PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3 SAMSON PATALINGHUG, BENITO PASILABAN AND RONALDO GORDO @ RAUL, ACCUSED-APPELLANTS.

G.R. Nos. 125814-15. November 16, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the decision[1] rendered on November 23, 1995, by the Regional Trial Court of Cebu City, Branch 10, in Criminal Case Nos. CBU-35594 and CBU-35595, which found accused-appellants PO3 Samson Patalinghug, Benito Pasilaban and Ronaldo Gordo, guilty of two counts of murder.

On April 14, 1994, Assistant Provincial Prosecutor Arturo Cabaron filed two informations against appellants. One information charged them with the murder of SPO1 Romeo Labra, thus:

> "That on the 11th day of April, 1994 at around 5:30 o'clock in the afternoon, more or less at Poblacion, Municipality of Madredijos (sic), Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with intent to kill, by the use of an M16 Rifle cal. 5.56 mm and cal. 38 revolver and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, and shoot SPO1 ROMEO LABRA, thereby inflicting upon the latter multiple gunshot wounds which caused his death immediately thereafter.
>
> CONTRARY TO LAW."[2]

The other information charged appellants with the murder of SPO2 Eduardo Mansueto, as follows:

> "That on the 11[th] day of April, 1994 at around 5:40 o'clock in the afternoon, more or less at the Municipal Building of Madredijos (sic), Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with intent to kill, by the use of an M16 Rifle cal. 5.56 mm and cal. 38 revolver and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, and shoot SPO2 EDUARDO MANSUETO, thereby inflicting upon the latter multiple gunshot wounds which caused his death immediately thereafter.
>
> CONTRARY TO LAW."[3]

Upon arraignment, appellants, assisted by counsel, entered pleas of "not guilty" to both charges. Thereafter, the two cases were heard jointly. Subsequently, the trial court rendered its verdict finding appellants guilty as charged. The dispositive portion of its decision reads:

> "WHEREFORE:
>
> In Criminal Case No. CBU-35594, finding accused Patalinghug, Pasilaban and Gordo Guilty of Murder beyond reasonable doubt, each is hereby sentenced to suffer reclusion perpetua, to indemnify jointly and

severally the heirs of the late SPO1 Romeo Labra the sum of P50,000.00; to pay jointly and severally said heirs the sum of P4,000.00 a month for the loss of earning capacity of the deceased for 9 years, P10,000.00 for burial expenses, P20,000.00 for attorney's fees (private prosecutor) and to pay the costs.

In Criminal Case No. CBU-35595, finding accused Patalinghug, Pasilaban and Gordo Guilty of Murder beyond reasonable doubt, each is hereby sentenced to suffer reclusion perpetua, to indemnify jointly and severally the heirs of the late SPO2 Eduardo Mansueto the sum of P50,000.00, to pay jointly and severally the sum of P4,000.00 a month for 12 years, P10,000.00 for burial expenses, attorney's fees (private prosecutor) of P20,000.00, and to pay the costs.

The motorcycle owned and used by accused Pasilaban in the commission of the crimes together with accused Patalinghug and Gordo is hereby confiscated and forfeited in favor of the Government. (Art. 45, R.P.C.) Accordingly, the Police Chief of Madridejos, Cebu is ordered to deliver to this Court the aforesaid motorcycle within seventy two (72) hours from receipt hereof.

PNP Regional Director, Gen. Jose S. Andaya is hereby furnished copy of this decision for his appropriate action.

SO ORDERED."[4]

The prosecution's evidence, upon which the finding of guilt beyond reasonable doubt was based, is summarized by the trial court as follows:

"Robert Dominici, a barangay tanod of barangay Poblacion, Madridejos, Cebu works as a vulcanizer in a shop in the Poblacion not far from the house of SPO1 Romeo Labra. On April 11, 1994, about past 5:00 o'clock in the afternoon, accused PO3 Samson Patalinghug arrived at the vulcanizing shop on board a motorcycle driven by its owner, Loloy (accused Benito Pasilaban) with Raul Gordo (accused Ronaldo Gordo) riding at the back. Patalinghug, who wore a headband and carrying an armalite rifle that was slung on his shoulder with his right hand clutching the trigger housing, told Dominici to verify if Labra was in his house. Dominici went inside the compound where Labra's house was located and met Labra and Marcela Cordova, Labra's mother-in-law. At that time Labra was wearing only a short pants and nothing upon his body while feeding the chickens. Dominici told Labra that Patalinghug was looking for him. Labra told Dominici to let Patalinghug enter. Dominici left Labra and on his way out he met Patalinghug who had already entered the compound. Patalinghug proceeded towards SPO1 Labra, passing by Marcela Cordova who was by the door of her dirty kitchen. When barangay tanod Dominici returned to the vulcanizing shop he saw Pasilaban and Gordo still on board the motorcycle parked near the gate of the compound although its engine was not switched on. At this juncture, Thelma Labra, wife of SPO1 Labra was talking to her friend Nilda at the roadside not far from the gate of her compound. Mrs. Labra saw Pasilaban and Gordo on the motorcycle standing by near the compound's gate. Meanwhile inside the compound, Marcela Cordova noticed that Patalinghug and Labra, who are both members of the Madridejos Police Force, were having conversation. Suddenly there was a rapid, successive gunbursts. Marcela Cordova saw Patalinghug fired (sic) his armalite rifle at Labra. The latter slumped to the ground beside a coconut tree. Lucia Cordova, sister-in-law of Labra was in her house when she heard the gunbursts coming from her backyard. She went out and saw Patalinghug with an armalite pointed downward. Mrs. Thelma Labra ran to her house when she heard the gunshots. On the way she met Patalinghug coming out of the compound's gate with an armalite on his shoulder. On the part of barangay tanod Dominici, upon hearing the gunfires he saw Patalinghug coming out from the gate of the compound, immediately boarded the motorcycle driven by Pasilaban and with Gordo backriding. The three headed towards the direction of the Madridejos municipal building.

