

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HITRO SANCHELES AND KAREEM SANCHELES, ACCUSED-APPELLANT.

G.R. Nos. 110999 and 111000. April 18, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellants Hitro Sancholes, Kareem Sancholes and two other unidentified persons, referred to for purposes of these cases as John Doe and Peter Doe, were charged with murder in two separate informations filed before the Regional Trial Court of Negros Oriental, Branch 30, docketed therein as Criminal Cases Nos. 9374 and 9431, and the particulars of which offenses are alleged in the informations hereunder quoted:

Criminal Case No. 9374:

“That on or about the 10th day of June, 1990, at Casanga-an, Tara, Mabinay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and helping one another, for a common purpose, with evident premeditation and treachery, with abuse of superior strength, and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab one Rodrigo Cabual y Orellano, a 12 year-old boy, with the use of a long bolo and a hunting knife, with which the Accused were then armed and provided, thereby inflicting a horizontal wound on the upper portion of the forehead, with a width of 5 inches, that cracked the skull, which injury caused the untimely death of the victim immediately thereafter.

Contrary to Article 248 of the Revised Penal Code.”[1]

Criminal Case No. 9431:

“That on or about the 10th day of June, 1990, at Casanga-an, Tara, Mabinay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and helping one another, and for a common purpose, with intent to kill, evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and hack one Enrique Cabual with long bolo (pinuti) and knives, with which the Accused were then armed and provided, thereby inflicting the following wounds on the victim, to wit:

‘Head - Presence of a hack wound at the upper portion of the head that crack(ed) the skull, with width of 4 inches. Another hack wound, 4 inches (in) width at the upper part of the forehead. Another 4 inches width hack wound at the right side of the head. A 5 inches width wound from the right eye towards the nose. Hack wounds of 3 inches width at the level of the mouth and the lower portion of the chin at the right side.

‘Body - Presence of multiple stab wounds at the right and left chest-frontal, and at the lower portion below the left axilla. Upper Extremities - Presence of two stab wounds at the upper left arm. All stab wounds ha(ve) a depth of 2 to 4 inches and a width of 1 inch.

Left hand - Presence of a 2 inches width hack wound, superficial.'

which wounds caused the immediate death of Enrique Cruz.

Contrary to Article 248 of the Revised Penal Code.”[2] (Corrections in parenthesis supplied).

Upon arraignment, herein appellants pleaded not guilty. In view of the substantial identity of the facts and circumstances of both cases, a joint trial thereof was conducted thereafter.

We have carefully reviewed and assayed the facts as found by the trial court in light of the evidence of record, more specifically the transcripts of the testimonies of the witnesses, and we are satisfied that no error can be ascribed thereto. For that reason, we are reproducing such findings in extenso:

“Trial of these cases started on December 6, 1990 and the prosecution presented in evidence the testimonies of Magno Reposo, Margarita Cabual, Dr. Herminio Garcia, Elpidio Babor, Pat. Weiss Alpay, Leonila Reposo, Anatolio Ignacio, Zoilo Abrasaldo and Romeo Mendoza whose testimonies tended to show the following version: While Magno Reposo was fishing at the Ilog River of Casanga-an, Tara, Mabinay, Negros Oriental at 10:00 o'clock in the morning of June 10, 1990, he heard a shout for help. When he looked to where the shout came from he saw Enrique Cabual who was also fishing in the river being ganged up by Hitro Sancholes and Kareem Sancholes. Hitro Sancholes hacked Enrique Cabual with the use of a bolo about 27 inches long hitting the latter on the middle portion of his head. Upon being hit, Enrique fell into the river. Kareem followed Enrique and stabbed the latter with the use of a hunting knife. He did not know how many times Enrique Cabual was hit because he immediately went home. When he reached his house, he told his wife of the incident that he had witnessed. Then he went to the house of Enrique Cabual and informed his wife, Margarita Cabual, of the incident.

