

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JERITO AMAZAN, JAIME AMAZAN, AND DANILO VILLEGAS,
ACCUSED-APPELLANTS.**

G.R. Nos. 136251, 138606-07. January 16, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated July 8, 1998, of the Regional Trial Court, Branch 44, Masbate, finding accused-appellants Jerito Amazan, Jaime Amazan, and Danilo Villegas guilty of murder, and each of the latter two of attempted homicide and sentencing them accordingly.

The informations against accused-appellants alleged:

Crim. Case No. 8494:

The undersigned 2nd Asst. Provincial Prosecutor accuses JERITO AMAZAN, JAIME AMAZAN AND DANILO VILLEGAS of San Vicente, Dimasalang, Masbate of the crime of Murder, committed as follows:

That on or about April 27, 1997, in the evening thereof, at Barangay San Vicente, Municipality of Dimasalang, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused confederating together and helping one another, with intent to kill, evident premeditation, treachery, superiority of strength and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, assault and hack with bolos Artemio Arma, hitting him on the head, thereby inflicting wounds, which caused his death.

CONTRARY TO LAW.

Masbate, Masbate, August 5, 1997.[2]

Crim. Case No. 8496:

The undersigned 2nd Asst. Provincial Prosecutor accuses JAIME AMAZAN of San Vicente, Dimasalang, Masbate of the crime of Frustrated Murder, committed as follows:

That on or about April 27, 1997, in the evening thereof at Barangay San Vicente, Municipality of Dimasalang, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superiority of strength, did then and there willfully, unlawfully and feloniously attack, assault and hack with a bolo Amparo Arma, hitting him (sic) on the left face, thus performing all the acts of execution which would have produced the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to said Amparo Arma, which prevented her death.

CONTRARY TO LAW.

Masbate, Masbate, August 5, 1997.[3]

Crim. Case No. 8497:

The undersigned 2nd Asst. Provincial Prosecutor accuses DANILO VILLEGAS of San Vicente, Dimasalang, Masbate of the crime of Frustrated Murder, committed as follows:

That on or about April 27, 1997, in the evening thereof at Barangay San Vicente, Municipality of Dimasalang, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and hack with a bolo Antonio Arma, hitting him on the left face and arm, thus performing all the acts of execution which would have produced the crime of Murder, as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, the timely and able medical attendance rendered to said Antonio Arma, which prevented his death.

CONTRARY TO LAW.

Masbate, Masbate, August 5, 1997.[4]

Upon arraignment, accused-appellants pleaded not guilty to the charges against them, whereupon joint trial of the three cases ensued.[5]

The prosecution presented three witnesses, namely, Alberto Arma,[6] Amparo Arma,[7] and Antonio Arma.[8] Their testimonies established the following:

Alberto Arma, then 14 years old and son of the deceased Artemio Arma, testified that, at 7 o'clock in the evening of April 27, 1997, he and his father, Artemio, went to their farm to graze their carabao.[9] The farm is about 30 meters from their house.[10] As Artemio was tethering their carabao to a coconut tree, he was struck on the head with a bolo by accused-appellant Jerito Amazan, a nephew of Amparo Arma, Artemio's wife. Artemio then turned around, and was stabbed by Jaime Amazan, Jerito's younger brother. Alberto, who was at that time about five meters away, cried for help.[11] His mother, Amparo Arma, rushed from their house, accompanied by her daughter-in-law, Lorna. She saw accused-appellants Jerito and Jaime Amazan and Danilo Villegas, a neighbor, all armed with bolos, training their flashlights on the body of Artemio Arma. She asked Jerito what happened to her husband but, instead of receiving an answer, she was hacked on the face with a bolo by Jaime.[12]

Amparo, Alberto, and Lorna ran towards their house. On the way they met Antonio, Amparo's other son. The three (Amparo, Alberto, and Antonio) then went to the place where Artemio lay dead. But as he was trying to help his father, Antonio was struck with a bolo on the face and left hand by Danilo Villegas. Then accused-appellants ran away.[13]

Amparo and Antonio brought the body of Artemio to their house. It was later brought by Barangay Captain Danilo Almocera to Dr. Ernesto L. Tamayo for autopsy. On the other hand, Amparo and Antonio proceeded to the hospital of Dr. Alfonso H. Alino at Poblacion, Dimasalang, Masbate for treatment of their wounds.[14]

Amparo Arma and her son Antonio suffered injuries which are described in the medical certificates (Exhs. D and E, respectively) issued by Dr. Alino, as follows:

April 29, 1997

TO WHOM IT MAY CONCERN:

This is to certify that Amparo Arma came to me on April 27, 1997 at 9:30 P.M. for treatment of stab wound on the left face, seven inches long and one inch deep extending from the left ear across the left face close to the left side of the nose.

