

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTIN MANDOLADO AND JULIAN ORTILLANO, DEFENDANTS-APPELLANTS.

G.R. Nos. 51304-05. June 28, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

The judgment of conviction rendered by the Court of First Instance of Cotabato, Branch II, Cotabato City dated June 28, 1979 sentencing the accused Martin Mandolado to the supreme penalty of death in each case and the accused Julian Ortillano to imprisonment of six (6) years of prison correccional as minimum to seventeen (17) years of prison mayor as maximum, being merely an accessory, is before Us for mandatory review.

Under two (2) separate criminal informations dated January 5, 1978 filed by First Assistant Provincial Fiscal Ismael G. Bagundang, the two accused-appellants Martin Mandolado and Julian Ortillano, draftees assigned with the Alpha Company, 3rd Infantry Battalion, Second Infantry Division, Philippine Army with station at Pikit, North Cotabato, together with Anacleto Simon and Conrado Erinada, trainees attached to the Headquarters & Headquarters Company, 3rd Infantry Battalion, 2nd Infantry Division, Philippine Army, stationed at the Army Detachment along Simuay Junction, Simuay, Sultan Kudarat, Maguindanao, were accused of murder for the death of the victims Herminigildo Tenorio and his driver Nolasco Mendoza with the use of their firearms in the afternoon of October 3, 1977 at Sultan Kudarat, Maguindanao, qualified with the aggravating circumstances of treachery, evident premeditation and abuse of superior strength.

Specifically, in Criminal Case No. 561, the information charged the accused as follows:

"That on or about October 3, 1977 in the afternoon, in the Municipality of Sultan Kudarat, Province of Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, conspiring, confederating and helping one another with treachery, evident premeditation and the use of superior strength all armed with high powered weapons did then and there willfully, unlawfully, and feloniously, and with the use of their guns shoot Mr. Nolasco Mendoza hitting the latter on the different parts of his body causing his instantaneous death.

"Contrary to law with the aggravating circumstances of treachery, evident premeditation, and the use of superior strength."

Similarly, in Criminal Case No. 562, the information reads:

"That on or about October 3, 1977, in the afternoon, in the Municipality of Sultan Kudarat, Province of Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and helping one another with treachery, evident premeditation and the use of superior strength all armed with high-powered weapons did then and there willfully, unlawfully, and feloniously, and with the use of their guns shoot Mr. Herminigildo Fajardo Tenorio hitting the latter on the different parts of his body causing his instantaneous death.

"Contrary to law with the aggravating circumstances of treachery, evident premeditation, and the use of

superior strength."

The charges having been allegedly committed at the same place and occasion and involving all the four (4) accused in each instance were jointly tried per order of the trial court dated February 28, 1978 and after completion thereof, the two herein accused--appellants were found guilty while the remaining two accused, Anacleto Simon and Conrado Erinada were acquitted. We quote hereunder the dispositive portion of the decision now under review, to wit:

"WHEREFORE, Martin Mandolado is found guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 562 for the killing of Herminigildo Fajardo Tenorio, and also in Criminal Case No. 561 for the killing of Nolasco Mendoza, with the aggravating circumstances of (1) 'advantage was taken of his being a draftee in the Philippine Army,' and (2) 'abuse of confidence or obvious ungratefulness' without the presence of any mitigating circumstances and is meted the following penalty, to wit:

In Criminal Case No. 562, for the killing of Herminigildo Tenorio, he is sentenced to suffer the penalty of the crime in its maximum degree which is death.

He shall pay the heirs of the deceased the amount of P12,000.00 for the death of this victim, and the amount of P20,000.00 as moral and exemplary damages.

In Criminal Case No. 561 for the killing of the driver, Nolasco Mendoza, he is similarly sentenced to death.

He is to pay the heirs of said deceased the amount of P50,000.00 for the death of said victim, and the amount of P100,000.00 as moral and exemplary damages.

In both Criminal Cases Nos. 561 and 562, on the grounds of reasonable doubt, Anacleto Simon and Conrado Erinada are both found not guilty. This case against them (Anacleto Simon and Conrado Erinada) is hereby dismissed.

