

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON DAGANGON, VEDASTO LAGAPA, MARIA LAGAPA, ONCIANG LAGAPA, JUANITO PETALINO, PEDRO ELLANA, JR., ONE ALIAS “DANNY”;, ONE ALIA...

G.R. Nos. 62654-58. November 13, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the then Court of First Instance of Davao, Branch III, which convicted the appellants of three counts of murder and two counts of kidnapping and serious illegal detention.

In the early dawn of May 18, 1978, in the remote barrio of Mapula, Paquibato, Davao City, Vicente Guillena, Sr., and his two sons, Jimmy and Vicente, Jr., were killed in a manner characterized by malevolence and brutality. After the slaying, the killers fled and took with them four members of the victim's household, namely; Benito Gallo, Alfonsa Guillena, Llewelyn Guillena and Cecile Guillena, and detained them for ten days.

As a result of this gruesome incident, three criminal informations for murder and two for kidnapping and serious illegal detention were separately filed against nine persons of whom only Ramon Dagangon, Ramon "Ata" Mampintuan, Vedasto Lagapa, Maria Lagapa, Onciang Lagapa and Candida Madelo were apprehended and stood trial.

All of the accused were charged as follows:

- "Criminal Case No. 4366:

"The undersigned accuses the above-named accused of the crime of Kidnapping and Serious Illegal Detention, under Art. 267 of the Revised Penal Code, committed as follows:

"That on or about May 18, 1978, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping one another, wilfully, unlawfully and feloniously and by means of force and violence kidnapped one Benito Gallo, while the latter was in the house, and there-after was deprived of his liberty for a period of ten (10) days, under restraint and against the will of the said Benito Gallo.

"Contrary to law."

- "Criminal Case No. 4367:

"The undersigned accuses the above-named accused of the crime of Kidnapping and Serious Illegal Detention, under Art. 267 of the Revised Penal Code, committed as follows:

"That on about May 18, 1978, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping one another, wilfully,

unlawfully and feloniously and by means of force and violence kidnapped Alfonsa Lacre Guillena and her two (2) minor children, namely, Llewelyn Guillena and Cecile Guillena 4 and 2 years old respectively, in their house, and thereafter were deprived of their liberty for a period of ten (10) days, under res-traint and against their will.

"Contrary to law."

- "Criminal Case No. 4368:

"The undersigned accuses the above-named accused of the crime of MURDER, under Art. 248 of the Revised Penal Code, committed as follows:

"That on or about May 18, 1978, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping one another, armed with deadly weapons with treachery and evident premeditation and with intent to kill, wilfully, unlawfully and feloniously attacked, assaulted, hacked and shot with said weapons one Vicente Romulo Guillena, Jr., thereby inflict-ing upon him fatal wounds, to wit:

"HACK WOUND 15 CM. ACROSS THE ANTERIOR SEVERING THE TRANCHEA ESOPHAGUS BOTH CAROTID ARTERIES AND BOTH JUGULAR VEINS.

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GUNSHOT WOUND, THRU AND THRU, ENTRANCE MID-CENTER AT THE BACK 1 CM. IN DIAMETER AT THE LEVEL OF THE 6TH THORACIC VERTEBRA FRACTURING THE SAME AND SPLINTERING THE SLUG, MAKING 2 EXITS MAIN SLUG AT THE ENTERIOR PORTION OF THE LEFT ARMPIT. 7 CM. BY 4 CM. SECONDARY SPLINTER EXITTED AT THE ABDOMEN 3 CM. LEFT AND ABOVE THE UMBILIOUS 2.5 CM. BY 1.5 CM. ORGANS HIT: HEART, LUNGS AND INTESTINES.

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GUNSHOT WOUND, THRU AND THRU, ENTRANCE 1 CM. IN DIAMETER AT THE PROXIMAL PORTION OF THE LEFT THIGH ANTERIOR SIDE. EXIT 13 CM. BY 12 CM. AT THE MID-PORTION POSTERIOR SIDE, FRACTURING THE FEMUR.

