

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIO ABENDAN, JULIAN PADIGOS AND PRIMITIVO “TEBONG” ABENDAN, APPELLANTS.

G.R. Nos. 132026-27. June 28, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In denying this appeal, the Court iterates the following doctrines: (1) positive identification prevails over denial and alibi; (2) delay in making a criminal accusation does not necessarily impair the credibility of witnesses; and (3) once conspiracy is established, the act of one is considered the act of all.

The Case

Mario Abendan, Julian Padigos and Primitivo Abendan appeal the July 15, 1997 Decision[1] of the Regional Trial Court (RTC) of Cebu, Branch 10, in Criminal Case Nos. CBU-33212, CBU-33213 and CBU-34692, finding them guilty on two counts of murder and one count of frustrated murder.

In two separate Informations both dated October 25, 1993, Prosecutor II Rustico D. Paderanga-NPSS-VIII charged appellant Mario Abendan and seven others, whose identities were unknown at the time, with murder, as follows:

"The undersigned Assistant City Prosecutor of the City of Cebu, accuses Mario Abendan and seven others whose names are unknown and herein described under fictitious names as Richard Doe, Peter Doe, Patrick Doe, James Doe, Manuel Doe, Edward Doe and John Doe of the crime of [m]urder, committed as follows:

"That on or about the 7[th] day of June, 1993, at about 10:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to kill and with treachery and evident prem[e]ditation, did then and there attack, assault and sho[o]t one Olympia Cañeda with said firearm, hitting the lat[t]er on the vital parts of her body and inflicting upon her physical injuries and as a consequence of said injuries Olympia Cañeda died instantaneously." [2]

"The undersigned Assistant City Prosecutor of the City of Cebu, accuses Mario Abendan and seven others whose names are unknown and herein described under fictitious names as Richard Doe, Peter Doe, Patrick Doe, James Doe, Manuel Doe, Edward Doe and John Doe of the crime of [m]urder, committed as follows:

"That on or about the 7[th] day of June, 1993, at about 10:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to kill and with treachery and evident prem[e]ditation, did then and there attack, assault and sho[o]t one Samuel Tardin with said firearm, hitting the latter on the vital part of his body and inflicting upon him physical injuries and as a consequence of said injuries Samuel Tardin died instantaneously." [3]

In another Information dated February 8, 1994, the same accused and Roel Abendan were charged by Prosecutor II Rodolfo V. Perez with frustrated murder, as follows:

"The undersigned Prosecutor II of the City of Cebu accuses MARIO ABENDAN, ROEL ABENDAN, and others whose real names are unknown and are described herein under fictitious names as John Doe, Peter Doe, Elmer Doe[,] Charles Doe, Raymund Doe and Michael Doe of the crime of [f]rustrated [m]urder, committed as follows:

`That on or about the 7[th] day of June, 1993, at about 10:30 o'clock P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, armed with firearms, with deliberate intent, with intent to kill, with treachery and evident premeditation, taking advantage of superior strength, did then and there suddenly and unexpectedly attack, assault and shoot one Carmelita Cañeda, hitting the latter on her thigh, and inflicting upon her the following physical injuries, causing:

`FRACTURE OF THE PUBIS (R)
SECONDARY TO GUNSHOT WOUND'

which injuries would ordinarily cause the death of said Carmelita Cañeda, thus performing all the acts of execution which would have produced the crime of [m]urder as a consequence, but which, nevertheless, did not produce it by reason of causes independent of the will of the herein accused, that is, by the timely and able medical assistance rendered on Carmelita Cañeda which prevented her death."[4]

When arraigned on August 30, 1995, Mario Abendan with the assistance of Counsel de Oficio Elisa Porio, pleaded not guilty.[5] Subsequently, upon sufficient identification, the three Informations were amended to include Julian Padigos and Primitivo Abendan in lieu of the two John Does charged therein.[6] Both also pleaded not guilty upon their arraignment on March 6, 1996.[7]

