PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEANETTE (GINETTE) YANSON-DUMANCAS, POL. COL. NICOLAS TORRES, POL. INSP. ADONIS ABETO, POL. OFFICER MARIO LAMIS Y FERNANDEZ, D...

G.R. Nos. 133527-28. December 13, 1999

Ponente: MELO, J.

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MELO, J.:

Accused-appellants were charged with Kidnapping for Ransom with Murder under two Informations which pertinently read:

> CRIMINAL CASE NO. 94-15562
> The undersigned hereby accuses JEANETTE YANSON-DUMANCAS, CHARLES DUMANCAS, (BOTH AS PRINCIPALS BY INDUCTION), POLICE COL. NICOLAS M. TORRES (AS PRINCIPAL BY INDUCTION AND BY DIRECT AND/OR INDISPENSABLE COOPERATION), POLICE INSPECTOR ADONIS C. ABETO, POLICE OFFICERS MARIO LAMIS Y FERNANDEZ, JOSE PAHAYUPAN, VICENTE CANUDAY, JR. DOMINADOR GEROCHE Y MAHUSAY, JAIME GARGALLANO, ROLANDO R. FERNANDEZ, EDWIN DIVINAGRACIA, TEODY DELGADO, ALL AS PRINCIPALS BY PARTICIPATION, CESAR PECHA, and EDGAR HILADO, BOTH AS ACCESSORIES, of the crime of KIDNAPPING FOR RANSOM WITH MURDER, committed as follows:
>
> That during the period beginning in the late morning of August 6, 1992 and ending the late evening of the following day in Sitio Pedrosa, Barangay Alijes, Bacolod City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and concurring in a common criminal intent and execution thereof with one another, save for the accessories, for the purpose of extracting or extorting the sum of P353,000.00, did, then and there willfully, unlawfully, and feloniously, to wit:
>
> Acting upon the inducement of spouses Jeanette Yanson-Dumancas and Charles Dumancas, under the direction cooperation and undue influence, exerted by P/Col. Nicolas M. Torres, taking advantage of his position as the Station Commander of the Philippine National Police, Bacolod City Station, with the direct participation and cooperation of Police Inspector Adonis C. Abeto, other police officers Vicente Canuday, Jr., Jose Pahayupan, Mario Lamis, civilian (police) agents Rolando R. Fernandez, Edwin Divinagracia, Teody Delgado, Jaime Gargallano, also taking advantage of their respective positions, and Dominador Geroche, concurring and affirming in the said criminal design, with the use of motor vehicle abduct, kidnap and detain one RUFINO GARGAR, JR. and shortly thereafter at around 11 o'clock in the evening of August 7, 1993 (1992), failing in their aforesaid common purpose to extort money and in furtherance of said conspiracy, with evident premeditation and treachery nocturnity and the use of motor vehicle, did then and there shot and kill the said victim, while being handcuffed and blindfolded; that accused Cesar Pecha and Edgar Hilado, with knowledge that said Gargar was victim of violence, did then and there secretly bury the corpse in a makeshift shallow grave or the purpose of concealing the crime of murder in order to prevent its discovery for a fee of P500.00 each; aforesaid act or acts has caused damage and prejudice to the heirs of said victim, to wit:

P50,000.00

-

as indemnity for death;

50,000.00

-

actual damages;

300,000.00

-

compensatory damages (lost income);

100,000.00

-

moral damages;

50,000.00

-

exemplary damages.

CONTRARY TO LAW.

(pp. 1-3, Record Vol. I)

CRIMINAL CASE NO. 94-15563
The undersigned hereby accused JEANETTE YANSON-DUMANCAS, CHARLES DUMANCAS (BOTH AS PRINCIPALS BY INDUCTION), POLICE COL. NICOLAS M. TORRES (AS PRINCIPAL BY INDUCTION AND BY DIRECTION AND/OR INDISPENSABLE COOPERATION), POLICE INSPECTOR ADONIS C. ABETO, POLICE OFFICERS MARIO LAMIS Y FERNANDEZ, JOSE PAHAYUPAN, VICENTE CANUDAY, JR., DOMINADOR GEROCHE Y MAHUSAY, JAIME GARGALLANO, ROLANDO B. FERNANDEZ, EDWIN DIVINAGRACIA, TEODY DELGADO, ALL AS PRINCIPALS BY PARTICIPATION, CESAR PECHA and EDGAR HILADO, BOTH AS ACCESSORIES, of the crime of KIDNAPPING FOR RANSOM WITH MURDER, committed as follows:

