

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONE

G.R. Nos. 108183-85. August 21, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Consistent with our oft-repeated pronouncement in criminal cases, minor inconsistencies in the testimonies of prosecution witnesses serve to strengthen, rather than weaken, their narration. We also reiterate the time-settled doctrine that the credibility of witnesses and their testimonies is best assessed by trial courts, absent any clear showing of bias, mistake or misappreciation of any matter of substance, the correction of which may change the disposition of the case. We take this occasion to remind (a) prosecutors to carefully formulate informations in order to comply with the Rules of Court and (b) judges to precisely state the legal terminology of the penalties they impose.

Statement of the Case

Brought for resolution before this Court are the separate appeals of Benjamin Cabanog,[2] Dione Palomar,[3] Nabor Ceriales, Patricio Ceriales, Hermie Ceriales and Jose Ceriales[4] from the trial court's Decision[5] dated May 22, 1992 but promulgated on July 29, 1992, finding all of them guilty of multiple murder, attempted homicide and frustrated murder.

In Criminal Case No. 6753, appellants, together with Romeo Cadeliña and Dominador Balasabas alias "Bulay-og," were charged by 2nd Assistant Provincial Fiscal Augusto R. Colina with multiple murder in an Information dated June 21, 1985 which reads as follows:[6]

"That on or about April 30, 1985 at sitio Manok [sometimes Mamok], Barangay Candabong, Manjuyod, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and acting in common accord, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully, and feloniously assault, attack, stone, shoot, hack and stab Pedro dela Peña, Gaudencio Cadiente, Jesper[7] dela Peña and Fernando dela Peña, with the use of stones, air rifle, bolos and spears, with which the accused were then armed and provided, thereby inflicting upon the victims mortal stab and hack wounds in the different parts of the body, and which wounds caused the death of said Pedro dela Peña, Gaudencio Cadiente, Jesper dela Peña and Fernando dela Peña, respectively, shortly, thereafter."

In Criminal Case No. 6764, the Information dated June 24, 1985 signed by 3rd Assistant Provincial Fiscal Marvin B. Besario charged the same accused with frustrated murder allegedly committed as follows:[8]

"That on or about the 30th day of April, 1985, at sitio Mamok, Barangay Candabong, Manjuyod, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other and acting in concert, with intent to kill, evident premeditation and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and hack Susan Cadiente with the use of long bolos (pinuti) with which said accused were then armed and provided, thereby inflicting upon the body of Susan Cadiente the following injuries, to wit:

1. Hacking wounds multiple curvilinear parieto occipital left, 20 cm. long, 5 cm. deep, with chip fracture outer table of skull:

- a.) 16 cm. long, suprascapular right
- b) 20 cm. upper arm middle 3rd left
- c) middle 3rd forearm left with fracture of ulna, 20 cm. circular.

thus performing all the acts of execution which would have produced the crime of Murder as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of said accused and the timely medical assistance given to said victim.”

Lastly, in Criminal Case No. 6756, the same persons, with the exception of Dominador Balasabas, were charged by 2nd Assistant Provincial Fiscal Cristino V. Pinili in an Information dated June 25, 1985 with attempted homicide allegedly committed as follows:[9]

“That on or about the 30th day of April, 1985, at Mamok, Candabong, Manjuyod, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and cofederating (sic) together and helping one another, with intent to kill, did then and there wilfully, unlawfully and feloniously, with the use of bolos and an airgun, hack and shot one Aniano dela Peña thereby inflicting the following wounds on him, to wit:

Amputating injury:

- 1. Metacarpophalangeal joint middle finger left
- 2. terminal phalanx, index finger, left
- 3. incise wound, 4 cm. left
- 4. incise wound, 5 cm. dorsum hand, left

thus the accused has (sic) commenced directly by overt acts the commission of the crime of Homicide but did not produce it by reason of causes other than the accused spontaneous desistance, that is the victim timely parried with his hands the bolo blows delivered by (the) accused.

Contrary to Article 249 in relation to Articles 6 and 51 of the Revised Penal Code.”

The trial court consolidated the hearing of the three (3) criminal cases “[s]ince the said criminal cases (arose from) on the same incidents and the evidence to be presented in each case are likewise the same.”[10]. At their arraignment, appellants and their co-accused Cadelina, all assisted by counsel, pleaded “not guilty” to the charges against them.[11] A separate trial was ordered[12] with respect to Dominador Balasabas, who was at large.

After trial in due course, the court a quo rendered the now assailed Decision, the dispositive portion of which reads:[13]

“WHEREFORE, in view of the foregoing considerations, the Court is convinced beyond reasonable doubt, on the basis of the testimonies of Aniano dela Peña and Susan dela Peña, eyewitnesses for the prosecution, that the accused actually committed the crimes charged. Their testimonies are sufficient to support conviction of all the accused.

Thus, judgment is hereby rendered in the above-captioned cases, as follows:

(1) Criminal Case No. 6753, finding the accused Benjamin Cabañog alias ‘Dongkoy,’ Dione Palomar, Hermie Ceriales, Jose Ceriales, Patricio Ceriales alias ‘Ising,’ Nabor Ceriales and Romeo Cadelina, GUILTY beyond

reasonable doubt of the crime of Multiple Murder and sentencing all of the above-named accused to serve the penalty of Reclusion Perpetua with its corresponding accessory penalties provided for by law and to indemnify solidarily the heirs of each of the deceased victims the sum of P50,000.00;

(2) Criminal Case No. 6756, finding the accused Benjamin Cabañog, Dione Palomar, Hermie Cerialles, Jose Cerialles, Patricio Cerialles, Nabor Cerialles, and Romeo Cadelina GUILTY beyond reasonable doubt of the crime of Attempted Homicide and sentencing all of the above-named accused to serve the penalty of six (6) months one (1) day to two (2) years four (4) months after applying the Indeterminate Sentence Law; and

(3) Criminal Case No. 6764, finding the accused Benjamin Cabañog alias 'Dongkoy,' Dione Palomar, Hermie Cerialles, Jose Cerialles, Patricio Cerialles alias 'Ising,' Nabor Cerialles and Romeo Cadelina, GUILTY beyond reasonable doubt of the crime of Frustrated Murder and sentencing all of the above named accused to serve the penalty of six (6) years one (1) day to twelve (12) years after applying the Indeterminate Sentence Law.

The accused shall be credited with the full time during which they have undergone preventive imprisonment subject to the condition imposed by Article 29 of the Revised Penal Code.”

Among the convicted, only Romeo Cadelina did not appeal. Thus, the above judgment became final and executory in regard to him.[14]

While appellants' respective appeals were pending, this Court [First Division] issued a Resolution dated June 28, 1993 which “NOTE[D] and GRANT[ED] the manifestation for withdrawal and/or abandonment of appeal filed by Atty. Antonio Ramos-Uypitching, Sr., counsel for Appellant Benjamin Cabañog, with the written conformity of the latter x x x.”[15]

Subsequently, this Court [First Division] also granted the motion to withdraw the appeal of Nabor Cerialles and Patricio Cerialles.[16]

Thus, only the appeals of Dione Palomar, Hermie Cerialles and Jose Cerialles will now be resolved by the Court. The Brief for Dione Palomar was mailed by his counsel de parte, Saletto J. Eramas, on July 7, 1993; while that of Hermie and Jose Cerialles was filed by the Public Attorney's Office on July 30, 1993.

