PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADEO ABUYEN ALIAS "ROBERTO ALORTE", ACCUSED-APPELLANT.

G.R. No. 77285. September 04, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Quezon City Branch 97 in Criminal Case No. Q-22896 entitled People of the Philippines v. Amadeo Abuyen, et al., the dispositive portion of which reads verbatim as follows:

> "WHEREFORE, this Court hereby declares the accused Amadeo Abuyen guilty as charged of the crime of Robbery with Homicide as defined and punished in the Arts. 293 and 294, respectively of the Revised Code (sic) and is hereby sentenced to the maximum penalty of DEATH, and ordered to pay the heirs of the victim the sums of P60,000.00, P240,000.00, and P120,000.00, as actual, moral and exemplary damages respectively, jointly and severally with the convicted co-accused, and to pay attorney's fees of P20,000.00 plus costs. (Rollo, p. 23)

An Information for Robbery with Homicide was filed with the Regional Trial Court of Quezon City Branch 97 on December 9, 1982 against Juan Escober and four (4) unidentified persons designated as John Doe, Peter Doe, Richard Doe and Juan Doe. On March 29, 1983, the Information was amended to include Macario Punzalan, Jr., with a further amendment being made on August 3, 1983 to include the herein accused-appellant, Amadeo Abuyen.

The Information reads as follows:

> "That on or about the 3rd day of December, 1982, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent of gain and by means of violation and intimidation against person, did then and there wilfully, unlawfully rob VICENTE CHUA Y CHING in the following manners, to wit:
>
> On the date and in the place aforementioned, the accused pursuant to their conspiracy entered the premises of Vicente Chua at No. 24 Joy Street, Grace Village, Quezon City and while inside robbed the former of his cash amounting to P5,000.00 Philippine Currency and by reason or on occasion of the robbery, accused with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violation (sic) upon the persons of IRVIN CHUA Y SAW and TIFFANY CHUA Y SAW, both minors by then and there stabbing them, hitting them, thereby inflicting upon them serious and mortal stab wounds which were the direct and immediate cause of their death, to the damage and prejudice of the heirs of said minors, Irvin and Tiffany Chua Y Saw in such amount as may be awarded to them under the provisions of the Civil Code and in the total amount aforementioned.
>
> Contrary to Law." (Rollo, pp. 4-5)

Escober and Punzalan were arraigned on separate dates but they had a joint trial. In the meantime, Abuyen was

still at large.

On January 10, 1984, the lower court rendered a decision finding Escober and Punzalan guilty of the crime charged. The case was then brought before us on automatic review. It was only during this time, or more precisely, on April 16, 1986, that Abuyen was apprehended by the authorities.

On April 30, 1986, Abuyen was arraigned wherein his conditional plea of guilty was rejected by the court and a plea of not guilty was ordered entered. Thereafter, trial ensued and on December 12, 1986, the trial court rendered the herein questioned decision. The case was then elevated to us on automatic review.

In accordance with paragraph (1), Sec. 19, Art. III of the 1987 Constitution which took effect during the pendency of the review of Abuyen's case before this Tribunal, the accused-appellant's imposable sentence was automatically reduced to reclusion perpetua. Thereafter, Abuyen manifested his intention to continue his case as an appealed case.

Meanwhile, on January 29, 1988, the review of the cases of Escober and Punzalan was terminated. Juan Escober was acquitted while Macario Punzalan's conviction was affirmed. Hence, the present appeal pertains only to Amadeo Abuyen.

The evidence for the prosecution consisted of the following:

Dr. Abelardo Lucero, a physician, testified that on December 3, 1982, he was called by the manager of Funeraria Paz, Quezon City upon the request of the Chua family to examine the cadavers of Erwin and Tiffany Chua. It was established that the children died due to shock and hemorrhage caused by multiple stab wounds.

Dr. Lucero's testimony as to the cause of death of Erwin and Tiffany was corroborated by Dr. Josefino Qua, the resident physician on duty at the Chinese General Hospital when the children were brought to said hospital.

