

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR ALACAR @ BADONG OR BUDDY, RIC ESGUERRA, CONRADO ALACAR AND TEOFILO TULIAO, JR., ACCUSED-APPELLANTS.

G.R. Nos. 64725-26. July 20, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This appeal from the decision of the Regional Trial Court, First Judicial Region, Branch 40, Dagupan City sprang from two separate informations for attempted homicide and for murder.

The information for the case of attempted homicide docketed as Criminal Case No. D-1995 reads:

"That on or about the 9th day of May, 1978, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable court, the above-named accused SALVADOR ALACAR @ Badong or Buddy, RIC ESGUERRA, CONRADO ALACAR and TEOFILO TULIAO, JR., with intent to kill one GERARDO P. CENTINO, confederating together, acting jointly and helping one another, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon one Gerardo P. Centino, by boxing, throwing stones and hitting him several times on the different parts of his body, thereby inflicting upon the latter physical injuries, the said accused having thus commenced the commission of a felony directly by overt acts, and did not perform all the acts of execution which should have produced the felony by reason of some cause or accident other than their own spontaneous desistance; that as a consequence thereof, the herein offended party sustained damages." (Rollo, p. 5)

The other information in Criminal Case No. D-1996 charges Salvador Alacar and Ric Esguerra with murder committed as follows:

"That on or about the 9th day of May, 1978, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused SALVADOR ALACAR and RIC ESGUERRA, with evident premeditation and treachery, and with intent to kill one TEOFILO G. SUAREZ, confederating together, acting jointly and helping each other, did then and there, wilfully unlawfully and criminally, attack, assault and use personal violence upon one TEOFILO G. SUAREZ by striking him with a stone, boxing and hitting him, thereby causing his death shortly thereafter due to 'Brain injury, severe, sec.' to massive intracranial hemorrhage', as per Autopsy Report and Certificate of Death, both issued by Dr. Otto Raguindin, PPH, this City, to the damage and prejudice of the legal heirs of the deceased TEOFILO G. SUAREZ, in the amount of not less than P12,000.00." (Rollo, p. 7)

At the arraignment in Criminal Case No. D-1995 held on January 28, 1982, all the accused-appellants with the assistance of counsel pleaded not guilty. In Criminal Case No. D-1996, accused-appellant Salvador Alacar and his co-accused Ric Esguerra likewise entered pleas of not guilty when arraigned on January 5, 1982.

Joint trial on the merits ensued after which the trial court, on May 20, 1983, rendered its decision with the following dispositive portion:

"In view of the foregoing, this Court, in Criminal Case No. D-1995 for Attempted Homicide, finds the accused Salvador Alacar, Ric Esguerra, Teofilo Tuliao, Jr. and Conrado Alacar all guilty of the offense of Attempted Homicide qualified by treachery and superior strength and hereby sentences them to an indeterminate penalty of six (6) years and one (1) day of prison mayor and to pay P3,000.00 to Gerardo Centeno (should be Centino), jointly and severally, and to pay each the proportionately costs.

"With regards to the crime of Murder in Criminal Case No. D-1996, this Court hereby finds Salvador Alacar guilty of Murder beyond reasonable doubt and judgment is hereby rendered qualified by treachery (sic) and hereby sentences him to reclusion perpetua and to pay P12,000.00 to the heirs of Teofilo Suarez and to pay 1/2 of the costs.

"And with regards to Ric Esguerra, the Court hereby orders his acquittal on ground of reasonable doubt. With 1/2 cost de oficio." (Rollo, p. 20)

The antecedent facts as presented in detail by the Solicitor General in his brief are as follows:

"Sometime prior to May 9, 1978, Gerardo Centeno (should be Centino), the complainant in Criminal Case No. D-1995, Attempted Homicide, was one of those who complained about the use of association funds by Teofilo Tuliao, Jr., one of the accused, who was then president of an association in Caranglaan District, Dagupan City. Tuliao 'used the funds of the association together with his friends' (p. 21, tsn, Centino, March 2, 1982). Teofilo Suarez, the deceased in Criminal Case No. D-1996, Murder, was commonly known in the community as a peaceful man, although once he had a quarrel with accused Ric Esguerra and Salvador Alacar over a mahjong game, but the deceased had not started it, 'he was not the one who made the first move' (p. 18, tsn, P. Suarez, March 15, 1982).

"About a month previous to the above-mentioned date, or on April 9, 1978, Centino was hit by a stone, although he did not know then who the stonethrower was (p. 20, tsn, Centino, February 15, 1982).

