

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTOS DUCAY AND EDGARDO DUCAY, ACCUSED. SANTOS DUCAY, ACCUSED-APPELLANT.

G.R. No. 86939, August 02, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Santos Ducay and Edgardo Ducay, father and son, were charged with the complex crime of double murder and multiple frustrated murder in an Information[1] filed on 16 October 1986 with the Regional Trial Court (RTC) of Valenzuela, Metro Manila, allegedly committed as follows:

“that on or about the 12th day of October, 1986, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill Pacita Labos, Manuel Labos, Lina Labos-Mojica, Edwin Labos and Ma. Cristina Labos, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot with a .45 caliber [pistol] and shotgun they were then provided the said Pacita Labos. Manuel Labos, Lina Labos-Mojica, Edwin Labos and Maria Cristina Labos, hitting them on their body, thereby causing them serious physical injuries which directly caused the death of Pacita Labos and Manuel Labos; thereby, also, with respect to Lina Labos--Mojica, Edwin Labos and Maria Cristina Labos, performing all the acts of execution which ordinarily would have produced the crime of murder but which nevertheless did not produce it by reason of a cause independent of their will, that is, the timely and able medical attendance rendered to said Lina Labos-Mojica, Edwin Labos and Maria Cristina Labos which prevented their death.”

The case was docketed as Criminal Case No. 7792-V-6 before Branch 172 of the said court. Upon arraignment, both accused entered a plea not guilty.[2] In due course, the trial on the merits proceeded.

The witnesses presented by the prosecution were Edwin Labos, Lina Labos, Sgt. Ponciano Casile, Dr. Rodolfo Lizondra, Dr. Tahil Mindalano and Dr. Leo Arthur Camagay.[3] On the other hand, the witnesses presented by the defense were accused Santos Ducay and Edgardo Ducay, Ruben Ampuan, Mario Abad and Cristino Mariano.

Prosecution witness Lina Labos testified that at about 5:00 o'clock in the morning of 12 October 1986, she was sleeping in the sala at the second floor of the house together with her husband, Manuel Labos, and their six-month old daughter, Ma. Cristina Labos, when she was awakened by the pounding of the door on the first floor leading to the sala. Moments later, Santos Ducay and his son, Edgardo Ducay, appeared in the sala. Santos was carrying a long firearm while Edgardo held a caliber .45 pistol. The two started firing at Manuel, who was already standing albeit half asleep. Then they shot her mother-in-law, Pacita Labos. Both Manuel and Pacita were killed. The accused also shot her, Ma. Cristina, and Edwin Labos, her brother-in-law, who was then coming out of the bedroom. She was hit in the stomach and gall bladder while Ma. Cristina was hit in the right leg, left thigh and abdomen. The accused then turned their backs and one of them uttered "Ubos ang lahi." She was able to identify the two accused, who are her former neighbors, because of the fluorescent light in the sala. After the accused had

left, the police came and brought the wounded to the Jose Reyes Memorial Medical Center.[4]

Edwin Labos testified that on 24 December 1985 his brother Manuel Labos and Santos Ducay quarreled and stabbed each other; however, Santos Ducay did not file any charges against Manuel who gave the former P200.00 for medical expenses.[5] He also corroborated the testimony of his sister-in-law. He heard the banging of the door and several gunshots, then he went out of his room and saw his brother Manuel already sprawled dead on the floor. He saw both accused shoot his sister-in-law and his niece.[6] Edgardo then fired at him, hitting him in the right thigh, while Santos shot his mother.[7] He was later treated at the Jose Reyes Memorial Medical Center where he spent P13,299.53 (Exhibits "Q" to "Q-165"). They paid P13,200.00 to Popular Memorial Chapels and P9,060.00 to Holy Cross Memorial Chapel for the interment of his mother and brother.[8]

Sgt. Ponciano Casile, a police investigator of the Valenzuela Police Station, testified that he was ordered to investigate the incident. In the course of his investigation, he learned that the assailants were Santos Ducay and a yet unidentified man who, upon Lina Ducay's sworn statement given two days later, was identified as Santos Ducay's son, Edgardo.[9]