Several minutes earlier on that same afternoon Victoria Mansueto, wife of SPO2 Eduardo Mansueto who is also a member of the Madridejos PNP Force instructed her daughters Irish and Cecelia, to go to their father at the municipal building to ask money for rice and fish. SPO2 Mansueto was pounding on the typewriter when

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> his daughters arrived. SPO2 Mansueto brought his daughters to the side of the municipal hall where he washed his hands after eating a star apple. Shortly thereafter PO3 Patalinghug arrived on board the motorcycle driven by Pasilaban with Raul Gordo riding at the back. Patalinghug disembarked carrying an armalite and approached Mansueto with a smile. Patalinghug greeted Mansueto by his nickname; `Eddy,'. Mansueto inquired what it was that Patalinghug wanted. All of a sudden Patalinghug who was four feet away from Mansueto levelled his armalite at the latter and fired. Mansueto fell to the ground and slumped backward on the fence. Irish who was standing beside her father at the time of the shooting was injured by splinters on her upper left arm and upper left thigh. Patalinghug advanced nearer to Mansueto and again fired at the fallen officer. Afterwards Patalinghug walked towards the municipal hall. Irish and Cecelia ran to their home and narrated to their mother what Patalinghug had done to their father. Irish was brought to the hospital for treatment. Mrs. Victoria Mansueto lost no time in going to the town hall but backed out upon seeing Patalinghug standing on the road carrying an armalite. It was only later in the evening after Patalinghug turned himself over to Col. Cesar Pagtakhan that Mrs. Mansueto was able to go to the spot where the lifeless body of her husband fell."[5]

Dr. Elma Cirunay, Municipal Health Officer of Madridejos, Cebu went to the residence of Labra and found the slain officer wearing only a pair of short pants lying flat in front of his residence. The doctor conducted post mortem examination on the body of Labra and found the deceased to have suffered eleven (11) gunshots wounds. The medical expert opined that the weapon used could be a high powered firearm because of the severity of all the injuries caused by the bullets on the underlying muscles, bones and blood vessels. She declared that the assailant could have been only two feet in relation to the victim in view of the presence of contusion collar. She also pronounced that that the wounds on the right cheek, on the neck and the one at the level of the fourth rib along the right mid-axillary line could have been inflicted while Labra was standing based on the location, shape and nature of the gunshot wounds. On the other hand, the wound at the level of the right axilla and the wounds on the right iliac region could have been inflicted when the victim was already lying flat on the ground. She concluded that the cause of death of Labra is cardiopulmonary arrest due to severe hemorrhage due to multiple gunshot wounds.[6]

After the autopsy on the body of Labra, Dr. Cirunay conducted a post-mortem examination on the body of Mansueto. The doctor found the body of Mansueto to have borne three (3) gunshot wounds. She declared that the weapon used could be a high-powered firearm in view of the severe injuries on the underlying muscles, bones and blood vessels. Based on the nature and direction of the wounds, she opined that gunshot wound No. 2 could have been inflicted while the victim was standing, while gunshot wounds Nos. 1 and 3 could have been dealt with when the victim was already lying prostrate on the ground. Due to the presence of contusion collar on each of the three gunshot wounds, she declared that the assailant could have been only two feet in relation to the victim when all the shots were fired. The medical expert concluded that the cause of death of Mansueto is cardiopulmonary arrest due to severe hemorrhage due to multiple gunshot wounds.[7]

Upon laboratory examination of the armalite rifle, admittedly the service firearm of Patalinghug, and the caliber 38 revolver, reportedly the service revolver of Mansueto, Police Senior Inspector Myrna P. Areola, Chief of the Chemical Section of the PNP Crime Laboratory, found both firearms positive of gunpowder residue which suggests that the armalite rifle and the revolver had been fired. Chemical analysis on the paraffin casts taken from the left and right hands of Patalinghug yielded positive result for the presence of gunpowder on both hands, indicating that Patalinghug had fired a firearm using both hands.[8]

Patalinghug admitted in court that he shot and killed Labra and Mansueto, but claimed that he did it in self-defense. He testified as follows:

> ". . . In the evening of March 31, 1994, a Maundy Thursday, after his escort duty of the town's religious procession, he went to the municipal building and by chance saw SPO4 Pablo Ygot, the officer-in-charge of

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the Madridejos Police Station, SPO1 Romeo Labra and SPO2 Eduardo Mansueto unloading confiscated gambling paraphernalia. He approached Ygot and asked the latter why gamblers were being arrested only to be released the following day. He further told Ygot to file charges against gambling law violators to prove that he (Ygot) is serious in his police duties. Ygot rebuked him and told him to shut up and not to act like hero. Seeing that Ygot was mad, he told Ygot that if it is trouble he wants, he (Patalinghug) would not move back an inch. After he hurled the challenge, he approached Ygot and asked for apology. Ygot proceeded to his sleeping quarters while he (Patalinghug) remained outside and conversed with some detained prisoners. Patalinghug was holding his armalite with its barrel pointed downward when he accidentally released the safety lock and the gun went off and burst. Ygot came out from his sleeping quarters, looked at him and then turned back. Few days after, he received a radio message from Recom 7 headquarters directing him to report to the Inspectorate Office on April 12, 1994 and bring along his issued armalite rifle and .38 caliber revolver for deposit. He surmised that the radio message could be the offshoot of the incident he had had with SPO4 Ygot. On April 11, 1994, about 3:00 p.m. he was in his house when SPO2 Eduardo Mansueto arrived and told him to report to the police station and to pass by the house of SPO1 Labra because the said police officer is in possession of a warrant of arrest issued for him (Patalinghug). While waiting for a ride to the municipal building, a motorcycle owned and driven by accused Benito Pasilaban, with accused Ronaldo Gordo backriding, passed by him. He flagged them and requested them to ferry him to the municipal building. Pasilaban told him that they will first pass by the vulcanizing shop to pump air to the motorcycle's tire. And since the house of SPO1 Labra was near the vulcanizing shop Patalinghug told them that he might as well drop by Labra and inquire regarding the warrant for his arrest. So Pasilaban drove the motorcycle with Patalinghug seated behind him. Raul Gordo was seated behind Patalinghug at the endmost of the bike. Upon arrival at the shop Patalinghug inquired from a worker if Labra was in his house. The shop worker replied that he will try to find out. Inasmuch as the worker did not return in due time to the shop, he went inside the Labra compound and proceeded to the yard in front of Labra's house. At that time he had his fully loaded armalite rifle cocked and slung on his shoulder. He approached Labra and Lucresio Honasa who were each holding a rooster. Labra was then wearing a pair of short pants and a white T-shirt. Patalinghug greeted the two `Good Afternoon' and asked Labra if there was really a warrant for his arrest. Labra dropped the rooster he was holding and angrily told him: `It's not just a warrant of arrest against you but in fact, a shoot to kill order' and immediately Labra motioned to draw a firearm from his waist at the back. Patalinghug immediately swung his rifle in a firing position and squeezed the trigger. Several bullets exploded on a single squeeze because the rifle was on full automatic force. Before Patalinghug fired, he did not see the firearm of Labra. When Labra fell to the ground he looked over Labra's body and it was only then that he saw a .22 caliber or .38 caliber pistol of the victim. He immediately left the compound and outside he saw Pasilaban holding the air hose. Pasilaban asked him what had happened and he replied that he had an encounter with SPO1 Labra. Then he requested Pasilaban to conduct him to the town hall so he can have the shooting incident blottered and surrender to whoever will be the police officer present there.

And the three accused, Patalinghug, Pasilaban and Gordo, motored to the municipal building in the same seating position when they motored to Labra's residence. Patalinghug disembarked several meters in front of the municipal building and walked towards it. On the way he met SPO2 Mansueto near the town hall and he told the latter that he was surrendering himself because he had just shot Labra. Suddenly Mansueto shot him but missed. He shot Mansueto in return and the latter dropped dead. He got the service revolver of the deceased and brought it inside the municipal hall."[9]

In an attempt to lend some degree of persuasiveness to Patalinghug's story, Lucresio Honasa was presented as witness for the defense. He testified that on April 11, 1994, about 5:00 o'clock in the afternoon, Labra asked him to give his roosters fighting exercise (pasikad sa manok). He declared that upon his arrival at Labra's residence, he noticed that Labra changed his clothes and put on a pair of shorts and a shirt. He stated he saw a bulging object at the back of the waist of Labra which he later found to be a firearm. They were about to start the rooster exercise when Patalinghug arrived with an armalite slung on his shoulder and his right hand holding the trigger housing.

