

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO PABLO Y MALUNES @ DANNY, NICOLAS COMPRA Y FERNANDEZ @ NICO, EDWIN TRABUNCON Y GATAGUE @ EDWIN, ACCUSED-APPELLANTS.

G.R. Nos. 120394-97. January 16, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is an appeal from the Decision[1] of the Regional Trial Court of the National Capital Judicial Region, Branch 107, Quezon City convicting accused-appellants Danilo Pablo, Nicolas Compra and Edwin Trabuncon of three (3) counts of murder and one count of attempted murder, and sentencing them to suffer the penalty of reclusion perpetua and prision mayor, respectively.

Appellants were charged with said crimes in four separate Informations. The Information in Criminal Case No. Q-92-29830 reads:

That on or about the 8th day of March, 1992, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with other persons, and mutually helping one another, did, then and there willfully, unlawfully and feloniously with intent to kill, qualified by evident premeditation, with the use of superior strength and treachery, assault, attack and employ personal violence upon the person of one DOMINGO LOVERES Y GERVOSO, by then and there stabbing and hacking him with knives and bolos hitting him on the different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of DOMINGO LOVERES Y GERVOSO, in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.[2]

Similar Informations were filed with the same court against appellants for the murder of Robert Loveres y Gertos[3] and Lucita Gertos De Loveres,[4] and for the attempted murder of Edgar Loveres y Gertos,[5] inasmuch as the crimes charged occurred during the same incident. However, treachery was not alleged in the Information charging appellants of the crime of attempted murder of Edgar Loveres.

When arraigned, appellants Danilo Pablo, Nicolas Compra[6] and Edwin Trabuncon[7] pleaded not guilty. Thereafter, joint trial of these cases ensued.

The prosecution established that on March 8, 1992, at around 7:45 in the evening, Lucita Loveres and her children, Jocelyn, Edgar, Alma and Robert, were eating supper in their house at No. 5 Tambis Street, Area 9, Pasong Tamo, Tandang Sora, Quezon City. The sister of Lucita, Aida Gertos, who was staying with them, was also there. Lucita's husband, Domingo Loveres, was then sleeping. Then they heard Renato "Panong" Danao call from outside, "Manang." Lucita Loveres went out accompanied by her children, Jocelyn and Edgar, while Aida Gertos stood outside the door of the house. Outside their gate, they saw Panong, appellant Danilo Pablo, appellant

Nicolas Compra, one Rencio, appellant Edwin Trabuncon, Inggo Pablo, Jerry Trabuncon, one Redford and their other companions. Inggo Pablo held a bolo; Panong held a gun; Rencio and Jerry Trabuncon each held a knife; appellant Edwin Trabuncon held a piece of wood; appellant Danilo Pablo held a knife; and appellant Nicolas Compra held a bolo. Lucita stood by the gate of their house while Edgar and Jocelyn stood beside her. Panong asked Lucita to let the troublemaker come out (“Palabasin ang nanggugulo”). Lucita replied that there was nobody making trouble (“Walang nanggugulo dito”). Suddenly, Panong shot her with his gun hitting her in the neck. Edgar and Jocelyn who were just beside their mother witnessed the incident. Panong just stared at them. When Edgar lifted his mother, Inggo Pablo stabbed him, and Edwin Trabuncon hit him on his left forearm with a piece of wood. Appellant Danilo Pablo was an “alalay” or aide of Panong and was holding a knife, while appellant Nicolas Compra was holding a bolo. When Edgar Loveres was hit by appellant Edwin Trabuncon on the forearm, he ran towards their house, and stood by the window. In the meantime, Jocelyn embraced her mother, Lucita, and pulled her away from the gate to the front of their house where Lucita fell. Then Jocelyn saw her father, Domingo, awakened by the commotion, come out of the house. She ran towards him, but the group of Panong, Domingo Pablo, Rencio, appellant Edwin Trabuncon, appellant Danilo Pablo, appellant Nicolas Compra and other companions dragged her father towards the house of Inggo Pablo, which was five meters away from their house, separated only by a street. Robert Loveres, who followed his father, was likewise dragged by the same group. When they were in front of the house of Inggo Pablo, the group, including the appellants, helped one another stab, hack and kill Domingo and Robert Loveres. Appellant Nicolas Compra held Robert’s right upper arm when he was stabbed by the brother of Renato Pablo, appellants Danilo Pablo and Edwin Trabuncon and was released after he was hacked at the neck. The incident was witnessed by Edgar Loveres who watched from their window, and Jocelyn Loveres, who followed her father and who was only an arm’s length away from him and her brother when they were stabbed. There was a fluorescent light at the corner where the incident happened.[8]

After the incident, the group of assailants fled together with their families in a stainless jeepney. Edgar Loveres left through their back door and went to Fort Bonifacio where he sought the help of his uncle Godofredo Borja. He was brought to the Rizal Medical Center in Pasig, Metro Manila where he was treated. A medical certificate dated March 17, 1992[9] showed the following findings: “Incised wound, distal third, distal phalanx, 2[nd] digit, right hand; Abrasion, medial aspect, F/3 post. forearm, left, sec. to stabbing.” In the meantime, Aida Gertos, who also witnessed the incident, brought Lucita Loveres to the Philippine Heart Center where she died.[10]

