

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROEL PUNZALAN, JOSE BESIDA @ “JOSE VESIDOR”; MARIETA MENDOZA AND DOMINGO MENDOZA, ACCUSED-APPELLANTS.

G.R. No. 78853. November 08, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

The accused, Marieta Mendoza, appeals from the decision of the Regional Trial Court, Fourth Judicial Region, Branch 30, San Pablo City, convicting her of the crime of robbery with homicide and imposing on her the penalty of reclusion perpetua.

The appellant, together with Roel Punzalan, Jose Besida, and Domingo Mendoza, were charged in Criminal Case No. 4578-SP in an information which read as follows:

"That on or about July 11, 1985 at Poblacion, Alaminos, Laguna and within the jurisdiction of this Honorable Court, accused MARIETA MENDOZA, in conspiracy with her husband DOMINGO MENDOZA and ROEL PUNZALAN and JOSE BESIDA alias 'Jose Vecidor' who are also still at large and whose case is still pending in the Municipal Trial Court, except Domingo V. Mendoza, were all employed as domestic helpers in the house of Judge Conrado Fule and Mrs. Lourdes Fule located in aforesaid municipality, while conveniently provided with bladed weapons, taking advantage of night time, with treachery and evident premeditation, with abuse of superior strength, in disregard of the respect due the offended party and dwelling, conspiring, confederating and mutually helping one another, forcibly entered the bedroom of Mrs. Lourdes Fule where the latter was sleeping and once inside therein, with intent to kill, did then and there wilfully, unlawfully and feloniously jointly attack, assault and stab Mrs. Lourdes Fule with the weapons they were provided, inflicting upon the latter mortal stab wounds on different parts of her body which caused her instantaneous death and on the same occasion and by reason thereof, with intent to gain, ransacked the bedroom of the victim. Mrs. Lourdes Fule and did then and there wilfully, unlawfully and feloniously, take steal and carry away cash money in the sum of TEN THOUSAND (P10,000.00) PESOS and assorted pieces of jewelry worth ONE MILLIION SIX HUNDRED THIRTY SIX THOUSAND (P1,636,000.00) PESOS, belonging to the victim Lourdes Fule, to the damage and prejudice of the victim and the surviving heirs, in the amount of ONE MILLION SIX HUNDRED FORTY SIX THOUSAND (P1,646,000.00) PESOS, representing the total amount unlawfully taken and carried away and damages by reason of the death of aforesaid victim.

Contrary to law."^[1]

Appellant's co-accused have remained at large up to the present time. Consequently, the prosecution of the case proceeded only against appellant; the case was archived by the trial court with respect to her co-accused.^[2]

Appellant proceeded to trial after entering a plea of not guilty on 7 May 1986.^[3] On 17 September 1986, after the prosecution had presented four (4) of its six (6) witnesses, Judge Benedicto Paz inhibited himself on the ground that his landlady was the sister-in-law of the victim.^[4] The case was then re-raffled to the sala of Judge Salvador P. de Guzman Jr. From there the case was re-raffled again to another sala because Judge de Guzman could not

maintain a weekly schedule of trial hearings for the case.[5] The case was eventually assigned to the sala of Judge J. Ausberto Jaramillo Jr., who tried the case to completion and wrote the judgment of conviction dated 22 May 1987.[6]

The dispositive portion of the decision states:

"WHEREFORE, in view of all the foregoing, the court finds accused Marieta Mendoza guilty beyond reasonable doubt of the crime of robbery with homicide punishable from reclusion perpetua to death aggravated by the circumstances of dwelling, in disregard of the respect due to the offended party, abuse of superior strength, evident premeditation, nighttime and abuse of confidence without any mitigating circumstance, and hereby sentences her to the applicable penalty of death. Fortunately, for accused Marieta Mendoza, however, the death penalty has to be reduced to life imprisonment in accordance with Article III, Section 19(1) of the 1987 Philippine Constitution.