"On May 9, 1978, at around 5:00 o'clock in the afternoon, Teofilo Tuliao, Ric Esguerra, Salvador Alacar, Conrado Alacar, and Ernesto Gomez, being friends and barriomates, were having a drinking spree with a certain Boy Ablog, also a mutual friend and barriomate, at the latter's house (pp. 4-6, tsn, Gomez, April 14, 1982). In the course of conversation, Salvador Alacar mentioned that he was the one 'who actually stoned Gerardo Centino' previously, and Salvador Alacar, Conrado Alacar, Teofilo Tuliao and Ric Esguerra 'talked and agreed that they would maul and kill Gerardo Centino' (pp. 6-7, Ibid). Ernesto Gomez tried to discourage the four accused. 'I tried to pacify them but they did not heed me' (p. 21, Ibid.)

"At around 8:00 o'clock in the evening, Gomez decided to go home, and on his way home dropped by the store of Loreta Gutierrez. 'It so happened that they [Salvador Alacar, Conrado Alacar, Teofilo Tuliao and Ric Esguerra] also followed me and about to go to the store also.' (p. 8. Ibid.) to buy cigarettes (p. 3, tsn, Esguerra, July 14, 1982; p. 3, tsn, S. Alacar, September 8, 1982). At about the same time, Gerardo Centino went to the same store also to buy cigarettes (pp. 6-7, tsn, Centino, February 15, 1982; pp. 10-11, tsn, Zarate, March 17, 1982; p. 9, tsn, Gomez, April 14, 1982).

"Whereupon, in a 'quarrelsome', 'ferocious' voice, Salvador Alacar addressed Centino thus: 'labi kuya' [i.e., 'good evening, elder brother]. Centino was surprised and replied: 'balon igalang mo ac natan' ['it is strange that you now greet me'], adding 'I was surprised why you greeted me'. Salvador followed up with: 'What is the question if I greet you?' Centino replied: 'I am really surprised that you greeted me.' Salvador continued: 'Why, didn't you know that I was the one who threw stones [at you] on that incident before?' Centino: 'I did not expect that 'you were 'the one who stoned me.' Salvador then told Centino that if Centino did not believe what Salvador just said, 'Come with me and go to the house of Auring [a neighbor] to confirm that I was really the one who stoned you' (pp. 7, 9-10, tsn, Centino, February 15, 1982; pp. 11-12, tsn, Zarate, March 17, 1982; pp. 9-11, tsn, Gomez, April 14, 1982).

"I did not expect that they have bad intention against me' or not suspecting any ill-intention on the part of Salvador Alacar, Conrado Alacar, Teofilo Tuliao and Ric Esguerra, Centino went with the four accused to go to Auring's house, with Salvador walking by his side while the other three accused walked behind him, on the right side of the road. Ernesto Gomez also went with the whole group (pp. 10, 22, 23, 34, tsn, Centino, February 15, 1982; p. 12, tsn, Zarate, March 17, 1982; p. 11, tsn, Gomez, April 14, 1982).

"When the group was about to reach a junction of the road, Salvador Alacar, unnoticed by Centino, stepped forward, picked up a stone, and suddenly 'smashed it against Centino his left lower jaw' and Conrado Alacar, Teofilo Tuliao and Ric Esguerra 'delivered fist blows' on Centino's breast, stomach, shoulders. All the accused 'ganged up upon him.' Ernesto Gomez tried to pacify the accused (pp. 10-12, 25, tsn, Centino, February 15, 1982; p. 24, tsn, Suarez, March 15, 1982; pp. 13-14, tsn, Zarate, March 17, 1982; pp. 12-13, 27, tsn, Gomez, April 14, 1982)

"Realizing that he 'could not fight against them', Centino was able to run 'towards the other side of the street.' This was his first attempt to escape. The four accused chased Centino (p. 12, Centino, February 15, 1982). At this stage, barangay councilman Perfecto Suarez, who was then watching television inside his house, was attracted by the commotion outside and went out and tried several times to pacify the accused. His pleas, 'What is that?' went unheeded (pp. 4-5, tsn, Suarez, March 15, 1982). The four accused caught up with Centino and stoned and boxed him several times, hitting him in the breast, arms and back. Centino fell down (p. 13, tsn, Centino, February 15, 1982; pp. 5-6, tsn, Suarez, March 15, 1982; pp. 13-14, tsn, Gomez, April 14, 1982). 'In the course of struggling, he was able to free himself' (p. 6, tsn, Suarez, March 15, 1982) and sensing 'that they are going to kill me really, I ran away towards the north,' in a second attempt to escape (p. 13, Centino, February 15, 1982). However, while running towards the north, Centino stumbled down, face down, and as he stood up, the four accused caught up with him. 'Ric Esguerra boxed me, several times' and the other three 'were throwing stones at me.' Centino fell down (p. 13, tsn, Centino, February 15, 1982; pp. 6-7, tsn, Suarez, March 15, 1982; p. 14, tsn, Zarate, March 17, 1982; pp. 14-15, tsn, Gomez, April 14, 1982). Centino 'was not feeling alright anymore.' He crawled on the ground and in a last attempt to escape, when 'I was able to stand up, I ran away again' and 'entered the house of Peping Callanta' (p. 14, tsn, Gomez, February 15, 1982; p. 7, tsn, Suarez, March 15, 1982; p. 16, tsn, Zarate, March 17, 1982; p. 15, tsn, Gomez, April 14, 1982).

