

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO GEROLAGA, EFREN ATIVO AND REMEDIOS RUADO, ACCUSED-APPELLANTS.*G.R. No. 89075. October 15, 1996*

Ponente: PANGANIBAN, J.

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In this Decision, this Court emphasizes the need to review the facts and details of appealed cases with meticulous, laser-like precision. While, as a rule, the findings of fact of trial courts are accorded great respect by appellate tribunals, still, the latter must wade through the mass of evidence in order to ensure that the trial court did not overlook or misapprehend little details that could spell the innocence of the accused, or at least mitigate their guilt. This is but consistent with the doctrine that all doubts must be resolved in their favor. Indeed, it is far better to set free a thousand guilty persons than to unjustly punish an innocent one.

Realizing that this direct appeal did not have the benefit of the usual "filtering" layer of the Court of Appeals and noting that the assailed judgment of conviction for murder was based purely on circumstantial evidence as well as on an uncounselled confession of guilt, we pored over the evidence, particularly the voluminous transcripts of stenographic notes, and came to the ineludible conclusion that indeed the court a quo over-looked and/or misapprehended some crucial bits of evidence and circumstances which when properly considered led to the acquittal of two of the appellants, and the conviction of the third for the less damning crime of homicide instead of murder.

The Antecedents

The twists and turns of this case are absorbing enough to be mistaken as the plot of a storybook thriller or a movie script. They are not. Rather, they are the flesh and blood drama of real life.

For the bizarre fatal stabbing of Antonio Sy on March 21, 1987, appellant Remedios Ruado-Sy, the deceased's sister-in-law, along with her former employee, Roberto Gerolaga and her houseboy, Efren Ativo were charged with murder under Article 248 of the Revised Penal Code. The Information^[1] lodged with the Regional Trial Court of Masbate, Masbate on June 15, 1987 and docketed as Criminal Case No. 5247 reads as follows:

"That on or about March 21, 1987, in the morning thereof, at the poblacion of the municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this court, the above-named accused conspiring and helping one another, with intent to kill, evident premeditation, treachery and in consideration of a price or reward, did then and there willfully, unlawfully and feloniously attack, assault and stab one Antonio Sy y Tan with a double bladed dagger, hitting the latter on the chest, abdomen and other parts of the body, thereby inflicting wounds which directly caused his instantaneous death.

Contrary to law."

All the accused pleaded "not guilty" during the arraignment on August 4, 1987. The prosecution presented seven (7) witnesses:

(1) Dr. Emilio Quemi -- who testified and submitted a post-mortem examination (Exh. "A") and certificate of death (Exh. "C"), which showed that the victim sustained seven (7) wounds, five (5) of them fatal, to wit:[2]

- "1. Stab wound penetrating, measuring about 3 inches wide located at the epigastric region.
2. Stab wound, penetrating the abdominal cavity, measuring about 1 1/2 inches, located at the left abdominal wall, a little above and lateral to the navel.
3. Stab wound, measuring about 2 inches wide, penetrating located at level of left costal arch, at its lateral side.
4. Stab wound, measuring about two inches, penetrating the thoracic cavity, located just below the right clavicle.
5. Stab wound, about one inch wide, penetrating, located a little anterior to the right axillary fossa.
6. Incised wound, measuring about 1/3 inch wide located at the left side of thoracic vertebrae at the level of the 6th.
7. Incised wounds, located at the palmar surface of the fingers of the right and left hand."

(2) Pfc. Estercacias (sometimes spelled "Estercasio") Pimentel, Jr., who was the first police officer to arrive at the scene of the crime

(3) Police Sgt. Felix Alonzo

(4) Pat. Tagumpay Mendoza

(5) Mrs. Conchita Sy Chua; younger sister of the victim

(6) Mrs. Benedicta Castillo Sy, and

(7) P/Sgt. Edgardo Tugbo.

On the other hand, testimonial evidence for the defense was given by six

(6) persons:

- (1) Pfc. Pimentel who was called back to the stand
- (2) Accused Roberto Gerolaga
- (3) Co-accused Efren Ativo
- (4) Co-accused Remedios Ruado-Sy
- (5) M/Sgt. Noli Cabug, and
- (6) Emilio Sy, the victim's brother and husband of the accused Remedios R. Sy.

On December 28, 1988, the trial court[3] rendered a Decision finding the three defendants guilty beyond reasonable doubt of the crime charged and imposing on each of them the penalty of reclusion perpetua and the payment in solidum of an indemnity in the amount of P30,000.00 to the heirs of Antonio Sy without subsidiary imprisonment in case of insolvency.

The Facts

Thirty-one-year-old Antonio Sy was the youngest brother of Emilio, Arturo, Jose, Teddy, Anita, Teresita, Norma, Lourdes and Conchita Sy.[4] Antonio was married to Benedicta Castillo. Childless, the couple lived apart from each other. Benedicta stayed in Cabangcalan, Aroroy, Masbate where she was assigned as a teacher while Antonio lived with his eldest brother, Emilio and the latter's wife, Remedios Ruado, who was also called Remy. While Benedicta claimed that Antonio was a businessman engaged in buying and selling men's and ladies' wear for which he earned a net income of around P3,000 a month,[5] his brother Emilio and the latter's wife Remy swore that Antonio was jobless and that he was dependent on them and given an allowance of P25.00 a day. Antonio had an insatiable hunger for vices -- gambling, illegal drugs, women. Hence, his allowance was always insufficient for his needs.[6]

At around 6:00 o'clock in the morning of March 4, 1987, as Remy was arranging her merchandise in her store on the ground floor of her residence in Aroroy, Masbate, a boy around fifteen years of age approached her, handled

her a letter and then hurriedly left. As translated by the court stenographer, the letter in Masbateno reads:[7]

"March 4, 1987
COMMANDER
NPA HELEN LIPANTO

REMY:
(MEL)

WE WILL ASK HELP FROM YOU WORTH P3,000 PESOS WE WILL EXPECT IN TWO DAYS.