Accused Marieta Mendoza shall indemnify the heirs of Mrs. Lourdes Fule the sum of P30,000 as civil liability for her death and shall also indemnify them the peso equivalent of the US\$5,000, P70,000 and P1,500,000.00 representing the stolen items, without subsidiary imprisonment in case of insolvency and to pay the costs of the proceedings.

x x x x x x x x

SO ORDERED."[7]

The facts of the case as found by the trial court are as follows:

"The accused Marieta is married to accused Domingo Mendoza. Since two years prior to the incident in question, the former, was employed on an off-and-on basis with the family of the Fules until the time when the daughter of the family cook Nieves Garcia Santos left when accused Marieta became a permanent househelp. Accused Marieta's primary duty was to attend to the needs of Mrs. Lourdes Fule who was then 66 years old, sick with hypertension. To be able to promptly administer to the needs of her mistress, the accused Marieta was made to sleep immediately outside the door of her mistress so that medicines could be given to her as the need arises. The accused Roel Punzalan was one of the houseboys of the Fules since about 4 or 5 months prior to the incident while accused Jose Besida alias 'Jose Vecidor' was hired two months prior, at the instance and effort of accused Domingo Mendoza. A week prior to the incident all the accused plotted to rob Mrs. Fule who had a collection of jewelries and certain amount of cash.

On 9 July 1985 accused Domingo Mendoza arrived at 9:00 a.m. and stayed at the servants' quarters of the Fule compound located at corner Del Pilar and Rizal Avenue, Alaminos, Laguna. He was seen in close huddle with the other said accused. He spent the night until the next day of July 10, 1985 (sic). After the master of the house, Judge Conrado Fule left for Manila at about 4:00 p.m. all the accused were seen to be in secret and close conversation. Accused Domingo Mendoza was heard to have uttered "Ituloy na natin wala si Judge Fule". Accused Domingo Mendoza left at 6:30 p.m. that day. At about 7:30 p.m. Gregorio Fule had supper at his mother's house while being served by Nieves Garcia Santos and accused Marieta. After eating, mother and son were talking about their health while the son was fixing the betamax unit. After fixing the betamax, the son, Gregorio Fule left his mother watching a betamax tape together with the accused Marieta, Roel Punzalan, Jose Besida, a child of Marieta and Nieves Garcia Santos. At about 11:30 p.m. of July 10 1985, accused Roel Punzalan and Jose Besida went out of the house for their servants' quarters while the victim, Lourdes Fule and accused Marieta locked up all the doors to the house. At 12:30 a.m. of July 11, 1985 accused Marieta was seen at the door of the servant's quarters calling (sutsot) for Roel Punzalan and Jose Besida after which the three of the accused went up to the house. Accused Marieta Mendoza knocked on the door of the victim and woke her up on some pretext. When the door was opened by the victim, accused Roel Punzalan and Jose Besida went rushing in and inflicted the injuries and stab wounds on the victim. They put cloth on her mouth to prevent her from making an outcry. When the victim was still lying on her bed bleeding to death, the accused Roel

Punzalan and Jose Besida ransacked her drawers and scooped up the jewelries and cash money. At this juncture, accused Domingo Mendoza was waiting in a parked jeep outside the Fule compound. While all these were going on accused Marieta did not do anything to help the victim. She did not also prevent the killing of the victim. When the crime was consummated, the accused Roel Punzalan and Jose Besida told accused Marieta that they would meet at Del Remedio, changed their bloodied clothes at the staircase and under the oliva (sic) tree on the ground of the Fule compound.

At 6:00 a.m. of July 11, 1985, accused Marieta woke up Jun Murillo, another houseboy and Nieves Garcia Santos without telling any of them about anything unusual that transpired previously or what had happened to the victim. Murillo started cleaning the Fule compound until he noticed that the front iron gate of the Fule compound was open. He reported this to accused Marieta and Nieves Garcia Santos and the three of them went up to the adjoining house of Gregorio Fule to report the matter. Accused Marieta informed Gregorio Fule that 'Napasukan tayo ng magnanakaw'. Murillo was instructed to fetch the police. Gregorio Fule saw the bloodstained clothing near the oliva (sic) tree and other personal items on the stairs leading to her mother's room. When he went up, he saw the sleeping mat, pillow and blanket of the accused Marieta immediately outside the door of her mother's room and when he was already inside he saw [his] mother already covered with blood, blood was all over the room, in pillows, boxes, etc. The drawer where the valuables were kept was open emptied of the \$5,000.00, P70,000.00 cash and P1.5 million worth of assorted jewelries. He went out of his mother's room and confronted accused Marieta on what happened. Accused Marieta responded that she knew nothing allegedly because 'Tulog na tulog po ako'. The police arrived and an investigation was conducted. Accused Marieta was initially treated as a possible witness until later on when she was suspected of having an involvement in the crime."[8]

