

ROMEO SISON, NILO PACADAR, JOEL TAN, RICHARD DE LOS SANTOS, AND JOSELITO TAMAYO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. Nos. 108280-83. November 16, 1995

Ponente: PUNO, J.

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PUNO, J.:

The case before us occurred at a time of great political polarization in the aftermath of the 1986 EDSA Revolution. This was the time when the newly-installed government of President Corazon C. Aquino was being openly challenged in rallies, demonstrations and other public fora by "Marcos loyalists," supporters of deposed President Ferdinand E. Marcos. Tension and animosity between the two (2) groups sometimes broke into violence. On July 27, 1986, it resulted in the murder of Stephen Salcedo, a known "Coryista."

From August to October 1986, several informations were filed in court against eleven persons identified as Marcos loyalists charging them with the murder of Salcedo. Criminal Case No. 86-47322 was filed against Raul Billosos y de Leon and Gerry Nery y Babazon; Criminal Case No. 86-47617 against Romeo Sison y Mejia, Nilo Pacadar y Abe and Joel Tan y Mostero; Criminal Case No. 86-47790 against Richard de los Santos y Arambulo; Criminal Case No. 86-48538 against Joselito Tamayo y Ortia; and Criminal Case No. 86-48931 against Rolando Fernandez y Mandapat. Also filed were Criminal Cases Nos. 86-49007 and 86-49008 against Oliver Lozano and Benjamin Nueva as well as Annie Ferrer charging them as accomplices to the murder of Salcedo.

The cases were consolidated and raffled to the Regional Trial Court, Branch XLIX, Manila. All of the accused pleaded not guilty to the charge and trial ensued accordingly. The prosecution presented twelve witnesses, including two eyewitnesses, Ranulfo Sumilang and Renato Banculo, and the police officers who were at the Luneta at the time of the incident. In support of their testimonies, the prosecution likewise presented documentary evidence consisting of newspaper accounts of the incident and various photographs taken during the mauling.

The prosecution established that on July 27, 1986, a rally was scheduled to be held at the Luneta by the Marcos loyalists. Earlier, they applied for a permit to hold the rally but their application was denied by the authorities. Despite this setback, three thousand of them gathered at the Rizal Monument of the Luneta at 2:30 in the afternoon of the scheduled day. Led by Oliver Lozano and Benjamin Nueva, both members of the Integrated Bar of the Philippines, the loyalists started an impromptu singing contest, recited prayers and delivered speeches in between. Colonel Edgar Dula Torres, then Deputy Superintendent of the Western Police District, arrived and asked the leaders for their permit. No permit could be produced. Colonel Dula Torres thereupon gave them ten minutes to disperse. The loyalist leaders asked for thirty minutes but this was refused. Atty. Lozano turned towards his group and said "Gulpihin ninyo ang lahat ng mga Cory infiltrators." Atty. Nueva added "Sige, sige gulpihin ninyo!" The police then pushed the crowd, and used tear gas and truncheons to disperse them. The loyalists scampered away but some of them fought back and threw stones at the police. Eventually, the crowd fled towards Maria Orosa Street and the situation later stabilized.[1]

At about 4:00 P.M., a small group of loyalists converged at the Chinese Garden, Phase III of the Luneta. There, they saw Annie Ferrer, a popular movie starlet and supporter of President Marcos, jogging around the fountain. They approached her and informed her of their dispersal and Annie Ferrer angrily ordered them "Gulpihin ninyo and mga Cory hecklers!" Then she continued jogging around the fountain chanting "Marcos pa rin, Marcos pa rin, Pabalikin si Marcos, Pabalikin si Marcos, Bugbugin ang mga nakadilaw!" The loyalists replied "Bugbugin!" A few minutes later, Annie Ferrer was arrested by the police. Somebody then shouted "Kailangang gumanti tayo ngayon!" A commotion ensued and Renato Banculo, a cigarette vendor, saw the loyalists attacking persons in yellow, the color of the "Coryistas." Renato took off his yellow shirt.[2] He then saw a man wearing a yellow t-shirt being chased by a group of persons shouting "Iyan, habulin iyan. Cory iyan!" The man in the yellow t-shirt was Salcedo and his pursuers appeared to be Marcos loyalists. They caught Salcedo and boxed and kicked and mauled him. Salcedo tried to extricate himself from the group but they again pounced on him and pummelled him with fist blows and kicks hitting him on various parts of his body. Banculo saw Ranulfo Sumilang, an electrician at the Luneta, rush to Salcedo's aid. Sumilang tried to pacify the maulers so he could extricate Salcedo from them. But the maulers pursued Salcedo unrelentingly, boxing him with stones in their fists. Somebody gave Sumilang a loyalist tag which Sumilang showed to Salcedo's attackers. They backed off for a while and Sumilang was able to tow Salcedo away from them. But accused Raul Billosos emerged from behind Sumilang as another man boxed Salcedo on the head. Accused Richard de los Santos also boxed Salcedo twice on the head and kicked him even as he was already fallen.[3] Salcedo tried to stand but accused Joel Tan boxed him on the left side of his head and ear.[4] Accused Nilo Pacadar punched Salcedo on his nape, shouting: "Iyan, Cory Iyan. Patayin!"[5] Sumilang tried to pacify Pacadar but the latter lunged at the victim again. Accused Joselito Tamayo boxed Salcedo on the left jaw and kicked him as he once more fell. Banculo saw accused Romeo Sison trip Salcedo and kick him on the head, and when he tried to stand, Sison repeatedly boxed him.[6] Sumilang saw accused Gerry Neri approach the victim but did not notice what he did.[7]