PO3 Roberto Cristobal, together with other police officers, arrived at the crime scene and saw the dead bodies of Domingo and Robert Loveres sprawled on the ground, in front of the house of Domingo Pablo. The relatives of the victims were not there as they were in the hospital. They talked with the neighbors of the victims and Domingo Pablo. Nobody wanted to get involved for fear of getting killed because the suspects were allegedly notorious.[11]

From the crime scene, PO3 Cristobal proceeded to the Philippine Heart Center where he found one of the victims and Jocelyn Loveres. Jocelyn told him that Panong Pablo, Domingo Pablo and other persons whose names she did not know were the ones who killed her parents and brother. He brought her to the police station where, at about 11:45 that night, she gave her statement.[12]

Thereafter, Danilo Pablo was arrested while he was walking at Pier 14, North Harbor, Manila.[13] Nicolas Compra was later arrested at Meralco, Karuhatan, Valenzuela.[14] They were brought to Police Station 2 in Quezon City on different occasions, and PO3 Cristobal conducted a custodial investigation. Jocelyn and Edgar Loveres who were invited to identify the suspects gave additional statements relative to the incident.[15] On April 1, 1992, Edwin Trabuncon was arrested by PO3 Cristobal in Iloilo City when he was identified by Aida Gertos while they were on board a jeepney bound for Antique.[16] On April 3, 1992, PO3 Cristobal conducted an

investigation. Jocelyn and Edgar Loveres identified Edwin Trabuncon as one of those who killed their parents and brother. They gave their statements in writing.[17]

On March 9, 1992, Medico-legal Officer Dario Gajardo conducted an autopsy of the bodies of the victims, Domingo, Lucita and Robert Loveres, and prepared the corresponding medico-legal reports and certificates of death. The cause of death of Domingo Loveres was cardio-respiratory arrest due to shock and hemorrhage secondary to stab and hacked wounds in the body.[18] Domingo Loveres sustained 10 wounds—four (4) stab wounds, one (1) hacked wound, one (1) incised wound, and several abrasions on the body.[19] Dr. Gajardo testified that stab wounds nos. 3 and 4[20] located at the right and left mammary region and the hacked wound were serious enough to cause Domingo's death.[21] A pointed single-bladed instrument was used in the stab wounds, while a sharp and heavy instrument was used in the hacked wound.[22] With the type of wounds sustained, there could have been three assailants. Assuming that the victim and assailant were on the same level, the assailant was in front of the victim when stab wound no. 2 was inflicted; while assailant was in front, a little bit on the right of the victim when stab wound no. 3 was inflicted; and the assailant was in front of the victim when he inflicted stab wound no. 4. However, he could not determine the relative positions of the victim and assailant in stab wound no. 7.[23]

The death of Robert Loveres was caused by cardio-respiratory arrest due to shock and hemorrhage secondary to stab and hacked wounds in the neck and trunk.[24] Said victim sustained 11 wounds—three (3) stab wounds, one (1) hacked wound, two (2) incised wounds, three (3) contusions and multiple abrasions on the body.[25] Dr. Gajardo declared that the hacked wound on the neck [26]and the stab wound[27]at the right lumbar region were serious wounds that could have caused the victim's death.[28] More than one weapon was used in inflicting the wounds, and there were possibly three assailants.[29]

The death of Lucita Loveres was caused by cardio-respiratory arrest due to shock and hemorrhage secondary to gunshot wound in the trunk.[30] The bullet entered above Lucita's clavicle, a little bit on the left, and exited at the upper outer quadrant of her back.[31] No slug was recovered from the body of the victim.[32]

Due to the incident, Aida Gertos and the relatives of the victims spent P1,010.60 for medicines;[33] P18,500.00 for the funeral services;[34] P300.00 for the mass;[35] and P7,500.00 as burial expenses,[36] totaling P27,310.60.

On the other hand, accused-appellants denied that they were involved in the killing of Domingo, Lucita and Robert Loveres, and gave different versions for their defense.

Appellant Edwin Trabuncon testified that on March 8, 1992, at around 7:30 in the evening, he was beside the house of Domingo "Inggo" Pablo with his friend Popong telling stories. Inggo passed by and asked permission to fetch water. When he returned, he was very angry because Max Trabuncon allegedly uttered unsavory words to him. Inggo then entered the house of Renato "Panong" Danao. Inggo and Panong returned and told him not to let his uncle go out because they were going to kill him, adding that whoever would come out from the house would also be included. Panong also threatened to kill him if he would interfere. Then he saw his uncle Max Trabuncon go out of the gate, so he ran and pulled him back to their house. His uncle resisted because he was very drunk, so he pushed him inside the house, after which he heard a gunshot. Then he heard Jocelyn Loveres shouting for help. He ran toward her and saw her helping her mother. He approached them but Renato Danao poked a gun at his head. He ran away and heard two gunshots which he felt were meant for him. Together with Panong were Inggo, who held a bolo; Popong and Panong's brother Laloy, who held a piece of wood and a knife; and Laloy's companion, who came from the province, held a bolo. Popong, Laloy and his companion were Inggo's nephews. He did not see Nicolas Compra and Danilo Pablo at that time.[37]

The following morning, March 9, 1992, he went to his sister in Novaliches, and in the evening, he proceeded to

his sister in Sta. Ana. He asked for fare to Antique because he was afraid of Panong's threats. His sister Judy gave him P600.00. He arrived in Antique on March 12, 1992.[38]

