PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FREDDIE JUAN AND EFREN JUAN, ACCUSED-APPELLANTS.

G.R. Nos. 100718-19. January 20, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is an appeal from the decision[1] of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 50, finding accused-appellants Freddie Juan and Efren Juan guilty beyond reasonable doubt of the crime of murder.

Freddie Juan (FREDDIE) and Efren Juan (EFREN) were charged with the crime of murder in an information that reads:

> "That on or about the 6th day of September 1988, at Brgy. Bagong Silang, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with intent to kill, with treachery and evident premeditation and while armed with a gun, did then and there willfully, unlawfully and feloniously assault, attack and shoot therewith one CARLOS TORRES, thereby inflicting upon him gunshot wounds on the different parts of his body, which wounds were the direct and immediate cause of his death.
>
> CONTRARY TO LAW."[2]

On May 20, 1987, both accused were arraigned and pleaded not guilty to the crime charged.[3]

The lower court summarized the facts as follows:

> "Sometime in the evening of September 6, 1988 at around 9:00 o'clock while Elmer Tabang (hereinafter referred to as Elmer) was conversing with his brother Ely Tabang infront of their house at Reynoso St., Cuito, Puerto Princesa City, the herein accused Freddie Juan (hereinafter referred to as Freddie) confronted Elmer whom he suspected of having kicked his son. Elmer denied the accusation against him. Thereupon, Freddie boxed Elmer but the latter was able to evade it and run towards his (Elmer's) house. Once inside, his mother, Adelaida Tabang closed the door and both went upstairs. Thereafter, Freddie and his brother Efren Juan (hereinafter referred to as Efren) stoned Adelaida's house. They did these for several minutes before desisting and left the place. After quite sometime subsequent to the stoning incident, Elmer went downstairs to answer the call of nature. When he opened the front door of their house he saw Freddie running towards their (Tabang's) house. Elmer immediately went back inside and locked the front door. But Freddie and Efren kicked it destroying the doorlock. Whereupon, the door swung open hitting the light switch on the wall turning the light off in the sala. Freddie and Efren then went inside the house. At this juncture, Elmer was already on the stairs going up to the second floor when he heard Efren uttered "pusila ren, pusila ren" (shoot him now, shoot him now). It was at this point when Elmer's uncle, Carlos Torres was coming out from the kitchen going towards the sala was shot twice by Freddie killing him instantly. Thereafter, Elmer heard Efren uttered "tinamaan mo ba?" to which Freddie answered, "Oo, patay." The two accused left thereafter and disappeared in the dark.

> Although the light in the sala was off when the shooting incident occurred, the light in the kitchen was on and some light radiated from that place. (Testimony of Elmer Tabang, Tsn: pp. 1-12, November 21, 1988; Tsn: pp. 2-8, 21, November 22, 1988).
>
> Earlier, when the stoning by Freddie and Efren stopped Adelaida Tabang, mother of Elmer left the house to report the stoning incident to the police. Adelaida never reached the police station as she was fetched by her nephew, Romeo Palao on her way to the police station. Romeo Palao told Adelaida that she has to return to their house immediately as somebody was already shot. Upon arrival, she saw her brother Carlos Torres already dead and sprawled on the ground between their sala and the kitchen."

On January 24, 1992, the RTC rendered its decision finding both accused guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

> "WHEREFORE and in view of the foregoing considerations, judgment is hereby rendered finding both the accused guilty beyond reasonable doubt of the crime of murder as principals as the same is defined and penalized under the Revised Penal Code, sentencing both the accused to suffer the penalty of reclusion perpetua as well as to pay the costs. They are furthermore ordered to indemnify the heirs of the deceased jointly and severally the sum of Fifty Thousand (P50,000.00) Pesos as and for the death of the deceased; the sum of Eight Thousand Four Hundred Fifty (P8,450.00) Pesos as and for actual damages, and the further sum of Thirty Thousand (P30,000.00) Pesos as and for moral damages.
>
> SO ORDERED."[4]