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GUNSHOT WOUND, THRU AND THRU ENTRANCE 1 CM. IN DIAMETER MID-PORTION OF THE SKIN PROXIMAL PORTION OF THE LEFT LEG. EXIT 11 CM. BY 9 CM. AT THE MID-PORTION, POSTERIOR SIDE FRACTURING BOTH TIBIA AND FIBULA.

which wounds caused the death of Vicente Guillena, Jr.

"That the commission of the foregoing offense was attended by the aggravating circumstances of dwelling, nighttime, evident premeditation, cruelty and minority.

"Contrary to law."

- "Criminal Case No. 4369:

"The undersigned accuses the above-named accused of the crime of MURDER, under Art. 248 of the Revised Penal Code, committed as follows:

"That on or about May 18, 1978, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping one another, armed with

deadly weapons with treachery and evident premeditation and with intent to kill, wilfully, unlawfully and feloniously attacked, assaulted and hacked with said weapons one Jimmy Guillena, thereby inflicting upon him fatal wounds, to wit:

"ROPE BURN, STILL WITH THE ROPE AROUND BOTH WRISTS.

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HACK WOUND 13 CM. BY 1 CM. ACROSS THE FACE FROM THE RIGHT CHEEK, UPWARDS TO THE LEFT SIDE OF THE FOREHEAD FRACTURING THE BASE OF THE BRIDGE OF THE NOSE.

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CONTUSION OF THE WHOLE UPPER AND LOWER LIPS WITH ALL THE FRONT TEETH FRACTURED AND DETACHED.

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HACK WOUND 13 CM. ACROSS THE ANTERIOR TO THE LEFT SIDE OF THE NECK, SEVERING FROM THE TRACHEA, ESOPHAGUS, LEFT CAROTID ARTERY AND LEFT JUGULAR VEIN.

which wounds caused the death of Jimmy Guillena.

"That the commission of the foregoing offense was attended by the aggravating circumstances of dwelling, nighttime, evident premeditation and cruelty.

"Contrary to law."

- "Criminal Case No. 4373:

"The undersigned accuses the above-named accused of the crime of MURDER, under Art. 248 of the Revised Penal Code, committed as follows:

"That on or about May 18, 1978, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping one another, armed with deadly weapons with treachery and evident premeditation and with intent to kill, wilfully, unlawfully and feloniously attacked, assaulted, hacked and shot with said weapons one Vicente Guillena, Sr., thereby inflicting upon him fatal wounds, to wit:

"HACK WOUND 22 CM. ACROSS THE ANTERIOR NECK SEVERING THE TRACHEA, ESOPHAGUS, BOTH CAROTID ARTERIES AND BOTH JUGULAR VEINS.

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HACK WOUND 10 CM. BY 5 CM. AT THE RIGHT CHEST FROM THE STERNUM DOWN TO THE LEVEL OF RIGHT 7TH RIB, MID-CLAVICULAR HITTING THE BASE OF THE LUNGS AND THE UPPER PORTION OF THE LIVER.

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GUNSHOT WOUND, THRU AND THRU ENTRANCE 2 CM. BY 1.5 CM. LEFT TO THE SPINE AT THE LEVEL OF THE 10TH RIB DIRECTED MEDIANLY AND DOWNWARDS HITTING THE 12TH THORACIC VERTEBRA SPLINTERING THE SLUG AND HITTING THE INTESTINE WITH 3 EXITS 0.6

CM. IN DIAMETER EACH LEFT SIDE OF THE ABDOMEN.

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GUNSHOT WOUND, THRU AND THRU, ENTRANCE 1 CM. IN DIAMETER RIGHT TO THE SPINE AT THE LEVEL OF THE 8TH THORACIC VERTEBRA GRAZING IT, DIRECTED MEDIALY AND TO THE LEFT AND SPLINTERING THE SLUG, EXIT (2) MAIN SLUG EXITTED AT THE ANTERIOR PORTION OF THE LEFT ARMPIT, 5 CM. BY 4 CM. SPLINTERED SLUG EXITTED AT THE POSTERIOR PORTION OF THE LEFT DELTOID REGION 1.5 CM. BY 1 CM. ORGANS HIT: DIAPHRAGM, HEART AND LUNGS.

