

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOEMARIE CHUA Y BALDEVINO, JOEL BASCO Y BALDEVINO,
JOEFREY BASCO Y PARRA, AND AGOSTO O. BROSAS,
ACCUSED-APPELLANTS.**

G.R. Nos. 126255-56. August 31, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated January 8, 1996, of the Regional Trial Court, Branch 38, Iloilo City, finding accused-appellants Joemarie B. Chua, Joel B. Basco, Joefrey P. Basco, and Agosto O. Brosas guilty of two counts of murder and two counts of frustrated murder and sentencing them accordingly and ordering them to pay damages.

The informations against accused-appellants alleged:

Crim. Case No. 43454:[2]

The Provincial Prosecutor through the undersigned accused JOEL BASCO, JOEFREY BASCO and JOEMARIE CHUA, as principals by direct participation and AGOSTO BROSAS, as accomplice, of the crime of FRUSTRATED MURDER, committed as follows:

That on or about the 20th day of January, 1994 in the Municipality of Oton, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JOEL BASCO, JOEFREY BASCO and JOEMARIE CHUA, conspiring, confederating and helping one another armed with firearms of unknown caliber, with deliberate intent and decided purpose to kill, with treachery and abuse of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault, shoot and hit ERLINDO MANAAY, with said firearms, causing multiple gunshot wounds on different parts of his body, thereby performing all the acts of execution that could have produced the crime of Murder as a consequence but nevertheless did not produce the same by reason of some cause or accident independent of the will of the accused, that is the timely medical attendance administered on said ERLINDO MANAAY which prevented his death; that the accused AGOSTO BROSAS, is being charge in this case as an accomplice to the crime for having participated in its commission by previous and simultaneous acts.

CONTRARY TO LAW.

Iloilo City, Philippines, April 21, 1994.

Crim. Case No. 43455:[3]

The Provincial Prosecutor through the undersigned accuses JOEL BASCO, JOEFREY BASCO and JOEMARIE CHUA, as principals by direct participation and AGOSTO BROSAS, as accomplice, of the crime of

FRUSTRATED MURDER, committed as follows:

That on or about the 20th day of January, 1994 in the Municipality of Oton, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JOEL BASCO, JOEFREY BASCO, and JOEMARIE CHUA, conspiring, confederating and helping one another, armed with firearms of unknown caliber, with deliberate intent and decided purpose to kill, with treachery and abuse of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault, shoot and hit PERPETUA GRACE GAJETO, with said firearms, causing multiple gunshot wounds on her right foot and leg, thereby performing all acts of execution that could have produced the crime of murder as a consequence but nevertheless did not produce the same by reason of some cause or accident independent of the will of the accused, that is the timely medical attendance administered on said Perpetua Grace Gajeto which prevented her death; that the accused AGOSTO BROSAS, is being charged in this case as an accomplice to the crime for having participated in its commission by previous and simultaneous acts.

CONTRARY TO LAW.

Iloilo City, Philippines, April 21, 1994.

Crim. Case No. 43456:[4]

The Provincial Prosecutor through the undersigned accuses JOEL BASCO, JOEFREY BASCO, JOEMARIE CHUA, as principal by direct participation, and AGOSTO BROSAS, as accomplice, of the crime of MURDER committed as follows:

That on or about the 20th of January, 1994, in the Municipality of Oton, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-accused JOEL BASCO, JOEFREY BASCO and JOEMARIE CHUA, conspiring, confederating and helping one another, armed with firearms of unknown caliber, with deliberate intent and decided purpose to kill, with treachery and abuse of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault, shoot and hit, CHARLIE SINOY, with said firearms, causing upon the latter gunshot or pellet wounds on different parts of his body which caused his death thereafter; that the accused AGOSTO BROSAS, is being charged in this case as an accomplice to the crime for having participated in its commission by previous and simultaneous acts.

CONTRARY TO LAW.

Iloilo City, Philippines, April 18, 1994.

Crim. Case No. 43457:[5]

The Provincial Prosecutor through the undersigned counsel JOEL BASCO, JOEFREY BASCO, JOEMARIE CHUA, as principals by direct participation, and AGOSTO BROSAS, as accomplice, of the crime of MURDER committed as follows:

That on or about the 20th of January, 1994, in the Municipality of Oton, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-accused JOEL BASCO, JOEFREY BASCO and JOEMARIE CHUA, conspiring, confederating and helping one another, armed with firearms of unknown caliber, with deliberate intent and decided purpose to kill, with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, shoot and hit ARSENIO GAJETO with said firearms, causing upon the latter gunshot wound on the right scapular area and contusion and abrasions on other parts of his body, which caused his death thereafter; that the accused AGOSTO BROSAS, is being charged in this case as an

accomplice to the crime for having participated in its commission by previous and simultaneous acts.

CONTRARY TO LAW.

Iloilo City, Philippines, April 18, 1994.

Upon being arraigned, accused-appellants pleaded not guilty to the charges, whereupon joint trial of the four cases was held.