Dr. Rodolfo Lizondra, Supervising Medico-Legal Officer of the National Bureau of Investigation (NBI), testified on the post-mortem examinations he conducted on the cadavers of Pacita and Manuel Labos, the results of which are embodied in two autopsy reports (Exhibits "K" and "M").[10] He determined the cause of death of Pacita as "hemorrhage, secondary to shotgun wounds of the chest, abdomen and left arm," and that of Manuel as "hemorrhage, secondary to gunshot wounds of the head and chest." Dr. Tabil Mindalano testified regarding the injuries sustained by Lina and Ma. Cristina Labos and the medical assistance rendered to them,[11] while Dr. Arthur Leo Macasiano Camagay testified about the injuries sustained by Edwin Labos.[12] Drs. Mindalano and Camagay declared that without the medical attendance given to Lina, Ma. Cristina and Edwin Labos, said persons would have died because of the nature of the injuries sustained by them.[13]

Per the Medico-Legal Certificates issued, Lina Labos sustained three gunshot wounds on her "left umbilical," "left buttocks," and "lateral D/3rd left thigh." The point of exit of the last wound was at the "anterior middle 3rd left thigh," thereby "penetrating the liver by 1.5 cm. thru and thru, perforating the duodenum by 1 cm. thru and thru, perforating jejunum by 0.5 cm. lacerating the pancreas by 2 cm. transecting muscular branch aorta (abdominal)" (Exhibit "A"). Edwin Labos sustained a gunshot wound at the "middle 3rd anterior surface thigh, right" with no point of exit resulting in "Gustilo--Anderson type III open fracture comminuted M/3rd femur, right," (Exhibit "V") and Ma. Cristina Labos sustained three gunshot wounds located at "lateral aspect D/3rd thigh right," "antero--medial aspect M/3rd thigh, left" and "periumbilical right" (Exhibit "B").

Both accused testified that they were in their house at Area 4, Valenzuela at the time of the incident in question. At about 6:00 o'clock in the morning, they were roused from their sleep by a friend, Martin Gabukan, who informed them that Santos was a suspect in the shooting of the Labos family.[14] Gabukan told Santos not to worry because "many people heard that (the accused) were really not the one." [15] Santos was arrested on 14 October 1986 in Balagtas, Bulacan[16] while he was looking for a lawyer, while Edgardo was taken into custody by the police while he was attending to his father in the police headquarters.[17]

Cristino Mariano, a neighbor of the Ducays, testified that at about 6:00 o'clock in the morning of 12 October 1986, Santos Ducay came and said that he (Santos) was a suspect in the shooting incident in question.[18] The following day, he brought Santos to the Barangay Captain, Pio Angeles, who entered in the barangay blotter (Exhibit "6") Santos' profession of innocence of the crime he was suspected of. On cross-examination, Cristino stated that the distance between Area 4, where he and the Ducays are residing, and the house of the Laboses at Area 6 (also referred to as Area 11) is about one kilometer.[19]

Ruben Ampuan, a neighbor of the Laboses, testified that at the time of the incident and while he was still lying down, he heard gunshots. He stood up, opened the window and saw two men leaving the house of the Laboses. He stated that they were not the accused in this case.[20]

Mario Abad Allegado testified that he was at the "tambakan" which is about thirty meters from the scene of the crime when he heard several gunshots. As he headed for home, he met two persons in front of the lamp post near the house of the Eugenios heading towards Maysan Road. One of them, a tall, thin fellow, with curly hair and mestizo features, was carrying a firearm, while the other, whose face he did not see,[21] was shorter. He believed that both persons were the assailants.[22] He declared that they were not the accused whom he knows very well being his former neighbors.[23] Upon reaching home, he heard a commotion from the house of the Laboses. He went inside the Laboses' house and saw the wounded family members. He asked Edwin and Lina Labos whether they recognized their assailants and both answered that they did not.[24]