In Criminal Cases Nos. 561 and 562, Julian Ortillano was found guilty as an accessory. He fired his M-16 armalite whenever Martin Mandolado fired his machine gun and this could be for no other purpose than to conceal or destroy the body of the crime in making it appear the victims were fighting them or running away or that somebody else like the MNLF, rebels, NPA or bandits committed the crime. Furthermore, in his own admission, the purpose of their attempt to leave Mindanao for Bulacan after this incident was to hide and wait for the time when Martin Mandolado could succeed in settling this case which is evidence that he assisted in the escape of the principal of the crime.

He is hereby sentenced in each of both cases to serve an imprisonment term of six (6) years of Prision Correccional as the minimum penalty, of seventeen (17) years of Prision Mayor as the maximum penalty.

Martin Mandolado and Julian Ortillano are to pay jointly and solidarily the cost of this litigation.

SO ORDERED.

Given in the City of Cotabato, Philippines, the 28th day of June, 1979.

(SGD.) ALEJANDRO R. LEOPANDO
District Judge"

The facts are as stated in the People's Brief as follows:

"In the morning of October 3, 1977, Julian Ortillano, Martin Mandolado, Conrado Erinada and Anacleto Simon, trainees/draftees of the Armed Forces of the Philippines and assigned to the 3rd Infantry Battalion of

the Philippine Army, were passengers of a bus bound for Midsayap, North Cotabato (p. 8, t.s.n., Feb. 21, 1979). They alighted at the bus terminal in Midsayap. Being all in uniform, armed and belonging to the same military outfit, they got acquainted and decided to drink ESQ rum, at the said bus terminal (pp. 10-11, Supra).

While drinking, Conrado Erinada and Anacleto Simon decided to join appellants in going to Pikit, North Cotabato, home base of appellants (p. 59, id.). After drinking for about an hour, appellant Mandolado got drunk and went inside the public market. Subsequently, he returned, grabbed his .30 caliber machine gun and started firing. His companions tried to dissuade him but he nonetheless continued firing his gun (pp. 11-12, Supra).

Sensing trouble, Conrado Erinada and Anacleto Simon ran away, hailed and boarded a passing Ford Fiera with some passengers on board. Appellants followed and boarded also the vehicle (pp. 13-15, Supra). The soldiers forced the driver of the Ford Fiera to bring them to the Midsayap crossing (p. 58, t.s.n., July 24, 1978).

On their way, appellant Mandolado got his knife and tried to attack the driver (pp. 61-62, Supra). After appellants alighted at said crossing, the Ford Fiera sped away. Appellant Mandolado fired his .30 caliber machine gun at the speeding vehicle (p. 51, t.s.n., Jan. 17, 1979) hitting the right side of the back of the driver's sister who was then on board said vehicle (p. 64, t.s.n., July 24, 1978).

While waiting for a ride at the Midsayap crossing a privately owned jeep, driven by Herminigildo Tenorio, passed by. On board said jeep which was bound for Cotabato City were Nolasco Mendoza and two (2) others, but the latter two alighted at said crossing. Conrado Erinada and Anacleto Simon boarded the jeep. Thereafter, appellants ran after the jeep, shouted at Herminigildo Tenorio, the driver thereof, to stop the vehicle and subsequently, both appellants Mandolado and Ortillano boarded the jeep (p. 34, Supra). On the way, both appellants kept firing their guns (pp. 54-55, t.s.n., Jan. 17, 1979) prompting Herminigildo Tenorio to remark, "Kung hindi kayo tatahimik, ibabangga ko itong jeep" (Sworn Statement, Exh. Q, Mandolado) which literally means, "if you will not stop firing your guns, I will ram this jeep into something."

