

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. JULITO DAVA ALIAS LILIT DAVA, ET AL., ACCUSED, JULITO DAVA ALIAS LILIT DAVA, MANSUETO VILLAHERMOSA ALIAS MANSUETO CASINO, CALIXTO V...

G.R. Nos. 41642-45. May 15, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

At about 6:00 o'clock in the evening of October 4, 1968 the peace and quiet of barrio Bambang, municipality of Matalam, North Cotabato, was broken when eight (8) armed men with guns and knives suddenly barged into the residence of Antonio Ganaan, indiscriminately tying, hacking and killing him, his wife, Martina Ganaan, son Rogelio and their houseguests Felizardo alias Dodo, a truck helper, Juanito Afsay, a driver, Dodo alias Dacu, another truck helper and Orbeto Nobliza, also a truck helper, Danilo Peñon, another guest was seriously injured but he survived the carnage. In the process the intruders ransacked trunks and cabinets in the house and carted away valuables including canned goods and personal properties.

After appropriate investigation, five (5) separate informations were filed in the Court of First Instance of Cotabato for the crimes of robbery with multiple homicide and frustrated homicide and robbery in band with frustrated homicide against Julito Dava alias Lilit Dava, Mansueto Villahermosa alias Mansueto Casino, Calixto Villahermosa alias Calixto Casino, Wennie Aguhayon alias Winnie, Hermosisimo Galedo, Nonito Galedo, Eddie Palmares, Inocencio Fernandez and Diony Montero.

After arraignment and joint trial on the merits, judgment was rendered on October 16, 1984, the dispositive part of which reads as follows:

"WHEREFORE, and in view of all the foregoing, the Court finds the accused Julito Dava alias Lilit Dava, Mansueto Casino alias Mansueto Villahermosa, Calixto Casino alias Calixto Villahermosa, Nonito Galido (also written as Hermosisimo Galedo), guilty beyond reasonable doubt as co-principals in the crime of robbery with homicide and in accordance with the provision of Article 294 paragraph 1 of the Revised Penal Code, in relation to paragraphs 3 and 6 of Article 64 of the same Revised Penal Code, hereby sentences each of them to seven death penalties: death penalty for the death of Martina Ganaan; another for the death of Antonio Ganaan; another for the death of Rogelio Ganaan; another for the death of Juanito Afsay; another for the death of Dado alias Dacu; another for the death of Orbeth Nobliza; and still another for the death of Felizardo alias Dodo. They are further sentenced to pay jointly and severally, in concept of moral and exemplary damages, the heirs of each of the victims; at the rate of P12,000.00 for each set of heirs. Each of the accused is also sentenced to imprisonment the minimum of which is 10 years of prison mayor which is within the range of the penalty next lower in degree than that prescribed by law, and the maximum 17 years and 4 months of reclusion temporal which is the maximum of the penalty prescribed by law, for the crime of robbery with serious physical injuries described under paragraph 4 of Article 294 of the Revised Penal Code. To both penalties shall attach all the accessory penalties provided by law.

In the case of robbery with physical injuries on Danilo Peñon, the accused are jointly and severally sentenced to pay Danilo Peñon the sum of P6,000.00, without subsidiary imprisonment in case of insolvency; and each of them to pay 1/7 of the cost.

As stated above, the Court hereby orders the exclusion of Inocencio Fernandez in Criminal Case No. 841 for lack of evidence.

The Clerk of Court is hereby ordered to issue alias warrant of arrest on Eddie Palmares and Wennie Aguhayon to be served by the Chiefs of Police, the Philippine Constabulary and the Philippine Army, detachments in the places where they are supposed to be. Wennie Aguhayon was reported to have escaped in Pigcawayan, North Cotabato.

Considering the penalties imposed on the accused, the Provincial Warden is hereby ordered to maintain strict vigilance and guard on the accused.

The Clerk of Court is hereby ordered to send the Records of these cases to the Honorable Supreme Court for automatic review.

The accused having been detained they should be entitled to the full benefits of Republic Act No. 6127."[1]

Since the death penalties were imposed on the accused these cases were elevated to this Court for automatic review.

A counsel de oficio was appointed by the Court for all the accused-appellants who in due time filed a brief enumerating the assignment of errors allegedly committed by the trial court as follows:

"I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED CONSIDERING THAT PROSECUTION FAILED TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN FAIL-ING TO CONSIDER THE IMPORTANCE OF THE DEFENSE OF ALIBI CONSIDERING THAT THE EVIDENCE OF THE PROSECUTION CONCERNING THE IDENTIFICATION OF ACCUSED-APPELLANTS AS THE AUTHORS OF THE CRIME CHARGED IS UNRELIABLE AND UNSATISFACTORY.[2]

The facts of the case are narrated in the People's brief as substantially borne by the records:

"On October 4, 1968, at about 6:00 o'clock in the evening, at Bo. Bangbang, Municipality of Matalam, North Cotabato, having loaded earlier palay on their 3/4-ton truck at Bo. New Alimodian, Danilo Peñon and his co-workers Juaning, "Do" and "Odo" were proceeding to Bo. Buroburoan where their employer, Merto Pedregosa, was residing, when they were caught by rain in Bo. Bangbang, compelling them to take shelter there in the house of Antonio Ganaan (TSN, pp. 4-6, Dec. 3, 1970).