This wound can heal in (for) a period of two weeks unless complication occurs. The patient is confined in the

hospital since April 27, 1997 up to this date of issuing the medical certificate.

April 30, 1997

TO WHOM IT MAY CONCERN:

This is to certify that Antonio Arma came to me for treatment of stab wounds on the left face six inches from the left ear down to the left chin and from the left ear down to the left neck 1 1/2" deep. Then another wound on the dorsum of the left hand 4" long and 2" deep. These wounds can heal in (for) a period of two weeks to three weeks unless complication occurs.

The patient was confined on the 27th of April till the 29th of April. This certification is issued on request of the patient for whatever purpose this may serve.[15]

Dr. Alino testified that Amparo's wound was not fatal. With regard to Antonio's wounds, he opined that had medical assistance not been extended to Antonio, his wounds would have caused his death. However, on cross-examination, Dr. Alino admitted that when Amparo and Antonio arrived at the hospital at around 9:30 p.m. on April 27, 1997,[16] their wounds were no longer bleeding. He also opined that the wounds which Amparo and Antonio sustained could have been caused by a sharp instrument or a bolo.[17]

On the other hand, Dr. Ernesto L. Tamayo of the Office of the Municipal Health Officer of Dimasalang, Masbate, who conducted a postmortem examination on the body of Artemio Arma, issued a medico-legal report (Exh. G) containing the following findings:

FINDINGS:

- = Hacking wound, 5 inches in length, with fracture (sic) of the affected area, parieto-occipital area, left;
- = Hacking wound, measuring 4 1/2 inches in length, also with fracture of the affected area, parieto-occipital area, rt.
- = Longitudinal contusion, 3 inches in length, abdomen, left.[18]

Dr. Tamayo testified that the first two wounds on the head were fatal. Both sides of the skull were fractured and there was massive bleeding in both wounds. He was of the opinion that the two wounds were caused by a sharp-edged instrument, such as a bolo. As to the third injury, Dr. Tamayo opined that this could have been caused by a blunt instrument, i.e., a stone or a piece of wood. It is also possible that the three injuries were caused by two or more persons since the first two injuries were caused by a sharp instrument, while the last was caused by a blunt instrument.[19]

The prosecution witnesses disclosed that the probable motive for the killing of Artemio was Jaime's jealousy, because he suspected Artemio of having an affair with his wife.[20]

The defense gave a different version of the events. Jaime Amazan testified that at 6:30 in the evening of April 27, 1997, he and his brother, Jerito Amazan, gathered tuba and afterward went to the house of Jerito near the boundary of the land of Hermogenes Apues and Amparo Arma. A short time thereafter, Jaime went out to defecate at the farm of the Armas, a little distant from Jerito's house. Before he could do so, however, he saw Amparo, Antonio, Artemio, and Alberto Arma, who were armed with bolos and pieces of wood, coming. He claimed that Artemio and Antonio tried to hit him with their bolos.[21]

When Jerito Amazan saw his brother Jaime being attacked, he got his bolo and tried to help him. Artemio turned to him and tried to strike him with his bolo, but Jerito was able to parry the blow. At that point, Jaime grabbed Artemio's hands, thus enabling Jerito to hit Artemio on the head with his bolo. Artemio dropped his bolo to the

ground. Jaime picked it up and used it against Antonio. When Alberto Arma saw that his father and brother had been wounded, he ran away. Amparo tried to hit Jerito with a piece of wood, but the latter was also able to evade the blow and hit her with his bolo. Antonio and Amparo then ran away.[22]

Jerito helped his wounded brother Jaime to his house and went to Danilo Villegas' house to ask for help.[23] Danilo Villegas claimed he was then asleep after gathering coconuts. His wife and three children were with him. He said Jerito came to ask for help in bringing his brother to the hospital. With Danilo's help, Jaime was taken to the hospital of Dr. Alino for treatment.[24]