I AM ONLY ASKING YOU NO ONE MUST KNOW OR INFORM ANYBODY FOR IF IT HAPPENS MANY LIVES WILL BE LOST? ESPECIALLY THE MILITARY. THEY WILL BE PITIFUL? AND WE WILL GET YOU IF YOU FAIL? THEN YOU PLACE THE MONEY IN ENVELOPE IN YOUR GARBAGE CAN AT 9:00 AT NIGHT ON SATURDAY

THANKS
GOD BLESS YOU = ALL

DON'T BE AFRAID (YOU) WILL NOT BE HURT IF YOU FOLLOW THE ORDER?"[8]

After reading the letter, Remy gave it to her husband. Emilio decided that (a) it should be presented secretly to the authorities for entry in the police blotter, (b) their house should be guarded, and (c) the amount of P3,000 should be given to anyone who could apprehend Helen Lepanto.[9]

Accordingly, the couple called the police. When Pfc. Estercasio Pimentel, Jr. arrived he was shown the letter. In the presence of Emilio, Remy asked Pfc. Pimentel's help in having their house and placing their premises under surveillance. She also asked him "to apprehend and identify" Helen Lepanto and to bring the letter to the municipal building in order that it could be officially recorded in the blotter.

Fear gripped the couple. Emilio asked Remy to tell their houseboy, Efren Ativo, to be vigilant especially at night and to arm himself with a 2" x 2" piece of wood as a club or weapon. The couple closed their store at 6:00 p.m. instead of the usual 8:00 p.m. Upon her husband's prodding, Remy set aside P3,000 in one-hundred "peso bills.[10]

Following the instructions in the aforesaid letter, Emilio instructed Remy to place the P3,000, which was in an envelope, inside the garbage can at about 6:30 p.m. on March 6, 1987. Emilio told one of their sales-girls to inform Pfc. Pimentel that the money had been placed in the garbage can and that he should guard it. However, the following day, Pfc. Pimentel returned the money to them with the information that nobody went near the garbage can that night. Emilio then told Remy to verify this information with the station commander. The latter confirmed that their surveillance yielded negative results. When Emilio was informed of this, he asked Remy to go back to the station commander and to retrieve the letter in order that it could be machine-copied in Masbate.

Thus, Remy got back the letter on March 9, 1987, and proceeded to Masbate to have the letter machine-copied. She returned to Aroroy at around 11:00 p.m. The following day, she met Sgt. Noly Cabug, a member of the 270th Philippine Constabulary Command in Aroroy,[11] who assured her that he would uncover the identity of Helen Lepanto. However, in spite of two days' sleuthing, the intelligence personnel could not produce any result from their surveillance.[12]

While the Sy couple was officially informed that the police had no leads, the latter in fact harbored some suspicions. In the evening of March 6, 1987, Pfc. Pimentel and Pat. Cadiz kept watch in the house across from the Sy residence while Patrolmen Maglente and Tugbo secretly stationed themselves at a street corner near the Sy

residence. At around 9:00 o'clock that evening, Pfc. Pimentel saw Antonio Sy coming from the house of Benny Tuason. Just before entering the Sy residence, Antonio approached the garbage can and looked at it for about five to ten seconds. He peered at the garbage can for two more times -- at 9:30 p.m. and then at around 10:00 p.m. when the electric light was switched off. The police stopped their surveillance at 2:00 a.m. but Antonio Sy did not return to the garbage can for the fourth time.[13]

When Pfc. Pimentel reported this to his chief on March 7, 1987, the latter concluded that Antonio Sy must have been "Commander Helen Lepanto." But Pfc. Pimentel himself did not share the same belief otherwise he would have apprehended Antonio Sy the moment he went near the trash can. That same day, when Pfc. Pimentel returned the P3,000.00 to Remy, he did not reveal to her the conversation he had with his chief.[14]

At 8:00 o'clock in the morning of March 15, 1987, another boy approached Remy in her store. The child conveyed the message that she was to prepare the amount of P3,000 which "they" had not taken on the 6th of March, and to drop the money on the 20th. The boy hastily left after warning Remy not to inform the authorities about this new arrangement. As before, Remy related to her husband what had transpired. Emilio asked her to follow the new orders, but he insisted that, instead of placing the money in the garbage can, she should give it to their houseboy, accused Efren Ativo, because he "slept in the kitchen". Emilio added that anyone who could "identify or apprehend" Helen Lepanto should be given the money as a reward.[15]

At around 4:00 o'clock in the afternoon of that same day, accused Roberto Gerolaga entered the store to buy a t-shirt and some "spare parts." Having been Gerolaga's former employer, Remy felt free to tell him that she had received a "threat." She begged him to help "apprehend or identify" Helen Lepanto.

Gerolaga told Remy that she was asking something dangerous because Lepanto might be a member of the NPA Sparrow Unit. However, she managed to convince Gerolaga to help watch over their house. She intimated to him that whoever could "apprehend or identify" Helen Lepanto, be he a PC soldier, a policeman or a civilian, would be given a P3,000 reward. Remy further informed Gerolaga that the money would be placed in the garbage can on the 20th of March and hence, whoever would pick up the envelope in the said container could be Helen Lepanto or his/her companions.[16]

Gerolaga, a 25-year-old minibus conductor who was also known as Edgar,[17] testified that at around 7:00 o'clock in the evening of March 20, 1987, he went for a walk at the pier, drank beer for about an hour at a little store and then went to a street corner near the Sy residence. Because he saw no one approach the garbage can, Gerolaga went back to the pier where there was a dance. He left the dance at midnight and went back to the bus terminal. Thence, he returned to the corner to watch the Sy house.