Upon learning that the jeep was bound for Cotabato City and not Pikit, North Cotabato, appellant Mandolado got angry, "cocked" his gun and ordered the driver to stop (pp. 36-38, Supra). While the jeep was coming to a full stop, Conrado Simon and Anacleto Erinada immediately jumped off the jeep and ran towards their detachment camp located some two hundred fifty meters away. Appellants also got off the jeep. Thereupon, appellant Mandolado fired his 30 caliber machine gun at and hit the occupants of the jeep (Sworn Statement, Exh. Q, Mandolado). Appellant Ortillano likewise, fired his armalite, not at the occupants of said jeep but downwards hitting the ground. These bursts of gunfire were heard by both Conrado Erinada and Anacleto Simon who were then already about fifty meters away from the jeep while running towards their detachment camp (pp. 38 and 42, t.s.n., Feb. 21, 1979). Although it was then raining torrentially, Anacleto Simon recognized the bursts of gunfire as those of a machine gun (p. 43, Supra).

Appellants ran away from the scene and boarded another vehicle, alighting at Pinaring crossing. Appellant Mandolado proceeded to a house where he left his belongings and changed his wet uniform (p. 104, Supra). After about an hour, they rode in a "Hino" passenger bus bound for Midsayap. On board said bus was a certain Mr. Leopoldo Jalandoni who was seated in front of the appellants.

Upon reaching a BPH building near Nuling, Sultan Kudarat, the passengers of said bus were ordered to alight at the military check point but appellant Mandolado did not alight (pp. 10-13, t.s.n., Oct. 5, 1975). As the bus was not proceeding to Pikit, North Cotabato and upon advice of Mr. Jalandoni, appellants alighted at the Midsayap crossing and waited for a bus bound for Pikit (pp. 19-20, Supra).

Appellants were able to ride on a sand and gravel truck which took them to Pikit, North Cotabato, arriving thereat at about 3:00 o'clock in the afternoon. At their camp, appellants returned their firearms, but did not report the

incident. In the evening, appellants attended a party at the Pikit Elementary School (pp. 32-35, t.s.n., April 16, 1979). The following day, appellants proceeded to Davao City but stopped at Kavocan where they stayed overnight.

Arriving at Davao City, the following morning, appellants went to see a movie and afterwards proceeded to the Office of Doña Ana, a shipping firm (p. 40, Supra), where they saw a certain Sgt. Villanueva who was then leaving for Luzon. Sgt. Villanueva informed the appellants that they were suspects in the Tenorio and Mendoza killings. Immediately thereafter, appellant Mandolado purchased two passenger tickets for Manila. The other ticket was for appellant Ortillano (pp. 120-123, Supra). However, before appellants could board the ship bound for Manila, they were apprehended by a team led by Lt. Licas (p. 45, Supra). Appellants were brought to Pikit, North Cotabato where they were investigated by Lts. Licas and Maburang about the aforesaid killings. The following day, appellants were brought to the headquarters of the 2nd MP Battalion at P.C. Hill, Cotabato City where they were again investigated. In said investigation, after appellants were duly apprised of their constitutional rights, they executed and signed their respective sworn statements (Exhs. "O" and "R"). Appellant Mandolado admitted the killing of Tenorio and Mendoza (Exh. "Q"); whereas appellant Ortillano admitted his presence at said killings and of his having fired his armalite downwards after appellant Mandolado fired upon and killed the afore-named victims (Exh. "R").

Silverio Balderosa, on October 3, 1977, at about 12:30 p.m., was on board a "Pinoy" jeep. On his way home to Midsayap, he passed a jeep parked along the highway towards the direction of Cotabato City and about 250 meters away from the BPH building. The parked jeep was surrounded by several persons. Alighting from the "pinoy" jeep, he went near the parked jeep to see what happened. He saw the lifeless bodies of two persons, one sprawled along the highway whom he recognized as Nolasco Mendoza and the other whom he recognized as Mr. Tenorio slumped on the wheel of the parked jeep (pp. 13-15, t.s.n., July 24, 1978).

