

MANUEL ANGELO, PETITIONER, VS. HON. COURT OF APPEALS, ELEVENTH DIVISION AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 88392. June 26, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

These are two (2) Petitions for Review assailing the Decision of the Court of Appeals in C.A.-G.R. No. 04652 dated 18 May 1989. In that Decision, the Court of Appeals affirmed the judgment of conviction rendered by the Regional Trial Court of Malolos, Bulacan, Branch 9, in Criminal Case No. 4722-M convicting six (6) accused of the crime of homicide. In G.R. No. 88392, Manuel Angelo, one of the six (6) convicted, asks us to review the Court of Appeals Decision; in G.R. No. 89978, the other five (5) persons convicted by the trial court similarly seek to reverse the Court of Appeals' affirmation of that conviction.

On motion of the Solicitor General, the Court resolved to consolidate G.R. No. 89978 with G.R. No. 88392.[1]

The several petitioners were among eleven (11) persons who were charged under the following amended information:

"That on or about the 18th day of October 1981, in the Municipality of Paombong, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Anding Paulino, Marcelo Bernardo, Manuel Angelo and Leonardo Layug, together with Peping Paulino, Florencio Bautista, Danilo Leoncio, Crispin Paulino, Peping Leoncio, Pongit Paulino and Bisaya Nakpil, who are still at large, armed with an axe and pieces of wood and other instruments, conspiring, confederating together and mutually helping one another did then and there willfully, unlawfully and feloniously, with intent to gain by means of force and violence and intimidation of persons take, rob and carry away with them cash amounting to P20,000.00, one (1) diamond ring worth P5,000.00 and a seiko watch valued at P500.00, belonging to one Gavino Samaniego, to the prejudice of the said owner in the total amount of P25,500.00; that by reason or on the occasion of the said robbery and for the purpose of enabling them to take, rob and carry away the said money, one (1) diamond ring and a seiko watch, with a total value of P25,500.00, the herein accused mentioned above, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery and taking advantage of their superior strength, attack, assault and employ violence against the said Gavino Samaniego, thereby inflicting upon him fatal physical injuries which directly caused the death of the said Gavino Samaniego.

Contrary to law."[2]

The other five (5) accused under the above information -- i.e., Peping Paulino, Florencio Bautista, Danilo Leoncio, Peping Leoncio and Bisaya Nakpil -- remained at large and were apparently never arrested.

After petitioners submitted a plea of not guilty, the case went to trial.

After trial, the court a quo rendered its decision convicting the six (6) petitioners herein of the crime of homicide. The dispositive portion of this decision reads as follows:

"WHEREFORE, finding the accused, namely, Anding Paulino, Marcelo Bernardo, Manuel Angelo, Leonardo Layug, Pongit Paulino and Crispin Paulino GUILTY beyond reasonable doubt of the crime of homicide, and considering that none of them appears to be disqualified from availing of the benefits of the Indeterminate Sentence Law, the Court hereby sentences each of them to suffer imprisonment for not less than EIGHT (8) YEARS to SIXTEEN (16) YEARS of reclusion temporal; to indemnify the heirs of the deceased Gavino Samaniego in the sum of P30,000.00, and to pay costs."[3]

On appeal to the Court of Appeals, that court, as already noted, affirmed the judgment of conviction rendered by the trial court. Hence, the present Petitions for Review.

In G.R. No. 88392, petitioner Manuel Angelo claims that the Court of Appeals committed the following errors:

"1. The Court of Appeals seriously erred and/or acted not in accord with law and the evidence tantamount to grave abuse of discretion in affirming the lower court's judgment of conviction against Manuel Angelo for the crime of homicide on the basis of inherently incredible and implausible testimonies, considering that:

A. The said testimonies of the principal prosecution witnesses are riddled with contradictions and improbabilities on material points as to create serious doubts on their credibility.

B. The requirement of the lower court for the accused to first prove that the prosecution witnesses committed perjury before their dubious testimonies can be disregarded is manifestly contrary to law;

2. The Court of appeals seriously erred and/or acted not in accord with law and the evidence tantamount to grave abuse of discretion in disregarding the absence of an impelling motive for Manuel Angelo to hurt or kill Gavino Samaniego, considering that:

A. His identification as one of those who allegedly participated in mauling the victim is highly doubtful and unreliable for, among others, the only witness who implicated him did not mention his alleged participation at first testimony before the judge, and mentioned the same almost half a year later, during reinvestigation.