After a consolidated trial, the RTC rendered its Decision, the dispositive portion of which reads:

"WHEREFORE,

"I. In Crim. Case No. CBU-33212, the Court finds accused Mario Abendan, Primitivo Abendan and Julian Padigos GUILTY of [m]urder beyond reasonable doubt and hereby sentences each to suffer reclusion perpetua; to indemnify the heirs of Samuel Tardin [in] the sum of P50,000.00; and to pay the costs;

"II. In Criminal Case No. CBU-33213, the Court finds accused Mario Abendan, Primitivo Abendan and Julian Padigos GUILTY of [m]urder beyond reasonable doubt and hereby sentences each to suffer reclusion perpetua; to indemnify the heirs of Olimpia Cañeda [in] the sum of P50,000.00; and to pay the costs; and

"III. In Criminal Case No. CBU-34692, the Court finds accused Mario Abendan, Julian Padigos and Primitivo Abendan, GUILTY of [f]rustrated [m]urder beyond reasonable doubt and hereby sentences each to suffer an indeterminate penalty of 6 years, 1 month and 11 days of prision correccional in its maximum period to prision mayor in its medium period as MINIMUM, to 10 years and 1 day of prision mayor in its maximum period to reclusion temporal in its medium period as MAXIMUM; to indemnify Carmelita Cañeda [in] the sum of P10,000.00; and to pay the costs.

"SO ORDERED."[8]

Hence this appeal.[9]

The Facts

Version of the Prosecution

The prosecution's version of the facts is summarized by the Office of the Solicitor General as follows:

"[O]n the evening of June 7, 1993, Olimpia Cañeda and her daughter Carmelita slept on one bed while a relative, one Samuel Tardin, a barangay tanod, slept on another bed inside the Cañedas' nipa house in Sitio Caduldulan, Bulacio, Pardo, Cebu City. About seven (7) meters [from] the said nipa house was an unfinished house where Carmelita's younger brother, Pedro, slept in the attic (TSN, Nov. 9, 1995, p. 2; TSN, Oct. 30, 1995, p. 3).

"Sometime past 10:00 p.m. that evening, Pedro was awakened by the barking of the dogs. He noticed the presence of several armed persons, one of whom he recognized as Mario Abendan, while the others were just familiar to him. Mario gave a good evening greeting and simultaneously kicked open the GI sheet door (TSN, Oct. 30, 1995, pp. 2-4).

"Mario stepped inside the house and shot the sleeping Samuel Tardin once in the head and another in the chin. Mario then held Olimpia and was overheard saying, 'Nang, isog kaayo ka Nang Ha' (Nang, you are very brave, Nang ha). Carmelita darted towards the door and when she turned her head back, she saw Julian Padigos shoot her, hitting her in the right thigh. Carmelita fell into the cow pen where she stayed to hide as she heard more gunshots (Ibid, pp. 4-5; TSN, Nov. 9, 1995, pp. 4-5).

"From the attic of the unfinished house, Pedro saw her mother pleading for her life, to no avail, as Mario shot Olimpia anyway on the head. After the shooting, Pedro reported the incident to the police and sought assistance from them (TSN, Oct. 30, 1995, pp. 5-6).

"Meanwhile, Carmelita crawled to the direction of the upper hill where Pedro and several policemen found her. The lifeless bodies of Olimpia and Samuel Tardin were placed in one police vehicle. Carmelita was initially taken to the Cebu City Medical Center but later transferred to the Mandaue City District [H]ospital where she assumed the name Lolita Lopez and stayed for more than a week (TSN, Nov. 9, 1995, pp. 7-8).