On April 1, 1992, while in a bus terminal in Molo, Iloilo, he was arrested by PO3 Cristobal, together with a police companion and Aida Gertos. He was brought to Precinct 2, Quezon City where he met Nicolas Compra for the first time. There was no grudge between him and the Loveres family. He is a nephew of Lucita Loveres.[39]

Appellant Danilo Pablo testified that he has been staying with Dominguito Suplito at Area 8, 92 Parola, Tondo, Manila for three years. On March 8, 1992, he was driving Suplito's passenger jeepney as an extra driver plying the route between Cubao, Divisoria and North Harbor. On that day, he worked from 5:00 o'clock in the morning to 10:00 o'clock in the evening.[40]

On March 15, 1992, at around 5:00 o'clock in the afternoon, while calling for passengers at Pier 14, he was arrested by Patrolman Lanuza and his companions without a warrant of arrest. They tied his hands with his belt, blindfolded him and put him inside their vehicle. When they arrived at the police precinct, they mauled and beat him up.[41]

Danilo Pablo said that he does not know Domingo, Lucita and Robert Loveres. He saw Jocelyn Loveres for the first time while he was in a police line-up on March 17, 1992 at about 6:00 o'clock in the evening at the precinct, but she did not point at him as one of those who killed her parents and brother. During the second police line-up on March 18, 1992, Jocelyn Loveres likewise did not point at him. She only pointed at him, Nicolas Compra and Esteban Orquia during the third police line-up on March 19, 1992 after she and PO3 Cristobal talked in the office.[42]

He met Nicolas Compra for the first time in the precinct. He does not know Domingo "Inggo" Pablo and denied that he resided in Inggo's house. He also denied participation in the killing of Domingo and Robert Loveres.[43]

Corroborating Danilo Pablo's testimony, Oscar Badango, a "kumpadre" of Danilo Pablo's friend, testified that at the time of the incident on March 8, 1992, he allowed Danilo Pablo to drive the passenger jeepney assigned to him. Danilo Pablo drove the jeepney from 5:00 o'clock in the morning to 7:00 o'clock in the evening when he turned over the boundary to him (Oscar Badango). Then Danilo Pablo proceeded to drive until 11:00 o'clock in the evening plying the route between Cubao and Divisoria.[44]

Felin Suplito declared that on March 8, 1992, Danilo Pablo, her nephew, was living with her. At 6:00 o'clock in the morning of said date, he drove the same passenger jeepney that her son Zaldy Suplito used to drive, and arrived home at 7:00 o'clock in the evening. Thereafter, he slept and did not leave the house.[45]

Appellant Nicolas Compra testified that he was a passenger jeepney driver plying the route between Cubao and Divisoria. On March 8, 1992, a Sunday, at about 3:00 o'clock in the afternoon, he was outside his house at 6158 Mercado Street, Gen. de Leon, Valenzuela, Metro Manila drinking beer with his brother-in-law Nedy Arpon, Willie Arpon, Noel Arpon, Monching Castillo, Melvin Casas and others. He never left the place except when he urinated. They consumed four cases of beer. When they stopped drinking at 9:00 o'clock in the evening, he was very drunk and his wife assisted him in going home because he could hardly walk. When he reached home, he slept. The following day, he woke up at 7:00 o'clock in the morning and later went with his jeepney operator to the Land Transportation Office.[46]

On March 16, 1992, at 2:00 o'clock in the morning, while their family was sleeping, PO3 Roberto Cristobal, Carlito Villanueva, Rodelio Recto and their other companions arrested him without any warrant of arrest. They brought him to Station 2; his wife went with him.[47]

Compra declared that on March 8, 1992 and prior thereto, he never met any member of the Loveres family. He saw Jocelyn Loveres for the first time on March 17, 1992 at the precinct while he was in a police line-up together with Danilo Pablo, but Jocelyn did not point at him. During the second police line-up on March 18, 1992, Jocelyn Loveres likewise did not point at him. It was only on March 19, 1992 when Jocelyn Loveres identified him and Danilo Pablo as among those involved in the killing of her parents and brother after talking with PO3 Cristobal in his office.[48]

While at the precinct, PO3 Cristobal told him to give him P7,000.00 and he would order his release. He asked Cristobal why he had to give said amount when he was not guilty. Nevertheless, he sent a note to his wife to bring the money because he did not want to stay in jail for a long time. His wife and son-in-law, Romy Quino, brought the money to the precinct and talked with PO3 Cristobal, but his wife did not give the money because there was no release papers.[49]

Compra said that he saw Danilo Pablo and Edwin Trabuncon for the first time in the police precinct on March 16, 1992.[50] He denied involvement in the killing of Domingo and Robert Loveres.[51]

Bella Luz Compra confirmed that on March 8, 1992, her husband Nicolas Compra was drinking beer outside their house with Melvin Casas, Teddy and Tindoy Arpon and others from 3:00 o'clock in the afternoon to 9:00 o'clock in the evening. Her husband got very drunk so she helped bring him home and sponge-bathed him with lukewarm water. Then her husband slept and woke up at 7:00 o'clock the next morning. He asked permission to go to Esteban Orquia as they were going to get a jeepney sticker. Her husband was a driver of a passenger jeepney.[52]