Jerito Amazan then went to the police station and surrendered.[25] Jaime also surrendered to the police after being confined in the hospital for four days and reported that he had wounded Antonio Rama.[26]

As proof of Jaime's injuries and subsequent confinement, the defense presented the medical certificate (Exh. 1) issued by Dr. Alino, dated July 11, 1997, which contains the following:

July 11, 1997

TO WHOM THIS MAY CONCERN:

This is to certify that Jaime Amazan was confined in the hospital for treatment of stab wounds on the right shoulder; right forearm below the right elbow, at lateral and on the right leg below to right knee, posterior, on April 27, 1997 at around 9:00 o'clock in the evening and discharged on April 30, 1997.

The patient was jailed and treatment was continued outside.[27]

Dr. Alino testified that the wounds were not fatal, although they were serious. He opined that, if untreated, these wounds could have caused Jaime to bleed to death. He could also have been exposed to tetanus and other severe complications.[28]

Danilo Villegas was "invited" by the police for interrogation at the police station and subsequently detained.[29] Warrants for the arrest of accused-appellants were issued by the Municipal Circuit Trial Court of Dimasalang on May 9, 1997.[30]

The defense also presented Barangay Captain Daniel Almocera. He testified that at around 7 o'clock in the evening of April 27, 1997, he received at home a report of a stabbing incident involving the Armas. He therefore went to the Arma residence with two barangay tanods and found Artemio Arma already dead. Seeing that Amparo and Antonio had been wounded, he had them taken to the hospital for treatment. He was informed by Amparo's daughter-in-law that it was Jerito Amazan who caused their injuries. The next morning, he went to the site of the incident and found scattered bloodstains on the ground. The place was near the houses of Jerito Amazan and Hermogenes Apues. Upon further investigation, it was disclosed that the land belonged to the victim Artemio Arma.[31]

The defense also presented Hermogenes Apues to establish the exact location of the incident. Apues testified that he had been a resident of San Vicente, Dimasalang, Masbate since birth. He knew accused-appellants and the victims. Artemio Arma was, in fact, a relative of his first wife.[32]

On July 8, 1998, the trial court rendered its decision, the dispositive part of which reads:

WHEREFORE, premises considered, this court finds:

- In Criminal Case No. 8494, accused Jerito Amazan, Jaime Amazan and Danilo Villegas GUILTY beyond reasonable doubt of the crime of MURDER for the killing of Artemio Arma without the presence of any aggravating circumstance, said accused are sentenced to RECLUSION PERPETUA and to pay the heirs of

Artemio Arma the sum of P50,000.00 as indemnity for the loss of life of the latter.

- In Criminal Case No. 8496, accused Jaime Amazan GUILTY beyond reasonable doubt of the crime of ATTEMPTED HOMICIDE for the wounding of Amparo Arma with the presence of the mitigating circumstance of voluntary surrender credited in his favor, said accused is hereby sentenced to a straight penalty of ONE (1) YEAR imprisonment.

- In Criminal Case No. 8497, accused Danilo Villegas GUILTY beyond reasonable doubt of the crime of ATTEMPTED HOMICIDE for the wounding of Antonio Arma, said accused is hereby sentenced to a straight penalty of ONE (1) YEAR and TEN (10) MONTHS imprisonment.

Finally, the Provincial Warden of Masbate is hereby directed to ship to the New National Penitentiary at Muntinlupa City the above-named accused within thirty (30) days from the finality of this decision and to report to this court immediately his compliance thereon.

IT IS SO ORDERED.[33]

Hence, this appeal. Accused-appellants raised the following assignment of errors:

I

THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS ATTENDANT IN THE COMMISSION OF THE CRIME CHARGED.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT CONSPIRACY EXISTED BETWEEN JERITO AMAZAN, JAIME AMAZAN AND DANILO VILLEGAS IN CRIMINAL CASE NO. 8494.

IV

THE COURT A QUO ERRED IN NOT CONSIDERING THE DEFENSE INTERPOSED BY ACCUSED-APPELLANT JERITO AMAZAN.