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GUNSHOT WOUND, THRU AND THRU, ENTRANCE 1.5 CM. X 1 CM. AT THE POSTERIOR AXILLARY LINE AT THE LEVEL OF THE 9TH ICS DIRECTED MEDIALY TO THE LEFT AND UPWARDS, EXIT 6 CM. BY 4 CM. LEFT ANTERIOR AXILLARY LINE AT THE LEVEL OF 3RD ICS. ORGANS HIT: DIAPHRAGM, LUNGS AND HEART.

which wounds caused the death of Vicente Guillena, Sr.

"That the commission of the foregoing offense was attended by the aggravating circumstances of dwelling, nighttime, evident premeditation and cruelty.

"Contrary to law."

The evidence for the prosecution consisted principally of the testimonies of Benito Gallo and Alfonsa Guillena. Their testimonies are summarized in the Solicitor General's brief as follows:

"At about 3:00 o'clock in the morning of May 18, 1978, while Benito Gallo was sleeping in the new house of his employer, Vicente Guillena, Sr. at Mapula, Paquibato, Davao City, he was roused from his sleep by the call of appellant Ramon 'Ata' Mampintuan (pp. 3-9 and 40 tsn., April 27, 1979). Upon waking up, Benito Gallo went down from the house and was surprised to find another person with Ramon 'Ata' Mampintuan. He did not know the other person who was called by appellant Mampintuan as 'Danny' (p. 9 tsn., id.). They asked for some cooked rice but since there was none, Gallo offered to cook some for them (pp. 9-10 tsn., id.). Gallo then walked towards the kitchen located on the ground floor of the house. Suddenly Danny pointed a gun at him (p. 10, tsn., id.). At the same time, appellant Mampintuan pointed a gun at Jimmy Guillena, the 18-year old son of Vicente Guillena, Sr. who was Gallo's companion in the house (Ibid). Then Danny ordered appellant Mampintuan to tie up the two men's hands (Ibid). Appellant Mampintuan tied the hands of Jimmy Guillena and Benito Gallo at their back and brought the two upstairs (pp. 10-11, tsn., id). They were ordered to lie on the floor (p. 10, tsn id). Danny then asked Jimmy Guillena of the whereabouts of the gun of Jimmy's father, former barrio captain (p. 11, tsn id). When Jimmy replied that they had no gun, Danny struck him on the mouth with the butt of his gun (p. 11, tsn., id). Once more, Danny asked for the gun and when he got a negative response, Danny cut off one of Jimmy's ears with a knife (Ibid). For the third time Danny inquired about the gun, and when Jimmy insisted that he did not know, the former cut off the latter's penis (Ibid).

"Danny was about to hit Gallo with the butt of Danny's gun, but appellant Mampintuan intervened to spare him because he (Gallo) was merely a hired hand of the Guillenas (p. 13, tsn., id). Appellant Mampintuan then grabbed Gallo and took him to a room and told him to sit down (Ibid). When appellant Mampintuan left the room, Gallo heard a banging sound followed by Danny's voice saying 'let us go' (Ibid). Gallo stood up and went out of the room (Ibid). He saw appellant Mampintuan with a bloody bolo in his hand and blood splattered on his body (Ibid). He saw also Jimmy Guillena lying lifeless on the floor with a slashed throat (Ibid).

"Danny and appellant Mampintuan together with Benito Gallo then proceeded to the old house of Vicente Guillena, Sr. (p. 14, tsn., id) which was located about 1½ kilometers from his new house (p. 6, tsn., August 21,

1979). Upon arriving there, Danny directed Gallo to call Vicente Guillena, Sr. and tell him that his son Jimmy was suffering from stomach ache (p. 14, tsn., April 27, 1979)

"Upon hearing Gallo's voice, Vicente Guillena, Sr. went down from the house (p. 15, tsn., id). As soon as he reached the ground floor, Danny poked his gun at Vicente Guillena, Sr. and asked for his gun (p. 15, tsn., id). Vicente Sr. told Danny that he no longer had a gun because he had surrendered it to the authorities after his term as barangay captain expired (Ibid). Danny ordered Vicente Sr. to go up the kitchen stairs (Ibid). Danny followed him (Ibid). Upon reaching upstairs, Benito Gallo heard the sound of gunshots (Ibid; pp. 10-11, tsn., August 21, 1979).