Appellant Marieta Mendoza narrated in court a different story. Her story, as set out in her Brief, was the following:

She "had been working as a housemaid of Mrs. Lourdes Fule for five (5) years at the time the incident happened although not on a continuous basis. There was (sic) times when she was borrowed by Mrs. Fule's daughter, Marilou. On the first week of July, 1985, she was with Marilou but on the second week thereof, she was with Mrs. Fule. On the night of July 10, 1985, after all the members of the household had taken their supper and after fixing the kitchen, Marieta joined Mrs. Fule in watching a television program together with two children, one of whom was her son. Roel Punzalan and Jose Besida also came and joined them. After a while, she noticed Jose Besida went to the kitchen and inside her room. She did not notice Roel Punzalan left (sic) the place where they were watching television. The doors were then all open including the door at the room of Mrs. Fule and the door at her room. They have finished watching television at around 11:00 o'clock in the evening of July 10, 1985 after which Mrs. Fule and she locked all the doors. She was the one who put up the mosquito net on the bed of Mrs. Fule and she did not notice anybody inside the room. She slept with her son outside the room of Mrs. Fule, around three meters from the door of Mrs. Fule's room outside of the white mark, shown in Exhibit 'F-1'. When lying down, the cabinet in her room was at her right side and so with the way leading to the comfort room. At her left side was the aparador and the room where rice and iron (sic) clothes are kept. The door of the room of Mrs. Fule has a lock both inside and outside. Until the time she went to sleep, she did not notice Besida went out of the room. Mrs. Fule's schedule of taking her medicine was after each meal, thus she does not have to wake up Mrs. Fule for the medicines.

At around 2:00 o'clock in the morning of July 11, 1985, Marieta was awakened by sounds of moaning from Mrs. Fule but when she stood up, she was blocked by Roel Punzalan and was told to just lie down or else she will be killed at the same time poking something at her back which she presumed to be a bladed instrument because it pierced through her skin. Because of the threat, Marieta just lay down facing the cabinet. After around three minutes, Punzalan went out of the room but she did not notice whether he was carrying something or whether his shirt had bloodstain. After three minutes, another person passed by and because of fear for her life, she just lay down facing sidewise towards the cabinet with her back against the passage from the door of

the room of Mrs. Fule to the other door. It was about 2:15 to 2:30 o'clock in the morning that these two persons went out of the room of Mrs. Fule and her room. The door of the room of Mrs. Fule was slightly open and she saw scattered things but she did not see Mrs. Fule. From the time she was ordered to lie down by Punzalan, she did not sleep, she just lay down. Much as she wanted to inform the other occupants of the house, she was not able to do so because of fear that Punzalan might still be in the house, so she waited until around 6:00 o'clock in the morning. She crawled going to Nieves Santos and inquired about Roel Punzalan whom she saw at the room of Mrs. Fule. She told Nieves that she heard Mrs. Fule moaning and that she saw Roel Punzalan in the room of Mrs. Fule at around 2:00 o'clock that morning. Upon knowing that Roel Punzalan and Jose Besida were not there, she and Nieves together with Jun Murillo went to Gregorio Fule who is just living in the house adjacent to the house of Judge Fule. When they told Gregorio that Roel Punzalan and Jose Besida were no longer there, they were told by Gregorio to call a (sic) police and Gregorio went directly to the room of his mother. Until such time, she had no knowledge of what actually happened to Mrs. Fule because the first thing she did in the morning was to inquire from Nieves Santos the whereabouts of Punzalan because of what she had witnessed a few hours ago and later she was told by Gregorio to report the incident to the police.

Marieta further testified that her husband, Domingo visited her days before the incident. They talked about the children and his drinking and nothing else. When Judge Fule left for Manila on July 10, 1985, Domingo was no longer there having left that day at around 4:00 o'clock in the afternoon. She did not notice her husband talked (sic) with Roel Punzalan and Jose Besida. She knew nothing of the plans of Punzalan and Besida. Neither did she knew (sic) of the presence of these jewelries and money inside the room of Mrs. Fule.

