

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTEMIO OBZUNAR, VIRGILIO OBZUNAR, NELSON ISANAN, JULIO ZILMAR, ALFREDO ISANAN, SR., ALFREDO ISANAN, JR., AND JOSE SUPERIO, AC...

G.R. No. 92153. December 16, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Murder is tragic and odious. Not only is there a wrenchful taking of human life. There is also untold grief and suffering inflicted upon the victim's family and loved ones. It is thus but natural on the part of a family member who witnessed the killing and recognized the authors thereof, in pursuit of justice, to charge those and only those responsible therefor, and not to falsely implicate innocent parties.

This is an appeal from the Decision[1] dated January 16, 1990 of the Regional Trial Court, 8th Judicial Region, Branch 30,[2] in Basey, Samar, convicting accused Artemio Obzunar, Virgilio Obzunar, Nelson Isanan, Alfredo Isanan, Sr., Alfredo Isanan, Jr., Julio Zilmar and Jose Superio for the murder of Anastacio Macato and sentencing them to reclusion perpetua.

On June 3, 1988, the following Information was filed against the accused-appellants charging them as follows:

"That on or about the 6th day of May, 1988 at about 9:00 o'clock in the evening, in the Poblacion of Talalora, Samar, Philippines, and within the jurisdiction of this Honorable Court, said defendants, ARTEMIO OBZUNAR, VIRGILIO OBZUNAR, NELSON ISANAN, ALFREDO ISANAN, SR., ALFREDO ISANAN, JR., JULIO ZILMAR and JOSE SUPERIO, conspiring and confederating together, and armed with deadly weapons to wit: bolos and a (sic) pieces of woods (sic), with intent to kill, did then and there wilfully, unlawfully and feloniously attack and wound therewith ANASTACIO A. MAGATO (should be 'Macato'), in the different parts of the body inflicting upon him the following:

External PE Findings:

1. Lacerated wound about 1 cm. lateral aspect forearm subcutaneous deep;
2. Stab wound about 2 cm. right posterior chest at the level of 7th intercostal space, midscapular line, penetrating;
3. Bluish discoloration & swelling of left ear;
4. Multiple abrasions of the left hypogastrium area left arm, left foot medial aspect, right foot lateral aspect;
5. Bluish discoloration left iliac region;
6. Avulsed maxillary central incision, left: first & second molar, left.

with treachery and premeditation (sic), accused Virgilio and Artemio Obzunar inflicted upon victim's forearm

a lacerated wound and stab wound at right portion chest respectively, while accused Alfredo Isanan, Jr., and the rest of the accused inflicted several bruises and injuries to said victim by means of pieces of woods (sic); and as a result thereof, said Anastacio A. Magato (sic) died.

All contrary to law, with the qualifying circumstance of alevosia and superiority in strength." [3]

Arraigned on June 28, 1988, all seven accused-appellants pleaded not guilty to the charge. [4]

The Facts

According to the Prosecution

In the appellee's brief, the Solicitor General provided the following summary of case facts:

"On May 6, 1988 at about 9:00 o'clock in the evening, Lydia Zilmar was at her house in Talalora, Samar, Folding clothes. At that particular time, she heard a woman shouting for help and so she immediately peeped through her window and saw several persons chasing her brother Anastacio Macato. She recognized the persons running after her brother as Artemio Obzunar, Virgilio Obzunar, Nelson Isanan, Alfredo Isanan, Sr., Alfredo Isanan, Jr., Jose Superio and Julio Zilmar (the accused herein). While Lydia was still at the window, she saw her brother overtaken in front of her house by Artemio Obzunar who immediately stabbed him at the back with a 'pisao'. She also saw the rest of the accused kicking and boxing her brother while one, particularly Alfredo Isanan, Jr., was striking him with a piece of wood. When her brother fell down, she immediately went downstairs and was in hysteria, shouting and asking for help. When her brother was already unconscious, all the accused slowly left the place. Her sister Cleopatra, her brother's wife Josefina, and her brother's son Michael, soon gathered around her unconscious brother. She kept on shouting for help and some of her relatives came and helped them. Later, she reported the matter to the police (TSN, 11-17-88, pp. 4-15).

Subsequently, the Assistant Provincial Fiscal of Samar filed an information charging all the herein accused with the crime of Murder with qualifying circumstances of alevosia and superiority in strength.