The postmortem examination conducted by Dr. Taeb Zailon, Municipal Health Officer of Sultan Kudarat, Maguindanao, upon the bodies of Tenorio and Mendoza on October 3, 1977, were reduced into writing and reads as follows:

POST-MORTEM EXAMINATION REPORT

Post-mortem examination was performed at the Rural Health Center, Sultan Kudarat, Maguindanao on October 3, 1977 at around 3:30 p.m. in the presence of police officers of Sultan Kudarat, Maguindanao and personnel of the Health Center and other persons in the vicinity.

PERTINENT PERSONAL DATA:

Name: HERMINIGILOO TENORIO

Sex: Male

Age: 55 yrs. old

Height: 5'5"

Weight: 145 lbs.

C.S.: Married

Residence: Midsayap, N. Cotabato

Place of Death: Sultan Kudarat, Maguindanao

POST-MORTEM EXAMINATION FINDINGS:

- Avulsed cranial content at the level of forehead including eyeballs;
- Wound— circular lacerate 3 inches in diameter T-T at lateral side of right deltoie region;
- Wound— 1 in. circular wound at the right forearm T-T 4 inches below the elbow;

- Comminuted fracture at right leg just below the knee cap;
- Comminuted fracture at right leg just above ankle;
- Wound— 1 in. circular non-penetrating at lateral side left arm;
- Wound— 1/2 in. circular non-penetrating at left region.

PROBABLE CAUSE OF DEATH

Hemorrhage severe secondary to multiple gunshot wounds.

Respectfully submitted:

(SGD.) TAE B ZAILON, M.D.
Municipal Health Officer
Sultan Kudarat, Maguindanao (Exh. "N")

POST-MORTEM EXAMINATION REPORT

Post-mortem examination report was performed at the Rural Health Center, Sultan Kudarat, Maguindanao on October 3, 1977 at 3:30 p.m. in the presence of police officers, personnel of the health center and other civilians.

PERTINENT PERSONAL DATA:

Name: NOLASCO MENDOZA
Sex: Male
Age: 45 years old
Height: 5'4"
Weight: 135 lbs.
C.S.: Married
Residence: Midsayap, North Cotabato
Place of Death: Sultan Kudarat, Maguindanao

POST-MORTEM EXAMINATION FINDINGS:

- Wound— Circular, one inch wide, one inch above right eyebrow;
- Wound— Circular, 1/2 inch wide, lateral part of left side of neck;
- Wound— Circular, 3/4 inch wide, upper aspect of right deltoid muscle;
- Wound— Circular, 1 1/2 inch wide, lateral aspect of right deltoid muscle; and
- Wound— Circular, 1 1/2 inch wide, lateral aspect of right breast 3 inches below arm pit.

PROBABLE CAUSE OF DEATH

Wounds, gunshot, multiple shock, secondary hemorrhage, external-internal, extensive

Respectfully submitted:

(SGD.) TAIB A. ZAILON, M.D.
Municipal Health Officer
Sultan Kudarat, Maguindanao (Exh. "P")

Acting upon the letter request of the commanding officer, Lt. Rodolfo Villanueva, a ballistic test was conducted by Sgt. Leon Platoon of the P.C. Crime Laboratory at Cotabato city, on the firearms issued to appellant

Mandolado, Anacleto Simon and Conrado Erinada. In said test, bullets were fired from said guns and the empty shells, called test specimen (T-05-1 to T-05-3), together with the empty shells recovered from the scene of the crime called specimen evidence, and the 10 links of cal. 30 machine gun, were forwarded to Camp Crame for Ballistic Examination (pp. 20-24, t.s.n., October 6, 1978). Sgt. Platoon marked the 8 shells of .30 caliber recovered from the scene of the crime as HT-1 to HT-8 and the armalite shells as CM-9 to CM-13.

In the ballistic examination conducted by Reynaldo Pasatiempo of the Camp Crame Criminal Laboratory, it was found that the caliber .30 shells recovered from the scene of the crime (Exh. "HT-1" to "HT-8") reveal identical impressions as the test specimens of five empty shells ("T-05-1" to "T-05-3") fired from appellant Mandolado's machine gun. Whereas the armalite shells recovered from the scene of the crime reveal non-identical impressions with the shells fired from the armalites of Conrado Simon and Anacleto Erinada. He then concluded that the .30 caliber shells recovered from the scene of the crime were fired from the same machine gun issued to appellant Mandolado (pp. 60-62, t.s.n., October 6, 1978)."