Hence, this appeal where the accused-appellants assign the following errors:

> "I. THE LOWER COURT GRIEVOUSLY ERRED IN NOT GIVING CREDENCE TO THE FINDINGS OF NBI SENIOR FORENSIC CHEMIST ELVIRA AVINA DEL ROSARIO THAT ACCUSED FREDDIE JUAN COULD NOT HAVE FIRED A GUN AT THE TIME CARLOS TORRES DIED ON SEPTEMBER 7, 1988.
>
> II. THE LOWER COURT GRIEVOUSLY ERRED IN FINDING THAT EITHER FREDDIE JUAN OR EFREN JUAN SHOT CARLOS TORRES.
>
> III. THE LOWER COURT GRIEVOUSLY ERRED IN FINDING THAT FREDDIE JUAN AND EFREN JUAN CONSPIRED TO KILL CARLOS TORRES.
>
> IV. THE LOWER COURT GRIEVOUSLY ERRED IN FINDING THAT ACCUSED-APPELLANTS GUILTY OF THE CRIME OF MURDER."[5]

In support of this appeal, accused-appellants maintain that the RTC erred in disregarding the testimony of the witnesses for the defense. They claim that the defense witnesses were able to establish that FREDDIE and EFREN were not at the scene of the crime at the time it occurred. They further allege that there was an inconsistency in the testimonies of the prosecution witnesses since Elmer Tabang (TABANG) testified that it was FREDDIE who fired the gun while Nemia Palao and Imelda Tabang testified that it was EFREN who fired the gun. Moreover, they allege that the examination for nitrates conducted on FREDDIE proved that he did not fire any gun on the night the crime occurred. Considering that EFREN was in the hospital due to a head injury inflicted by the deceased, neither could he have fired the gun. In addition, the defense faults the trial court for finding the existence of a conspiracy between the accused-appellants in the absence of any concrete evidence to prove the existence of the same beyond reasonable doubt. The mere fact that one of the accused shouted "Shoot him, shoot him" is not in itself sufficient to prove a conspiracy. Neither does the fact that the accused-appellants are related or acted with some degree of simultaneity prove the existence of a conspiracy between them. Instead, accused-appellants posit the following version of events that transpired on the night the crime occurred:

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> "On the night of September 6, 1988, at around 5:00 p. m. Efren Juan was celebrating his birthday at Freddie Juan's home at Reynoso St., Quito, Puerto Princesa City, together with his brother Freddie Juan, their cousin and several guests.
>
> At around 7:00 p.m., while the birthday celebration of Efren Juan was going on, the son of Freddie Juan came and told the latter that he was kicked by Elmer Tabang. Upon hearing the complaint of his son, Freddie Juan left the birthday celebration to confront Elmer Tabang, but he could not find the latter. Freddie Juan then returned to the birthday celebration.
>
> Thereafter, at around 9:30 p.m., while Efren Juan was still celebrating his birthday, some bottles and stones coming from the direction of Adelaida Tabang's house were thrown at house of Freddie Juan. Efren Juan went out to confront the stone throwers. Freddie Juan and Jaime Carandang went out and followed Efren Juan. While Efren Juan was still on the road going to the house of Adelaida Tabang, Carlos Torres suddenly came out from behind a coconut tree and clubbed Efren Juan, injuring him on the left side of his forehead where blood flowed. After injuring Efren Juan, the assailant ran away.
>
> Due to the suddenness of the attack, Freddie Juan did not even recognize who attacked his brother, Efren Juan.
>
> Efren Juan was brought to the hospital where he was treated for a "Clear Cut Wound (L) Temporal 3 cm. long".
>
> In the meanwhile, that Efren Juan was at the hospital together with Freddie Juan and police officer Gil Manlavi, a certain Carlos Torres was reported shot and killed.
>
> Due to the report, police officers including Gil Manlavi responded. At the crime scene, the police officers were informed by Elmer Tabang that Freddie Juan shot and killed Carlos Torres.
>
> At the hospital, Freddie Juan who accompanied his brother, Efren Juan, was then arrested by the police and brought to the city jail. On the next day, September 7, 1998, paraffin casts were taken from the two hands of Freddie Juan to determine the presence of nitrate.
>
> Upon the information given by Elmer Tabang, Efren Juan and Freddie Juan were accused of Murder for allegedly shootng to death Carlos Torres despite the fact that both hands of Freddie Juan are negative of nitrate, and that Efren Juan was being treated at the hospital at the time Carlos Torres was supposedly killed.[6]