Salcedo somehow managed to get away from his attackers and wipe off the blood from his face. He sat on some cement steps[8] and then tried to flee towards Roxas boulevard to the sanctuary of the Rizal Monument but accused Joel Tan and Nilo Pacadar pursued him, mauling Sumilang in the process. Salcedo pleaded for his life exclaiming "Maawa na kayo sa akin. Tulungan ninyo ako." He cried: "Pulis, pulis. Wala bang pulis?"[9]

The mauling resumed at the Rizal Monument and continued along Roxas Boulevard until Salcedo collapsed and lost consciousness. Sumilang flagged down a van and with the help of a traffic officer, brought Salcedo to the Medical Center Manila but he was refused admission. So they took him to the Philippine General Hospital where he died upon arrival.

Salcedo died of "hemorrhage, intracranial traumatic." He sustained various contusions, abrasions, lacerated wounds and skull fractures as revealed in the following post-mortem findings:

"Cyanosis, lips, and nailbeds.

Contused-abrasions: 6.0 x 2.5 cm., and 3.0 x 2.4 cm., frontal region, right side; 6.8 x 4.2 cm., frontal region, left side; 5.0 x 4.0 cm., right cheek; 5.0 x 3.5 cm., face, left side; 3.5 x 2.0 cm., nose; 4.0 x 2.1 cm., left ear, pinna; 5.0 x 4.0 cm. left suprascapular region; 6.0 x 2.8 cm., right elbow.

Abrasions: 4.0 x 2.0 cm., left elbow; 2.0 x 1.5 cm., right knee.

Lacerated wounds: 2.2 cm., over the left eyebrow; 1.0 cm., upper lip.

Hematoma, scalp; frontal region, both sides; left parietal region; right temporal region; occipital region, right side.

Fractures, skull; occipital bone, right side; right posterior cranial fossa; right anterior cranial fossa.

Hemorrhage, subdural, extensive.

Other visceral organs, congested.

Stomach, about 1/2 filled with grayish brown food materials and fluid."[10]

The mauling of Salcedo was witnessed by bystanders and several press people, both local and foreign. The press took pictures and a video of the event which became front-page news the following day, capturing national and international attention. This prompted President Aquino to order the Capital Regional Command and the Western Police District to investigate the incident. A reward of ten thousand pesos (P10,000.00) was put up by Brigadier General Alfredo Lim, then Police Chief, for persons who could give information leading to the arrest of the killers.[11] Several persons, including Ranulfo Sumilang and Renato Banculo, cooperated with the police, and on the basis of their identification, several persons, including the accused, were apprehended and investigated.

For their defense, the principal accused denied their participation in the mauling of the victim and offered their respective alibis. Accused Joselito Tamayo testified that he was not in any of the photographs presented by the prosecution[12] because on July 27, 1986, he was in his house in Quezon City.[13] Gerry Neri claimed that he was at the Luneta Theater at the time of the incident.[14] Romeo Sison, a commercial photographer, was allegedly at his office near the Luneta waiting for some pictures to be developed at that time.[15] He claimed to be afflicted with hernia impairing his mobility; he cannot run normally nor do things forcefully.[16] Richard de los Santos admits he was at the Luneta at the time of the mauling but denies hitting Salcedo.[17] He said that he merely watched the mauling which explains why his face appeared in some of the photographs.[18] Unlike the other accused, Nilo Pacadar admits that he is a Marcos loyalist and a member of the Ako'y Pilipino Movement and that he attended the rally on that fateful day. According to him, he saw Salcedo being mauled and like Richard de los Santos, merely viewed the incident.[19] His face was in the pictures because he shouted to the maulers to stop hitting Salcedo.[20] Joel Tan also testified that he tried to pacify the maulers because he pitied Salcedo. The maulers however ignored him.[21]

The other accused, specifically Attys. Lozano and Nueva and Annie Ferrer opted not to testify in their defense.