Pat. Oscar Francisco, investigator, Station Investigation Division (SID) of the Quezon City Police Department (QCPD), testified that on December 3, 1982, between 8:00 o'clock and 9:00 o'clock in the evening, the Desk Officer instructed him to proceed to the Chinese General Hospital where the victims of stabbing (later identified as Erwin and Tiffany Chua) were brought. He immediately went to the hospital and started conducting his investigation there. He gathered from the victims' parents that the incident took place at No. 24 Joy Street, Grace Village, Quezon City. So he then proceeded to the indicated crime scene where he was met by other policemen. One of the policemen, particularly, Pat. Ebuan, handed to him the weapon allegedly used to stab the victims which is a scissors' blade. He, therefore, made an observation of the office where the incident took place and noted that the same was in complete disarray with the floor soaked in blood. Before midnight, he terminated his investigation at the crime scene and returned to headquarters. He took down the statements of Vicente and Lina Chua, parents of the victims, Juan Escober and Domingo Rocero. He also took the statements of Jesus Zaragoza and Virginia Abuyen, the accused-appellant's mother, on the succeeding days.

A further investigation of the case yielded the information that Amadeo Abuyen assumed the identity of his uncle, Roberto Alorte. It was established that Abuyen used his uncle's license to gain employment as a security guard. Pat. Francisco declared that the foregoing was revealed when the real Roberto Alorte was invited to the headquarters. It was another policeman, however, who took the statement of Alorte.

Sgt. Amado Ramos, Chief of the Investigation section, SID, QCPD, who assisted Pat. Francisco in conducting the investigation corroborated the latter regarding Abuyen's use of Alorte's license. He stated that upon inquiring from the government agency issuing licenses to security guards, it was discovered that Abuyen was never issued a license. He took down the statement of the real Roberto Alorte, as well as those of Lina Chua and Domingo

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Rocero. Sgt. Ramos also corroborated Pat. Francisco's testimony that Abuyen remained at large throughout the police investigation. He added that the police searched for Abuyen in Olongapo City, Angeles City, Baguio City, Roxas Boulevard, Mandaluyong, Valenzuela and all the neighboring places of Metro Manila but Abuyen had continually succeeded evading arrest until his apprehension on April 16, 1986.

Sgt. Antonio Olivarez, policeman, QCPD, testified that on April 16, 1986, he was requested by Lt. Roldan, Officer-in-Charge of the operation that successfully arrested Abuyen, to take down the latter's statement. It was taken without the assistance of counsel since Abuyen declared he had no need for one. Olivarez continued by stating that the statement was taken in the police station in front of several witnesses and that the same was given voluntarily.

Danilo Sarmiento, member of the Follow-up Team, SID, testified that on April 16, 1986 at around 2:00 o'clock in the afternoon, his team arrested Amadeo Abuyen at the corner of Kalaw and Roxas Boulevard. They were able to discover the whereabouts of Abuyen through an informant's tip. Abuyen was arrested by virtue of a warrant of arrest.

Domingo Rocero, a security guard at Bee Seng Electrical Supply, the place where the alleged robbery with homicide was committed, testified that after his tour of duty at around 7:35 in the evening on December 3, 1982, he chanced upon Amadeo Abuyen drinking beer at the store of a certain Col. Samson which is only one-half (1/2) kilometer from Bee Seng. Abuyen was with three others, one of whom Rocero identified as Macario Punzalan. He knows Abuyen because they came from the same security agency and it was he who replaced Abuyen as security guard at Bee Seng.

Lina S. Chua, mother of the victims, testified that Amadeo Abuyen was deployed by the Western Security Agency to their office at Bee Seng Electrical Supply from March 3, 1982 up to August 3, 1982. At that time, he was known as Roberto Alorte. Abuyen was replaced by Domingo Rocero because Lina Chua complained to the security agency about Abuyen's frequent absences from work.