The Facts Evidence for the Prosecution

The facts as viewed by the prosecution are synthesized in the Appellee's Brief filed by the Solicitor General on October 17, 1994, as follows:[17]

“On April 30, 1985, at about 2:00 o' clock in the afternoon, Pedro dela Peña, together with his sons Aniano, Jasper and Fernando, the latter two aged 13 and 10 years old, respectively, and married daughter Susan, as well as the latter's husband Gaudencio 'Bobong' Cadiente, were at Pedro's farm at Sitio Mamok, Bo. Candabong, Manjuyod, Negros Oriental (TSN, October 15, 1985, TSN, November 19, 1985; pp. 15-16). They were gathering vegetables as well as pulling nails from their house for re-use in another house they were building in Cabcaban (TSN, November 19, 1985, pp. 16-17). Afterwards, they proceeded on foot towards their house at Talukanon, Cabcaban, Bindoy, Negros Oriental (TSN, October 15, 1985, pp. 10-12). While on their way home, Pedro's group was waylaid by the group of Benjamin Cabañog alias 'Dungkoy' who suddenly appeared and announced 'Pedro dela Peña, we are ready to kill you' (TSN, November 19, 1985, pp. 17-19). Cabañog was accompanied by appellants Diony Palomar, Hermie Cerialles and Jose Cerialles, as well as Dominador Balasabas, Romeo 'Romy' Cadelina and Patricio alias 'Ising' Cerialles and Nabor Cerialles (TSN, November 19, 1985, p. 8-12). Afterwards, stones rained on Pedro and his companions (TSN, November 19, 1985, p. 8). Subsequently, Susan saw her father's forehead hit by a stone about 3 to 4 inches in diameter thrown by appellant Hermie Cerialles which caused her father to fall face down on the ground (TSN, November 19, 1985, pp. 9-10; TSN, December 4, 1986, pp. 4-6). Thereupon, Benjamin Cabañog jumped on him and hacked

Pedro's neck with a 'pinuti' (bolo) (TSN, October 15, 1985, pp. 14-15). Aniano later tried to move his father to assure himself if he was still alive (TSN, January 23, 1986, pp. 9-11). However, Patricio Ceriales alias 'Ising' shot Aniano with an air rifle hitting him on his right thigh (TSN, January 23, 1986, pp. 8-10; TSN, October 15, 1985, pp. 15-16). Appellant Diony Palomar subsequently hacked him on the left arm with a long bolo 'pinuti' which caused him to lose his middle finger and have a disfigured hand (TSN, October 15, 1985, pp. 15-16). Aniano managed to hit appellant Diony Palomar with a dull working bolo used for weeding (TSN, March 6, 1986, pp. 9-10). Subsequently, Romeo Cadelina hacked him on his left forearm with a 'pinuti' (TSN, October 15, 1985, p. 16). Aniano then ran away towards the bush of tall cogon grass to hide from his attackers while he recovered from the pain caused by his wounds (TSN, October 15, 1985, pp. 13-14). When he left the bush, Aniano saw appellants Jose and Hermie Ceriales pursuing him so he ran towards the house of Nardo, a barangay tanod (TSN, *ibid.*, pp. 15-17). Eventually, Aniano escaped from his pursuers (TSN, January 23, 1986, pp. 11-18).

Meanwhile, Susan who was left near the place where her father collapsed, ran towards him and covered him with her own body for fear that Caba[ñ]og would further hack him (TSN, November 19, 1985, pp. 14-15). Forthwith, Caba[ñ]og hacked Susan on her left arm (TSN, November 19, 1985, pp. 15-16). Fearing for her life, she ran down the hill towards her two (2) younger brothers Jasper and Fernando (TSN, November 19, 1985, pp. 36-37; TSN, February 5, 1987, pp. 5-6). Her husband Gaudencio was unable to help her since he was also being stoned by appellants Hermie and Jose Ceriales and by the brothers Nabor and Patricio Ceriales. Her husband then tried to run towards the woods away from his attackers as they were armed but Benjamin Caba[ñ]og followed him there (TSN, November 19, 1985, pp. 23-26). Appellants Hermie and Jose Ceriales and their brothers Nabor and Patricio were then carrying stones (TSN, November 19, 1985, *ibid.*) Patricio Ceriales was also armed with an air gun while appellants Jose Ceriales and Diony Palomar carried long bolos (TSN, November 19, 1985, pp. 25-26). Caba[ñ]og aside from a long bolo, also carried a spear (*ibid.*).

Subsequently, Susan saw that appellant Diony Palomar had given up chasing her brother Aniano and that he was moving towards her and her younger brothers Jasper and Fernando (TSN, November 19, 1985, pp. 18-19). Thereafter, appellant Diony Palomar hacked Jasper on his back with a long bolo causing his death (TSN, *ibid.*, p. 19). Consequently, she and Fernando continued running towards the creek and tried to hide themselves there (TSN, November 19, 1985, pp. 19-21; TSN, September 2, 1986, pp. 22-23). However, appellant Diony Palomar saw them and told them to come back (TSN, September 2, 1985, pp. 22-23). Susan and Fernando later came out of hiding (*ibid.*). Fernando then walked ahead of her towards the spot where their father died. Appellant Fernando then asked Diony Palomar, 'Uncle Diony, why are you doing this to us, we have not done anything wrong to you' but appellant Diony Palomar did not answer and hacked Fernando with a long bolo almost severing Fernando's head from his body (TSN, November 19, 1985, pp. 19-20; Exhibits 'A' and 'B').

Romeo Cadelina also hacked Susan on the head and at her back while Patricio Ceriales shot her with an air rifle but he missed (TSN, November 19, 1985, pp. 27-28; TSN, February 5, 1987, pp. 6-11). Subsequently, Susan who was lying on the ground on her left side, saw the other companions of appellant Diony Palomar come back and hack the dead bodies of her younger brothers (TSN, September 2, 1986, pp. 25-29; TSN, November 19, 1985, p. 22). She also saw Caba[ñ]og extract with his bolo the adam's apple of her father and thereafter divided it into eight pieces and distributed the same to his seven (7) companions (TSN, February 5, 1987; pp. 9-11). Subsequently, Caba[ñ]og touched her on her right shoulder saying 'We know that a woman is weak so how could we expect a woman to last long.' Afterwards, Caba[ñ]og and his seven (7) companions left the place (TSN, *ibid.*, pp. 10-11). Several minutes later, Susan left the site.

Meanwhile Susan's older brother Aniano managed to reach the house of Nardo, a barangay Tanod (TSN, January 23, 1986, pp. 15-16). Later, he went to Manjuyod to report to the police that his family was ambushed (TSN, October 15, 1985, pp. 16-20). Subsequently, Aniano was hospitalized at the Bais District Hospital in Bais City where he was attended to by the resident physician Dr. Maria Corazon Roxas for the following injuries: metacarpophalangeal joint middle finger, left; ring finger of the left; incise wound, 4 cm. forearm, left;

incise wound, 5 cm. dorsum hand, left and gunshot wound on the right lateral thigh 2 mm. (TSN, May 26, 1987, pp. 9-23; Exhs. 'A' and 'C'; TSN, August 17, 1987, pp. 3-17).

At about one o'clock at dawn of May 1, 1985, the police went to the scene of the ambush (TSN, October 15, 1985; pp. 18-19). Thereafter, Dr. Romeo Kadili, Municipal Health Officer of Manjuyod, who was summoned by the chief of police, examined the bodies of Pedro dela Peña, Gaudencio Cadiente, Jasper dela Peña and Fernando dela Peña at the sitio of Barangay Candabong. Thereafter, he issued their respective Medical Certificates (TSN, September 30, 1987, pp. 16-27; Exhs. 'D', 'D-1', 'E', 'E-1' to 'E-3', 'F' and 'G').

At about 1:25 in the afternoon of May 1, 1985, Susan dela Peña was brought to the Negros Oriental Provincial Hospital for treatment and confinement (TSN, June 13, 1988, pp. 3-5). She was attended to by Dr. Henry Calledo, then resident physician of the hospital's Department of Surgery (ibid.). His findings revealed that Susan sustained the following wounds: 'hacking wounds multiple curvilinear parieto occipital left, 20 cm. long, 5 cm. deep, with chip fracture outer table of skull; (a) 16 cm. long suprascapular right; (b) 20 cm. upper arm middle 3rd left and (c) middle 3rd forearm left with fracture of ulna, 20 cm. circular' (TSN, June 13, 1988, pp. 5-7).

During the trial, Dr. Rogelio Kadili, Municipal Health Officer of Manjuyod, Negros Oriental identified the death certificates he issued after examining the bodies of Pedro dela Peña, Gaudencio Cadiente, Fernando and Jasper dela Peña (TSN, September 30, 1987, pp. 19-27; Exhibits 'D' to 'D-4', 'E', 'E-1', 'F' and 'G').