On December 16, 1988, the trial court rendered a decision finding Romeo Sison, Nilo Pacadar, Joel Tan, Richard de los Santos and Joselito Tamayo guilty as principals in the crime of murder qualified by treachery and sentenced them to 14 years 10 months and 20 days of reclusion temporal as minimum to 20 years of reclusion temporal as maximum. Annie Ferrer was likewise convicted as an accomplice. The court, however, found that the prosecution failed to prove the guilt of the other accused and thus acquitted Raul Billosos, Gerry Nery, Rolando Fernandez, Oliver Lozano and Benjamin Nueva. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgement is hereby rendered in the aforementioned cases as follows:

1. In 'People versus Raul Billosos and Gerry Nery,' Criminal Case No. 86-47322, the Court finds that the Prosecution failed to prove the guilt of the two (2) Accused beyond reasonable doubt for the crime charged and hereby acquits them of said charge;
2. In 'People versus Romeo Sison, et al.,' Criminal Case No. 86-47617, the Court finds the Accused Romeo Sison, Nilo Pacadar and Joel Tan, guilty beyond reasonable doubt, as principals for the crime of Murder, defined in Article 248 of the Revised Penal Code, and, there being no other mitigating or aggravating circumstances, hereby imposes on each of them an indeterminate penalty of from FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS, of Reclusion Temporal, as minimum, to TWENTY (20) DAYS, of Reclusion Temporal, as minimum, to TWENTY (20) YEARS of Reclusion Temporal, as Maximum;

3. In 'People versus Richard de los Santos,' Criminal Case No. 86-47790, the Court finds the Accused Richard de los Santos guilty beyond reasonable doubt as principal for the crime of Murder defined in Article 248 of the Revised Penal Code and, there being no other extenuating circumstances, the Court hereby imposes on him an indeterminate penalty of from FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of Reclusion Temporal, as Minimum, to TWENTY (20) YEARS of Reclusion Temporal as Maximum;

4. In 'People versus Joselito Tamayo,' Criminal Case No. 86-48538, the Court finds the Accused guilty beyond reasonable doubt as principal, for the crime of 'Murder' defined in Article 248 of the Revised Penal Code and hereby imposes on him an indeterminate penalty of from FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of Reclusion Temporal, as Minimum, to TWENTY (20) YEARS of Reclusion Temporal, as Maximum;

5. In 'People versus Rolando Fernandez,' Criminal Case No. 86-48931, the Court finds that the Prosecution failed to prove the guilt of the Accused for the crime charged beyond reasonable doubt and hereby acquits him of said charge;

6. In 'People versus Oliver Lozano, et al.,' Criminal Case No. 86-49007, the Court finds that the Prosecution failed to prove the guilt of the Accused beyond reasonable doubt for the crime charged and hereby acquits them of said charge;

7. In 'People versus Annie Ferrer,' Criminal Case No. 86-49008, the Court finds the said Accused guilty beyond reasonable doubt, as accomplice to the crime of Murder under Article 18 in relation to Article 248 of the Revised Penal Code and hereby imposes on her an indeterminate penalty of NINE (9) YEARS and FOUR (4) MONTHS of Prison Mayor, as Minimum to TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of Reclusion Temporal, as Maximum.

The Accused Romeo Sison, Nilo Pacadar, Richard de los Santos, Joel Tan, Joselito Tamayo and Annie Ferrer are hereby ordered to pay, jointly and severally, to the heirs of Stephen Salcedo the total amount of P74,000.00 as actual damages and the amount of P30,000.00 as moral and exemplary damages, and one-half (1/2) of the costs of suit.

The period during which the Accused Nilo Pacadar, Romeo Sison, Joel Tan, Richard de los Santos and Joselito Tamayo had been under detention during the pendency of these cases shall be credited to them provided that they agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail.

The Warden of the City Jail of Manila is hereby ordered to release the Accused Gerry Nery, Raul Billosos and Rolando Fernandez from the City Jail unless they are being detained for another cause or charge.