As alleged in the informations, the incident took place at around 10 o'clock in the evening of January 20, 1994, at Barangay Cabanbanan, Municipality of Oton, Province of Iloilo. Charlie Sinoy, Arsenio Gajeto, Erlindo Mana-ay, Nathaniel Presno, and several other companions were having drinks at the side of a sari-sari store fronting the national road going to the adjoining Municipality of Tigbauan. After some time had lapsed, a jeepney with the name "Salamander" at the backboard, owned by accused-appellant Joemarie Chua and driven by accused-appellant Agosto Brosas, arrived. With them were accused-appellants Joel Basco and Joefrey Basco. A burst of gunfire was then heard. Sinoy and Arsenio Gajeto were killed, while Perpetua Grace Gajeto and Erlindo Mana-ay were seriously injured. Who fired at the group is the subject of the differing versions of the prosecution and the defense.

Five witnesses testified for the prosecution namely, Erlindo Mana-ay,[6] Nathaniel Presno,[7] Jesus Cebu,[8] Corazon Gajeto,[9] and Perpetua Grace Gajeto.[10] Their testimonies are as follows:

On the night in question, Erlindo Mana-ay, Charlie Sinoy, Arsenio Gajeto, Nathaniel Presno, Dwight Tacata, Baltazar Tadea, Romeo Presno, Rolando Tullo, and Jesus Cebu were having drinks at the store of Lorna Geonigo. Presno, Gajeto, Mana-ay, and Sinoy were seated on a bench on the left side of the store outside the fence. There were electric lights inside and outside the store, as well as on the electric post nearby. At a distance on the right side of the store was a parked motorcycle.

While the group was thus having drinks, a group of men arrived on board a jeepney. The jeepney stopped a short distance away from the store. It was parked diagonally on the left side of the road with its headlights beamed on the right side of the store. Three men, whom prosecution witnesses identified as Joel Basco and Joemarie Chua, both of whom were armed with long firearms, and Joefrey Basco, who was armed with a short firearm, alighted from the vehicle. The three went to the place where Presno, Gajeto, Mana-ay, and Sinoy were and then fired at them. Afterwards, they boarded the jeepney and sped away. The jeepney was driven by accused-appellant Agosto Brosas.

The prosecution witnesses testified that they recognized the three who fired at the victims because they were all residents of Barangay Botong. They knew the driver of the jeepney, Agosto Brosas, because they used to ride on the jeepney with the word "Salamander" painted on its back.

As a result of the incident, Erlindo Mana-ay was hospitalized for injuries described in the medical certificate[11] issued by Dr. Dennis Superficial, dated January 24, 1994, as follows:

Injuries incurred were:

- 1) Apparent GSW thru and thru thenar aspect (R) hand
- 2) Apparent GSW of entrance #2 at the D/3rd dorsal aspect (R) forearm
- 3) Apparent GSW thru and thru (R) arm mid 3rd.
- 4) Apparent GSW of entrance at the proximal 3rd medial aspect left thigh no exit wound

5) Apparent GSW of entrance at the anterior aspect mid 3rd (R) thigh with no exit.

X-ray revealed foreign bodies in the (R) and (L) proximal thigh and distal (R) arm, Fracture at (R) carpal and distal (R) radius.

I & D with removal of foreign bodies (bullets) #2 pellets (R) forearm were done. Foreign bodies at the right thigh were not accessible to retrieval.

This certificate was issued for legal purposes.

Dr. Superficial testified that the first and second wounds on Erlindo Mana-ay were caused by a single bullet. He recovered two pellets from wound no. 1 and foreign objects from wound no. 5. He also found a contusion collar in wound no. 2. He opined that without timely medical attendance, the patient would have died.[12]

Perpetua Grace Gajeto also suffered injuries. The medical certificate[13] dated January 24, 1994, issued by Dr. Marcelo Jaen, stated:

TO WHOM IT MAY CONCERN:

This is to certify that PERPETUA GRACE GAJETO, 27 years old female, single, was admitted and treated in this hospital last January 21, 1994 at 1:05 A.M. because of:

- 1) Multiple gunshot wound (R) foot and leg
- 2) Comminuted fracture distal 3rd (R) tibio fibula, 4th and 5th metatarsal (R) foot

This certification is being issued for whatever purpose it may serve her.

Dr. Jaen testified that the wounds listed in the medical certificate were all entrance wounds. He did not recover any foreign object from, nor were there any contusion collars in, any of the wounds. On the basis of the location of the wounds, he stated that Perpetua Grace was facing the assailant when she was shot at a distance of more than two meters. He opined that without medical attention, the patient would have died.