Marieta was investigated several times. The first statement was in her own handwriting which was dictated to her by Ma Ading (Nieves Santos' nickname) and Francisco Fule (Gregorio's brother) with a threat to kill every member of her family if she'll make a mistake. Another statement was in typewritten form prepared by the police when she was interrogated at the police station on July 11, 1985 (Exh. 'H'). She did not fully understand every question asked of her by the police officer. She signed said statement because she was told that there was nothing wrong in signing said statement. On July 15, 1985, another statement was prepared at the police station of Alaminos, Laguna with her signature appearing thereon (Exh. 'C')."[9]

Appellant, in her Brief, made the following assignment of errors:

"I

The trial court gravely erred in giving much weight and credence to the evidence for the prosecution and in disregarding totally the evidence for the defense.

II

The trial court gravely erred in finding accused-appellant as a co-conspirator granting without admitting that conspiracy existed in the commission of the offense.

III

The trial court gravely erred in finding accused-appellant guilty beyond reasonable doubt of the crime as charged in the information.

IV

The trial court gravely erred in appreciating the aggravating circumstance of nighttime, abuse of superior strength, disregard of the respect due the offended party on account of his rank, age or sex, dwelling and evident premeditation".[10]

Appellant maintains that the prosecution failed to establish that she was a conspirator in respect of the robbery or

the slaying.

To this end, she seeks to impugn the credibility of some prosecution witnesses who gave testimony indicating her adherence to the plan of robbing the victim. She points out that since the Judge who had observed the demeanor of witnesses Nieves Santos and Pepito Hernandez in court was not the same Judge who wrote the decision under review, the Supreme Court is not bound by the latter judge's findings on the credibility of these witnesses.

The general rule is that findings of the trial court on the credibility of witnesses are accorded great weight and will not lightly be disturbed by an appellate court. The underlying reason for this rule is that the trial judge had an opportunity to observe the demeanor of witnesses while testifying, an advantage not enjoyed by an appellate court. Appellant's contention has merit in the sense that the Court cannot rely solely on the aforesaid rule with respect to the two witnesses mentioned, (Nieves Santos and Pepito Hernandez) and must make its own evaluation of the testimony of these witnesses.[11]

But the Court must also emphasize that the circumstance pointed out by appellant, taken alone, does not render erroneous the trial court's reliance upon the testimony given by Santos and Hernandez.[12] The continuity of a court and the efficacy of its proceedings are not affected by interruptions in the service of the judge(s) presiding over it.[13] In this case, the Judge who wrote the decision had presided over the latter half of the trial.[14]

Appellant contends that the trial court should not have found Nieves Santos and Pepito Hernandez as credible witnesses, considering that both were employees of the victim's husband and considering further that their sworn statements tending to incriminate the appellant were submitted to the Fiscal's Office only three (3) months after the commission of the crime. Appellant suggests that Judge Fule exercised considerable influence over these two witnesses.

It may well be true that Judge Fule had asked and persuaded Santos and Hernandez to testify for the prosecution. However, this Court is not prepared to believe, for that reason alone, that Judge Fule led those two witnesses to testify falsely against appellant. There simply is no basis for such an insinuation.

The fact that witnesses Nieves Santos and Pepito Hernandez were brought to the Fiscal's Office by counsel of the heirs of the victim three (3) months after the killing of the victim, does not by itself impair their credibility. An obvious explanation for this delay, if delay it was, is that it took sometime before those two (2) individuals overcame their natural reluctance to become involved in the investigation of a brutal crime and to testify in court when co-accused Roel Punzalan and Jose Besida were, and are, still at large.

Appellant then contends that the testimony of Santos and Hernandez was incredible in itself. Appellant's claim is that it was improbable that Pepito Hernandez saw Domingo Mendoza (husband of appellant Marieta) in front of Fule's house at 4:30 A.M. on 11 July 1985 because this would place him (Domingo Mendoza) approximately 2 1/2 hours behind the time when Roel Punzalan and Jose Besida left the room of the victim. It does not seem to the Court necessary to deal with this contention. That particular statement of Hernandez is not directly relevant to the establishment of Marieta's culpability. Whether or not Domingo Mendoza had furnished the getaway vehicle for Roel Punzalan and Jose Besida, does not impact upon other evidence on record tending to show that Marieta had indeed conspired to rob the victim.