The Petition for Bail of the Accused Rolando Fernandez has become moot and academic. The Petition for Bail of the Accused Joel Tan, Romeo Sison and Joselito Tamayo is denied for lack of merit.

The bail bonds posted by the Accused Oliver Lozano and Benjamin Nueva are hereby cancelled." [22]

On appeal, the Court of Appeals [23] on December 28, 1992, modified the decision of the trial court by acquitting Annie Ferrer but increasing the penalty of the rest of the accused, except for Joselito Tamayo, to reclusion perpetua. The appellate court found them guilty of murder qualified by abuse of superior strength, but convicted Joselito Tamayo of homicide because the information against him did not allege the said qualifying circumstance. The dispositive portion of the decision reads:

"PREMISES CONSIDERED, the decision appealed from is hereby MODIFIED as follows:

1. Accused-appellants Romeo Sison y Mejia, Nilo Pacadar y Abe, Joel Tan y Mostero and Richard de los Santos are hereby found GUILTY beyond reasonable doubt of Murder and are each hereby sentenced to suffer the penalty of Reclusion Perpetua;

2. Accused-appellant Joselito Tamayo y Oria is hereby found GUILTY beyond reasonable doubt of the crime of Homicide with the generic aggravating circumstance of abuse of superior strength and, as a consequence, an indeterminate penalty of TWELVE (12) YEARS of prision mayor as Minimum to TWENTY (20) YEARS of reclusion temporal as Maximum is hereby imposed upon him;

3. Accused-appellant Annie Ferrer is hereby ACQUITTED of being an accomplice to the crime of Murder.

CONSIDERING that the penalty of Reclusion Perpetua has been imposed in the instant consolidated cases, the said cases are now hereby certified to the Honorable Supreme Court for review."^[24]

Petitioners filed G.R. Nos. 108280-83 under Rule 45 of the Revised Rules of Court inasmuch as Joselito Tamayo was not sentenced to reclusion perpetua. G.R. Nos. 114931-33 was certified to us for automatic review of the decision of the Court of Appeals against the four accused-appellants sentenced to reclusion perpetua.

Before this court, accused-appellants assign the following errors:

"I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT NOTED THAT THE ACCUSED FAILED TO CITE ANYTHING ON RECORD TO SUPPORT THEIR AVERMENT THAT THERE WERE NO WITNESSES WHO HAVE COME FORWARD TO IDENTIFY THE PERSONS RESPONSIBLE FOR THE DEATH OF STEPHEN SALCEDO.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE UNRELIABLE, DOUBTFUL, SUSPICIOUS AND INCONCLUSIVE TESTIMONIES OF PROSECUTION WITNESS RANULFO SUMILANG.

III

THE HONORABLE COURT OF APPEALS LIKewise ERRED IN FINDING THE ACCUSED GUILTY WHEN THERE WAS NO EVIDENCE TO PROVE THAT ANY OF THE ACCUSED CARRIED A HARD AND BLUNT INSTRUMENT, THE ADMITTED CAUSE OF THE HEMORRHAGE RESULTING IN THE DEATH OF THE DECEASED.

IV

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THERE EXISTS CONSPIRACY AMONG THE PRINCIPAL ACCUSED.

V

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE CRIME COMMITTED IS MURDER AND NOT DEATH (HOMICIDE) CAUSED IN A TUMULTUOUS AFFRAY."^[25]

In their additional brief, appellants contend that:

"I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REACHING A CONCLUSION OF FACT UTILIZING SPECULATIONS, SURMISES, AND NON-SEQUITUR CONCLUSIONS, AND EVEN THE DISPUTED DECISION OF THE TRIAL COURT, TO UPHOLD THE VALIDITY OF THE VERY SAME JUDGMENT, ALL CONTRARY TO THE RULES OF EVIDENCE.

II

THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING EXHIBITS "D", "G", "O", "P", "v", TO "V-48", "W" TO "W-13", ALL OF WHICH WERE NOT PROPERLY IDENTIFIED.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONCLUDING THAT CONSPIRACY EXISTED IN THE CASE AT BAR DISREGARDING ALTOGETHER THE SETTLED JURISPRUDENCE ON THE MATTER.