Capt. Carlos Tiquia, Chief Investigator of the Valenzuela Police Station, who was presented as the only defense witness during the hearing for the application for bail and whose testimony was adopted in the trial on the merits, declared that he proceeded to the crime scene after receiving a report on the incident from the investigator assigned to the case. When he and the investigator returned to the office, his investigator took down the statements of the witnesses, one of whom was Erwin Labos and whose statement was taken down at 4:00 o'clock in the morning of 14 October 1986. However, he believed that Erwin was not telling the truth so that he personally talked to him, and at 6:00 am., Erwin executed a supplemental statement (Exhibit "4") in the presence of several people including his brother Renato Labos. This time, Erwin described one of the alleged assailants as tall, with curly hair and mestizo features. On the basis of such a description, Tiquia made a request for a cartographic sketch to the PC Crime Laboratory.[25]

On 29 April 1988, the trial court promulgated its judgment finding Santos Ducay guilty beyond reasonable doubt of the crime charged but acquitting Edgardo Ducay on ground of reasonable doubt.[26] The dispositive portion of the decision reads:

"In view of the foregoing, the Court finds guilty beyond reasonable doubt Santos Ducay of the complex crime of double murder and multiple frustrated murder as charged.

The penalty of reclusion temporal in its maximum period to death is equivalent to 17 years, 4 months and 1 day to death, the minimum being 17 years, 4 months and 1 day to 20 years, the medium being reclusion perpetua and maximum, death.

The Court could have meted the death sentence on Santos Ducay but is prevented from doing so by the New Constitution. Santos Ducay is, therefore, hereby sentenced to suffer imprisonment for life, reclusion perpetua which is the medium period of the penalty provided by law, and all the accessory penalties provided by law, to indemnify the heirs of the victim Pacita Labos in the sum of P30,000.00 and the heirs of Manuel Labos P30,000.00; to indemnify the victims Edwin Labos in the sum of P13,299.53 as reimbursement of medical expenses, and the sum of P4,500.00 as lost earnings for the period from October 12, 1986 to July 1987; to indemnify Lina Labos and Ma. Cristina Labos in the total sum of P10,000.00 as reimbursement of medical expenses; and to pay the costs of suit.

The Court finds Edgardo Ducay not guilty of the crime charged on ground of reasonable doubt and is hereby acquitted. The Jail Warden of Valenzuela, Metro Manila, is hereby ordered to release Edgardo Ducay from detention unless held for any other lawful cause."[27]

In convicting Santos Ducay, the trial court said:

"The Court never doubts the participation of Santos Ducay not only on the basis of the positive identification

made by surviving victims, Lina and Edwin Labos, the motive Santos Ducay had to avenge the assault done on him by Manuel Labos, but also because his positive identification sweeps aside altogether his defense -- that of alibi -- a very weak defense in the light of the overwhelming evidence against him.

x x x

From the evidence thus adduced the Court is convinced beyond reasonable doubt that it was Santos Ducay who was one of the persons who conspired with another in killing the victims, Manuel Labos, Pacita Labos, and in trying to kill Lina Labos, Maria Cristina Labos and Edwin Labos, but was frustrated. The evidence of evident premeditation, abuse of superior strength and treachery, were clearly shown by the prosecution when it proved convincingly to the Court that considering the time of the attack, 5:00 at dawn, evident premeditation is clear especially if the testimony of Edwin Labos will be considered that months previous to this attack, Santos Ducay had a quarrel with one of the victims shot to death. There was abuse of superior strength and treachery because the victims were asleep at the time of the attack and were therefore unprepared and unarmed for the attack. They had no chance whatsoever to fight back, the six months baby Ma. Cristina Labos especially." [28]

The trial court expressed the view that two murders and three frustrated murders were committed, or that there are as many crimes as there are victims in this case because "the trigger of the gun used in committing the acts complained of was pressed in several instances and not in one single act." However, it did not impose the corresponding penalties therefor "because the information to which the accused pleaded is only one crime of double murder and multiple frustrated murder." [29]

On 13 May 1988, Santos Ducay filed a Partial Motion For Reconsideration And/Or New Trial. [30] He sought the admission of the alleged result of a paraffin test conducted on him on 13 October 1986, or a day after the incident, which shows that he was found negative for powder burns. For lack of merit, the trial court denied the motion in its Order of 24 May 1988. [31]

Santos Ducay, hereinafter referred to as the Appellant, then filed on 7 June 1988 a Notice of Appeal. [32]

In his "Brief for the Defense" filed on 24 September 1992, [33] the appellant raises the following assignment of errors:

"1. THE TRIAL COURT ERRED IN HOLDING AS 'POSITIVE' PROSECUTION WITNESSES EDWIN LABOS AND LINA LABOS' IDENTIFICATION OF ACCUSED; HENCE, IT ERRED WHEN IT REJECTED ACCUSED'S DEFENSE OF ALIBI.