Upon being informed by Magno Reposo that her husband was killed by Hitro Sancholes and Kareem Sancholes, Margarita Cabual did not do anything yet because she was sick. She just waited for her children to come home because they were in Lumbangan collecting their wages. At 4:00 p.m. of same day her children Mercedito, Ricky and Rolando arrived and she informed them of what happened to their father as told by Magno Reposo. Thereafter her children went to the river to look for their father. At 8:00 o'clock in the evening, her son Ricky went back home telling her that they could not find their father. So she, together with her two sons and a nephew, went to the Army detachment to ask for help. The soldier refused to extend help to them because their commanding officer was out. So they went home and waited till morning. At 5:00 a.m. of the following day, her three sons went back to the river to further look for their father and brother. Later, Mercedito went back home telling her that they found their father and brother, Nonoy, floating on the river already dead. She went to the place where her husband and son were. She saw that her husband and son had several wounds on their bodies. Her dead son Nonoy was 200 meters away from where her husband was. They did not touch the dead bodies because they waited for the military to examine the same. At 11:00 o'clock a.m. of that day Commander Mendoza together with Barangay Captain Loreto Esperagoza made a sketch of the place of the incident while policeman Weiss Alpay examined the dead bodies of the victims. Due to the death of her husband and son she felt sad and worried and she has incurred expenses in the amount of P8,000.00.

Elpidio Babor who was gathering firewood on the land of Pepe Dupio situated at Casanga-an, Tara, Mabinay, Negros Oriental at 9:00 a.m. of June 10, 1990 heard a shout for help of a child saying: 'Help papa,' which came from the lowland. He then looked down and from a distance of 100 meters away he saw Kareem Sancholes and Hitro Sancholes chasing a boy, later identified to be Rodrigo Cabual. When they overtook the boy, Kareem Sancholes stabbed the boy with the use of a hunting knife. Lito Sancholes joined the assault by hacking the boy hitting the forehead. Hitro hacked the boy again and as a consequence thereof the boy fell and died. Thereafter, Kareem Sancholes and Hitro Sancholes left and walked towards the land of Pepe Dupio, where they were met by Renato Cadavid and Romulo Santos. This witness hid in the place where he was for fear that they might see him because they walked towards his direction. Later, they stopped and sat on the

ground, thus giving him an opportunity to leave the place.

Dr. Herminio Garcia, a medico legal officer of Mabinay, received a report from Pat. Weiss Alpay sometime in the month of June, 1990 of dead bodies of victims Enrique Cabual and Rodrigo Cabual. Pat. Alpay reported that the dead bodies were already buried because at the time of his examination the bodies were beginning to decompose and no embalmer was available. Pat. Alpay submitted to him a sketch of the human bodies and from the verbal report of Pat. Alpay, Dr. Garcia made his own medical findings which he recorded in a Medical Certificate (Exhibit 'G'). The first wound found on the body of Enrique was on the upper portion of the head that cracked the skull about 4 inches wide (Exhibit 'C-1'). It was a fatal wound. The possible instrument that caused said wound was a bladed weapon like a bolo. Second wound is 4 inches wide at the upper part of the forehead ('F-1-b') ('C-2'). Next was hack wound 4 inches wide located on the right side of the head ('F-1-c') ('C-3'). Another wound was 3 inches wide from the right eye towards the nose ('F-1-d') ('C-4'). The fifth wound was 3 inches wide at the level of the mouth down to the lower portion of the chin at the right side ('F-1-e') ('C-5'). Multiple stab wounds on the left portion of the chest below the left nipple ('F-1-f') ('C-6'). All the stab wounds had a depthness (sic) of 2 to 4 inches and were 1 inch in width. There were also two stab wounds at the upper left arm ('F-1-g') ('C-7'), and another hack wound 2 inches wide on the left hand ('F-2') ('C-8'). Almost all of the wounds found on the body of the victim Enrique Cabual were fatal except the one found on the left hand. There were two kinds of instruments that possibly caused said wounds, a bolo and a pointed knife. Due to the several wounds sustained by the victim massive hemorrhage must have taken place that resulted in blood loss, causing the death of the victim. Dr. Garcia then issued the death certificates (Exhibits 'I' and 'J').