That during the period beginning in the late morning of August 6, 1992 and ending the late evening of the following day in Sitio Pedrosa, Barangay Alijes, Bacolod City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and concurring in a common criminal intent and execution thereof with one another, save for the accessories, for the purpose of extracting or extorting the sum of P353,000.00, did, then and there willfully, unlawfully, and feloniously, to wit:

Acting upon the inducement of spouse Jeanette Yanson-Dumancas and Charles Dumancas, under the direction, cooperation and undue influence, exerted by P/Col. Nicolas M. Torres, taking advantage of his position as the Station Commander of the Philippine National Police, Bacolod City Station, with the direct participation and cooperation of Police Inspector Adonis C. Abeto, other police officers Vicente Canuday, Jr., Jose Pahayupan, Mario Lamis, civilian (police) agents Rolando R. Fernandez, Edwin Divinagracia, Teody Delgado, Jaime

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Gargallano, also taking advantage of their respective positions, and Dominador Geroche, concurring and affirming in the said criminal design, with the use of motor vehicle abduct, kidnap and detain one DANILO LUMANGYAO and shortly thereafter at around 11 o'clock in the evening of August 7, 1993 (1992), failing in their aforesaid common purpose to extort money and in furtherance of said conspiracy, with evident premeditation and treachery nocturnity and the use of motor vehicle, did then and there shot and kill the said victim, while being handcuffed and blindfolded, that accused CESAR PECHA and EDGAR HILADO, with knowledge that said Lumangyao was victim of violence, did then and there secretly bury the corpse in a makeshift shallow grave for the purpose of concealing the crime of murder in order to prevent its discovery for a fee of P500.00 each; aforesaid act or acts has caused damage and prejudice to the heirs of said victim, to wit:

P50,000.00

-

as indemnity for death;

50,000.00

-

actual damages;

300,000.00

-

compensatory damages (lost income);

100,000.00

-

moral damages;

P50,000.00

-

exemplary damages.

CONTRARY TO LAW.

(pp. 1-3, Record Vol. I-A)

All thirteen accused (excluding Edgar Hilado, who was then still at large) entered pleas of NOT GUILTY upon arraignment conducted on February 14, 1994 (per Certificates of Arraignment, Record Vol. I-A, pp. 372-384). After a joint trial (excluding accused Edgar Hilado, who upon arraignment on April 11, 1994, pleaded NOT GUILTY [Record, Vol. II, p. 866], was tried separately), judgment was rendered acquitting Charles Dumancas, Police Officers Jose Pahayupan and Vicente Canuday, Jr., but convicting the rest of the accused for the crime charged, to wit:

Wherefore, finding the first nine (9) Accused herein -

- JEANNETTE (GINNETTE) YANSON - DUMANCAS

- POL. COL. NICOLAS TORRES

- POL. INSP. ADONIS ABETO

- POL. OFFICER MARIO LAMIS Y FERNANDEZ

- DOMINADOR GEROCHE Y MAHUSAY

- JAIME GARGALLANO

- ROLANDO R. FERNANDEZ

- EDWIN DIVINAGRACIA

- TEODY DELGADO and

- CESAR PECHA

GUILTY BEYOND REASONABLE DOUBT AS PRINCIPALS and CESAR PECHA as accessory in the two (2) informations filed in these cases, JUDGMENT is hereby rendered against them, as follows:

1. In CRIMINAL CASE NO. 94-15562, each of the Accused charged as principal is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all the accessories of the law; to indemnify, jointly and severally, the Heirs of Rufino Gargar Jr. in the amount of P50,000.00 as indemnity for death; P25,000.00 as actual damages; P300,000.00 for compensatory damages (lost income); P100,000.00 in moral damages and P50,000.00 as exemplary damages; and to pay the cost. Accused CESAR PECHA who is charged as an accessory is hereby sentenced to suffer the penalty of imprisonment of two (2) years four (4) months and one (1) day of Prision Correccional as minimum to eight years and one day of Prision Mayor as maximum and to pay one-tenth of the cost;

2. In CRIMINAL CASE NO. 94-15563, each of the Accused charged as principal is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessories of the law, indemnify jointly and severally, the Heirs of DANILO LUMANGYAO in the amount of P50,000.00 as indemnity for death; P25,000.00 as actual damages; P100,000.00 as compensatory damages (lost income); P100,000.00 as moral damages; P50,000.00 as exemplary damages; and to pay the cost. Accused CESAR PECHA who is charged as an accessory is hereby sentenced to suffer the penalty of imprisonment of two (2) years four (4) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of Prision Mayor as maximum and to pay one-tenth of the cost.