"'Teofilo Tuliao and Conrado Alacar stood by the door of the house of Callanta waiting for Gerardo Centino to come out' while Salvador Alacar and Ric Esguerra 'followed each other going South.' At this stage, the deceased Teofilo Suarez was also proceeding towards south, 'towards the store of his mother.' Half-walking and half-running; Salvador Alacar and Ric Esguerra were able to catch up with Teofilo Suarez remarking 'you are also one,' Salvador Alacar 'immediately got hold of a stone and immediately hit Teofilo Suarez on the forehead,' adjacent to the right temple, and Ric Esguerra followed up this attack by boxing Teofilo Suarez on the chest. Teofilo Suarez 'fell down on a lying position.' Whereupon, Salvador Alacar and Ric Esguerra ran away, proceeding southward. Upon seeing what Salvador Alacar and Ric Esguerra did to Teofilo Suarez, Teofilo Tuliao and Conrado Alacar, who had been waiting for Gerardo Centino to come out from the house of Callanta, also ran away, in the opposite direction, northward. From May 10, 1978, Esguerra 'permanently resided in Amacoro, Binmaley, Pangasinan.' Also, right after the May 9, 1978 incident, Conrado and Salvador Alacar lived in Pampanga and after 'about a year' Salvador transferred to Manila.' (pp. 9-14, 33-34, tsn, Suarez, March 15, 1982; pp. 19-21, 35-44, tsn, Zarate, March 17, 1982; p. 19, tsn, Esguerra, August 12, 1982).

"After going to the Pangasinan Provincial Hospital for treatment, Gerardo Centino reported the incident that occurred to him to the Dagupan City Police Station. On the other hand, after causing Teofilo Suarez to be brought to the hospital, barangay councilman Perfecto Suarez reported also the whole incident to the police authorities (p. 16, tsn, Centino, February 15, 1982; pp. 14-15, tsn, Suarez, March 15, 1982; Exhibit "G" and "F" for the Prosecution).

"The medico-legal certificate as to the injuries sustained by Gerardo Centino contains the following findings:

- Contusion 1 x 1.5 cms. upper lip right side.
- Linear abrasions (2) 2 cms. each at the level of 6th rib anterior right.
- Confluent abrasions (3) 2 x 2 cms. each and chest middle left.
- Confluent abrasion 1.5 x 2 cms. with erythema and cross chest, lower right.
- Confluent abrasions 2 x 3 cms. forearm, medial aspect right.
- Linear abrasion 1 cm. proximal third of forearm, left.

"The autopsy report on Teofilo Suarez contains the following:

Date and time of autopsy : May 10, 1978, 10:00 o'clock p.m.

External physical findings : Head-lacerated wound, 5 cms. superorbital right.

Internal physical findings : Head-linear fracture, frontal bone. Intracranial hemorrhage, massive frontal area.

Probable cause of death : Brain injury, severe, second to massive intracranial hemorrhage.

(Exhibit "E", Prosecution)

"‘Sometime on the first month of 1982,’ Benita Alacar, mother of Salvador Alacar and Conrado Alacar twice approached Dr. Antonio Pastoral for the latter to set a meeting or appointment between Perfecto Suarez and her sons to ‘determine whether it will be possible to settle the case now in Court’ (pp. 5, 6-7, 11, tsn, Pastoral, January 13, 1983)." (Appellee's Brief, pp. 4-10)

On the other hand, the presentation of the facts of the consolidated cases from the viewpoint of the appellants is found in their brief, to wit:

"I. ABSTRACT OF THE TESTIMONY OF THE ACCUSED SALVADOR ALACAR.

The facts of the case according to the accused, Salvador Alacar, are as follows:

"That at or about 4:00 p.m. of May 9, 1978, accused and Ric Esguerra went to the house of Boy Ablog;

"That together with the latter, they gathered vegetables, returned to the residence of Boy Ablog and cooked their supper;

"That after it was cooked, Teofilo Tuliao, followed by Ernesto Gomez, arrived;

"That Salvador Alacar greeted him, but Gerardo Centino coldly remarked that it was now that he greeted him;

"That after Salvador Alacar explained himself, Gerardo Centino accused the former of having stoned him but was denied, so that the latter grabbed his collar and proceeded to drag him towards the place of Auring Cabrera;

"That on the way, Salvador Alacar struggled to free himself, boxing Gerardo Centino in the process;

"That they exchanged blows, and Ric Esguerra separated them;

"That he urged Salvador Alacar to go home;

(Source: TSN, S. Alacar, p. 4)