B. Due to such fatally defective identification, the absence of motive to commit the crime of homicide should have been considered in favor of Manuel Angelo.

3. The Court of Appeals seriously erred and/or acted not in accord with law and the evidence tantamount to grave abuse of discretion in sustaining the lower court's finding that conspiracy exists in the killing of Gavino Samaniego;

4. The Court of Appeals seriously erred and/or acted contrary to the Constitution in sanctioning the lower court's finding that the non-presentation of the accused as witnesses lessened the credibility of their defense."[4]

We note that the principal issues raised above relate to (a) credibility; (b) motive; and (c) conspiracy.

In G.R. No. 89978, the remaining five (5) petitioners submit one issue only:

"Can petitioners be found guilty of the crime charged beyond reasonable doubt based merely on the testimony of Antonio Samaniego and Pat. Reynaldo Estrella?"[5]

In their brief, however, these petitioners in effect adopted the assignment of errors made by petitioner Manuel Angelo as well as his related arguments. Thus, we treat all the petitioners as making all the arguments indicated above and deal with them accordingly.

The issues raised before us in these Petitions for Review are exactly the same issues petitioners had raised before the Court of Appeals. They ask us to review the findings and conclusions of the trial court and the Court of

Appeals relating to the events which culminated in the death of Gavino Samaniego, insisting that the Court of Appeals acted not in accordance with law and in effect with grave abuse of discretion in disregarding the evidence presented and the arguments made by petitioners' counsel before the Court of Appeals and affirming the judgment of conviction.

It is firmly settled doctrine that the findings and conclusions of fact of the Court of Appeals are well-nigh binding upon this Court and only questions of law may be raised in a petition for review of the decisions of that appellate court. It is not the function of this Court to analyze or weigh the evidence all over again. In effect, petitioners seek to establish that they come within one or another of the exceptions which have developed in case law to the mentioned general proposition. In *BPI Credit Corporation v. Hon. Court of Appeals, et al.*,^[6] the Court listed the following as exceptions:

"(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) When there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of facts are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record." (Citation omitted)

It goes without saying that very clear and convincing evidence is essential to establish that a particular case falls within the scope of one or more of the exceptions noted above.

As noted, the trial court found the petitioners guilty of homicide only, and not robbery with homicide. The trial court concluded that there was insufficient evidence supporting the robbery portion of the special complex crime of robbery with homicide and accordingly declined to hold them guilty of the crime of robbery. This is in line with the decision of this Court in *People v. Pacala*,^[7] which held that:

"It is well settled that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery had taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex crime of robbery with homicide."^[8] (Underscoring supplied)

Accordingly, we consider below only the conviction for homicide.

The Court of Appeals summarized the facts it and the trial court found:

"The victim Gavino Samaniego and his brother, Domingo Samaniego, were engaged in the landscaping job. At about 5:00 o'clock in the afternoon of October 18, 1981, as Gavino was riding a tricycle on his way home at Barrio San Roque, Paombong, Bulacan, his brother Domingo saw and told him to bring to him (Domingo) the amount of P20,000.00 to purchase materials for their landscaping contract (TSN, pp. 2, 7-8, hearing of September 22, 1983).

At about 6:00 o'clock of the same afternoon, Antonio Samaniego, a son of the victim Gavino Samaniego, arrived at the house of his uncle Domingo at San Isidro, Paombong, Bulacan to protect his father from the accused-appellants herein whom he heard from his father telling his mother that the said accused-appellants

were angry at his father. (TSN, pp. 8-9, hearing of March 9, 1984)

At about 7:00 o'clock in the evening of October 18, 1981, Gavino arrived at his brother's house, where he found his sons, Antonio and Bernardo, as well as Ben Cuntabay. After a short while, Domingo's house was pelted with stones. Gavino Samaniego, his two sons Antonio and Bernardo, including Ben Cuntabay, came out of the house. They saw Marcelo Bernardo, Manuel Angelo, Leonardo Layug, Ricardo Paulino, Peping Paulino, Peping Leoncio, Lorenzo Bautista, Bisaya Nakpil and Danilo Leoncio, all of whom came from the nearby yard of Peping Paulino where earlier they had a drinking spree. (TSN, pp. 8-10, hearing of March 4, 1984).