Dr. Garcia further declared that his findings found on the Medical Certificates (Exhs. 'F' and 'G') he issued and signed were all based upon the verbal report of Pat. Alpay and the sketch of the human bodies submitted by said policeman. He was not able to personally see and examine the dead bodies of the two victims because he was informed of the incident several days after the bodies were already buried. The place of incident happened in a far-flung barangay which would take a half day walk to reach. The said place is not accessible by motor vehicles during rainy days. Dr. Garcia used to give the police briefings on how to examine injuries on dead bodies and to indicate the nature, size and depthness (sic) of those injuries and the kind of instrument probably used in inflicting the same. So he feels confident that what the police furnished him were substantially accurate.

Pat. Weiss Alpay and companions went to Barangay Tara passing by the Army detachment in order to request for reinforcement. They arrived at the place of incident at 2:00 p.m. and he investigated the persons around, one of whom was Margarita Cabual, the wife of the victim Enrique Cabual who furnished him with the personal data of the victim. He learned that the victims were Enrique Cabual and his son Rodrigo Cabual. He examined the cadavers and took a look at each and every wound of the victims and took their measurements with the use of a tape measure and a stick. He took down notes while he was investigating and examining the cadavers. When they returned to the headquarters he prepared Exhibits 'C' and 'D' with the aid of his notes written on a piece of paper and thereafter submitted the same to Dr. Herminio Garcia."^[3]

The court below just as meticulously and extensively set out its findings on the version presented and the testimonial evidence adduced by the defense, detailing the same in its decision as follows:

"The defense presented evidence in the form of testimonies of Esperidion Lopez, Epenito Vailoces, Felisa Jordan, Rowena Sancholes, Abundio Gador, Accused Hitro Sancholes and Kareem Sancholes which tended to show the following version: At 7:00 o'clock in the morning of June 10, 1990, Esperidion Lopez saw Elpidio Babor pass by his house walking on the trail bound for Lumbangan. From 6:00 p.m. to 10:00 p.m. of that day he was on duty as guard in the army detachment of Tara, Mabinay being a CAFGU member. At 7:00 o'clock that evening three persons reported to him of missing persons. Among them were Elpidio Babor and Margarita Cabual who asked for assistance to locate Elpidio's missing uncle and a son who failed to come home from fishing at the Ilog River. He referred them to their Commander Sgt. Romeo Mendoza. Within his hearing

distance, Sgt. Mendoza told Babor that they will go to the place indicated the following day. Babor suggested that the search be made right that evening but Sgt. Mendoza refused because their duty was not to look for missing persons but to fight. He asked Babor why they were late in their report and Babor answered that they came from Lumbangan yet. The following day, June 11, 1990, Sgt. Mendoza, together with their radioman Anatolio Ignacio, Asst. Commander Maximo Paraiso, Roland Demafelis, Ruben Guachi and Eustaquio Anca went to the place where the missing persons were last seen. When they reached said place, the members of the family of the victims already found the dead bodies of the missing persons. The place of the incident was familiar to him because that was his roaming place before. But now several government personnel had been killed, including members of the 'masa' like Abraham Bohol, Victor Bohol and Sencio Baldoza. Killings were done in the evening. The terrain going to the Ilog River where the missing persons were killed was a slope about 200 meters steep. There were trees growing parallel to the river bank. Said river is the boundary between the town of Mabinay and Bayawan.

Epenito Vailoces declared that he is a resident of Matobato, Bindoy, Negros Oriental. He used to go to Lantoy, Tara, Mabinay, Negros Oriental because he owned a parcel of land there. He knew Kareem Sancholes because they were friends and Kareem is also a first degree cousin of his wife. On June 3, 1990, Kareem went to his house at Matobato, Bindoy in order to enrol at the Canluto Elementary School, less than a kilometer away from his house. On June 4, 1990, Kareem attempted to enrol at the Canluto Elementary School but was refused due to lack of a school card. Kareem sent a word to his parents requesting them to send to him his school card. While waiting, Kareem stayed in his house for nine days. On June 13, 1990, Kareem went home to Lantoy because his card did not arrive. The distance from his place at Matobato to Lantoy can be negotiated by bus and it will take six hours of travel. Kareem was in their place on the date of the incident and not (i)n any other place.