On the other hand, a postmortem examination on the body of Charlie Sinoy was conducted by Dr. Tito Doromal at the Flores Funeral Homes, Oton, Iloilo, at 3:10 in the afternoon of January 21, 1994. His report contained the following findings:[14]

GENERAL SURVEY

The body was seen by the undersigned at the autopsy table of Flores Funeral Homes, Oton, Iloilo, lifeless, lying flat on his back, on the stage of rigor mortis with lividity on the posterior half with pellet wounds on the left and right thighs. The height is 166 cms., and weighs about 64 kilos. The estimated time of death is fifteen (15) to seventeen (17) hours before the autopsy.

The victim allegedly was declared DOA by Iloilo Doctor's Hospital authorities, Iloilo City at around 10:30 PM of January 20, 1994.

AUTOPSY FINDINGS

HEAD_&_NECK:

Nothing of note.

THORACO-ABDOMINAL REGIONS:

Nothing of note.

EXTREMITIES:

Upper:

Nothing of note.

Lower:

1) PELLET WOUNDS, one central hole, 4.5 x 7.5 cm., in dia., anterior upper 3rd, left thigh, 77 cms., from the left heel, penetrating muscle tissue, exiting on the skin at the antero-medial aspect, middle 3rd, left thigh, 75.5 cms., from the left heel, 6 in nos., ranging from 0.7 x 0.5 to 2.1 x 2.4 cm., in diameter all stellate in shape. One carton wad was extracted on the muscle tissue near the exit wound, antero-medial aspect upper 3rd, left thigh.

The direction of the wound is left to right downward.

2) PELLET WOUNDS, 7 in nos., ranging from 0.5 x 0.6 cm., in dia., to 0.7 x 0.9 cm., in dia., anteromedial aspect, upper 3rd, right thigh, center of which is 77 cms., from the right heel, 5.6 cms., from the mid-line, penetrating muscle tissue, lacerating the femoral artery & vein, exiting on the skin at the lateral aspect, junction of upper & middle 3rd, right thigh, with exit wounds 7 in nos., ranging from 0.7 x 0.6 to 1 x 1.3 cm., in dia., stellate in shape, center of which is 74 cms., from the right heel.

The direction of the wound is right to left, downward.

CAUSE OF DEATH:

HEMORRHAGE, 2° to MULTIPLE PELLET WOUNDS.

Dr. Doromal testified that wound no. 1, a through and through wound, was caused by a pellet fired from a .12 gauge shotgun. He recovered a carton wad near the exit wound on the left thigh of the victim. Based on the location of the wound, he believed that the assailant was on the left of the victim with both of them in a standing position.[15]

Dr. Doromal also performed the postmortem examination on the body of Arsenio Gajeto. His findings are contained in a report,[16] the pertinent parts of which read:

GENERAL SURVEY

The body was seen by the undersigned at the autopsy table of Flores Funeral homes, Oton, Iloilo, lifeless, lying flat on his back, on the stage of rigor mortis with lividity on the posterior half with contused -abrasion, on the right lateral eyebrow and gunshot wound on the right lateral scapular area. The height is 163½ cms., and weighs about 62 kilos. The estimated time of death is sixteen (16) to eighteen (18) hours before the autopsy.

The victim allegedly was declared DOA by Iloilo Doctor's Hospital authorities, Iloilo City at around 10:30 PM of January 20, 1994.

AUTOPSY FINDINGS

HEAD & NECK:

1) Contused-Abrasion, 2 X 0.8 cm., in dia., with central lacerated wound, 1.5 cm., long right lateral eyebrow.

THORACO-ABDOMINAL REGIONS:

1) GUNSHOT WOUND, thru & thru, entrance, circular, 0.5 x 0.5 cm., in dia., with abrasion collar around, 1 x 1 cm., in dia., right lateral scapular area, 14.5 cms., from the posterior median line, 127 cms., from the right heel, penetrating, making a punch-in fracture of the 6th rib, along right mid-scapular line, thru & thru the middle lobe, right lung, cutting the bronchus, right pulmonary artery & vein, perforating the posterior pericardial sac, lacerating the ascending aorta, perforating the anterior pericardial sac, penetrating the muscle tissue of the 2nd intercostal space, along left parasternal line, finally exiting on the skin at the said area with exit wound measuring 1.5 x 0.9 cms., in dia., stellate in shape, 5 cms., from the anterior median line, 127.5 cms., from the left heel.

The direction of the wound is forward, slightly upward right to left.

About 2.5 liters of clotted and liquefied blood was extracted from the thoracic cavity.

EXTREMITIES:

1) Abrasion, 3 x 4 cm., in dia., left anterior knee.

CAUSE OF DEATH:

HEMORRHAGE, 2° to GUNSHOT WOUND.