Patalinghug greeted Labra and immediately asked Labra whether there was a warrant for his arrest. Labra angrily retorted that it's not just a warrant of arrest but in fact a shot-to-kill order. Suddenly, Labra motioned to pull a gun from his back, but Patalinghug beat him to the draw. Labra was hit on the chest, staggered forward and fell to the ground with his face down. Patalinghug hastily left the scene. Honasa said he was shocked, but after he regained his senses, he went out of the compound and went home. Despite being an incumbent municipal official at that time, he did not report the incident to the authorities. Neither did he inform the family of Labra of what he had witnessed. At the time he took the stand, he was already in jail having been convicted of the crime of falsification of public document.[10]

Pasilaban claimed that he had no participation in the commission of the crimes. He took the witness stand and gave his own version of the story as follows:

> ". . . On April 11, 1994 at 5:30 p.m., he and Raul left their place on board a motorcycle to buy cement in the Poblacion. Not far from his house Patalinghug was on the roadside waiting for a vehicle. Patalinghug flagged them and requested them to bring him to the town hall. He acceded. Patalinghug sat behind him while Raul sat behind Patalinghug at the endmost. They passed by a vulcanizing shop located near the residence of SPO1 Labra. Patalinghug inquired from a worker in the shop who was also a barangay tanod where the house of Labra was. He saw the barangay tanod accompany Patalinghug to the Labra compound. No one was left manning the shop so he waited for the barangay tanod to return to the shop so he can have air for his tires. He could not pump air because he had no permission from the barangay tanod vulcanizer. Later, the tanod came back. He heard several shots rang out. He thought the shots were warning shots. Then he saw Patalinghug came out of the gate of the compound, pulled off the magazine of his armalite; inverted it and load the other joined magazine inside the rifle's chamber. Patalinghug approached him, cocked his rifle and pointed it at him, telling him to bring him (Patalinghug) to the municipal hall. He and Raul took Patalinghug to the municipal building in the same seating position when they brought him to SPO1 Labra's place. After arrival at the Madridejos town hall his motorcycle bogged down. He disembarked to check the motor. He saw Mansueto waived his hands him. He saw Patalinghug about to enter the municipal hall and Manusueto going out of the said building. They met and the two had a conversation. While scanning his motorcycle he heard a gunshot. He looked behind the Rizal monument. The he heard another shot and saw SPO2 Mansueto fell to the ground. He just stood there rattled. Afterwards he saw Patalinghug fired another several shots at the fallen policeman. He went home and informed the wife of Patalinghug that her husband had killed a policeman. He went to the town of Bantayan and had the incident blottered there because all the policemen of Madridejos fled. He accompanied Bogo Police Station Commander Montejo to the Madridejos municipal building and they succeeded in convincing Patalinghug to give himself up."[11]

Gordo also maintained his innocence. His account of the incident which substantially jibes with that of Pasilaban reads:

> ". . . About 5:30 p.m. of April 11, 1994, he was walking on the road when co-accused Pasilaban called him and requested him to push Pasilaban's motorcycle. However, the motor immediately started so there was no need of pushing it. Pasilaban told him to go with him to buy cement in the Poblacion. While they were on board the motorcycle driven by Pasilaban, he was surprised that it made a curve at the corner going to the direction of the interior. And on the road was co-accused PO3 Samson Patalinghug who requested to have a ride to the municipal building because he wanted to report for work. On a corner before reaching the municipal hall, Pasilaban asked Patalinghug where the latter wanted to be dropped because they will have to put some air in the tire. Patalinghug said it was okay because the vulcanizing shop is near Labra's house and anyway he has to drop by the Labras as he has something to do there. They were not able to pump air because the vulcanizer went with Patalinghug inside the Labra compound. At that juncture he asked Pasilaban's permission to urinate while Patalinghug was inside the Labra premises. While relieving himself on a post he heard gunbursts. Then he saw Patalinghug coming out from the Labra place. He got scared so he did not ask Patalinghug what was

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> that gunshots. Patalinghug pointed his armalite at Pasilaban and then rode on the motor. Patalinghug did not point the rifle at him. When Patalinghug boarded the motorcycle he also seated himself behind Patalinghug. Pasilaban cranked the motorcycle and it readily started. When they arrived near the Rizal monument in front of the municipal building the motor conked out. Patalinghug disembarked a few feet from the municipal hall. He saw SPO2 Mansueto outside the building talking to a little girl who was with the said policeman. His back was towards the town hall when he heard a gunshot. Then it was followed by a series of gunshots. He turned his head around and he saw Patalinghug shooting at Mansueto. At the time of the shooting Pasilaban was making some check-ups on his motorcycle. Right after the shooting he urged Pasilaban that they leave the scene. They immediately boarded the motorcycle and sped away towards Crossing Bunakan. They informed the wife of Patalinghug about the shooting and the wife suggested that the incident be reported to the police of Bantayan, the adjacent municipality, because after Mansueto was shot dead there was no more policeman in the Madridejos municipal hall. Mansueto was the only policeman at that time together with his little daughter before he was shot."[12]

As mentioned earlier Patalinghug readily admitted in court that he shot and killed his fellow police officers Labra and Mansueto, but interposed self-defense. On the other hand, Pasilaban and Gordo claimed that they have no participation in the twin killings.