Appellants submit only one assigned error and that is, that the trial court erred in convicting appellants Martin Mandolado and Julian Ortillano beyond reasonable doubt as principal and accessory, respectively, of the crimes charged on the strength of the prosecution's evidence totally disregarding the evidence of the defense. Appellants contend that their guilt was not proven beyond reasonable doubt inasmuch as the circumstantial evidence of the prosecution merely proved the fact of the deaths of Tenorio and Mendoza and not as to the actual perpetrators of the crime; that the evidence of the prosecution being weak on its own, the only link of the appellant Mandolado to the killings is his extra-judicial sworn confession, Exhibit "Q," which he stoutly repudiates for being unlawfully taken under force and duress and in the failure of the investigator to apprise him of his constitutional right to remain silent and to be assisted by counsel.

It is contended by the defense that although the ballistic expert and the firearm examiner testified that they conducted ballistic and firearm examinations, respectively and that their finding was that the caliber .30 empty shells were fired from the machine gun issued to Martin Mandolado, the prosecution failed to prove that the "evidence specimen" (Exh. "HT-1" to Exh. "HT-8") were the empty shells recovered from the scene of the crime, the prosecution not having presented any witness who recovered these empty shells. It was not shown that these empty shells were recovered from the scene of the crime nor that the slugs of these empty shells caused the gunshot wounds which resulted in the death of the victims. Hence, the only link of appellant Martin Mandolado with the empty caliber .30 shells was the fact that these shells were fired from his machine gun, yet the records disclose that Mandolado accidentally fired his machine gun at the Mintranco Terminal in Midsayap, North Cotabato, which is not the scene of the crime, when he threatened the person who tried to steal his bag.

Appellant Mandolado's claim that he was not previously apprised of his constitutional rights before he executed his extra-judicial confession, Exh. "Q," deserves scant consideration. His claim is clearly belied by the opening statements appearing in his sworn statement, which reads, thus:

'Preliminaries: Dft Martin Mandolado please be informed that you are now under investigation by this unit in connection with the Shooting incident that happened at National Highway particularly near the vicinity of the BPH Office at Sultan Kudarat, Maguindanao on or about 031300H October 1977. Before I ask you any questions, you must understand your legal rights to wit: You have the right to remain silent, Anything you say maybe used for or against you as evidence. You have the right to the services of a lawyer of your own choice. If you cannot afford a lawyer and you want one, A lawyer will be appointed for you before I ask you any questions.

Question:

Are these all clearly understood by you?

Answer:

Yes, sir.

2.

Q —

Do you wish now to proceed with this investigation even in the absence of a lawyer of your own choice?

A —

Yes, sir.

3.

Q —

Are you willing to give your statement without being forced, coerced, intimidated or promised of any reward whatsoever?

A —

Yes, sir.

4.

Q —

Now that you are about to testify under oath, do you swear to tell the truth?

A —

Yes, sir.

W A I V E R

'I have been advised of my legal right to remain silent; that anything I say maybe used as evidence against me, and that I have the right to a lawyer to be present with me while I am being questioned.

I understand these rights and I am willing to make a statement and answer to questions. I do not want the assistance of a counsel and I understand and know what I am doing. No promises or threats have been made to me and no force or pressure or any kind have been used against me.'

(SGD.) MARTIN A. MANDOLADO

Dft 07A-2853 PA

(Affiant)"

And with respect to the accused-appellant Julian Ortillano, the same preliminary questions were made to him before his investigation and he answered similarly as his co-accused Mandolado which is shown in Exhibit "R" and said Ortillano likewise executed the same waiver as that of his co-accused, which is marked Exhibit "R-A."