Dr. Doromal testified that wound no. 2 was a through and through wound, the entrance of which was at the right lateral scapular area. Based on the location of the wound, he believed that the assailant was at the back of the victim, slightly on the right side, when he fired upon him. Since he did not recover any foreign object from the wound, Dr. Doromal could not determine the type and caliber of the firearm used by the assailant.[17]

On the other hand, the defense gave a different version as follows:[18] Joemarie Chua testified that about 8:30 in the evening on January 20, 1994, he and his co-accused, Joel Basco and Joefrey Basco, as well as Romeo de la Cruz and Michael Canto, arrived home in Barangay Botong, Oton, Iloilo on his jeepney which was driven by Agosto Brosas. They had just come from Iloilo City when a certain Joemar Basco flagged down the jeepney and informed him that the motorcycle he borrowed from Joemarie Chua was taken from him. Accordingly, Joemarie ordered Joemar to board the jeepney and join him to go after the carnapper. Upon reaching Barangay Cabanbanan, Joemarie saw his motorcycle parked on the left side of the national road. He and Joemar alighted from the vehicle and went to the sari-sari store. After greeting the persons drinking beer beside the sari-sari store, he asked who drove his motorcycle to that place. One of the men resented Joemarie's question as it insinuated that they had stolen the motorcycle.

Joemarie then saw a person coming from the side of the store with a long firearm pointed at him. The man, whom Joemarie identified as Nathaniel Presno, squeezed the trigger, but the weapon did not fire. Joemarie claimed he pushed the firearm from his head and, with his left hand holding the barrel and his right hand holding the hand of the person with the firearm, pointed the firearm downward. He and Presno grappled for possession of the firearm. Presno was able to reload the firearm and fire it twice.

Failing to wrest the firearm from Presno, Joemarie ran towards his jeepney, but the vehicle was already moving away. He therefore took his motorcycle and drove away. He used a duplicate ignition key which he had with him.

On January 8, 1996, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, the court finds:

- In Criminal Case No. 43454, the accused, Joemarie Chua y Baldevino, Joel Basco y Baldevino and Joefrey

Basco y Parra, guilty beyond reasonable doubt for the crime of Frustrated Murder, as principal by direct participation penalized under Article 248, Revised Penal Code as amended by No. 1, Section 6 of Republic Act No. 7659 in relation to Article 50 of the same Code and hereby sentence Joemarie Chua y Baldevino and Joel Basco y Baldevino, to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum to twelve (12) years and one (1) day as maximum; for accused, Joefrey Basco y Parra, to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum to fourteen (14) years, eight (8) months and one (1) day as maximum.

Accused, Agosto Brosas y Yange, is likewise found guilty beyond reasonable doubt for the same crime as an accomplice and hereby sentences him to suffer an indeterminate penalty of imprisonment ranging from two (2) years, four (4) months and one (1) day as minimum to eight (8) years and one (1) day as maximum.

In addition, all four (4) accused shall indemnify, Erlindo Mana-ay the sum of P17,759.83 as actual damages, jointly and solidarily;

- In Criminal Case No. 43455, the accused, Joemarie Chua y Baldevino, Joel Basco y Baldevino and Joefrey Basco y Parra, guilty beyond reasonable doubt for the crime of Frustrated Murder as principal by direct participation penalized under Article 248, Revised Penal Code as amended by No. 1 Section 6 of Republic Act No. 7659 in relation to Article 50 of the same code and hereby sentence Joemarie Chua y Baldevino and Joel Basco y Baldevino to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum to twelve (12) years and one (1) day as maximum; for accused, Joefrey Basco y Parra, to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum to fourteen (14) years, eight (8) months and one (1) day as maximum.

Accused, Agosto Brosas y Yange, is likewise found guilty beyond reasonable doubt for the same crime as an accomplice and hereby sentences him to suffer an indeterminate penalty of imprisonment ranging from two (2) years, four (4) months and one (1) day as minimum to eight (8) years and one (1) day as maximum.

In addition, all four (4) accused shall indemnify Perpetua Grace Gajeto the sum of P27,906.80 as actual damages, jointly and solidarily;

- In Criminal Case No. 43456, the accused, Joemarie Chua y Baldevino, Joel Basco y Baldevino and Joefrey Basco y Parra, guilty beyond reasonable doubt for the crime of Murder as principal by direct participation penalized under Article 248, Revised Penal Code as amended by No. 1, Section 6 of Republic Act No. 7659 and hereby sentence each of them to suffer a penalty of Reclusion Perpetua.

Accused, Agosto Brosas y Yange, is likewise found guilty beyond reasonable doubt for the same offense as an accomplice and hereby sentences him to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum to fourteen (14) years, eight (8) months and one (1) day as maximum.

In addition, all four (4) accused shall pay the heirs of Charlie Sinoy the sum of P50,000.00 as civil indemnity by reason of his death;

- In Criminal Case No. 43457, the accused, Joemarie Chua y Baldevino, Joel Basco y Baldevino and Joefrey Basco y Parra, guilty beyond reasonable doubt for the crime of Murder as principal by direct participation penalized under Article 248, Revised Penal Code as amended by No. 1, Section 6 of Republic Act No. 7659 and hereby sentence each of them to suffer a penalty of Reclusion Perpetua.

Accused, Agosto Brosas y Yange, is likewise found guilty beyond reasonable doubt for the same offense as an accomplice and hereby sentences him to suffer an indeterminate penalty of imprisonment ranging from eight (8)

years and one (1) day as minimum to fourteen (14) years, eight (8) months and one (1) day as maximum.