2. THE TRIAL COURT ERRED IN DENYING ACCUSED'S PARTIAL MOTION FOR RECONSIDERATION AND/OR NEW TRIAL FOR THE ADMISSION OF THE PARAFFIN EXAMINATION ON ACCUSED A DAY AFTER THE INCIDENT FINDING HIM NEGATIVE OF POWER (sic) BURNS.

3. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED."

In the first assigned error, the appellant attacks the credibility of prosecution witnesses Lina and Edwin Labos and alleges that their identification of the appellant is vague and highly dubious. To buttress this claim, he refers this Court to his testimony that a neighbor by the name of Martin Gabukan told him that while the victims were in the hospital, he (Martin) overheard Edwin Labos say that he did not really see the appellant and Edgardo Ducay; that Edwin only happened to mention the name of the appellant when he was asked by the police about their enemies in their place. The appellant then concludes that the crime was imputed upon him not because he was seen at the scene of the crime but because of the motive alleged, namely, that he and Manuel Labos had an altercation on 24 December 1985. As to Lina Labos, the appellant maintains that she gave her statement only on 14 October 1986 or two days after the occurrence of the incident; she thus had sufficient time to concoct a story and implicate the

appellant and Edgardo after she had talked with her brother-in-law, Edwin, and her father-in-law, Jesus Labos.

The appellant further claims that since the trial court did not believe Lina and Edwin's testimonies that they positively identified Edgardo Ducay, then following the maxim "falsus et (sic) uno, falsus et (sic) omnibus,"[34] it should not have also believed their testimony as regards the appellant. He also faults the trial court for rejecting the supplementary statement (Exhibit "4") of Erwin Labos, brother of Edwin Labos, and Erwin's "contemporaneous" statement to Edgardo Ducay: "Kuya pasensiya ka na, naturo kita noon una, hindi naman ikaw," allegedly absolving the accused and pointing to a tall, mestizo and curly-haired man as one of the assailants, which statement was allegedly confirmed by Sgt. Casile and Capt. Tiquia and made as the basis of the cartographic sketch by the PC Crime Laboratory. According to the appellant, these declarations of Erwin are declarations against interest and are part of the res gestae. Finally, the appellant asserts that the evidence for the prosecution is weak because no disinterested witness was presented despite the fact that the incident occurred in a thickly populated area. He also contends that the prosecution suppressed evidence by failing to present Erwin Labos as a witness.

These claims are without merit.

A careful evaluation of the records and the evidence adduced by the prosecution discloses that the appellant had been positively identified by Lina and Edwin Labos. In his sworn statement (Exhibit "H") executed barely four hours after the incident and while he was still in the emergency room of the hospital, Edwin explicitly declared that the appellant was one of the assailants. This sworn statement was spontaneously given at the time he was hovering between life and death. He had no opportunity then to contrive or fabricate a story. The appellant is the only one identified therein by Edwin. Thus:

x x x

"TANONG: Bakit ka narito ngayon sa loob ng Dr. Jose Reyes Hospital, Emergency Room, Manila?

SAGOT: Binaril po ako.

T: Sino ang bumaril sa iyo?

S: Ang kasama ni Santos Ducay po nakatira sa Area-4, Family Compound, Karuhatan, Val. M.M.

T: Kilala mo ba ang bumaril sa iyo na kasama ni Santos?

S: Kong makikita ko muli.

x x x

T: Paano mo nasabi na kasama ni Santos Ducay and bumaril sa iyo?

S: Nakita ko po si Santos Ducay na ang hawak niya shotgun at siya ang bumaril sa kuya ko, Manuel, nanay ko, Pacita, Ate ko, Lina at bata na si Maria Cristina.