V

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF ACCUSED-APPELLANT JAIME AMAZAN FOR THE CRIME OF ATTEMPTED HOMICIDE IN CRIMINAL CASE NO. 8496 HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

VI

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT DANILO VILLEGAS FOR ATTEMPTED HOMICIDE IN CRIMINAL CASE NO. 8497.

First. In their first, fifth, and sixth assignment of errors, accused-appellants raise questions concerning the credibility of the prosecution witnesses. They allege contradictions and inconsistencies in the witnesses' testimonies, as follows:

- Inconsistencies in testimony.

(1) Alberto Arma's confused testimony:

(a) as to who between the brothers Amazan hacked Artemio twice; and

(b)

that the killing of his father occurred prior to April 27, 1997, while the hacking of his brother and mother took place on April 27, 1997;

(2)

Alberto's admission on cross-examination that some of his statements were not true; and

(3)

The alleged contradiction between Alberto's testimony that Amparo was hacked on the trail by Jaime, and Amparo's testimony that she was hacked by Jaime while she was asking Jerito what happened to her husband.

- Contradictions between sworn statements and testimony in open court.

(1)

The inconsistency between Amparo's sworn statement that when she arrived at the farm she was hacked by Jaime on the face, and her testimony that Jaime hacked her while she was asking Jerito what happened to her husband;

(2)

The inconsistency between Antonio's sworn statement where he claimed that he was hacked by Danilo Villegas while he was embracing his father, and his testimony in open court that he was hacked while he was standing near his father.

To begin with, the evaluation of the credibility of witnesses by the trial court will not be disturbed on appeal unless it is shown that it overlooked certain facts or circumstances of substance that, if considered, could have affected the results of the case.[34] Inconsistencies as to minor details and collateral matters do not affect the credibility of the witnesses nor the veracity or weight of their testimonies. Such minor inconsistencies may even serve to strengthen their credibility as they negate any suspicion that the testimonies have been rehearsed.[35]

A. In Alberto's case, the alleged inconsistencies in his testimony can be explained by his age, his inexperience with court proceedings, and the relative darkness of the place at the time of the occurrence of the incident. Alberto was only 14 years old and finished only the sixth grade.[36] When he testified in court, he was only about 15 years of age. This Court has recognized that even the most candid of witnesses commit mistakes and make confused and inconsistent statements. This is especially true with young witnesses who could be overwhelmed by the atmosphere of the courtroom. Hence, there is more reason to accord them an ample space for inaccuracy.[37] In this case, Alberto in fact cried during his direct examination. When asked on cross-examination why he cried, he answered he was nervous.[38] His answers to the defense counsel's questions actually reflected his nervousness when he confusedly answered that his father was killed before April 27, 1997, while his brother and mother were hacked on April 27, 1997. This was obviously not true, as the records of the case show.

Alberto's failure to state categorically which of the Amazan brothers hit Artemio twice can be easily explained. At 7 o'clock in the evening of April 27, 1997, in Brgy. San Vicente, Dimasalang, Masbate, the place was nearly pitch dark as the sun had already set at 5:58 p.m. and the moon did not shine until 10:00 p.m.[39] In fact, accused-appellants used flashlights in attacking the victims. The place was surrounded with corn plants and coconut trees, about 15 feet high.[40] Furthermore, considering the suddenness and violence of the attack, it is understandable why Alberto failed to perceive clearly what was happening around him as to enable him to keep track of the Amazans' individual actions.

Alberto's statement that some parts of his testimony were not true was due to his failure to understand the questions interposed by the defense counsel. This is evident in the following portion of his testimony:

Q.

Were you able to understand your answer when you were asked by the defense counsel, that while you are testifying, you feel nervous because you are not telling the truth, and your answer is "yes, sir" where you able to pathom (sic) or understand your answer?

A.

I did not understand.

Q.

Meaning, you were not able to understand the question asked by the defense counsel?

A.

Yes, sir.[41]

No sane witness would admit that he was nervous because he was not telling the truth.

With regard to Amparo's testimony, the contradictions pointed out by accused-appellants are more apparent than real. Amparo's and Alberto's testimonies, which accused-appellants claim are contradictory, are as follows:

Amparo's testimony:

Q.

After that, what happened next? When you arrived there?

A.

I was asking Jerito as to what happened to my husband, suddenly, Jaime Amazan approached me and hacked me.