Bella Luz Compra stated that her husband was arrested in their house at 2:00 o'clock in the morning of March 16, 1992 and was brought to Precinct 2 where he was detained. The Desk Officer then showed her an ID with a picture saying that was her husband who used the alias "Gerry." She replied that the ID did not belong to her husband, but was told that if she would not tell the truth, she would soon be a widow. Frightened, she just kept silent.[53]

On March 22, 1992, at about 5:00 o'clock in the afternoon, she went to the police precinct with her son-in-law Romeo Quino because her husband sent her a note asking her to bring P7,000.00 for his release. They talked with Roberto Cristobal but they went home without giving the money because her husband was not guilty and Cristobal did not give the release papers.[54]

Jose Romeo Quino testified that on March 8, 1992, at around 3:00 o'clock in the afternoon, Nicolas Compra, who resided near their sari-sari store ordered beer from him. He saw Compra drinking beer with Nedy Arpon, Tindoy Arpon, Noel Arpon, Melvin Cases, Monching Castillo and Tom Macasiit until 9:00 o'clock in the evening. Compra's wife helped him in going home. He volunteered to testify because he wants to tell the truth.[55]

Marilou Casas, the godmother of Compra's youngest child, also testified that at 2:00 o'clock in the afternoon of March 8, 1992, she was at Compra's house visiting her godchild, and brought along her brother Melvin. At 3:00 o'clock in the afternoon, Nicolas Compra had a drinking spree with Melvin, Nellie Arpon, Tindoy, Noel and others she did not know until 9:00 o'clock in the evening. Compra was very drunk and was assisted by his wife in going home.[56]

Pedro Pablo, who is also an accused in the instant case but charged in another sala, testified that around 7:30 in the evening of March 8, 1992, on his way to fetch water near the house of Maximo Trabuncon, he saw Maximo Trabuncon and his group drinking, whereupon Maximo told him, "Huwag ka nang dumaan dito. Pag dumaan ka

pa rito babasagin ko ang mukha mo.” On his way home, he saw Edwin Trabuncon near his house and told him, “Edwin, bakit ganuon ang tiyo mo, tayo lang ang magkakapitbahay kinukursunada pa niya ako.” Edwin Trabuncon talked to his uncle about the incident but Maximo Trabuncon continued his “pagwawala” and pushed Edwin, who left. Maximo Trabuncon went in and out of his yard. Then Renato Danao went out and confronted Maximo Trabuncon, “Bakit ka nagwawala, pag di ka tumigil babarilin kita.” Lucita Loveres went out to pacify Renato Danao; Maximo Trabuncon followed her. Renato Danao immediately shot Maximo Trabuncon, but instead hit Lucita Loveres. He tried to help her but suddenly the group of Maximo Trabuncon, numbering about 10, were approaching and “attacked” his house. He hid in their aratiles tree.[57]

According to Pedro Pablo, Nicolas Compra and Danilo Pablo were not present during the incident. He did not witness the killing of Domingo and Robert Loveres.[58]

Donato Danao, also an accused in this case but charged in another court, testified that Edwin Trabuncon and the Loveres family were his neighbors. He did not see Danilo Pablo and Nicolas Compra on March 8, 1992 in Quezon City. He met them for the first time when he was confined in November 1994 at the city jail of Quezon City.[59]

The trial court gave credence to the testimonies of the prosecution witnesses, which appeared to be straightforward, sincere and truthful, and found that eyewitnesses Jocelyn Loveres, Edgar Loveres and Aida Gertos positively identified accused-appellants to have taken part in committing the crimes charged against Domingo, Lucita, Robert and Edgar, all surnamed Loveres. It held that the defense of bare denials and alibi cannot prevail over the positive identification of eyewitnesses, who had no improper motive to testify falsely. On February 23, 1995, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF THE FOREGOING, this Court finds that the guilt of all the accused, DANILO PABLO Y MALUNES alias “Danny” NICOLAS COMPRA Y FERNANDEZ alias “Nico” and EDWIN TRABUNCON Y GATAQUE alias “Edwin” have been proven beyond reasonable doubt and finds them all guilty of crimes as charged and hereby sentences them to wit:

- In Crim. Case Nos. Q-92-29830, for the crime of murder of Domingo Loveres y Gervoso to suffer the penalty of reclusion perpetua. All the accused are hereby further sentenced to jointly and severally—

a)

Indemnify the heirs of the said victim in the amount of P50,000.00;

b)

Pay the heirs of the said victim for their mental anguish, moral damages in the amount of P100,000.00; and

c)

Pay the heirs of the said victim exemplary damages in the amount of P100,000.00.

- In Crim. Case No. Q-92-29831, for the crime of Murder of Robert Loveres y Gertos, to suffer the penalty of reclusion perpetua. All the accused are further sentenced to jointly and severally—

a)

Indemnify the heirs of the said victim in the amount of P50,000.00;

b)

Pay the heirs of the said victim for their mental anguish, moral damages in the amount of P100,000.00; and

c)

Pay the heirs of the said victim exemplary damages in the amount of P100,000.00;

- In Crim. Case No. Q-92-29832, for the crime of murder of Lucita Loveres y Gertos, to suffer the penalty of reclusion perpetua. All the accused are further sentenced to jointly and severally—

a) Indemnify the heirs of the said victim in the amount of P50,000.00;

b) Pay the heirs of the said victim for their mental anguish, moral damages in the amount of P100,000.00; and

c) Pay the heirs of the said victim exemplary damages in the amount of P100,000.00; and

- In Crim. Case No. Q-92-29833, for the attempted murder of Edgar Loveres y Gertos, to suffer the straight penalty of twelve (12) years of prision mayor. All the accused are further sentenced –

a) To jointly and severally pay the victim, Edgar Loveres the amount of P50,000.00 by way of moral damages; and

b) To jointly and severally pay him P50,000.00 for exemplary damages.