In addition, all four (4) accused shall pay the heirs of Arsenio Gajeto the sum of P29,503.60 as actual damages and a civil indemnity of P50,000.00 by reason of his death.

The accused, Joemarie Chua y Baldevino, Joel Basco y Baldevino, Joefrey Basco y Parra, being detained, the whole period of their detention shall be deducted in full from the period of their imprisonment, provided however, they had agreed in writing to abide by the disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited only to four-fifths (4/5) of the time during which they had undergone preventive imprisonment.

With the finding of conviction of accused, Joemarie Chua y Baldevino, Joel Basco y Baldevino and Joefrey Basco y Parra in Criminal Cases Nos. 43456 and 43457, no bail is available to each of them and they shall remain under detention pending the finality of this judgment.

Since the penalty herein imposed is an imprisonment exceeding six (6) years but not more than twenty (20) years, in so far as accused, Agosto Brosas y Yange, is concerned in herein four (4) cases, the prosecution is ordered to manifest within two (2) days from promulgation whether it objects to the continued grant of bail to herein convicted accused stating specifically its grounds with annexes as proofs thereto, copy furnished by personal services to the defense who shall make a reply thereto, if it wish[es] to, with evidences as annexes, all within the same period above stated counted from receipt, without extension. This shall guide the court on whether or not the accused shall be granted bail should he opt to appeal, all pursuant to the new rules on bail. A hearing may be conducted for such purpose, if necessary.

With herein conviction, the property bond of accused, Agosto Brosas y Yange, is automatically cancelled. His bondsmen are ordered to appear before the court during promulgation of herein sentences of conviction and manifest whether or not they shall continue with their property bond in favor of said accused during his period to appeal.

Costs against the four accused, jointly and solidarily.

It is so ordered.[19]

Hence this appeal. Accused-appellants raised the following issues:

I WHETHER THE DEATHS OF CHARLIE SINOY AND PERPETUA GAJETO AS WELL AS INJURIES TO PERPETUA GRACE GAJETO AND ERLINDO MANA-AY WERE MERELY ACCIDENTAL

II WHETHER THE FINDING BY THE TRIAL COURT THAT ALL THE ACCUSED-APPELLANTS FIRED AT THE VICTIMS IS SUPPORTED BY PHYSICAL EVIDENCE

III WHETHER CONSPIRACY ATTENDED THE COMMISSION OF THE CRIME

IV WHETHER THE TRIAL COURT WAS JUSTIFIED IN IGNORING THE UNDISPUTED FACT OF THE PRESENCE OF THE MOTORCYCLE OF ACCUSED JOEMARIE CHUA IN THE VICINITY OF THE INCIDENT PRIOR TO THE ARRIVAL OF THE ACCUSED

V WHETHER JOEFREY BASCO IS ENTITLED TO THE PRIVILEGED MITIGATING CIRCUMSTANCE OF MINORITY

First. Accused-appellants' theory is that Nathaniel Presno was the one who tried to shoot Joemarie Chua. It is claimed that, as Joemarie Chua tried to seize the gun from him, Presno fired it several times and hit Charlie Sinoy, Arsenio Gajeto, Erlindo Mana-ay, and Perpetua Grace Gajeto.

There is nothing in the evidence to support this theory. As the trial court correctly ruled, this claim is belied by the

testimony of Dr. Doromal, the medicolegal officer who performed the postmortem examination on the bodies of Charlie Sinoy and Arsenio Gajeto.[20] Dr. Doromal told the court:

PROS. CABALUM

Q Now doctor considering the location of the wounds which you had found after you conducted autopsy on the body of the victim, Charlie Sinoy, what could have been the probable position of the assailants in relation to the victim when they shot the victim?

ATTY. GEROCHE

Objection, Your Honor, the question assumes that there are more than one assailant.

PROS. CABALUM

Assailant or assailants.

COURT

Answer.

A The assailant is located on the left side of the victim.

Q And what could have been the possible position of the victim here when he was shot?

A It is possible that the victim and the assailant were standing.

Q Is it also possible that the victim was seated at that time when he was shot?

A I don't think so.

Indeed, if the gun was pointed to the ground, as accused-appellants say it was when it was fired, the trajectory of the bullets would have been downward. But, as Dr. Doromal said, the trajectory was horizontal, indicating that the bullets were fired by the assailant while standing to the left of the victim.

The same observation could be said regarding the wounds suffered by Arsenio Gajeto. According to the postmortem report of Dr. Doromal, the direction of the bullet was forward, slightly upward, right to left. This disproves the defense's claim that Joemarie Chua had the gun pointed to the ground when Presno fired it.

Furthermore, based on the nature of the wounds suffered by Perpetua Grace, it is improbable that she was injured while trying to stop Presno from firing at Joemarie. Dr. Marcelo Jaen testified that she was far from the assailant when she was hit.[21] Dr. Jaen said:

Pros. Cabalum:

Now, doctor, is it possible doctor that at that time the victim was shot she was standing and at the same time facing the assailant or assailants?