During the trial, the prosecution presented Maria Gina Figueroa, an employee of the Commission on Audit in Tacloban City. She testified that on April 29, 1988 at around 9:00 o'clock in the morning, accompanied by Statement Auditor Anna Liza Canuno and Engr. Miguel Diaz, she arrived at Talalora, Samar to audit an infrastructure project. In going to the project site, they were guided by the late Anastacio Macato. On their way to the project site, a person shouted and said: 'You are being a traitor to us fellowmen from Talalora'. Several others also expressed threatening words to the late Anastacio Macato but the latter told Figueroa not to mind them. She recognized said persons as the herein seven accused (TSN, 1-13-89, pp. 3-13).

Her testimony was corroborated by Miguel Diaz who testified that he was the one who requested the late Anastacio Macato to go with them to the barangay where the project was located; and that on their way to the project site, they were harassed by the herein accused who according to the late Anastacio Macato were men of the Mayor and were trying to prevent him from guiding them (TSN, 3-14-89, p. 10).

The prosecution likewise presented one Pablo Millano who testified that on April 27, 1988 he overheard the herein accused, who were then having a drinking spree, planning to kill the late Anastacio Macato (TSN, 12-13-88, p. 11). However, the trial court did not give credence to his testimony in view of the inconsistencies therein." [5]

Maria Gina Figueroa, the COA audit examiner, also testified that the victim informed her of the names of herein accused and their relationship with the mayor, whose project was the subject of the audit examination and later reported by her to have a disallowance amounting to P1,800,000.00. Her testimony was corroborated by Miguel M. Diaz, a technical audit specialist and member of her audit team.

Dr. Adoracion L. Cinco, testifying on the results of her post mortem examination of the victim, said that the victim sustained "(o)nly one mortal wound that stab on the (right posterior) chest but the bluish discoloration on

every part of the victim('s) body and the (cut or broken) molars and upper incisors showed that the victim was molested of (sic) a hard object by his assailant(s)."[6] the court a quo also noted her testimony that said fatal stab wound which entered at the victim's back and hit the coronary blood vessel leading to the heart was probably administered from behind, and "could not have been inflicted with the victim and his assailant hugging (facing) each other because the victim could have defended himself considering that he has a stout physique x x x."[7]

Finally, it is noted that prosecution eyewitness Lydia M. Zilmar is related to the following accused as follows; (a) Julio Zilmar, by blood, (b) Alfredo Isanan, Jr., the husband of her stepdaughter, and (c) Alfredo Isanan, Sr., her 'balaye.'[8]

Scenario of the Defense

In contrast to the prosecution's theory that the seven accused in conspiracy with each other and with treachery and evident premeditation all participated in the killing, the defense claims that it was only Virgilio Obzunar who perpetrated said killing, and then only in self-defense. The defense presented eight witnesses, namely: Ricardo Patrimonio who rebutted the testimony of prosecution witness Pablo Millano by denying having had a drink with the latter; Patrolmen Ananias Idlisan and Edgardo Valdez who corroborated the accused's denials and alibis; Pedro Aclado who testified seeing the victim smash a bottle of tuba on the head of Virgilio Obzunar; the said accused-appellant Virgilio Obzunar who admitted killing the victim albeit in self-defense; and the three accused-appellants Alfredo Isanan, Sr., Artemio Obzunar, and Julio Zilmar, who all offered alibis. The defense's version of the facts is follows:

"In the evening of May 6, 1988, in Talalora, Samar, there were two wakes, one for Agapito Borico, whose house was situated on the corners of Domingo and Bonifacio sts. (sic), and the other wake at located along (sic) Los Martirez St., where there was a wake for the grandchild of Francisca Zilmar. The six appellants, namely, Virgilio Obzunar, Artemio Obzunar, Nelson Isanan, Alfredo Isanan, Jr., Julio Zilmar, and Jose Superio were at the wake of Agapito Borico. The other appellant, Alfredo Isanan, Sr., father of the two other appellants, although he was there earlier that evening, left (for) home after spending few minutes thereat. The six other appellants were playing cards, and joining a drinking spree at the said wake. Found playing mahjong on another table, was Anastacio Macato; he was observed to be happy and jolly, and in fact he was winning his bets. Actually, Virgilio Obzunar was inside another house just immediately in front of the house of Agapito Borico, drinking with Javier Macato, son of Anastacio Macato. Virgilio Obzunar made a joke a 'balikbayan', a relative of the dead man, Agapito Borico, which irked Javier Macato. This resulted in a heated altercation between Virgilio Obzunar and Javier Macato. They nearly came to blow and clash. But cooler heads intervened, most specially that two police officers, Pat. Edgardo Valdez and Pat. Ananias Idlisan of the INP Talalora, Samar were there to pacify the two. Both were advised to go home. In the meanwhile (sic), from the mahjong table where he was seated, father Anastacio Macato was observing the incident. After Javier Macato left the place, Virgilio (sic) Obzunar followed, and walked his way home. Not knowing, Anastacio Macato, a known thou (sic) tough character, left the mahjon (sic) table, and walked behind Virgilio Obzunar. After a few meters walk, Virgilio (sic) Obzunar heard a call from behind him, and when he turned his back, he saw Anastacio Macato walking towards him. He faced Anastacio Macato, and when he was in front of him, Virgilio Obzunar admonish (sic) his son, Javier Macato, while he was about to (sic) him (Virgilio Obzunar) at the wake. Without any word, Anastacio obzunar (sic) boxed Virgilio Obzunar straight on the face; and after he was thrown on the ground, Anastacio Macato ran away. After he was able to rise himself up, he looked around, but Anastacio Macato was nowhere to be found. While walking home, he had to pass the house of Francisca Zilmar, where there was another wake for a child. While passing said house, someone called his attention from a group of persons seated on a table drinking tuba. When he approcahed (sic) the table, he saw Anastacio Macato behind another person among the group. When he asked why he (Asnastacio [sic] Macato) boxed him (Virglio [sic] Obzunar), the deceased lifted a half-filled gallong (sic) of tuba, and smashed the same on the face of appellant Virgilio Obzunar. The latter because (sic) groggy and was not in full consciousness after he was

thrown aback (sic) against a fence. When he regained consciousness (sic), and found that Anastacio Macato was no longer there; among the persons who were at that wake was Pedro Aclado, a Barangay Tanod who advised said appellant to get medical treatment as the face of Virgilio Obzunar was bloody as a result of that smashing of a gallon by the deceased. Pedro Aclado testified that he accompanied Virgilio Obzunar to the house of the midwife who was the only person available in the municipality to (sic) could extend some medical help. While they were walking along Los Martirez st. in front of the house of Lydia Zilmar, Anastacio Macato accosted Virgilio Macato, and immediately grappled and wrestled with him, and he tried to choke appellant Virgilio Obzunar; the latter tried to free himself from the grip and hold of Anastacio Macato, but the aggression (sic) was bigger in built (sic); he was strangling Virgilio Obzunar. As he was about to lose breath, Virgilio (sic) Obzunar pulled out a small knife from his waist, and stabbed the deceased on his stab (sic). They continue (sic) to struggle and both fell down to the ground. After sensing that Anastacio Macato was already motionless, he stood up, and time later (sic), the two policemen, Pat. Edgardo Vladez (sic) and Pat. Ananias Idlisan arrived at the scene of the incident. These two policemen demanded (sic) that he throw away his knife, but he did not, because he was afraid some relative of the deceased might come out, especially that it was in front (sic) of the house of Lydia Zilmar, sister of the deceased. He wanted to surrender to the chief of police. Pat. Idlisan went to fetch the chief of police, and when the station commander (arrived), he fired hi (sic) armalite rifle, and Virgilio Obzunar surrendered (sic). He was brought to the INP station, and he was boxed, and that was an entry in the police blotter of the incident, and that he stabbed to death one Anastacio Macato, a Letter Carrier. As he needed immediate medical attendance a midwife on the municipality extended him some first aid assistance, but he was advised to go to Tacloban City to subject (sic) to more thorough medical treatment, as he suffered cuts and wounds on his face. He alone killed Ansatacio (sic) Macato. There were no other persons involved. But when the complaint was filed before the Municipal Trial Court of Talalora, Samar, six other persons were impleaded. He (sic) first even the Regional Trial Court of Bassy (sic), Samar, was in great doubt as to the participation of the other five or six accused considering the wounds which the deceased sustained, and the inconsistent stand of the prosecution as to (who) actually stabbed the deceased. Was it Virgilio Obzunar or Artemio Obzunar?"[9]

The Trial Court's Ruling

On January 16, 1990, the trial court rendered its decision, the decretal portion of which reads as follows:

"WHEREFORE, in view of the foregoing judgement (sic) is hereby rendered, finding accused: ARTEMIO OBZUNAR, VIRGILIO OBZUNAR, NELSON ISANAN, ALFREDO ISANAN, SR., ALFREDO ISANAN, JR., JULIO ZILMAR and JOSE SUPERIO, GUILTY beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code. All the accused are sentenced to suffer the penalty of RECLUSION PERPETUA, and to pay the heirs of the deceased ANASTACIO MACATO, jointly and severally in the amount of THIRTY THOUSAND (P30,000.00) PESOS and to pay also jointly and severally the costs of the suit."[10]

The Issues

On appeal, accused-appellants made the following assignments of errors:[11]

"That the trial court erred in giving due weight and credence to the doubtful, perjured, unreliable and uncorroborated testimonies of the three (3) prosecution witnesses.