All the accused are further ordered to pay jointly and severally the heirs of the victims actual compensatory damages in the amount of P32,090.60.

SO ORDERED.[60]

Appellants ascribe to the trial court the following errors:

I

THE TRIAL COURT ERRED IN FINDING ACCUSED DANILO PABLO Y MALUNES, NICOLAS COMPRA Y FERNANDEZ AND EDWIN TRABUNCON CONSPIRED WITH PANONG (A.K.A. RENATO DANAQ) IN KILLING OR SHOOTING LUCITA LOVERES.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE MURDER OF DOMINGO LOVERES Y GERVOSE AND ROBERT LOVERES Y GERTOS WERE COMMITTED WITH THE QUALIFYING AGGRAVATING CIRCUMSTANCES OF TREACHERY, SUPERIOR STRENGTH AND EVIDENT PREMEDITATION.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE ATTEMPTED MURDER OF EDGAR LOVERES Y GERTOS WAS COMMITTED WITH THE AGGRAVATING CIRCUMSTANCES OF SUPERIOR STRENGTH AND EVIDENT PREMEDITATION.[61]

Appellants contend that the prosecution established that it was only Renato “Panong” Danao who shot Lucita Loveres, but the trial court convicted them of the crime of murder on the ground of conspiracy, which was not supported by evidence.

It is a settled rule that conspiracy need not be proved by direct evidence of prior agreement on the commission of the crime as the same can be inferred from the conduct of the accused before, during, and after the commission of the crime, showing that they acted in unison with each other, evincing a common purpose or design.[62] An overt act in furtherance of the conspiracy may consist in actively participating in the actual commission of the crime, in lending moral assistance to his co-conspirators by being present at the scene of the crime, or exerting moral ascendancy.[63]

The trial court ruled that there was conspiracy among the accused in the killing of Lucita, Domingo and Robert Loveres, and the stabbing of Edgar Loveres, thus:

The prosecution established that when Lucita came out of their house to talk to Panong (a.k.a Renato Danao) all the accused were already by their gate, standing, holding on to their weapons. When Panong shot Lucita, not one of the accused assisted or showed concern for her. They just stood there holding on to their weapons and proceeded to commit acts of violence against her remaining next of kin.

When Edgar Loveres tried to help his mother; when he was stabbed; when he was hit with a piece of wood and chased with a knife by Edwin Trabuncon, all the accused were also there. No one assisted him nor showed concern for him. Not one of the accused tried to stop the assailants from hitting Edgar Loveres. All the others just stood there watching with their bladed weapons.

When Domingo and Robert Loveres came out from their house, the three accused were all there waiting together with their companions and they dragged the two towards the house of Inggo where they repeatedly stabbed, hacked and killed both of them. Thereafter, all of them fled from the scene of the crime.

It is evident from the above circumstances that all the accused acted collectively and individually with a common design towards the accomplishment of the same unlawful purpose. Not even one of the accused tried to stop the assault on all the victims (People vs. Carino, 233 SCRA 687; People vs. Leonor Tamang, G.R. No. 99868, August 19, 1994). They were all “together in the execution of their criminal design.”[64]

We agree with the trial court that there was implied conspiracy among the appellants in the commission of all the crimes charged. When Panong called Lucita Loveres who went out of the house to respond to his call, appellants were among those with him armed with weapons. Danilo Pablo held a knife, Nicolas Compra held a bolo, Edwin Trabuncon held a piece of wood.[65] When Panong shot Lucita, there was no evidence that appellants were surprised, nor did they protest or attempt to help the victim. Instead, they appeared united in the execution of a common criminal design. The presence of the appellants as a group, each of them armed, undeniably gave encouragement and sense of security and purpose among themselves.[66] Where conspiracy is established, the act of one is the act of all.[67] All the conspirators are liable as co-principals.[68]

Hence, the trial court correctly held appellants liable for the murder of Lucita Loveres. The act of Renato Danao in suddenly shooting Lucita Loveres while they were conversing qualified the crime with alevosia.[69] However, there is no factual basis for the trial court’s finding that the crime was committed with evident premeditation as the prosecution failed to prove the following requisites: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act.[70]

Appellants also faulted the trial court in holding that the murder of Domingo and Robert Loveres were committed with the qualifying aggravating circumstance of treachery, superior strength and evident premeditation. They asserted that there was no treachery because before Domingo and Robert went out of the house, Jocelyn shouted for help showing that they had been forewarned of the impending trouble ahead of them.