"Soon, thereafter, Danny returned downstairs and approached Alfonsa Guillena, the daughter-in-law of Vicente Sr. who was seated on the steps of the front door stairs. She had earlier comedown from the house together with her two minor daughters whose age was 4 years and 2 years, respectively (p. 16, tsn., April 27, 1979). Danny ordered Alfonsa to go upstairs (p. 17, tsn., id). She did as ordered followed by Gallo, Danny and appellant Mampintuan (Ibid). Upstairs, they found Vicente, Jr., age 11 years old, sitting on a bed (Ibid). Vicente, Jr., crying, ran to Alfonsa (p. 12, tsn., August 21, 1979). Danny ordered him to sit down in one corner of the house (Ibid) Then Danny shot Vicente, Jr. twice (p. 19, tsn., April 27, 1979). Alfonsa then pleaded with Danny not to kill her because she has two minor children (p. 13, tsn., August 21, 1979). Danny agreed provided Alfonsa should go with him to the forest (pp. 13-14, tsn., August 21, 1979).

"Alfonsa agreed with Danny and asked permission to bring some clothes (p. 14, tsn., August 21, 1979). Then Danny ordered appellant Mampintuan to check whether Vicente, Sr. was still alive (p. 19, tsn., April 27, 1979; p. 15 tsn., August 21, 1979). Appellant Mampintuan approached the lifeless body of Vicente, Sr. and hacked him twice with a bolo, the first blow hitting the victim on the waist and the second at the throat, at the same time uttering 'this man is hard' (p. 20, tsn., April 27, 1979; p. 15 tsn., August 21, 1979). Appellant Mampintuan then went to the place where the body of Vicente Jr. was lying, and hacked him with a bolo (p. 20, tsn, April 27, 1979).

"Satisfied that their victims were dead, appellant Mampintuan and Danny, together with Benito Gallo and Alfonsa and her two minor children, proceeded to the forest nearby. They untied the hands of Gallo, and Danny ordered him to carry the younger daughter of Alfonsa while appellant Mampintuan carried the older child (p. 21, tsn., April 27, 1979).

"Along the way, they passed the house of appellant Ramon Dagangon who was directed by Danny to go to the house of appellant Vedasto Lagapa, the father of appellant Ramon Dagangon's wife (pp. 22-23, tsn., April 27, 1979; pp. 15-16, tsn., August 21, 1979). Thereafter, the group proceeded to appellant Vedasto Lagapa's house. (p. 23, tsn., April 27, 1979). Appellant Dagangon followed the group as told and caught up with the group at appellant Lagapa's yard (Ibid).

"Upon their arrival, Danny called for appellant Lagapa who answered by opening the door to let the group in (p. 24, tsn., id). At the doorway, Danny told appellant Lagapa and his wife Maria, and appellant Dagangon that 'Inting is already dead and I included the two children because Boy is not there' (p. 24, tsn., April 27, 1979; p. 19, tsn., August 21, 1979). Boy is Alfonsa's husband and the two children referred to were Jimmy and Vicente, Jr. (p. 19, tsn., August 21, 1979). Then Danny, appellant Lagapa and his wife Maria and appellant Dagangon walked towards the kitchen and talked in hushed tones (p. 25, tsn., April 27, 1979). Shortly, thereafter, appellant Lagapa asked his wife to get money (Ibid). Maria returned with P200.00 which she gave to her husband appellant Lagapa who in turn handed the money to Danny (p. 25, tsn., April 27, 1979; p. 20, tsn., August 21, 1979). Danny then stood up and said 'I will get my pack' (p. 25, tsn., April 27, 1979). Maria produced Danny's pack and gave it to him (pp. 25-26, tsn., id).

"From appellant Lagapa's place, the group proceeded to the house of Onciang Lagapa, the sister of appellant Lagapa, where the group ate their breakfast (p. 27, tsn., April 27, 1979). After eating, they proceeded to the forest but Danny told Onciang to bring food for them in the forest (Ibid).

"Later on, a certain Gorio and Benito Ata brought the food coming from Onciang (p. 28, tsn., id). After eating their lunch in the forest, they proceeded to the house of Benito Ata and arrived there at about 7:00 o'clock in the evening (pp. 28-29, tsn., id). They spent the night in the house of Benito Ata (p. 30, tsn., id). The next night they slept in a hut not far from the house of Benito Ata. They stayed for five days in the house of Benito Ata (Ibid) under the watchful eyes of appellant Mampintuan and Danny (p. 34, tsn., April 27, 1979; p. 23, tsn., August 21, 1979). During those five days, Danny sexually attacked Alfonsa for five (5) times (pp. 29 and 33, tsn., August 21, 1979).