Kareem Sancholes testified in his defense that he is one of the Accused in these two cases on trial. The charge for Murder in these two cases against him is not true because from June 3, 1990 to June 12, 1990 he is in Matobato, Bindoy, Negros Oriental in the house of Penito Vailoces. He only went home to Lantoy on June 13, 1990 to get his school card because his parents failed to send it while he was in Matobato. On June 14, 1990 the CAFGU thru Sgt. Romeo Mendoza arrested him. He was surprised because he had not done anything wrong. When he asked them why he was being arrested the CAFGU just told him to inquire about it before the authorities. He was investigated by the CAFGU and during the investigation he was forced to admit the killing otherwise he would be killed. Thereafter he was brought to the municipal hall of Mabinay and while he was in jail he knew that his brother Hitro Sancholes was also arrested and was manhandled by the policemen. His purpose in studying in Canluto that year was to watch over their coconut plantation there and at the same time cultivate the land because nobody was taking care of the same. He did not go home on June 5, 6, 7, 8, 9, 10 and 11 because he waited for his school card to arrive and also due to the fact that he had no money to pay for his fare. Upon the suggestion of Penito, he went home on the 13th especially because he had already money for his fare coming from the proceeds of the coconut he gathered on June 4, 1990 after he failed to enrol, and which he made into copra.

Hitro Sancholes testified in his defense declaring that he knew victim Enrique Cabual since he reached the age of reason, and that during the latter's lifetime they had no difference(s) with each other. He does not know victim Rodrigo Cabual. The charge of Murder against him was not true because at the time of the alleged incident he was in the house of his parents-in-law Brigido Andaya and Tita Andaya at Sitio Makatol, Tara, Mabinay, Negros Oriental on June 10, 1990. He left his house at Sitio Lantay on June 8, 1990 and stayed with his parents-in-law up to the 10th. During those times he helped in the carpentry work of his father-in-law. At 9:00 of June 10, 1990, Felisa Jordan arrived in said house selling medicines. Felisa left the house at 11:00 a.m. of that day. Hitro declared further that he had not gone to any other place while he was in the house of his parents-in-law except on the 11th when his father-in-law sent him for an errand to Poblacion, Mabinay to buy medicines for his ailing mother-in-law. He left Makatol on June 11 at 8:00 a.m. and reached Poblacion, Mabinay past 2:00 p.m. He rested awhile after which he ate his lunch and then bought the medicines. Before

proceeding home, he dropped by the house of his grandmother in Poblacion, Mabinay. Since it was already late in the afternoon and the sun was about to set, his grandmother required him to pass the night in her place and to go home only on the following day. At 8:30 a.m. of the following day he left and after having walked a distance of about 5 fathoms, four men, known to be CAFGU's and 1 policeman met him and asked for his name. He gave his name and he was requested to go along with them. He asked why, since he has not done anything wrong, but they just insisted that he should go with them for a conference. He was brought to the municipal hall of Mabinay. While they were behind the municipal building, the CAFGUs whose names he does not know forced him to admit the killing of Enrique Cabual. When he refused they struck his head with a gun which caused him to fall to the cemented floor thereby hitting his head on the floor. They aimed a gun at his mouth. A CAFGU member pushed his head three times to the cemented wall. He fainted and lost consciousness. He does not know whether the questions propounded to him and the answers he gave were written down because his hand was held high and he could not see. Later they dragged him and placed him inside the dark prison cell alone. On the 15th of the month while he was in jail, his younger brother was arrested and was brought to the municipal hall accompanied by his parents and grandmother. That was also the time his parents and grandmother had the occasion to visit him in jail. He and Kareem were arrested for being suspects in the killing of Enrique Cabual and Rodrigo Cabual. It is not true that he hacked Enrique Cabual on June 10, 1990 because he had not gone to Casanga-an, Tara, Mabinay, in fact he does not know said place. He does not know prosecution witness Magno Reposo. He only saw him for the first time in court. He knew prosecution witness Elpidio Babor since childhood because his father was their neighbor before. They had no difference(s) nor grudges with each other. They never quarreled. It is not true that he chased a boy named Rodrigo in the river of Casanga-an, Tara, Mabinay on June 10, 1990. The testimony of Elpidio Babor is a lie. He believed that the family of the late Enrique Cabual must have given him money. In fact his parents and grandmother cried and asked the complainant why they implicated (him) when he had no participation in the killing of the victims.