(TSN, p. 5, April 13, 1998)

Alberto's testimony:

Q.

When you shouted for help to your mother what happened next?

A.

My mother was hacked by Jaime when they met at the trail.

(TSN, p. 12, March 17, 1998)[42]

There is really no contradiction between the two testimonies. Amparo and Alberto's testimonies are consistent that Jaime Amazan had hacked Amparo. Amparo merely added more details to her narration, which is understandable since she was the one who asked Jerito what was going on. Alberto did not contradict his mother's claim that she was asking Jerito what happened when she was struck by Jaime with a bolo.

B. With respect to the contradictions between the sworn statements and the testimonies in court of Amparo and Antonio, it has been observed that such inconsistencies are oftentimes due to the fact that affidavits are generally not prepared by the affiants themselves but by others, like police investigators, and are only signed by the affiants.[43]

In any event, the witnesses should have been shown their prior inconsistent statements and given a chance to explain themselves, as required by Rule 132, §13. This was not done in this case. The witnesses were never confronted during the trial with the alleged inconsistencies between their affidavits and their testimonies and asked to explain them. It is only now on appeal that the question is raised.

Moreover, Antonio was not the only one who identified Danilo Villegas as his assailant. Rather, both Amparo and Alberto Arma also testified to the same thing, claiming that they saw Danilo Villegas hack Antonio.[44] Antonio's seeming uncertainty only reflects his shock at seeing his father lying dead on the ground.

Second. Accused-appellants contend that the suddenness of the attack against Artemio Arma alone does not constitute treachery. There must be evidence that the mode of attack was consciously adopted by them to make it impossible or difficult for the victim to defend himself. Moreover, accused-appellants maintain that the attack was frontal. Hence, the deceased Artemio had a fair warning of the impending attack.

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.[45] For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[46]

In the case at bar, Artemio had no warning of the impending attack. Accused-appellants' assertion that the attack was frontal is belied by the report of Dr. Tamayo which shows that the deceased sustained two (2) head wounds at the parieto-occipital area, right and left. In other words, the wounds were inflicted on the upper back part of the skull, indicating that the attack was made from behind. In addition, according to Alberto, Jerito did not draw his bolo until he was near Artemio. Then he hit Artemio on the head.[47] The first wound was fatal.[48] It rendered the victim helpless against the subsequent attacks of accused-appellants.

Third. Accused-appellants allege that there is no evidence of any conspiracy among them but that each one acted independently of the others. They claim that the prosecution failed to produce evidence indicating a common criminal purpose.

Accused-appellants' contention has no merit. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[49] In determining the existence of conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to bring about the death of the victim.[50] The agreement may be deduced from the manner in which the offense was committed.[51]

In this case, all of accused-appellants came together at the place where Artemio was tethering his carabao; the three were present at the time of the attack on Artemio; they were all armed; none of them made any effort to stop the attack on the deceased; and all three of them fled together after attaining their purpose.

In fact, both Jerito and Jaime participated in the assault on Artemio. On the other hand, Danilo Villegas' participation in the conspiracy was shown by the fact that, after Artemio had fallen on the ground, he checked to ensure that Artemio was really dead.[52] Moreover, Villegas turned to Antonio when he saw the latter coming to the aid of his father.

Fourth. Accused-appellants insist that it was the victim and the members of his family who were guilty of aggression. According to accused-appellants, when Jerito saw his brother Jaime being attacked, Jerito only tried to help him. But he was met by Artemio who tried to hit him with a bolo. When Artemio tried to strike Jerito again,

Jaime caught Artemio's hands. This enabled Jerito to strike Artemio with his bolo. As a result, Artemio dropped his bolo on the ground. Jaime then picked it up and used it against Antonio and Amparo.