The contention of both appellants that they signed their sworn statements (Exhibits Q and R) because they were maltreated and forced, cannot be believed, not only for failure on their part to present any evidence of

compulsion, duress or violence but also because they even failed to identify their investigators who allegedly inflicted maltreatment to them, much less complained to the officials who administered the oaths to their sworn statements, of such maltreatment, if any. Moreover, the sworn statements themselves contain significant and important details which the affiants alone could have furnished, thereby clearly revealing the voluntariness of said statements and rendering the same admissible as evidence (*People vs. Rosales*, 108 SCRA 339; *People vs. Regular*, 108 SCRA 23, 39; *People vs. Tintero*, 111 SCRA 714; *People vs. Estero*, 91 SCRA 93, 99).

The conviction of appellant Mandolado for double murder appears to be based not only on his extra-judicial confession (Exhibit Q) but also upon the following circumstances which proved that he did shoot and kill the victims, Tenorio and Mendoza, beyond peradventure of doubt. And these are listed in the People's Brief, to wit: "(1) he repeatedly fired his .30 caliber machine gun while intoxicated at the bus terminal in Midsayap (pp. 11-12, t.s.n., February 21, 1979); (2) that he fired at the Ford Fiera which took them in the Midsayap junction (p. 51, Supra) hitting one of its passengers (p. 64, t.s.n., July 24, 1978); (3) that Anacleto Simon while running away from the jeep driven by the deceased, heard a burst of machine gun fire coming from the direction of the jeep (p. 42, t.s.n., February 21, 1979); (4) the result of the Ballistic examination showing that the shells recovered from the scene of the crime were fired from the gun issued to appellant Mandolado (pp. 60-62, t.s.n., October 16, 1978); (5) the attempted flight of both appellants from justice (pp. 120-123, t.s.n., April 16, 1979) and which act clearly indicates guilt for the 'wicked fleeth where no man pursueth but the righteous are as bold as the lion'; and lastly (6) appellant's own admission before the lower court that he killed Tenorio and Mendoza although he claims the same to be accidental (pp. 7-8, t.s.n., October 6, 1978)."

The killing of the two victims in the case at bar is correctly qualified as murder, there being present the qualifying circumstance of treachery which is alleged in the informations. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (Art. 14, paragraph 16, Revised Penal Code). The prosecution evidence is quite clear and explicit that when appellants alighted from the jeep, the accused Mandolado immediately fired his .30 caliber machine gun at the occupants of the jeep, the victims Nolasco Mendoza and Herminigildo Tenorio, and both of them died instantaneously on the spot, and from this sudden means or manner of attack, it can reasonably be concluded that it tended directly to insure its execution without risk to the appellant-assailant and also deprive the victims of any chance or opportunity to defend themselves. We also rule that the particular means or manner employed by the appellant-assailant was consciously or deliberately sought and not a mere accidental circumstance resorted to on the spur of the moment on the basis of the evidence that the appellant had previously and repeatedly fired his .30 caliber machine gun at the bus terminal in Midsayap and had also fired the machine gun at the Ford Fiera which took them to Midsayap junction and that appellants waited for sometime riding on board the jeep driven by Tenorio before they ordered the Jeep to stop, alight therefrom and then shoot the occupants therein.

While the informations allege as aggravating circumstances that of evident premeditation and the use of superior strength, aside from treachery, We cannot agree with the finding of the trial court that the aggravating circumstances of (1) advantage was taken of his being a Draftee in the Philippine Army, and (2) abuse of confidence or obvious ungratefulness were present in the commission of the crime.

While it may be true that a soldier in the Armed Forces of the Philippines is deemed as one who holds public position (*U.S. vs. Gimenea*, 24 Phil. 464, where a constabulary soldier was held to be a public officer), there is no persuasive showing that herein appellants being draftees of the Army, in full military uniform and carrying their high-powered firearms, facilitated the commission of the crimes they were charged. It may be conceded that as draftees, the accused could easily hitch-hike with private vehicles, as in the case of the deceased Tenorio's

owner-type jeep, but there is no evidence that when they stopped the jeep the accused already intended to shoot the occupants of the vehicle. As it was held in *People vs. Pantoja*, 25 SCRA 468, 471 which We reiterate that "There is nothing to show that the appellant took advantage of his being a sergeant in the Philippine Army in order to commit the crimes. The mere fact that he was in fatigue uniform and had an army rifle at the time is not sufficient to establish that he misused his public position in the commission of the crimes. . . ."