The basic contention of the accused-appellants is that the RTC erred in giving weight to the testimonies of the prosecution witnesses without considering the testimonies of the witnesses for the defense. After a thorough review of the records of the case, we find no substantial reason to disturb the trial court's appreciation of the evidence and find no basis therein to rule that the testimonies of the prosecution witnesses were not credible. The sole eyewitness, TABANG, whose testimony the trial court found acceptable despite an earlier misunderstanding with the acused, testified that:

> "Q. You said Mr. Witness that these 2 accused are your neighbors, how far is their house from the place where you are residing?
>
> A. More or less 50 meters away.
>
> Q. Mr. Witness, sometime on September 6, 1988 in the evening thereof, could you recall where were you?
>
> COURT:
>
> What time, you specify the time.
>
> ATTY. AUSTRIA :
>
> Q. More or less about 9:00 in the evening?

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A. Yes sir.

Q. Where were you?

A. In front of our house beside the road conversing with my brother.

Q Your house which you stated, where is this house of yours located?

A. It is within Barangay Bagong Silang, Puerto Princesa City sir.

Q. You said that on that said date and time you were conversing with your brother, could you state the name of your brother?

A. Ely Tabang.

Q. Now, while you were conversing at the said date, time and place was there any unusual incident that transpired?

A. None yet sir.

Q. While you were conversing with your brother, what happened Mr. Witness?

ATTY. CRUZAT:

No basis, it pre-supposes that something has happened while this witness answered none.

COURT:

Q. But a little later, did anything happen?

A. Yes sir.

Q. What transpired Mr. Witness?

A. Freddie Juan approached us at that time with my brother.

Q. You said that he approach you, do you know the reason why he approach you Mr. Witness?

A. He was suspecting that I kick his son.

Q. Now, having informed of such fact, what was your reaction or what did you do?

A. I told him I did not, I did not touch his son.

Q. What happened next after that confrontation?

A. He box me sir.

Q. When he box you, was he able to hit you?

A. No sir, I was able to run towards inside the house.

Q. How many times did he box you by the way Mr. Witness?

A. Only once sir.

Q. Now, you said that you run to your house, what did this Freddie Juan do upon seeing you run towards your house?

A. He was uttering bad words sir.

Q. What happened next after that Mr. Witness?

COURT:

Wait.

Q. How about you, you said you run to your house, do you know where your brother Ely was when you run to your house?

A. He also run away.

Q. Towards where?

A. I don't know your honor.

Proceed.

ATTY. AUSTRIA TO THE WITNESS:

Q. Earlier Mr. Witness, you stated that you were.. I withdraw my question.

Q. By the way Mr. Witness, were you able to reach your house?

A. Yes sir.

Q. While you were running, what was this Freddie Juan doing?

ATTY. CRUZAT:

Already answered, he was uttering bad words. "Nagbubuyayaw." The previous question is, when you were running, what was Freddie Juan doing and he answered Freddie Juan was nagbubuyayaw.

ATTY. AUSTRIA :

Yes your honor and this was sustained by the Court.

ATTY CRUZAT:

And I object to your honor.

COURT:

That was sustained.

ATTY. AUSTRIA :

I will ask another question.