"SPO2 Mario Monelar interviewed Pedro xxx on the deaths of Olimpia and Samuel and the wounding of Carmelita. After his investigation, SPO2 Monelar filed the present set of charges against appellants and several John Does (TSN, Nov. 29, 1995, pp. 2-3)."[10]

Version of the Defense

On the other hand, the facts according to the defense are summarized by the trial court in the following manner:

"Accused Mario Abadiez Abendan disclaimed he had anything to do with the shooting of Samuel Tardin and Olimpia Cañeda and the wounding of Carmelita Cañeda [o]n the evening of June 7, 1993. He testified that on that date and [at that] time, he was in the house of his relative, Letecia Luga, in Poblacion, Consolacion, Cebu, drinking with Loloy, Arturo, and Rudy Luga. The drinking session ended at 11:00 P.M. and after that, he went to sleep. The following morning, he heard from the radio broadcast about a shooting in Bulacao, Pardo, and he was surprised why his name was mentioned in the news report as the assailant, when he was not in Pardo at that time but in Consolacion. He requested Letecia Luga to go to Pardo and verify the news. Letecia Luga was formerly a neighbor of the victims. Upon the return of Letecia Luga from Pardo, she told him that the reason why he was implicated in the shooting was because before the killing, someone announced: 'Open the door, this is Mario Abendan.' The accusations against him are all lies because the prosecution included his brother Roel Abendan, who [had] left Pardo in 1984 and x x x resided in Davao since then. Several criminal cases pending against him in the different branches of the Regional Trial Courts in Cebu City and Mandaue City, are all fabricated charges. Upon learning that he [was] a suspect in the Bulacao shooting incident, he wrote to the President of the Philippines, requesting that he be allowed to surrender in Manila, not in Cebu City, for fear that he might be salvaged. The Office of the President referred his letter to the PNP headquarters in Camp Crame for comment (Exh. '4', '4-A'). He was surprised why Pedro Cañeda and Carmelita Cañeda identified him as one of the assailants, when he does not know them and he has no quarrel with them. He only knows

their mother. He knew that Sta. Lucia Realty and Aznar Realty corporations were interested in buying the land of the farmers. He also knew that these realtors were offering incentives to those who [could] help them in acquiring the farmlands. But he did not work for them, contrary to the testimonies of the prosecution witnesses. It is neither true that he worked with Dadong Racaza in negotiating for the farmlands. He came to know Dadong Racaza for the first time when the latter testified in Court. He heard the name of Dadong Racaza because his aunt told him that Dadong Racaza and his group were the ones who paid the farmers in order to leave their lands. In fact, the house and farm of his aunt [were] paid by Dadong Racaza. He is a resident of Candulawan, Talisay, which is more than a kilometer away [from] Caduldulan, and can be reached in half an hour by walking. On cross-examination, he declared that after the incident on June 7, 1993, he went in hiding until he was arrested in Liloan, Cebu[; and] on July 30, 1995. From June 8, 1993 to July 30, 1995, he had three hiding places, namely: Poblacion, Consolacion, Cebu, Barangay Tayud and Barangay Bagong Daan, both in Liloan, Cebu. Co-accused Primitivo Abendan is his relative, because their grandfathers are brothers. On the day of the incident on June 7, 1993, he ha[d] not seen Primitivo Abendan and Julian Padigos.

"Letecia Luga testified that Mario Abendan [was] her relative, so [was] deceased Samuel Tardin. When she was young, Olimpia Cañeda and her daughter Carmelita Cañeda were her neighbors in Caduldulan. In 1986, she got married and transferred her residence to Poblacion Occidental, Consolacion, Cebu. One week before June 7, 1993, Mario Abendan stayed in her house. [O]n the evening of June 7, 1993, [he] had a drinking spree with her husband, Rodolfo[;] a neighbor Loloy[;] and Arturo, owner of the lot on which her house [was] constructed. The drinking stopped at 11:00 P.M. and Mario went to sleep. On that evening, Mario Abendan never left her house. The following morning, June 8, 1993, she awakened Mario Abendan because the radio broadcast news that there was a killing incident in Bulacao, Pardo, and Mario Abendan was mentioned as the author thereof. The next day, June 9, 1993, Leizel Amancia, sister of Mario arrived and informed them that there was a massacre in Pardo and Mario Abendan was mentioned as the one responsible. Two days after the incident, she went to Pardo and told Mario Abendan's relatives that Mario Abendan [was] innocent because he was in her house at the time of the massacre. She did not bother to tell police authorities of the innocence of Mario Abendan because the policemen knew it. After June 7, 1993, she knew Mario Abendan became a fugitive. She also knew that there was a fifty thousand pesos reward for his capture. Mario Abendan left her house at the end of June 1993. She attended the wake of deceased Samuel Tardin but she did not approach the relatives because at that time, they were in grief and anger. From the conversation among relatives in the vigil, she learned that Samuel Tardin was shot by Mario Abendan. She was requested by the sister of Mario Abendan to testify, but at that time she was still in the family way, so she told them that she [would] go to the court later.