As to the questioned incident, Lina Chua narrated that at around 8:00 o'clock in the evening of December 31, 1982, she was on her way to the office of Bee Seng. The house and office are located in the same compound and they are about fifty (50) meters apart. She noticed that the pedestrian gate was open and she saw a person standing there who was later identified as Macario Punzalan. She shouted to ask why the gate was open but nobody answered her. Suddenly, she heard a gun shot from the left side of the garage and immediately thereafter, she saw Abuyen and Escober about a meter from each other on the left side of the garage walking hurriedly towards the gate. She ran to the place where the shot came from but Punzalan warned her to stay away or she might get hit. So she just returned to the house and tried to call her husband through the intercom but the intercom was out of order. So she ran out of the house again and she heard her husband calling for her. Her husband told her to get a car because they will bring the children to the hospital. She saw her husband carrying their bloodied children out of the office. At the time they arrived at the Chinese General Hospital, the children were already dead.

Lina Chua additionally declared that she only came to know of Abuyen's real name during the investigation. She was able to see the real Roberto Alorte at the police station and he is definitely not the Roberto Alorte they previously employed as security guard.

The evidence for the defense as summarized in appellant's brief is as follows:

> "Appellant Amadeo Abuyen testified that he does not know a person by the name of Juan Escober but he knew a certain Macario Punzalan, because said person was a 'barkada' of Roberto Alorte, his uncle. Since 1982, he has not seen his uncle. He does not carry the alias of Roberto Alorte. He cannot say anything regarding the accusation as contained in the information for he did not participate in the alleged crime. When the alleged

> robbery incident happened, he was in 470 Kayumanggi St., Mandaluyong, Rizal resting. In said place, he was with Inigo Alorte his uncle, Marita Alorte, his aunt and Merly Alorte, his cousin. At the time the robbing and stabbing incident happened, he was not in the compound at No. 24 Joy St., Grace Village, Quezon City. In all his life, he was never employed as a security guard. He was only an Instructor and electrician. He does not know a person by the name of Domingo Lucero. He was apprehended at T.M. Kalaw and was brought near Maxim to Danarra Hotel by Sgt. Sarmiento, Sgt. Diaz and Lt. Roldan to sign a document made by his uncle. He was forced to sign the document for fear of being killed as he was brought to a cemetery. While he was in a cemetery, these officers kept on boxing him on the chest and a gun was poked on him (TSN, August 13, 1986 p. 8-16).
>
> Iluminada Daez testified that on December 3, 1982 at 8:00 o'clock in the evening, she was in the house of Inigo Alorte, uncle of Amadeo Abuyen, located at Kayumanggi St, Mandaluyong, viewing television and stayed there until 11:00 o'clock. Inside the house were Amadeo Abuyen, Marita Alorte and her children. (TSN, August 18, 1986, pp. 3-5).
>
> Virginia Abuyen, mother of the appellant testified that her son was an electrician and an instructor of karate. Roberto Alorte is her brother whom she last saw in January, 1983 the Quezon City Police Department. Her brother's occupation was as security guard." (Rollo, pp. 58-59)

On rebuttal, the prosecution recalled to the witness stand Mrs. Lina Chua to refute the claim of Abuyen that he was never employed at Bee Seng as a security guard. She unwaveringly pointed to Abuyen as the security guard they employed at Bee Seng because he frequently made cash advances from her.

The prosecution also presented Mr. Santos Gordon, president of the Western Security Agency, to bolster the foregoing claim of Mrs. Chua. He testified that he had in his roster of guards one by the name of Roberto Alorte whom he identified in open court as the accused Amadeo Abuyen. He stated further that Abuyen was assigned at Bee Seng from March 3 until August 3, 1982. He is positive that the Alorte deployed at Bee Seng is the accused-appellant herein because Abuyen personally signed the payroll and drew his salary from Mr. Gordon just like the other security guards connected with said agency. He corroborated Mrs. Chua's testimony regarding the replacement of Abuyen at Bee Seng due to the latter's frequent absence from work.