"That Gerardo Centino lunged at him and boxed him several times, so Salvador Alacar grappled with him, and both fell to the ground, with the former on top of him;

"That Ric Esguerra pulled Gerardo Centino away from Salvador Alacar;

"That Teofilo Tuliao, Jr., was not there anymore the second time Salvador Alacar and Gerardo Centino grappled with each other;

"That Perfecto Suarez and Ernesto Gomez held Salvador Alacar, and when he was able to stand up, he saw someone intercept his brother Conrado Alacar;

(Source: TSN, S. Alacar, p. 5)

"That this incident took place in front of the store of Tayaba, about 20 meters away from the store of Loreto Gutierrez;

"That Perfecto Suarez and Ernesto Gomez released him, and Salvador Alacar saw them approach his brother Conrado Alacar;

"That in the meantime, Gerardo Centino struggled to free himself from Ric Esguerra so that he can resume his fight with Salvador Alacar, but could not do so easily, so he instead fought with Ric Esguerra;

"That he went near his brother Conrado Alacar and saw Perfecto Suarez pick up another stone which he threw at him, but missed;

(Source: TSN, S. Alacar, p. 7)

"That the stone which missed him hit someone at his back, but he was not able to identify him because Ernesto Gomez, Gerardo Centino and Perfecto Suarez, rained him with stones;

"That he also picked up stones and threw it at them, but the two ran to the house of Iping Callanta;

"That his brother Conrado Alacar also picked up a stone and faced Ernesto Gomez;

"That they threw stones at their adversaries to drive them away in self defense;

"That at that time, Conrado Alacar was on his right side about 2 or 3 meters away.

(Source: TSN, S. Alacar, p. 8)

"That after driving them away, they proceed (sic) to go back to their respective house, but Ernesto Gomez and Gerardo Centino came running after them with clubs;

"That Perfecto Suarez also joined the group in chasing them;

"That for fear of being mauled, they ran home with their adversaries close on their heels;

(Source: TSN, S. Alacar, pp. 9)

"That they shouted to the mother of Salvador Alacar to let them out, but when nothing happened, they left.

"That Salvador Alacar denied having plotted nor conspired with all of his co-accused to kill or harm Gerardo Centino;

"That he also denied that they (all defendants) confederated and helped one another in mauling complainant Gerardo Centino;

(Source: TSN, S. Alacar, p. 10)

"II. ABSTRACT OF THE TESTIMONY OF ACCUSED CONRADO ALACAR.

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The following testimony of Conrado Alacar supplemented that of Salvador Alacar as follows:

"That at or about 6:15 of May 9, 1978, Conrado Alacar went to the house of Loreta Gutierrez to play mahjong (TSN, C. Alacar, pp. 12-13);

"That when he left their house on his way he passed by the store of Vivencio Suarez and saw Gerardo Centino and Ernesto Gomez drinking beer (TSN, pp. 15-16, C. Alacar);

"That when he was playing mahjong inside the house of Loreta Gutierrez, both Gerardo Centino and Ernesto Gomez arrived and inquired from him the whereabouts of his brother, Salvador Alacar;

"That when asked why he was looking for him, he replied that it was his brother Salvador Alacar who stoned him the night before, according to Auring, and that he threatened to spank him if he sees him;

"That thereafter, both of them left the place;

"That not long after, he heard shouts saying that his brother and Gerardo Centino were fighting;

(Source: TSN, C. Alacar, pp. 16-17)

"Conrado Alacar unequivocally pointed to Perfecto Suarez, uncle of the deceased Teofilo Suarez, as the person who caused the death of the latter when he missed his target, Salvador Alacar, which instead hit the deceased (TSN, C. Alacar, p. 20, May 26, 1982).

"Winding up his direct examination, Conrado Alacar denied any participation in mauling Gerardo Centino." (TSN, C. Alacar, p. 29).

"III. ABSTRACT OF THE TESTIMONY OF RIC ESGUERRA.

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"Briefly stated, Ric Esguerra testified that that night of May 9, 1978, it was Gerardo Centino who started the fight by accusing Salvador Alacar of having stoned him; that in order to prove to the latter that what he said was true, he held Salvador Alacar by the collar and dragged him towards the house of Auring Cabrera who informed him of such fact; that on the way, Salvador Alacar struggled to free himself, and both exchanged blows; that Ric Esguerra intervened to pacify them; that Perfecto Suarez and Ernesto Gomez held Salvador Alacar, while he pulled Gerardo Centino away; that the brawl expanded (sic) and much later, Perfecto Suarez and Ernesto Gomez began to fight both Salvador Alacar and Conrado Alacar by throwing stones at them; that Ric Esguerra also exchanged blows with Gerardo Centino; that a stone thrown by Perfecto Suarez at Salvador Alacar missed, hitting the deceased Teofilo Suarez in the head; that thereafter, Gerardo Centino, Ernesto Gomez and Perfecto Suarez chased them with clubs to their respective houses; that to avoid any further trouble, the mother of accused Ric Esguerra advised him to leave the place; that he did not know that something serious happened until after a few days; and that accused Ric Esguerra and his co-accused went to a lawyer, attended the preliminary investigation and appealed the ruling of the fiscal to the Ministry of Justice (TSN, Ric Esguerra, pp. 2-13, July 12, 1982; TSN, pp. 19-24, 25, August 12, 1982; TSN, p. 20, September 10, 1982; Exhibit 5).