That the trial court erred in holding that conspiracy existed among and between the appellants in killing the victim.

That the trial court erred in rejecting the claim of appellant Virgilio Obzunar that he killed the deceased in the act of lawful self-defense.

That the trial court erred in not acquitting the appellants on the ground that their guilt was not proven beyond reasonable doubt."

all of which may be summed up as questioning the trial court's assessment of the credibility of witnesses and its appreciation of the weight and sufficiency of the prosecution's evidence, vis-à-vis that of the defense.

The Court's Ruling

First issue: Credibility of Witnesses

In deciding this appeal, the Court reiterates the general rule that --

"x x x when the question is raised as to whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth; the trial court is thus in the best position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected." [12]

After a thorough review of this case, we find that the trial court did not overlook any such material fact nor did it commit any palpable error in assessing the credibility of the witnesses presented by both sides. It did not err in giving full faith and credit to the narration of Lydia Zilmar as to how her brother was chased and killed by herein accused-appellants, as she was not shown to have any ill motive to testify falsely against the latter. [13] This is further bolstered by the rule that "the testimony of a witness should normally be accepted especially when the witness is the victim or his near relative because these witnesses usually strive to remember the face(s) of the assailants" [14] and the truism that "x x x relationship with a victim would deter a witness from indiscriminately implicating anybody to the crime. His natural and usual interest would be to identify the malefactor and secure his conviction to obtain true justice for the death of a relative. This is (e)specially so when the witnesses were present at the scene of the crime x x x" [15] as in this case. Moreover, her positive identification of the accused must prevail over their bare denial because "denial, like alibi, is a weak defense which becomes even weaker in the face of the positive identification of the accused by prosecution witnesses. The accused's denial constituted self-serving negative evidence which can hardly be considered as overcoming a straightforward and credit-worthy eyewitness account." [16] The salient portions of her testimony are as follows:

Q

Mrs. Zilmar, you said that you are a resident of Talalora, Samar, for how long have you been a resident of Talalora?

A

Since birth, fourty (sic)-seven years now.

Q

Up to the present?

A

Yes, sir.

x x x x x x x x

Q

Will you kindly tell us? Where were you then?

A

I was in our house at the Poblacion of Talalora, Samar.

Q

What were you doing that time, if any?

A

I was folding our clothes in our bedroom to be placed at the aparador.

Q

While you were folding your clothes to be kept inside your aparador or cabinet, do you remember if there was an unusual incident that occurred (sic)?

A

Yes, sir, there was.

Q

Will you please inform the Honorable Court, what was that?

A

On that particular time, I heard a voice from a woman asking for help.

Q

And when you heard that voice, what did you do?

A

I immediately peeped out of the window where that voice come from.

x x x x x x x x

Q

What did you find out when you peeped out of the window?

A

The very moment I looked out of the window, I saw persons running after a man, whom I recognized as my brother, the late Anastacio Macato, Sr.

Q

What was the distance of the persons whom you saw who were running after the man, for the first time?

A

They were about fifteen (15) meters from me, because I was at the window.

Q

Were you able to recognize, who were running after your brother?

A

Yes, sir, I identified all of these persons because all of them are from Talalora and aside from that our light was

bright which was illuminating the street coming from our balcony.

Q

You mentioned your light being bright, what are these light?

A

These are electrical light bulbs because there is electricity in our place.

Q

Where were these lights located?

A

One (1) 20 watts flourescent (sic) bulb in our doorway and upstairs at the balcony because this is suppose(d) to serve as our overnight lamp, one (1) 20 watts also.

Q

Aside from this lighting, was there any other light in the vicinity?

A

The other light I noticed was the light at the electric post along the street.

Q

Will you kindly state the distance of that electric post to your house?

A

More or less about six (6) meters to our house.

Q

By the way, where is your house located to (sic) the road?

A

Our house is along the road of Los Martires Street.

Q

And you saw your brother Anastacio Macato being run after by persons after that, what happened?

A

When these persons were running after my brother and when he reached near our house he was overtaken by one of them whom I recognized as Artemio Obzunar and he immediately stab his knife on my brother.

Q

Were you able to recognized (sic) the other assailant of your brother aside from Artemio Obzunar?

A

Yes, I recognized them because the light was very bright.