We think the trial court correctly rejected accused-appellants' version. For the justifying circumstance of defense of relative to be credited in favor of an accused, the following requisites must be proven: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel it; and (3) in case the provocation was given by the person attacked, the one making the defense had no part therein.[53] The burden is on the accused to prove these elements of self-defense or defense of relative.[54]

Here, none of these requisites has been proven by accused-appellants. First, Jerito's claim that he was attacked by Artemio and that it was his defensive action of hitting him frontally which caused Artemio's injuries is contrary to the evidence which shows that Artemio suffered wounds at the upper back portion of his head, indicating that the latter was attacked from behind. Second, no reason has been shown why the Armas should attack accused-appellants. Accused-appellants have been neighbors of the victim and the prosecution witnesses for years. Amparo Arma is in fact the aunt of the Amazans, and Alberto and Antonio are their cousins. Third, the seriousness of the wounds sustained by the Armas, compared to the minor injuries suffered by Jaime, makes it improbable that the former were the aggressors. That one of accused-appellants (Jaime Amazan) suffered some injuries which were not fatal only indicates that one or some of the victims fought back.

Fifth. The information in Crim. Case No. 8494 (for murder) alleged the presence of the aggravating circumstances of evident premeditation, abuse of superior strength, and nighttime. In Crim. Case No. 8496 and 8497 (for frustrated murder), the informations alleged the presence of evident premeditation and treachery. In addition, in Crim. Case No. 8496, the information alleged the aggravating circumstance of abuse of superior strength.

In all three cases, the lower court correctly ruled that there was no aggravating circumstance of evident premeditation. Indeed, there is no evidence showing (a) the time when accused-appellants determined to commit the crime; (b) acts manifestly indicating that they had clung to their determination; and (c) a sufficient lapse of time between the determination and the execution to allow them opportunity to reflect upon the consequences of their acts and to allow their conscience to overcome the resolution of their will.[55]

With respect to the allegation of abuse of superior strength in Crim. Case No. 8494, this circumstance cannot be appreciated because it is deemed absorbed in treachery,[56] which is present in this case.

In Crim. Case No. 8496, however, the trial court erred in not appreciating the aggravating circumstance of abuse of superior strength against accused-appellant Jaime Amazan. In *United States v. Consuelo*,[57] it was held that when a man attacks an unarmed and defenseless woman, it constitutes taking advantage of superior strength. This circumstance is clearly shown in the present case by the fact that, without any warning, Jaime attacked Amparo, who was unarmed, as she came to find out what had happened to her husband.

On the other hand, the aggravating circumstance of nighttime cannot be appreciated since there is no evidence to show that nighttime was deliberately sought by accused-appellants to facilitate the commission of the crime or prevent its discovery or evade capture or facilitate their escape.[58]

The trial court also correctly credited Jerito and Jaime Amazan with the mitigating circumstance of voluntary surrender. Jerito Amazan surrendered to the police authorities right after he had brought Jaime Amazan to the hospital.[59] The latter (Jaime Amazan) himself surrendered to the police four days later.[60] Although Jaime admitted that he surrendered because of fear of reprisal, this fact should not be taken against him for, as the Court has held in another case,[61] this circumstance does not detract from the spontaneity of the surrender, nor does it alter the fact that, by giving himself up, he has saved the State the time and trouble of searching for him until

arrested.

Under Art. 248 of the Revised Penal Code, murder is punishable by reclusion perpetua to death. In view of the absence of any other aggravating circumstance and the presence of the mitigating circumstance of voluntary surrender of Jerito and Jaime Amazan, the trial court correctly found them guilty of murder in Crim. Case No. 8494 and imposed on them the penalty of reclusion perpetua^[62] in accordance with Art. 63 of the Revised Penal Code.

The trial court also correctly found Danilo Villegas guilty of murder in Crim. Case No. 8494 and imposed on him the penalty of reclusion perpetua in accordance with Art. 63 of the Revised Penal Code, there being no other aggravating and mitigating circumstances present.^[63]

We hold, however, that it was error for the trial court to convict Jaime of attempted homicide in Crim. Case No. 8496 for inflicting injuries on Amparo. As the crime was committed with abuse of superior strength, the crime committed is attempted murder, in accordance with Art. 248 of the Revised Penal Code. Dr. Alino testified that Amparo's injuries were not fatal. In fact, she only went to the hospital for treatment at 9:30 p.m. of April 27, 1997, two hours after she sustained her injuries, which were no longer bleeding when Dr. Alino treated them.^[64] But the fact that Jaime hit Amparo on the face with a bolo shows that his intent was not only to injure but to kill.