A It is possible.

Q But the probability or precisely the victim was standing at the time when she was shot because she was hit on the right leg?

A Yes, it is probabl[e].

Q Basing again doctor from the wounds that the victim suffered, how far was the victim to the assailant or assailants when she was shot?

A I could not exactly tell how far but there were no contusions current. It means to say that the patient is not within a very close range.

Q Could it be two or three meters away?

A More than that.

Indeed, Perpetua Grace testified:[22]

Pros. P. Cabalum:

Now, Madam Witness, according to the accused, Agosto Brosas, witness, Joemar Basco, and Joel Basco, accused, the two women were present in front of that store that evening together with the other victims in these cases and their companions drinking beer and the two women were identified by accused, Joel Basco, as you and your mother, Corazon Gajeto, what can you say to the statement of accused, Agosto Brosas and Joel Basco?

Witness:

Those are all lies because everytime I go home I stayed at home and how come that I was at the store when I do not go out and in the Sari-Sari Store are full of men drinking.

Q How about your mother, according to the same accused and their witnesses your mother was outside the store together with you. What do you say to the statement of accused, Agosto Brosas, Joel Basco, and witness, Joemar Basco?

A My mother was not at the Sari-Sari Store. She was inside our fence outside our house.

Second. It is contended that accused-appellants were inquiring as to the whereabouts of the one who had taken the motorcycle when they were suddenly fired at by Presno. Accused-appellants cite the following testimony of Erlindo Mana-ay:[23]

Q Have you seen a motorcycle that evening of January 20, 1994?

A I saw the motorcycle which was parked with a distance from the store near the canal.

Q At what time did you see the motorcycle there?

A When I arrived in the store.

Q Was that motorcycle familiar to you?

A I'm not familiar with the motorcycle because I have no interest on it.

Q You did not wonder whose motorcycle was that?

A Only later on I knew that it belongs to Chua's group.

Q How did you know?

A Only later on after they fired upon us.

Q You mean to say that the Chua's riding in a motorcycle when they arrived there?

A No, sir.

Q I thought you said that the Chua is the owner of that motorcycle?

A Yes, they are the owners.

Q And do you know who brought that motorcycle there?

A Because I was not present when the motorcycle arrived and I only saw it.

Q Up to now you never asked how come that the motorcycle was there?

A Only later on I knew.

Q How did you know?

A Only later on I knew that they were not in good terms with one of our barangay mate Nathaniel Presno.

Q You are not answering the question. The question is: How did you know that this motorcycle belongs to Chua?

A When it was impounded in the Municipal Hall.

Q And up to now you did not know how come that motorcycle was there on January 20, 1994?

A What I knew was that, they bought cigarettes from the store.

Q Who bought cigarettes from the store?

A I'm not sure because that was only told to us by the neighboring barangay that they bought cigarette from the store.

Q Were you not there when that person bought cigarette?

A I was not there yet.

Q How about your other companions, were they there already?

A Only Nathaniel Presno.

This excerpt from the testimony of Mana-ay does not prove that Presno was the one who had stolen the motorcycle. What this testimony shows is that Joemarie had a prior misunderstanding with Presno. If at all, the testimony proves that accused-appellant had a reason to commit the crimes charged against Presno and his group. Besides, if the motorcycle had been stolen at gunpoint from Joemar Basco, it was improbable that accused-appellants would try to run after those who took their vehicle without arming themselves.

Third. Accused-appellants dispute the trial court's finding that Joemarie Chua, Joel Basco, and Joefrey Basco were all armed and that they fired at the victims. They contend such finding is not supported by the evidence. They cite the post-mortem findings of Dr. Doromal and the testimony of policemen that they found only two spent bullets and one dud ammunition. They likewise cite the finding of the ballistics expert who testified that the two bullets came from the same shotgun. Accused-appellants thus conclude that only one shotgun was used in the commission of the crime.

This contention has no basis. First, the accounts of the prosecution witnesses that accused-appellants fired at the men having drinks near the store are consistent. The testimonies of Erlindo Mana-ay, Nathaniel Presno, Jesus Cebu, Corazon Gajeto, and Perpetua Grace Gajeto establish the fact that Joemarie Chua, Joel Basco, and Joefrey Basco carried firearms. Second, the ballistics expert, Robert Page, Jr. of the PNP Crime Laboratory, found that, because of the similarity of the breech faces of the shells,[24] the two shells and one dud shell recovered from the scene were fired from the same .12 gauge shotgun. This finding does not mean that there were no other shells at the scene of the crime. The crime was committed near the national road. It is reasonable to assume that considerable time had elapsed before responding policemen arrived at the scene of the crime. Hence, there was the probability that the shells of other bullets had been taken in the meantime. Third, it is only with respect to the wounds suffered by Charlie Sinoy that it was established that a .12 gauge shotgun was used. Even then, it could not be determined whether it was the same gun which produced the marks on the breech face of the bullets found by the policemen since the gun used was never recovered. Dr. Doromal testified that, with regard to Arsenio Gajeto's wounds, he could not determine with certainty the type and caliber of the firearm used by the assailant since he did not recover any foreign object from the wound.[25] The same is true with regard to the wounds of the other victims. Accused-appellants' bare denials cannot prevail over the positive testimony of the witnesses for the prosecution that accused-appellants Joemarie Chua, Joel Basco, and Joefrey Basco were armed and that they fired at the victims.[26]