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"ABSTRACT OF THE TESTIMONY OF TEOFILO TULIAO, JR.

"The testimony of accused Teofilo Tuliao is very brief, because he left when Salvador Alacar and Gerardo Centino were just beginning to fight. (TSN, T. Tuliao, pp. 32)

"He testified, however, that he was with Ric Esguerra, Salvador Alacar, Ernesto Gomez who left earlier, and Boy Ablog, in the house of the latter in the late afternoon and up to about 8:00 p.m. of May 9, 1978 in Caranglaan, Dagupan City, when they went to the store of Loreta Gutierrez to buy cigarettes.

"While in the store, they saw Gerardo Centino drinking beer, and when accused Salvador Alacar greeted him, Gerardo Centino expressed surprise. After an exchange of a few words, Gerardo Centino accused Salvador Alacar of stoning him which, however, the latter denied. Gerardo Centino then insisted that he was the one who stoned him, then he took hold of his collar and dragged him towards the place of Auring Cabrera, because the latter was the one who allegedly told him of it.

"He went with the group to find out if there is any truth to what Gerardo Centino said, but on the way, Salvador Alacar struggled to extricate himself, and both exchanged blows. Witness Teofilo Tuliao tried to pacify them, but Gerardo Centino warned him not to interfere least (sic) he be harmed, so he left them (TSN, T. Tuliao, pp. 21-33)

"Witness also denied having participated in mauling complainant Gerardo Centino (TSN, T. Tuliao, p. 33)." (Appellants' Brief, pp. 4-12)

In this appeal, the accused-appellants interpose the following assignment of errors.

I

THE COURT ERRED IN GIVING CREDENCE TO THE THEORY OF THE PROSECUTION.

II

THE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF WITNESSES FOR THE PROSECUTION.

III

THE COURT ERRED IN CONSIDERING THE ACT OF BENITA TULIAO IN EXPLORING THE POSSIBILITY OF A SETTLEMENT AS AN ADMISSION OF GUILT OF THE ACCUSED.

IV

THE COURT ERRED IN CONSIDERING THE FLIGHT OF ACCUSED FOR SAFETY AS AN ADMISSION OF GUILT.

V

THE COURT ERRED IN HOLDING THAT THE CRIMES COMMITTED ARE ATTEMPTED HOMICIDE AND MURDER, RESPECTIVELY.

VI

THE COURT ERRED IN NOT ACQUITTING THE DEFENDANTS. (Appellants' Brief, p. 1-2)

These cases were transferred to the Third Division on August 24, 1987 and reassigned to the undersigned ponente

for report on March 2, 1992.

An analysis of the assigned errors pigeonholes them into two basic issues namely: (1) credibility of the witnesses presented; and (2) sufficiency of the evidence in support of a judgment of conviction.

On the issue of credibility of witnesses, the accused-appellants find fault with the prosecution evidence by alleging that the testimonies of the eyewitnesses namely Perfecto Suarez, Loreta Zarate and Ernesto Gomez contain serious inconsistencies and contradictions on material details. They state that the credibility of the witnesses remains tainted on account of their close relationship with the offended parties. Moreover, the accused-appellants claim that the narration of the attendant facts by the alleged eyewitnesses in relation to the crimes subject of this appeal defies human experience and the laws of nature.

In their brief, the accused-appellants maintain that Gerardo Centino's claim that he was mauled and pummelled with stones is belied by the medical certificate (Exhibit "A") issued by Dr. Dominador Manzano who described Centino's injuries as either abrasion or contusion thus, only minor ones (Appellants' Brief, p. 17); that the testimonies of both prosecution witnesses Perfecto Suarez and Loreta Zarate locating the fatal wound suffered by the deceased Teofilo Suarez at the right temple do not coincide with the finding of Dr. Otto Raguindin in his autopsy report (Exhibit "E") on the said victim placing the mortal wound above the right eyebrow of the forehead (Ibid, p. 19); that Perfecto Suarez' testimony that the accused-appellant smashed a stone in the right temple of the deceased Teofilo is not supported by the statement of the latter in the hospital before he lost consciousness saying that he was hit by a stone thrown at him (Ibid, pp. 47--48); that there is a variance on material points in the declarations made in court and the affidavits executed by prosecution witnesses Gerardo Centino (Exhibit "H"), Perfecto Suarez (Exhibit "I"), Ernesto Gomez (Exhibit "J") and Loreta Zarate (Exhibit "K"), hence, their credibility is impaired (Ibid, pp. 32-34, 36-37, 50-51 and 71-72).