The death certificate of Pedro dela Peña showed that the cause of his death was 'Hemorrhagic shock due to the stab wound and hack wound' and the date thereof was April 30, 1985 (Exhs. 'D' to 'D-4'). Cadiente's Medical Certificate showed that his death was due to 'Hemorrhagic shock due to stab and hack wound' and the date of death is April 30, 1985 (Exhs. 'F', 'F-1' to 'F-4'). The death certificate of Fernando dela Peña stated that the cause of death was 'hemorrhagic shock due to stab wound and hack wound' and the date of death is April 30, 1985 (Exhibits 'F', 'F-1' to 'F-4'). The death certificate of Jasper dela Peña similarly stated that his death was due to 'hemorrhagic shock due to stab and hack wound' and the date of his death is April 30, 1985 (Exhibits 'G', 'G-1' to 'G-4').

Dr. Kadili also identified the Medical Certificates of Pedro dela Peña, Gaudencio Cadiente, Fernando and Jasper dela Peña (Exhibits 'H', 'I', 'J', 'K'; TSN, March 17, 1988, pp. 2-22). Dr. Kadili testified that Pedro dela Peña's wounds included the following: (1) injury at the interior part of the neck involving all the muscle layers, major blood vessels and cervical bones located at the neck which is a fatal wound; (2) wound at the posterior part of the head involving the scalp bones and outer part of the brain tissue which is also fatal; (3) wound at the medial part of the anterior left arm (sic) involving the muscle layer and outer part of the bones of the lower left arm which is not fatal; and (4) an incise wound at the medial part of the posterior right arm involving the muscle layer and outer part of the bone which is not also fatal (TSN, March 17, 1988, pp. 6-7). Dr. Kadili testified that it is possible that the wounds were inflicted with the use of a bolo, a sharp instrument and it is also possible that several persons inflicted the injuries (TSN, ibid., pp. 7-8).

With respect to the medical certificate of Gaudencio Cadiente (Exh. 'I'), Dr. Kadili testified that his wounds involve 3 incise wounds and 1 punctured wound, to wit: incise wound located at the left side of the neck involving the major blood vessels which is fatal; wound at the left side of the face involving the left cheek or zygomatic bones which is fatal as it involved the bones; incise wound located at the posterior part of the head involving the scalp layer and brain tissue, which is also a fatal wound; and a punctured wound located at the lumbar area involving the abdominal cavity (waist) which is also fatal (TSN, ibid., pp. 8-9). He declared that it is possible that the lacerated wounds were inflicted with a bolo, a sharp-bladed instrument (ibid., p. 10). He also testified that the punctured wound at the patient's back was caused by a hard wood with a pointed end which could serve as a spear and that he saw said wood still stuck at the back of Cadiente (TSN, March 17, 1988, p. 11).

Anent the medical certificate of Fernando dela Peña, Dr. Kadili testified that per the certificate, Fernando

sustained three (3) incise wounds which included the following: (1) incise wound located at the posterior part of the head involving the scalp layer, which is not fatal; (2) an incise wound located at the posterior part of the neck involving the cervical bones (nape) which is fatal; (3) an incise wound located the (sic) (3) incise wound located at the scapular area involving the scapular bone which is also fatal; and (4) a punctured wound at the right upper buttocks which is not fatal (TSN, March 17, 1988, pp. 12-13). He also stated that Fernando sustained an amputated wound located at the posterior part of the left wrist (ibid.). Dr. Kadili testified that it is possible that the wounds no. 1 and 2 on Fernando's body were inflicted with a sharp-bladed instrument like a bolo while the wound no. 3 was probably inflicted with a sharp-pointed instrument like a spear (TSN, ibid., p. 14). Dr. Kadili also declared that it is possible that the spear stuck to the body of Gaudencio was the same spear used in inflicting Fernando's punctured wound.

With respect to the wounds of Susan dela Peña, Dr. Calledo testified during the trial that her wounds described as a 'hacking wound multiple curvilinear parieto occipital left, 20 cm. long, 5 cm. deep, with chip fracture outer table of skull' could be fatal when there is no medical intervention due to blood loss or infection, while her hacking wound, 16 cm. long suprascapular right (located at the back of the head), can also be fatal because it can cause hemorrhage and infection (TSN, June 13, 1988, pp. 5-6). Dr. Calledo further testified that her wound at 20 cm. upper arm middle 3rd left (middle portion of the left upper arm, 20 cm. long) is also a hacking wound which was inflicted by a hard blow of a sharp-edged instrument possibly a bolo (TSN, June 13, 1988; Exhs. 'I' to 'I-2')."

Evidence for the Defense

Appellants Jose and Hermie Cerialles presented their version as follows:[18]

"In mid-afternoon of April 30, 1985, Pedro dela Peña and his family consisting of his sons Aniano, Jesper and Fernando, daughter Susan and the latter's husband, Gaudencio Cadiente were on their way home to Talukabon, Cabcaban, Bindoy, Negros Oriental from Sitio Mamok, Candabong, Manjuyod, Negros Oriental when they were waylaid by a group of persons. The ambush resulted in the killing of Pedro dela Peña, his sons Jesper and Fernando and his son-in-law Gaudencio Cadiente. Wounded, Aniano dela Peña and his sister, Susan, lived to tell their story of the gory incident. Brother and sister testified in court and pointed to appellants Jose Cerialles and Hermie Cerialles as two of the perpetrators of their horrible experience and the brutal slaying of their kinsfolk.

At about 7:00 o' clock in the evening of April 30, 1985, Susan dela Peña, alone and blodied (sic), arrived at the house of her uncle, Francisco Cadayona. She told her uncle that they were waylaid at Sitio Mamok, Candabong earlier that afternoon and their ambushers, among whom was a woman, were responsible for her injuries and the killing of her father, husband and two brothers. She, however, did not recognize their assailants. Cadayona, then, bade his niece to spend the night in his house and rest.

In the morning of the following day, May 1, 1985, Cadayona, after having caused Susan to be conducted to the provincial hospital of Negros Oriental, then proceeded with fifteen others to Mamok, the scene of the ambush slaying as pointed out by Susan. (TSN, June 15, 1989, pp. 4-6).

Mamok is really not a sitio. It is a river. It was along a footpath leading to this river that the massacre took place. The footpath is bordered on both sides with plenty of huge trees[,] the trunks of which reach to 50 cm. in diameter and grasses six feet tall. The broad leaves of these trees overlap and form a thick foliage that effectively screens off the sunlight, so that, the degree of illumination on the ground at anytime of the day is reduced to 's[a]linga-ob', that degree of illumination after twilight. Under such degree of illumination, a person can hardly be recognized beyond one meter (Ibid., pp. 7 and 13-14; TSN, September 28, 1989, p. 11; TSN, October 9, 1986, pp. 3-7). It was in this place that Cadayona and his companions found the dead bodies of Pedro dela Peña, Jesper dela Peña, Fernando dela Peña and Gaudencio Cadiente.

While Cadayona was busy attending to Susan and her family, his stepsons, the brothers Jose Cerialles and

Hermie Cerialles, were in his farm at Sitio Lumantao, Candabong, Manjuyod, some four kilometers from his house at Sitio Palay. The brothers arrived at the farm on April 29, 1985 in obedience to Cadayona's summons for help to work on the said farm. On April 30, 1985, Cadayona stayed with the brothers working on the farm the whole day. He took his lunch with them together with his wife on that date. They stopped working after 4:00 o'clock in the afternoon of said date. He then went home to Sitio Palay leaving the two brothers in the farm where the latter could sleep in a hut erected thereat for the purpose. The brothers stayed in the farm until May 2, 1985 when work therein was completed. (TSN, June 15, 1989, pp. 5 and 7-8; TSN, September 26, 1989, pp. 8-10). It was on this last date that Jose and Hermie Cerialles knew about the Mamok incident for the first time when Cadayona came back to the farm and told the brothers about Susan's horrible experience.

To their utter surprise, Jose and Hermie Cerialles were arrested by the police on May 8, 1985. The police did not tell them the reason for their arrest. It was only during the preliminary investigation conducted by the Municipal Trial Court of Manjuyod that they knew they were being indicted for the killing of Pedro dela Peña, Jesper dela Peña, Fernando dela Peña and Gaudencio Cadiente and the wounding of Susan dela Peña and Aniano dela Peña.