It was then that he saw someone approach the garbage can. The man had a flashlight which he beamed at the container. Then, as the stranger entered the gate of the Sy residence, Gerolaga followed silently. The person went to the well, fetched water and washed his feet. From a distance of about three (3) meters, Gerolaga greeted him, "Good evening, Commander Helen Lepanto." Surprised, the man turned his head and exclaimed, "Why do you know me?" Gerolaga retorted that he knew him very well -- that he was Antonio Sy. Immediately, Antonio pulled out a double-bladed knife and tried to stab Gerolaga but the latter evaded the thrust. He caught Antonio's hand and held him in a bear hug. Antonio kept on shouting, "I will really kill you, I will really kill you." Sensing that Antonio was strong, Gerolaga shouted for help. He twisted Antonio's hands and pushed the one holding the weapon upon Antonio's chest several times. When Gerolaga felt Antonio weakening, he released him, and the latter fell on the ground face down.

Gerolaga pulled out the bladed weapon and walked towards the gate. It was there that he met Efren Ativo. The latter angrily demanded to know what he was doing inside the premises. Gerolaga told him that he had already

"identified" Helen Lepanto. Gerolaga asked Ativo for the P3,000, but Ativo was incredulous. So Gerolaga led Ativo to the well near which Antonio lay dead. It was only then that Ativo went inside the house, took the money and handed it to Gerolaga.

Gerolaga went to the bus terminal where he took off his bloodied shirt and pants and placed them together with the weapon in a plastic bag. At 2:00 a.m., he boarded the San Agustin minibus which promptly departed. Arriving in Luy-a, Gerolaga entrusted the plastic bag to a co-worker, Rafael Francisco, who alighted there, with instructions that the clothing in the bag should be washed by Francisco's mother.[18]

After Gerolaga left, Ativo, still trembling, closed the gate. At 5:00 o'clock that morning, he knocked "at the stairs near the door" of Remy's room. He informed her, her husband and his sister Norma, that Antonio Sy was dead. Emilio instructed everyone not to touch the body until the authorities arrived. Ativo summoned Pfc. Pimentel but did not tell him about Gerolaga's participation.[19]

The police officer found the body of Antonio sprawled on the floor. The victim, lying about a meter away from the well, was still holding a flashlight in one hand. Pfc. Pimentel examined the body to determine the number of wounds it sustained. Ten (10) meters from the body, he found a scabbard.

The body of the victim was in a state of rigor mortis and inside a coffin when Dr. Emilio Quemi, medical specialist at the provincial health office, arrived to conduct the post-mortem examination.[20] In his report,[21] Dr. Quemi indicated that Antonio Sy sustained five (5) stab wounds in the epigastric region, above the navel, at the lateral side of the costal arch, below the right clavicle and the right axillary fossa, and incised wounds at the left side of the thoracic vertebrae and at the "palmar surface of the fingers of the right and left hand(s)." He established the cause of death as "shock due to massive external hemorrhage, caused by multiple wounds."

On March 23, 1987, the Aroroy police received information that Gerolaga had been looking for Antonio Sy at around 11:00 o'clock "on the night of March 21 (sic)."[22] The police searched for Gerolaga and learned that he had hide off to Barangay Luy-a. Upon reaching that place at 4:00 o'clock in the afternoon, the police were told that Gerolaga had proceeded to Crossing, Mandaon, where he was finally apprehended by Pat. Maglente.

At the police station, the authorities learned from Gerolaga that the double-bladed weapon used in the assault was in the possession of Juanita Amaro, mother of Rafael Francisco. Juanita Amaro subsequently turned over the 8-inch long weapon as well as the pants and shirt of Gerolaga to Pat. Edgardo Tugbo and Pat. Mendoza.[23]

Gerolaga was investigated by Sgt. Felix Alonzo. He readily admitted killing Antonio Sy, and also implicated Mrs. Remedios Ruado-Sy, saying that she gave him through Efren Ativo the P3,000 after he killed Antonio Sy. However, Gerolaga surrendered only P600[24] to Sgt. Alonzo as the rest of the money had been spent.[25]

Before taking Gerolaga's statement,[26] Sgt. Alonzo informed him of his constitutional rights to counsel and against self-incrimination. However, Gerolaga told him that he did not as yet need a lawyer. The statement he made was signed in the presence of his mother Encarnacion Letada Gerolaga and his cousin Ermila Gerolaga Manlangit, who affixed their thumbmark and signature, respectively, on the certification appended to the statement.[27]

Also on March 23, 1987, at around 8:00 o'clock in the morning, a fifteen-year-old boy approached Remy in her store. The boy told her that their "head" had ordered that Remy should write a letter to her in-laws "admitting the killing" of Antonio Sy. Remy protested, telling the boy that it was her husband's idea that the P3,000 be given to whoever could "apprehend and identify" Helen Lepanto, but the boy left immediately. Distraught, Remy told her husband about the boy's message. Enraged, Emilio asked whether she caused the killing of his brother. Remy denied the accusation and reminded Emilio of their agreement to "find ways to identify" Helen Lepanto and to

give the P3,000 to whoever could identify him.

Emilio ordered her to prepare the letter and to follow the instructions of the NPA as it was the only way by which their entire family could be spared. Remy went upstairs, prepared the letter and showed it to her husband. The boy came for the latter at 4:00 p.m. of the same day.

At 5:30 p.m., the boy was back. He told Remy that their head was "not convinced" by her short letter and that she should make it longer. She should also include the letter of Helen Lepanto and "state what had happened in our family." The boy warned her once again that she should not report to the authorities and that, should she refuse to follow their instructions, "they" would "get" her and her family.