IV

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE CRIME COMMITTED WAS MURDER, NOT DEATH (HOMICIDE) IN TUMULTUOUS AFFRAY SIDESTEPPING IN THE PROCESS THE FACTUAL GROUNDS SURROUNDING THE INCIDENT."[26]

Appellants mainly claim that the Court of Appeals erred in sustaining the testimonies of the two prosecution eyewitnesses, Ranulfo Sumilang and Renato Banculo, because they are unreliable, doubtful and do not deserve any credence. According to them, the testimonies of these two witnesses are suspect because they surfaced only after a reward was announced by General Lim. Renato Banculo even submitted three sworn statements to the police geared at providing a new or improved version of the incident. On the witness stand, he mistakenly identified a detention prisoner in another case as accused Rolando Fernandez.[27] Ranulfo Sumilang was evasive and unresponsive prompting the trial court to reprimand him several times.[28]

There is no proof that Banculo or Sumilang testified because of the reward announced by General Lim, much less that both or either of them ever received such reward from the government. On the contrary, the evidence shows that Sumilang reported the incident to the police and submitted his sworn statement immediately two hours after the mauling, even before announcement of any reward.[29] He informed the police that he would cooperate with them and identify Salcedo's assailants if he saw them again.[30]

The fact that Banculo executed three sworn statements does not make them and his testimony incredible. The sworn statements were made to identify more suspects who were apprehended during the investigation of Salcedo's death.[31]

The records show that Sumilang was admonished several times by the trial court on the witness stand for being argumentative and evasive.[32] This is not enough reason to reject Sumilang's testimony for he did not exhibit this undesirable conduct all throughout his testimony. On the whole, his testimony was correctly given credence by the trial court despite his evasiveness at some instances. Except for compelling reasons, we cannot disturb the way trial courts calibrate the credence of witnesses considering their visual view of the demeanor of witnesses when on the witness stand. As trial courts, they can best appreciate the verbal and non-verbal dimensions of a witness' testimony.

Banculo's mistake in identifying another person as one of the accused does not make him an entirely untrustworthy witness.[33] It does not make his whole testimony a falsity. An honest mistake is not inconsistent with a truthful testimony. Perfect testimonies cannot be expected from persons with imperfect senses. In the court's discretion, therefore, the testimony of a witness can be believed as to some facts but disbelieved with respect to the others.[34]

We sustain the appellate and trial courts' findings that the witnesses' testimonies corroborate each other on all important and relevant details of the principal occurrence. Their positive identification of all petitioners jibe with each other and their narration of the events are supported by the medical and documentary evidence on record.

Dr. Roberto Garcia, the medico-legal officer of the National Bureau of Investigation, testified that the victim had

various wounds on his body which could have been inflicted by pressure from more than one hard object.[35] The contusions and abrasions found could have been caused by punches, kicks and blows from rough stones.[36] The fatal injury of intracranial hemorrhage was a result of fractures in Salcedo's skull which may have been caused by contact with a hard and blunt object such as fistblows, kicks and a blunt wooden instrument.[37]

Appellants do not deny that Salcedo was mauled, kicked and punched. Sumilang in fact testified that Salcedo was pummelled by his assailants with stones in their hands.[38]

Appellants also contend that although the appellate court correctly disregarded Exhibits "D," "G," and "P," it erroneously gave evidentiary weight to Exhibits "O," "V," "V-1" to "V-48," "W," "W-1" to "W-13." [39] Exhibit "O" is the Joint Affidavit of Pat. Flores and Pat. Bautista, the police intelligence operatives who witnessed the rally and subsequent dispersal operation. Pat. Flores properly identified Exhibit "O" as his sworn statement and in fact gave testimony corroborating the contents thereof.[40] Besides, the Joint Affidavit merely reiterates what the other prosecution witnesses testified to. Identification by Pat. Bautista is a surplusage. If appellants wanted to impeach the said affidavit, they should have placed Pat. Flores on the witness stand.

Exhibits "V," "V-1" to "V-48" are photographs taken of the victim as he was being mauled at the Luneta -- starting from a grassy portion to the pavement at the Rizal Monument and along Roxas Boulevard,[41] -- as he was being chased by his assailants[42] and as he sat pleading with his assailants.[43] Exhibits "W," "W-1" to "W-13" are photographs of Salcedo and the mauling published in local newspapers and magazines such as the Philippine Star,[44] Mr. and Ms. Magazine,[45] Philippine Daily Inquirer,[46] and the Malaya.[47] The admissibility of these photographs is being questioned by appellants for lack of proper identification by the person or persons who took the same.