In the house were Antonio Ganaan and his wife, Martina, Ganaan. Once inside, Peñon, "Odo" and "Do" rested themselves on the sacks of palay on the ground floor of the 2-story house. Peñon's other companion, Juaning, driver of the 3/4-ton truck, conversed with the spouses Antonio and Martina. Not long after, three (3) armed men barged through the kitchen, saying: "This is holdup". Pointing their guns at Peñon and Antonio Ganaan, the intruders ordered Peñon, his companions, Juaning, "Do", "Odo", and the spouses Antonio and Martina Ganaan to lie on the ground, faces down; and tied their hands at the back with abaca (TSN, pp. 6-9, Id.).

Peñon saw the intruders by a petromax light. From his position, he turned his face towards them, prompting

one of them, Wennie Aguhayon, to kick his face. He was able to recognize three of them, Wennie Aguhayon, Julito Dava and Nonito Galido, as their masks were already removed by that time. Martina Ganaan tried to run away but was pursued and overtaken by two of the in-truders. She was brought back, tied, and made to lie near the place where Peñon, his companions, and a laborer of the spouses lay tied (TSN, pp. 10-11, Id.).

Martina Ganaan ran after hearing the three intruders say that her son Itoy was already dead. After four of the in-truders took Antonio Ganaan upstairs, banging noises, including sounds of trunks and aparador being opened, were heard. As Peñon, Martina Ganaan, and the others were on the floor tied, stabbings followed. Peñon himself was stabbed thrice. He heard his companions' groanings, possibly in death throes. Although stabbed, he dared not move. He was able to observe, however, the intruders get canned goods, and heard one of them say: "Get back because we'll place them in-side the sack" (TS, pp. 11-13, Id.).

Those four other intruders with Antonio Ganaan stayed upstairs for about 4 minutes. Peñon heard Antonio Ganaan groan in pain, after which the intruders came down. He saw the faces of those four (4) men who brought Antonio Ganaan upstairs, namely, Hermosisimo Galido, Mansueto Casino (not Mansueto Villahermosa), and Calixto Casino. All seven (7) intruders then left carrying sacks of canned goods. Before leaving, they put out the petromax light (TSN, pp. 14-17, Id.).

Peñon then freed himself by rub-bing the abaca fibers against something. He knew that the intruders left because they fired shots outside. One of them uttered: "Come. Let's go home. They are all dead. None of them is alive" (TSN, pp. 17-18, 21, Id.). It was Wennie Aguhayon who stabbed him. Lito Dava stabbed his three companions, Juaning, "Odo" and "Do". He did not actually see who stabbed the spouses Antonio and Martina, her companions and another one who was brought upstairs by the intruders (TSN, pp. 22-23, Id.).

Dr. Cesar R. Tomen, Municipal Health Officer of Matalam, North Cotabato, who attended to the victims' cadavers, namely, Maria Epifanio Ganaan (Exh. AA, p. 8, rec.), Antonio Ganaan (Exh. X, p. 10, rec.), Rogelio Ganaan (Exh. W, p. 12, rec.), Dodo alias Daco (Exh. BB, p. 14, rec.), Felizardo alias Dodo (Exh. Y, p. 16, rec.) Orbit Nobleza (Exh. CC, p. 18, rec.), Juanito Afsay (Exh. Z, p. 20, rec.), gave the following findings:

"This is to certify that I have examined the body of one, ROGELIO GANAAN, 18 yrs. old, male, single, farmer and resident of barrio Bangbang, Matalam, Cotabato at about 7:20 P.M. in their residence on said barrio. Examination revealed the following:

Body was lying face upward, rigor mortis present over the entire body postmortem lividity positive over the posterior surfaces of the entire body. Further examination revealed the following injuries:

- Incised wound, 2-1/2 inches long; directed obliquely and cutting the 10[th] and 11[th] ribs, lateral aspect of the chest; left

- Stab wound, 1/2 inch long; directed horizontally, level of the 4th intercostal space, 2 inches from left nipple; 4 inches deep penetrating the left lung, anterior region, chest; left along the anterior axillary line

CAUSE OF DEATH: SEVERE INTERNAL AND EXTERNAL HEMORRHAGE SECONDARY TO INCISED AND STAB WOUNDS PENETRATING THE LEFT LUNG; LEFT SIDE

(Sgd. CESAR R. TOMEN, M.D.
Municipal Health Officer'

(Rogelio Ganaan, Exh. 1, p. 36, rec.)

"This is to certify that I have examined the body of one, ANTONIO GANAAN, 47 years old, male, married, barrio councilman and resident of Bangbang, Matalam, Cotabato in his resi-dence on October 5, 1968 at about 8:30 P.M. Examination revealed:

The body was lying face upward, both hands tied at the back, postmortem rigidity present over the entire body, postmortem lividity present over the posterior aspect of the entire body. Further examination revealed the

following injuries:

- Incised wound, 4 inches long, directed horizontally, originating from one side of the neck (right side) extending to the left lateral side severing the skin; 1/2 inch above the thyroid cartilage
- Stab wound, 3/4 inch long, 3-3/4 inches deep, directed upward and to the right, penetrating the spinal cord; 1 inch from the midvertebral line; 20 inches from the anal orifice, posterior region, thorax, right.