"Conrado Racaza came to Court by virtue of a subpoena issued at the instance of the counsel for Mario Abendan. He is a realty agent of Vista Grande and not of Sta. Lucia or Aznar Realty Corporation. He does not know accused Mario Abendan, Julian Padigos and Primitivo Abendan. It is not true that he negotiated the purchase of the land of Olimpia Cañeda. He is not a negotiator. The negotiator of the land in the mountain barangay of Pardo is Bencio Ibrado. As a realty agent, however, if there are lots to be sold, he will give it to Sta. Lucia. He has not met Carmelita Cañeda or Pedro Cañeda. On cross-examination, he came to court to clear his name because he was mentioned in connection with the death of Olimpia Cañeda [and] Samuel Tardin and the wounding of Carmelita Cañeda. The first time he knew that his name was entangled with the Bulacao shooting, was his receipt of a subpoena from the court. He den[ied] the testimonies of prosecution witnesses that he was seen with the herein accused in the mountain barangay. He does not know the Cañedas, so he has no misunderstanding with them. He believes that the reason why the Cañedas stated that he was seen together with Mario Abendan, Primitivo Abendan and Julian Padigos, roaming around during the bulldozing of the farmers' lands, was because the Cañedas want[ed] to ruin his name.

"For accused Julian Padigos and Primitivo Abendan, the testimonies of Teofila Torregosa and Aniceto Castañares, gave out the following facts:

"Teofila Torregosa is the owner of a rattan factory in Candulawan, Talisay, Cebu. She has been operating it

since 1974. Aniceto Castañares, a factory worker of Teofila Torregosa, [has known] his co-worker, Primitivo Abendan and Julian Padigos since childhood. On June 7, 1993, her workers were Primitivo Abendan, Julian Padigos, Aniceto Castañares, Eduardo Castañares, Adriano Llamado, Jacinta Amancia and Jolot Abadie. Her workers reported on that day at 8:00 A.M., took their lunch at 12:00 noon and went back to work at 1:00 P.M. Due to a rush order for rattan chairs, the workers continued working overtime until 11:00 A.M. of June 8, 1993. On that morning, she heard from the radio that there was a shooting in Bulacao, Pardo, killing Olimpia Cañeda, Samuel Tardin and wounding Carmelita Cañeda. The news report did not mention the names of Primitivo Abendan and Julian Padigos. The year 1994 passed by and she did not hear Primitivo Abendan and Julian Padigos implicated in the shooting. However, on August 23, 1995, Primitivo Abendan and Julian Padigos received a subpoena from the prosecutor's office. She voluntarily submitted herself to be a witness because at the time of the shooting incident in Caduldulan, Primitivo Abendan and Julian Padigos were working in her factory in Candulawan. On cross-examination, [she said that] she is just a sub-contractor, so her factory is nameless. Her workers are not listed with the Social Security System. She has no books of accounts nor ledgers. She did not keep a list of her employees and they don't have daily time records. She has not filed income tax returns for her business. She does not issue B.I.R. accredited receipts in her business transactions. Her factory does not have documents showing payments of her workers because they are paid according to the volume of their accomplished work or 'pakyaw' basis. She does not have [a] payroll but she kept an individual list of the volume of work each laborer ha[s] finished and [been] paid [for]. All the lists, however, were lost when her home was destroyed by a strong typhoon. From her factory in Candulawan to Caduldulan by walking, will entail thirty (30) minutes. She has no paper or documentary proof to show that Primitivo Abendan and Julian Padigos worked in her factory on June 7, 1993 from 8:00 A.M. until 1:00 o'clock dawn of June 8, 1993, because anyway, she was there herself supervising her laborers during the said period. During the overtime work of the rush orders, she did not allow any of her workers to leave until the forty ordered chairs were finished. The finished chairs were delivered to the store of her customer in Carbon market area, but she forgot the name of her regular customer and the name of her customer's store." [11]