"After 5 days in the house of Benito Ata, the group proceeded on foot to Suwawan, Calinan, Davao City (p. 35, tsn., April 27, 1979). While in Suwawan, the group kept on changing the house where they were staying because Danny was wanted in that place (p. 36, tsn., August 21, 1979). Danny planned that the group will proceed to Cotabato (p. 35, tsn., id). However, later on, upon receiving information that PC soldiers were looking for him, Danny changed plan (pp. 36-39, tsn., August 21, 1979). Benito Gallo was released and he went home to Mapula, Paquibato, Davao City. Alfonsa with her two children was instructed to take a bus and proceed to Marbel, Cotabato where Danny will meet her (p. 38, tsn., August 21, 1979). Alfonsa agreed, however, instead of proceeding to Marbel, Cotabato, she proceeded to Davao City (pp. 39-40, tsn., August 21, 1979).

"Upon arriving in Davao City, she went to the house of the uncle of her husband and reported what had happened to her (p. 40, tsn., id). Later on, when her husband arrived there, she also told him what had happened and her husband reported the matter to the police authorities (pp. 40-41, tsn., id). x x x."

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Meanwhile, Benito Gallo was sent by his father to a policeman named Lacuña, their family friend, to seek advice on what to do. The policeman let him stay in his house in Panabo, Davao del Norte, for quite sometime and then took him to Davao City to give his sworn statement to the authorities.

The prosecution also presented as witness one Eduardo Zafra. He testified that on the night of May 17, 1978, four men including one named Danny fetched him in his house to repair a Garand rifle. They went to the house of Ramon Dagangon and later to the house of Vedasto Lagapa where the gun was. On their way home, he saw Ramon Dagangon give some bullets to Danny.

To impute motive upon the accused, Pastora Bulalas, Vicente's widow, and her oldest son, Hilario, Alfonsa's husband, testified that they have a long standing quarrel with the Lagapas. Their differences include political rivalry and disputes over land boundaries. Vicente Guillena, Sr. was also instrumental in the confiscation by police authorities of a .22 magnum pistol owned by Vedasto Lagapa.

In their defense, the accused spouses Vedasto and Maria Lagapa insisted that they had no quarrel with the Guillenas. They testified that on the night of May 17, 1978, they were both at home because Vedasto was sick. Two men knocked at their door and asked for a lighted lamp. Maria recognized one of them as Eduardo Zafra. The two men remained in the ground floor by the front door and by the light of the lamp started to repair a long gun. Maria, then, returned to her husband's side who was at the second floor of the house. After the two men had finished their task, they called her and returned her lamp.

Early the next morning, while Maria was feeding her chickens, she saw four persons passing by. She recognized one of them as Alfonsa Guillena. In answer to her query: "Ponsa what happened to you?", Alfonsa replied: "Just keep quiet Ma, because Tatay is already dead". The group went on to the direction of the mountains. Maria returned to the house, and related to her husband what happened. Later, she went to her son-in-law, Ramon Dagangon, to ask about what Alfonsa told her. She, however, found that Ramon had left together with a laborer of the Guillenas who had come to fetch him.

The accused Ramon Dagangon, for his part, testified that on the night of May 17, 1978, he went to bed early. He got up early the next morning and went to plow his field. At around 7:00 o'clock that morning, two laborers of the Guillenas approached him shouting that Vicente is dead. He went to the Guillena's house and found Vicente's body. He went to the Guillena's house and found Vicente's body at the kitchen floor. He went back to his house, changed his clothes, and went to Paquibato. Since he found no policeman there, he proceeded to Davao City where he reported the crime to the homicide section of the police station.