The rule in this jurisdiction is that photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced.[48] The value of this kind of evidence lies in its being a correct representation or reproduction of the original,[49] and its admissibility is determined by its accuracy in portraying the scene at the time of the crime.[50] The photographer, however, is not the only witness who can identify the pictures he has taken.[51] The correctness of the photograph as a faithful representation of the object portrayed can be proved *prima facie*, either by the testimony of the person who made it or by other competent witnesses, after which the court can admit it subject to impeachment as to its accuracy.[52] Photographs, therefore, can be identified by the photographer or by any other competent witness who can testify to its exactness and accuracy.[53]

This court notes that when the prosecution offered the photographs as part of its evidence, appellants, through counsel Atty. Alfredo Lazaro, Jr. objected to their admissibility for lack of proper identification.[54] However, when the accused presented their evidence, Atty. Winlove Dumayas, counsel for accused Joselito Tamayo and Gerry Neri used Exhibits "V," "V-1" to "V-48" to prove that his clients were not in any of the pictures and therefore could not have participated in the mauling of the victim.[55] The photographs were adopted by appellant Joselito Tamayo and accused Gerry Neri as part of the defense exhibits. And at this hearing, Atty. Dumayas represented all the other accused per understanding with their respective counsels, including Atty. Lazaro, who were absent. At subsequent hearings, the prosecution used the photographs to cross-examine all the accused who took the witness stand.[56] No objection was made by counsel for any of the accused, not until Atty. Lazaro appeared at the third hearing and interposed a continuing objection to their admissibility.[57]

The objection of Atty. Lazaro to the admissibility of the photographs is anchored on the fact that the person who took the same was not presented to identify them. We rule that the use of these photographs by some of the accused to show their alleged non-participation in the crime is an admission of the exactness and accuracy thereof.

That the photographs are faithful representations of the mauling incident was affirmed when appellants Richard de los Santos, Nilo Pacadar and Joel Tan identified themselves therein and gave reasons for their presence thereat.[58]

An analysis of the photographs vis-a-vis the accused's testimonies reveal that only three of the appellants, namely, Richard de los Santos, Nilo Pacadar and Joel Tan could be readily seen in various belligerent poses lunging or hovering behind or over the victim.[59] Appellant Romeo Sison appears only once and he, although afflicted with hernia, is shown merely running after the victim.[60] Appellant Joselito Tamayo was not identified in any of the pictures. The absence of the two appellants in the photographs does not exculpate them. The photographs did not capture the entire sequence of the killing of Salcedo but only segments thereof. While the pictures did not record Sison and Tamayo hitting Salcedo, they were unequivocally identified by Sumilang and Banculo.[61] Appellants' denials and alibis cannot overcome their eyeball identification.

Appellants claim that the lower courts erred in finding the existence of conspiracy among the principal accused and in convicting them of murder qualified by abuse of superior strength, not death in tumultuous affray.

Death in a tumultuous affray is defined in Article 251 of the Revised Penal Code as follows:

"Art. 251. Death caused in a tumultuous affray. - When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by prision mayor.

If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of prision correccional in its medium and maximum periods shall be imposed upon all those who shall have used violence upon the person of the victim."

For this article to apply, it must be established that: (1) there be several persons; (2) that they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally; (3) these several persons quarrelled and assaulted one another in a confused and tumultuous manner; (4) someone was killed in the course of the affray; (5) it cannot be ascertained who actually killed the deceased; and (6) that the person or persons who inflicted serious physical injuries or who used violence can be identified.[62]

A tumultuous affray takes place when a quarrel occurs between several persons and they engage in a confused and tumultuous affray, in the course of which some person is killed or wounded and the author thereof cannot be ascertained.[63]

The quarrel in the instant case, if it can be called a quarrel, was between one distinct group and one individual. Confusion may have occurred because of the police dispersal of the rallyists, but this confusion subsided eventually after the loyalists fled to Maria Orosa Street. It was only a while later after said dispersal that one distinct group identified as loyalists picked on one defenseless individual and attacked him repeatedly, taking turns in inflicting punches, kicks and blows on him. There was no confusion and tumultuous quarrel or affray, nor was there a reciprocal aggression at this stage of the incident.[64]

As the lower courts found, the victim's assailants were numerous by as much as fifty in number[65] and were armed with stones with which they hit the victim. They took advantage of their superior strength and excessive force and frustrated any attempt by Salcedo to escape and free himself. They followed Salcedo from the Chinese Garden to the Rizal Monument several meters away and hit him mercilessly even when he was already fallen on the ground. There was a time when Salcedo was able to get up, prop himself against the pavement and wipe off the blood from his face. But his attackers continued to pursue him relentlessly. Salcedo could not defend himself

nor could he find means to defend himself. Sumilang tried to save him from his assailants but they continued beating him, hitting Sumilang in the process. Salcedo pleaded for mercy but they ignored his pleas until he finally lost unconsciousness. The deliberate and prolonged use of superior strength on a defenseless victim qualifies the killing to murder.