CAUSE OF DEATH: SEVERE HEMORRHAGE, INTERNAL AND EXTERNAL SECONDARY TO INCISED AND STAB WOUNDS IN THE NECK AND THORAX WITH INJURY TO THE SPINAL CORD

(Sgd.) CESAR R. TOMEN, M.D.
Municipal Health Officer'

(Antonio Ganaan, Exh. K, p. 38, rec.)

'This is to certify that I have examined the body of one, FELIZARDO alias Dodo, about 22 years old, male, single, truck-helper and resident of Mlang, Cotabato, on October 5, 1968 at about 9:10 P.M. in the residence of Antonio Ganaan in barrio Bangbang, Matalam, Cotabato. Examination revealed:

Body lying face upward, rigor mortis present over the entire body, postmortem lividity present over the posterior as-pect of the entire body, both hands were tied at the back. Further examination revealed:

- Stab wound, 3/4 inch long, 1-1/2 inches deep, vertebral line, 4 inches from the root of the neck, 52 inches from the right heel, posterior region, thorax.
- Stab wound, 3/4 inch long, 1-1/4 inches deep, directed obliquely, 9 inches from the left ear, 54 inches from the left heel, posterior region, thorax, left.

CAUSE OF DEATH: SEVERE HEMORRHAGE, INTERNAL AND EXTERNAL, SECONDARY TO STAB WOUNDS, POSTERIOR REGION, THORAX, LEFT WITH INJURY TO THE SPINAL CORD.

(Sgd.) CESAR R. TOMEN, M.D.
Municipal Health Officer'

(Felizardo alias Dodo, Exh. M, p. 40, rec.)

'This is to certify that I have examined the body of one, JUANITO AFSAY, 28 yrs. old, male, married, driver and resident of Buro-buroan, Matalam, Cotabato. Examination revealed:

The body was lying face downward both hands were tied at the back, postmortem rigidity positive over the entire body, postmortem lividity present over the posterior aspect of the entire body. Further examination revealed the following injuries:

- Stab wound, 3/4 inch long, 5 inches deep, directed obliquely and penetrating the left lung; 22 inches from the anal orifice, posterior region, thorax, left
- Stab wound, 3/4 inch long, 5 inches deep, directed obliquely penetrating the left lung, 21 inches from the anal orifice posterior region thorax, left
- Stab wound, 3/4 inch long, 1 inch deep hitting the vertebral bone at the left edge; 1 inch from the midvertebral line, 20 inches from the anal orifice, posterior region, thorax, left.

CAUSE OF DEATH: SEVERE HEMORRHAGE, INTERNAL AND EXTERNAL, SECONDARY TO MULTIPLE STAB WOUNDS PENETRATING THE LEFT LUNG, POSTERIOR REGION, THORAX.

(Sgd.) CESAR R. TOMEN, M.D.

Municipal Health Officer'

(Juanito Afsay, Exh. O, p. 42, rec.).

'This is to certify that I have examined the body of one MARTINA GANAAN, 37 yrs. old, female, married, housekeeper and resident of barrio Bangbang, Matalam, Cotabato, on October 5, 1968 at about 7:00 P.M. inside their house on the above-mentioned barrio. Examination revealed:

The body was lying face upward, both hands were tied at the back, postmortem rigidity present over the entire body, postmortem lividity present over the posterior aspect of the entire body. Further examination revealed the following injuries:

- Stab wound, 3/4 inch long, 2 inches deep, directed downward penetrating the left side of the vertebra column and spinal cord 1/2 inch from the mid-vertebral line, 20 inches from the anal orifice, posterior region, thorax, left
- Stab wound, 3/4 inch long, 5 inches deep penetrating the left lung, 1 inch from the midvertebral line, 20-1/2 inches from the anal orifice, posterior region, thorax, left
- Swelling, upper and lower lips.

CAUSE OF DEATH: SEVERE HEMORRHAGE, INTERNAL AND EXTERNAL, SECONDARY TO STAB WOUNDS, POSTERIOR REGION, THORAX PENETRATING THE LEFT LUNG AND SPINAL CORD.

(Sgd.) CESAR R. TOMEN, M.D.
Municipal Health Officer'

(Martina Ganaan, Exh. Q, p. 42, rec.)

'This is to certify that I have examined the body of one DODO alias Daco, 30 yrs. old, male, truckhelper and resident of Mlang, Cotabato in the residence of Antonio Ganaan on October 5, 1968 at about 9:30 P. M. in barrio Bangbang, Matalam, Cotabato, Examination revealed:

Body lying face downward, both hands were tied on his back, rigor mortis present over the entire body, postmortem lividity present over the posterior aspect of the body. Further examination revealed the following injuries:

- Stab wound, 3/4 inch long, 5 inches deep, directed vertically penetrating the left lung, 2-1/2 inches from the midvertebral line, 18 inches from the anal orifice, posterior region; thorax, left side
- Stab wound, 3/4 inch long, 5 inches deep, directed vertically penetrating the left lung, 17 inches from the anal orifice, posterior region, thorax, left
- Stab wound, 3/4 inch long, 1/2 inch deep, directed vertically vertebral column at the midvertebral line, 17 inches from the anal orifice, posterior region thorax.