The accused Ramon "Ata" Mampintuan, however, invoked the defense of uncontrollable fear to justify his participation in the crime. He explained that the word "Ata" pertains to the cultural minority group to which he belongs. He narrated to the court that in the afternoon of May 17, 1978, his father sent him to Mapula to buy some salt and dried fish. After buying the said goods, he decided to spend the night at Marcial Gallo's store. After he ate his supper there, he prepared to go to sleep. Shortly before that, two men arrived, bought tuba and started drinking. He recognized one of them as Eduardo Zafra. During his sleep, he was awakened by Zafra's companion who asked to be accompanied to Benito Gallo's place. When he refused to do so, Zafra's companion pulled out a long gun and threatened him with it. Because he feared for his life, he acceded to the man's commands. Mampintuan's testimony substantially corroborated the testimonies of Benito Gallo and Alfonsa Guillena on the commission of the murders except as to those portions which pertain to the spouses Lagapa and Dagangon. He maintained that they never stopped by the Lagapa's house. During the course of his testimony he identified the name of Zafra's companion as "Danny".

After the prosecution rested its case, all of the accused except Ramon "Ata", filed on October 8, 1980, a motion to dismiss the case on the ground that, as per evidence on record, the prosecution failed to overcome their constitutional presumption of innocence. In an order dated December 3, 1980, the trial court granted the motion with respect to Maria Lagapa, Onciang Lagapa and Candida Madelo, and denied the same with respect to Vedasto Lagapa and Ramon Dagangon. On September 24, 1982, it rendered judgment. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered in:

"Criminal Case No. 4366

finding accused RAMON DAGANGON, VEDASTO LAGAPA, and RAMON 'ATA' MAMPINTUAN guilty beyond all reasonable doubt of the offense of Kidnapping And Serious Illegal Detention as defined and penalized under Article 267, paragraphs 1 and 3 of the Revised Penal Code, hereby sentencing each of the accused to suffer the penalty of reclusion perpetua, and to pay costs;

"Criminal Case No. 4367:

finding accused RAMON DAGANGON, VEDASTO LAGAPA, and RAMON 'ATA' MAMPINTUAN guilty beyond all reasonable doubt of the offense of Kidnapping and Serious Illegal Detention as defined and penalized under Article 267, paragraphs 1 and 4 of the Revised Penal Code, hereby sentencing each of the accused to suffer the penalty of reclusion perpetua, and to pay costs;

"Criminal Case No. 4368

finding accused RAMON DAGANGON, VEDASTO LAGAPA, and RAMON 'ATA' MAMPINTUAN guilty beyond reasonable doubt of the offense of MURDER as defined and penalized under Article 248 of the Revised Penal Code, hereby sentencing each of the accused to suffer the penalty of reclusion perpetua; to indemnify the heirs of Vicente Romulo Guillena, Jr. in the amount of TWELVE THOUSAND (P12,000.00) PESOS without subsidiary imprisonment in case of insolvency and to pay costs;

"Criminal Case No. 4369

finding accused RAMON DAGANGON, VEDASTO LAGAPA, and RAMON 'ATA' MAMPINTUAN guilty beyond all reasonable doubt of the offense of MURDER as defined and penalized under Article 248 of the Revised Penal Code, hereby sentencing each of the accused to suffer the penalty of reclusion perpetua, to indemnify the heirs of Jimmy Guillena in the amount of TWELVE THOUSAND (P12,000.00) PESOS without subsidiary imprisonment in case of insolvency, and to pay costs;

"Criminal Case No. 4373

finding accused RAMON DAGANGON, VEDASTO LAGAPA, and RAMON 'ATA' MAMPINTUAN guilty beyond all reasonable doubt of the offense of MURDER as defined and penalized under Article 248 of the revised Penal Code, hereby sentencing each of the accused to suffer the penalty of reclusion perpetua, to indemnify the heirs of Vicente Guillena, Sr. in the amount of TWELVE THOUSAND (P12,000.00) PESOS without subsidiary imprisonment in case of insolvency, and to pay costs."

From this decision, two separate appeals were filed.

Appellant Ramon "Ata" Mampintuan, through his counsel de oficio, takes exception to the court's finding that he conspired with the other accused to execute the crimes imputed to them. He insists that he acted under the impulse of an uncontrollable fear, and therefore, should be exempt from criminal liability.

In their joint appeal, appellants Lagapa and Dagangon assail the decision of the court on the ground that the evidence of the prosecution does not support the finding of conspiracy.