These persons rushed towards Gavino Samaniego. Manuel Angelo hit Gavino with a piece of wood and fell on the ground face down. Then Peping Leoncio hit Gavino on the head with an axe. The rest of the group ganged up on the victim, hitting the prostrate body, also with wood. One of them picked the victim's pocket and another took his watch and ring, both of whom were not clearly identified. Thereafter, some of them ran towards their respective houses leaving the others near the fallen Gavino. (TSN, pp. 12-1, hearing of March 4, 1984).

Antonio Samaniego went to the Paombong municipal hall to seek aid from the police. Pat. Reynaldo Estrella responded and proceeded to the scene. Pat. Estrella saw and recognized Peping Paulino, Leonardo Layug, Manuel Angelo, Peping Leoncio and Ricardo Paulino, armed with axe, dagger, piece of wood, standing around the fallen Gavino Samaniego, lying still on the ground (TSN, pp. 3-5, hearing of November 22, 1982).

Pat. Estrella and Antonio brought Gavino to the Rosary Hospital in Malolos, where the victim was pronounced dead on arrival. The autopsy report (Exhibit 'A') of the Municipal Health Officer, Dr. Alberto M. Bondoc, shows that the deceased suffered multiple fractures of the skull, abrasions on the right forehead, left cheek, right shoulder, chest and feet, and a lacerated wound on the scalp.

Five (5) of the eleven (11) persons implicated in the killing of Gavino Samaniego, remained at large as of the trial of the present case.

x x x x x x x x."[9]

Petitioners offer their alternative version of the background facts surrounding the death of the victim Gavino Samaniego.[10] In the early evening of 18 October 1981, at around 7:00 to 8:00 o'clock p.m., Bernardo Samaniego (brother of the victim) approached the group of petitioners Leonardo Layug, Danilo Leoncio and Vicente Bernardo who were then sitting and chatting at the gate of the latter's yard. Bernardo was allegedly armed with a knife and shouted for "Bogart," referring to petitioner Leonardo Layug. The three (3) petitioners seeing Bernardo Samaniego flailing away with his knife, ran away from the latter and into the house of Vicente Bernardo, securing the door behind them. Meanwhile, the victim Gavino Samaniego had petitioner Peping Leoncio pinned to the ground and was about to strike the latter with an axe ("palataw") when Bernardo Samaniego came out of Vicente Bernardo's yard. Gavino Samaniego did not proceed to strike at petitioner Peping Leoncio; the latter was accordingly able to flee.

The commotion, petitioners continue, aroused the attention of accused Florencio Bautista and petitioner Peping Paulino and both allegedly proceeded to chase away the victim Gavino Samaniego. Petitioner Anding Paulino tried to follow his brother Peping, but one Ben Cuntabay prevented him from doing so. Anding Paulino was then called back by his wife and urged to avoid further involvement in the commotion. Between this point and the moment of arrival of Pat. Rey Estrella on the scene, the precise actions of petitioners and other accused are not satisfactorily accounted for. Nonetheless, petitioners contend that when Pat. Rey Estrella did arrive, Gavino Samaniego already lay on the ground, mortally injured, surrounded by several spectators at the scene among whom were the petitioners. In effect, petitioners contend that they were mere spectators or curiosity-mongers at the scene of the killing.

The familiar rule is that the assessments by trial courts of the credibility of the witnesses who testified before them are accorded great respect by appellate courts. Such assessments are not casually deviated from or reversed by higher courts who must rely merely upon the dead print of the record before them. In the case at bar, after careful and detailed review of the record, we find that petitioners have not adduced adequate basis for rejecting and reversing the basic conclusions of the trial court and of the Court of Appeals.

Petitioners have expended great time and effort both before the Court of Appeals and this Court in examining, in micro detail, the inconsistencies and contradictions in which the two (2) principal prosecution witnesses -- Antonio Samaniego (son of the deceased victim Gavino Samaniego) and Pat. Rey Estrella -- supposedly involved themselves. The bulk of the claimed inconsistencies relate to minor points or details and do not justify disregard of the principal thrusts of the testimony of the two (2) prosecution witnesses. Some of the alleged inconsistencies and contradictions are properly attributable to differences in perception by different witnesses who react differently to the same emotional or psychological circumstances. The detailed analysis given by the Solicitor General in his Consolidated Comment on the Petitions, echoes his explanation given before the Court of Appeals:

"For instance, petitioners claimed that Antonio Samaniego stated that he saw the incident before Pat. Estrella arrived. Later, Antonio stated that he saw them hit his father with pieces of wood after he fetched Pat. Estrella.