Again Remy relayed the instructions to her husband. Emilio, expressing pity for her, told her to follow the NPA instructions, reiterating that this was the only way to save the family. She went upstairs and prepared the letter on three sheets of yellow pad paper written back-to-back.[28] As translated by the court interpreter, it reads:

"March 24, 1987

Dear Teresing, Tuaches, Ting, Long,

I write you this letter, because I want you to know the truth of Tony's death. You know, on March 4, Tony sent me a letter. Here you may read, because he planned to kill me. Good, he was able to tell that my 'Comadre' that during the Juniors Ball of Chong (daughter of Remy) he would stab me. If luck was against me I should have been the object of your vigil instead of him. I have been asking help from 'Sto. Niño' to save me because I have still many obligations yet to my children. I prayed to God that if I am wrong, He should punish me, but if he is wrong, he should be punished instead.

You know this fellow was used to 'Barkadas', gambling, disco and he had also a girlfriend in Joan's. He was always worried on how to acquire a large amount of money because of his vices, such was the reason why I prepared myself to kill or be killed, I told him that if my life was what he was after, it was up to him to find out who would reach the base first(.) I told your 'Manoy' to settle this case before we repent it. Well in the afternoon of that day Tony and baby had an altercation in connection with the construction of his house because he did not agree to give 1 meter allowance to his elder brother's piece of lot. But I told them, 'It's up to you.' Then Baby said, 'Mama, get Tony because this is again a big problem. Manoy, I have prayed to all the Gods in order that Tony should reform, but there was no good result.' I told Norma, you have given him P50.00. He would go to the disco house, he might be stabbed there thus all his problems will be finished. The thorns in your heart will also be pulled. So, God heard our prayer. He met an adversary.

The truth is that last March 4, Tony wrote me a letter, that a person who was working under me before, would come here to buy spare parts. I did not know why I was able to tell Edgar that I had a problem because I received a letter from the NPA Commander, Helen Lepanto. I let him read the letter. 'Sus, Manay Remy, this letter is asking for the amount of P3,000.00, I'm going to put that person down.' 'Yes', I answered, 'because anyway I am going to be killed is a matter of who will be the first (sic). 'My bayaw' was the one who sent this to me,' said I. 'Sus, its difficult, because he is like a snake, a dangerous one. What do you say? Aba, Manay Remy, what a pity on you! You are like a cock who is induced to fight but has no chance to win.' So, he sided with me and killed Tony. When he came from the disco house, I handed to him the reward of P3,000.00 in order that he would not be angry with me. So, it appears that I am the mastermind, but it was only a matter of who got ahead if it was a game.

Thanks

You know, Tony had many plans. He wanted to kill Baby. He wanted to kill Doctor, because according to him, he is the one keeping the papers. Baby, he said, is tight handed when it comes to money. He got angry with me, because when I gave him his P20.00 allowance, he wanted P50.00 and later on P100.00. I told him, 'Tony,

Baby might be angry with me, because you are given the amount more than you are allowed,' The following morning, I gave him P300.00 and I said, 'This is the last time that I will give you. You ask from my other in-laws (brother and sisters of Tony). As for me, I don't like to give you anymore.' Aba, by March 4, there was a letter that I would be kidnapped and somebody was told that I would be killed before the end of March. I was determined then to kill or be killed for your own good, for my children's good, and mine. I have many problems yet for my children, that is why I choose to finish him for he had no problems yet but make trouble to me and to all of us. It is said that Teresing's worries may last until her death. So, all of us have threats. We are all in a pityful situation.

Understand me. I'm writing you this so that you will know.

Thanks

Remy T. Ruado

Even if your younger brother was like a snake in your family, I did not do anything because he is your blood, I am a different person. Ruado, you know. But when it come to service I did my best. I sent for Teresing in order to explain to each an(d) every one of you, but you did not like because you are only thinking of what I have done. You know, what Tony said, that he would kill me before the end of March. We competed only as to who would reach the base first.

Here is his letter on March 4.

NPA

Commander Helen Lepanto

Remy:

Mil:

We are asking from you as a help for us the amount of P3,000.00. You send it within two days.

I want you not to reveal this to anybody or else many lives will be lost especially the military. It would be a pity to them and we will get you if you can not produce this. Then you put the money inside an envelope and place it in a trash container, at 9:00 o'clock on Saturday night.

Salamat,

God bless you all.

Don't be afraid. You will not be hurt if you follow my order.

This is the letter that was sent in duplicate.

I have no ill-feeling if you want me to be imprisoned (sic). Just okay. If you accuse me, just okay also. I'll face you in the government in whatever action you may take against me. I'm alone, but I think God will not forsake me. But I tell you that I am like this, because I have given you too much pity. In truth, Tony has brothers and sisters, but you did not do anything to correct his mistake, grave or not. Like when he held up your elder brother. You kept that in secret for he is your blood your surname and you will be put in shame. Now, it's too late to repent, because he was able to meet somebody to stop his wrong deeds.

I enclosed you in my two arms. Even if you ill not be asked, something is loosen in your hearts, beginning now. I know that you have an ill-feeling against me, but if it were in your place, you would find out a remedy.

God will judge us all and God knows how much I loved Tony. Even when Pa had a letter and telegram not to allow him in the house, I still admitted him, because I took pity on him. But at the end, I was still bad. Well, my brothers and sisters I hope you understood me already. We just played chess and I won. To all of you, forgive me. Okay, if you don't want to see me, God is responsible to all of you.