Treachery as a qualifying circumstance cannot be appreciated in the instant case. There is no proof that the attack on Salcedo was deliberately and consciously chosen to ensure the assailants' safety from any defense the victim could have made. True, the attack on Salcedo was sudden and unexpected but it was apparently because of the fact that he was wearing a yellow t-shirt or because he allegedly flashed the "Laban" sign against the rallyists, taunting them into mauling him. As the appellate court well found, Salcedo had the opportunity to sense the temper of the rallyists and run away from them but he, unfortunately, was overtaken by them. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked.[66]

The qualifying circumstance of evident premeditation was alleged in the information against Joselito Tamayo. Evident premeditation cannot be appreciated in this case because the attack against Salcedo was sudden and spontaneous, spurred by the raging animosity against the so-called "Coryistas." It was not preceded by cool thought and reflection.

We find however the existence of a conspiracy among appellants. At the time they were committing the crime, their actions impliedly showed a unity of purpose among them, a concerted effort to bring about the death of Salcedo. Where a conspiracy existed and is proved, a showing as to who among the conspirators inflicted the fatal wound is not required to sustain a conviction.[67] Each of the conspirators is liable for all acts of the others regardless of the intent and character of their participation, because the act of one is the act of all.[68]

The trial court awarded the heirs of Salcedo P74,000.00 as actual damages, P30,000.00 as moral and exemplary damages, and one half of the costs of the suit. At the time he died on July 27, 1986, Salcedo was twenty three years old and was set to leave on August 4, 1986 for employment in Saudi Arabia.[69] The reckless disregard for such a young person's life and the anguish wrought on his widow and three small children,[70] warrant an increase in moral damages from P30,000.00 to P100,000.00. The indemnity of P50,000.00 must also be awarded for the death of the victim.[71]

IN VIEW WHEREOF, the decision appealed from is hereby affirmed and modified as follows:

1. Accused-appellants Romeo Sison, Nilo Pacadar, Joel Tan and Richard de los Santos are found GUILTY beyond reasonable doubt of Murder without any aggravating or mitigating circumstance and are each hereby sentenced to suffer the penalty of reclusion perpetua;
2. Accused-appellant Joselito Tamayo is found GUILTY beyond reasonable doubt of the crime of Homicide with the generic aggravating circumstance of abuse of superior strength and, as a consequence, he is sentenced to an indeterminate penalty of TWELVE (12) YEARS of prision mayor as minimum to TWENTY (20) YEARS of reclusion temporal as maximum;
3. All accused-appellants are hereby ordered to pay jointly and severally the heirs of Stephen Salcedo the following amounts:
 - (a) P74,000.00 as actual damages;
 - (b) P100,000.00 as moral damages; and
 - (c) P50,000.00 as indemnity for the death of the victim.

4. Costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado and Mendoza, JJ., concur.
Francisco, J., on leave.

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- [1] TSN of April 20, 1988, pp. 7-10.
[2] TSN of April 13, 1988, pp. 22-23.
[3] Exhibits "NN" and "SS;" Records, pp. 295, 296-A.
[4] Exhibit "LL;" Records, p. 298.
[5] Exhibits "OO" and "PP;" Records, pp. 296-A, 297.
[6] Exhibit "E;" Records, p. 254.
[7] TSN of December 1, 1987, pp. 17-39.
[8] Exhibit "QQ;" Records, p. 302.
[9] Exhibit "X-5;" Records, p. 329.
[10] Exhibit "B;" Records, p. 249.
[11] Exhibit "4;" Records, p. 319.
[12] TSN of September 26, 1988, pp. 5-6.
[13] Id., p. 15.
[14] Id., pp. 83, 90.
[15] TSN of Oct. 3, 1988, pp. 33, 53.
[16] Id., pp. 40, 47-48; Exhibit "2;" Records, p. 227.
[17] TSN of November 9, 1988, p. 25.
[18] Id., pp. 25-27.
[19] TSN of November 14, 1988, pp. 5-7.
[20] Id., pp. 7-8; Records, pp. 297, 299.
[21] TSN of November 14, 1988, pp. 10-11.
[22] Records, pp. 426-428; Decision, pp. 59-61.
[23] CA-G.R. CR Nos. 10501-10502, 10130-10131.
[24] Rollo, G.R. Nos. 114931-33, pp. 654-655; Decision, Court of Appeals pp. 48-49.
[25] Rollo, G.R. Nos. 114931-33, pp. 15-16; Petition, pp. 5-6.
[26] Rollo, G.R. Nos. 108280-83, p. 207; Additional Brief for Appellants, p. 2.