CAUSE OF DEATH: SEVERE HERMORRHAGE, INTERNAL AND EXTERNAL, SECONDARY OF MULTIPLE STAB WOUNDS PENETRATING THE LEFT LUNG; POSTERIOR REGION, THORAX

(Sgd.) CESAR R. TOMEN, M.D.
Municipal Health Officer'

(Dodo alias Daco, Exh. S, p. 46, rec.)

'This is to certify that I have examined of one ORBIT NOBLEZA, about 20-25 yrs. old, male, single truckhelper and resident of Mlang, Cotabato on October 5, 1968 at about 8:45 P.M. in the house of Antonio Ganaan in barrio Bangbang, Matalam, Cotabato. Examination revealed the following:

Body was lying face upward, rigor mortis present over the entire body, postmortem lividity present on the posterior surface of the entire body, blood stains found on the posterior aspect of the truck. Both hands were tied at the back.

- Stab wound, 1/2 inch long, 1 inch deep, vertebral column (vertebral bone) at the midvertebral line; 18 inches from the anal orifice; posterior region; thorax

- Stab wound, 3/4 inch long, 5 inches deep, directed vertically 2 inches from the midvertebral line, penetrating the right lung; 18 inches from the anal orifice; posterior surface, thorax; right

- Stab wound, 3/4 inch long, 5 inches deep, directed vertically penetrating the right lung, 3 inches from midvertebral line; 18 inches from the anal orifice; posterior aspect; thorax, right

- Stab wound, 1 inch long, 1/2 inch deep, directed vertically 3-1/2 inches from the midvertebral line; posterior aspect, thorax, right

- Stab wound, 1 inch long, 1/2 inch deep, directed vertically and to the left, midvertebral column, 21 inches from the anal orifice.

CAUSE OF DEATH: SEVERE HEMORRHAGE, INTERNAL AND EXTERNAL, SECONDARY TO MULTIPLE STAB WOUNDS ON THE POSTERIOR ASPECT OF THE THORAX PENETRATING THE RIGHT LUNG.

(Sgd.) CESAR R. TOMEN, M.D.
Municipal Health Officer'

(Orbith Nobleza, Exh. U, p. 48, rec.)"[3]

Under the first assignment of error appellants contend as follows:

"A.

That the identification of accused-appellants by witness Danilo Peñon is too positive to be true;

B.

That the improbabilities in the testimony of witness Danilo Peñon on points material to identification of accused-appellants raise grave doubts as to its accuracy;

C.

That the general statements and suppositions by witness Danilo Peñon make his testimony incredible;

D.

That the testimony of Nena Ganaan is not credible;

E.

That the testimony of witness Eutiquio Valledor is not credible; and

F.

That there was no eyewitness to the Commission of the crime itself."[4]

Firstly appellants contend that considering prosecution witness Danilo Peñon took the witness stand two (2) years after he allegedly witnessed the incident, it was not probable that he could possibly identify appellants as the culprits whom he saw under the startling circumstances. Suffice it to state that Peñon was present throughout the incident from its beginning up to the time the intruders left. He was kicked, tied and was stabbed three (3) times. It was a violent and traumatic incident in his life. It is not surprising that the image and memory of the faces of appellants cannot be forgotten by Peñon even with the lapse of time.

Secondly, appellants assail the credibility of Peñon when he stated that after he was assaulted he became unconscious but he recovered in about two minutes. There is nothing improbable in such a testimony of the witness. His unconsciousness must have been momentary and he must have recovered consciousness while the carnage was still going on. It was an honest estimate therefore on his part that his consciousness lapsed only for a couple of minutes.

Thirdly, appellants then call attention to the fact that when on cross examination Peñon admitted that he was present in Court when the names of the other witnesses were called and when they testified, thus he should not have been allowed to testify. Appellants stress that he gained familiarity with their identities only at the time of the trial and not at the scene of the crime.

A review of the records of the case show that the testimony of Peñon is predicated on his own personal knowledge. If it is true that he was present and heard the other witnesses testify Peñon, cannot thereby be qualified from testifying. If at all, it may only affect his credibility.

Fourth, appellants point out the alleged improbability in the testimony of Peñon in the matter of their identification, Peñon said that there was a petromax light and when he turned his face towards the appellants he was kicked on the face but he recognized the appellants as their masks were removed at the time. Appellants assert that the culprits had their faces covered with towels so that it was improbable that they would have removed their masks just to be recognized by Peñon. That is not what Peñon said. He said that the masks of the appellants fell off so he recognized their faces. Appellants argue that Peñon declared four (4) persons took Toñing upstairs for as they were going up he saw four (4) pairs of feet going upstairs and when they came down he saw said four (4) persons. Appellants point out that considering the level of vision of Peñon with his hand tied then and he was lying down with his face towards the ground, he must have seen only up to the feet of the intruders and could not have identified appellants. What Peñon said is that while going up the stairs he saw only the feet of the four (4) persons but when they were going down he saw the faces of the four (4) persons as he turned the ball of his eyes on the side and recognized them.[5]

Fifth, appellants invite attention to the general statements and suppositions of Peñon on direct examination stating that he was stabbed three times and he could hear his other companions groaning, so he concluded that they were already dead. At one time, he allegedly said that it was appellant Lito Dava who stabbed his companions Juaning, Odo and Do, and yet on further cross examination, he admitted that he did not see the assailants of his other companions.