We disagree. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[71] When Domingo Loveres, who was previously sleeping, and his son Robert went out of the house, there was no showing that they knew of the danger ahead. Jocelyn Loveres even testified that she ran toward her father when he went out because he did not know what was happening.[72] However, she did not reach him, because appellants’ group had pulled and dragged him to the front of the house of Inggo Pablo, and they did the same with Robert Loveres, both of whom they repeatedly stabbed, hacked and killed, deliberately adopting such means of execution which deprived

Domingo and Robert, who were both unarmed, any opportunity to defend themselves. Hence, we agree with the trial court that the killing was attended by treachery.

Appellants also argued against the presence of the aggravating circumstance of superior strength as there was no showing that Domingo and Robert Loveres refused to fight or defend themselves because of their superiority in number.

The argument is without merit. In the aggravating circumstance of superiority in strength, superiority in number does not necessarily mean superiority in strength; it is necessary to show that the aggressors cooperated in such a way as to secure advantage from their superiority in strength.[73] There must be proof of the relative physical strength of the aggressors and the assaulted party or proof that the accused simultaneously assaulted the deceased.[74] Indeed, the prosecution established that the group of appellants, numbering 10 and all armed, took advantage of their superior strength as they helped one another in the killing of Domingo and Robert Loveres, who were unarmed. Jocelyn Loveres testified thus:

xxx xxx xxx

Q. Will you please tell us the names of the persons who took your father?

A. He was taken by Danilo Pablo, Renato Pablo and a certain Rencio.

Q. Where was your father brought by these persons?

A. Inside the compound of their house.

xxx xxx xxx

Q. Now what happened when your father was brought inside the compound of the house of Renato Pablo?

A. They stabbed and hacked my father.

Q. How about Danilo Pablo, Nicolas Compra and Edwin Trabuncon?

A.

They were also there and helping in the stabbing of my father.

Q. How about your brother Roberto, where was he at that time?

A. Also there, he was taken by them also.

Q. Who took Roberto?

A. Their companions, the people.

(Witness pointing to the three accused inside the Courtroom.)

Q. Will you please tell us where was Roberto brought by the accused?

A. He was brought beside my father.

Q. What happened when he was brought beside your father?

A. He was also killed and hacked.

Q. Who stabbed your brother?

A. The brother of Renato Pablo, sir.[75]

xxx xxx xxx

Q.

How about Danilo Pablo, Edwin Trabuncon and Nicolas Compra where were they at the time your brother was being stabbed by the brother of Renato Pablo?

A. They were also there beside standing beside my brother.

xxx xxx xxx

Q. What were they doing when your brother was stabbed by the brother of Renato Pablo?

A. They were also helping in stabbing my brother, sir.

Q.

How about this Danilo Pablo whom you said helped or aided in stabbing your brother. Was Danilo Pablo able to hit your brother?

A. Yes, sir.

Q. Will you please tell us which portion of the body of your brother Danilo Pablo was able to hit?

A. I don't know which part, sir but I am sure a part of the body of my brother was hit.

Q.

How about Edwin Trabuncon, you said he was helping in stabbing your brother. Was he able to hit your brother too?

A. Yes, sir.

Q. How about Nicolas Compra. Was he able to hit your brother?

A. He was holding my brother, sir.

Q. What portion of the body of your brother was being held by Nicolas Compra?

A. He was holding my brother's right upper arm.

Q. How long did Nicolas Compra held your brother's right arm?

A. For a few moments only, sir because after he was hacked at the neck he was released.

Q. Where were you at that time?

A. I was also present, sir.

Q. Were there other persons during that time aside from the three accused?

A. There were, sir.

Q. How many?

A. There were 10 of them, sir.

Q. Can you mention some of them?

A.

Edwin Trabuncon, Danilo Pablo, Nicolas Compra, Rencio, Domingo Pablo, Renato Pablo and their companions.

Q. After stabbing your father and brother, by the accused where did the accused go, if you know?

A. They fled, sir.[76]

Appellants also contend that evident premeditation cannot be considered as an aggravating circumstance as the prosecution failed to prove that sufficient time elapsed between the determination and the execution to allow an offender to reflect upon the consequences of his act.

The contention has merit. The rule is that under normal conditions, when the conspiracy is directly established with proof of the attendant deliberation and selection of the method, time and means of executing the crimes, the existence of evident premeditation may be taken for granted.[77] In case of implied conspiracy, however, there must be proof as to how and when the plan was hatched and the time that elapsed before it was carried out, so it can be determined if the accused had sufficient time between its inception and its fulfillment to dispassionately consider the commission of the crime and its consequences.[78] In the case at bar, the prosecution failed to prove the aforementioned requisites.

Hence, the trial court correctly convicted appellants of the crime of murder of Domingo and Robert Loveres, qualified by treachery, which absorbed the aggravating circumstance of abuse of superior strength.[79]

Further, appellants faulted the trial court in holding that the attempted murder of Edgar Loveres was committed with the aggravating circumstance of superior strength and evident premeditation. They asserted that Edgar was stabbed by Inggo only once, and hit by Edwin Trabuncon with a piece of wood only once before he ran away. There was no evidence that the accused were physically stronger and abused such superiority.