Thanks

Sister-in-law"[29]

After reading the letter, Emilio asked Remy to give it to his younger sisters. Remy prepared an enveloped and was about to deliver it to her sisters-in-law when, at 9:00 a.m., another unnamed boy came back, asking for the letter. He returned it to Remy at 10:00 a.m. with the information that his chief considered the letter to be "alright". Emilio then ordered their daughter Haydee to deliver the letter to his sisters.[30]

In the afternoon of March 24, 1987, as Remy and others were going over the personal belongings of Antonio Sy which, in accordance with Chinese traditions and belief, should be burned during his burial, they found a wallet. Inside it was a letter to a Miss Mecenario which was written in the same handwriting as the letter sent to Remy by "Helen Lepanto". From Gerolaga's revelation and this letter, Remy concluded that Helen Lepanto was none other than Antonio Sy.[31]

As earlier stated, the trial court convicted the defendants-appellants of murder. It discredited Gerolaga's claim of self-defense, holding that Antonio Sy "was found dead by the police authorities sprawled face upward a meter from the well holding a flashlight in his right hand." [32] To the trial court, such fact belied Gerolaga's claim of self-defense because Antonio Sy could not have pulled the dagger from its scabbard with his right hand holding the flashlight. The scabbard was found ten (10) meters away from the body of the victim and not tucked into his waist or near his body, which would have been the case if the weapon indeed belonged to the victim. Moreover, the court opined that Antonio Sy, a Chinese businessman, could not have kept a "locally made dagger and scabbard."

The trial court also faulted Gerolaga for not surrendering to the authorities immediately. Furthermore, his plea of self-defense "does not square with the commission of the crime induced by reward or price." [33]

In holding that the three defendants conspired in the killing of Antonio Sy, the trial court indicted Remy for providing the monetary reward which Ativo delivered to Gerolaga, the actual assailant. The trial court was convinced of Remy's culpability by the tenor of the letter she wrote admitting participation in the crime. As to Ativo, the court a quo emphasized his failure to report the incident immediately to his employers and to the police authorities.

The defendants filed a motion for new trial on the ground of newly discovered evidence.[34] They wanted to present on the witness stand one Frankie Escarlan, Jr. who allegedly witnessed the killing of Antonio Sy. On May 19, 1989, the trial court denied the motion on the ground that the claimed newly discovered evidence would be merely corroborative of Gerolaga's self-defense.[35] Hence, the instant appeal.

The Issues

In their well-presented and convincing brief consisting of 166 pages, appellants specified the following alleged errors of the trial court:[36]

"(1) The trial court erred by, in, and for, rejecting the valid and clearly tenable claim of self-defense, and thus, and with patent partiality, it erroneously rendered its judgment convicting all of the accused in this case, despite the insufficiency of the evidence for the purpose;

(2) The trial court erred by, in, and for, finding and ruling that conspiracy obtains in this case, without clear and sufficient factual and legal basis, and thus, with manifest bias and in grave error, it held all of the accused criminally liable as co-principals; on the contrary, upon the entire and purely admissible evidence, the applicable laws and jurisprudence on the matter, conspiracy does not lie in the case at bar;

(3) The trial court erred by, in, and for, not finding and ruling that each, and all of the accused acted without

freedom, then being under the impulse of an uncontrollable fear of an equal or greater injury, in their case, respectively, or probable death;

(4) The trial court erred by, in, and for, not finding and ruling that accused Efren Ativo, more so, Remedios Ruado-Sy, acted in obedience to lawful orders for some lawful purpose in this case at bar;

(5) The trial court erred, consequently, in its decision by, in, and for, having convicted all of the accused for murder through conspiracy, or by, in, and for, not having acquitted all of the accused herein, upon the ground of reasonable doubt, it having failed or refused to consider exclusively, only the purely admissible factual and more credible circumstantial evidence obtaining in this case, and to observe with liberality, consistent with the proper dispensation of criminal or penal justice, the law, jurisprudence, and the fundamental precepts, as are applicable to, or in the case at bar."

In fine, the issues could be condensed into three:

(1) Is Gerolaga's theory of self-defense sufficient, credible and valid?

(2) If not, was the crime committed murder or homicide? More specifically, were evident premeditation, treachery and/or price and reward amply proven by the prosecution?

(3) Are appellants Remedios Ruado-Sy and Efren Ativo, who were unquestionably absent from the crime scene, equally as guilty as appellant Roberto Gerolaga who while admitting the killing of the victim proffers self-defense as a justifying circumstance?

The Court's Ruling

First Issue: Gerolaga's Theory of Self-Defense

At the outset, it should be pointed out that the prosecution did not (could not?) present any eyewitness to the crime. The circumstances prior to and those obtaining during the actual commission of the felony were established mostly by the defense. This happened because of appellants' theory that the killing was justified by self-defense. As such, the resolution of this case hinges to a large extent on the credibility of the appellants' witnesses. However, while the determination of the issue of credibility has always depended on trial courts and appellate courts are, as a rule, bound by such findings, we realize that in the present case, the conviction of the accused was based on pure circumstantial evidence and on an uncounselled confession of guilt. On account thereof, we were constrained to pore over the evidence, and arrived at the conclusion that the trial court misapprehended critical bits of evidence and circumstances which when considered correctly leads to a modification of the judgment of conviction. We thus emphasize the need for all courts to scrutinize every bit of evidence with meticulous care and analyze each case with deliberate precision and thoroughness to spare the innocent and/or mitigate the penalty of the guilty.

With the foregoing caveat, we shall first pass upon appellant Gerolaga's theory of self-defense. When such defense is invoked, the burden of evidence shifts to the accused. He must rely on the strength of his own evidence and not on the weakness of the prosecution's. Even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing.[37]

In the present case, it was duly proven that Gerolaga was unarmed when he entered the Sy residence to confront the victim.[38] It was also clearly established, through Emilio Sy, that Antonio owned the double-bladed knife, its scabbard and the flashlight found at the crime scene.[39] Because Gerolaga surprised Antonio by disclosing the latter's sobriquet as he was washing his feet, and because such disclosure came from an intruder in the Sy residence, it is indeed not improbable that Antonio initially attacked Gerolaga.

However, to appreciate self-defense in favor of an accused, the following requisites must be concurrently and

clearly proven: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself.[40] In this case, even if the first and third requisites were to be appreciated in favor of appellant Gerolaga, the second requisite had not been met. There was no reasonable necessity to inflict upon Antonio Sy numerous wounds, five of them fatal.[41] Because Gerolaga himself was unscathed, the wound sustained by Antonio Sy certainly negates the former's claim of self-defense.[42] Moreover, the justifying circumstance of self-defense may not survive in the face of Gerolaga's flight from the crime scene, his concealment of the weapon and his failure to inform the authorities of the incident.[43]

Second Issue: Murder or Homicide?