- [27] TSN of April 13, 1988, pp. 32-33.
- [28] Rollo, G.R. Nos. 108280-83, pp. 44, 67, 77; Petition, pp. 34, 57, 67.
- [29] Exhibit "I," Records, p. 258.
- [30] TSN of March 7, 1988, pp. 50-51, 77-78.
- [31] Exhibits "L," "M," and "N;" Records, pp. 262-265.
- [32] TSN of December 1, 1987, p. 70; TSN of March 14, 1988, pp. 9, 29-30.
- [33] TSN of April 13, 1988, pp. 32-33.
- [34] *People v. Caneja*, 235 SCRA 328 [1994]; *Lagunsad v. Court of Appeals*, 229 SCRA 596 [1994]; *People v. Dulay*, 217 SCRA 103 [1993].
- [35] TSN of February 13, 1987, pp. 55-56.
- [36] *Id.*, pp. 48-49.
- [37] *Id.*, pp. 42-44.
- [38] Exhibit "I;" Records, p. 258.
- [39] Rollo, G.R. Nos. 108280-83, pp. 220-221; Additional Brief for Appellants, pp. 15-16.
- [40] TSN of April 20, 1988, pp. 4-15; Exhibit "0;" Records, pp. 276-278.
- [41] Exhibits "V," "V-1" to "V-23;" Records, pp. 292-301.
- [42] Exhibit "V-25;" Records, p. 302.
- [43] Exhibits "V-24," "V-26," and "V-28;" Records, pp. 302-304.
- [44] Exhibits "W" and "W-6;" Records, pp. 313 and 319;
- [45] Exhibit "W-2;" Records, pp. 314-315.
- [46] Exhibit "W-1;" Records, p. 316.
- [47] Exhibit "W-4;" Records, p. 317.
- [48] *City of Manila v. Cabangis*, 10 Phil. 151 [1908]; 4 Martin, Revised Rules on Evidence, 61 [1989].
- [49] *The Chamberlayne Trial Evidence*, p. 617 cited in 4 Martin, *supra*; *Tan v. Sun Insurance*, 51 Phil. 212 [1927].
- [50] 1 Underhill, *A Treatise on the Law on Criminal Evidence*, 216-217 [1956].
- [51] Underhill, *supra*; VII Francisco, *The Revised Rules of Court in the Philippines*, Part 1, 107 [1973].
- [52] Francisco, *supra*.
- [53] *City of Manila v. Cabangis*, *supra*; cf. *Vda. de Ramos v. Court of Appeals*, 81 SCRA 393 [1978].
- [54] TSN of July 29, 1988, p. 33.
- [55] TSN of September 26, 1988, pp. 2-3, 5-6.

- [56] Id., pp. 114-123; TSN of November 9, 1988, pp. 42--50.
- [57] TSN of November 9, 1988, p. 35.
- [58] Id., pp. 38-50; TSN of November 14, 1988, pp. 6710, 10-13.
- [59] Exhibits "V-1," "V-2," "V-8," "V-9," "V-12," "V-13," "V-15" to "V- 18."
- [60] Exhibit "W-3;" Records, p. 314.
- [61] Exhibits "E" and "L," "K" and "F;" Records, pp. 254 and 262, 255 and 260; TSN of April 13, 1988, pp.25-26; TSN of December 1, 1987, pp. 23-26.
- [62] II Reyes, Revised Penal Code, 436 [1993].
- [63] United States v. Tandoc, 40 Phil. 954, 957 [1920].
- [64] People v. Ribadajo, 142 SCRA 637 [1986].
- [65] Exhibit "E," Records, p. 253.
- [66] People v. Abapo, 239 SCRA 469 [1994]; People v. Buela, 227 SCRA 534 [1993]; People v. Alcantara, 206 SCRA 662 [1992].
- [67] People v. Galit, 230 SCRA 486 [1994]; People v. Pandiano, 232 SCRA 619 [1994].
- [68] People v. Timple, 237 SCRA 52 [1994]; People v. Labre, 239 SCRA 159 [1994]; People v. Magalang, 217 SCRA 571 [1993].
- [69] TSN of June 25, 1987, pp. 12-15.
- [70] TSN of June 25, 1987, pp. 10-13.
- [71] Civil Code, Article 2206; People v. Dasig, 221 SCRA 550 [1993].

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