Pasilaban and Gordo readily filed their notice of appeal which they later withdrew.[13] In lieu thereof, they moved for reconsideration of their conviction which was nonetheless denied by the trial court.[14] Expectedly, they sought acquittal by filing jointly their notice of appeal.[15]

Contrary to the allegation of the Solicitor General in his brief,[16] Patalinghug has timely appealed his conviction.[17] And such appeal appears to have not been withdrawn as no motion to that effect was filed. We observe, however, that Patalinghug did not file appellant's brief despite the order from this Court. Accordingly, we shall dispense with that requirement and decide his appeal based on the records of this case. Pasilaban and Gordo filed their briefs as ordered by the Court while the Solicitor General filed appellee's brief in answer to the briefs of Pasilaban and Gordo.

Attached to the consolidated brief of Pasilaban and Gordo is an affidavit purportedly executed by Patalinghug on May 8, 1996. In the affidavit, Patalinghug manifested that the killing of Labra and Mansueto was his own personal preconceived plan and intention. He even declared that he alone should answer for the crimes committed.[18] It would seem that the aforecited affidavit of Patalinghug enhances the claim of innocence of Pasilaban and Gordo. Unfortunately, we cannot give credence to such affidavit. The infirmity of an extra-judicial statement is a matter of judicial experience. An extra-judicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement. Hence, omissions and misunderstandings by the affiant are not infrequent.[19] Besides, an affidavit executed after conviction of the accused and while the affiant is in detention, as in this case, is unreliable. The allegations therein, not being testified to in court, are mere hearsay and have no substantial evidentiary value.[20] We shall therefore resolve the appeal of Pasilaban and Gordo based on the records of the case as well as their briefs but without relying on the aforecited affidavit.

In their consolidated appellants' brief, Pasilaban and Gordo raise the following error:

> "The trial court erred in convicting accused-appellants Pasilaban and Gordo as co-conspirators of Samson Patalinghug in the commission of the crime charged despite the absence of clear and convincing proof of their alleged culpability."[21]

A similar error is assigned in Pasilaban's separate brief as follows:

> "The trial court has seriously and gravely erred in holding that accused-appellant Benito Pasilaban conspired

> with accused PO3 Samson Patalinghug in the killing of SPO1 Romeo Labra and SPO2 Eduardo Mansueto."[22]

The issue to be resolved insofar as Patalinghug is concerned is whether or not there is clear and convincing evidence to establish self-defense.

As regards Pasilaban and Gordo, the issue for resolution is whether or not there is clear and convincing evidence to prove conspiracy among the accused-appellants in the commission of the crimes.

Anent Patalinghug's claim of self-defense, we reiterate the time-honored doctrine that although it is a cardinal principle in criminal law that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits committing the crime but interposes self-defense to escape culpability. In the latter case, the burden is shifted to the accused who must prove clearly and convincingly the following elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[23]

Unlawful aggression is an essential and indispensable requisite of self-defense. For unlawful aggression to be appreciated, there must be an actual, sudden and unexpected attack on the life or limb of a person or an imminent danger thereof, and not merely a threatening or intimidating attitude. There must be a real danger to the life or personal safety of the person claiming self-defense.[24]

As regards SPO1 Labra, Patalinghug argues that he was justified in shooting the former as he was merely defending himself from Labra's unlawful and unprovoked aggression. He claims that when he was approaching Labra to inquire regarding the warrant of arrest, Labra angrily retorted that what was issued was in fact a shoot to kill order and immediately motioned to draw a firearm from the back of his waist. However, the prosecution evidence belies Patalinghug's assertion. It turns out that Labra was unarmed.

In the matter of credibility of witnesses, it is doctrinally settled that factual findings of the trial court should be respected because the trial judge is in a better position to pass judgment on the veracity of witnesses having had the opportunity to personally hear them, observe their deportment and manner of testifying, and detect if they were telling the truth.[25] Thus, we agree with the disquisition of the court a quo in not giving evidentiary weight to the testimony of Lucresio Honasa. Verily, Honasa's long silence about the incident without justifiable explanation eroded the credibility of his claim.

Like the trial court, we too cannot subscribe to Patalinghug's version that Labra was the unlawful aggressor. The first thing which erodes the credibility of Patalinghug's testimony is his declaration that Labra was wearing a pair of short pants and a white tee shirt. This does not jibe with the testimony of the witnesses of the prosecution. On this point, Roberto Dominici testified that Labra had only a pair of short pants and no clothing in his upper torso when Patalinghug approached him (Labra). This was corroborated in substance by the testimony of Marcela Codova. Furthermore, Dr. Cirunay stated in her post mortem examination report as well as in her testimony that she found the slain policeman lying flat in front of his house clad only in a pair of short pants.

Next, Patalinghug would have us believe that Labra had a gun tucked at the back of his waist. This we also find not credible. As the trial court noted, Dominici and Cordova could have noticed the firearm had there been any on the person of Labra as the latter had no clothing in his upper body. Besides, Patalinghug himself admitted that shortly before he shot Labra, he did not see the firearm of the latter and it was only after Labra fell prostrate on the ground that he allegedly saw a pistol at the back of the victim. Another point which negates the claim that Labra had a firearm is the failure of Patalinghug to recover the same as what he did concerning the revolver of Mansueto, his other victim. Indeed Patalinghug, being a peace officer, should have preserved the weapon as required by law. He could not, because there was none.