Accused CHARLES DUMANCAS, Police Officers JOSE PAHAYUPAN and VICENTE CANUDAY JR. are hereby Acquitted of the crime charged for failure of the prosecution to prove their guilt beyond reasonable doubt, with cost de officio.

SO ORDERED.

(pp. 272-273, Rollo.)

All ten accused filed their respective notices of appeal, and are now before us on review. After going through the voluminous record of the case, the Court adopts the following summary of facts by the court a quo, to wit:

February 20, 1992

Jeanette Yanson Dumancas was swindled in a fake gold bar transaction losing P352,000 to Danilo Lumangyao and his cohort.

10:30 A.M. August 5, 1992 present in the house of Rolando Fernandez were:
a) Dominador Geroche
b) Rolando Fernandez

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c) Jaime Gargallano
d) Edwin Divinagracia
e) Teody Delgado
f) Mario Lamis and
g) Moises Grandeza

On this occasion Mario Lamis brought out the plan to abduct Danilo Lumangyao and Rufino Gargar, Jr. because they swindled the Dumancas family.

4:30 P.M. August 5, 1992

The group of:

a) Dominador Geroche
b) Mario Lamis
c) Rolando Fernandez
d) Jaime Gargallano
e) Edwin Divinagracia
f) Teody Delgado
g) Moises Grandeza

went to the office of Col. Nicolas Torres at PNP Headquarters where they met the colonel who told them that if you find these two people (referring to Lumangyao and Gargar) to bring and hide them at Dragon Lodge Motel.

8:30 A.M., August 6, 1992

State witness Moises Grandeza went to the house of Helen Tortocion to invite Danilo Lumangyao and Rufino Gargar Jr. to "Tinolahan Eatery" at Shopping Center Terminal but found only Gargar Jr. as Lumangyao went to the house of a certain Bardot at BBB Avenue, this City.

Moises Grandeza together with Gargar Jr. proceeded to the house of Bardot where they found Lumangyao and thereafter the three of them went to "Tinolahan Eatery".

9:00 - 10:00 A.M. August 6, 1992

The three arrived at "Tinulahan Eatery". Waiting for them were:

a) Dominador Geroche
b) Jaime Gargallano
c) Edwin Divinagracia
d) Rolando Fernandez
e) Teody Delgado; and
f) Mario Lamis

Then a) Fernandez b) Geroche and c) Lamis entered "Tinulahan" and handcuffed Lumangyao and Gargar.

Waiting in the red Toyota Land Cruiser (Plate No. 689) were:

a) Gargallano
b) Divinagracia; and
c) Delgado

10:30 A.M. August 6, 1992

Lumangyao and Gargar were brought to the Office of Jeanette at Ceres Compound on board red toyota land

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cruiser by:

a) Moises Grandeza
b) Gargallano
c) Lamis
d) Geroche
e) Divinagracia
f) Delgado, and
g) Fernandez

It was there that a) Divinagracia and b) Fernandez manhandled Lumangyao and Gargar. Jeanette then investigated the two victims on the whereabouts of the money that they swindled from her and the two answered that it was already spent.

It was then that Jeanette ordered Doming (Geroche) to take care of the two (Lumangyao and Gargar).

3:00 P.M. August 6, 1992

From Ceres Compound and while the group, together with the two victims, were already at Dragon Lodge Motel, thereafter,

a) Abeto
b) Pahayupan, and
c) Canuday

arrived and investigated the two victims regarding the whereabouts of the gold bar and the two replied that it was with Helen Tortocion.

4:00 P.M. August 6, 1992

a) Moises Grandeza
b) Fernandez, and
c) Geroche

went to the office of Col. Torres to inform him that Lumangyao and Gargar were already captured. So Col. Torres ordered them to keep the two victims so that nobody would see them. After receiving this instructions they went back to Dragon Lodge. Meanwhile, Geroche again interrogated the victims on where the money was - if there was still any let and Geroche received the same negative reply.

Past 6:00 p.m. August 6, 1992

The group, with the two captives transferred to D'Hacienda Motel.

9:00 P.M. August 6, 1992

At D'Hacienda Motel, Jeanette and Charles Dumancas, together with Rose Ines arrived. Jeanette and Rose Ines investigated the victims where they kept the money that they swindled and the two gave the same reply that it was already gone. Jeanette then reiterated her order to Geroche to take care of the two.