Q. You said that you were able to get inside your house, what happened next after you were already inside you house?

A. My mother close the door of the house.

Q. Could you state the name of your mother?

A. Yes sir, Adelaida Tabang.

Q. Now, after your mother was able to close your door, what happened next Mr. Witness?

A. We went upstairs.

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Q. Then, while you were already upstairs, what transpired next?

A. Freddie and Efren were stoning our house.

Q. Do you know the relation of this Freddie to Efren?

A. Yes sir.

Q. State their relation to the Court?

A. They are brothers sir.

Q. You said that they were stoning your house, when you were already upstairs, for how long have they been throwing stones in your house?

A. More or less 5 minutes sir.

Q. While this stoning incident occurred, what were you and your mother doing?

A. She was holding me sir.

Q. What happened next after this stone throwing incident?

A. Then they left and my mother went to the city hall.

Q. Now, you said that they left and your mother went to the city hall, was there any occasion when these two brothers return to your house?

ATTY. CRUZAT:

Leading your honor.

COURT:

Reform.

Q. What happened next after these 2 brothers left your house?

A. I went downstairs in order to urinate sir.

Q. Now, when you were already downstairs in going to the comfort room to urinate, what happened next?

A. I went towards the door of the house to go to the comfort room, then I was able to see Freddie Juan running.

COURT:

Q. Which door did you open, the front door or back door?

A. The front door your honor.

ATTY. AUSTRIA :

Q By the way, how far is your comfort room to the main house?

A More or less 5 (dipa) 2 arms length (witness extending his 2 arms sideward to represent one dipa). The distance of the comfort room from our house is 5 two arms length.

ATTY. AUSTRIA :

Your honor, it is already 12:00 o’ clock noon , could we continue this tomorrow?

COURT:

This is also set tomorrow?

ATTY. AUSTRIA :

Yes your honor."[7]

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"ATTY. AUSTRIA ON DIRECT EXAMINATION OF WITNESS ELMBER TABANG:

Q. Mr. Witness, you stated during the last scheduled hearing that you saw Efren and Freddie Juan rushing towards your house at the time you went out of the house to answer the call of nature?

ATTY. CRUZAT:

That is misleading. His testimony is that, after the two left, he went downstairs to urinate and he saw Freddie running.

ATTY. AUSTRIA TO THE WITNESS:

Q. When you saw Freddie running, was he alone Mr. Witness?

A. Yes sir.

Q. Running towards what direction?

A. He was running towards the house because he saw me.

Q. You said that this Freddie Juan upon seeing you rushed towards your house, what happened next after that Mr. Witness?

A I run inside the house

Q Then were you able to get inside?

A Yes sir.

Q Then what transpired next after you were already inside the house?

A I tried to lock the door of the house but Freddie Juan kicked it.

Q You said Freddie Juan kicked it, upon kicking your door what happened to that door?

A The lock was destroyed.

Q Then when the said lock was destroyed?

A Then the two of them with Efren Juan went inside the house.

Q When they were inside the house when they were about to enter inside your house, where were you at that particular time Mr. Witness?

A On the stairs sir.

Q Were they able to see you Mr. Witness?

A No sir.

Q Now, after they were already inside your house, what happened next Mr. Witness?

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A Efren uttered, "pusila ren, pusila ren" (shoot him, shoot him).

Q To whom was he telling these words, "pusila ren, pusila ren"?

ATTY. CRUZAT:

Incompetent your honor please.

COURT:

You reform.

ATTY. AUSTRIA TO THE WITNESS:

Q. Mr. Witness, you said you hear this Efren Juan stated "pusila ren", pusila ren, how far were you Mr. Witness when you hear him utter these words?

A. More or less 2 meters away.

Q. Now, after this Efren Juan uttered these words, what transpired next Mr. Witness?

A. My uncle was by the kitchen and was about to go out when I heard these words uttered by Efren Juan.

Q. You mentioned a certain person whom you claimed to be your uncle, will you tell this Court what is the name of your uncle?