The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.^[65] The trial court imposed a straight penalty of one (1) year imprisonment on Jaime Amazan.^[66] This penalty should be modified. In accordance with the Indeterminate Sentence Law and Art. 64 of the Revised Penal Code, the minimum of the indeterminate penalty should be anywhere within the range of prision correccional, while the maximum should be prision mayor minimum, considering the absence of any aggravating circumstances and the presence of the mitigating circumstance of voluntary surrender.

In Criminal Case No. 8497, the trial court correctly found Danilo Villegas guilty of attempted homicide for the injuries inflicted on Antonio Arma. Antonio's injuries were not fatal, as can be gleaned from Dr. Alino's testimony that Antonio's wounds were no longer bleeding when he arrived at the hospital.^[67] But the fact that Danilo hacked Antonio on the face shows that his intent was to kill and not merely to injure.

The trial court erred in imposing on Danilo Villegas a straight penalty of imprisonment for one (1) year and ten (10) months. In accordance with the Indeterminate Sentence Law and Art. 64 of the Revised Penal Code, the minimum of the penalty should be within the range of arresto mayor and the maximum should be prision correccional medium, in view of the absence of any aggravating and mitigating circumstances.

The trial court also correctly awarded the heirs of Artemio Arma the sum of P50,000.00 as indemnity for the death of Artemio Arma.^[68] However, in line with our recent rulings, the heirs of the victim are also entitled to an additional amount of P50,000.00 as moral damages.^[69]

WHEREFORE, the decision of the Regional Trial Court, Branch 44, Masbate, is MODIFIED as follows:

(1) In Criminal Case No. 8494, accused Jerito Amazan and Jaime Amazan are found guilty of murder and, taking into account the absence of any aggravating circumstance and the presence of the mitigating circumstance of voluntary surrender, are hereby sentenced to reclusion perpetua for the killing of Artemio Arma;

(2) In Criminal Case No. 8496, accused-appellant Jaime Amazan is found guilty of attempted murder and is hereby sentenced to an indeterminate penalty the minimum of which is two (2) years and four (4) months of prision correccional minimum and the maximum of which is eight (8) years of prision mayor minimum.

(3) In Criminal Case No. 8497, accused-appellant Danilo Villegas is found guilty of attempted homicide and is hereby sentenced to an indeterminate penalty the minimum of which is four (4) months of arresto mayor medium and the maximum of which is four (4) years and two (2) months of prision correccional medium.

(4) Accused-appellants Jerito Amazan, Jaime Amazan and Danilo Villegas are ordered to pay the heirs of the victim Artemio Arma the additional amount of P50,000.00 as moral 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 Felimon C. Abelita III.

[2] Records (Crim. Case No. 8494), p. 1.

[3] Records (Crim. Case No. 8496), p. 1.

[4] Records (Crim. Case No. 8497), p. 1.

[5] Id., p. 42; Records (Crim. Case No. 8496), p. 26; Records (Crim. Case No. 8494), p. 30.

[6] TSN (Alberto Arma), pp. 1-39, March 17, 1998.

[7] TSN (Amparo Arma), pp. 1-26, April 13, 1998.

[8] TSN (Antonio Arma), pp. 1-20, April 20, 1998.

[9] TSN (Alberto Arma), pp. 4-5, March 17, 1998.

[10] TSN (Amparo Arma), p. 5, April 13, 1998.

[11] TSN (Alberto Arma), pp. 3-4; 8-11, March 17, 1998.

[12] TSN (Amparo Arma), pp. 6-7, April 13, 1998; TSN (Alberto Arma), pp. 11-12, March 17, 1998.

[13] TSN (Amparo Arma), pp. 10-11, April 13, 1998; TSN (Alberto Arma), pp. 12, 28-30, March 17, 1998; TSN (Antonio Arma), pp. 4-7, April 20, 1998.

[14] TSN (Amparo Arma), pp. 12-13, April 13, 1998.

[15] Records (Crim. Case No. 8494), pp. 42-43; Records (Crim. Case No. 8496), pp. 33-34.

[16] Records (Crim. Case No. 8494), p. 43.

[17] TSN (Dr. Alfonso H. Alino), pp. 3-10, May 4, 1998.

[18] Records (Crim. Case No. 8494), p. 44.

[19] TSN (Dr. Ernesto Tamayo), pp. 3-5, May 14, 1998.