At any rate, even assuming that Labra had a firearm then, it appears on record that Labra did not manifest any aggressive act which may have imperiled the life and limb of Patalinghug. It is axiomatic that mere thrusting of one's hand into his pocket as if for the purpose of drawing a weapon is not unlawful aggression.[26] Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger.[27] Hence, a threat even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.[28]

Now, with regard to the killing of SPO2 Mansueto. The record reveals that after killing Labra, Patalinghug proceeded to the municipal hall allegedly to surrender himself to the authorities. Patalinghug gave the following version of what transpired thereat:

> "Q-
>
> When you arrived there at the Madredejos Municipal Hall, what did you do?
>
> A-
>
> When I arrived the municipal hall, I alighted from the motorcycle and considering that in going to the municipal hall you have to walk a short distance, I met Eduardo Mansueto.
>
> Q-
>
> And when you met Eduardo Mansueto, what transpired then?
>
> A-
>
> I told him that I will surrender and have the incident blottered considering that Labra and I had an encounter.
>
> Q-
>
> And what was the response of Mansueto when you told him that you will surrender because you and Labra had an encounter with each other?
>
> A-
>
> He got mad and pulled out his gun and told me, `You are foolish' and he immediately shot me. I was not hit though and so I shot him back.
>
> Q-
>
> In effect, did you hit Mansueto when you retaliated?
>
> A-
>
> Yes, I did hit him.
>
> Q-
>
> What did you do upon hitting Mansueto?
>
> A-
>
> After that I got the gun of Mansueto and then went inside the municipal hall and then called the 342[nd] PNP Co and told them I will surrender only to them considering that they are my old comrades."[29]

The abovequoted testimony of Patalinghug contradicts that of Mansueto's daughter. Iris Mansueto who witnessed

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the startling incident testified for the prosecution as follows:

"Q-

You said PO3 Samson Patalinghug went near you, what happened when he went near you?

A-

I and my father were talking and at a distance when he was coming near us, I saw him smile at my father.

Q-

And after that, what happened next?

A-

He called my father, "Dy" and my father answered, "What is it?" and right after that Patalinghug fired at my father.

Q-

How far was your father to Patalinghug, whom the latter fired at your father?

A-

My father was about 4 feet from Patalinghug.

Q-

Please demonstrate how Patalinghug shot your father?

A-

(With Private Prosecutor posing as the deceased and witness acting as accused Patalinghug, witness demonstrated by aiming an imaginary long arm at the deceased and hitting the latter on the mid chest portion of the body).

Q-

After that, what happened to your father?

A-

Because there was a fence behind, he slumped backwards on the fence.

Q-

When your father slumped on the fence, what happened next?

A-

Patalinghug went near my father and fired rapid shots at him.

Q-

After firing rapid shots at your father who slumped on the fence, what happened next?

A-

Patalinghug went inside the municipal building."[30]

Who should be believed, the prosecution or the defense witnesses? We reiterate the settled tenet that the trial court's assessment on this matter is entitled to respect, for the reason that the trial court has the advantage of observing the demeanor of the witnesses as they testify.[31] Furthermore, the weight of the testimony of the witnesses is not impaired or in anyway affected by their relationship to the victim, as in this case of Mansueto, when there is no showing of improper motive on the part of the witnesses.[32]

As in the Labra case, the court a quo found the prosecution version more credible than that of the defense. Having reviewed the evidence of this case, we find nothing on record that would indicate material inconsistencies or even improbabilities in the testimony of the prosecution witness. Accordingly, the lower court correctly rejected Patalinghug's assertion that Mansueto fired at him first but missed. The truth is that upon arrival at the municipal hall, Patalinghug accosted Mansueto and then at close range shot the latter. Clearly, Mansueto had no inkling that his fellow policeman will harm him as Patalinghug even managed to greet and smile at him. Mansueto could not have started the shooting as he would not haved risked the lives of his two daughters who were beside him. In fact, one of Mansueto's daughters, Iris, was injured by splinters.

Another factor which militates against appellant's claim of self-defense is the nature and number of wounds suffered by Labra and Mansueto. As examined by Dr. Cirunay, Labra's body sustained eleven (11) gunshot wounds while Mansueto's body bore three (3) gunshot wounds. It is an oft-repeated rule that the presence of a large number of wounds on the part of the victim negates self-defense and instead indicates a determined effort to kill the victim.[33]

Absent unlawful aggression that can be attributed to the victims, it is unnecessary to determine the remaining requisites of self-defense. Inevitably, Patalinghug's invocation of self-defense must fail.