Marieta impugns the testimony of Nieves Santos as improbable. Marieta claims, first, that it is unlikely that Nieves had chanced upon and heard a discussion among the several accused relating to a plan to perpetrate the robbery during the absence of Judge Fule, considering that the accused would, (if they were true conspirators) have taken great pains to conceal their criminal plan from a third party who might denounce them. Secondly, Marieta questions why Nieves Santos was able to hear and recall only incriminating remarks from the alleged

discussion. Finally, Marieta asks why, if Nieves Santos had indeed seen her (Marieta) summon Roel Punzalan and Jose Besida from the servants' quarters an hour or so before the crime was committed, Nieves found nothing unusual in such summons and chose casually to go back to sleep.

Once more, we consider that it is unnecessary to deal with these speculative arguments in any detail. We do not think it impossible that Nieves Santos should have overheard only fragments of a discussion among the co-accused who, presumably, were not interested in broadcasting their intentions to the whole world. The summons by Marieta of her co-accused did not alarm Nieves Santos who thought that the house boys had been called for by the victim. That Nieves Santos did not volunteer to get up and help in whatever chore may have been needed to be done for Mrs. Fule, does not appear unusual at all when one recalls that Nieves Santos was a cook rather than a house-girl or an all-purpose domestic servant. Further, the acts and words that Nieves Santos testified she had seen and overheard do not appear unambiguous indications of some evil intent or act. Only after the discovery of the bloody killing of Mrs. Fule and the taking away of valuable jewelry in addition to cash, did those acts and words appear significant.

Appellant next seeks to assail the testimony of prosecution witness Gregorio Fule, son of Judge Fule and the victim Mrs. Lourdes Fule. Marieta contends it was unnatural that Gregorio Fule had failed to mention having discovered some pieces of jewelry belonging to his mother in or under appellant's pillow on her sleeping mat in the corridor immediately outside Mrs. Fule's bedroom on the morning that he found his mother's body. Gregorio Fule first made written mention of such pieces of jewelry three months after the killing and robbery. Marieta also contends that Gregorio contradicted himself when he stated in court that he had placed the jewelry he accidentally found on the floor outside the bedroom in a bank vault, considering that Gregorio also testified that Judge Fule had refused to permit the opening of Mrs. Fule's or the family's vault or safety deposit box in the Prudential Bank branch in Alaminos. Marieta asks why, if she was indeed involved in the crime, she would conceal the fruits thereof in a place so open to discovery.

Once more, we do not think these arguments significantly affect the testimony of Gregorio Fule. An ordinary person suddenly confronted with the bloody corpse of his mother would be so shocked and disoriented, as Gregorio Fule was, as to forget or overlook confronting appellant Marieta about the stray pieces of jewelry on the floor near her sleeping mat. That he had executed his statement referring, among other things, to such stray pieces of jewelry only three (3) months later does not necessarily imply that he had merely fabricated such statement. Moreover, whether or not the said pieces of jewelry were in fact placed by Gregorio Fule in the bank vault (possibly in a vault of the Rural Bank of Alaminos, whose office were on the first floor of Judge Fule's house) has no necessary bearing on the truth or falsity of his statement concerning his inadvertent discovery of such stray pieces of jewelry on the floor. As for the supposed improbability of Marieta ineffectually hiding those pieces of jewelry in or near her pillow, it seems sufficient to note that she may well have been unable to think of a more secure hiding place for the stray pieces of jewelry on the spur of the moment that brutal and bloody night. In any case, Judge Jaramillo who wrote the decision of the trial court had in fact observed witness Gregorio Fule as he testified in court and Judge Jaramillo found his testimony worthy of credence.

Since there was no direct evidence that appellant Marieta had actually participated in the physical assault and stabbing of the victim Mrs. Lourdes Fule, her conviction rests upon the conclusion of the trial court that she had participated in a conspiracy to commit the robbery in the course of which the homicide had occurred. The factors which lead the trial court to this conclusion are set out in repetitive detail in the following portion of the trial court's decision:

"It is undisputed that accused Marieta was already aware that Lourdes Fule was moaning that fateful night and had glimpsed inside the victim's room seeing scattered things. But she did not do anything to assist her or

prevent her killing. Neither did the accused Marieta relate what she witnessed that night to Nieves Garcia Santos and Gregorio Fule. Her suppression of such information is highly suspicious, to say the least.