Q

Will you please name them?

A

Virgilio Obzunar, Nelson Isanan, Alfredo Isanan, Sr., Alfredo Isanan, Jr., Jose Superio and Julio Zilmar.

Q

If these persons you named are in court now, can you point them out?

A

Yes, sir.

Q

Please do, so?

A

Yes, I can identify them because I know them very well because we come from one place and some of them are even my relatives and that of my husband. That one is Alfredo Isanan, Jr.

(Witness pointed to one of the accused seated from the right side who answered the name Alfredo Isanan, Jr. when asked by the court interpreter of his identity)

Next to Alfredo Isanan, Jr., is his father, Alfredo Isanan, Sr., Artemio Obzunar, the one who stabbed my brother; Julio Zilmar, nephew of my husband; Virgilio Obzunar; Nelson Isanan and the last one is Jose Superio.

(Witness at this juncture pointed one by one the 7 accused in this case, who answered the same name during the arraignment in this case and when asked by the court interpreter of their respective identity.)"[17]

In fact, in addition to the positive identification of the accused-appellants made by prosecution witness Lydia Zilmar, the prosecution, in presenting the testimonies of COA audit team members Maria Gina Figueroa and Miguel M. Diaz, established the motive for the killing. As correctly found and concluded by the trial court:

"x x x the killing of Anastacio Macato was the culmination of the victim's accompanying and acting as the guide of the COA Audit Team that inspected and audited the infrastructure project at Talalora, Samar. While it is true that none of the accused, except perhaps Artemio Obzunar, who was a sub-contractor in one of the projects, were involved or parties to the anomaly (sic) being investigated by the audit team, it was ably established by credible and competent witnesses (Figueroa and Diaz) that the accused were harassing (sic) and threatening the audit team during the inspection. The initial report of the audit team showed a disallowance of P1,800,000.00 which was officially reported to the Regional Office of the Commission on Audit. The testimonies of these two witnesses for the prosecution were not rebutted by the defense. While motive should not be a sole basis to convict an accused, nevertheless, as in this case, it should be given great evidentiary value. It was established that the accused were close to the Municipal Mayor and one of the Mayor's infrastructure projects was being audited by the COA team and the victim was the guide of the team. And as stated above, the initial findings of the audit team showed a disallowance of P1.8 million pesos. This Court had the opportunity to watch the demeanor of these prosecution witnesses when they were testifying on the witness stand and it is our opinion that they were indeed testifying truthfully."[18]

Second Issue: Conspiracy

Based on the foregoing discussion the Court proceeds with assurance that prosecution eyewitness Zilmar indeed saw what she testified as having seen, and that all the accused-appellants participated in the killing of the victim

as narrated by said eyewitness. And notwithstanding that the prosecution was not able to present proof of prior agreement among the seven accused-appellants to commit the foul deed, their conspiracy is manifest and patent from the manner in which they executed the same. Well-settled is the rule that "conspiracy need not be proved by direct evidence of prior agreement on the commission of the crime as the same can be inferred from the conduct of the accused before, during, and after the commission of the crime, showing that they acted in unison with each other, evincing a common purpose or design." [19] In the instant case, the accuseds' conspiracy is shown through eyewitness Zilmar's straightforward account of their actions during and after the commission of the crime from the moment she first saw them chasing her brother, as follows: [20]

"Q

While this accused Artemio Obzunar was able to overtake your brother, the victim in this case and you said he immediately delivered a stabbing thrust on your brother Anastacio Macato, where was he hit on what part of his body?

A

He was hit at the back.

Q

When your brother was hit at the back what happened to him?

A

He fell down.

x x x x x x x x

Q

What were the other persons do(ing) who were running after your brother aside from Artemio Obzunar, if they do (sic) anything?

ATTY. BUBAN:

Leading.

Court:

What did they do? Let the witness answer, if she knows?

A

Those persons I mentioned, were kicking and boxing my brother.

Court:

Who particularly was boxing your brother?

A

All of them.

Court:

All of them were kicking?

A

All of them were kicking and boxing my brother, while one (1) was striking (him with) a piece of wood.

Court:

Continue.

ATTY. CAJARA

Q

Regarding this Virgilio Obzunar, what did they he do particularly to your brother?

A

He was kicking him.

Q

How about Nelso(n) Isanan?

A

He was also kicking him.

Q

How about Alfredo Isanan, Sr.?

A

He was kicking and boxing my brother.

Q

How about Alfredo Isanan, Jr.?

A

He was the one striking (sic) my brother with a piece of wood.