The sole key to appellant Gerolaga's exoneration having been disposed off, appellants' exact criminal responsibility must now be determined.

As defined by Art. 248 of the Revised Penal Code, murder is the crime committed by a person who kills another "in consideration of a price, reward, or promise." Said qualifying circumstance of price or reward equally affects both the offeror and offeree[44]-- the former becomes a principal by inducement and the latter, a principal by direct participation.

In this case, the prosecution attempted to establish that Gerolaga killed Antonio Sy for the reward. In his brief, the Solicitor General even quoted the following portion of Gerolaga's testimony to support the theory:

"Q. And when you said that you are going to help, the help that you are going to do is to kill Helen Lepanto?

A. Yes, sir.

Q. And it was also your desire to kill Commander Helen Lepanto because you will received (sic) the Three thousand (P3,000.00) pesos, is it not?

A. Yes, sir."[45]

However, that portion of Gerolaga's testimony should have been considered in the context of his entire testimony as well as all the pieces of evidence presented at the trial, in the same manner that it should have been considered under the basic principle in criminal law that all doubts shall be resolved in favor of the accused. Gerolaga knew the purpose for which Remy and her husband offered the P3,000.00 reward. Thus, after testifying that he expressed to Remy his fears about looking for and identifying NPA Commander Helen Lepanto as the latter might be a member of the dreaded Sparrow Unit, Gerolaga said:

"Q. So what did Remedios Ruado say if she said anything?

A. Mrs. Ruado answered that she must be helped because this amount asked by NPA will be given to whoever who (sic) can apprehend that Helen Lepanto." (Underscoring supplied.)[46]

Pressed by the prosecution to admit that he "desired" to kill Commander Helen Lepanto for the reward of P3,000, appellant Gerolaga demurred as follows:

"Q. When you entered the gate following that person, you were thinking that the person you were following was Commander Helen Lepanto? Is that what you want the Court to understand?

A. Yes, sir.

Q. And in following him with the intention of killing, you want to tell us that you do not have any weapon?

A. I have no intention to kill him. What I have in mind is to recognize him and identify him and to report to the policemen.

ATTY. BRAVO continuing)

Q. You mean you were not afraid to follow up (sic) Commander Helen Lepanto whom you believe to be a member of the NPA when your intention is to kill him and that Helen Lepanto is armed?

A. What I wanted during that night is that to identify and recognize him because had I knew (sic) him I will (sic) not do harm to him because we were friends."[47] (Underscoring supplied.)

Appellant Gerolaga then proceeded to narrate that it was only when "Commander Helen Lepanto" spoke that, by his voice, he recognized the stranger to be Antonio Sy, his friend. But because Antonio Sy immediately lunged at him with a knife, appellant Gerolaga responded accordingly.

We are thus faced with a situation where self-defense is discredited because of the number of wounds inflicted upon the victim. However, there are several circumstances, proven by the defense and un rebutted by the prosecution, indicating that Gerolaga intended only to identify and recognize, and not to kill, the victim. These circumstances include appellant Gerolaga's entering the Sy residence unarmed and the reflex action of Antonio Sy in lunging at the appellant on account of his unexpected detection and identification. In such a situation, the law tilts the scales of justice in favor of the perpetrator of the offense.[48] Consequently, because appellant Gerolaga had been impelled by the prospect of a monetary reward merely for identifying the source of the Sy couple's woes, he may not, in the same breath, be deemed as having intended to kill Antonio Sy for a price. He killed Antonio Sy in reaction -- albeit extreme -- to the violent attack launched by the deceased. The qualifying circumstance of price or reward in regard appellant Gerolaga may not, therefore, be counted against him.

In view of the absence of proof beyond reasonable doubt showing the evident premeditation and treachery alleged in the Information but considering his owning up to the killing of the victim, appellant Gerolaga may be held liable only for the crime of homicide, not for murder as charged.

The qualifying circumstance of price or reward may not likewise be appreciated against appellants Ruado-Sy and Ativo. Both testified that the money was meant to encourage people to "identify and apprehend" Commander Helen Lepanto. Even Emilio Sy, who was allowed to testify after his defendant wife had granted permission,[49] swore that his wife did not entertain any idea of killing Commander Helen Lepanto. She asked only for the latter's "identification and apprehension." [50] Such fact was buttressed by Pfc. Pimentel who, after the police had formed the surveillance team, returned to Remy to ask what police services she needed. He testified as to the conversation that transpired:

"Q. What did Mrs. Ruado answer to that?

A. Mrs. Ruado said that she will cooperate and she told us that whoever among us could apprehend Lepanto that Three Thousand (P3,000.00) pesos she (sic) asked will be given to us as a consideration for our services." [51]

Money offered or paid by anyone as a "sort of an expression of x x x appreciation of sympathy or aid (gratification)," may not be considered as a recompense for participation in a crime.[52] In the face of the prosecution's relentless effort to discredit her testimony during the trial, appellant Ruado-Sy tenaciously stuck to her repeated statement that, in line with her husband's idea, she intended the P3,000.00 to be a reward for whoever could "identify and apprehend" Commander Helen Lepanto. That no criminal intent may be ascribed to her in setting aside the P3,000.00 as reward is supported by the fact that appellant Ruado-Sy immediately referred the letter of Commander Helen Lepanto to the police authorities and even offered them the same amount as a recompense for the identification and apprehension of the author of the letter.