The assertion of Peñon that he was stabbed three (3) times must be of his own knowledge because he was the very victim who suffered the wounds inflicted. His identification of the appellant Dava as the assailant of his co-victims is positive. Although in other parts of his testimony he said he could not identify the assailants of his other companions but only heard their groans and when they became silent he assumed that they were dead, this

apparent inconsistency cannot affect his credibility. He was on the witness stand for several days and he was subjected to rigid examination. It is but to be expected that in the tiring process of undergoing such a grilling he could be inconsistent in some portions of his testimony. As a matter of fact at one point this witness said that he was confused and dizzy. This explains his errors, if not inconsistencies.[6]

Portions of the testimony of this witness attest to his positive identification of the appellants:

"Q

Will you tell this Court what you knew about such robbery?

A

I knew about the robbery because it happened that I was there taking shelter.

Q

The house that was robbed was the same house where you sought shelter?

A

Yes, sir.

Q

What were you doing when this robbery took place?

A

I was lying down on the sacks resting, relaxing.

Q

Was this downstairs or upstairs?

A

Downstairs, among the sacks of palay.

Q

Who were with you resting on the sacks of palay?

A

Odo, Do and I were the ones.

Q

How about Juaning, what was Juaning doing?

A

They were engaged in conversation with Tonying and Martina Ganaan.

Q

Who is this Juaning?

A

He is a Waray.

COURT:

Q

Do you know his surname?

A

No, sir.

Q

Do you know his real name?

A

We used to call him Juaning, I do not know his real name.

ATTY. PLAGATA:

Q

Do you know his occupation?

A

Yes, sir. He is a driver.

Q

Was he the driver of the truck where you loaded palay?

A

Yes, sir.

Q

How far was Juaning conversing with Martina Ganaan and Antonio Ganaan from the place where you were lying on the sacks of palay?

A

About 4 meters, sir.

Q

How many men did you see who went up the house and robbed the house?

A

Three, sir.

Q

Will you tell the circumstances by which these three men went to the house and then robbed the house?

A

These three men suddenly entered and told us not to move, 'This is hold up.'

Q

What did you do? When they said 'this is hold up,' what did you do?

A

I tried to look around and I noticed already persons around me pointing guns and bolo.

Q

Were these three persons armed?

A

Yes, sir.

Q

What were their arms?

A

Bolo and pistol, sir.

Q

The three of them?

A

Yes, sir.

Q

What about your companions, what did they do?

A

What can they do when we cannot anymore run away. We wanted to run, but we cannot.

COURT:

Q

Why did you not go away?

A

Because we cannot leave. It was raining. Our 3/4 truck had no roof.

Q

You said you wanted to run away, but you did not run away?

A

Yes, sir. How could we run when the main door was closed?

COURT: Proceed.

ATTY. PLAGATA:

Q

Where did these persons pass in going inside the house?

A

To the kitchen, sir.

Q

What about Antonio Ganaan and Martina Ganaan after these 3 men entered their house and ordered you not to move because it was a hold up, what did they do?

A

They did not do anything. How could Antonio move when a pistol was pointed at his head and was ordered not to move because it was a hold up.

Q

What happened when these three men had entered the house and pointed pistols at you, Antonio Ganaan and Mrs. Ganaan?

A

We were made to lie on the ground face down (witness illustrating by putting both hands at his back).

COURT:

Q

How were you tied?

A

Both my hands were tied at my back.

Q

What other parts of your body was tied?

A

No more, only the hands, sir.

COURT: Proceed.

ATTY. PLAGATA:

Q

What did they use in tying your hands?

A

Abaca fiber which is used in sewing sacks.

Q

Were you able to recognize these 3 men who entered the house?

A

Yes, sir. I know their appearance, but not their names.

Q

Are they here in Court?

A

Yes, sir.

Q

Will you point to these 3 persons whom you saw?

A

That one (witness points to a person who when asked answered that he is Jolito Dava).

Q

Who else?

A

That man (witness points to a person who when asked answered that his name is Wennie Aguhayon). That other one also (witness points to another person who when asked answered that he is Nonito Galido).

ATTY. PLAGATA:

Q

How were you able to recognize them?

A

I saw them because there was a petromax light; and from my position I turned my face towards them, but when I did that I was kicked on my face, but I recognized them because their masks were removed at that time. (witness points at the right side of his face as the place kicked)

Q

Who kicked you?

A

Wennie Aguhayon.

Q

When they first entered the house, were their faces covered?

A

Yes, sir.

Q

How did they cover their faces?

A

(witness placing both hands over the nose and mouth)

Q

What did they use in covering their faces?

A

Towel.

Q

But after you were made to lie down and then you looked backward and you were kicked on your face, their faces were no longer covered?

ATTY. BAYOG: Already answered.

COURT: Leading, sustained.

ATTY. PLAGATA:

Q

After you were tied and made to lie down on the floor, what about Antonio Ganaan and Martina Ganaan?

A

Martina Ganaan ran, but she was pursued by two persons. After she was overtaken by those two persons she

was brought back and tied and was made to lie near the place where we were.

Q

Aside from Martina Gaan, were there other persons tied?

A

Yes, sir.