9:30 P.M. August 6, 1992

The group transferred to Moonlight Inn Motel.

3:00 A.M. August 7, 1992

The group transferred again to Casamel Lodge Motel.

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10:00 A.M. August 7, 1992

The group returned to D'Hacienda Motel and it was there that the plan was pursued to liquidate the two victims at 12:00 midnight.

The persons who conceived of this plan were:

a) Geroche, and
b) Fernandez
4:30 P.M. August 7, 1992
1) Canuday
2) Abeto
3) Dudero
4) Lesaca, and
5) Arollado

searched the residence of Helen Tortocion for the gold dust and simulated gold bar per search warrant 014-92 (Exh. "D") but the search was fruitless.

7:30 P.M. August 7, 1992

The group, including the victims, partook of supper which was charged to Roy Yanson.

Then a) Abeto
b) Canuday, and
c) Pahayupan

entered the room and asked Fernandez what they are going to do with the two victims to which Fernandez, replied that he will be responsible for the two.

11:00 P.M. August 7, 1992

a) Geroche
b) Lamis
c) Fernandez, and
d) Moises Grandeza

rode on the red Toyota Land Cruiser to conduct Geroche to his house. The victims were left behind.

From his house Geroche took an armalite rifle and the group then went back to D'Hacienda Motel.

12:00 P.M. August 7, 1992

a) Fernandez, and
b) Lamis
blindfolded and handcuffed Lumangyao and Gargar (Exh. "A" and "A-1") and have them board a vehicle, with
a) Gargallano the driver
b) Geroche sitting in front, and with
c) Moises Grandeza also seated inside.

From D'Hacienda Motel, the group rode on the red toyota land cruiser. They proceeded to Hda. Pedrosa in Brgy. Alijis. When they arrived there the two victims were ordered to alight and sit by the side of the road. Geroche then asked Moises Grandeza to hold the hands of Lumangyao and then Gargar behind their backs. After that -

a) Gargallano was the first to shoot. He shot Gargar at the back of his head (Exh. K) using a baby armalite.

Then

b) Geroche followed suit by shooting Lumangyao with a .45 cal. Pistol at his right lower jaw (Exh. L).

Thereafter, the two dead bodies were loaded on board the land cruiser and brought to Hda. Siason where Pecha and Hilado buried them in the shallow grave they dug.

August 8, 1992

In Sitio Cabalagnan were recovered

a) Three (3) empty shells of armalite rifle and one .45 cal. Empty shell (Exh. "G", "G-2")

In Hda. Siason were recovered

a) the dead bodies of Rufino Gargar, Jr. and Danilo Lumangyao

b) Both of the two victims hands were handcuffed (Exh. "A" and "A-1").

August 9, 1992

The same group again went to see Col. Torres in his office and reported the extermination of the two and Col. Torres promptly gave the instruction that "you who are here inside, nobody knows what you have done but you have to hide because the NBI are after you.

August 10, 1992

a) Lamis
b) Geroche
c) Fernandez
d) Divinagracia
e) Gargallano
f) Delgado, and
g) Moises Grandeza

went back to the office of Col. Torres and this time he told the group "to hide because the NBI are now investigating".

4:00 P.M. August 12, 1992

The same group that liquidated Lumangyao and Gargar again went back to the office of Col. Torres where they were asked by Col. Torres to escort him to Ceres Compound because he would like to borrow money from Ricardo Yanson as Col. Torres said that he has huge debts to pay. Col. Torres was able on this occasion, to meet Ricardo Yanson.

On this same day,

a) Moises Grandeza
b) Lamis, and
c) Geroche

were picked up in a land cruiser by the driver of the Yansons' to go to the house of Fernandez where Geroche will give the money to the group. Each member of the group, after the check, which was drawn by Yanson, was encashed were given the amount of P1,700.00 each.

August 13, 1992

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Nenita Bello went to the office of Col. Torres to plead for his help in regard to the death of her relatives Lumangyao and Gargar but was promptly turned down by Colonel Torres with the curt remark that her case was very difficult because it involves the "military" and some "big times".

The Sangguniang Panlungsod of Bacolod City also passed, on this day, Resolution No. 328, series of 1992 urging the National Bureau of Investigation (NBI) to conduct an investigation on the death of "salvage victims" Danilo Lumangyao and Rufino Gargar, Jr. as soon as possible (Exh. "I").