Further, we agree with the trial court's finding that treachery attended the killing of Labra and Mansueto. The essence of treachery is that the attack comes without warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[34]

Clearly, the encounter between Patalinghug and Labra was not by chance. Appellant especially sought Labra in the latter's residence. When he approached Labra, appellant's fully loaded armalite rifle was already cocked. In such mode, the firearm was ready to set a volley of fire upon release of the safety lock and squeeze of the trigger. The two policemen even talked briefly. For sure, the unarmed Labra had no premonition of the danger that lurked ahead. Suddenly, Patalinghug successively shot Labra, hitting the latter on the left side of his body and on his face. Labra was again shot on his face while already slumped on the ground. Finally, Patalinghug mercilessly riddled the fallen Labra with armalite fire when the latter was already lying prostrate on the ground. Under the circumstances, Labra could not have the ghost of a chance to defend himself or retreat.

In like manner, Patalinghug rushed to the municipal hall in search of Mansueto in the pretext of surrendering himself. Having been greeted and smiled at by the appellant, Mansueto did not have a hint of Patalinghug's evil design. Patalinghug's shooting was successive and totally unexpected, thus, depriving Mansueto the opportunity to defend himself. In fact, Patalinghug still shot Mansueto twice while the latter was already lying helpless on the ground.

Now, regarding co-appellants Pasilaban and Gordo. As earlier mentioned the two insist on their innocence. They dispute the finding of the trial court that they conspired with Patalinghug in perpetrating the crimes. They contend that conspiracy was not established by clear and convincing evidence.

Conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[35] Although it is not required that there be an agreement for an appreciable

period prior to the occurrence, it must be shown that at the time of the commission of the offense, the accused and co-accused had the same purpose and were united in its execution.[36] Conspiracy, to be the basis for a conviction, should be proved as clearly and convincingly as the commission of the crime itself. No less than proof beyond reasonable doubt is required. It is also essential that a conscious design to commit an offense must be established. Conspiracy is not the product of negligence but intention on the part of the cohorts.[37]

In the case at bar, the trial court found co-appellants Pasilaban and Gordo to have conspired with Patalinghug in killing Labra and Mansueto. It deduced appellants conspiratorial participation in the crimes from the following facts: (1) the three accused were together before Patalinghug assaulted Labra; (2) they used Pasilaban's motorcycle as get-away vehicle; (3) during the attack on Labra, Pasilaban and Gordo stood as lookouts outside Labra's residence; (4) after shooting Labra, they proceeded together to the municipal hall to effect the killing of Mansueto; and (5) Pasilaban and Gordo witnessed the shooting of Mansueto and left the scene of the crime only after Patalinghug went inside the municipal building.[38]

Given the foregoing circumstances, however, we are now constrained to sustain the claim of the two appellants that the evidence failed to meet the quantum of proof required by law to establish conspiracy. There is no evidence at all showing that Pasilaban and Gordo agreed with Patalinghug to kill Labra and Mansueto, nor that they even acted in a manner showing commonality of design and purpose together with Patalinghug. Without evidence as to how these co-appellants participated in the perpetration of the crime, conspiracy cannot be attributed against them. Evidence of intentional participation is indispensable, as the two appellants' mere presence at the crime scene cannot be considered proof of conspiracy.[39]

It is true that the two co-appellants were together with Patalinghug just prior to the attack on Labra. However, where the co-appellants have satisfactorily explained their presence with the perpetrator of the crime they cannot be tagged as co-conspirators.[40] As in this case, Pasilaban and Gordo were going to the poblacion to buy cement. They were on board the motorcycle driven by Pasilaban. On their way, Patalinghug flagged them down and requested to ride with them to the municipal hall as he was reporting for duty. They acceded to Patalinghug's request but told him that first they would have to pass by the vulcanizing shop. Patalinghug agreed as he was seeing Labra who lived beside the said shop. Obviously, being on the same vehicle may indeed elicit suspicion on the real nature of their intention. But a perceived intimacy among friends does not give much significance to the existence of criminal conspiracy.[41] Besides, the mere fact that the co-appellants were found in the company of the perpetrator of the crime at a certain time and at a certain place is not sufficient proof that these two were co-authors or accomplices in the crimes committed.[42]

Likewise, the fact that co-appellants Pasilaban and Gordo left the vulcanizing shop together with Patalinghug and proceeded to the municipal hall using the same motorcycle is inadequate proof that they participated as co-conspirators in killing Labra and Mansueto. The fact that the accused left together, without more, cannot instantly support a finding of conspiracy. Certainly, conspiracy transcends companionship.[43] The duo testified that after shooting Labra, Patalinghug rushed to Pasilaban and told the latter that he had an "encounter" with Labra. He aimed his armalite rifle at Pasilaban and asked the latter to proceed to the municipal hall so that he could surrender. At this juncture, Pasilaban summoned Gordo to board the motorbike also. The three left the scene of the crime not aware that Patalinghug had shot Labra, having mistaken the gunfires they heard as warning shots.

We cannot also agree with the trial court's observation that Pasilaban and Gordo served as look-outs during the killing of Labra. Indeed, the two stayed within the vicinity of the vulcanizing shop just beside Labra's compound. But, Pasilaban remained there waiting for Dominici to return so that he could ask permission to use the air pump. On the other hand, Gordo was there to relieve himself nearby. Neither could we accept the proposition that the motorcycle was a get-away vehicle. Dominici testified that the motorcycle's engine was not on when he returned

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back to the shop. To facilitate a quick escape, its motor should not have been switched-off.