We agree. When Edgar Loveres tried to lift his mother after she was shot, Inggo Pablo stabbed him, and Edwin Trabuncon hit him with a piece of wood on his left forearm, so Edgar Loveres ran inside their house. It appears that the attack was made on him alternately and not simultaneously. Use of superior strength should not be considered when the attack was made on the victim alternately, one after the other.[80] It was not shown that Inggo Pablo and Edwin Trabuncon cooperated in such a way as to secure advantage from their combined or superior strength in attacking Edgar Loveres.[81]

Evident premeditation cannot also be considered against appellants as the prosecution failed to prove the time when they determined to commit the crime; an act manifestly indicating that they clung to their determination; and a sufficient lapse of time between the determination and execution, to allow them to reflect upon the consequences of their act.

Therefore, absent any attendant circumstances under Article 248 of the Revised Penal Code to qualify the crime against Edgar Loveres as attempted murder, appellants can only be convicted of attempted homicide.

In sum, based on a careful review of the records, we concur with the decision of the trial court in convicting appellants of the crime of murder of the spouses Domingo and Lucita Loveres and their son Robert Loveres. However, we find the appellants guilty only of the crime of attempted homicide of Edgar Loveres.

When the crimes were committed on March 8, 1992,[82] murder under Article 248 of the Revised Penal Code was punishable by reclusion temporal in its maximum period to death. Under Article 64 of the Revised Penal Code, in cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, when there are neither aggravating nor mitigating circumstances, as in the case at bar, the penalty prescribed by law in its medium period shall be imposed. Hence, the penalty of

reclusion perpetua was properly imposed by the trial court.

The crime of attempted homicide is punishable by prision correccional.[83] Applying the Indeterminate Sentence Law, the minimum penalty for attempted homicide ranges from one (1) month and one (1) day to six (6) months of arresto mayor, and the maximum penalty ranges from two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of prision correccional in the medium period, absent any mitigating or aggravating circumstances as in Criminal Case No. Q-92-29833.

The award of moral damages to the heirs of the deceased victims is reduced from P100,000.00 to P50,000.00 in accordance with prevailing jurisprudence.[84] Exemplary damages is likewise reduced to P20,000.00.[85]

WHEREFORE, the assailed decision of the trial court is **AFFIRMED** with modifications. Appellants Danilo Pablo, Nicolas Compra and Edwin Trabuncon are hereby found guilty beyond reasonable doubt of the crime of murder of Domingo Loveres, Lucita Loveres and Robert Loveres; and guilty beyond reasonable doubt only of the crime of attempted homicide of Edgar Loveres.

In Criminal Case No. Q-92-29830, for the crime of murder of Domingo Loveres, appellants are hereby sentenced to suffer the penalty of reclusion perpetua, and to pay, jointly and severally, to the heirs of the said victim the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P20,000.00 as exemplary damages.

In Criminal Case No. Q-92-29831, for the crime of murder of Robert Loveres, appellants are hereby sentenced to suffer the penalty of reclusion perpetua, and to pay, jointly and severally, to the heirs of the said victim, the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P20,000.00 as exemplary damages.

In Criminal Case No. Q-92-29832, for the crime of murder of Lucita Loveres, appellants are sentenced to suffer the penalty of reclusion perpetua, and to pay, jointly and severally, to the heirs of the said victim the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P20,000.00 as exemplary damages.

Appellants are further ordered to pay jointly and severally to the heirs of the victims, Domingo Loveres, Robert Loveres and Lucita Loveres, actual or compensatory damages in the amount of P27,310.60 as borne by the evidence adduced.

In Criminal Case No. Q-92-29833, for the attempted homicide of Edgar Loveres, appellants are sentenced to suffer an indeterminate penalty of six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum, and to pay, jointly and severally, to the victim, Edgar Loveres, moral damages in the amount of P20,000.00. The award of exemplary damages is deleted, absent any finding of one or more aggravating circumstances in the commission of the crime.[86]

SO ORDERED.

Bellosillo, J., (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Judge Rosalina L. Luna Pison.

[2] Records, p. 44.

[3] Crim. Case No. Q-92-29831, Records, p. 46.

[4] Crim. Case No. Q-92-29832, Records, p. 48.

[5] Crim. Case No. Q-92-29833, Records, p. 50.

- [6] On May 4, 1992, accused Danilo Pablo and Nicolas Compra pleaded not guilty, Records, p. 54.
- [7] On June 8, 1992, accused Edwin Trabuncon pleaded not guilty, Records, p. 59.
- [8] TSN, June 8, 1992, pp. 6-13, 19-22; August 4, 1992, pp. 6-8, 17-24, 31-32, 42-45, 48, 50, 53-57; August 25, 1992, pp. 4-14, 19, 26-32, 36-40; September 22, 1992, pp. 4-8.
- [9] Exhibit F, Records, p. 115.
- [10] TSN, June 8, 1992, pp. 10, 22; August 25, 1992, pp. 13, 17.
- [11] TSN, December 8, 1992, pp. 23-26.
- [12] TSN, December 8, 1992, pp. 27-28; January 5, 1993, pp. 8-9.
- [13] TSN, January 5, 1993, p. 17.
- [14] *Id.*, p. 18.
- [15] Exhibits M to M-2; G to G-2; CA Decision , pp. 12-13, Rollo, pp. 200-201.
- [16] TSN, Dec. 8, 1992, pp. 14-15.
- [17] Exhibits K, K-1; L and L-1, Decision, p. 13, Rollo, p. 201.
- [18] Exhibit A-1, Records, p. 108-a.
- [19] Exhibit O, Records, p. 170.
- [20] Medico-legal Report, Exhibit O, Records, p. 170.
- [21] TSN, September 13, 1993, p. 6.
- [22] *Id.*, pp. 6, 15.
- [23] TSN, September 13, 1993, pp. 16-19.
- [24] Exhibit P-2, Records, p. 171.
- [25] Exhibit P, Records, pp. 171-172.
- [26] No. 1, Medico-legal Report, Exhibit P, Records, p. 171.
- [27] No. 7, Medico-legal Report, Exhibit P, Records, p. 171.
- [28] TSN, September 13, 1993, p. 8.
- [29] *Id.*, pp. 21-22.
- [30] Exhibit Q-1, Records, p. 172.
- [31] TSN, September 13, 1993, pp. 10-11.
- [32] *Id.*, p. 10.
- [33] Exhibits R, R-1, R-2, TSN, October 4, 1993, p. 4.
- [34] Exhibits S, S-1, S-2, S-3, S-4, TSN, October 4, 1993, pp. 5-6.
- [35] Exhibits T, T-1, T-2, TSN, October 4, 1993, p. 7.