There is also merit in appellants' contention that there could be no abuse of confidence as the evidence on record showed the lack of confidence by the victims to the appellants, that this confidence was abused, and that the abuse of the confidence facilitated the commission of the crimes. In order that abuse of confidence be deemed as aggravating, it is necessary that "there exists a relation of trust and confidence between the accused and one against whom the crime was committed and the accused made use of such a relationship to commit the crime." (*People vs. Comendador*, 100 SCRA 155, 172). It is also essential that the confidence between the parties must be immediate and personal such as would give that accused some advantage or make it easier for him to commit the crime; that such confidence was a means of facilitating the commission of the crime, the culprit taking advantage of the offended party's belief that the former would not abuse said confidence (*People vs. Hanasan*, 29 SCRA 534). In the instant case, there is absolutely no showing of any personal or immediate relationship upon which confidence might rest between the victims and the assailants who had just met each other then. Consequently, no confidence and abuse thereof could have facilitated the crimes.

Similarly, there could have been no obvious ungratefulness in the commission of the crime for the simple reason that the requisite trust of the victims upon the accused prior to the criminal act and the breach thereof as contemplated under Article 14, par. 4 of the Revised Penal Code are manifestly lacking or non-existent. In all likelihood, the accused Army men in their uniforms and holding their high-powered firearms cowed the victims into boarding their jeep for a ride at machine gun point which certainly is no source of gratefulness or appreciation.

The finding of the trial court that: "There is no doubt about Martin Mandolado's state of intoxication. He was so drunk that even his three (3) companions armed with M-16 armalite feared him. The same thing was true with the MPs," should credit said accused with the mitigating circumstance of drunkenness but which the trial court decision failed to appreciate in his favor. Accordingly, the penalty to be imposed upon the accused-appellant Mandolado shall be reduced in the computation thereof.

With respect to the accused-appellant Julian Ortillano who was found guilty as an accessory in Criminal Cases No. 561 and No. 562 for having fired his M-16 armalite whenever Martin Mandolado fired his machine gun and, according to the court, this could be for no other purpose than to conceal or destroy the body of the crime and making it appear that the victims were fighting them or running away or that somebody else like the MNLF, rebels, NPA or bandits committed the crime, and for assisting in the escape of the principal (Martin Mandolado) of the crime and sentenced in each of both cases to serve imprisonment for a term of six (6) years of prision correccional as minimum to seventeen (17) years of prision mayor as maximum, We find and hold that the accused-appellant Julian Ortillano should be convicted, not as an accessory, but as an accomplice.

An accomplice cooperates in the execution of the offense by previous or simultaneous acts, provided he has no direct participation in its execution or does not force or induce others to commit it, or his cooperation is not indispensable to its accomplishment (Art. 18, Revised Penal Code).

"To hold him liable, upon the other hand, as an accomplice, it must be shown that he had knowledge of the criminal intention of the principal, which may be demonstrated by previous or simultaneous acts which contributes to the commission of the offense as aid thereto whether physical or moral (*People vs. Silvestre, et al.*, 56 Phil. 353, 356). As aptly stated in *People vs. Tamayo* (44 Phil. 38, 49): 'It is an essential condition to the

existence of complicity, not only that there should be a relation between the acts done by the principal and those attributed to the person charged as accomplice, but it is further necessary that the latter, with knowledge of the criminal intent, should cooperate with the intention of supplying material or moral aid in the execution of the crime in an efficacious way." (People vs. Custodio, 47 SCRA 289, 303 (1972)).