A. Yes sir.

Q. Tell the name of your uncle to the Court.

A. Carlos Torres.

Q. Then when your uncle Carlos Torres is about to go out in the kitchen and you heard Efren Juan uttered "pusila ren, pusila ren", what transpired next Mr. Witness?

A. Freddie Juan shoot him sir.

COURT TO THE WITNESS:

Freddie who, Freddie shoot Carlos Torres.

ATTY. AUSTRIA TO THE WITNESS:

Q. Now, how did you know that it was Freddie who shoot Carlos Torres?

A. I saw it sir.

COURT TO THE WITNESS:

Q. When you said Freddie, are your referring to Freddie Juan, the accused in this case?

A. Yes your honor.

ATTY. AUSTRIA TO THE WITNESS:

Q. You said Freddie Juan shoot Carlos Torres at the time he shoot Carlos Torres, how far were you from Freddie Juan?

A. More or less 2 meters away.

Q. Could you describe to the Court the gun that was used by Freddie Juan in shooting Carlos Torres?

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A. It is a short gun sir.

COURT TO THE WITNESS:

Q. How many times did he shot Carlos Torres?

A. Twice your honor.

ATTY. AUSTRIA TO THE WITNESS:

Q. Was Carlos Torres hit by the shots when he was twice shot by Freddie Juan.

A. Yes sir.

COURT TO THE WITNESS:

Q. What was the position of Freddie Juan in relation to Carlos Torres at the time he fired the shot?

A. He was standing.

Q. How about Carlos Torres, what was his position?

A. He came from the kitchen going towards the living room.

Q. So, Carlos Torres was facing Freddie Juan when he shot him, is that correct?

A. Yes sir.

ATTY. AUSTRIA TO THE WITNESS:

Q. When Carlos Torres was first hit by the first shot of Freddie Juan, what happened to him?

A. He was hit on his chest (Witness pointing to his left breast) and he fell to the floor and then another shot more (witness pointing to his right breast).

Q. When Carlos Torres already fell to the ground, what happened next Mr. Witness?

A. Before living Efren Juan still uttered "tinamaan mo ba" and the other one answered, yes, I hit him. One of them uttered. I am not certain who among them uttered those words "tinamaan mo ba."

Q. Then after you heard these statements, what transpired next Mr. Witness?

A. Then they left sir.

Q. Now, this happened at about 9:00 o'clock in the evening as you claimed, Mr. Witness, how were you able to witness the incident considering that it was night time?

A. It happened inside the house, the light in the living room was off but the light in the kitchen was on.

Q. And the stairs was located near the sala or living room?

A. Yes sir."[8]

The fact of killing committed by the accused-appellants is corroborated by the testimonies of Imelda Tabang and her cousin, Nemia Palao, who were together on the second floor of the house when the incident occurred. They testified that they heard EFREN and FREDDIE enter the house of Adelaida Tabang by kicking it open. Thereafter, they heard two gunshots fired. They also heard FREDDIE asking EFREN whether he hit Carlos Torres; EFREN answered "Patay na". They were able to identify the two accused by their voices considering that they have known them for a number of years already.[9]

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This Court has ruled on countless occasions that the trial court is in the best position to determine facts and to assess the credibility of witnesses as it is in a unique position to observe the witnesses' deportment while testifying which opportunity the appellate court is denied on appeal; this Court will respect the findings and conclusions of the trial court provided that they are supported by substantial evidence on record.[10] After an extensive examination of the records, we find no cogent reason to set aside the trial court's rejection of the witnesses for the defense.