Third Issue: Culpability of Ruado-Sy and Ativo

Neither may appellant's Ruado-Sy and Ativo be held criminally liable on the basis of appellant Gerolaga's sworn statement implicating his co-accused in the crime, as it was executed without the assistance of counsel. The right to counsel has been constitutionalized to curb duress and other undue influence in extracting confessions from a suspect in a crime.[53] In accordance with the provisions of Sec. 12(1) of the 1987 Constitution, a waiver of the

right to counsel must be in writing and executed in the presence of counsel.[54] Indeed, any waiver of the right to counsel without the assistance of counsel has no evidentiary value.[55] Hence, appellant Gerolaga's waiver of the same right, even if executed in the presence of his mother and cousin, is void and has no legal effect.

The trial court's reliance on appellant Ruado-Sy's letter on March 24 1987 as a basis for her conviction is misplaced. A reading of the letter bespeaks of no more than the rambling thoughts of a clearly apprehensive wife. That she admitted she was ready to "kill and be killed" may not be considered as an accurate gauge of the existence of any criminal intent on her part. The letter was written under understandably overpowering anxiety and apprehension on account of her possible liability for the death of Antonio Sy, her in-laws' anger at her and her fear of reprisal from them, and her failure to neutralize the NPA threat. Also, as correctly pointed out by the Solicitor General,[56] it was written three days after the crime had been committed when appellant Ruado-Sy already had more than an inkling as to the true identity of Commander Helen Lepanto. Furthermore, her claim that it was returned to her in order that she could lengthen the letter is buttressed by its format. Appellant Ruado-Sy's signature appears in the middle of the letter and, in accordance with the directive given her through the boy-messenger, she incorporated the contents of the March 4, 1987 letter of Commander Helen Lepanto.

It is immaterial that the order to write the letter was coursed through a boy in his mid-teens. Under the circumstances, appellant Ruado-Sy could not be expected to (and would have been foolhardy to) subdue the boy or to cause his apprehension. We take judicial notice of the fact that in rural areas, gullible young people are conscripted in the commission of crimes by lawless elements who, taking advantage of the fear generated by the "swift justice" allegedly rendered by members of the New People's Army upon those who refuse to do its bidding, use the name of said organization to attain their malevolent purposes, even if they may not really be members thereof. While it has not been clearly established that Antonio Sy was indeed a member of the NPA, or that he was merely out to collect more money from his own relatives, appellant Ruado-Sy's actions subsequent to her receipt of the letter from "Commander Helen Lepanto" showed that she was in fact in the grip of fear and a sense of helplessness throughout that time, and therefore, we can only conclude that in all probability, she was psychologically and mentally unbalanced, and not in complete control of her free will, when she wrote the letter of March 24, 1987.

Anent appellant Ativo, it is not uncommon for houseboys like him to follow their master's orders unquestioningly and quite literally. No criminal intent was proven or could be attributed to him for his act of delivering the "reward" to appellant Gerolaga. His failure to report immediately the death of Antonio Sy to his own employers and to the police is explained by the fact that after he discovered that Antonio Sy was killed and Gerolaga demanded the amount of P3,000 from him, he, too, was consumed by fear that Gerolaga might kill him.[57]

If at all, appellants Ruado-Sy and Ativo may be held criminally liable only under the conspiracy theory where the act of one may be imputed to all the conspirators.[58] Conspiracy, considering the secrecy by which it is usually hatched, may be established by a chain of circumstances only.[59] However, like the physical acts constituting the crime itself, it must be established by proof beyond reasonable doubt.[60]

In the present case, the prosecution attempted to establish conspiracy by showing that the "reward" of P3,000 was financed by appellant Ruado-Sy and that appellant Ativo delivered the amount to the killer. However, considering the unrebutted testimony of appellant Ruado-Sy that, with the approval of her husband, she set aside the P3,000 as a reward for the identification and apprehension of Commander Lepanto and the fact that Ativo merely obeyed the order of his employers to deliver the amount to whoever could identify and apprehend said NPA commander, no criminal intent to kill Antonio Sy could be attributed to him. Moreover, as earlier discussed, it was not indubitably proven that appellant Gerolaga intended to kill Commander Lepanto and/or Antonio Sy for a price. Hence, no community of criminal design may be attributed to them. As "there is no other evidence to prove

conspiracy except the affidavit of confession" (which is inadmissible in evidence), even the Solicitor General admitted that the "lower court erred" in finding the existence of conspiracy.

In view of the foregoing, appellant Gerolaga's criminal liability is individual and separate. He shall be liable only for homicide, not murder, as no qualifying circumstances have been proven beyond reasonable doubt. Because no mitigating or aggravating circumstances attended the killing, he shall be meted the medium period of the penalty of reclusion temporal.[61] By the application of the Indeterminate Sentence Law, he shall suffer ten (10) years of prision mayor medium as minimum penalty to seventeen (17) years and four (4) months of reclusion temporal medium as maximum penalty. Pursuant to current jurisprudence, he shall indemnify the heirs of Antonio Sy in the amount of fifty thousand pesos (P50,000).

WHEREFORE, the appeal is partially GRANTED. Appellants Remedios Ruado-Sy and Efren Ativo are hereby ACQUITTED and are hereby ordered RELEASED immediately, unless they are being detained for some other legal cause. Appellant Roberto Gerolaga is found GUILTY beyond reasonable doubt of the crime of homicide for which he is hereby IMPOSED the indeterminate penalty of ten (10) years of prision mayor to seventeen (17) years and four (4) months of reclusion temporal and ORDERED to indemnify the heirs of the victim, Antonio Sy, in the amount of P50,000.00. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, p. 8.

[2] Appealed Decision, p. 2; rollo, p. 20.

[3] Presided by Judge Ricardo B. Butalid.

[4] TSN, March 15, 1988, pp. 4-5.

[5] TSN, September 8, 1987, pp. 39-45.

[6] TSN, August 17, 1988, pp. 55-56; TSN, August 18, 1988, pp.33-34.