September 24, 1992

The bodies of Rufino Gargar Jr. and Danilo Lumangyao were exhumed at Brgy. Buenavista Cemetery, Balintawak, Escalante, Negros Occidental and autopsies were conducted (Exhs. "M" and "N") by Dr. Ricardo Jaboneta, Medico Legal Officer of the NBI.

a) Found on the body of Rufino Gargar, Jr. (per examination report, Exh. "M") among others, were ligature marks, wrist joint, right side (Exh. "M-2", and

b) Gunshot wound (Exh. "M-1")

As to Danilo Lumangyao, the exhumation report (Exh. "N" disclose

a) Ligature marks, right wrist (Exh. "N-2") and among others, and

b) Gunshot wound (Exh. "N-1")

After the National Bureau of Investigation, Bacolod Office, conducted its investigation, the State Prosecutors of the Department of Justice took over and the result were the filing of these two criminal cases of Kidnapping with Murder against the above-named accused.

(pp. 73-85, Decision; pp. 202-214, Rollo.)

After a thorough review of the factual findings of the trial court vis-à-vis the evidence on record, we find ourselves unable to agree with the conclusions arrived at by the trial court convicting all 10 accused-appellants; rather, we concur in the suggestion of the Solicitor General, that accused-appellants Jeanette Yanson-Dumancas and Police Inspector Adonis Abeto should be acquitted. Too, by reason of his supervening death, accused-appellant Police Col. Nicolas Torres is acquitted. The judgment of conviction of the rest of the accused-appellants is to be affirmed.

A. Jeanette (Ginette) Yanson-Dumancas

On the case of accused-appellant Jeanette Yanson-Dumancas (Jeanette, for short), the information charged her of the crime of kidnapping for ransom with murder as principal by induction together with her husband, Charles, who was found by the trial court not guilty of the crime.

Article 17, Revised Penal Code, provides:

Art. 17. Principals. &mdash The following are considered principals:

1. Those who take a direct part in the execution of the act;

2. Those who directly force or induce others to commit it.

3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

What the Court now has to examine is whether or not sufficient evidence was adduced by the prosecution to prove beyond reasonable doubt that Jeanette indeed performed any of the following acts: (a) directly forcing the killers to commit the crime, or (b) directly inducing them to commit the crime.

There are 2 ways of directly forcing another to commit a crime, namely: (i) by using irresistible force, or (ii) by causing uncontrollable fear. Upon review of the testimony of all the witnesses of the prosecution, we find nothing to conclude that Jeanette used irresistible force or caused uncontrollable fear upon the other accused-appellants. From the factual findings of the trial court, it is patent that the plan to abduct and liquidate the victims was hatched on August 5, 1992 (10:30 A.M.) without Jeanette's involvement or participation whatsoever (p. 202, Rollo). The record is entirely bereft of any evidence to show that Jeanette directly forced the participants of the said meeting to come up with such plan, by either using irresistible force or causing uncontrollable fear. The only basis relied upon by the trial court in arriving at its conclusion that Jeanette is guilty of the crime as principal by inducement, is the supposed "commands" or order given by her to accused-appellant Dominador Geroche on two occasions (one inside the Ceres Compound: p. 205, Rollo, and the other in D'Hacienda Motel: p. 207, Rollo). By no stretch of the imagination may these so-called "commands", standing alone, be considered as constituting irresistible force or causing uncontrollable fear.

Likewise, there are 2 ways of directly inducing another to commit a crime, namely: (i) by giving a price, or offering reward or promise, and (ii) by using words of command. The Court finds no evidence, as did the trial court, to show that Jeanette offered any price, reward, or promise to the rest of accused-appellants should they abduct and later kill the victims in this case. If at all, the prosecution witness mentioned the name of Ricardo Yanson as having lent money to accused-appellant Col. Torres to be used for paying the latter's debts or obligations. But definitely, no money ever came from Jeanette herself. The trial court's surmise that the money delivered by Ricardo Yanson to the group was with the knowledge and approval of Jeanette in completely baseless.

The only matter left for consideration is whether the order supposedly given by Jeanette to accused-appellant Geroche "to take care of the two" constitutes words of command which may be considered sufficient basis to convict Jeanette as principal by inducement.

In order that a person may be convicted as principal by inducement, the following must be present: (1) the inducement be made with the intention of procuring the commission of the crime, and (2) such inducement be the determining cause of the commission by the material executor (U.S. vs. Indanan, 24 Phil. 203 [1913]). To constitute inducement, there must exist on the part of the inducer the most positive resolution and the most persistent effort to secure the commission of the crime, together with the presentation to the person induced of the very strongest kind of temptation to commit the crime.