Ruling of the Trial Court

The trial court gave credence to the testimonies of the prosecution witnesses. It appreciated the qualifying circumstance of treachery in the killing of Samuel Tardin, who was asleep when he was fatally shot; in the killing of Olimpia Cañeda, who was held by Mario Abendan and who had pleaded for her life when she was fatally shot; as well as in the shooting of Carmelita Cañeda, who had then been fleeing from the scene.

The trial court also found the existence of conspiracy among accused-appellants. It thus considered the act of each accused as the act of all.

Assignment of Errors

In his brief, Appellant Mario Abendan ascribes to the RTC a single alleged error:

"Court a quo gravely erred in finding that the guilt of the accused-appellant for the crime charged ha[d] been proven beyond reasonable doubt." [12]

On the other hand, the alleged errors imputed to the trial court by Appellant Primitivo Abendan are the following:

"I

The Court erred in ignoring the implied admission by Eyewitness Pedro Cañeda that accused Primitivo Abendan was not one of the armed men who entered the residence of the Canedas on that fateful night of June 7, 1993.

"II

The Court erred in giving undue credence to a testimony which can best be described as an afterthought,

having been given only after almost three years from the time of the incident.

"III

The Court erred in finding Primitivo Abendan guilty, in the process contradicting its own observations in the decision." [13]

Like Mario Abendan, Appellant Julian Padigos presents a lone error:

"The prosecution failed to establish [the] guilt of [the] accused." [14]

In summary, the main issue in this case is whether the prosecution was able to prove the guilt of appellants beyond reasonable doubt. In addition, the Court will also resolve whether conspiracy and treachery have been duly proven.

The Court's Ruling

The appeal has no merit.

Main Issue Sufficiency of Prosecution Evidence

All three appellants contend that their guilt has not been proven beyond reasonable doubt. We are not persuaded.

To prove appellants' guilt, the prosecution presented Carmelita who positively and consistently identified the three appellants as the persons who had entered their house on the night of June 7, 1993, armed with guns. She testified as follows:

"Q

Now at about 10:30 in that evening, was there any un[us]ual incident that you noticed?

A

Yes, there was.

Q

What was that incident about?

A

There was a person outside asking for 'Maayong gabii Nang' (Good evening Nang) and [he] simultaneously forced open the GI sheet door.

Q

And what happened to that east door?

A

It inclined and opened.

Q

And then what happened next?

A

Mario went inside and shot Samuel Tardin.

x x x x x x x x

Q

If this Mario Abendan i[s] in the courtroom, will you please point to him?

A

Yes.

INTERPRETER:

Witness pointing to Mario Abendan.

COURT:

Proceed.

ATTY. ROSITO:

Q

Now how many times did Mario Abendan sho[o]t Samuel Tardin?

A

Twice. He shot Samuel Tardin twice.

Q

Now was Samuel Tardin hit by the two gun[s]hots from Mario Abendan?

A

Yes.

Q

Using your body as point of reference, which part of the body of Samuel Tardin was hit?

A

Right forehead and on the right side of the chin.

Q

Now when Mario Abendan shot Samuel Tardin[,] what happened next?