We find no reason to reverse the decision of the court below with respect to appellant Ramon "Ata". His claim that he acted under the impulse of an uncontrollable fear of an equal or greater injury is not supported by the evidence. Fear in order to be a valid defense, should be based on a real, imminent or reasonable fear for one's life or limb (*People v. Abanes*, 73 SCRA 44). More re-cently, in the case of *People v. Loreno* (130 SCRA 311), this Court held that: "x x x The duress, force, fear or intimidation must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough. The compulsion must be of such a character as to leave no opportunity to the accused for escape or self-defense in equal combat".

Appellant Ramon "Ata"'s testimony contains details that convey the impression that his participation in the crime was voluntary. First of all, it is difficult to believe that one man alone even with the advantage of a gun, could perform and execute such serious crimes against several persons, half of whom were equally young and strong men without the cooperation and active participation of another gunman. A group of four or five, as is present in the case, would be difficult to control especially in their long and tedious trek to the mountains. During the first stages of the crime, the appellant could have escaped but he did not do so. If he did, the subsequent killings and the kidnapping would not have been consummated. In fact, by his own admission, he was armed with a defective pistol given by "Danny". There was also no uncontrollable fear shown when Mampintuan, instead of merely checking whether Vicente, Sr. and Vicente, Jr. were already dead, decided to hack with a bolo their already lifeless bodies. Nor was there any fear when Alfonsa tried to escape with her two children from Danny upstairs only to be confronted by Mampintuan downstairs, acting in perfect coordination with his companion. Mampintuan pointed his gun at Alfonsa and prevented her from escaping. There are various other incidents showing voluntary participation in the crimes.

There is likewise no reason to reverse the court's decision with respect to appellants Lagapa and Dagangon.

The counsel for the appellants assails the sufficiency of the prosecution's evidence which prove their participation in the crime. He points to some inconsistencies and improbabilities in the testimonies of the witnesses which allegedly render their testimonies un-believable. He maintains that it is incredible that the actual pay-off between

the killers and the Lagapas would be made in the presence of Benito Gallo and Alfonsa Guillena. Furthermore, they allege inconsistency in the witnesses' narration of the sequence of events in the house of Lagapa. Benito Gallo testified that inside the Lagapas' house, the Lagapas and Danny talked in hushed tones a few meters away from them after which they came back and Maria, on orders of Vedasto, gave Danny two hundred pesos (P200.00). On the other hand, Alfonsa Guillena testified that the conference between the three happened after the giving of the money. The counsel for the appellants also avers that the trial court erred in appreciating the testimonies of the accused as alibi.

In the case of *People v. Palon* (127 SCRA 529, 536--537), this Court held that:

"It is the rule that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjectures but must be established as a fact. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself (*People v. Custodio*, 47 SCRA 289).

"At the same time, for evidence of conspiracy to be clear and convincing it is not essential that there be eyewitnesses testifying to the actual conversation, agreements, and acts of the accused as they conspired together to commit the offense. (*People v. Cercano*, 87 SCRA 1). Conspiracy can also be established from the various circumstances attending the commission of the offense. Direct proof of conspiracy is not necessary. It may be inferred from the circumstances surrounding the commission of the offense (*People v. Molleda*, 86 SCRA 667); or from the mode or manner in which the offense was perpetrated (*People v. Ruiz*, 93 SCRA 739); or from facts and circumstances, which taken together, indicate that the assailants cooperated and labored to the same end (*People v. Bernales*, 94 SCRA 604); or from a number of facts done in pursuance of a common unlawful purpose (*People v. Aguel*, 97 SCRA 795)."

Circumstantial evidence, provided it is competent and convincing, will therefore be sufficient to establish conspiracy. (*People v. Candado*, 84 SCRA 508, 522)

The question of sufficiency of the evidence for the prosecution hinges on credibility. This Court has already ruled that in the determination of values and credibility of evidence, witnesses are to be weighed and not numbered. The testimony of even only one witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict. (*People v. Candado*, *supra*) Moreover, the rule is well-settled that where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case. (*People v. Canamo*, 138 SCRA 141, 145; *People v. Pelias Jones*, 137 SCRA 166, 185). As is well recognized, the trial judge's proximate contact with those who take the witness stand places her, compared to appellate Justices, in a more competent position to discriminate between the true and the false. (*People v. Candado*, *supra*). The alleged inconsistency between the testimonies of the prosecution witnesses involved only minor details. Variance on minor details would not destroy the effectiveness of their testimony (*People v. Agudo*, 137 SCRA 516, 522).