Sgt. Olivarez and Pat. Francisco were likewise recalled on rebuttal to affirm their testimony as to the statements of Amadeo Abuyen and his mother Virginia Abuyen being given voluntarily.

The accused-appellant now raises the following assignment of errors:

I

> "THE COURT A QUO GRAVELY ERRED IN RENDERING ITS DECISION IMPOSING DEATH SENTENCE IN CULPABLE VIOLATION OF THE CONSTITUTION.

II

> THE COURT A QUO GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT ASSUMED THE IDENTITY AND NAME OF HIS UNCLE ROBERTO ALORTE AND HAD PARTICIPATED IN THE COMMISSION OF THE CRIME.

III

> THE COURT A QUO GRAVELY ERRED IN BELIEVING THAT THE 'ALLEGATIONS OF THE INFORMATION ARE FACTS AS TO THE PARTICIPATION OF EACH OF THE ACCUSED AS PRINCIPAL, THE ACT OF ONE IS THE ACT OF ALL.'

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- IV -

THE COURT A QUO GRAVELY ERRED IN ADMITTING ALL THE EVIDENCE AND EXHIBITS OF THE PROSECUTION DESPITE THE VIGOROUS OBJECTIONS INTERPOSED BY THE DEFENSE.

V

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT CONSIDERING THAT HIS GUILT WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT." (Rollo, p. 55)

The first assigned error is evidently misleading and very carelessly prepared. The contention itself assails the trial court's decision for violating the constitution as the death penalty was imposed while the arguments and discussions in support thereof question the trial court's failure to state the facts and law on which the decision is based, also in contravention of the mandate of the Constitution.

At the time the herein questioned decision was rendered, the 1987 Constitution was not yet in effect and hence death as a penalty for Robbery with Homicide was still imposable. As has been clarified earlier cases, it was precisely the effectivity of the 1987 Constitution which automatically reduced the appellant's death sentence to reclusion perpetua. There is, thus, no basis for appellant's contention that the imposition of the death penalty was in violation of the Constitution.

As to the alleged failure of the trial court to state the law and the facts upon which the decision is based, we find that the same is not altogether correct. The questioned decision may not have the thoroughness, precision, and elegance expected of a seasoned Judge but it sufficiently shows that the court's findings as to Abuyen's complicity in the crime are supported by evidence and the decision contains the law and the facts upon which the findings were based. Unfortunately however, the findings of conspiracy and the aggravating circumstances of nighttime, abuse of superior strength, armed band, cruelty and disregard of the minority and sex of the victims are mere generalizations with no exposition as to how these were appreciated. The decision on the presence of aggravating circumstances was capsulized in the following manner:

> "In view of the records of this case, including the notes of the presiding judge in yellow pad paper which are also part of the record, this Court is convinced that the accused did participate as a conspirator and confederate in the execution of the premeditated and treacherous robbery with homicide and is guilty beyond reasonable doubt as charged in the information, with aggravating circumstances of nighttime, abuse of superior strength, armed band, cruelty and disregard, of the minority and sex of the victims. It is not moral to plan and to execute, a robbery with homicide. It is also not legal." (Rollo, p. 23)

We take judicial notice of the fact that the decision in the trial of Escober and Punzalan by the same Judge was questioned on the same grounds upon appeal to this Court. And in the decision rendered in the review of the cases of Escober and Punzalan [see People v. Escober, 157 SCRA 541 (1988)], the Court had occasion to explain how the lower court's decision failed to meet the standards required by the Constitution.

At this point, we reiterate our reminder in the People v. Escober case, to wit:

> "Speed in the administration of justice, however, 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."

Be that as it may, this Court deems it best not to remand the case to the lower court for a new decision considering that all the evidence and records necessary for a determination of the innocence or guilt of the appellant are already before us.

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The accused-appellant, in his brief, also questions the admissibility of his extra-judicial confession. He alleges that the same could not be admitted since it was extracted through force or intimidation.