Her claim that Roel Punzalan prevented her from entering the room of the deceased is unbelievable. If it was really true that Roel Punzalan blocked her way at the door and ordered her to lie down otherwise she would be killed, accused Marieta could have rushed out of her room and summoned help. Her excuse that she was allegedly paralyzed by her fear is not worthy of credence because of her allegation that from 2:00 a.m. to 6:00 a.m. she was awake lying down on her sleeping mat while the victim was already dead or perhaps bleeding to death. No person who is only three (3) meters away from the body of another, a victim of foul play could have the nerve to stay alone at night for four hours. An innocent person under such circumstances would have not lasted five (5) minutes staying in that room for four (4) hours without doing anything. The fact that accused Marieta was able to show how coldblooded she is and suggested her complicity. She knew Mrs. Lourdes Fule moaned that night and could have reasonably thought that she was hurt and needed help. But when Roel Punzalan and Jose Besida left the victim's room, she did not even bother to check and see why her mistress was moaning so strong enough to have awakened her. Moreover, the fact that she suppressed the information about what happened to her mistress to Nieves Santos and Gregorio Fule was obviously intended to feign innocence. But if she was really innocent and was not a co-conspirator, she could have easily told Nieves Santos and Gregorio Fule what happened to her mistress at the first opportunity. At that particular time Jose Besida and Roel Punzalan were already gone and the members of the Fule family were there to offer her protection. She had nothing to fear from Jose Besida and Roel Punzalan since they were already gone. Instead, she only told Gregorio Fule that "Napasukan tayo ng magnanakaw" when they reported to him about the open front iron gate.

If it was also true that while watching TV she saw Jose Besida enter her room leading to the victim's room, her failure to report this to the victim, to Gregorio Fule or others leads one to believe that she was part of the conspiracy and lends support to the existence of a criminal plan.

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[S]he was not tied or bound by the other two accused. If the accused Marieta was not a conspirator, since she was an eye witness to the heinous crime she could have been killed by the said two accused to eliminate an eye witness. Or, at least they could have tied and gagged her to immobilize her to give them ample time to escape in the darkness of the night. She was not hurt by them. The fact that she was not tied, gagged, hurt or killed by accused Roel Punzalan and Jose Besida militates against her claim of innocence.

The room of the victim is such that no one can enter inside without passing through accused Marieta. The victim had jewelries and cash inside her room, for which reason she would not just open her door to anybody especially in the middle of the night. Anyone planning to rob her must contend with the presence of accused Marieta who slept outside the room of the victim. Roel Punzalan and Jose Besida could not have consummated the crime without the involvement and indispensable cooperation of accused Marieta. If she was not involved or a co-conspirator she would have been eliminated first, immobilized or neutralized before the other accused could break-in the door of the victim. It is significant to note that the door of the victim can not be opened by a false key from the outside. It could only be opened from the inside by releasing or sliding the iron bolt which is installed inside. The fact that the victim's door was not forcibly opened shows that the victim opened the door herself. The victim would not have opened for accused Roel Punzalan and Jose Besida who were relatively newly hired househelpers. But she would have opened the door for accused Marieta, her sort of nursemaid and security.

x x x x x x x x

She could not explain how come Roel Punzalan was found inside the room of the victim inspite of the fact that she, together with the victim, closed and locked all the doors prior to retiring to bed. The only persons that night in the house were the victim and accused Marieta. The victim could not have opened the doors leading to

her room. The accused Marieta admitted that the victim never allowed any of the househelps to enter the house at night. Accused Marieta expressed ignorance on how the other accused were able to enter the room of the victim. All these circumstances put together definitely established the guilt of the accused Marieta."[15]

Examining the above excerpt, the elements consisting either of affirmative acts or failure to act which led the court to conclude that appellant had acted in concert with Roel Punzalan and Jose Besida, may be summarized as follows:

1. She had participated in the discussion among her husband Domingo Mendoza, Roel Punzalan and Jose Besida in the afternoon before the robbery and the killing, when Domingo Mendoza had declared that the time to carry out their plan had arrived with Judge Fule gone;
2. Marieta had unlocked doors and summoned Roel Punzalan and Jose Besida from the servants' quarters and brought them inside Judge Fule's house an hour or so before the robbery and the killing were committed;
3. Appellant Marieta had, by her own testimony, seen Jose Besida enter her room leading to Mrs. Fule's room while Mrs. Fule and others were watching a video film, but failed to report that fact to Mrs. Fule or to anyone else in the household then watching the video film;
4. After hearing the moaning of Mrs. Fule through the open bedroom door and after she was aware that Roel Punzalan and another person had left Mrs. Fule's room in the corridor in which Marieta slept, she, per her own testimony, stayed in the floor for four hours without attempting to find out what had happened to Mrs. Fule and without attempting to awaken Nieves Santos or any body else and to raise the alarm;
5. Marieta had not been harmed in any way by Roel Punzalan and Jose Besida although she obviously recognized them; they had not even tied or gagged her to prevent her from raising an alarm.

We believe that the above multiple factors, when considered together, lead to the conclusion, constituting moral certainty, that appellant Marieta had acted in concert with Roel Punzalan and Jose Besida at least in respect of the robbery. It is possible that the conspiracy did not originally extend to the killing of Mrs. Fule, and that such killing was resorted on the spur of the moment to counter unexpected resistance on the part of Mrs. Fule or to prevent any outcry on her part. The general rule, however, is that where conspiracy or action in concert to achieve a criminal design is shown, the act of one is the act of all and that the extent of the specific participation of each individual conspirator becomes secondary, each being held liable for the criminal deed(s) executed by another or others.[16]

Appellant insists that she was unaware of any plan to rob the victim and that the fact that she did not flee with her co-accused shows that she had not joined the conspiracy.

The simple refusal or failure to flee with her co-accused does not, by itself, necessarily imply that she had never conspired to rob the victim. Taking the totality of the evidence presented against appellant Marieta in the light most favorable to her, her failure to flee may be considered as indication that she had been shocked that what had begun as a plan to rob Mrs. Fule of her jewelry and money culminated in her brutal slaying, and that appellant Marieta sought to disavow the conspiracy to rob which she had initially joined. So viewed, the ultimate issue may be seen to be whether her "disavowal" or disengagement through failure or refusal to flee was sufficient to extinguish or negate criminal liability for the robbery and the killing.

We believe and so hold that such "disavowal" through failure to flee was not sufficient to discharge appellant Marieta from liability for the robbery and the killing. 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 things may go awry and that the offended party may resist or third persons may get killed in

the course of implementing the basic criminal design. To free himself from such criminal 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 to commit the initial felony.[17]

In the instant case, while the failure to flee may perhaps be regarded as a negative overt act, such "disavowal" came too late, having manifested itself after, and not before or during, the consummation of the robbery and the slaying. In legal contemplation, there was no longer a conspiracy to be repudiated nor an unlawful killing which could have been prevented since the conspiracy and the killing had already materialized. The locus penitentie, i.e., appellant's opportunity to purge herself of criminal liability, had already passed. Appellant insists that her life was threatened by Roel Punzalan who poked into her back what she believed was a sharp instrument, when she discovered the robbery and assault being carried out. She says that that circumstance effectively prevented her from doing anything to forestall or prevent the perpetration of the crime. The difficulty with this defense is not merely that there is nothing to support it except Marieta's own word. That word, when taken in the context of all the other circumstances, especially her failure to raise the alarm long after the doers of the crime had left, is simply insufficient to nullify the prosecution's case. Appellant's word was not believed by the trial judge, Judge Jaramillo, who was presiding when the defense presented its case and who wrote the decision with the benefit of observing her demeanor in court,[18] was unable to accept appellant's statement that she had been coerced into silence by Roel Punzalan. There is no basis in the record for setting aside this conclusion on the part of the trial judge, a conclusion to which we must accord appropriate deference.