The aforementioned inconsistencies and contradictions pinpointed by the accused-appellants do not warrant our reversing the trial court's verdict of conviction as the same pertain to minor details.

In Criminal Case No. D-1995, there is overwhelming evidence in support of the trial court's factual finding that after a verbal argument transpired between accused-appellant Salvador Alacar and the victim Gerardo Centino, the said accused-appellant, together with the three other accused-appellants Ric Esguerra, Teofilo Tuliao, Jr. and Conrado Alacar, ganged up on Centino boxing him and throwing stones at him simultaneously. If it were true that there was no homicidal intent on the part of the said accused-appellants, how come they pursued Centino and persistently stoned and boxed him even as he scrambled for safety and fell twice and they stopped mauling and stoning him only after Centino sought refuge in the house of one Eping Callanta? Clearly, the accused-appellants did not simply intend to inflict upon Centino minor physical injuries as the former would have us believe considering the manner of concerted attack inflicted on the offended party.

In Criminal Case No. D-1996, prosecution eyewitnesses Perfecto Suarez and Loreta Zarate positively identified accused-appellant Salvador Alacar as the person who delivered the fatal blow on the deceased. Their testimonies in open court were assessed to be straightforward, clear and sincere by the trial court which had the full opportunity to observe their demeanor while testifying. The fact that both witnesses recalled having seen the accused-appellant smash the deceased with a stone on his right temple instead of at the right eyebrow of the forehead (described as 5 cm. supraorbital, right in the autopsy report marked as Exhibit "E") cannot seriously affect the trial court's finding of guilt. The alleged discrepancy is more apparent than real as both situses pertain to the right part of the head.

In both cases, the alleged variances between the eyewitnesses' testimonies in court and their affidavits ex-parte are inconsequential. As opined by the trial court, the same relate to minor matters which cannot affect the

probative value of their positive testimonies in court. Ex-parte affidavits are generally incomplete, hence, inconsistencies between declarations of the affiants in their sworn statements and those in court do not necessarily discredit them and the infirmity of affidavits as an evidence is much a matter of judicial experience (*People v. Lagota*, 194 SCRA 92 [1991]; *People v. Patilan*, 197 SCRA 354 [1991]).

Thus, whether or not the conversation between Gerardo Centino and the accused-appellant Salvador Alacar was cordial or heated matters little if not nil when we consider the proven fact that the verbal encounter between the two resulted in the crime of attempted homicide with the four accused-appellants as perpetrators. Whether or not the assault on the deceased Teofilo Suarez was frontal or from behind does not affect the presence of treachery in the light of the circumstance that the attack was sudden and consciously adopted by the accused leaving the victim with no means to defend himself.

The accused-appellants further attempt to discredit the prosecution eyewitnesses intimating that their testimonies are biased and self-serving. They point out that Perfecto Suarez is the uncle of the deceased Teofilo Suarez, and Ernesto Gomez is the godson of the offended party Gerardo Centino (Appellants' Brief, pp. 16 and 43). It is settled jurisprudence that mere relationship of a party to the victim does not automatically taint the former's credibility when summoned on the witness stand in the absence of any ill-motive on the part of the relative to testify against the accused. (*People v. Genaro, et al*, G.R. No. 89113, November 29, 1991; *People v. De Guzman*, 194 SCRA 618 [1991]; *People v. Paras*, 147 SCRA 594 [1987]). The lower court correctly disregarded the defense theory in this case that Perfecto Suarez accidentally hit the deceased when he threw a stone at accused-appellant Salvador Alacar so that he exhibited unusual interest in pursuing the case to cover up his fault. The records are further bereft of proof that Ernesto Gomez was motivated to distort the actual facts of this case on account of his close relationship with Gerardo Centino.

On the accused-appellants' argument that the prosecution version as presented by its eyewitnesses is readily belied by human experience and the law on physics taking into account the amount of physical evidence in the instant case, we deem it sufficient to quote with favor the submissions made by the Solicitor-General in his brief, to wit:

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"By way of assailing the credibility of complainant Gerardo Centino, the accused-appellants' claim, that it is 'not consistent with the normal behavior of a man' for Salvador Alacar, as narrated by Centino, to declare in the presence of others at Loreta's store that he, Salvador, was the one who threw stones at Centino on a previous occasion (pp. 16, 29, *Ibid.*). This claim plainly lacks merit. On the contrary, Salvador's open and public admission of his feat of stoning Centino is merely indicative of Salvador's bravado and contempt for Centino. Earlier at a drinking spree, Salvador openly admitted to his friends his feat of stoning Centino (p. 6, *tsn, tsn, Gomez*, April 14, 1982). Later, at Loreta's store, Salvador openly and unhesitantly repeated this vaunted claim, not only in the presence of his drinking friends and of a woman, Loreta Zarate, but also in the very presence of the victim himself, Gerardo Centino. Clearly, this incessant claim of Salvador is sheer braggadocio and is only too human, 'as the common experience and observation of mankind can approve as probable under the circumstances' (*People v. Baquirin*, 20 SCRA 451 [1967]).