Hitro Sancholes further declared that he was born in Lantoy, Tara, Mabinay, Negros Oriental, and knew of only two sitios in their place like Lantoy and Makatol. He cannot name other barangays in Mabinay except Tara and Poblacion.

Felisa Jordan testified that she knew Hitro Sancholes because she was previously a resident of sitio Danas, Tara, Mabinay, Negros Oriental but now she is already a resident of Bais City. On June 9, 1990 she went to the house of her sister-in-law Felicidad Jordan Ignacio at Danas, Tara, Mabinay canvassing buyers of herbal medicines like apdolsan and apscosoda. At 9:00 a.m. of the following day she went to Makatol to the house of Brigido Andaya for the same purpose. She was entertained by Brigido Andaya, Hitro Sancholes and the wife of Hitro. Brigido placed an order for medicines and she promised to deliver the medicines the following month. She left the house of Brigido at 11:00 a.m. and she saw that Hitro was still there.

Abundio Gador testified for the defense that he is a resident of Bindoy, Negros Oriental. On June 9, 1990 he went to Lantoy, Mabinay, Negros Oriental in order to get the corn he harvested which he left in the house of his brother-in-law Abundio Montecino. While he was there, he removed the grains from the c(o)b and was able to gather half cavan of corn grains. The following day June 10, 1990 at 8:30 a.m., he went bringing with him the half cavan of corn grains. While on his way, at Awayon River, he overtook Magno Reposo and Elpidio Babor. So he joined them and they walked together for they have the same destination. When they reached Lumbangan, at 11:00 a.m. they ate their lunch together too by the roadside because they respectively brought with them their food. Thereafter, they parted ways because he went home to Bindoy, Negros Oriental.

Rowena Sancholes declared that she is the wife of 8 years of Accused Hitro Sancholes. They have two children. Kareem Sancholes is her brother-in-law. They have their own house in sitio Lantoy, Tara, Mabinay. On June 10, 1990 she, together with her husband, was in Makatol, Tara, Mabinay in the house of her mother Rosita Bato. Her husband helped in the carpentry work of her step-father while they were there. She attended to her mother who had fever that time. They left their house in sitio Lantoy on June 8, 1990 which was a

Friday at 5:00 a.m. They walked for about 20 kilometers to Makatol. On June 11th at 5:00 a.m., her husband left for Poblacion, Mabinay to buy medicines for her mother. Since then her husband did not return because he was arrested as a suspect in the killing incident that happened on June 10th. She gathered said information from her sister-in-law Renita Sancholes.

Witness further declared that when her husband did not return from Poblacion, Mabinay on June 11th, she stayed with her mother up to June 20th. She denied the claim that Barangay Captain Loreto Esperagoza went to her house in Lantoy to inquire from her the whereabouts of her husband on the 11th of June.”[4]

On May 21, 1993, the trial court rendered its decision finding appellants guilty beyond reasonable doubt of the crimes charged, the dispositive part of which decrees as follows:

“IN VIEW OF THE FOREGOING, the Court finds Hitro Sancholes and Kareem Sancholes guilty beyond reasonable doubt of the crime of Murder, defined and penalized in Article 248 of the Revised Penal Code, and they are hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law, to jointly and severally indemnify the heirs of Enrique Cabual and Rodrigo Cabual the total amount of P100,000.00 (at P50,000.00 for each victim), and to pay the costs.”[5]