By the foregoing standards, the remark of Jeanette to "take care of the two" does not constitute the command required by law to justify a finding that she is guilty as a principal by inducement. As we held in U.S. vs. Indanan, supra, "a chance word spoken without reflection, a wrong appreciation of a situation, an ironical phrase, a thoughtless act, may give birth to a thought of, or even a resolution to crime in the mind of one for some independent reason predisposed thereto without the one who spoke the word or performed the act having any expectation that his suggestion would be followed or any real intention that it produce the result. In such case, while the expression was imprudent and the results of it grave in the extreme, he (the one who spoke the word or performed the act) would not be guilty of the crime committed" (p. 219).

Furthermore, the utterance which was supposedly the act of inducement, should precede the commission of the crime itself (People vs. Castillo, July 26, [1966]). In the case at bar, the abduction, which is an essential element

of the crime charged (kidnapping for ransom with murder) has already taken place when Jeanette allegedly told accused-appellant Geroche to "take care of the two." Said utterance could, therefore, not have been the inducement to commit the crime charged in this case.

Most importantly, it was duly proven by no less than the prosecution witness himself, Moises Grandeza, that the intention of Jeanette was but to allow the law to its course, when in his cross-examination, the following transpired:

> Q. And according to your testimony this morning, Jeanette Dumancas said, what more can we do that swindling transpired four months ago, definitely that money could nowhere be around. Would you confirm that you testified that this morning before this Court? Is that correct?
>
> A. Yes, sir.
>
> Q. Mr. Witness, this is very important. Please make a vivid recall. When Danilo Lumangyao made that answer that the money was not around and Jeanette Dumancas said what's the use, the money is now nowhere to be found as four months have already transpired, did not Jeanette Dumancas tell Doming: "Doming, bring these two to the PC or police and I will call Atty. Geocadin so that proper cases could be filed against them?" Kindly make a recall on that.
>
> A. Yes, sir.
>
> (pp. 54-55, tsn Feb. 14, 1994)

Thus, even the veracity of the allegation that Jeanette uttered the words: "take care of the two" is put to some reasonable doubt by the prosecution witness himself. The remark, if made at all, cannot by any stretch of the imagination, be basis for the conviction of Jeanette.

People vs. Manambit (271 SCRA 344 [1997]) finds apt application, to wit:

In criminal law, the quantum of evidence for conviction is that which produces moral certainty in an unprejudiced mind that the accused is guilty beyond reasonable doubt. But, if the evidence is susceptible of two interpretations, one consistent with the innocence of the accused and the other consistent with his guilt, the accused must be acquitted.

(p. 385)

B. Police Inspector Adonis Abeto

With respect to accused-appellant Abeto, we quote with approval the observations of the Solicitor General as follows:

> Police Inspector Adonis C. Abeto's appeal is meritorious. Be it remembered that Abeto's only participation was to serve the search warrant on Helen Tortocion's residence and the subsequent interrogation of the two victims at the Hacienda Motel. He was never part of the conspiracy to abduct and liquidate the two victims. He is similarly situated as that of Canuday and Pahayupan.

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> The trial court, in acquitting Canuday and Pahayupan had this to say:
> The evidence against Officer CANUDAY, JR. shows that in the afternoon of August 6, 1992, together with Officers ABETO and PAHAYUPAN, they went to Dragon Lodge Motel to investigate LUMANGYAO and GARGAR, JR. as to the whereabouts of the gold (fake) bar used in swindling JEANETTE. The two captives answered that it is with HELEN TORTOCION. A subsequent search of Tortocion's house led by Officer ABETO yielded no fake gold bar. Meanwhile, in the evening of August 7, 1992, Officers ABETO, CANUDAY, JR., and PAHAYUPAN showed up at D'Hacienda Motel to inquire from FERNANDEZ what he is going to do with the two.
>
> Like Officer Pahayupan, his being in the company of Officers Abeto, on the two occasions can not give rise, to without proof of previous agreement, a conspiracy. Thus, being present at the scene of the crime is not by itself sufficient to establish conspiracy, as already averted to previously. So does mere companionship.
>
> (p. 1720-1721, Rollo.)