A

He held my mother and said `Nang isog kaayo ka Nang ha' (Nang You are very brave Nang ha).

Q

And then what about you, what did you do, if any?

A

I r[a]n away.

Q

Now before you [ran away] from Mario Abendan, did you notice anybody else inside the room?

A

Yes, there was.

Q

Can you tell the Honorable Court who?

A

Yes.

Q

Who are they?

A

Tibong, Julian Padigos and there was another man [whose name] I do not know x x x.

Q

You know Tibong very well?

A

Yes.

Q

What is his real name, if you know?

A

Abendan.

x x x x x x x x

Q

Now you said you r[a]n towards where did you run?

A

Through the other door sir across the door where Mario and his companions entered.

Q

When you r[a]n, did you hear any words uttered by anyone?

A

I heard someone said do not run.

Q

Who said that, if you know?

A

Julian.

Q

So when you r[a]n towards the other door, where did you go?

A

Towards the fence of our cow.

Q

How far was that fence of your cattle from that house?

A

About three armslength, my armsleng[th].

Q

When you r[a]n to the fence of the cattle, what happened?

A

When Julian said do not run, I turned around and then I heard a gunburst and I was hit on my thigh.

INTERPRETER:

Witness pointing to her right thigh.

COURT: (TO WITNESS)

Q

Where?

INTERPRETER:

Witness exhibiting her scar on the right thigh.

COURT: (TO WITNESS)

Q

Can you tell the court who fired that shot?

A

Julian Padigos."[15]

After Julian and Primitivo were arrested and brought to court, Carmelita further testified as follows:

"Q

Carmelita Cañeda, do you know the person of Tibong Abendan?

A

Yes, I know him.

Q

Why do you know him?

A

Because he was there present when the incident happened.

x x x x x x x x

Q

Now if you see that person of Tibong Abendan, will you be able to identify him?

A

Yes, I can.

Q

Will you please look around the courtroom if you see the person of Tibong Abendan?

A

Yes, he is there.

INTERPRETER:

Witness pointing to a person[;] when asked for his name, he g[a]ve his name as Primitivo Abendan.

Q

Now this Primitivo Abendan, also known as Tibong Abendan, at the time when you said that he was present when the incident took place, what exactly was he doing at that time?

A

He was together with Mario Abendan. He was watching the surroundings and he was bringing with him a firearm at that time.

Q

What else was he doing, if any?

A

He was bringing with him a firearm and he was looking at us very fiercely.[16]

On the other hand, to substantiate their claim of innocence, appellants simply denied that they had anything to do with the deaths of Olimpia Cañeda and Samuel Tardin. They presented alibis to prove that at the time the victims were killed, they were not at the scene of the crime but somewhere else.

It has been consistently held by this Court that "positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law." [17]

In the present case, Mario has been positively and categorically identified as the person who had shot Samuel and Olimpia. As against this positive identification, Mario's alibi, which was supported only by a relative, cannot prevail. Alibi becomes unworthy of credit when it is established mainly by the accused himself and his relative,

and not by credible persons.[18]

The denial and alibi of Primitivo and Julian cannot be given weight either. Like Mario, they were positively identified as having been at the Cañeda residence on the night of June 7, 1993 -- at the time Olimpia, Samuel and Carmelita were shot.

Primitivo's contention that Pedro impliedly admitted that the former was not one of the armed men who had entered the Cañeda residence on the night of June 7, 1993, has no merit. An examination of the records indicates no such implied admission. Pedro's positive and categorical identification and naming of Mario as one of the three malefactors did not rule out Primitivo and Julian as the two other malefactors. The testimony of Pedro merely indicated that he did not know the identities of the other malefactors. He stated:

Q

Now, you mentioned of three men in front of the door of your mother's house. Now, can you name or can you give us the names of these three persons, if you know?

A

I noticed very well Mario Abendan.[19]

It was Carmelita who, aside from corroborating Pedro's testimony on the identity of Mario as one of the assailants, also positively and categorically identified Primitivo and Julian as the other malefactors.