The brothers were placed inside the Manjuyod municipal jail where they met the other accused. Except for the brothers Nabor and Patricio Cerialles who were their first cousins, appellants met their other co-accused for the first time in jail, as they were hauled in one after the other.

Of the victims, appellants knew only Aniano dela Peña, Susan dela Peña and Pedro dela Peña. The first two are his first cousins while the other one is the latter's father and the husband of their mother's sister. Aniano and Susan were still quite small when appellants last saw them prior to their meeting during the preliminary investigation of the instant cases on May 25, 1985.

During the aforesaid preliminary investigation, appellants asked Susan why they were being indicted for the crimes charged in the instant cases and Susan told them not to be bothered as she was only advised by Manjuyod policeman investigator Felipe Somoza to implicate them and that she had been promise[d] by Somoza that they (appellants) would be released as soon as the same would be forwarded to Dumaguete City.

The promise, of course, was a police ploy as appellants stayed on in jail until they were convicted. (TSN, September 28, 1989, pp. 3-14; TSN, September 14, 1990, pp. 8-15)

In his Brief, Appellant Diony Palomar presented the following version of the facts:[19]

"For his defense, accused-appellant Diony Palomar testified that on April 30, 1985, the day the incident happened in Mamok, he was working in Kabugan, Bindoy, Negros Oriental, at the fishpond of Municipal Councilor Bernabe Carriaga, which is about fifteen (15) mountainous kilometers away from the said place of incident. In fact, he started working at the said fishpond on April 15, 1985 and continued to so work everyday thereafter without interruption up to and beyond the date of the incident. His testimony on this point was confirmed and corroborated by fishpond owner Bernabe Carriaga, a Municipal Councilor of Bindoy, and Sergio de la Peña, a co-laborer of Diony Palomar at the fishpond. Incidentally, the said Sergio dela Peña was the godfather of deceased-victim Pedro dela Peña and had every reason to be biased for said deceased and his family. Likewise, Sergio de la Peña testified that Aniano de la Peña told him that he was hacked during the incident but he could not identify the culprits.

Accused-appellant Diony Palomar further testified that he met his co-accused only at the Municipal Jail of Manjuyod." (Emphasis in the original)

The Issues

Appellant Dione Palomar raises a "lone assignment of error"[20]

"The lower Court erred in convicting accused-appellant Diony Palomar considering that his guilt has not been

established by a sufficient amount of evidence.”

On the other hand, Appellants Jose Cerales and Hermie Cerales, in their own brief, allege the following errors:[21]

“I

The trial court erred in giving undue weight to the improbable[,] inconsistent and contradicatory (sic) testimonies of Prosecutoin (sic) Witnesses Aniano dela Peña and Susan dela Peña Cadiente.

II

The trial court erred in not giving exculpatory weight to Accused-Appellants Jose Cerales and Hermie Cerales’ defense of alibi.

III

The trial court erred in not acquitting Accused-Appellants Jose Cerales and Hermie Cerales on the ground that their guilt was not proved beyond reasonable doubt.”

The separately assigned errors boil down to the issue of whether the trial court correctly convicted appellants on the basis of the allegedly inconsistent, improbable and contradictory testimonies of Prosecution Witnesses Aniano dela Peña and Susan dela Peña Cadiente. Appellants argue, by reason of such inconsistencies, Aniano’s and Susan’s testimonies should be rejected and that their defense of alibi should be accorded credence. Consistent with the foregoing, the Court will discuss separately the following topics: (1) credibility of the prosecution eyewitnesses, (2) alleged inconsistencies in their testimonies, (3) probative weight of the appellants’ alibi, and (4) the presence of conspiracy, and attending circumstances.

The Court’s Ruling

The separate appeals are bereft of merit but the penalties imposed by the trial court in Crim. Case Nos. 6764 and 6756 should be modified.

Credibility of Prosecution Eyewitnesses

Appellant Palomar contends that the trial court erred in giving credence to the testimony of Susan dela Peña Cadiente. Defense Witness Francisco Cadayuna who helped the victims “immediately after the incident,” testified that Susan allegedly told him that “she did not know the persons who hacked them.” Citing the testimony of Cadayuna, Appellant Palomar also argues that it was not really possible for Susan Cadiente to have identified the culprits, considering that the setting of the incident was a forest.[22]

Furthermore, Susan’s testimony holding Palomar responsible for the killing of her brothers does not conform with her affidavit dated May 30, 1985 in which she “did not point to [A]ccused-appellant Diony Palomar as the person who hacked his [sic] younger brothers Jasper and Fernando.”[23] In addition, Susan’s brother Aniano, in answer to the question “who killed them [referring to his younger brothers Fernando and Jasper], according to Susan?” testified; “Those people, the seven of them.”[24]

Appellant Palomar also argues that Susan Cadiente’s testimony is “very incredible because during the preliminary investigation in the Municipal Circuit Trial Court of Manjuyod, she testified” that even if the head of her brother Jasper was already severed, he was still able to say “Nang, don’t leave me.”[25]

He finally submits that “the defense of alibi of [A]ppellant Diony Palomar is strengthened by the weakness of

[W]itness Susan Cadiente” and that the trial court should have given full credence to his defense of alibi and should have acquitted him of the charges.[26]

Appellant Palomar’s contentions are unacceptable. The story of Francisco Cadayuna cannot overcome the positive and detailed testimony of Susan dela Peña. In their defense, appellants resort to bare denial which constitutes self-serving negative evidence. This cannot be accorded evidentiary weight when compared with the declaration of credible witnesses who testified on affirmative matters. Firm is the rule that affirmative testimony has greater value than negative ones for the reason that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial.[27]

The allegation that the locus criminis was dark and shrouded was clearly rebutted by Susan’s testimony that the place was sufficiently illuminated for her to see the attack on her father. In any case, it should not be forgotten that the crime was committed around 2:00 p.m. when the sun was at its brightest. Susan testified on cross-examination as follows:[28]

“Atty. Cempron:

Q And every side of it on the two sides of this foot way there are trees and grasses growing [sic], is that correct?

A Yes, sir.

Q Tall talahid [sic] grass, is that correct?

A Yes, sir.

Q How tall, please demonstrate, using your height as a meter?

A (Witness indicating a height of two feet.)

Q And the trees on the side, how tall were they(sic)?

A By the way side were tall trees farther from the cogon grass.

Q Nevertheless, these tall trees farther to the side of the road of the cogon grass have widespread branches overlapping with each other?

A Yes, sir.

Q And in that particular situation where you were, you clearly saw your father hit by the stone on his forehead, is that correct?

A Yes, sir.

Q And you also clearly saw that the stone your father was hit only once?

A Yes, sir.

Q And immediately after being hit he fell down, is that correct?

A Yes, sir.”

Aniano dela Peña corroborated Susan’s narration that the locus criminis, while shady; was adequately lighted to enable her to identify the assailants. He stated thus:[29]

“CROSS EXAMINATION:

Erales:

Aniano, you are familiar with the alleged place of the incident, its terrain and vegetation?

A Yes, Sir.

Q It is not a fact, that this place of the incident is well-vegetated?

A Yes, Sir.

Q What are the trees and other plants that could be found?

A Lawa-an trees and other big trees.

Q So, it is practically a forest where lawa-an and big trees are found?

A Yes.

Q And the trees are situated close to each other?

A Yes, Sir.

Q And this lawa-an and other big trees in that forest have wide branches and thick leaves, is that not correct?

A Yes, Sir.

Q Is it not a fact, that even if it is daytime, if you are situated within the forest and under these big trees, your surrounding is dark because of the vegetation?

A No, Sir.

Q But it is shady?

A Yes, Sir.”

The alleged contradictions between Susan’s testimony and the contents of her affidavit regarding the identity of the assailants of her two younger brothers do not militate against her credibility. First, Susan is unlettered. She merely affixed her thumbmark on her affidavit dated May 30, 1985.[30] Thus, she could not have examined what was missing or inaccurate in said affidavit. Indeed, this personal drawback was exploited by the defense to discredit her, thus:[31]

“Q I am showing to you an affidavit in the Visayan dialect, dated May 30, 1985, signed with the thumbmark of one Susan Cadiente y dela Peña, affiant, will you please go over this affidavit and tell the Court if this is the very affidavit which you mentioned a moment ago?