Q

Could you still recall what part of the body of your brother was hit by Alfredo Isanan, Jr.?

A

I cannot remember where he was hit, I just see him strike the piece of wood and I could hear its sound as it touched the body of my brother.

Q

How about this Julio Zilmar?

A

He also helped in kicking and boxing.

Q

How about this Jose Superio?

A

He was also there kicking him and he was carrying a weapon and asking my brother, 'Are you still alive?'. "

The allegation by the prosecution that there were seven assailants at the scene of the crime each armed with a knife or bolo, may at first glance have created some doubt as to the existence of a conspiracy, since the victim sustained only one fatal stab wound. However the testimony of eyewitness Zilmar sheds light on this matter, revealing the conscious effort of the conspirators to hide their participation in the crime by limiting their attack to the one fatal stab wound already inflicted on the victim:

"ATTY. BUBAN

Q

And Jose Superio, of course at that time, was armed with a knife or bolo?

A

Yes, sir.

Q

And of course to make sure that your brother was alive, he just kicked your brother, he did not use his bolo?

A

He did not use his bolo because Alfredo Isanan, Jr. said that 'stop that because many of us will be implicated and he is already dead.'

Q

And all of them were all armed with bolos but they did not use it on the victim?

A

He was just kicked after he was stabbed by Artemio Obzunar (from) which he instantly died but they kept on kicking my brother.

Q

What made them and you so sure that your brother was really dead?

A

Because he did not move anymore and nobody stabbed him anymore or delivered a hacking blow as he was already dead because of too much maltreatment.

x x x x x x x x

Q

How many times your brother been stabbed by these armed men?

A

Only once at the back.

Q

And of course, the six other persons did not participate?

A

Did I not state before that all participated in ganging-up, kicking and clubbing my brother?

Q

By the way, who was that person who uttered that we should stop because all of us might be involved and implicated?

A

It was Alfredo Isanan, Jr. and they camouflage that they did not participate because they lined-up in our yard." [21]

Lydia Zilmar's testimony that the appellants deliberately avoided inflicting more stab or hack wounds on the hapless victim in order to cover up their actuations as a group is resonant with truthfulness especially when taken together with the number and extent of the injuries sustained by the victim, which indicate that the killing could not have been perpetrated by only one assailant. As astutely observed by the trial court:

"While it may be true that only Wound no. 2 x x x was a fatal wound caused by a sharp pointed object, which according to Dr. Cinco was inflicted by the assailant while he was at the back of the victim, Wounds Nos. 1,3,4,5 and 6 which are multiple abrasions, lacerated wounds, the cut teeth (upper and lower molars), as well as the several blood clots on the body of the victim, were caused by blunt objects, and clearly indicate that they were not inflicted by only one person, but by several persons."

Hence, the community of purpose and common design of the seven accused-assailants is made evident by their having chased down the victim as a group, their having each participated in the physical assault in pursuit of their murderous intent, and finally, their collective effort in hiding their guilt by limiting their attack to only one fatal wound and playing innocent thereafter. Their foregoing conduct during and after the commission of the felony sufficiently proves their conspiracy beyond the scintilla of a doubt. Hence, in the determination of their criminal liability, the rule that the act of one is the act of all applies four-square.

Third Issue: Alleged Self-Defense

The admission by Virgilio Obzunar that he was the one who administered the fatal stab wound albeit in self-defense shifts the burden of proof upon him to show that the killing was justified and that he incurred no criminal liability therefor. As is the rule in such cases, it is incumbent upon the accused to establish that all the elements necessary to a claim of self-defense were present, and he can rely only "on the strength of his own evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing." [22] He must prove the essential requisites of self-defense, to wit: (a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to repel the aggression, and (c) lack of sufficient provocation on the part of the accused.

In the instant case, the claim of self-defense must fail because that most indispensable element of all -- unlawful aggression on the part of the victim -- was not sufficiently proven. The defense anchors their claim of self-defense on their assertion that:

"Deceased Anastacio Macato was the unlawful aggressor. He was of bigger built than the appellant, Virgilio Obzunar. Previous to the stabbing incident on that same evening of May 6, 1988, appellant Virgilio Obzunar was boxed on the face by the deceased, and then flung with a half-filled gallon of tuba, again on the face. And while said appellant was on his way to seek medical treatment for his wounds, deceased waylaid the said appellant, and they grappled and wrestled, and the deceased tried to choke and strangle appellant Virgilio Obzunar. The latter had no alternative but to pull a small knife which was tucked on his waist, and stab the deceased." [23]

In the assessment of such defense theory, the Court is guided by the now-familiar rule that "evidence to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself -- such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience." [24] Consequently, we hold that the trial court was correct in considering the scenario conjured up by the defense as completely unworthy of belief, being inconsistent with normal human conduct. Even the number and extent of the injuries sustained by the victim are inconsistent with the testimony of Virgilio Obzunar that he inflicted only one stab wound upon the victim with his knife, [25] and his small stature vis-a-vis the big and robust victim.