[7] Exh. 1 verbatim reads:

"March 4, 1987

COMMANDER

NPA HELEN LIPANTO

REMY:

(MEL)

MAAYO KAMI SIN BULIG SA IYO KANTIDAD SIN P3,000 PISOS PAGALAOMON NA MOON SA SULOD GIN DUWA KAADLAW.

GINA AYO KO LANG SA IYO SIN MAKAR-ARAM. O MAG-PAMARITA KAY KON MANGYARI DAMO SIN BUHAY NA MAWARA? LALO NA SA (MET) MELITARY. MAKALOLO-OY MAN SINDA? KAG PAGA-KOWAON KA MOON KON DILI MO MATUPAD? TAPOS AN KUARTA ISULOD MO SUBRE SA IYO BASURAHAN ALAS 9:00 AN GAB-I SAN SABADO.

SALAMAT:

GOD BLESS YOU = ALL

WAG (illegible) KANG MATAKOT HINDI MAANO KONG SUMUNOD KA SA UTOS?"

[8] Exh. 2; Record, p. 131.

[9] TSN, August 17, 1988, p. 13-14.

[10] Ibid., pp. 15-18.

[11] Ibid., pp. 18-23.

[12] TSN, September 29, 1988, pp. 5-6, 10.

[13] TSN, April 29, 1987, pp. 10-14.

[14] Ibid., pp. 15-17.

[15] TSN, August 17, 1988, pp. 23-25.

[16] Ibid., pp. 25-27.

[17] TSN, March 15, 1988, pp. 41-42.

[18] TSN, July 18, 1988, pp. 6-19.

[19] TSN, April 29, 1988, pp. 32-43.

[20] TSN, September 8, 1987, p.9.

[21] Exh. A.

[22] TSN, March 14, 1988, p. 4.

[23] Ibid., pp. 4-7.

[24] Exhs. E-1 to E-6.

[25] TSN, October 15, 1987, pp. 46-47.

[26] Exh. G.

[27] Exhs. G-4 & G-5, TSN, October 15, 1987, p. 54.

[28] TSN, August 17, 1988, pp. 30-37.

[29] Exh. L-Translation.

[30] TSN, August 17, 1988, pp. 42-44, 75.

[31] Ibid., pp. 58 & 66.

[32] Decision, p. 11.

[33] Ibid., p. 14.

[34] Record, p. 800.

[35] *Ibid.*, p. 809.

[36] Appellant's Brief, p. 75.

[37] *People vs. Silvestre*, 244 SCRA 479, 490-491, May 29, 1995.

[38] TSN, July 18, 1988, pp. 33-34.

[39] TSN, August 18, 1988, pp. 23-27.

[40] Art. 11 (1), Revised Penal Code; *People vs. Silvestre*, *supra* at pp. 490-491.

[41] TSN, September 8, 1987, pp. 9-14.

[42] *People vs. Manalo*, 229 SCRA 479, 487, January 24, 1994.

[43] *People vs. Rivera*, 221 SCRA 647, May 10, 1993.

[44] *People vs. Alincaestre*, 40 SCRA 391, 408, August 30, 1971 citing *U.S. vs. Maharaja Alim*, 38 Phil. 1 (1918).

[45] Appellee's Brief, pp. 10-11.

[46] TSN, July 18, 1988, p. 30.

[47] *Ibid.*, pp. 41-42.

[48] In *People vs. Agustin* (G.R. No. 114681, July 18, 1995, 246 SCRA 673, 681) the Court held that "when the inculpatory facts and circumstances are capable of two or more interpretations, one of which is consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence, in view of the constitutional presumption of innocence, has not fulfilled the test of moral certainty and is thus insufficient to support a conviction." While this principle may not be totally applicable in this case considering appellant Gerolaga's admission of the killing of Antonio Sy, it may nevertheless be utilized as a basis for interpreting the facts of the case in his favor.

[49] TSN, August 18, 1988, p. 2.

[50] *Ibid.*, p. 29.

[51] TSN, April 29, 1988, p. 10.

[52] *U.S. vs. Flores*, 28 Phil. 29, 34, September 14, 1914.

[53] *People vs. Lucero*, 244 SCRA 425, 434-435, May 29, 1995.

[54] Then Solicitor General Francisco I. Chavez considered this constitutional provision a "quirk" or an "anomaly" because "where the accused voluntarily waives his personal right to counsel, meaning to say, where it is against his personal will or consent to have counsel (perhaps on any ground he personally conceives, e.g., he does not trust any counsel but himself, counsel like 'the law is an ass' [Shakespeare], etc.), yet, the Constitution nevertheless mandates that, despite any voluntary waiver of his personal right, the accused be literally given, meaning to say even against his will or consent, counsel in order that accused may validly waive the right to counsel, i.e., in the presence of counsel whose services he has precisely waived or does not want for a number of reasons. In sum, an otherwise voluntarily (sic) waiver is made involuntary by the Constitutional mandate taken literally" (Appellee's Brief, pp. 17-18).

[55] *Vide*: *People vs. Nito*, 228 SCRA 442, 457, December 15, 1993; *People vs. Dacoycoy*, 208 SCRA 583, May 8, 1992; *People vs. Rodriguez*, 205 SCRA 791, 797-798, February 4, 1992.

[56] Appellee's Brief, pp. 23-25.

[57] TSN, April 29, 1988, p. 44. In *People vs. Rosario* (246 SCRA 658, 667, July 18, 1995), the Court stated that the witnesses' fear of reprisal was understandable considering that the perpetrators of the crime lived near the victim's family and that one of the appellants was a member of the New People's Army.

[58] *People vs. Parica*, 243 SCRA 557, April 21, 1995.

[59] *People vs. Miranday*, 242 SCRA 620, March 23, 1995.

[60] *Magsuci vs. Sandiganbayan*, 240 SCRA 13, January 3, 1995.

[61] Arts. 64(1) and 249, Revised Penal Code.

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