T: Dati mo bang kilala si Santos Ducay?

S: Opo.

T: Paano mo siya nakilala?

S: Dati po siyang (Santos) kapitbahay namin at lumipat sa Area 4 Family Compound, Karuhatan, Val., M.M."[35]

In court, Edwin unhesitatingly pointed to the appellant as one of the assailants.[36]

Lina Labos also identified the appellant as one of the malefactors both in her handwritten sworn statement, Exhibit "E,"[37] executed on 14 October 1986 or two days after the incident, and in her court testimony.[38] That her statement was executed two days after the incident does not perforce affect her credibility. With the three gunshot wounds she sustained and the thought of the death of her husband and mother-in-law and the serious injuries of her daughter and brother-in-law, it would be too much to expect from her that physical and emotional fortitude to forthwith give her statement as what Edwin did. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of a witness if such delay is satisfactorily explained.[39] In any case, the speculation that she could have contrived her testimony after having talked with her father-in-law and brother-in-law is wholly unsupported by evidence.

We agree with the appellee that the alleged statements made by Martin Gabukan to the appellant, which the latter related in court, is hearsay and has little, if any, probative value. Counsel for the appellant knew, or ought to have known, that this was so. Yet, the defense did not present Martin as a witness.

Nor can we subscribe to the proposition that since the trial court did not give credit to Edwin and Lina's testimonies that they positively identified Edgardo, it should, pursuant to the maxim "falsus in uno, falsus in omnibus," likewise disregard their testimonies as against the appellant and accordingly acquit him. In *People vs. Dasig*,[40] this Court stated that the maxim is not a mandatory rule of evidence, but rather a permissible inference that the court may or may not draw. In *People vs. Pacada*,[41] we stated that the testimony of a witness can be believed as to some facts and disbelieved as to others. And in *People vs. Osias*,[42] we ruled that:

"It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected but such portions thereof deemed worthy of belief may be credited.

The primordial consideration is that the witness was present at the scene of the crime and that he positively identified (the accused) as one of the perpetrators of the crime charged x x x."

Professor Wigmore gives the following enlightening commentary:

"It may be said, once for all, that the maxim is in itself worthless; -- first, in point of validity, because in one form it merely contains in loose fashion a kernel of truth which no one needs to be told, and in the others it is absolutely false as a maxim of life; and secondly, in point of utility, because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore it is a superfluous form of words. It is also in practice pernicious, first, because there is frequently a misunderstanding of its proper force, and secondly, because it has become in the hands of many counsel a mere instrument for obtaining new trials upon points wholly unimportant in themselves."[43]

The trial court did not err in rejecting the supplementary statement (Exhibit "4") of Erwin Labos, brother of Edwin Labos, and his alleged contemporaneous statement to Edgardo Ducay. Erwin Labos was not called by the defense as its witness -- even as a hostile one. Whatever declaration he made to any party, either written or oral, is thus hearsay. The prosecution seasonably objected to the admission of Exhibit "4." [44] Besides, as noted by the prosecution, this document is not under oath while his first statement implicating the appellant is duly subscribed and sworn to. The defense should have presented Erwin as a witness if indeed it was convinced that Exhibit "4" expresses the truth. There is no showing that this could not have been done because Erwin was not available. His brother, Edwin, testified that Erwin was staying with his father in Escolta.[45] This information should have been utilized by the defense to have compulsory process issued to bring Erwin to court.

Instead, the defense imputes suppression of evidence upon the prosecution in not presenting Erwin Labos as its

witness. It is settled that suppression of evidence is inapplicable in a case where the evidence is at the disposal of both the prosecution and the defense.[46] Besides, the prosecution had no cogent reason for presenting Erwin since there is no showing that he was in the house when the incident occurred. On the other hand, the defense needed his testimony for if, indeed, he should affirm his supplemental statement, he may somehow enhance the theory of the defense.

We do not likewise agree with the appellant that Erwin's alleged statement to Edgardo Ducay: "Kuya pasensiya ka na, naturo kita noon una, hindi naman ikaw," uttered immediately after he made his supplemental statement, is a part of the *res gestae* and thus an exception to the hearsay rule.