Q

Who else were tied?

A

Their laborer.

Q

Do you know why Martina ran outside?

A

Because the three persons said that their son is already dead.

Q

And do you know whether Martina was able to go outside?

A

No, but she ran to get out.

Q

Did Martina say anything while she was running?

A

Yes, she said: 'Tonying patay na ti Iloy ta.' (Tonying, our Iloy is already dead.)

Q

You mentioned two persons ran after Martina when she was running out, who of the three persons ran after Martina?

A

Wennie and Nonito Galido, sir.

Q

After Martina and the other persons were made to lie down and with their hands tied, what else happened?

A

Tonying was taken by four persons up to the house.

Q

Were these four persons different from the three persons you already mentioned?

A

Yes, sir.

Q

What happened when they were already upstairs?

COURT: Reform.

ATTY. PLAGATA:

Q

While Tonying Ganaan and the four persons were upstairs, did you hear anything?

A

Yes, sir.

Q

Please tell this Court what you heard?

A

There were banging sounds, signs of opening truck and aparador.

COURT:

Not signs, but 'sounds of opening of truck and aparador.'

ATTY. PLAGATA:

Q

While your hands were tied and you were made to lie down face down and after Martina and that other person were also made to lie on the floor together with you, was there anything that happened to you before Tonying was taken upstairs by the four persons?

A

Yes, sir.

Q

What?

A

We were stabbed. I was stabbed three times.

Q

What about your other companions?

A

I could hear groanings and maybe some of them were already dead.

COURT:

Q

How did you happen to conclude that some of them were dead already?

A

Because I could hear them groaning, sir.

ATTY. PLAGATA:

Q

Did the groaning continue?

A

After that no more, sir.

Q

After you were stabbed, did you lost consciousness immediately?

A

No, sir.

Q

What did you do after you were stabbed?

A

I did not move, but I observed those persons getting canned goods and I could hear one of them saying: 'Get back because we'll place them inside the sack.'

Q

How long did these four persons and Tonying Ganaan stay upstairs?

A

About 4 minutes.

Q

After those 4 minutes, what happened?

A

I heard that Tonying was also groaning in pain.

Q

Then what happened?

A

After that the four persons came down and prepared to leave.

Q

Please tell this Court what these four persons did before they left?

A

They fired shots, sir.

Q

You mentioned about one of them saying for one of them to get back, what did they do with the sack?

A

They placed canned goods and other merchandise of Tonying in the sack.

Q

Did you see these four persons who took Tonying upstairs?

A

Yes, but I did not anymore move my body because I was afraid that they might stab me again.

Q

Would you recognize those persons if you see them again?

A

Yes, sir.

Q

Are they here in Court?

A

Yes, three of them are here. One is not apprehended.

Q

Please point who are in the courtroom?

A

(Witness points to the three persons inside the courtroom who are sitting side by side: The first person when asked his name answered that he is Hermosisimo Galido; the second answered that he is Mansueto Casino, and not Mansueto Villahermosa; and the third answered that he is Calixto Casino)"

x x x x x x x x

x x x x x x x x

“Q

When the 7 persons that you saw went up the house of Antonio Ganaan had left the house, what did they do with the sacks in which they placed goods in as you said?

A

They carried the sacks with them, sir.

Q

How many shots did they fire when they left?

A

Two shots.

Q

When was the first shot fired?

A

When they were at the kitchen.

Q

When was the second shot fired?

A

At the time when they were already on their way to the highway they fired the next shot.

Q

Did these persons leave together and at the same time?

A

Yes, sir.

Q

All of the 7 of them?

A

Yes, sir.”[7]

Appellants then assail the testimony of prosecution witness Nena Ganaan as not credible when she identified Lito Dava as one of the persons who came to their house. They contend she was able to identify said appellant because

at the PC investigation she was told that said appellant was one of the suspects.

Nena Ganaan was at the time a 12-year old girl and a Grade VI student who was among the first ones who saw the three intruders come to the house so she immediately recognized Dava.[8] One of the three intruders shouted at her not to move and aimed a pistol at her but she was able to hide under the bed.[9] She reorganized Dava after the cover of his face slipped off. She knew Dava before as he and his other companions often came to their house.[10] When the robbers came to their house, Nena was standing by the door leading to the kitchen on the ground floor about three meters away from the door through which the intruders entered the house. A kerosene lamp lighted the place.[11]

The claim therefore of the appellants that Nena Ganaan had very limited opportunity to identify any of them is not true. She was sure that one of the assailants was appellant Dava.

Appellants also contend that the testimony of prosecution witness Eutiquio Valledor is not credible as his identification of appellants Wennie Aguhayon, Hermosisimo Galedo, Lito Dava and Nonito Galedo was from a place where he allegedly hid himself behind banana plants about twenty (20) meters distance from the kitchen of Ganaan's house. He testified that the moon was shining but this was contradicted by other prosecution witnesses who said that it was raining hard then. Appellants point out that Valledor could not even ascertain what the scabbards of the bolos of the appellants look like.