[20] TSN (Alberto Arma), p. 5, March 17, 1998; TSN (Amparo Arma), p. 15, April 13, 1998.

[21] TSN (Jaime Amazan), pp. 9-11, May 25, 1998.

[22] TSN (Jerito Amazan), pp. 12-13, June 8, 1998.

- [23] TSN (Danilo Villegas), pp. 13-14, June 9, 1998.
- [24] Id., pp. 2-4.
- [25] TSN (Jerito Amazan), p. 15, June 8, 1998.
- [26] TSN (Jaime Amazan) pp. 15-17, May 25, 1998.
- [27] Records (Crim. Case No. 8494), p. 55.
- [28] TSN (Dr. Alfonso H. Alino), pp. 13-15, May 4, 1998.
- [29] TSN (Danilo Villegas), p. 5, June 9, 1998.
- [30] Records (Crim. Case No. 8494), p. 12; Records (Crim. Case. No. 8496), p. 11; Records (Crim. Case No. 8497), p. 11.
- [31] TSN (Daniel Almocera), pp. 3-8, June 8, 1998.
- [32] TSN (Hermogenes Apues), pp. 3-5, May 25, 1998.
- [33] Decision, pp. 9-10; Records (Crim. Case No. 8494), pp. 77-78.
- [34] People v. Perez, 313 SCRA 544 (1999); People v. Tan, 315 SCRA 375 (1999); People v. Accion, 312 SCRA 250 (1999); People v. Pulusan, 290 SCRA 353 (1998).
- [35] People v. Takop, 315 SCRA 465 (1999).
- [36] TSN (Alberto Arma), p. 16, March 17, 1998.
- [37] See People v. Panlilio, 255 SCRA 503 (1996).
- [38] TSN (Alberto Arma), p. 17, March 17, 1998.
- [39] Per Certification from PAG-ASA, dated November 9, 2000.
- [40] TSN (Alberto Arma), p. 21, March 17, 1998.
- [41] Id., p. 18.
- [42] Appellants' Brief, p. 16; Rollo, p. 62.
- [43] People v. Reyes, 316 Phil. 1 (1995).
- [44] TSN (Alberto Arma), p. 12, March 17, 1998; TSN (Amparo Arma), p. 10, April 13, 1998.
- [45] REVISED PENAL CODE, ART. 14, par. 16.
- [46] People v. Penaflorida, 313 SCRA 563, 572 (1999).
- [47] TSN (Alberto Arma), p. 24, March 17, 1998.
- [48] TSN (Dr. Ernesto Tamayo), p. 4, May 14, 1998.
- [49] REVISED PENAL CODE, ART. 8, par. 2.
- [50] People v. Alib, G. R. No. 130944, January 18, 2000.
- [51] People v. Perez, supra.

- [52] TSN (Amparo Arma), pp. 6-7, April 13, 1998.
- [53] People v. Emberga, G. R. No. 116616, November 26, 1999.
- [54] Jacobo v. Court of Appeals, 270 SCRA 270 (1997).
- [55] People v. Ladit, G. R. No. 127571, May 11, 2000.
- [56] People v. Cawaling, 293 SCRA 267 (1998).
- [57] 13 Phil. 612 (1909).
- [58] People v. Atop, 286 SCRA 157 (1998).
- [59] TSN (Jerito Amazan), p. 15, June 8, 1998.
- [60] TSN (Jaime Amazan), pp. 15-16, May 25, 1998.
- [61] People v. Clemente, 21 SCRA 261 (1967).
- [62] Decision, p. 9; Rollo, p. 76.
- [63] Id.
- [64] TSN (Dr. Alfonso H. Alino), pp. 4, 7, 10, May 4, 1998; TSN (Antonio Arma), p. 18, April 20, 1998.

[65] REVISED PENAL CODE, ART. 51.

- [66] Decision, p. 9; Rollo, p. 76.
- [67] TSN (Dr. Alfonso H. Alino), pp. 4, 7, 10, May 4, 1998; TSN (Antonio Arma), p. 18, April 20, 1998.
- [68] Decision, p. 9; Rollo, p. 76.
- [69] People v. Suplito, 314 SCRA 493 (1999); People v. Atrejenio, 310 SCRA 230 (1999); People v. Panida, 310 SCRA 66 (1999).

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