After due consideration of accused-appellant Abeto's constitutional right to the presumption of innocence, coupled with the presumption of regularity in the performance of his official functions having simply followed the order of his superior officers, much is left to be desired before the Court can sustain the trial court's conviction of accused-appellant Abeto. The two presumptions negate the inadequate proof adduced against accused-appellant Abeto, who must perforce be acquitted, in much the same manner that accused Canuday, Jr. and Pahayupan, who being similarly situated, were cleared and absolved.

C. Police Col. Nicolas M. Torres

As for accused-appellant Col. Torres, who passed away during the pendency of this appeal, the following rule laid down by this Court in People vs. Bayotas (236 SCRA 239 [1994]) applies:

> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability ex delicto in senso strictiore."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
> a) Law
> b) Contracts
> c) Quasi-contracts
> d) xxx xxx xxx
> e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator of the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file a separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on possible privation of right by

prescription.

(pp. 255-256)

With the application of the above set of rules to accused-appellant Torres, we hold that his death extinguished his criminal liability and the civil liability solely based thereon. Accordingly, the appeal of accused-appellant Torres is forthwith dismissed, such dismissal having the force and effect of an acquittal.

D.

Pol. Officer Mario Lamis y Fernandez, Dominador Geroche y Mahusay, Jaime Gargallano, Rolando R. Fernandez, Edwin Divinagracia, Teody Delgado, and Cesar Pecha

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Now, in regard to the other accused-appellants, after a careful review of the evidence, we find the same sufficient to affirm their conviction.

These accused-appellants assail the credence given by the trial court to the eyewitness account of Moises Grandeza. Even after a thorough perusal of their main appellants' brief (pp. 327-498, Rollo), plus the separate briefs of accused-appellants Geroche (pp. 1453-1627) and Pecha (pp. 828-1009, Rollo), we find no cogent reason to depart from the well settled rule that when it comes to the issue of credibility of witnesses, the factual findings of the trial court is generally accorded great weight. In People vs. Tañedo (266 SCRA 34 [1997]) the Court had occasion to reiterate the ruling that findings of fact of the trial court pertaining to the credibility of witnesses command great respect since it had the opportunity to observe their demeanor while they testified in court. The briefs of accused-appellants Lamis, et al. are replete with generalities and legal principles relating to the issue, but are utterly wanting in relevant particulars which may be the basis to rule that indeed, the trial court erred in lending full credence to the testimony of witness Grandeza on the matter. As held in People vs. Ramirez 266 SCRA 335 [1997]), unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.

In an attempt to buttress the contention that witness Grandeza's testimony should not have been given credence by the court a quo, accused-appellants referred to supposed inconsistencies between Grandeza's sworn statements before investigators vis-à-vis his testimony in court (pp. 349-359, Rollo; and 1465-1468, Rollo). The Court, however, is not impressed. This will not be the first occasion for us to hold that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex-parte affidavits are generally incomplete - affidavits are generally subordinated in importance to open court declarations (People vs. Padao, 267 SCRA 64 [1997]). A contradiction between a witness' affidavit and his testimony in open court may almost be explained by the fact that, being taken ex parte, an affidavit is often incomplete and inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries (Sumalpong vs. Court of Appeals, 268 SCRA 764 [1997]). Grandeza's perceived failure to mention anything in his 3 affidavits pertaining to the supposed meetings where the criminal plot was hatched, does not necessarily render his testimony in court unworthy of credit.

In his brief, accused-appellant Geroche cites Grandeza's failure to identify one of their co-accused, Charles Dumancas, in open court, and the variance on the alleged instructions given by Jeanette, and the failure by Grandeza to mention the supposed meetings in his previous affidavits, as grounds to totally disregard Grandeza's

entire testimony for being unworthy of credence (pp. 1461-1469, Rollo). Indirectly, accused-appellant Geroche wants this Court to apply the maxim falsus in uno, falsus in omnibus. In this regard, we held in People vs. Pacis (130 SCRA 540 [1984]):

> The maxim of "falsus in uno falsus in omnibus," however, is not a positive rule of law. Neither is it an inflexible one of universal application. If a part of a witness' testimony is found true, it cannot be disregarded entirely. The testimony of a witness may be believed in part and disbelieved in part.
>
> (p. 546)

Also in People vs. Li Bun Juan (17 SCRA 934 [1966]) we ruled:

> . . . In this connection it must be borne in mind that the principle falsus in uno falsus in omnibus is not an absolute one, and that it is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. In People vs. Keller, 46 O.G. No. 7, pp. 3222-3223, the following was quoted with approval by the Court of Appeals from 1 Moore on Facts, p. 23:
> "18. Testimony may be partly credited and partly rejected. - Trier of facts are not bound to believe all that any witness has said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances to be the truth . . . Even when witnesses are found to have deliberately falsified in some material particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they deem worthy of belief.
>
> (p. 945)

The grounds relied upon by accused-appellant Geroche do not, therefore, constitute cogent reasons to discredit the testimony of eyewitness Grandeza in its entirety.