A Yes, this is the one.

Court:

Q Because you have imprinted your thumbmark on that paper, are we agreed that you don’t know how to write?

A No, sir, I do not know.

Q If you do not know how to write, can you read?

A I do not know how to read either but I know how to identify my own affidavit.

Q You cannot read but you spontaneously identify the papers shown to you as your affidavit with thumbmark that you have seen, now tell the Court, what indication do you find in that paper shown to you that would make you identify it as your own affidavit?

A I can identify this as my own affiavit [sic] because of the thumbmark which I know is mine.

Q What is in your thumbmarked [sic] that indicates that it is your thumbmark?

A That is mine because right here it’s clearly fits my thumb.

Q If you are shown a thumbprint which also squarely fits your thumb you would also call it as your own?

A No, sir, I really can recognize my own thumb print.

Q Did you have a special study in thumbmarks like an NBI agent?

A I cannot identify other thumbprints but I can identify mine since it is mine.

Q All right, point out the peculiarity of your thumbprint there that convinces you that it is yours.

A I can tell that this is mine because of this (witness pointing to the gap align in thumb print.)”

Second, although the contents of her affidavit were read to her by Judge Lumeda,[32] she, being unlettered, cannot be expected to be assertive and detailed in correcting her testimony.[33] Besides, the transcripts clearly show that she duly explained the alleged inconsistencies during her cross-examination by Atty. Erames, Appellant Palomar’s counsel:[34]

“CROSS EXAMINATION BY ATTY. SALETO J. ERAMES:

Q Susan, do you know the distinction between a pronoun they and he?

A Yes, Sir.

Q When you say, ‘they killed him,’ you refer to several persons killing a person, is that correct?

A Yes, Sir.

Q And, of course, when you say, ‘he killed him,’ you are referring only to one killer, is that correct?

A Yes, Sir.

Q And when you executed this affidavit dated May 30, 1985 already marked as Exhibit 4, which you claimed to have understood very well during the last cross-examination of this representation to the effect, and I quote: ‘that they also hacked my two younger brothers and the two also died.’ You were aware that you were using the pronoun ‘they’?

A Yes, Sir.

Q And you were also aware when you executed this affidavit, and when your affidavit was read back to you by Judge Lomeda and Pat. Somoza that in this affidavit you never mentioned the name of Dione Palomar as the killer of your two younger brothers. Is that correct?

Fiscal Pinili:

There are two affidavits, Your Honor.

Atty. Erames:

I am referring to May 30.

A I had somehow forgotten it, Sir, because that was a long time ago.

Q You forgot to mention the name of Dione Palomar on May 30, 1985 because of the lapse of time, is that correct?

A Yes, Sir.

Q Now, you remember because a longer period of time has elapsed?

A Yes, Sir.

Q So, in spite of the shorter period of time that elapsed between the incident in May 30, you could not remember Diony Palomar as having killed your 2 brothers, but now in spite of a lapse of a longer period of time you can remember?

A That was quite a time that has lapsed, and when I said, ‘they killed my brothers,’ what I actually meant was that it was really Diony Palomar who did the killing of my brothers.

Q Your first reason for failing to state the name of Diony Palomar as a killer of your brothers in the May 30, 1985 affidavit (sic) was the lapse of time that blurred your memory. Now you are giving the second reason, as follows: that the word ‘they’ refers to Diony Palomar. Is that what you mean?

A Yes, Sir.

Q But if that is so, why did you not mention the name of Diony Palomar as singular person referred than in the pronoun 'they'?

A I said 'they' because there were many of them who hacked by brothers.

Court (to witness):

So, it was not Diony Palomar alone who hacked your brothers, there were, besides him, others also who did the hacking of your brothers?

A These other persons hacked my brothers when they were already dead.

Atty. Eramas:

So your two brothers were hacked several times?

A Yes, Sir, and the arms was [sic] cut to pieces.

Q You know, you are very imaginative, Susan. You testified that inspite of the fact that your brothers Fermin's head was almost cut the head was able to talk. Now that you are pressed for an explanation why you used the pronoun 'they' you are now changing testimony to the effect that at first you said it was only Diony Palomar who hacked your two brothers, now you are saying that many participated in the hacking of your brothers after your brothers died. My question to you is, which version is correct, the first version that only Diony Palomar hacked your brothers or the second version that the other accused also participated in the hacking?

A Yes. The rest participated after my brothers were already dead.

Q Who participated?

A Jose, Hermie, Bulay-og, (Juliano), Nabie, only that.

Eramas:

All of them at the same time participated in the hacking of your brothers after Diony Palomar did, according to you?

A Yes, Sir.

Court:

Where were you while all these acts were done by the group?

A I was just nearby."

Third, the omission of Palomar's name from the affidavit of Susan Cadiente is further proof of what we have long taken judicial notice of: that affidavits, which are usually taken ex parte, are always incomplete and often inaccurate, but these do not denigrate the credibility of witnesses.[35] Obviously, Appellant Palomar, by relying merely on the alleged inconsistencies between Susan Cadiente's declaration in court and her affidavit, cannot escape criminal liability.

On the other hand, the guilt of said Appellant Palomar is clearly established by the direct testimony of Susan Cadiente unmistakably identifying him as her brothers' killer:[36]

"Fiscal Pinili:

Q You saw your two younger brothers, will you please describe to the Court or tell the Court what happened to your two younger brothers when you saw them?

A They ran away following me.

Q You are referring to Jesper dela Peña and Fernando dela Peña.

A Yes, sir.

Q Where are your brothers now Jesper and Fernando?

A They are already dead.

Q Do you know how they died?

Atty Erames:

We object to the latest question, Your Honor. Do you know how they died? Because the witness here would not be competent to answer that question. The testimony of this witness is to the effect that when she ran away the two younger brothers namely Jesper and Fernando were following her running. So her back was towards the two brothers.

Court:

Not necessarily that her back, otherwise, if we have to admit the fact that they were following then although they were following her back she must have turned around to see who was following her.

Atty. Erames:

That is not yet established, Your Honor. And so in the position that the witness describe it is not possible that she would see what happened to Jesper and Fernando. No basis, Your Honor.

Court:

Anyway, the witness has declared that Jesper and Fernando her younger brothers are now dead.

Atty. Erames:

Yes.

Court:

Q What did they die of, your brothers?

A They were hacked.

Fiscal Pinili:

Q Do you know who hacked them?

A Yes, sir.

Q Please tell the Court who hacked your brothers?

A They were hacked by Diony Palomar.

Court:

Q Only Diony Palomar hacked them?

A Yes, sir.

Q Did you see Diony Palomar hack them?

A Yes, sir.

Q You told the Court a moment ago that these two brothers of yours were running following you in running away from the group. Why is it that now you are saying that you saw Diony Palomar hacked them?

A I manage to turn around and I saw Diony Palomar return turn (sic) back.

Q What do you mean that you saw Diony Palomar turned back?

A After I got hacked by Benjamin Cabañog I rested for a while and then I ran down hill and there was Diony Palomar running after Aniano and Diony Palomar returned.

Q So Diony Palomar was chasing your brother Aniano?

A Yes, sir.

Q And Aniano was not overtaken by Diony Palomar?

A No, sir.

Q And so Diony Palomar gave up chasing Aniano and turned back?

A Yes, sir.

Q After Diony Palomar stopped chasing Aniano your brother he turned back, what happened next?

A Next Diony Palomar hacked my brother Jesper dela Peña on his back and that was the cause of his death.

Q What happened next after Jesper was hacked on the neck?

A Fernando dela Peña my younger brother continued running towards the creek.

Q What happened next?

A Fernando dela Peña and I tried to hide ourselves in the creek but since Diony Palomar was already there we had to get out and this time Diony Palomar hacked and cut off the head of my brother by his neck.

Q So the head of Fernando was severed (sic) from his body?

A Just almost severe his head was only the spot of his skin holding it to his body.