Appellants are now before us seeking the reversal of that judgment on the argument that the trial court committed the following errors, viz.:

1. In finding accused-appellants guilty beyond reasonable doubt of the crime charged despite the failure of the prosecution to prove their guilt beyond reasonable doubt; and
2. Assuming that the accused-appellants indeed delivered blows to the victims, the trial court erred in finding that the circumstance of abuse of superior strength qualified the crime committed by accused-appellants to murder.[6]

After a painstaking and objective evaluation of the testimonies and evidence respectively presented by the prosecution and the defense, this Court is of the carefully considered opinion that the prosecution has succeeded in proving the guilt of appellants beyond reasonable doubt.

We have repeatedly held that the matter of appreciating evidence and assessing the credibility of witnesses is an undertaking that rests primarily with the trial court.[7] The appellate court normally will not disturb the findings of the trial court considering the latter’s clear vantage point in resolving that question.[8] In the case at bar, despite indulging all doubts in favor of appellant, we find no cogent reason to depart from said rule.

The prosecution has sufficiently established by strong and compelling evidence the killing of Enrique and Rodrigo Cabual by the appellants through the positive identification of them by the prosecution’s principal witnesses, Magno Reposo and Elpidio Babor. Reflected by the transcripts are their clear, categorical and straightforward testimonies on the facts which they witnessed.

The defense could not impute any evil or dubious motive to the said witnesses which might have impelled them to testify falsely. With that failure of the defense to prove that Magno and Elpidio were moved by any improper motive, the presumption is that they were not so moved and that their testimonies, specifically the portions found credible by the trial court, are entitled to full faith and credit.[9]

Moreover, the reliability of the testimonies of the said eyewitnesses was further strengthened by the corroboration made by the medico-legal officer, Dr. Herminio Garcia, as to the nature and number of wounds inflicted on the bodies of the victims and the kind of weapons used by the assailants, that is, a bolo and a pointed knife. Mute as such physical evidence may appear, it has been said that the gaping lips of those wounds speak with an eloquence which the victims themselves would not probably have mustered in life.

In the face of the overwhelming evidence against them, appellants fell back upon and relied on the discredited defense of alibi. Kareem contended that he was in Matobato, Bindoy, Negros Oriental from June 3, 1990 to June 13, 1990, while Hitro insisted that he was in Sitio Makatol, Tara, Mabinay, Negros Oriental when the crimes were committed.

No jurisprudential rule in criminal case is more settled than that alibi is the weakest of all defenses and should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime, as in the instant case. The alibi of the accused cannot prevail against the positive identification made by the prosecution witnesses.[10] Otherwise, it would be a case of testimony capable of easy fabrication overriding testimony devoid of questionable attribution.

Moreover, for alibi to prosper, it is not enough to prove that the accused was in another place when the crime was committed, but he must also demonstrate that it was physically impossible for him to have been in the scene of the crime at such time.[11] This is a rule of such natural and logical basis as to be beyond question. In this case, both appellants absolutely failed to demonstrate such impossibility on their part.

At the time of the commission of the crime, both appellants were in places not far from the crime scene. In the case of Kareem, it was established that a trip from Matobato to Lantoy could be negotiated in less than six (6) hours by bus and which mode of transportation was readily available. There can also be no sensible debate that Hitro's defense of alibi has likewise to be rejected. The admitted facts clearly show that Sitio Makatol, where Hitro claimed to have been staying at the time of the commission of the crime, and Sitio Casanga-an, the situs of the killing, are within the same barrio of Tara. Thus, it does not inveigh against but even reinforces the theory of the People since said appellant was in the vicinity of the crime scene within a radius of just a few kilometers.

In addition, the defense of alibi was mainly testified to by appellants themselves and their immediate relatives. Kareem's testimony was corroborated by Epenito Vailoces, the husband of his first degree cousin, who claimed that Kareem was in his house on June 10, 1990. On the other hand, Hitro's version was corroborated only by his wife. Corroboration by other impartial and reliable witnesses, although a distinct probability, was neither sought nor availed of by appellants.