Moreover, appellant Virgilio Obzunar testified that the deceased allegedly smashed a half-full gallon of tuba on his head, knocking him unconscious. If it were true that the deceased really intended to do him in, he would have done so at that point and taken advantage of the fact that Obzunar was then supposedly already unconscious, or at the very least dazed and vulnerable. But contrary to ordinary human experience, instead of finishing off the unconscious Obzunar then and there with the least risk to himself, the deceased allegedly and inexplicably called off his attack, ran away and then decided to lie in wait for Obzunar in the dark (giving the latter time and opportunity to recover his senses and strength!) and then jumped him and tried to strangle and kill him. This storyline is redolent of badly written scripts from third-rate local movie fare, and while it might by some imaginative stretch be deemed "entertaining", it cannot pass for a tenable defense. Besides, it bears repeating that the number and kind of wounds on the deceased, plus the fact that said injuries were caused by different types of weapons such as bladed, pointed instruments and blunt objects, all belie appellants' tale that it was the deceased who started the whole fracas.

With respect to appellant Virgilio Obzunar's head injury, which was the only significant wound sustained by him, and which he utilized to prop up his allegation of unlawful aggression by the victim, the court *quo* noted that:

"There was a conflicting version (as to) the wound on the forehead of Virgilio Obzunar. The defense claims in its Exhibits '3' and '4' was caused by a gallon of tuba (flung) by the victim at the wake; while prosecution claims accused Virgilio sustained said injury when he fell down and bumped his head on the fence. Be that as it may, accused himself admitted that he did not sustain said injury at the place of the incident. In *People vs. Orongan and Lopez*, G.R. No. L-32751, December 21, 1988, the Supreme Court states:

'That accused killed in self-defense, or even in incomplete self-defense, is equally of doubtful veracity. Standing alone and without corroboration his version is unconvincing, especially when coupled with the fact that accused, who was a(d)mittedly smaller than victim, sustained no injury at all his body while his opponent suffered several wounds. The onus of proving self-defense is on the accused which he failed to do.'"

This claim of self-defense by Virgilio Obzunar is in all likelihood a mere cover-up for Artemio Obzunar and the other appellants, especially since in this case Virgilio can conveniently use his head injury, the cause of which had not been conclusively established, as physical proof of his version.

In light of all the foregoing, we hold that the claim of self-defense in this case cannot be appreciated in the absence of unlawful aggression by the victim, its primordial element. [26]

Fourth Issue: Was Murder Proven

Beyond Reasonable Doubt?

We agree with the trial court that the positive identification by the prosecution's sole eyewitness Lydia Zilmar of the seven accused-appellant coupled with all the prosecution evidence presented in this case sufficiently established beyond reasonable doubt the guilt of the latter for the offense charged. On the other hand, their failure to present a credible defense or evidence sufficient to rebut the charge against them bolsters our moral certainty of their guilt.

In connection with the above, we hold that the defense of alibi proffered by accused-appellants Alfredo Isanan, Sr., Julio Zilmar, and Artemio Obzunar must fail because "well-settled is the rule that greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime. Similarly, it is firmly entrenched in our jurisprudence that the defense of alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime." [27] This is further buttressed by considering the fact that, as per their alibi, the place where they allegedly were at the time of the killing was near the scene of the crime, and it was not at all physically impossible for them to have been present at the scene and to have participated in the commission of the felony.

However, we have to differ with the trial court in its finding of treachery in this case, which finding is not supported by evidence on record. It is an almost immutable rule of evidence that treachery must be proven as clearly as the crime itself, and "absent any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victim unfolded, as in this case, treachery cannot be appreciated." [28] The prosecution's sole eyewitness Lydia Zilmar saw what transpired only from the time the victim was already being chased by the accused-appellants. Hence, not having seen how the assailants commenced the execution of the felony, she gave no testimony as to, and there is no sufficient evidence available to prove conclusively, the use of treachery in the commission thereof. Furthermore, the fact that the victim had opportunity to flee from his attackers (although he was subsequently caught) tends to negate the presence of the qualifying aggravating circumstance of treachery.