Firstly, the RTC correctly found that the testimony of Melchor Castillo to the effect that he saw two persons (not FREDDIE nor EFREN) run out of the house of Adelaida Tabang after he heard two shots fired was not credible and we quote with approval the RTC's ratiocination on this as follows:

> "Similarly, the testimony of Fire Sergeant Melchor Castillo of the Integrated Naitonal Police of Palawan and neighbor of the accused must be taken with extreme caution. If we are to believe his testimony as truly reflective of the incident that transpired, there was no cogent reason advanced for his failure to report the incident to the police authorities immediately thereafter notwithstanding the fact he considered himself a peace officer and knew for a fact that his immediate neighbors Efren and Freddie Juan were arrested and charged immediately for the killing of Carlos Torres when all the while according to him 2 shots were fired at a time when both accused were far from the scene of the crime and well within his seeing distance. His execution of an affidavit describing his version without undergoing police investigation for more than 2 months after the occurrence of the incident must therefore be taken with complete distrust and could not be accorded any credit."[11]

Secondly, the testimonies of FREDDIE and EFREN basically posit the defense of alibi and denial. In support of their claim, they cite the testimony of Gil Manalavi (MANLAVI), a member of the Integrated National Police of Puerto Princesa City, which according to them corroborates their defense.

We are not persuaded.

The defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[12] A positive identification of the accused made by an eyewitness prevails over such a defense.[13] In the present case, accused-appellants were positively identified by TABANG, Nemia Palao and Imelda Tabang as the perpetrators of the killing. The presence of accused-appellants in the immediate vicinity of the crime scene was also established by the testimony of Marvic Pantollano who saw the two accused coming from the house of Adelaida "grappling for something", after the two gunshots were fired.[14]

Moreover, for alibi to prosper as a defense, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime.[15] We are not convinced that the accused-appellants proved this with their assertion that they were at the hospital getting treatment for the head wound received by EFREN due to the clubbing incident when the crime occurred. Accused-appellants themselves placed themselves at the scene of the crime at the time the shooting occurred. EFREN testified that Carlos Torres clubbed him at more or less ten o'clock in the evening.[16] FREDDIE testified that the person who clubbed EFREN came from the house of Adelaida Tabang, the place where Carlos Torres was shot.[17] Contrary to the allegation of the accused-appellants, the testimony of MANLAVI proves that the accused-appellants were not at the hospital when the shooting occurred. A reading of the transcript of the testimony of MANLAVI shows no categorical statement to the effect that EFREN and FREDDIE were at the hospital at the precise time of the shooting; he only stated that he received the radio message to investigate the shooting at the time he brought them there. In fact, he stated that he saw EFREN and FREDDIE at the place where they were clubbed at around ten o'clock. His testimony reads:

> "Q: Please point to the person whom you found to have been inflicted from a hacking wound?

A: (witness pointing to a person in the accused corner, the person pointed to stood up and gave his name Efren Juan.)

Q: And so aside from Efren Juan whom you saw on that place having a hacked wound you saw other people there?

A: Yes sir.

Q: You saw Freddie Juan helped his brother?

A: Yes sir.

Q: What time was that?

A: More or less 10:00 o'clock in the evening."[18]

It was therefore not physically impossible for the accused-appellants to be at the scene of the shooting since they were in fact outside of the house of Adelaida Tabang at that particular time.

Accused-appellants' defense of denial likewise fails in the light of the positive identification and declarations of the prosecution witnesses that they participated in the commission of the crime. Like the defense of alibi, a denial is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that the accused-appellants were at the scene of the incident and was one of the victim's assailants and perpetrators of the crime.[19]

In a further attempt to exculpate themselves, accused-appellants cite the testimony of NBI Senior Forensic Chemist Elvira Avina Del Rosario to the effect that the negative finding for nitrate on both hands of the accused FREDDIE establishes conclusively that he did not fire a gun on the evening of September 6, 1988. According to them, this contradicts the testimony of the lone eyewitness TABANG who testified that it was FREDDIE who shot Carlos Torres.