Fourth. Accused-appellants question the finding of the trial court that Joemarie Chua, Joel Basco, Joefrey Basco conspired to commit the crimes imputed on them. They contend that there was neither time nor opportunity for

the accused-appellants to agree to an unlawful object. Agosto Brosas also questions the ruling of the trial court finding him liable as an accomplice.

Their contentions have no merit. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[27] Conspiracy may be established not only by proof of an express agreement among the accused to commit a crime but also by evidence showing concerted action aimed at the same purpose.

In the case at bar, the trial court found that when Joemarie, Joel and Joefrey arrived, they alighted from the jeepney, went to the place near the store where the victims were, started firing at the latter and fled afterwards. Such concerted action cannot be interpreted otherwise than that they were acting according to a previous agreement. 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.[28]

As for Agosto Brosas, the trial court was correct in finding him guilty as an accomplice. An accomplice is one who, not being a principal, cooperates in the execution of the offense by previous or simultaneous acts.[29] To be an accomplice, it must be established (1) that the offender knew of the criminal design of the principal by direct participation and concurred therein or (2) that he cooperated in the execution of the offense by prior or simultaneous acts by supplying material or moral aid. Finally, it must be shown that there is a relation between the acts done by the principal and those of the accomplice.[30]

Brosas was the driver of the jeepney used by the three accused-appellants to go to the scene of the crime. He waited for them and, after they had accomplished their mission, helped Joel and Joefrey get away. These are clear acts of an accomplice. Even assuming he was not initially aware of the plan of the three, once the three started shooting at their victims, Brosas could not have remained ignorant of their criminal design. His subsequent act showed his concurrence to what his co-accused had done.

Fifth. Appellant Joefrey Basco claims he should have been credited with the privileged mitigating circumstance of minority. We find this contention meritorious.

Joefrey Basco testified that he was born on May 22, 1977.[31] His testimony was never disputed by the prosecution. Nonetheless, the trial court did not appreciate this as a mitigating circumstance in view of Joefrey's failure to present additional proof of his minority. This is error. In several cases,[32] we have upheld the claim of minority even without any other proof to corroborate such testimony, especially when coupled with the fact that the prosecution failed to present contradictory evidence.

The trial court held that the killing of Charlie Sinoy and Arsenio Gajeto was committed with treachery. There is treachery when the offender commits any of the crimes against 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.[33] In this case, the victims were seated on a bench, relaxing with beer, when accused Joemarie Chua, Joel Basco, and Joefrey Basco suddenly appeared and started firing at them. The attack was sudden and unexpected and the victims, all unarmed, were caught totally unprepared to defend themselves. Doubtless, the execution of the crime was done to ensure the accomplishment thereof. This circumstance qualifies the crime committed to murder.

Under Art. 248 of the Revised Penal Code, murder is punishable by reclusion perpetua to death, and, in determining which of the indivisible penalties prescribed by law should be imposed, the presence of mitigating or aggravating circumstances should be considered.

As regards Joemarie Chua and Joel Basco, the defense clearly proved that the two voluntarily surrendered to the

local police of Oton on January 21, 1994, thus saving the government trouble and expense in searching for them. In accordance with Art. 63 of the Revised Penal Code, the penalty of reclusion perpetua should be imposed in view of the presence of such mitigating circumstance and the absence of any aggravating circumstance.

Considering the privileged mitigating circumstance of minority in favor of Joefrey Basco and the fact that there was neither mitigating nor aggravating circumstance in the commission of the crime, the maximum of the penalty to be imposed on him should be reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the minimum of the penalty should be prision mayor.

As for Agosto Brosas, who was an accomplice in the commission of murder against Charlie Sinoy and Arsenio Gajeto, the trial court correctly sentenced him to an indeterminate prison term of eight (8) years and one (1) day, as minimum, to fourteen (14) years, eight (8) months, and one (1) day, as maximum, considering that there was neither mitigating nor aggravating circumstance.

The trial court also correctly ordered accused-appellants to pay P50,000.00 for the death of Charlie Sinoy. For the death of Arsenio Gajeto, accused-appellants were ordered to pay P50,000.00 and an additional amount of P29,503.00 as actual damages. The latter amount must be reduced as the evidence showed that only P13,003.60 had been incurred^[34] for funeral expenses.