There is no inconsistency here. Antonio never testified that he saw petitioners hit his father with the pieces of wood only after he fetched Pat. Estrella. Antonio declared that he saw them hit his father before and after he fetched Pat. Estrella. As a matter of fact, when Pat. Estrella arrived, he saw some of the petitioners still holding their weapon, and the latter threw their weapons away when they saw Pat. Estrella approaching.

Petitioners claimed that Antonio made an incredible statement when he stated that he saw petitioners run twice from the same incident.

Antonio never stated that he saw all the petitioners run away together from the scene of the incident. He explained that there were persons who ran away before he went to the municipal building and there were others who ran away when Pat. Estrella arrived (p. 14, tsn., March 4, 1984).

Petitioners claimed that Antonio stated that he was one hour ahead of his father in the house of his uncle before the incident took place. And later on, Antonio said that he stayed in his uncle's house for about a minute only before his father arrived.

Antonio's statement that he waited for one hour before his father's arrival was actually the words of counsel for the petitioners who asked Antonio in cross-examination. Antonio merely gave a yes answer to a leading question of petitioner's counsel. What Antonio said was that his father arrived in his uncle's house between 7:00 and 8:00 in the evening and the incident took place also between that period of time.

Petitioners pointed out that Antonio stated that he went to his uncle's house to help his father in the event some trouble ensue. However, when the people were ganging up on his father, he immediately ran to the municipal building, without extending any help to his father.

Although Antonio went to his uncle's house to help him in case of trouble, he was, however, unable to help his father when petitioners were already ganging upon the latter. He must have been shocked by the suddenness of their attack and the fact that all petitioners were armed with deadly weapons. As stated in the case of *People v. Amoncio*, 122 SCRA 686, 'there is no standard form of behavior when one is confronted by a shocking incident.'

With regard to prosecution witness Pat. Rey G. Estrella, petitioners likewise claimed that the said peace officer could not have focused his eyes on them for one to three minutes since they (petitioners) ran away a few seconds after he (Pat. Estrella) arrived.

It is possible that Pat. Estrella was mistaken in his estimate of time since the time involved is ... [too short a span]. What is important is when he arrived at the scene of the incident, he saw petitioners throw their weapons, and then immediately run away.

Petitioners also claimed that Pat. Estrella could not name who among them was holding which weapon.

It is but natural that even if Pat. Estrella saw the group of persons armed and be able to identify them, he could not identify which weapon each was holding because these persons precisely threw away their weapons and then ran away.

The alleged inconsistencies, therefore, are more apparent than real. They can easily be explained. Further, if any [inconsistencies] exist, they refer only to minor details and do not affect credibility of the witnesses, since there is no showing that the inconsistencies were deliberate attempts to distort the truth (People v. Abigan, 144 SCRA 130; People v. Mostales, Jr., 124 SCRA 906)."[11]

We agree with the Court of Appeals that the inconsistencies above addressed by the Solicitor General have not been shown to be deliberate attempts to distort the truth and accordingly cannot be regarded as dissolving and destroying the probative value of the witnesses' testimony on how the victim was assaulted and killed and who were there participating in the assault which led to the death of Gavino Samaniego.

Petitioners also sought to impeach the testimony of Antonio Samaniego on the basis of his statements found in the affidavit executed by him during the preliminary investigation of the case. Petitioner Manuel Angelo points out that in his affidavit, Antonio Samaniego did not name him (Manuel Angelo) as one of those who had taken part in the assault upon and slaying of Gavino Samaniego. In the testimony of Antonio Samaniego in open court, however, given five (5) months later, Manuel Angelo was explicitly named as among the persons who rushed at Gavino Samaniego and who assaulted Gavino with a piece of wood:

"FISCAL (Q):

Which house was thrown with stones?

A. Samaniego (A): The house of my uncle.

Q. What is the name of your uncle?

A. Domingo Samaniego, sir.

Q. These persons you mentioned who threw stones, where were they?

A. They were at the street.

Q. What happened after they had thrown stones?

A. We went out.

Q. You said we. To whom were you referring?

A. My father Gavino Samaniego and my uncle Ben Cuntabay, and brother Bernardo Samaniego.

Q. What happened when you got out?

A. These people rushed towards us.

Q. Who were these people who rushed towards you?

A. Marcelo Bernardo, Manuel Angelo, Leonardo Layug, Ricardo Paulino, Peping Paulino, Peping Leoncio, Lorenzo Bautista, Crispin Paulino.