In the case at bar, Ortillano, by his acts, showed knowledge of the criminal design of Mandolado. He was present when Mandolado tried to attack the driver of the Ford Fiera with a knife and fired at the vehicle hitting a female passenger (p. 4, Decision). When Mandolado got angry and "cocked" his gun and ordered Tenorio to stop the jeep, their two other companions, Simon and Erinada, immediately jumped off the jeep and ran away, but Ortillano stayed. In a display of unity with Mandolado, Ortillano fired his armalite while they were riding in the jeep of the victim (p. 5, Decision). And Ortillano's act of firing his gun towards the ground manifested his concurrence with the criminal intent. In other words, Ortillano's simultaneous acts supplied, if not material, moral aid in the execution of the crime in an efficacious way. Ortillano's presence served to encourage Mandolado, the principal, or to increase the odds against the victims (U.S. vs. Guevara, 2 Phil. 528 [1903]; People vs. Silvestre and Atienza, 56 Phil. 353 [1931]).

In convicting the accused Ortillano as an accomplice, We, however, appreciate the mitigating circumstance of drunkenness in his favor, the same as We did to his co-accused Martin Mandolado, the principal defendant.

In resumé, the crime committed by the accused-appellant Martin Mandolado is murder, qualified by treachery. There being no aggravating circumstance but having found and appreciated drunkenness which is not habitual as a mitigating circumstance, the penalty prescribed under Article 248 of the Revised Penal Code which is reclusion temporal in its maximum period to death shall be imposed in its minimum period. Applying the Indeterminate Sentence Law, the accused shall be sentenced to imprisonment of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum in each case.

As to the accused-appellant Julian Ortillano, convicted as an accomplice to the crime of murder, and appreciating in his favor the mitigating circumstance of drunkenness which is not habitual, the penalty to be imposed upon him shall be one degree lower than that imposed for murder (Article 52, Revised Penal Code), which will be in the minimum period. Applying the Indeterminate Sentence Law, the accused Ortillano shall be sentenced to imprisonment of four (4) years, two (2) months of prision correccional as minimum to ten (10) years and one (1) day of prision mayor as maximum in each case.

With respect to damages, for the death of Herminigildo Tenorio, the award of P12,000.00 as compensatory damages and P20,000.00 for moral damages is hereby affirmed.

For the death of Nolasco Mendoza, We reduce the award of P50,000.00 as compensatory damages to P12,000.00. We also reduce the award of P100,000.00 as moral damages to P20,000.00.

The liability of the appellants for the above damages which shall be paid to the heirs of the victims shall be in solidum (Article 110, par. 1, Revised Penal Code).

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the judgment of the trial court is hereby MODIFIED. The accused--appellant Martin Mandolado is hereby found guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 561 for the killing of Nolasco Mendoza and in Criminal Case No. 562, for the killing of Herminigildo Tenorio. There being no aggravating circumstance but having found and appreciated drunkenness which is not habitual as a mitigating circumstance, said accused is hereby sentenced to suffer imprisonment of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum in each of the two cases.

The accused-appellant Julian Ortilano is hereby found guilty beyond reasonable doubt as accomplice in the crime of murder in Criminal Case No. 561 for the killing of Nolasco Mendoza and in Criminal Case No. 562 for the killing of Herminigildo Tenorio. Similarly, there being no aggravating circumstance but having found and appreciated the mitigating circumstance of drunkenness which is not habitual in his favor, said accused is hereby sentenced to suffer imprisonment of four (4) years, two (2) months of prision correccional as minimum to ten (10) years and one (1) day of prision mayor as maximum in each case.

In Criminal Case No. 561 for the killing of Nolasco Mendoza, We sentence both accused to pay the heirs of the victim P12,000.00 as compensatory damages and f20,000.00 as moral damages. The liability of the accused shall be in solidum.

In Criminal Case No. 562 for the killing of Herminigildo Tenorio, We sentence both accused to pay the heirs of the victim P12,000.00 as compensatory damages and P20,000.00 for moral damages. The liability of the accused shall also be in solidum.

Costs against the appellants.

Judgment modified.

SO ORDERED.

Fernando, C. J., Teehankee, Makasiar, Concepcion Jr., Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.
Aquino, J., no part.

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