For the injuries suffered by Erlindo Mana-ay and Perpetua Grace Gajeto, the trial court convicted the accused-appellants of frustrated murder. This is correct because the un rebutted testimonies of Dr. Jaen and Dr. Superficial showed that, without immediate and proper medical attention, the two would have died.

The penalty next lower in degree to that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.^[35] The trial court correctly imposed on Joemarie Chua and Joel Basco the indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum to twelve (12) years and one (1) day as maximum, such penalty corresponding to a minimum penalty of prision mayor and a maximum penalty of reclusion temporal in its minimum period in view of the mitigating circumstance of voluntary surrender.

Modification should, however, be made on the penalty to be imposed on Joefrey Basco. Considering the privileged mitigating circumstance of minority, the penalty of reclusion temporal should be lowered to prision mayor. Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence should be anywhere within the range of prision correccional, and the maximum prision mayor medium considering the absence of mitigating and aggravating circumstance.

As accomplice, Agosto Brosas, was correctly sentenced to an indeterminate prison term ranging from two (2) years, four (4) months and (1) day of prision correccional as minimum, to eight (8) years and (1) day, of prision mayor, as maximum.

WHEREFORE, the decision of the Regional Trial Court, Branch 38, Iloilo City, is MODIFIED as follows:

- (1) In Criminal Case Nos. 43454 & 43455, accused-appellant Joefrey Basco is sentenced in each case to an indeterminate penalty the minimum of which is two (2) years, four (4) months, and one (1) day of prision correccional and the maximum of which is eight (8) years and one (1) day of prision mayor medium.
- (2) In Criminal Case Nos. 43456 & 43457, accused-appellant Joefrey Basco is sentenced in each case to an indeterminate penalty the minimum of which is eight (8) years of prision mayor and the maximum of which is fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal.
- (3) Accused-appellants are ordered to pay, jointly and solidarily, the heirs of Arsenio Gajeto a modified amount of P13,003.60 as actual damages.

In all other respects, the appealed decision is AFFIRMED.

SO ORDERED.

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

[1] Per Judge David A. Alfeche, Jr.

[2] Records (Crim. Case No. 43454), p. 4.

[3] Records (Crim. Case No. 43455), p. 1.

[4] Records (Crim. Case No. 43456), p. 1.

[5] Records (Crim. Case No. 43457), p. 1.

[6] TSN, pp. 1-64, Nov. 15, 1994.

[7] TSN, pp. 22-72, Nov. 24, 1994; TSN, pp. 4-19, Aug. 24, 1995.

[8] TSN, pp. 2-44, Nov. 9, 1994.

[9] TSN, pp. 19-59, Dec. 28, 1994; TSN, pp. 21-24, Aug. 24, 1995.

[10] TSN, pp. 2-47, Feb. 15, 1995; TSN, pp. 18-30, Aug. 31, 1995.

[11] Exh. A (Crim. Case No. 43454); Records (Crim. Case No. 43454), p. 15.

[12] TSN, pp. 2-21, Jan. 26, 1995; TSN, pp. 2-7, Feb. 3, 1995.

[13] Exh. A (Crim. Case No. 43455).

[14] Exh. A (Crim. Case No. 43456); Records (Crim. Case No. 43456), p. 8.

[15] TSN, pp. 6-10, Nov. 24, 1994.

[16] Exh. A (Criminal Case No. 43457).

[17] TSN, pp. 15-16, Nov. 15, 1994.

[18] TSN, pp. 5-32, April 5, 1995; TSN, p. 35, June 1, 1995; TSN, pp. 1-27, June 8, 1995.

[19] Decision, pp. 25-28; Records, pp. 878-881.

[20] TSN, pp. 9-10, Nov. 24, 1994.

[21] TSN, pp. 15-16, Feb. 8, 1995.

[22] TSN, pp. 20-21, Aug. 31, 1995.

[23] TSN, pp. 52-54, Nov. 15, 1994.

[24] TSN, pp. 8-12, July 21, 1995.

[25] TSN, p. 19, Nov. 15, 1994.

[26] *People v. Flores*, 252 SCRA 31 (1996); *People v. Abrenica*, 252 SCRA 31 (1996); *People v. Goce*, 247 SCRA 780 (1995); *People v. Macario*, 240 SCRA 531 (1995).

[27] Revised Penal Code, Art. 8.

[28] *People v. Gregorio*, 255 SCRA 380 (1996).

[29] Revised Penal Code, Art. 8.

[30] *People v. Tamayo*, 44 Phil. 38 (1922).

[31] TSN, p.4, June 8, 1995.

[32] *People v. Villagrancia*, 226 SCRA 374 (1993); *People v. Tismo*, 204 SCRA 535 (1991); *People v. Eborra*, 141 SCRA 282 (1986); *People v. Bernalde*, 139 SCRA 426 (1985).

[33] Revised Penal Code, Art.14, par. 16.

[34] Decision, p.25; Exh. H to H-5 (Crim. Case No.43456).

[35] Revised Penal Code, Art. 50.

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