Q. How many persons rushed toward you?

A. About eleven persons, sir.

Q. You mentioned eight. Who were the other three?

A. Pongit Paulino, Bisaya Nakpil [sic].

Q. Do you know a certain Danilo Leoncio?

A. Yes sir.

x x x x x x x x

FISCAL (Q):

What happened when these persons you mentioned rushed towards you?

A. Samaniego (A): My father was hit with a piece of wood.

Q. Who hit your father with a piece of wood?

A. Manuel Angelo.

Q. What happened when your father was hit with a piece of wood by Manuel Angelo?

A. He fell on the ground.

Q. Face down or face up?

A. Face down, sir.

Q. What happened after that?

A. His companions ganged up on my father and hit him.

Q. How did they gang up on your father?

A. Somebody hit him with an axe.

Q. Who was that?

A. Peping Leoncio.

Q. In what part of [the] body was your father hit by Manuel Angelo with piece of wood?

A. I cannot remember in what part of his body he was hit because he was hit several times, sir.

Q. How about Peping Leoncio, in what part of the body was your father hit with an axe by Leoncio?

A. On the head, sir.

Q. What was the position of your father when he was hit on the head with an axe?

A. He was lying on the ground face down.

Q. What happened after your father was hit on the head with an axe.

A. He was not able to rise from that position.

Q. Why?

A. Because he suffered a cracked skull.

Q. You mentioned that the companions of Manuel Angelo and Peping Leoncio also ganged up on your father. How did they gang up on your father?

A. That is it. Somebody hit him with a piece of wood.

Q. Who hit him with a piece of wood?

A. Manuel Angelo."^[12] (Underscoring supplied)

This Court has held a number of times that variances between the affidavit and the subsequent testimony of a witness do not by themselves affect the credibility of the witness, considering that affidavits, which are taken ex parte and commonly prepared by someone other than the affiant himself, are usually incomplete and at least partially inaccurate due to suggestions or want of suggestions and inquiries which may be necessary for the accurate recollection of all relevant matters.^[13] Thus, the failure of Antonio Samaniego to mention Angelo's name in Antonio's affidavit, does not by itself show that Antonio lied in naming Manuel Angelo as having struck his father Gavino with a piece of wood.

Moreover, assuming, for present purposes only, that part of the testimony of a prosecution witness is actually found to be untrue, such circumstance would not by itself be sufficient to discredit the entire testimony of such witness. There is no rule of law which prohibits a court from crediting part of the testimony of a witness as worthy of belief and from simultaneously rejecting other parts which the court may find incredible or dubious. The maxim *falsus in uno, falsus in omnibus* is not a rule of law, let alone a general rule of law which is universally applicable.^[14] It is not a legal presumption either. It is merely a latinism describing the conclusion reached by a court in a particular case after ascribing to the evidence such weight or lack of weight that the court deemed proper.

Next, petitioners raise as an issue the relationship of prosecution witness Antonio Samaniego who, as noted, was a son of the deceased victim Gavino Samaniego, as a ground for discrediting his testimony. Petitioners imply that because of such relationship, the testimony of Antonio Samaniego is unreliable and should be rejected. We are unable to agree with this contention. Blood relationship of a witness to the victim in a criminal proceeding is not per se a ground for disqualifying such witness or disregarding his testimony in toto, absent a clear showing of some evil motive on the part of the witness testifying.^[15] On the contrary, the Court has pointed out that the underlying interest springing from blood relationship of the witness to the victim of the crime, would tend to secure the conviction of the guilty and prevent the implication of innocent persons. For the underlying interest is an interest in seeing to it that justice is done, that the guilty are convicted while the innocent are set free. While revenge may be a common reaction of a person who has lost a loved one under criminal circumstances, it does not follow that the bereaved person would demand revenge that is directed aimlessly and mindlessly so as to include innocent persons.^[16] On the contrary, a desire for revenge is normally satisfied only by the belief that the person convicted was indeed guilty of the slaying or other injury inflicted upon the victim.