On the contrary, the testimony of this witness is credible and this is borne by the evidence. He saw that at 5:00 o'clock in the afternoon of October 4, 1968, appellant Hermosisimo Galedo purchased four (4) packages of cigarettes and four (4) boxes of matches from the store of the Ganaans. While he was fetching water and resting by the house of the Ganaans, Valledor heard Martina shout from the door of her kitchen "Tonying wala na ang atong Ilyo" (Tonying, our Ilyo is gone) Ilyo was Antonio Ganaan's eldest son. Valledor looked back and saw the appellants as they entered the house of the Ganaans at the kitchen.[12] After he brought home the water Valledor returned to the place where he stopped for a rest around a banana grove near the Ganaan's kitchen, about twenty (20) meters away. Then he saw several persons come out of the house, namely: Eddie Palmares, Wennie Aguhayon, Nonito Galedo and Lito Dava. On the way he saw Diony Montero and three other persons whom he did not recognize. The surrounding was still a bit bright as there was a moon. Two of the intruders were carrying a gun while the others were carrying bolos and hunting knives. Palmares and Hermosisimo Galedo carried guns. They were eight persons in all.[13]

There is no question that Valledor was able to positively identify the appellants from the place where he was hiding at the banana grove as he was resting. After hearing the shots he concealed himself behind the banana grove. Although it maybe true that it rained then, the rain must have subsided and the moon was up.

The contention therefore of the appellants that there were no eye-witness to the commission of the crime is without basis. No doubt prosecution witnesses Danilo Peñon, Valledor and Nena Ganaan corroborated each other in positively identifying the appellants as the culprits.

By and large the assigned errors of the appellants boil down to the matter of credibility of the witnesses and the too-well known rule is that it is the peculiar province of the trial court to determine the credibility of witnesses while testifying because of its superior advantage in observing the conduct and demeanor of witnesses while testifying and its findings shall not be disturbed on appeal unless some facts or circumstances may have been overlooked that may otherwise affect the result of the case.[14] The appellant failed to persuade this Court that it should depart from this rule.

Under the second assigned error the appellants invoke alibi as a defense.

Appellant Dava claims that at the time of the incident he was at Barangiran, Kalamada, Cotabato, now North Cotabato with his brother-in-law Gonzalo Cagangoon on the land of Redoro Esteban, vice mayor thereof, as tenants and at 6:00 o'clock in the evening he was at their house. His alibi was not even reiterated in his Brief nor did he assail the admissibility of his extra-judicial confession of November 6, 1968 admitting his complicity.[15]

With respect to appellant Mansueto Casino he asserted that he was with Juanito Epifanio, brother of Mansueto Galedo who went to the scene of the crime after the incident. He allegedly stopped Epifanio from hacking the survivor Danilo Peñon. He claims that on that evening of the incident he was shelling corn at the place of Alfredo Langote when Epifanio arrived informing him the Ganaans have been murdered so he went with them to the place with barrio captain Jose Mandulado. Since admittedly said appellant was shelling corn at a place near the scene of the crime, it was not physically impossible for him to have gone to the scene of the crime, participated in the commission thereof, and returned to the place where he was shelling corn.[16] If it is true that he was persuaded to come along by Epifanio then it must be because he had no choice otherwise his complicity would have been exposed. Indeed, it was a bold decision that he had to make to portray a picture of innocence.

As to the appellant Calixto Casino, he stated that if he was liable, he would not have stayed behind in Bo. Bambang and would have fled. Again Calixto must have been that prudent if not smart. He preferred to stay and make it appear that he was innocent. He together with his brother Mansueto even attended the wake of the victims. Such a dramatic performance cannot exculpate them from the heinous crime that they have committed.

Moreover, the defense of denial and alibi of appellants could not prevail over their positive identification by the prosecution witnesses as authors of the crime.[17]

The Court agrees with the following disquisition of the court a quo:

"From all the evidence presented by the prosecution, conspiracy has been established beyond reasonable doubt, particularly, by the testimonies of victim Danilo Peñon, by Nena Ganaan and Valledor. Peñon, besides declaring that he saw the accused together, tying the victims, stabbing and hacking them, also said that he heard one of them say: 'Tana, pauli na ta kay patay naman silang tanan, Wala ng buhi.' which means, 'Come, let us go home, they are all dead. None of them is alive.' We also observed them together getting and carrying the things they've got.

The prosecution has established beyond reasonable doubt that the seven persons arrived in the place simultaneously together, and they left the premises together, and from the house they followed the same direction. Consequently, the act or acts of one should be considered as the act or acts of each and everyone of them.

The prosecution has also established beyond reasonable doubt aggravating circumstances: the crime was committed by a band of seven armed persons; the crime was committed in the dwelling of the Ganaans who have not caused any provocation; six victims, namely, Martina Ganaan, Danilo Peñon, Juaning, Do, Odo, and Orbeth Nobleza were made to lie down, face downward and then their hands were tied on their backs before they were hacked and stabbed. The victim Antonio Ganaan was also tied with his hands on the back.

The acts of making the victims lie down, then tying them, before committing the robbery and stabbing and killing and wounding them, constitute an aggravating circumstance of employing means to weaken the defense of the victims.

There is still another aggravating circumstance present in this case that is advantage was taken by the accused of their superior strength, and with regard to the victim Martina Ganaan, there was disregard of respect due to her on account of her sex.