We are not persuaded. A conspiracy was established between the accused-appellants, FREDDIE and EFREN. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[20] It need not be proved by direct evidence but may be inferred from the acts of the accused[21]; it may be deduced from the mode and manner in which the offense was perpetrated when such point to a joint purpose and design, concerted action and community of interest.[22] Evidence shows that both accused-appellants acted in concert, one performing one part and the other performing another part so as to execute the crime of murder. They both stoned the house of Adelaida Tabang early that evening; they both chased TABANG into said house when he answered the call of nature and in the course of the pursuit, kicked the door of the house of Adelaida Tabang open in order to enter the said house. These facts taken in the context of the conversation of accused-appellants after the gunshots were fired i.e. "Shoot him now, shoot him now"; "Tinamaan mo ba?"; "Oo, patay na" show the existence of an intentional participation in a simultaneous chain of events, which led to the shooting of Carlos Torres. Considering that the evidence convincingly establishes that either of the two accused-appellants shot Carlos Torres, it is irrelevant as to who between them delivered the fatal shot.[23] In a conspiracy, the act of one is the act of all.[24]

We come now to the imposition of the proper penalty.

In convicting the accused-appellants, the RTC appreciated treachery as a qualifying circumstance in view of the fact that the attack on Carlos Torres was sudden and unexpected.

We disagree.

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While there is treachery where the attack on the unarmed victim was sudden and unexpected,[25] suddenness of an attack does not of itself prove the existence of treachery. There must also be proof that the accused consciously adopted the mode of attack to facilitate the perpetration of the killing without risk to himself.[26]

In the present case, although the shooting of Carlos Torres was sudden and unexpected, it was clearly part and parcel of the chase of TABANG. The aggression was continuous and cannot be broken up to constitute a separate, distinct and independent attack. It was the aftermath of the confrontation between TABANG and FREDDIE which begun earlier that evening at nine o'clock when FREDDIE accused TABANG of kicking his son and confronted him about this. This was followed by FREDDIE's attempt to box TABANG who was able to avoid getting hit. The boxing incident was followed by the stoning incident where FREDDIE and EFREN stoned the house of TABANG. There was no break in the continuity of the aggression since only five minutes elapsed from the time the stoning had ceased and from the time TABANG went outside to urinate.[27] The settled rule is that in order to appreciate treachery in cases of continuous aggression, the same must be shown present at the inception of the attack.[28] Considering that the boxing and stoning incidents preceded the aggression against TABANG, the attack on TABANG cannot be characterized as treacherous inasmuch as the chase was preceded by an altercation.[29] He was sufficiently forewarned of the reprisal that the accused-appellants might make when he left the house to answer the call of nature and was therefore necessarily aware or at least had an inkling that he was in some sort of danger. Although the victim, Carlos Torres, was not aware of these prior circumstances, the fact that he was suddenly shot does not make the shooting treacherous considering that the intended victim of the attack was TABANG and his appearance was accidental. We are inclined to rule out the existence of treachery since the manner of attacking the victim cannot be characterized as deliberately and consciously adopted inasmuch as the accused-appellants had no intention at all of killing Carlos Torres.

The RTC also appreciated the aggravating circumstance of dwelling.[30] Since the accused-appellants purposely entered the victim's house in order to commit the crime, we find no reversible error in the RTC's finding. Dwelling is aggravating when the crime is committed in the dwelling of the offended party and the latter did not provoke either of the accused-appellants.[31]

Since treachery cannot be appreciated to qualify the crime into murder, the accused-appellants can only be convicted of the crime of homicide.[32] Article 249 of the Revised Penal Code provides that the penalty for homicide is reclusion temporal. Since there is one aggravating circumstance in the present case, the penalty that should be imposed on the accused-appellants is reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, the minimum imposable penalty is any period within the range of the penalty next lower to that prescribed by the Code for the offense which is prision mayor.[33]

We affirm the award of P50,000.00 as death indemnity to the heirs of Carlos Torres as this is in accord with prevailing jurisprudence[34] but increase the award of moral damages to P50,000.00 on account of the mental suffering on the part of Carlos Torres' heirs.[35] We however cannot sustain the award of P8,450.00 as actual damages in favor of the heirs of Carlos Torres. The Court can only grant such amount for expenses if receipts support them.[36] We can thus only grant P1,650.00 as actual damages as only this amount is substantiated by receipts.