x x x x x x x x

"By way of assailing the credibility of prosecution witness Ernesto Gomez, the accused-appellants claim that it is unbelievable that Gomez, wedding godson of Centino, made no effort to warn Centino at Loreta's store that Salvador and Conrado Alacar, Ric Esguerra and Teofilo Tuliao had agreed to kill Centino (pp. 16-17, 39-40, Appellants' Brief). This claim deserves scant attention, as accused-appellants are apparently unmindful of the predicament Gomez found himself in. Both the would be killers and the intended victim were his friends,

precisely for this reason one of them, the intended victim, became his wedding ninong, and if the would be killers, considering their proximity to Loreta's store (about 10 meters) should know that Gomez had warned Centino, they would have harmed Gomez. This is made clear by Gomez on the witness stand on cross, thus:

"Atty. Llamas

Q. And you did not tell Gerardo Centino what these four accused would do against him?

A. I did not tell him because they are my friends, they might turn against me.

Q. How far away (sic) when you went down and walk, how far away were the four accused from you?

A. About 10 meters or more.

Q. Did you not know that they were proceeding precisely to the store of Loreta Gutierrez for the purpose of greeting Gerardo Centino?

A. I do not know, but then later on they bought cigarette.

Q. How do you know that they will do some harm to you if you would tell Gerardo Centino their motive when you said you were close friends?

A. Even if they are my friends, if I will reveal to Gerardo Centino they will hit me.

(p. 22, tsn, Gomez, April 14, 1982; emphasis supplied [sic])

"The fear entertained by Gomez as may be clearly gleaned from the foregoing testimony is only too human a feeling and is 'in conformity with the common experience of mankind.' (People v. Dayag, 56 SCRA 439)" (Appellee's Brief, pp. 12-13, 14-15)

Moreover, we reiterate our ruling in the case of *People v. Orlando Arbolante y Lagundi, et al.* (G.R. No. 96713, October 17, 1991) that:

"x x x The discrepancies in the declarations made in open court x x x can be readily explained on the basis of human experience which shows that when two persons both claim witness to a certain incident, each of them will have a different account as to the details of the same incident, since it is not possible for their senses of perception to be synchronized in such a way that one sees or hears exactly as the other does x x x. (At. pp. 9-10)

Hence, the fact that one witness testifies that the deceased fell on his knees after he was successively hit on the right temple and chest (TSN, March 15, 1982, p. 13) and another testified that the victim fell on his buttocks then ended up in a lying position after the said successive blows (TSN, March 17, 1982, pp. 19-20) instead of having fallen sideways towards the left since he was hit on the right side of the head as posited by the accused-appellants (Appellants' Brief, p. 20) is all a matter of perception leaving no doubt that the victim had fallen after the blow which later turned out to be fatal was cast on his person.

In the absence of any showing that the trial court overlooked some substantial and material facts, the issue of credibility is preferably addressed to the trial judge who is in a better position to weigh conflicting testimonies having actually seen the witnesses testify and observed their demeanor in court while testifying (*People v. Peter Hatague, et al.*, G.R. No. 97308, April 7, 1992; *People v. Ruben Lee y Amaso*, G.R. No. 66848, December 20, 1991). In the case at bar, there are no cogent reasons for us to disturb the trial court's findings of fact in this regard.

On the issue of whether or not there is sufficient evidence to support a judgment of conviction as rendered by the trial court, the accused-appellants insist that the prosecution has not shown any motive on their part for them to

commit the crimes imputed to them. (Appellants' Brief, p. 20) They state that since there is doubt as to the identity of the culprits as a result of the affray that attended the incident in question, the prosecution should have established the motive behind the imputed crimes (Appellants' Brief, pp. 3-4).

The evidence on record as to the identity of the assailants is conclusive and convincing. Our pronouncement in the case of *People v. Mario Aguiluz alias "Rock-Rock"*, (G.R. No. 91662, March 11, 1992) is significant, thus:

"x x x [M]otive becomes relevant, and its absence may assume determinative significance, only when the accused has not been positively identified, and proof thereof becomes essential only when the evidence of the commission of a crime is purely circumstantial or is inconclusive. This Court has time and again ruled that lack of motive does not preclude conviction when the crime and the participation of the accused therein are definitely established." (At p. 10, citing *People v. Ballinas*, 202 SCRA 516 [1991])

The quantum of proof required to establish proof beyond reasonable doubt is satisfactorily met by the evidence on record. There is strong, compelling and positive proof that the accused-appellants acted in concert in having attempted on the life of Gerardo Centino. The trial court committed no error in dismissing the accused-appellants' pleas of self-defense. Likewise, for the killing of Teofilo Suarez, there exists a reasonable and moral certainty that the accused-appellant Salvador Alacar delivered the fatal blow. This was categorically declared by the prosecution eyewitnesses, thereby making the defenses of denial and alibi unavailing.