Next, the trial court mistakenly imputed criminal design on Pasilaban and Gordo when they witnessed the shooting of Mansueto and left only after Patalinghug went inside the municipal building. Again, their presence at the crime scene and their subsequent flight therefrom are not indicative of their participation in the crime in the absence of proof that they know Patalinghug's criminal design.

The existence of conspiracy not having been proven satisfactorily, Pasilaban and Gordo cannot be held criminally liable for the killing of Labra and Mansueto without a shadow of doubt.

Finally, noteworthy is the observation of the court a quo on the possible motive of Patalinghug in perpetrating the crimes. The trial court pointed out the incident on Maundy Thursday (March 31, 1994) in which Patalinghug had an altercation with his superior SPO4 Ygot and his fellow policemen Labra and Mansueto in connection with the arrest of illegal gamblers. On such occasion, Patalinghug challenged Ygot to a fight which the latter just ignored. On his part, Patalinghug apologized to Ygot for his sudden outburst of temper but later on he fired his service armalite rifle. This incident generated the filing by Ygot of a complaint with the PNP regional office for attempted murder and grave misconduct. In view of the complaint, Patalinghug was ordered via a radio message to report on April 12, 1994, to the regional inspectorate office. He was supposed to bring with him his service armalite rifle and revolver for deposit. The trial court opined that the regional office directive had terribly shaken Patalinghug's moral fiber that he decided to seek those who may have something to do with the complaint.

While it is not necessary to inquire into appellant Patalinghug's motive for doing a criminal act, especially where he admits his transgression, it is important to know the reason for the commission of the crime if only to gain judicial perspective of the case.[44] Apparently, Patalinghug's motive for killing Labra and Mansueto is revenge. But assuming that Patalinghug harbored ill feeling towards his fellow policemen on the belief that they were responsible for the complaint against him, there is nothing to show that co-appellants Pasilaban and Gordo had any reason for killing the deceased. At least, no such reason has surfaced on record to stifle our serious doubt that co-appellants Pasilaban and Gordo conspired with Patalinghug in perpetrating the crimes charged.

WHEREFORE, Benito Pasilaban and Ronaldo Gordo are hereby ACQUITTED and ordered RELEASED immediately, unless they are being detained from some other legal cause. The assailed Decision is AFFIRMED insofar as it convicted accused PO3 Samson Patalinghug for two crimes of murder and sentenced him to reclusion perpetua. Accordingly, he alone is ORDERED also to indemnify the heirs of the deceased victims in the amounts therein stated, and to pay the costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon Jr., JJ., concur.

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[1] Penned by Presiding Judge Leonardo B. Cañares.

[2] Rollo, pp. 10-11.

[3] Id. at 12.

[4] Id. at 131.

[5] Id. at 81-82.

[6] TSN, September 19, 1994, pp. 9-22.

[7] Id. at 23-32.

[8] TSN, January 12, 1995, pp. 4-7.

[9] Supra, note 5 at 84-85.

[10] TSN, March 24, 1995, pp. 4-8.

[11] Supra, note 5 at 87.

[12] Id. at 124.

[13] Records, pp. 193, 196-197.

[14] Records, pp. 198-204, 232-233.

[15] Rollo, p. 51.

[16] Id. at 150.

[17] Id. at 52.

[18] Id. at 79-80.

[19] People v. Reyes, 245 SCRA 785, 794 (1995).

[20] Osias v. Court of Appeals, 256 SCRA 101, 118 (1996).

[21] Rollo, p. 101.

[22] Id. at 73.

[23] People v. Magallanes, 275 SCRA 222, 228 (1997).

[24] People v. Baniel, 275 SCRA 472, 480 (1997).

[25] People v. Apongan, 270 SCRA 713, 729 (1997).

[26] People v. Calantoc, 55 SCRA 458, 461 (1974).

[27] Alameda v. Court of Appeals, 269 SCRA 643, 650 (1997).

[28] Supra, note 26.

[29] TSN, July 10, 1995, pp. 10-11.

[30] TSN, September 21, 1994, pp. 6-7.

[31] Amper v. Sandiganbayan, 279 SCRA 434, 441 (1997).

[32] People v. Carpio, 282 SCRA 23, 33 (1997).

[33] People v. Deopante, 263 SCRA 691, 707 (1996).

[34] People vs. Zamora, 278 SCRA 60, 62 (1997).

[35] Revised Penal Code Article 8.

[36] People v. Hubilla, Jr., 252 SCRA 471, 480 (1996).

[37] People v. Gomez, 270 SCRA 432, 443 (1997).

[38] Rollo, p. 130.

[39] People v. Ragon, 282 SCRA 90, 101 (1997).

[40] Vol. I R. Aquino and C. Griño-Aquino, The Revised Penal Code, p. 531 (1997).

[41] People v. Berroya, 283 SCRA 111, 129 (1997).

[42] Supra, note 40, p. 533.

[43] Supra, note 37.

[44] Supra, note 40, pp. 48, 50.

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