Nonetheless, the qualifying circumstance of abuse of superior strength was properly and correctly appreciated by the court a quo as this is plainly evident from the fact that the unarmed victim was set upon by his seven armed attackers, stabbed in the back and boxed, kicked and clubbed into senselessness. The felons were able to commit their dastardly act without the former being able to put up any defense. Thus, even in the absence of treachery, abuse of superior strength would still qualify the killing to murder, [29] and there being no aggravating or mitigating circumstance present, the penalty of reclusion perpetua meted out to accused-appellants stands.

The amount of P30,000.00 imposed by the trial court as civil indemnity shall be raised to P50,000.00 in accord with prevailing jurisprudence. [30]

WHEREFORE, the herein appealed Judgment convicting appellants Artemio Obzunar, Virgilio Obzunar, Nelson Isanan, Alfredo Isanan Sr., Alfredo Isanan Jr., Julio Zilmar and Jose Superio of the crime of murder and imposing on them the penalty of reclusion perpetua is hereby **AFFIRMED** subject to the modification that they shall pay jointly and severally the heirs of the deceased Anastacio Macato civil indemnity in the amount of fifty thousand pesos (P50,000.00).

SO ORDERED.

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

[1] In Criminal Case No. 1767; Rollo, pp. 25-70.

[2] Judge Ruben A. Mendiola, presiding.

[3] Rollo, pp. 25-26.

[4] Decision, pp. 1-2; rollo, pp. 25-26; citing Information, record, p. 41.

[5] Appellee's brief, pp. 2-5; rollo, pp. 197-200.

- [6] TSN, November 15, 1988, p. 21, in relation to pp. 5-11 thereof.
- [7] Judgment, p. 4; rollo, p. 28.
- [8] TSN, December 6, 1988, pp. 16-17; record, pp. 17-18; and Judgment, p. 7; rollo, p. 31.
- [9] Appellant's brief, pp. 5-8; rollo, p.144.
- [10] Decision, p. 46; Rollo, p. 70.
- [11] Appellants' brief, p. 9; rollo, p. 144.
- [12] *People vs. Alimon*, G.R. No. 87758, p. 12, June 28, 1996; citing *People vs. Vallena*, 244 SCRA 685, June 1, 1995, and *People vs. Tismo*, 204 SCRA 535, December 4, 1991.
- [13] *Ibid.*, p. 13.
- [14] *People vs. Ramos, et al*, G.R. 110600, p. 7, August 7, 1996, citing *People vs. Jacolo*, 216 SCRA 631, December 16, 1992.
- [15] *People vs. Sotes*, G.R. No. 101337, p. 15, August 7, 1996, citing *People vs. Juan*, G.R. No. 113710, March 7, 1996, and *People vs. Jacolo*, 216 SCRA 631, December 16, 1992.
- [16] *People vs. Alunan*, G.R. No. 88822, p. 12, July 15, 1996, citing *People vs. Ompad, Jr.*, 233 SCRA 62, June 10, 1994, and *people vs. Orehuela*, 232 SCRA 82, April 29, 1994.
- [17] TSN, November 17, 1988, pp. 4-9.
- [18] Decision, pp. 39-40; Rollo, pp. 63-64.
- [19] *People vs. Sotes*, *supra*, p. 14.
- [20] TSN, November 17, 1988, pp. 9-12.
- [21] TSN, pp. 20-22; Record, pp. 21-23.
- [22] *People vs. Rivero*, 242 SCRA 354, 358, March 15, 1995.
- [23] Appellant's brief, pp. 26-27; Rollo , p. 144.
- [24] *People vs. Escalante*, 238 SCRA 554, 563, December 1, 1994.
- [25] TSN, p. 35, August 2, 1989.
- [26] Appellee's brief, pp. 14-15; Rollo, pp. 209-210.
- [27] *People vs. Polangco*, 251 SCRA 503, December 26, 1995; citing *People vs. Andasa*, 206 SCRA 636, February 27, 1992, and *People vs. Pascua*, 206 SCRA 628, February 27, 1992.
- [28] *People vs. Patamama*, 250 SCRA 603, 613, December 4, 1995, citing *People vs. Ablao*, 229 SCRA 280, January 14, 1994, *People vs. Lug-aw*, 229 SCRA 308, January 18, 1994, *People vs. Apaap, Jr.*, 235 SCRA 468, August 17, 1994, and *People vs. Timple*, 237 SCRA 52, September 26, 1994.
- [29] *People vs. Patamama*, *supra*, p. 613.
- [30] *People vs. Caritativo*, G.R. Nos. 92271-72, p.16, April 1, 1996.

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