Petitioners next contend that they should be acquitted because the prosecution had failed to prove any motive on their part for the killing of Gavino Samaniego. The established doctrine, however, is that proof of motive of the accused to carry out the crime charged is essential only where there is doubt as to the identity of the doer of the deed and is not necessary where the accused has been positively identified as among the assailants, as in the case at bar.^[17] As noted earlier, Antonio Samaniego explicitly identified the petitioners as among the people who had rushed towards Gavino Samaniego, Bernardo Samaniego, Ben Cuntabay and himself. Moreover, Manuel Angelo was expressly named as having hit Gavino Samaniego with a piece of wood with result that Gavino fell to the ground, face down. The petitioners were similarly named by Pat. Rey Estrella as among the group of persons who

stood over the prostrate Gavino Samaniego, some with a piece of wood, another with an axe and still another with a dagger who threw away such weapons and fled as Pat. Estrella approached the mortally wounded Gavino.

It is worthy of note that were the alternative version of the facts presented by the defense to be given credence, petitioners would still have to be convicted. For the testimony presented by the defense only showed that Gavino Samaniego was never the aggressor: according to the testimony of Emma Paulino,[18] Gavino Samaniego stood there ready to strike petitioner Peping Leoncio with an axe ("palataw") but Gavino desisted and instead, inexplicably, ran away, with petitioners Florencio Bautista and Peping Leoncio chasing after him. Petitioners could not account for their precise acts and whereabouts at the time of the commotion or melee.

Petitioners seek to convince the Court that they were merely spectators, curiously gazing upon the stricken Gavino prostrate on the ground. Petitioners have not, however, satisfactorily explained why they fled from the scene of the crime as the police arrived in the person of Pat. Estrella. The explanation of the petitioners that they simply "[did] not wish to be involved" is quite inadequate when taken in conjunction with the positive identification by witness Antonio Samaniego that they had participated in the deadly assault upon Gavino Samaniego. The Court has repeatedly ruled that flight of an accused may be taken as signifying awareness of guilt and consciousness that he has no viable defense against the crime charged.[19]

The final issue raised by petitioners relates to conspiracy. Petitioners insist that conspiracy had not been proved because no prior agreement among the petitioners to commit the crime had been shown by the prosecution. Once again, the well-established doctrine is that conspiracy need not be proved by direct evidence of prior agreement to commit the crime; only rarely would such a prior agreement be demonstrable since, in the nature of things, criminal undertakings are only rarely documented by agreements in writing. Thus, conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that the several accused had acted in concert or in unison with each other, evincing a common purpose or design.[20] Once conspiracy is proven by proof of the accused having acted in concert with one another in the commission of a crime, proof of the specific and actual extent of participation of each of the accused becomes unnecessary; for the act of each is imputed to the others and becomes the act of all.

In the case at bar, the evidence of record showed that petitioners were present at the scene of the crime just before the assault or commotion which ended with the death of Gavino Samaniego. Petitioners were armed with pieces of wood, apparently branches hacked from trees growing nearby, except Peping Leoncio who had an axe with him. Petitioners rushed upon the victim in concerted fashion and took turns striking and banging away at him. The very number and the character of the wounds on the person of the victim indicated clearly that a number of persons had taken part in the assault upon him, as was observed by the Court of Appeals:

"In the instant case, the existence of conspiracy is amply shown by the circumstances surrounding the commission of the crime. When Antonio Samaniego, Bernardo Samaniego, Gavino Samaniego, with Ben Cuntabay, went out to the house of Domingo Samaniego to investigate who threw stones at the roof of the house, accused-appellants herein [petitioners herein] who were armed with pieces of wood, except Peping Leoncio who was armed with an axe, rushed towards the Samaniego's and ganged up on Gavino Samaniego and they took turns in hitting him. All the accused-appellants acted in unison, each of them hitting the victim and all participated in the assault of the victim. The testimony of Antonio Samaniego elucidates how the concerted attack was perpetrated.

x x x x x x x x

The findings in the autopsy report (Exhibit 'A'), indicating the wound inflicted upon the victim Gavino Samaniego, further bolster the testimony of Antonio Samaniego that the accused-appellants took turns in hitting the victim. The victim sustained abrasions on the right forehead, left cheek, right shoulder, feet and

chest over the sixth rib. A gaping lacerated wound was inflicted on the scalp, occipital left. Hematoma was visible on the right eyelids, right cheek, left ear. The back of the head of the victim sustained multiple fractures exposing the brain, as depicted in the pictures on pages 76-80 of the records of the trial court.[21] (Underscoring supplied)