In an effort to persuade us to give weight to their alibis, appellants contend that the trial court erred in according credibility to the prosecution witnesses' testimonies. We are not persuaded. Well-settled is the rule that this Court will not interfere with the judgment of the trial court in passing upon the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted.[20] The reason for this is that the trial court was in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[21] In the case before us, we find no cogent reason to disturb the trial court's findings and assessment as to the credibility of the prosecution witnesses.

Furthermore, as pointed out by the RTC, the defense has not shown any plausible reason why Carmelita and Pedro would testify falsely against the accused. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is thus entitled to full faith and credit.[22]

Delay in Reporting

Carmelita's delay in reporting the identities of Julian and Primitivo did not affect her credibility. Delay in making a criminal accusation will not necessarily impair the credibility of a witness if such delay is satisfactorily explained.[23] In the present case, Carmelita explained that it took her some time to report the incident because, out of fear for her life, she was hiding and moving from place to place.[24] Since appellants remained at large for some time, she had every reason to be afraid. Her failure to immediately reveal to the authorities the assailants' identities did not affect, much less impair, her credibility. The initial reluctance to volunteer information about a criminal case or the unwillingness to be involved in a criminal investigation due to fear of reprisal is common and has been judicially declared to have no effect on credibility.[25]

Treachery

Although appellants have not questioned the presence of treachery, the Court will nonetheless discuss it, so as not

to leave any doubt on whether it was properly appreciated by the trial court.

Article 14, paragraph 16 of the Revised Penal Code, states:

"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."

For treachery to exist, two conditions must be present: (1) the employment of means of execution that gives the person attacked no opportunity for self-defense or retaliation and (2) the deliberate or conscious adoption of the means of execution.[26]

In the instant cases, both conditions were present. Guns and nocturnity were deliberately employed by appellants to obviate any opportunity for the victims to defend themselves. Appellants arrived at the Cañeda residence in the middle of the night, each armed with a gun. As can be expected, the victims were fast asleep. Appellants' arrival was sudden and unexpected. Without much ado they forced open the door and broke in. Immediately upon entering, Mario shot the still sleeping Samuel. He then grasped Olimpia, who had just awakened, and shot her. In the meantime, Carmelita was able to run towards the other door, but was shot by Julian Padigos. None of the victims had any opportunity to defend themselves against the gun-bearing men, who had acted swiftly and surprisingly.

The deliberateness of the means employed to kill the victims is evident from appellants' act of purposely going to the Cañeda residence and breaking down their door in the middle of the night, already fully armed and without any provocation.

Carmelita's flight will not negate treachery. From the time appellants started their aggression by forcing open the door of the Cañeda house, treachery was already evident. Settled is the rule that in order to appreciate treachery in a continuous aggression, the same must be shown to be present at the inception of the attack. The existence or non-existence of treachery is not dependent on the success of the assault.[27] What is decisive is that the execution of the attack made it impossible for the victim to retaliate or resort to self-defense.[28] In this case, there is no question that Carmelita had no opportunity to defend herself.

Conspiracy

We now go to the criminal participation of Primitivo and Julian. True, neither of them personally shot Olimpia or Samuel. This fact, however, will not free them from liability for the murders. In conspiracy, it is not necessary to show that all the conspirators actually attacked and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design in bringing about the death of the victim.[29]

The records show that Primitivo and Julian, both armed, went with Mario to the house of the Cañedas late in the night on June 7, 1993. After Mario forced the door open Julian went inside with him, while Primitivo acted as lookout. When Mario shot Samuel and thereafter grasped Olimpia, his two companions stood by him. When Carmelita, an occupant of the house, fled from them, Julian ran after and shot her, following the command for him to do so.[30] After the shooting of Olimpia, they all left the house together.[31] These acts show their unity of purpose, and joint design to kill the victims, following a consciously adopted plan. Conspiracy having been established, the act of one is considered the act of all.[32]

Proper Penalty for Frustrated Murder

There is, however, a need to modify the penalty imposed on appellants for frustrated murder in Criminal Case No.