Q How far were you when Diony Palomar, according to you, cut the neck of Fernando?

A I was just nearby perhaps from here to there (witness demonstrating one meter distance).

Q Did Diony Palomar say anything at all?

A Yes, sir.

Q What did he say?

A He said, come back here, come back.

Q To whom was he addressing?

A He was addressing it to me.

Q Was he addressing those words to you after he had hacked Fernando?

A Before he hacked Fernando.

Q What did you say, did you say anything?

A No, sir.

Q How about Fernando did he utter something?

A Fernando said, uncle Diony, why are you doing this to us, we have not done anything wrong to you?

Q What did Diony answer to Fernando after that?

A Nothing, sir.

xxx xxx xxx

Fiscal Pinili:

Q With what weapon did Diony Palomar use in hacking your brother Jesper?

A Long bolo.

Q And with what weapon also did Diony Palomar use in hacking your other brother Fernando?

A Long bolo also.

Q The same bolo that was used in hacking Jasper?

A Yes, sir.”

Likewise, during the cross-examination, Susan consistently and unwaveringly declared that she saw Appellant Dione Palomar hack the neck of her brother Jasper.[37] It should be stressed further that Susan’s description of the injuries sustained by her brothers clearly coincided with the testimony of Dr. Kadili, Municipal Health Officer of Negros Oriental, who conducted the autopsy.[38]

No ill motive was ascribed to Susan’s story. On the contrary, she testified that Appellant Diony Palomar was “very close” to her father and frequented their house “at daytime” and at “night[time after] he returned home.”[39] Aniano, Susan’s brother, even testified that Appellants Hermie and Jose Cerialles were their first cousins.[40] When there is no evidence to indicate that the principal witness for the prosecution was moved by improper motive, the presumption is that such witness was not so moved and that her testimony is entitled to full faith and credit.[41]

From the foregoing, it is evident that the alleged inconsistencies attributed by Appellant Dione Palomar to the incriminating testimony of Susan Cadiente are insubstantial. The trial court was justified in giving full faith and credence to her testimony and, consequently, in convicting said appellant on the basis of such testimony. Indeed, the judge below was in a better position to pass judgment on the issue because he personally heard the witnesses and observed their deportment and manner at the witness stand. His evaluation deserves no less than the highest respect of this Court. Appellant Palomar has not shown any reason—and we cannot find one in the records- to justify a reversal or modification of the trial court’s assessment.

Alleged Inconsistencies of the Testimonies of Aniano Dela Peña and Susan Cadiente

Appellants Jose and Hermie Cerialles contend that the trial court “glossed over the many improbabilities, inconsistencies and contradictions on material points in the testimonies” of Prosecution Witnesses Aniano dela Peña and Susan dela Peña Cadiente.[42] They argue that the following assertions of the prosecution witnesses are improbable:

1. Aniano’s insistence that the stone thrown by Appellant Hermie Cerialles “hit his father’s forehead even as he admitted that he could not see his father’s forehead” as the latter was walking in front of him.
2. Aniano’s claim that “he clearly saw Hermie Cerialles throw the stone despite [Aniano’s] admission that the place of the incident was forestal x x x.”
3. Susan’s identification of Appellant “Hermie Cerialles as the one who threw the stone that hit her father in the forehead” considering she was twenty meters away from appellant and the place was “forestally dark.”
4. “Despite the fact the stones rained” on the victims, it was only “Pedro dela Peña [who] was hit.”[43]

These contentions are without merit. On the contrary, Susan’s and Aniano’s testimonies are consistent and plausible. Aniano positively declared during his direct examination that his group was ambushed by the accused. He saw Appellant Hermie Cerialles throw a stone which hit the forehead of his father and caused the latter to fall face down.[44] Witness Aniano, about 1.5 meters away from his father, was able to identify Appellant Hermie Cerialles who, together with the group of Appellant Benjamin Cabañog, was 10 meters away on an elevated location. On the other hand, Susan testified that the victims were on a lower ground when Accused Cabañog made known his presence.[45]

That the locus criminis was “forestal” did not affect Aniano’s credibility and his ability to identify the

malefactors, considering that the incident happened “about two o’clock in the afternoon” of April 30, 1985 and that Appellant Hermie Cerialles -- his “close neighbor” and first cousin -- was known to him.[46] Aniano also pointed out that the trees made the site “shady” but not dark.[47] In this light, Susan Cadiente was able to identify Appellant Hermie Cerialles. She even testified that Jose, the brother of Hermie, was her cousin and she knew their father to be Emiliano.[48] Truly, Appellants Hermie and Jose Cerialles were not strangers to her.

The fact that only Susan’s father was hit by the hurled stones does not render her testimony incredible. Susan firmly testified during the cross-examination:[49]

“Court:

Q All right, there were no stones smaller than that?

A No, sir.

Q There were stones bigger than that?

A Yes, sir.

Q And only your father was hit?

A Yes, sir.

Q Because the rest of you were away from your father?

A Yes, sir.”

Aniano also corroborated Susan’s testimony that the stone thrown by Hermie hit only his father, Pedro dela Peña.[50] Aniano’s declaration, like Susan’s, was not successfully rebutted by the defense.

Appellants Jose and Hermie Cerialles further protest that the following testimonies are marked by “inconsistencies and contradictions”:

1. Aniano’s testimony that after his father fell “he immediately went over to his father’s side and shook him (father),” whereas, according to Susan “she was the first and only one who rushed” to her father’s side even when she was last in the group walking in single file.
2. Susan’s testimony that when “she and her two younger brothers Jesper and Fernando were running to escape their assailants, she was running ahead of the two.” Later, “in her testimony,” she claimed that “her two younger brothers were ahead of her as they were running away from their assailants.”
3. While both “Aniano and Susan dela Peña” agreed that their group walked in a single file,” the two “gave different accounts of the order in which the members of the group were walking.” Susan “said that order was as follows: Pedro dela Peña, Gaudencio Cadiente, Aniano dela Peña, Jesper dela Peña, Fernando dela Peña, Susan dela Peña while Aniano claimed that the order was as follows: Pedro dela Peña, Aniano dela Peña, Gaudencio Cadiente, Susan dela Peña, Fernando dela Peña, Jesper dela Peña.”[51]

We hold that these alleged “inconsistencies and contradictions” pertain to minor matters. Besides, Aniano did not testify that he was the first to reach his father after the latter fell down. He merely said that he immediately approached his father who fell after being hit by a stone.[52] On the other hand, Susan testified that when her father fell, she was the first to help him. However, she did not testify that she alone helped her father:[53]

“Atty. Cempron:

Q And when your father fell down face down, the first to go to his help was you, is that correct?

A Yes, sir.

Q Your husband Gaudencio was next to your father did not do anything despite the fact that your father

already fell?

A No, sir.

Court:

Q So, while you were rushing towards your father for more than fifteen (15) meters behind them you overtook your brothers the rest of your group including your husband because it was you who reached the side of your fallen father?

A Yes, sir.”

Thus the inconsistency is more apparent than real. Both Aniano and Susan approached their father. Susan did so first, and Aniano followed her.

The alleged inconsistency in Susan’s testimony in regard to her position--- relative to her younger brothers Jasper and Fernando, while she was running away from her attackers--- pertains to an inconsequential matter. We have held that inconsistencies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility. Such minor inconsistencies even manifest truthfulness and candor[54] and erase any suspicion of a rehearsed testimony.[55] In the present case, the alleged “inconsistencies and contradictions” in the testimonies of the prosecution eyewitnesses are not substantial enough to impair their credibility. The indelible fact remains that Susan and Aniano were present at the crime scene, that they themselves were attacked by the culprits; and that they identified appellants as the assailants.