The rule on spontaneous statements as part of the *res gestae* is stated in Section 42, Rule 130 of the Rules of Court: "statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. x x x." There are three requisites for the admission of spontaneous statements as evidence of the *res gestae*: 1) that the principal act, the *res gestae*, be a startling occurrence; 2) that the statements were made before the declarant had time to contrive or devise; and 3) that the statements must concern the occurrence in question and its immediately attending circumstances.[47] The rationale for the exception lies in the fact that a statement made under the stress of an exciting event or condition tends to ensure that the statement is spontaneous and, therefore, trustworthy; and the likely proximity in time between the event or condition and the statement minimizes the possibility of a memory problem.[48] Erwin's alleged statement to Edgardo Ducay does not refer to the incident in question but rather to his prior statement (not the supplemental statement) implicating Edgardo Ducay. Furthermore, the alleged "contemporaneous" statement was made two days after the shooting incident. In no way can it be said that Erwin was under the stress of an exciting event or condition.

Nor do we find merit in the appellant's argument that the prosecution's evidence is weak because unlike the defense, it did not present any disinterested witness. He suggests that since the place where the incident happened is thickly populated, there were many people who saw the gunmen and who could have pointed to the accused if they were the ones who committed the crime considering that they were familiar to the residents of the area. In the first place, it was not shown that at the time the incident occurred, many people were already awake and were able to see the gunmen. In the second place, assuming that it was so shown, the determination of who should be utilized as witnesses by the prosecution is addressed to the sound discretion of the prosecutor handling the case.[49] That the prosecutor did not present any disinterested witness does not lessen the strength of the prosecution's case, which is anchored on the testimonies of Edwin and Lina Labos, who were themselves eyewitnesses and victims of the crime.

In the ultimate analysis, the first assigned error involves the credibility of witnesses. It is settled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial unless it has plainly overlooked certain facts of substance that, if considered, might affect the result of the case.[50] We find no reason to depart from this rule in this case.

In his second assigned error, the appellant faults the trial court for denying his motion for new trial on the ground of newly discovered evidence consisting of Chemistry Report No. 0-1630-86 of the PC Crime Laboratory Service, the result of the paraffin test conducted on Santos Ducay on 13 October 1986 or the day after the incident in question, which allegedly shows that "both hands of the [appellant] gave NEGATIVE result to the test for gunpowder residue (nitrates)."[51]

One of the grounds for a new trial mentioned in Section 2, Rule 121 of the Rules of Court is the discovery of new and material evidence. The requisites therefor which must concur are: (1) that the evidence was discovered after the trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (3) that such evidence is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, it will probably change the judgment.[52] In the present case, the appellant was subjected to a paraffin test the day after the crime was committed. Certainly, he knew that the findings of such test would be forthcoming. He should have asked for the result of the test to find out if it is exculpatory, in which case he could have presented it during the hearing of his application for bail or, at the latest, during the trial on the merits. In any event, the chemistry report cannot be considered as newly discovered evidence since it was already existing even before the trial commenced and could have been easily produced in court by compulsory process. The appellant either did not exercise reasonable diligence for its production or simply forgot about it. Forgotten evidence is, of course, not a ground for a new trial.[53] Moreover, the result of the paraffin test conducted on the appellant is not conclusive evidence that he did not fire a gun.[54] It is possible for a person to fire a gun and yet be negative for the presence of nitrates, as when he wore gloves or washed his hands afterwards.[55] The trial court, therefore, correctly denied the motion for new trial.