WHEREFORE, the appealed decision of the Regional Trial Court is hereby MODIFIED. The accused-appellants, ELMER JUAN and FREDDIE JUAN, are found GUILTY OF HOMICIDE and are sentenced to ten (10) years and one (1) day of PRISION MAYOR as minimum to seventeen (17) years, four (4) months and one (1) day of RECLUSION TEMPORAL as maximum. Accused-appellants are further ordered to pay the heirs of the victim P50,000.00 as death indemnity, P50,000.00 as moral damages and P1,650.00 as actual damages.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Penned by Judge Angel R. Miclat.

[2] Record, p. 2.

[3] Record, pp. 116.

[4] Decision, p. 10; Rollo, p. 87.

[5] Appellant's Brief, pp. 7– 31; Rollo, pp. 53–77.

[6] Rollo, pp. 50-52.

[7] TSN dated November 21, 1988, pp. 3-8.

[8] TSN dated November 22, 1988, pp. 2-6.

[9] TSN dated January 4, 1989, pp. 7-10; TSN dated November 14, 1988, pp. 4-11.

[10] People vs. Mahinay, 302 SCRA 455 at pp. 483-484 (1999); People vs. Banela, 301 SCRA 84 at pp. 90-91 (1999)

[11] Decision, p. 8.

[12] People vs. Realin, 301 SCRA 495 at p. 512 (1999)

[13] People vs. Nialda, 289 SCRA 521 at p. 532 (1998); People vs. Realin, Supra.

[14] TSN dated January 11, 1989 at p. 2.

[15] People vs. Villanueva, 302 SCRA 380 at pp. 394-395 (1999); People vs. Realin, Supra.

[16] TSN dated August 24, 1989 at p. 16.

[17] TSN dated November 15, 1989 at pp. 11-12.

[18] TSN dated December 14, 1988 at p. 16.

[19] People vs. Baniel, 275 SCRA 472 at pp. 483-484 (1997)

[20] Article 8, par. 2, The Revised Penal Code.

[21] People vs. Baccay, 284 SCRA 296 at p. 305 (1998)

[22] People vs. Cara, 283 SCRA 96 at pp. 105-106 (1997)

[23] People vs. Abdul, G.R. No. 128074, July 13, 1999 at p. 22.

[24] People vs. Enriquez, 281 SCRA 103 at p. 121 (1997)

[25] People vs. Andres, 296 SCRA 318 at p. 340 (1998)

[26] People vs. Quitlong, 292 SCRA 360 at p. 382 (1998)

[27] TSN dated December 12, 1988 at p. 9.

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[28] People vs. Iligan, G. R. No. 128286, July 20, 1999 at p. 33.

[29] People vs. Gupo, 190 SCRA 7 at p. 19 (1990)

[30] Article 14, par. 3 (2); REVISED PENAL CODE: .."That the act be committed xxx (2) that it be committed in the dwelling of the offended party, if the latter has not given sufficient provocation."

[31] People vs. Molina, G.R. No. 129061, July 28, 1999 at p. 8.

[32] Article 249, Revised Penal Code; People vs. Tavas, G. R. No. 123969, February 11, 1999 at p. 13.

[33] People vs. Platilla, G. R. No. 126123, March 9, 1999 at p.20; § 1, Indeterminate Sentence Law.

[34] People vs. Verde, 302 SCRA 690 at p. 706 (1999)

[35] TSN dated December 13, 1988 at p. 11.

[36] People vs. Gutierrez, Jr., 302 SCRA 643 at p. 666 (1999)

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