Alibi as Defense

Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. It cannot prevail over the positive identification of the accused by eyewitnesses who had no improper motive to testify falsely. Appellant Dione Palomar was positively identified by Susan Cadiente as the culprit who mercilessly hacked her two younger brothers.[56] She also pointed to Hermie Ceriales as the killer of her father[57] and to Jose Ceriales as a member of the group who ganged up on her husband, Gaudencio Cadiente. [58]

Appellant Jose Ceriales testified that on April 30, 1985, the day of the massacre, he was in Sitio Lumantao.[59] Appellant Hermie Ceriales also testified that he was sowing rice in Sitio Lumantao at that time.[60] Well-settled is the rule that alibi can prevail only if it is shown that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.[61] Whether the walking time from Sitio Lumantao to Sitio Mamok where the crime was committed was one hour as testified to by Hermie, or 30 minutes as stated by Jose, appellants clearly failed to prove the physical impossibility of their presence at the crime scene . Under the circumstances, appellants’ alibis are clearly untenable.

For his part, Appellant Dione Palomar denied that he knew Pedro, Jasper or Fernando dela Peña, He also denied knowing where Sitio Mamok was.[62] Appellants denials are bereft of merit. Such denials, if unsubstantiated by clear and convincing proof, are negative, self-serving evidence which deserve no weight in law. They cannot be accorded credence greater than that given to the narration of credible witnesses who testified on affirmative matters.[63]

Conspiracy and Qualifying Circumstances

For collective responsibility to be established, it is not necessary that conspiracy be proven by direct evidence of a prior agreement to commit the crime. Only rarely would such an agreement be demonstrable because criminal undertakings, in the nature of things, are rarely documented by written agreements.[64] The concerted actions of the accused, however, clearly evince conspiracy. Leading off with the challenge hurled by Benjamin Cabañog and

the stones thrown by Appellant Hermie Cerialles; followed by Appellant Cabañog's hacking of the prostrate body of Pedro dela Peña and the arm of the hapless Susan Cadiente; then pursuit and killing of young Jasper and Fernando dela Peña by Appellant Dione Palomar; and finally, the ganging up on Gaudencio Cadiente by Hermie, Jose, Patricio and Nabor Cerialles--- all these acts of the accused sufficiently prove beyond reasonable doubt that they conspired to consummate the killing of the members of the dela Peña family.

Treachery was also duly proven. The deadly and successive actions of the accused did not allow the victims any opportunity to put up a defense. Rather, the victims were like scampering mice chased by big, ugly cats on their tails. One after another, the victims were stoned, mauled, hacked and shot. While the victims may have realized a possible danger to their persons, the attack was executed in such a manner as to make defense, not to say counterattack, impossible.[65] Treachery is likewise manifested in the brutal killings of Jasper and Fernando, 13 and 10 years old, respectively. The killing of minor children who, by reason of their tender years, could not be expected to put up a defense, is considered treacherous.[66]

The qualifying circumstance of evident premeditation, however, was not established. For this qualifying circumstance to be appreciated, there must be shown a period sufficient to afford full opportunity for meditation and reflection and time adequate to allow the conscience of the actor to overcome the resolution of his will.[67] The premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill.[68] In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient. In the present case, there is no evidence of planning or preparation to kill. Neither is there proof of the time when the plot was conceived.[69]

In Criminal Case No. 6764, abuse of superior strength was not established in the in the hacking of Susan Cadiente. This aggravating circumstance is present when there is an obvious inequality of forces between the victim and the aggressor, and the aggressor took advantage of this superiority in the commission of the crime. Susan was hacked by Benjamin Cabañog when she tried to shield her fallen father with her body.[70] There is no evidence that Cabanog consciously took advantage of his superior situation.

Although only a single felony--- multiple murder--- was alleged in Criminal Case No. 6753, the Court observes that the prosecution had actually proven four separate counts of murder. It was not shown that accused-appellants were motivated by a single criminal impulse to kill the dela Pena family. If such were the case, the accusation of the complex crime of multiple murder would find support in Article 48[71] of the Revised Penal Code. This "single criminal impulse" has been clearly illustrated in *People vs. Lawas*,[72] "where on a single occasion there was a multiple killing of around 50 Maranaos by a group of home guards (former Constabulary soldiers), the killing was held to be only one offense (multiple homicide) because it resulted from a single criminal impulse and it was not possible to determine how many victims were killed by each of the accused." [73] In the present case, however, it was proven that Appellant Hermie Cerialles first stoned Pedro dela Pena; Appellants Hermie, Jose, Nabor and Patricio Cerialles then mobbed Gaudencio; and Dione Palomar followed by hacking Jasper and decapitating Fernando dela Pena. These overt criminal acts were committed separately by appellants, each of whom was motivated by a separate criminal intent. However, the Information in Criminal Case No. 6753 charged only the complex crime of multiple murder without specifying the participation of each accused in the killing of each victim; thus, the appellants cannot be convicted of four counts of murder. To do so would contravene appellants' right to "be informed of the nature and cause of the accusation against them." [74] It is a basic right of the accused to be informed of the nature and cause of the accusation against him and, if found guilty, to be penalized only for the offense specified in the information or necessarily included in such offense.[75]

We note further that trial court did not mention the legal designation of the penalties it imposed in Criminal Case No. 6756 and 6764. Rather, the trial court stated only the duration of the sentences. This is erroneous. As opined

by former Chief Justice Ramon C. Aquino:[76]

“It is desirable to employ the proper legal terminology in the imposition of the imprisonment penalties provided in the Code, such as reclusion perpetua, prision or arresto, because each penalty has its distinct accessory penalties and effects. Thus, instead of sentencing the accused to ‘imprisonment for life’ or ‘cadena perpetua’, the term reclusion perpetua should be used. [fn: Mobe, 81 Phil. 58; Saik and Akan, 106 Phil. 957; Segovia, 92 Phil. 1080; Rodriguez and Bacutan, 108 Phil. 118; Gonzales, 58 SCRA 265; Dereje, 56 SCRA 554; Abletes, 58 SCRA 241]. The penalties prescribed in the Code should be imposed in the form and manner in which they are prescribed. The courts should not attempt to substitute equivalents for such penalties in the form of imprisonment for a term of years in a designated jail. Where the three defendants were convicted of theft and each of them was sentenced to ‘five years in Bilibid,’ it was held that the sentence was defective because it did not specify the exact penalty prescribed in the Penal Code. A sentence ‘to four years’ imprisonment in Bilibid’ is also defective. [Avillar, 28 Phil. 131; Pantaleon Mariano, 27 Phil. 132; Emilio Sevilla, 30 Phil. 288. A penalty of ‘life imprisonment at hard labor, without hope of any pardon or reprieve whatsoever,’ is not quite correct (Limaco, 88 Phil. 35). But in case of an erroneous designation of the penalty, the duration thereof is controlling (Pontillas, 65 Phil. 659).]”

The penalty for homicide is reclusion temporal; that for attempted homicide, on the other hand is two degrees lower, i.e., prision correccional. Under the Indeterminate Sentence Law, the maximum of the correct penalty for attempted homicide is prision correccional, while the minimum term is within the range of the penalty one degree lower than that prescribed by the Revised Penal Code, i.e., arresto mayor. The trial court should have imposed this penalty in Criminal Case No. 6756.

In the case of frustrated murder in Criminal Case No. 6764, the proper penalty is one degree lower than that prescribed for murder, which is reclusion temporal maximum to death.[77] Thus, the penalty for frustrated murder is prision mayor in its maximum period to reclusion temporal in its medium period. Under the Indeterminate Sentence Law, the minimum term for frustrated murder is within the range of prision correccional maximum to prision mayor in its medium period.

WHEREFORE, premises considered, the disposition of the trial court in Criminal Case 6753 is AFFIRMED. In Criminal Case 6756, the Court AFFIRMS the conviction for attempted homicide of Appellants Dione Palomar, Jose and Hermie Ceriales who are hereby sentenced to serve the penalty of two (2) months and one (1) day of arresto mayor medium to two (2) years, four (4) months and one (1) day of prision correccional medium. In Criminal Case No. 6764, the assailed Decision is also AFFIRMED but the same appellants are sentenced to the penalty of six (6) years and one (1) day of prision mayor minimum to twelve (12) years and one (1) day of reclusion temporal minimum. There being four deaths,[78] appellants are jointly and severally held liable to pay to the heirs of the deceased the sum of P50,000 for each death or a total of P200,000.00. Costs against appellants.

SO ORDERED.

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

[1] Sometimes spelled by the trial court as “Diony.”