The testimonies of the witnesses and the nature of the wounds suffered by the victims show that there were two different firearms used by two assailants, one of whom is the appellant. The crimes committed were not caused by a single act nor were any of the crimes committed as a necessary means of committing the others. In this case, there are as many crimes committed as there are victims. The trial court correctly ruled that there was no complex crime "considering that the trigger of the gun used in committing the acts complained of was pressed in several instances and not in one single act." It is settled that when various victims expire from separate shots, such acts constitute separate and distinct crimes.[56] However, the trial court erred when it ruled that "(i)t cannot, however, impose the corresponding penalty for the crime committed against each victim because the information to which the accused pleaded is only one crime of double murder and multiple frustrated murder." The information in this case, although denominated as one for a complex crime, clearly charges the accused with five different criminal acts. It states: "the above-named accused, with intent to kill Pacita Labos, Manuel Labos, Lina Labos-Mojica, Edwin Labos, and Ma. Cristina Labos, x x x did then and there x x x attack, assault and shoot with a .45 caliber [pistol] and shotgun they were then provided the said Pacita Labos, Manuel Labos, Lina Labos-Mojica, Edwin Labos and Ma. Cristina Labos, x x x." The appellant and his co-accused did not move to quash the information on the ground of multiplicity of charges. At no other time thereafter did they object thereto. They therefore waived such defect[57] and the trial court thus validly rendered judgment against them for as many crimes as were alleged and proven.[58]

The crimes committed by the appellant and his companion, which were proven beyond reasonable doubt are: (1) two counts of murder with the qualifying circumstance of treachery since the attack on the victims was so sudden and at a time when the victims were barely awake, thus giving them no chance whatsoever to defend themselves; and (2) three counts of frustrated murder. Conspiracy[59] between the assailants was duly proven. Together they came to the house of the victims, simultaneously attacked them, and then, together again, they fled. Before fleeing, one of them even exclaimed "Ubos ang lahi." These acts sufficiently established a common plan or design to commit the crimes charged and a concerted action to effectively pursue it. Hence, the act of one is the act of all.[60]

We do not, however, agree with the trial court that evident premeditation was sufficiently established. Although Manuel Labos stabbed the appellant on 24 December 1985, there is paucity of evidence as to when the latter determined to kill the former and any member of his family and as to acts manifestly indicating that he has clung to his determination.[61] Nevertheless, the aggravating circumstance of dwelling which was proved without

objection from the defense should be appreciated against the appellant since the victims were attacked and shot inside their own dwelling. The assailants displayed greater perversity in their deliberate invasion of the home of the Laboses.[62]

Under Article 248 of the Revised Penal Code, the crime of murder punishable by reclusion temporal maximum to death. The maximum of the penalty should be imposed in view of the presence of the aggravating circumstance of dwelling which is not offset by any mitigating circumstance. However, the imposition of the death penalty is prohibited by the Constitution;^[63] hence, the proper imposable penalty would be reclusion perpetua. The penalty for the crime of frustrated murder is the penalty next lower in degree than that prescribed for murder,^[64] that is, prision mayor maximum to reclusion temporal medium.^[65]

The appellant is entitled to the benefits of the Indeterminate Sentence Law in the frustrated murder cases. Thus, he may be sentenced in each of the three frustrated murder cases to an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor medium as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium as maximum.

ACCORDINGLY, the challenged judgment of Branch 172 of the Regional Trial Court of Valenzuela, Metro Manila in Criminal Case No. 7792-V-6 is **AFFIRMED** subject to the modifications herein indicated. As modified, appellant Santos Ducay is convicted of (a) two crimes of murder for the death of Pacita Labos and Manuel Labos and is accordingly sentenced to reclusion perpetua for each death, with the indemnity in each crime increased from P30,000.00 to P50,000.00 in conformance with the current policy of this Court; and (b) three crimes of frustrated murder committed on Lina Labos, Ma. Cristina Labos and Edwin Labos, and is hereby sentenced in each crime to an indeterminate penalty of eight (8) years and one (1) day of prision mayor medium as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium as maximum.

Costs against the appellant.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Bellosillo, and Quason, JJ., concur.

[1] Original Records (OR), 1-2.

[2] TSN, 24 November 1986, 2.

[3] Lina Labos, Edwin Labos, Sgt. Casile and Dr. Lizondra were presented during the hearing on the application for bail. Their testimonies were considered reproduced for the trial on the merits. Edwin Labos was recalled as a rebuttal witness.

[4] TSN, 24 November 1986, 4-9.

[5] TSN, 23 January 1987, 5.

[6] TSN, 19 December 1986, 6-8.

[7] TSN, 23 January 1987, *op. cit.*, 3.

[8] TSN, 19 August 1987, 5-6.

[9] TSN, 27 February 1987, 11-14.

[10] TSN, 18 March 1987, 4-9.