We turn to the appreciation of the qualifying and aggravating circumstances attending the commission of the crime. Marieta assails the finding by the trial court of the qualifying circumstance of evident premeditation. However, the record shows not only the time when the accused determined or at least last conferred on the commission of the crime, but also acts which manifestly indicated that the appellant and her co-accused had clung to their determination to commit the crime. An interval of seven (7) or eight (8) hours had taken place between the meeting of the co-accused and Marieta's summoning of Roel Punzalan and Jose Besida into the Fule house, an interval of time sufficient to allow appellant and her co-conspirators to reflect upon the consequences of their acts.

Nocturnity was correctly appreciated because it was purposely sought by the conspirators to afford impunity and to facilitate both the execution of the crime and their escape.[19] They not only timed the robbery to coincide with the absence of Judge Fule; they also chose to strike late that night to ensure that the victim would be alone in her bedroom and unable to resist or to flee.

Abuse of superior strength was similarly correctly appreciated. There was great variance in the relative physical condition of the assailants and of the victim: two adult males as against an old lady suffering from hypertension; the assailants were armed with bladed and blunt instruments while the victim was alone and unarmed and in no position to defend herself; and the great violence inflicted upon the victim, as indicated by the number and location of her wounds, all indicate the presence of the circumstance of abuse of superior strength.

Upon the other hand, disregard of age, rank, or sex was incorrectly appreciated by the trial court. This circumstance was absorbed in abuse of superior strength. Moreover, disregard of age, rank, or sex is relevant only in crimes against persons; the instant case involves robbery with homicide, a felony classified as a crime against property, the homicide being regarded as incidental to the robbery.[20]

Dwelling should also have been disregarded because the accused (except Domingo Mendoza) all resided in the servants' quarter of Mrs. Fule's residence. The servants' quarter may be assimilated to the victim's house, the former being an appendage of, or attachment to, the latter.

Under Article 294 of the Revised Penal Code, any person guilty of robbery with the use of violence against or

intimidation of persons shall suffer the penalty of reclusion perpetua to death when, by reason or on the occasion of the robbery, the crime of homicide shall have been committed. Article 63 paragraph 2 of the same Code provides, among other things, that when there is at least one aggravating circumstance attending the commission of the crime, the imposable penalty is death. Since death is not an enforceable penalty under our Constitution, the appropriate penalty is reclusion perpetua.

WHEREFORE, the decision of the trial court dated 22 May 1987 is hereby AFFIRMED, except that the civil indemnity for the victim's death is hereby increased to P50,000.00 in line with recent jurisprudence of the Court.[21]

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Information, Record, pp. 23-24.

[2] Record, p. 197.

[3] Id., p. 54.

[4] Id., p. 92.

[5] Id., p. 100.

[6] Id., pp. 114 and 122.

[7] Id., p. 190.

[8] Decision, Record, pp. 180-184; Rollo, pp. 51-55.

[9] Appellant's Brief, Rollo, pp. 118-121.

[10] Id., Rollo, p. 107.

[11] People v. Aldeguer, 184 SCRA 1, 6 (1990).

[12] People v. Callado, G.R. No.88631, 30 April 1991, p.16.

[13] Ayco v. Fernandez, G.R. No.84770, 18 March 1991, pp. 8-9.

[14] People v. Montante, 192 SCRA 483, 487-488 (1990).

[15] Decision, Rollo, pp. 22-27.

[16] People v. Vasquez, G.R. No. 92658, 30 April 1991, pp. 4-8; People v. Nunag, G.R. No. 92570, 29 April 1991, p. 10; People v. Bartulay, 192 SCRA 621, 629 (1990); People v. Gupo, 190 SCRA 7, 18 (1990); People v. Veronas, 179 SCRA 423, 427 (1989).

[17] People v. Salvador, 163 SCRA 574, 580-582 (1988); People v. Bazar, 162 SCRA 609, 617 (1988); People v. Escobar, 157 SCRA 541, 567 (1988); People v. Pelagio, 20 SCRA 153, 159-160 (1967).

[18] Record, p. 178; TSN of Appellant, pp. 469 and 571.

[19] People v. Ga, G.R. No. 49831, 27 June 1990.

[20] People v. Pagcol, 79 SCRA 579-577 (1978); People v. Nabduna, 142 SCRA 446, 458 (1986); People v. Ga,

supra; People v. Callado, G.R. No. 88631, 30 April (1991), pp. 19-20.

[21] Lozano v. Court of Appeals, G.R. No. 90870, 5 February 1991.

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