CBU-34692. In cases such as this, the Indeterminate Sentence Law is applicable. Since there are no aggravating or mitigating circumstances, the maximum specific penalty should be within the medium period of reclusion temporal. The minimum specific penalty should be taken from the range one degree lower than the penalty prescribed by law, or prision mayor.

WHEREFORE, the appeal is DENIED and the appealed Decision AFFIRMED with the sole modification that in Criminal Case No. CBU-34692, appellants are sentenced to suffer the indeterminate penalty of 8 years and 1 day of prision mayor as minimum, to 17 years and 4 months of reclusion temporal as maximum. Costs against appellants.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Written by Judge Leonardo B. Cañares.

[2] Records, pp. 9-10, CBU-33213.

[3] Ibid., pp. 1-2, CBU-33212.

[4] Records, pp. 1-2, CBU-34692.

[5] Records, p. 29, CBU-33212 and 33213.

[6] Records, p. 120, CBU-33212 and 33213.

[7] Records, p. 127, CBU-33212, 33213 and 34692.

[8] RTC Decision, p. 20; rollo, p. 137.

[9] The case was deemed submitted for resolution on January 5, 2001, when this Court received Mario Abendan's Reply Brief signed by Attys. Amelia C. Garchitorea and Alteza A. Año of the Public Attorney's Office.

[10] Appellee's Brief, pp. 5-6; rollo, pp. 207-208; signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Magdangal M. de Leon and Solicitor Ronaldo B. Martin.

[11] Decision, pp. 10-14; rollo, pp. 50-54.

[12] Brief for Appellant Mario Abendan, p. 1; rollo, p. 160; signed by Attys. Arceli A. Rubin and Alteza A. Año of PAO.

[13] Brief for Appellant Primitivo Abendan, p. 4; rollo, p. 111; signed by Atty. Francisco M. Malilong Jr.

[14] Brief for Appellant Julian Padigos, p. 3; rollo, p. 75; signed by Atty. Francisco A. Seville Jr.

[15] TSN, November 9, 1995, pp. 4-5.

[16] TSN, September 19, 1996, pp. 9-11.

[17] People v. Dinglasan. 267 SCRA 26, January 28, 1997, per Panganiban, ..

[18] People v. Panganiban. 241 SCRA 91, February 6, 1995.

[19] TSN, October 30, 1995, p. 4.

[20] People v. Nang, 289 SCRA 16, April 15, 1998; People v. Pulusan, 290 SCRA 353, May 21, 1998.

- [21] *People v. Sta. Ana*, 291 SCRA 188, June 26, 1998; *People v. Nialda*, 289 SCRA 521, April 24, 1998.
- [22] *People v. Alfeche*, 294 SCRA 352, August 17, 1998; *People v. Ebrada*, 296 SCRA 353, September 25, 1998.
- [23] *People v. Lusa*, 288 SCRA 296, March 27, 1998; *People v. Bragas*, 315 SCRA 216, September 24, 1999.
- [24] TSN, October 9, 1996, p. 9.
- [25] *People v. Santos*, 270 SCRA 650, 668, April 4, 1997; citing *People v. Israel*, 231 SCRA 155, March 11, 1994; *People v. Polangco*, 251 SCRA 503, December 26, 1995.
- [26] *People v. Caisip*, 290 SCRA 451, 461, May 21, 1998.
- [27] *People v. Zumil*, 275 SCRA 182, July 8, 1997.
- [28] *People v. Villonez*, 298 SCRA 566, November 16, 1998.
- [29] *People v. Azugue*, 268 SCRA 711, February 26, 1997.
- [30] TSN, October 30, 1995, p. 5.
- [31] TSN, October 30, 1995, p. 6.
- [32] *People v. Nardo*, 270 SCRA 672, April 4, 1997.

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