As regards accused-appellant Geroche's defense of alibi, it is settled that alibi cannot prevail over positive identification (People vs. Garma, 271 SCRA 517 [1997]). Being easy to fabricate and difficult to disprove, alibi cannot prevail over and is worthless in the face of the positive identification of the accused-appellant (People vs. Datun, 272 SCRA 380 [1997]<). Besides, the record is bereft of strong and convincing evidence that accused-appellant could not have been at the scene of the crime because the certification proffered in support thereof stated that he was in Mt. Calandog only after the commission of the crime. And, as aptly stated by the Solicitor General in the People's brief, "the trial court expressed puzzlement why this supposed fact was not mentioned in his July 3, 1993 affidavit . . . The first impulse of an innocent man when accused of a wrongdoing is to express his innocence at the first opportune time. The People can only conclude that Geroche's defense of alibi is but an afterthought" (p. 1723, Rollo).

As to accused-appellant Cesar Pecha's case, the Court finds it difficult to believe that he had no knowledge that the 2 victims he was burying were victims of violence. The deceased were surely bloodied from their gunshot wounds and were in fact still handcuffed when exhumed from their shallow grave. It becomes almost impossible for accused-appellant Pecha not to at least, entertain doubts as to the absence of foul play in this case. He is thus guilty as an accessory to the crime committed under Paragraph 2, Article 19, of the Revised Penal Code, to wit:

> ART. 19. Accessories. - Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:
>
> 1. By profiting themselves or assisting the offender to profit by the effects of the crime;
>
> 2. By concealing or destroying the body of the crime or the effects or instruments thereof, in order to prevent its discovery;

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> 3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to habitually guilty of some other crime.

All told, there are only reasons to affirm, and none to reverse, the trial court's conviction of accused-appellants Pol. Officer Mario Lamis y Fernandez, Dominador Geroche y Mahusay, Jaime Gargallano, Rolando R. Fernandez, Edwin Divinagracia, and Teody Delgado as principals by direct participation of the crime of kidnapping for ransom with murder, and that of Cesar Pecha as accessory thereto.

Under Article 267 of the Revised Penal Code, when the crime of kidnapping is committed for the purpose of extorting ransom from the victims, the penalty is death. However, since the crime was committed before the re-imposition of the death penalty, only reclusion perpetua is imposable upon all the accused-appellant found guilty of the crime as principals. Accused-appellant Pecha's penalty, as accessory is 2 degrees lower, which is prision mayor. Applying the indeterminate sentence law, the penalty to be imposed is 6 months and 1 day (the minimum of prision correccional), as minimum, up to 8 years (within the minimum period of prision mayor), as the maximum.

On the civil liabilities, accused-appellants who are herein convicted of the crime as principals are held solidarily liable for the amount of P50,000.00 to the heirs of each of the victims, as indemnity for their death. The amount of P50,000.00, each, by way moral damages and P25,000.00, each, as exemplary damages are already deemed sufficient. Accused-appellant Cesar Pecha is held liable for one-tenth of the above amounts. The appealed judgment is silent as to any justification for the other damages awarded and can therefore not be sustained on appeal.

WHEREFORE, accused-appellants JEANETTE YANSON-DUMANCAS and ADONIS ABETO are hereby ACQUITTED and forthwith ordered released from detention unless there may be reason for their further detention on other criminal cases. The case and appeal of NICOLAS TORRES is DISMISSED by reason of his death. The convictions of all the other accused-appellants for each case filed are AFFIRMED except for the modification that accused-appellant CESAR PECHA is sentenced for each case to an indeterminate prison term of six (6) months and one (1) day of prision correccional, as minimum up to eight (8) years of prision mayor, as maximum. Joint and several civil liability for the accused-appellants found guilty as principals, is reduced to P50,000.00 for each case, as indemnity for the death of each victim, P50,000.00 for each case, by way moral damages, and P25,000.00 for each case, by way of exemplary damages. The civil liability of accused-appellant Cesar Pecha is maintained at one-tenth of the above amount.

No special pronouncement is made as to costs.

SO ORDERED.

Vitug, Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

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