The final contention of petitioners that both the trial court and the Court of Appeals had erred seriously in taking into consideration petitioners' failure to take the witness stand in finding them guilty of homicide, is most appropriately and economically dealt with by quoting from the Decision of the Court of Appeals:

"We have accorded unswerving fidelity to the constitutional precept that an accused is presumed innocent until the contrary is proven and that, consequently, the burden of proof as to the offense charged lies on the prosecution. Accordingly, an accused should be convicted on the strength of the evidence presented by the prosecution and not on the weakness of his defense. An accused has the right to decline to testify at the trial without having any influence of guilt drawn from his failure to go on the witness stand. Thus, a verdict of conviction on the basis, solely or mainly of the failure or refusal of the accused to take the witness stand to deny the charges is a judicial heresy which cannot be countenanced.

As aptly pointed out by the Solicitor General, to which We place the stamp of approval:

'Such situation does not obtain, however, in the case at bar. For while the trial court took note of the failure of the accused-appellants to take the witness stand to deny the charge against them, the same was not the main reason, much less the sole basis of the trial court in holding as credible the testimonies of Antonio Samaniego, And Pat. Rey G. Estrella. The trial court explained why it believed these witnesses. x x x

x x x x x x x x x

With more reason, the above discussed principle should be made to apply to Pat. Rey G. Estrella. Since he is a disinterested witness and a law enforcer at that, his testimony is entitled to great weight.'"[22]

WHEREFORE, for all the foregoing, the Petitions for Review on Certiorari are hereby DENIED for lack of merit. The Decision of the Court of Appeals in C.A.-G.R. No. 04652 dated 18 May 1989 is hereby AFFIRMED, except that, in line with current jurisprudence,[23] the civil indemnity for death shall be P50,000.00 to be paid by the petitioners jointly and severally to the heirs of the victim. Costs against petitioners.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Davide, Jr., JJ., concur.
Romero, J., no part.

[1] Resolution dated 6 November 1989.

[2] Trial Court Decision, pp. 1-2; Rollo of G.R. No. 88392, pp. 82-83.

[3] Id., p. 13; Rollo of G.R. No. 88392, p. 94.

[4] Rollo of G.R. No. 88392, p. 28.

[5] Rollo of G.R. No. 89978, p. 27.

[6] G.R. No. 96755, 4 December 1991.

[7] 58 SCRA 370 (1974).

[8] 58 SCRA at 377-378.

[9] Court of appeals Decision, pp. 4-5; Rollo of G.R. No. 88392, pp. 73-74.

[10] Rollo of G.R. No. 88392, pp. 18-20.

[11] Consolidated Comment, pp. 14-18; Rollo of G.R. No. 89978, pp. 65-69.

[12] TSN, 4 March 1984, p. 11.

[13] *People v. Fule*, G.R. No. 83027, 28 February 1992; *People v. Magdadaro*, 197 SCRA 151 (1991); *People v. Loveria*, 187 SCRA 47 (1990).

[14] See *People v. Rendoque*, G.R. No. 95541, 4 February 1992; *People v. Refuerzo*, 82 Phil. 576 (1949).

[15] *People v. Tinapay*, G.R. Nos. 80658-60, 23 March 1992; *People v. Andasa*, G.R. No. 101022, 27 February 1992; *People v. Bulignon*, G.R. No. 94338, 4 February 1992; *People v. Lardizabal*, G.R. No. 89113, 29 November 1991; *People v. Espera*, 175 SCRA 728 (1989).

[16] *People v. Espera*, 175 SCRA 728 (1989); *People v. Radomes*, 141 SCRA 548 (1986); *People v. Sarabia*, 127 SCRA 101 (1984); *People v. Demetrio*, 124 SCRA 914 (1983).

[17] *People v. Competente*, G.R. No. 96697, 26 March

[18] TSN, 18 February 1985, pp. 21-23.

[19] *People v. Balansi*, 187 SCRA 566 (1990); *People v. Rey*, 172 SCRA 149 (1989).

[20] *People v. Hatague*, G.R. No. 97308, 7 April 1992; *People v. Pinzon*, G.R. No. 94757, 7 February 1992; *People v. Briones*, 202 SCRA 708 (1991).

[21] Rollo of G.R. No. 89978, p. 11.

[22] Rollo of G.R. No. 88392, pp. 79-81.

[23] *People v. de la Cruz*, G.R. No. 68319, 31 March 1992; *People v. Estera*, G.R. No. 101556, 31 March 1992.

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