The crime described in the Informations and proved by the prosecution with regard to the seven victims who

were killed on the occasion of the robbery, namely, (1) Antonio Ganaan, (2) Martina Ganaan, (3) Rogelio Ganaan, (4) Juanito Afsay, (5) Orbeth Nobliza, (6) Felizardo alias Dado and (7) Dodo alias Daco, is punished under paragraph 1 of Article 294 of the Revised Penal Code with the penalty of reclusion perpetua to death, because on the occasion of the robbery, the crime of homicide was committed; with regard to the victim Danilo Peñon, inasmuch as the law does not provide for a crime of robbery with frustrated homicide, but only for robbery with physical injuries, the penalty provided for under paragraph 4 of Article 294 of the Revised Penal Code should be applied considering that Peñon was treated for more than 30 days, and the penalty is prison mayor in its maximum period to reclusion temporal in its medium period or imprisonment of from 10 years and 1 day to 17 years and 4 months, because the robbery was accompanied by physical injuries penalized under subdivision 4 of Article 263 of the Revised Penal Code.

Considering that there are only aggravating, and no mitigating circumstances, the penalty to be imposed, should be in accordance with paragraphs 3 and 6 of Article 64 of the Revised Penal Code and it should be in its maximum period.

The Indeterminate Sentence Law is not applicable except in the crime of robbery with physical injuries on Danilo Peñon.[18]

As to the penalty imposed of seven (7) death penalties for the seven (7) offenses of robbery and homicide that were committed by the appellants penalized under Article 294, par. 1 of the Revised Penal Code in relation with paragraphs 3 & 6 of Art. 64 of the same Code, the same is hereby reduced to seven (7) penalties of reclusion perpetua. The death penalty has already been abolished under the Constitution.[19] The indemnity to the heirs of the seven (7) victims to be jointly and severally paid by the appellants should be raised to P30,000.00 for each set of heirs.

WHEREFORE, with the above modification as to the penalty and indemnity, the decision appealed from is AFFIRMED in all other respects, with costs against the appellants.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Pp. 48-50, Rollo.

[2] Appellants' brief, p. 171, Rollo.

[3] Pp. 4-14, Appellee's brief, P. 233, Rollo.

[4] P. 14, Appellants' brief, Supra.

[5] TSN, June 16, 1971, pp. 12, 50, & 51; TSN, June 17, 1971, pp. 5-8.

[6] TSN, June 18, 1971, pp. 16-17.

[7] Pp. 7-14 and 16-17, TSN, Dec. 3, 1970.

[8] P. 31, TSN, Nov. 26, 1969.

[9] Exhibit A, A-7, p. 22, Records.

[10] Pp. 9-10, TSN, Nov. 26, 1969

[11] Exhibits A, A-14, A-15; TSN, Supra, pp. 13-22.

[12] TSN, February 12, 1970, pp. 29-32.

[13] Pp. 33-35, TSN, *Supra*.

[14] *People vs. Beraces*, 38 SCRA 127; *People vs. Geronimo*, 53 SCRA 246; *People vs. Abboc*, 53 SCRA 54; *People vs. Jovellano*, 56 SCRA 156; *People vs. Caoile*, 61 SCRA 73; *People vs. Renegado*, 57 SCRA 275; *People vs. Bermudes*, 57 SCRA 629.

[15] Exhibit B.

[16] *People vs. Brioso*, 37 SCRA 336; *People vs. Diaz*, 55 SCRA 178; *People vs. Ibañez*, 56 SCRA 210; *People vs. Baylon*, 57 SCRA 114; *People vs. Zalazar*, 58 SCRA 467; *People vs. Clementer*, 58 SCRA 742; *People vs. Ignacio*, 60 SCRA 11; *People vs. Ancheta*, 60 SCRA 333.

[17] *People vs. Esmael*, 37 SCRA 601; *People vs. Amit*, 37 SCRA 793; *People vs. Mercado*, 38 SCRA 168; *People vs. Bagasala*, 39 SCRA 296; *People vs. Cornelio*, 39 SCRA 435; *People vs. Cuaton*, 40 SCRA 386; *People vs. Kipte*, 42 SCRA 199; *People vs. Tajalali Gajali*, 46 SCRA 130; *People vs. Olden*, 47 SCRA 45; *People vs. Herila*, 51 SCRA 31; *People vs. Carandang*, 52 SCRA 259; *People vs. Dorico*, 54 SCRA 172; *People vs. Diaz*, 55 SCRA 178; *People vs. Bongo*, 55 SCRA 547; *People vs. Dela Cruz*, 56 SCRA 84; *People vs. Genoguin*, 56 SCRA 181; *People vs. Ibañez*, 56 SCRA 210; *People vs. Cardenas*, 56 SCRA 631; *People vs. Aquino*, 57 SCRA 43; *People vs. Madera*, 57 SCRA 349; *People vs. Cortez*, 57 SCRA 308; *People vs. Abletes*, 58 SCRA 241; *People vs. Salazar*, 58 SCRA 467; *People vs. Sangalang*, 58 SCRA 737; *People vs. Sudog*, 60 SCRA 174; *People vs. Tumulip*, 60 SCRA 303; *People vs. Ancheta*, 60 SCRA 333; *People vs. Caoile*, 61 SCRA 73.

[18] Pp. 39-41, *Decision*, pp. 46-48, *Rollo*.

[19] Section 19(1), Art. III, 1987 Constitution.

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