From the testimony of Sgt. Olivarez, it can be seen that Abuyen's statement is indeed inadmissible even if the allegations of force or intimidation were successfully refuted since Abuyen was admittedly without the aid of counsel when Sgt. Olivarez interrogated him. Abuyen's waiver of his right to counsel is defective considering that it was not made in the presence of counsel.

At any rate, even if the statement is inadmissible, there are other evidences sufficient to support Abuyen's conviction. His statement is disregarded.

It is true that there were no eyewitnesses who testified on the killing itself such that the determination of the accused-appellant's participation rests upon circumstantial evidence. The necessity to resort to circumstantial evidence is recognized inasmuch as crimes are usually committed in secret and to require direct testimony would in many cases result in freeing criminals and denying proper protection to society (People v. Roa, 167 SCRA 116 [1988]).

The evidence presented by the prosecution which establishes Abuyen's presence at the scene of the crime is Mrs. Lina Chua's testimony to the effect that after the gunshot, she saw Abuyen and Escober on the left side of the garage walking hurriedly towards the gate. Although Juan Escober's testimony during his own trial also established Abuyen's presence at the scene of the crime, the same cannot be used against Abuyen inasmuch as Escober was not presented as a witness during Abuyen's trial. To do otherwise would be an evident violation of the accused-appellant's right to confront the witnesses against him. It is quite unfortunate that the prosecution should have used Escober's knowledge of what transpired by the mere expedient of calling him to the witness stand but the records fail to show why this was not done. However, there is other admissible evidence, which, when taken with Mrs. Chua's testimony would suffice to establish Abuyen's participation.

Domingo Rocero's testimony that he saw Abuyen around 7:30 in the evening at Col. Samson's store with Macario Punzalan which is only half a kilometer from Bee Seng destroys his alibi and strengthens the testimony regarding his presence at Bee Seng considering further that it was Macario Punzalan whom Lina Chua saw with Abuyen at the pedestrian gate when she was on her way to the office. From Col. Samson's store, Abuyen and Punzalan clearly proceeded to Bee Seng.

Abuyen's presence at Bee Seng during the time of the stabbing of the children having been established, the next question which arises, then, is whether or not such presence is enough to point to his culpability.

In order to establish the guilt of the accused through circumstantial evidence, the following requisites must be present: 1) there must be more than one circumstance; 2) the facts from which the inferences are derived are proved; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (People v. Cagadas, 193 SCRA 216 [1991]). There must be an unbroken chain of circumstances which leads to one fair and reasonable conclusion pointing to the defendant to the exclusion of all others, as the author of the crime (People v. Ritter, 194 SCRA 690 [1991]).

This Court is not oblivious to the fact that in the appeal of Escober and Punzalan, the former was acquitted while the latter was convicted. Punzalan's participation in the crime consisted of standing guard at the pedestrian gate. Who, then, was responsible for the stabbing of the children? Mrs. Lina Chua named only three (3) people she saw at the crime scene: Macario Punzalan, Juan Escober and Amadeo Abuyen. Punzalan stood guard, Escober was acquitted; there is no doubt, then, that Abuyen directly participated in the killing. Although there are still two other John Does charged in the Information, the circumstances proved herein establish Abuyen's inclusion in the

perpetration of the questioned act. Moreover, the question as to whether the two John Does really exist remains unanswered.

Add to the foregoing the fact that the accused-appellant, a former security guard at Bee Seng using a false name, successfully evaded the authorities for four (4) long years. Abuyen's claim that he was unaware of the manhunt for him is quite incredible. He admitted to having spoken with his mother after his uncle, Roberto Alorte, had been investigated. It would be straining the imagination too much to believe that his mother did not inform him of the then ongoing investigation.

It is settled that flight from the authorities is an indication of a guilty mind and the absence of a tenable defense (People v. Diquit, 205 SCRA 501 [1992]; People v. Arenas, 198 SCRA 172 [1990] People v. Mercado, 190 SCRA 452 [1990]).