As regards the accused-appellants' suppositions that the trial court regarded the attempt of the mother of the accused-appellants Salvador and Conrado Alacar to amicably settle the case and the subsequent flight of accused-appellants Ric Esguerra and the Alacar brothers as "admissions of guilt" (Appellants' Brief, pp. 82-83, 87-88), we find that the said suppositions are erroneous impressions caused by a careless perusal of the trial court's decision. The trial court merely noted the fact of the unrealized "settlement" measures as contemplated by the mother of the Alacars and the "flight" of the three accused-appellants to avoid further complication or reprisal. The trial court did not consider the same as the bases for its judgment of conviction.

We, however, note that with respect to the crime of attempted homicide, evidence of treachery is wanting owing to the fact that the mauling, stoning and chasing by the accused-appellants on Gerardo Centino resulted from a verbal altercation between the victim and the assailants so that the victim must have been forewarned of the impending brawl. This could have placed Gerardo Centino on his guard. In order that treachery may be established against the accused, the prosecution must indubitably prove that at the time of the attack, the victim was not in a position to defend himself and that the offender consciously adopted the means, method or form of attack employed by him (see *People v. Peter Hatague, et al.* supra citing *People v. Sabado*, 168 SCRA 681 [1988]; *People v. Mabubay*, 185 SCRA 675 [1990]). For as a general rule, treachery must be present at the inception of the attack. (*People v. Cantre*, 186 SCRA 76 [1990])

The modifying circumstance of taking advantage of superior strength, however, attended the commission of the crime of attempted homicide. As held in *People v. Peter Hatague*, (supra):

"x x x When it is shown that the attack was not made with alevosia, the number of assailants and the simultaneity of the attack upon a defenseless person may constitute abuse of force (US v. Lasada, 21 Phil. 287 [1912]; *People v. Cantre*, supra.) Here, it is undeniable that, by reason of the synchronal attack on the victim by two armed persons, the latter cooperated an intended to use or to secure advantage from the superiority of their combined strength. This is especially manifest, where, as in this case, the victim was unarmed and trying to flee, while the two felons were armed and used their weapons in perpetrating the crime." (Cited cases omitted; at p. 13)

Anent the crime of murder, we agree with the trial court's finding that treachery was duly established considering

that the attack on the deceased Teofilo Suarez was sudden and unexpected, without the slightest provocation on his part. As found by the trial court, when the accused-appellant Salvador Alacar saw the victim walking towards the store of the latter's mother, he, together with co-accused Ric Esguerra (whom the trial court acquitted in the absence of conspiracy), overtook Teofilo Suarez and said: "You are also one", and the said accused-appellant mercilessly smashed a stone on the deceased's right temple (RTC Decision, p. 15). This is treachery the essence of which is a sudden and unexpected attack without the slightest provocation on the part of the hapless victim (People v. Carlito Alcantara, G. R. No. 95957, February 28, 1992 citing People v. Rey, 172 SCRA 149 [1989]; People v. Pablito Rendoque, et al., G. R. No. 95541, February 4, 1992; and People v. Badilla, 185 SCRA 554 [1990]).

The dispositive portion of the trial court's decision, through inadvertence or oversight, found the accused-appellants in Criminal Case No. D-1995 guilty of attempted homicide "qualified by treachery and superior strength." The word "qualified" should properly read "aggravated." Inasmuch as we have ruled out the presence of treachery in the attempted homicide case, we only consider one aggravating circumstance which is abuse of superior strength in computing the proper penalty. Hence, the accused-appellants should be sentenced to the maximum period of the penalty prescribed by law as there is only one aggravating circumstance present (Art. 64, paragraph [3], Revised Penal Code). For an attempted crime, a penalty lower by two degrees than that prescribed by law for the consummated felony is imposable (Art. 51, Ibid.). Two degrees lower than reclusion temporal (the penalty prescribed for homicide under Art. 249, Ibid.) is prision correccional. Applying the Indeterminate Sentence Law, the accused-appellants must suffer the penalty of four (4) months and one (1) day of arresto mayor as minimum to six (6) years of prision correccional as maximum.

In Criminal Case No. D-1996, the amount of indemnity to the heirs of the deceased is raised to P50,000.00 on account of recent jurisprudence.

WHEREFORE, subject to the above modifications, the appealed decision of the trial court dated May 20, 1983 is AFFIRMED in toto.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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