The trial court, presided over by a respected Judge, the Honorable Pacita Cañizares-Nye stated:

"The inconsistency pointed to by the accused refers only to a minor detail which may easily be explained by the lapse of time and the emotional shock suffered by the witnesses, especially on the part of Alfonsa Guillena who aside from having seen the gruesome killings of her father-in-law, and brother-in-law, was further subjected to the humiliating ordeal of being violated by Danny several times while in captivity. Credibility is not impaired by inconsistencies in trivial matters. (*People v. Clementes*, 58 SCRA 742) In fact, discrepancies in the testimony which are not glaring strengthen the credibility of the witness (*People v. Sangalang*, 58 SCRA 737), and maybe considered as a badge of veracity (*People v. Tumulip*, 60 SCRA 303). For in the case at bar, what is of vital importance is the fact that the P200.00 was given by Maria Lagapa to her husband Vedasto Lagapa who in turn gave the money to Danny on the said occasion. That the conference

among them was held before or after the giving of the money is an insignificant detail that does not in any way affect the credi-bility of the witnesses.

"The accused further assail the version of the prosecution as 'incredible and it is contrary to human experience', arguing:

"xxx xxx xxx

"How can the Prosecution version convince the Honorable Court to believe the fact that the giving of the money or the 'payoff' was flagrantly and 'publicly' made and displayed in their presence while at the same time, Prosecution is sticking to its story that the conversation at the kitchen was made in such a way as to prevent Gallo and Alfonsa Guillena from hearing and knowing what they were whispering about. If it is true, that there was a payoff, the Accused, consistent with human nature and experience, would have done it discreetly and even secretly.

"xxx xxx xxx

"It is to be noted that the house of Vedasto Lagapa is not a large one; it is a typical house owned by farmers in the barrios generally without a partition between the kitchen and the living room. The testimonies of the prosecution witnesses do not give the impression of a public display of the so-called 'payoff'. In fact, the prosecution witnesses testified that the accused 'went towards the kitchen which is not far from our place and they were walking there.' (T.S.N., p. 25, April 27, 1979, *cossid.*) This would clearly indicate that the accused purposely went to the kitchen to seek some privacy. Unfortunately, the giving of the money was noticed by Benito Gallo and Alfonsa Guillena, no doubt because of the short distance between them. Motive is not lacking on the part of the accused. It is quite evident that political differences between the two families have existed for some time aside from other irritants like land disputes. The element of conspiracy has been established by the following facts: (a) Vedasto Lagapa gave Danny P200.00 after he informed the accused that Vicente Guillena, Sr. and his two sons were already dead; (b) the Garand rifle was given to Eduardo Zafra in the house of Vedasto Lagapa by Danny after the latter received the rifle from Vedasto Lagapa; (c) Ramon Dagangon was present in Vedasto Lagapa's house when the Garand rifle was given to Zafra to be repaired; and (d) after the Garand rifle had been assembled and along the way as they passed Ramon Dagangon's house, he asked Danny to wait a while and later gave the latter an ammunition clip containing .30 caliber bullets for the Garand rifle. Consequently, the prosecution having successfully proven the existence of conspiracy, the rule that once it is established, the guilt of one conspirator is the guilt of all has to be applied. (People v. Aguarino, L-31106, May 31, 1974)."

As to the testimonies of the appellants we hold that mere denials, constitute self-serving negative evidence. It cannot obtain greater evidentiary weight than the declarations of credible witnesses who testify on affirmative matters. The denials of the accused cannot prevail over the positive testimonies of the prosecution witnesses (See cases of People v. Bocasas, 137 SCRA 531, 539; People v. Sinaw-ay, 138 SCRA 221, 225).

WHEREFORE, the decision appealed from is hereby AFFIRMED, with the MODIFICATION that as in the cases where the court ordered an indemnity to be paid to the heirs of the deceased persons, the corresponding indemnity is hereby increased from P12,000.00 to THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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