- [36] Exhibits U, U-1, V, V-1, W, W-1, TSN, October 4, 1993, pp. 7-8.
- [37] TSN, April 20, 1993, pp. 7, 13-15.
- [38] *Id.*, pp. 18, 21-26.
- [39] *Id.*, pp. 16-17, 27.
- [40] TSN, May 3, 1993, pp. 4-5.
- [41] *Id.*, pp. 6-7.
- [42] TSN, May 3, 1993, pp. 16, 10-11, 20-21.
- [43] *Id.*, pp. 11-13.
- [44] TSN, September 28, 1994, pp. 4-6.
- [45] TSN, February 22, 1994, pp. 11-15.
- [46] TSN, May 10, 1993, pp. 6-9.
- [47] *Id.*, pp. 9-10.
- [48] *Id.*, pp. 10-13.
- [49] *Id.*, pp. 13-15.
- [50] TSN, June 21, 1993, p. 3.
- [51] TSN, May 10, 1993, p. 15.
- [52] TSN, May 4, 1993, pp. 5-10.
- [53] *Id.*, pp. 10-13.
- [54] *Id.*, pp. 14-16.
- [55] TSN, October 11, 1993, pp. 7-12, 19.
- [56] TSN, February 22, 1994, pp. 3-6.
- [57] TSN, July 6, 1994, pp. 7-14.
- [58] *Id.*, pp. 19, 21.
- [59] TSN, December 7, 1994, pp. 3-5.
- [60] Decision, pp. 34-36, Rollo, pp. 222-224.
- [61] Appellant's Brief, pp. 1-2, Rollo, pp. 161-162.
- [62] *People vs. Sotes*, 260 SCRA 353, 365 [1996] citing *George Arceno vs. People of the Philippines*, G.R. No. 116098, April 26, 1996; *People v. Zafra*, 237 SCRA 669 [1994].
- [63] *People vs. Casey*, G.R. No. L-30146, February 24, 1981, 103 SCRA 21, 36.
- [64] Decision, pp. 30-31, Rollo, pp. 218-219.
- [65] TSN, August 25, 1992, pp. 37-38.

- [66] *People vs. Sotes*, 260 SCRA 353, 365 [1996] citing *Arceno vs. People*, G.R. No. 116098, April 26, 1996.
- [67] *Id.*
- [68] *People vs. Peralta*, 25 SCRA 759, 776-777 [1968].
- [69] *People vs. Magno et al.*, G. R. No. 134535, January 19, 2000.
- [70] *Id.*
- [71] Article 14, Section 16, Revised Penal Code.
- [72] *Jocelyn*, p. 57.
- [73] *People v. Casey*, see note 63, *supra* at 34 [1981] citing *People v. Elizaga*, 86 Phil. 365.
- [74] *Id.*, citing *People v. Bustos, et al.*, 51 Phil. 385; *People vs. Rubia, et al.*, 52 Phil. 172, 176 [1928].
- [75] TSN, June 8, 1992, pp. 12-13.
- [76] TSN, June 8, 1992, pp. 19-22.
- [77] *People vs. Rojas*, 147 SCRA 169, 179 [1987] citing *People vs. Cornejo*, 28 Phil. 457.
- [78] *Id.*, citing *People vs. Custodia*, 97 Phil. 698.
- [79] *People vs. Lopez*, G. R. No. 132168, October 10, 2000.
- [80] *People vs. Narciso*, 23 SCRA 844, 865-866, (1968).
- [81] *People v. Casey*, 103 SCRA 21, 34 [1981] citing *People v. Trumata and Baligasa*, 49 Phil 192.
- [82] The crime was committed before Republic Act 7659 was enacted on January 1, 1994.
- [83] Two degrees lower than reclusion temporal, which is the penalty for homicide under Art. 249, Revised Penal Code.
- [84] *People vs. Dagami*. G. R. No. 123111, September 13, 2000, pp. 9-10; *People vs. Ubaldo, et al.*, G. R. Nos. 128110-11, October 9, 2000.
- [85] *People vs. Dizon*, G. R. No. 129893, December 10, 1999, *People vs. Pedroso*, G. R. No. 125128, July 19, 2000.
- [86] *People vs. Dizon*, G. R. No 129893, December 10, 1999.

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