balmeo for the killing of Pat Trinidad. Under the code, it is only when the robbery is in band that all those present in the commission of the robbery may be punished, for any of the assaults which its members might commit. x x x." (At pp. 159-160).

This ruling in *Pelagio*, therefore, appears applicable to the case of *Leonardo Bernardo*, hence my concurrence." (95 SCRA at 125-126; underscoring supplied)

[13] See Article 296, Revised Penal Code and Article 504, Penal Code of the Philippine Islands.

[14] 57 SCRA 330 (1974).**[15] 95 SCRA 107 (1980).**

[16] 57 SCRA at 338 (1974)

[17] These were: Teehankee, Aquino, Santos, Abad Santos and Melencio-Herrera, JJ. Barredo, J., agreed with Aquino, J., with respect to the "[liabilities) of the appellants" but voted for the imposition of life imprisonment in view of "the unusually long detention of appellants after their conviction by the lower courts".

[18] See 95 SCRA at 112-113.

[19] 95 SCRA 107 at 121 and 122 (1980)

[20] The notion of causality has been referred to by the Supreme Court of Spain in, e.g., its decision of 23 February 1872 in the following terms:

"x x x - El Tribunal Supremo ha declarado que siendo ambos procesados autores del robo, lo son igualmente el homicidio que ocurrió en el mismo acto, al tiempo de ser perseguidos por el to interferitor; porque este ultimo delito esta de tal manera enlazado con el de robo, que a no haber mediado este, ni los robados hubieran pedido

auxilio, ni al prestarselo el tercero hubiese sido muerto como lo fue; y que por consiguiente, habiendo tomado parte directa en la ejecucion del robo ambos procesados, son autores uno y otro, segun el articulo 13 delCodigo Penal, y por lo mismo responsables los dos de todas las consecuencias de su accion. (S. de 30 de abril de 1872, Gaceta de 1. de Julio.)" -- as quoted in *People v. Lingad*, 98 Phil 5, at 10 (1955).

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