- [11] TSN, 14 October 1987, 2-5.
- [12] Id., 7-8.
- [13] TSN, 14 October 1987, 4; 7.
- [14] TSN, 10 February 1988, 6; TSN, 29 February 1988, 4.
- [15] TSN, 29 February 1988, 6.
- [16] TSN, 29 February 1988, 10-11.
- [17] TSN, 10 February 1988, 10-12.
- [18] TSN, 9 November 1987, 5; 10.
- [19] Id., 4.
- [20] TSN, 20 November 1987, 6-8.
- [21] TSN, 11 December 1987, 5-6.
- [22] TSN, 16 December 1987, 3-4.
- [23] TSN, 11 December 1987, op. cit., 6-7.
- [24] Id., 5-10.
- [25] TSN, 3 June 1987, 4-5; 8-9; 12-13.
- [26] OR, 305-318; Rollo, 30-43. Per Judge Teresita Dizon-Capulong.
- [27] OR, 318; Rollo, 43.

[28] OR, 315-317.

[29] OR, 318.

- [30] Id., 329-347.
- [31] Id., 351-352.
- [32] Id., 356.
- [33] Rollo, 86-125.
- [34] Should be falsus in uno, falsus in omnibus, i.e., false in one thing, false in everything. (Black's Law Dictionary, Fifth ed., 543).
- [35] Exhibit "H," Folder of Exhibits, 8.
- [36] TSN, 23 January 1987, 3-4.
- [37] Folder of Exhibits, 5.
- [38] TSN, 24 November 1986, 5.
- [39] People vs. Obngayan, 55 SCRA 465 [1974]; People vs. Roxas, 73 SCRA 583 [1976]; People vs. Elizaga, 73 SCRA 524 [1976].

[40] 93 Phil. 618 [1953].

[41] 142 SCRA 427 [1986].

[42] 199 SCRA 574 [1991].

[43] WIGMORE, J.H., Evidence in Trials at Common Law, 3rd ed., Section 1008.

[44] TSN, 18 March 1988, 4.

[45] TSN, 14 March 1988, 19-20.

[46] People vs. Morado, 4 SCRA 292 [1962]; People vs. Fernandez, 209 SCRA 1 [1992].

[47] People vs. Ricaplaza, 23 SCRA 374 [1968]; Ilocos Norte Electric Co. vs. Court of Appeals, 179 SCRA 5 [1989]; People vs. Sanchez, 213 SCRA 70 [1992].

[48] See WIGMORE, J.H., op. cit., note 43, Section 1747.

[49] People vs. Collantes, 208 SCRA 853 [1992].

[50] People vs. Tismo, 204 SCRA 535 [1991]; People vs. Simon, 209 SCRA 148 [1992].

[51] OR, 349.

[52] People vs. de la Cruz, 207 SCRA 632 [1992], citing MORAN, Comments on the Rules of Court, vol. 4, 1980 ed., 340-41. See also, Reyes vs. People, 71 Phil. 598 [1941].

[53] People vs. Penesa, 81 Phil. 398 [1948].

[54] People vs. Pama, G.R. Nos. 90297-98, 11 December 1992.

[55] People vs. Roallos, 113 SCRA 584 [1982]; People vs. Clamor, 198 SCRA 642 [1991].

[56] People vs. Pineda, 20 SCRA 748 [1967]; People vs. Boniao, G.R. No. 100800, 27 January 1993.

[57] Section 8, Rule 117, Rules of Court.

[58] Id.

[59] A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Article 8, Revised Penal Code).

[60] People vs. Alonzo, 73 SCRA 483 [1976]; People vs. Pascual, 204 SCRA 618 [1991].

[61] These are two of the three requisites of evident premeditation. The third requisite is that there must be a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act. (People vs. Narit, 197 SCRA 334 [1991]; People vs. Barba, 203 SCRA 436 [1991]; People vs. Buka, 205 SCRA 567 [1992]).

[62] People vs. Ampo-an, 187 SCRA 173 [1990].

[63] Section 19(1), Article III, 1987 Constitution.

[64] Article 50, Revised Penal Code.

[65] Article 61(3), Id.

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