It has been held that alibi becomes less plausible as a defense when it is sought to be established by the accused themselves and their immediate relatives. When nothing supports alibi except the testimonies of relatives and friends, and with the defendants urging the same, the said defense weighs and is worth nothing.[12]

On the second assignment of error, we agree with the trial court that the crime committed by appellants in both cases was murder. The evidence of the People indisputably established the presence of treachery and abuse of superior strength, either of which qualifies the crime as murder.

Treachery characterized the killing of Rodrigo who, by reason of his youth, did not pose any danger to appellants. The qualifying circumstance of treachery exists in the commission of a crime when an adult person illegally attacks a child of tender years and causes his death. The killing of a child is murder qualified by treachery, even if the manner of attack was not shown, because the weakness of the victim due to his tender age results in the absence of any danger to the accused.[13] In the present case, Rodrigo, the murdered child, was only twelve (12) years old.

There was also a clear case of abuse of superior strength, given the blatant inequality of strength between the victim and his aggressors, as well as the degree of force and the weapons used by the latter.[14] However, this cannot be appreciated even as a generic aggravating circumstance since it is absorbed by treachery which has been used to qualify the crime to murder.[15]

As to the killing of Enrique Cabual, even if the qualifying circumstance of abuse of superior strength was not alleged in the information, treachery was nonetheless alleged therein and was sufficiently established at the trial. It consequently qualified the killing of this victim to murder.

Treachery was ineluctably attendant in the killing of Enrique by appellants. This victim was fishing in the river sitting on a piece of wood when appellants and the two other unidentified persons suddenly and unexpectedly ganged up on him. Upon being hit on the head with a bolo wielded by Hitro, he fell into the river. Immediately thereafter, Kareem followed him into the water and stabbed him. Under these circumstances, the victim was totally and unquestionably in a defenseless state.

The codal text that treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend to directly and specially insure its execution, without risk to himself arising from the defense which the offended party might make^[16] applies foursquare to this case. The victims were unarmed at the time of the attack, defenseless and helpless, without any opportunity to defend themselves from their assailants' unexpected sanguinary assault. The sudden attack was specially employed by the latter to insure the execution of the crime without risk to themselves arising from the defense which the victims might make.^[17]

Further, the deadly nature of the weapons used, the traitorous manner of the assault, and the number and location of the wounds inflicted upon the victims, conjointly demonstrate a deliberate and determined assault with intent to kill.^[18]

The fact that the attack was frontal does not make it less treacherous. Alevosia is taken into account, even if the deceased was face to face with his assailants, when the attack was so sudden and unexpected that the victim was not in a position to offer an effective defense; or when there was a deliberate surprise attack upon an unarmed victim; or when the attack was launched, without warning, and without giving the victim the chance to defend himself or repel the initial attack.^[19]

The trial court was also correct in finding the existence of a conspiracy among appellants and their unidentified cohorts. Their acts clearly and convincingly showed a unity of purpose, that is, a concerted effort to bring about the death of Enrique and Rodrigo.^[20] Hence, proof as to who among the conspirators inflicted the fatal wound is not required.^[21] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.^[22]

However, the trial court erred in imposing only a single penalty of reclusion perpetua. Appellants were found guilty, and correctly so, of two separate crimes of murder for the killing of Rodrigo and Enrique Cabual. The penalty for the crime of murder under Article 248 of the Revised Penal Code at that time was reclusion temporal in its maximum period to death. In the absence of any aggravating or mitigating circumstances, the imposable penalty was the medium period of said penalty, or reclusion perpetua.^[23] Hence, for the two counts of murder, herein appellants must be sentenced to suffer two penalties of reclusion perpetua.

WHEREFORE, the questioned judgment of the trial court finding accused-appellants Hitro Sancholes and Kareem Sancholes guilty beyond reasonable doubt of two separate crimes of murder is hereby **AFFIRMED**, with the **MODIFICATION** that they are hereby sentenced to suffer two penalties of reclusion perpetua.

SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

- [1] Original Record, Criminal Case No. 9374, 1.
- [2] Original Record, Criminal Case No. 9431, 1.
- [3] Ibid., id., 129-133.
- [4] Ibid., id., 133-142.
- [5] Ibid., id., 146; penned by Judge Enrique C. Garrovillo.
- [6] Brief for Accused-Appellants, 3; Rollo, 87.
- [7] People vs. Anciano, et al., G.R. No. 88937, September 13, 1990, 189 SCRA 519; People vs. Solares, G.R. No. 82363, May 5, 1989, 173 SCRA 203, and cases cited therein.
- [8] People vs. Vinas, Sr., et al., G.R. Nos. 112070-71, June 29, 1995, 245 SCRA 448; People vs. Manuel, et al., G.R. Nos. 93926-28, July 28, 1994, 234 SCRA 532.
- [9] See People vs. Aldeguez, G.R. No. 47991, April 3, 1990, 184 SCRA 1; People vs. Cedenio, et al., G.R. No. 93485, June 27, 1994, 233 SCRA 356; People vs. Barquilla, G.R. No. 99049, October 11, 1995, 249 SCRA 197.
- [10] People vs. Vinas, Sr., et al., G.R. No. 112070-71, June 29, 1995, 245 SCRA 448; People vs. Ferrer, G.R. No. 102062, March 14, 1996, 255 SCRA 19.
- [11] People vs. Baniaga, et al., G.R. No. L-14905, January 28, 1961, 1 SCRA 283; People vs. Escosio, G.R. No. 101742, March 25, 1993, 220 SCRA 475; People vs. Cristobal, G.R. No. 116279, January 29, 1996, 252 SCRA 507.
- [12] People vs. Torres, G.R. No. 105389, 232 SCRA 32, April 28, 1994; People vs. Corpuz, et al., G.R. No. 105007, January 18, 1995, 240 SCRA 203.
- [13] People vs. Magtuloy, G.R. No. 105671, June 30, 1993, 224 SCRA 153; People vs. Laggui, G.R. No. 76262-63, March 16, 1989, 171 SCRA 305; People vs. Valerio, Jr., G.R. No. L-4116, February 25, 1982, 112 SCRA 208.
- [14] See People vs. Plasencia, et al., G.R. No. 90198, November 7, 1995, 249 SCRA 674.
- [15] People vs. Caritativo, G.R. Nos. 92271-72, April 1, 1996, 256 SCRA 1; People vs. Ampo-an, G.R. No. 75366, July 4, 1990, 187 SCRA 173.
- [16] Article 16, Revised Penal Code.
- [17] People vs. Gregorio, G.R. Nos. 109614-15, March 29, 1996, 255 SCRA 380; People vs. Lapura, G.R. No. 94494, March 15, 1996, 255 SCRA 85; People vs. Espinosa, et al., G.R. No. 72883, December 20, 1989, 180 SCRA 393.
- [18] See People vs. Gregorio, *supra*, Fn. 17.
- [19] People vs. Liston, G.R. No. 63396, November 15, 1989, 179 SCRA 415; People vs. Cafe, G.R. No. 60674, October 28, 1988, 166 SCRA 704; People vs. IAC, G.R. Nos. 66939-41, January 10, 1987, 147 SCRA 219.
- [20] See People vs. Canillo, G.R. No. 106579, August 30, 1994, 236 SCRA 22; People vs. Merabueno, G.R. No. 87179, December 14, 1994, 239 SCRA 197.
- [21] People vs. Sabal, et al., G.R. No. 108084, August 14, 1995, 247 SCRA 263; People vs. Liquiran, G.R. Nos. 105693-96, November 19, 1993, 228 SCRA 62.

[22] People vs. Gregorio, supra, Fn. 17; People vs. Carizo, G.R. No. 96510, July 6, 1994, 233 SCRA 687.

[23] People vs. Ferrer, supra, Fn. 10.

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