The accused-appellant's bare denials cannot stand in view of the positive identification made by Mrs. Lina Chua. Settled is the rule that alibi cannot prevail over a positive identification made by a prosecution witness (People v. Penillos, 205 SCRA 546 [1992]; People v. Viray, 147 SCRA 146 [1987]).

The corroboration made by Iluminada Daez of Abuyen's alibi is not convincing. Although she denied her friendship with Abuyen, she admitted to having attended every hearing of the trial as a "form of help" to Abuyen (TSN, August 15, 1986, p. 12). Daez' presence throughout Abuyen's trial gives away her concern for the accused. Moreover, she is a very close friend of Abuyen's uncle (not Roberto Alorte), in whose house she frequently watches television. It is, thus, clear that Daez is not a disinterested witness. And even assuming that Daez truthfully narrated what she knows, there is no showing that she could have recalled the particular date in question. The day was uneventful as far as they were concerned and she only learned of the need to recall the event at the time Abuyen was arrested - a good four long years from the time the incident happened. Her recall of the event could have been completed by suggestions from interested people such as Abuyen's relatives or Abuyen himself. It would be patently erroneous for this Court to rely upon such testimony.

From all the foregoing, it is incumbent upon this Court to hold the accused-appellant also liable for the death of two innocent children unfortunate enough to recognize the identity of at least one of the persons who barged into the office while the two were watching television.

We are not inclined to affirm the lower court's decision of conviction for Robbery with Homicide.

In Robbery with Homicide, "the original criminal design of the culprit must be robbery and the homicide is perpetrated with a view to the consummation of the robbery, by reason or on the occasion of the robbery." (People v. Ponciano, 204 SCRA 627 [1991]). Therefore, the robbery itself must be proven; otherwise, the killing of the victim would be simple homicide or murder as the case may be [People v. Repuela, 183 SCRA 244 (1990); People v. Pacala, 58 SCRA 370 (1974)].

In the case at bar, the prosecution failed to adduce evidence as to the alleged robbery. All of the testimonies of the prosecution witnesses pertained only to the killing. The testimony of Pat. Oscar Francisco as to the Office being in complete disarray would not suffice to establish that a robbery took place [See People v. Sabio, 102 SCRA 218 (1981).

Although Macario Punzalan, the co-accused of Amadeo Abuyen, was convicted of the crime of robbery with homicide, it must be noted that in Punzalan's case, Lina and Vicente Chua testified as to the robbery. And as has been stated earlier, the testimonies in one trial cannot be automatically taken against an accused in another trial without doing violence to the accused's constitutional right to confrontation of witnesses.

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For what crime, then, should accused-appellant be convicted of? It is the considered opinion of this Court that Abuyen should be convicted of the crime of murder.

The accused-appellant's act of repeatedly stabbing two (2) children aged six (6) and thirteen (13) clearly constitutes treachery and qualifies the killing to murder. It has, time and again, been held that the killing of minor children who, by reason of their tender years, could not be expected to put up a defense is considered attended with treachery [People v. Limaco, 88 Phil. 35 (1951); People v. Mabilangan, 111 SCRA 398

In line with the ruling in People v. Munoz, 170 SCRA 107 (1989), the only penalty which may be imposed upon accused-appellant is reclusion perpetua, the death penalty not imposable under the 1987 Constitution. The penalty for murder being single and indivisible, the presence of mitigating or aggravating circumstances is of no moment. Therefore, there is no need to pass upon the findings of the lower court regarding the presence of the aggravating circumstances.

WHEREFORE, in view of the foregoing, the decision of the RTC Quezon City in Criminal Case No. Q-22896 is hereby modified. Accused-appellant Amadeo Abuyen is hereby found guilty beyond reasonable doubt of the crime of MURDER, and is accordingly sentenced to suffer the penalty of reclusion perpetua and to imdenify the heirs of the victim in the amount of P50,000.00. Let a copy of this decision be furnished the Presiding Judge concerned.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.
Feliciano, J., on official leave.

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