[2] Per Notice of Appeal in the Original Records of Criminal Case No. 6756, Volume III, p. 181.

[3] Ibid., pp. 183-84.

[4] Ibid., p.185.

[5] Rendered by Branch XXXIX of the Regional Trial Court of Dumaguete City, presided by Judge Teopisto L. Calumpang; *ibid*, p. 131-149.

- [6] Original Records of Criminal Case No. 6753, Volume II, p. 1; Rollo, pp. 16-17; Decision, pp. 1-2.
- [7] Sometimes spelled as “Jasper.”
- [8] Original Records of Criminal Case No. 6764, Volume I, p.1-2; Rollo, pp. 17-18; Decision, pp. 2-3.
- [9] Original Records of Criminal Case No. 6756, Volume III, pp. 1-2; Rollo, p. 17; Decision, p. 2.
- [10] Decision, p. 3; Rollo, p. 18.
- [11] In Criminal Case No. 6764 for frustrated murder, Original Records, Volume I, pp. 20 & 26; in Criminal Cases No. 6753 for multiple murder, and No. 6756 for attempted homicide, Original Records, Volume II, p. 55.
- [12] Original Records, vol. II, p. 47.
- [13] Decision, p. 19; rollo, p. 34.
- [14] Section 7 of Rule 120 of the Rules of Court provides:
- SEC. 7. Modification of judgment. -- A judgment of conviction may, upon motion of the accused, be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the accused has expressly waived in writing his right to appeal, or the accused has applied for probation.
- [15] Rollo, p. 50.
- [16] *Ibid.*, p. 166.
- [17] Appellee’s Brief, pp. 7-19; Rollo, p. 204.
- [18] Appellants Jose and Hermie Cerales’ Brief, pp. 5-8; Rollo, pp. 106-109.
- [19] Appellant Dione Palomar’s Brief, pp. 7-8; Rollo, pp. 69-70.
- [20] *Ibid.*, pp. 8-9; Rollo, pp. 70-71.
- [21] Appellants Jose and Hermie Cerales’ Brief, p. 9; Rollo, p. 110.
- [22] *Ibid.*, p. 73.
- [23] *Ibid.*, p. 74.
- [24] *Ibid.*, p. 75
- [25] *Ibid.*, p. 74.
- [26] *Ibid.*, p. 76.
- [27] *People vs. Acuña*, 248 SCRA 668, 677, October 2, 1995 citing *People vs. Mendoza*, G.R. No. 109783, September 22, 1994, 236 SCRA 666, 673.
- [28] TSN, December 4, 1986, pp. 10-11.
- [29] TSN, October 9, 1986, pp. 3-4.
- [30] Original Records of Criminal Case No. 6764, Volume I, p. 7.
- [31] TSN, September 2, 1986, pp. 11-12.

[32] Sometimes spelled as Lomeda in the TSN.

[33] She testified cross-examination that she was afraid Judge Lumeda might scold her if she interrupted him:

“Atty. Eramas:

Q If you did not hear the name of Dionie Palomar when this affidavit was first read to you by Judge Lumeda and when this was read to you in open Court now in a loud voice by Attorney Eramas, why did you not complain?

A I did not complain, least I would be scolded, so I just keep silent.

Court:

Q Who were you afraid might scold you?

A I did not complain least I might be scolded by the judge.

Q You were also apprehensive that Judge Lumeda would scold your for not mentioning Dionie Palomar?

A Yes, sir, also if I interrupted I was afraid Judge Lumeda might scold me.

Q But you have observed Susan even before the questions were completed you interrupted the questioner with your own answers?

A But you said (the witness addressing to the judge) that here you are interrupting and so I did not.

Q All right, let us recapitulate this one point. Once and for all, nobody scolding you, please, feel free. Once and for all, who killed your younger brothers, name them all if there were more than one killers?

A It was Dionie Palomar.

Q And it was Dionie Palomar alone who killed your younger brothers?

A Yes, sir.” (TSN, September 2, 1986, pp. 28-29).

[34] TSN, February 5, 1987, pp. 11-13.

[35] *People vs. Fulinara*, 247 SCRA 28, 42, August 3, 1995 citing *People vs. Padilla*, G.R. Nos. 97111-13, September 4, 1992, 213 SCRA 631.

[36] TSN, November 19, 1985, pp. 17-21.

[37] TSN, September 2, 1986, pp. 17-18.

[38] TSN, March 17, 1988, pp. 4-6; 11-18.

[39] TSN, September 2, 1986, p. 5.

[40] TSN, October 15, 1985, p. 7.

[41] *People vs. Garcia*, 258 SCRA 411, 419, July 5, 1996 citing *People vs. Cabuang*, 217 SCRA 675 (1993).

[42] *Rollo*, p. 110.

[43] *Ibid.*, pp. 110-111.

[44] TSN, October 15, 1985, pp. 11-13.

[45] TSN, November 19, 1985, p. 8.

[46] TSN, October 15, 1985, pp. 3-13.

[47] TSN, October 9, 1986, p. 4.

[48] TSN, November 19, 1985, p. 13.

[49] TSN, December 4, 1986, p. 7.

[50] TSN, January 23, 1986, p. 9.

[51] Ibid., pp. 112-113.

[52] TSN, January 23, 1986, p. 9.

[53] TSN, December 4, 1986, pp. 14-15.

[54] *People vs. Vallador*, 257 SCRA 515, 524, June 20, 1996 citing *People vs. Belibet, et al.*, G.R. No. 91260, July 25, 1991, 199 SCRA 587.

[55] *Arceño vs. People*, 256 SCRA 569, 579, April 26, 1996 citing *People vs. Mauyao*, 207 SCRA 732.

[56] TSN, November 19, 1985, pp. 17-20.

[57] TSN, September 2, 1986, p. 29.

[58] TSN, November 19, 1985, pp. 23-24.

[59] TSN, September 28, 1989, pp. 9-10.

[60] TSN, September 4, 1990, p. 9.

[61] *People vs. Ramos*, 260 SCRA 402, 410, August 7, 1996.

[62] TSN, October 31, 1990, p. 14.

[63] *People vs. Morales*, 241 SCRA 267, 275, February 13, 1995.

[64] *People vs. Torrefiel*, 256 SCRA 369, 377, April 18, 1996 citing *People vs. Yabut*, 226 SCRA 715, 719 (1993).

[65] *People vs. Panganiban*, 241 SCRA 91, 101, February 6, 1995.

[66] *People vs. Caritativo*, 256 SCRA 1, 13, April 1, 1996 citing *People vs. Limaco*, 88 Phil. 35, January 9, 1951; *People vs. Mabilangan*, 111 SCRA 398, January 30, 1982; *People vs. Lora*, 113 SCRA 366, March 30, 1982 which cases were also cited in *People vs. Abuyen*, 213 SCRA 569, September 4, 1992.

[67] *People vs. Cordero*, 217 SCRA 1, 7, January 5, 1993; *People vs. Salvador*, supra, p. 826; *People vs. Rivera*, 221 SCRA 647, 656, May 10, 1993 and *People vs. Buela*, 227 SCRA 534, 539-540, November 8, 1993.

[68] *People vs. Estrella*, 221 SCRA 543, 548, April 28, 1993.

[69] *People vs. Nazareno*, 260 SCRA 256, 282, August 1, 1996, citing *People vs. Salvador*, 224 SCRA 819 (1993).

[70] TSN, November 19, 1985, p. 15.

[71] "Article 48. Penalty for complex crimes.--- When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." (As amended by Act No. 4000.)

[72] 97 Phil. 975, No. L-7618-20, June 30, 1955.

[73] Aquino, The Revised Penal Code, 1987 edition, volume 1, p. 626.

[74] Rule 115, Section 1, paragraph (b) of the 1988 Rules on Criminal Procedure.

[75] People vs. Taguba, 229 SCRA 188, 200, January 10, 1994.

[76] The Revised Penal Code, 1987 edition, volume 1, pp. 568-587.

[77] The crime was committed before the effectivity of RA 7659 which amended the Article 248 of the Revised Penal Code.

[78] Pedro dela Peña, Gaudencio Cadiente, Jasper and Fernando dela Peña.

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