

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAT. RICARTE MADALI AND ANNIE MORTEL MADALI, DEFENDANTS-APPELLANTS.

G.R. Nos. 67803-04. July 30, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Husband and wife Patrolman Ricarte Madali and Annie Mortel Madali appeal from a decision of the Regional Trial Court of Romblon, Branch LXXXI[1] finding them guilty beyond reasonable doubt of killing father and son Cipriano and Felix Gasang, and seriously wounding Agustin Reloj and Cipriano's daughter, Merlinda. The dispositive portion of the decision states:

"WHEREFORE, the Court hereby finds the guilt of accused Ricarte Madali and Annie Mortel Madali beyond reasonable doubt of the following offenses and sentences each of them as follows:

"(1) For the frustrated murder of Agustin Reloj, each accused is meted an indeterminate penalty of SIX (6) YEARS of prision correccional, as minimum to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as maximum. (E)ach of them is also sentenced to suffer all the accessory penalties provided for by law, and each is ordered to pay in solidum the offended party, Agustin Reloj, the sum of P200.00 as reimbursement of medical and hospitalization expenses.

"(2) For the murder of Felix Gasang, each accused is sentenced the penalty of reclusion perpetua and each of them is likewise sentenced to suffer the accessory penalties provided for by law, and each is also ordered to pay in solidum to the heirs of Felix Gasang, the sum of P12,000, as death indemnity.

"(3) For the murder of Cipriano Gasang and the mortal (sic) wounding of Merlinda Gasang (which has been converted into a complex crime of murder with frustrated murder) each accused is sentenced to the penalty of reclusion perpetua together with the accessory penalties provided for by law and to indemnify in solidum the heirs of Cipriano Gasang the sum of P12,000.00 and each is also ordered to pay in solidum, Merlinda Gasang the sum of P6,000 for reimbursement of medical and hospitalization expenses.

"Each of the accused is likewise ordered to pay in solidum the heirs of deceased, Cipriano Gasang and Felix Gasang, the sum of P50,000.00, which amount represents the value of the loss (sic) earning capacity of deceased Cipriano and Felix, both surnamed Gasang, and the sum of P30,000.00 as moral damages, and the sum of P10,000.00 as exemplary damages.

"The sentences of reclusion perpe-tua and the indeterminate penalty imposed upon each accused should be served successively, with proportionate costs.

"IT IS SO ORDERED."[2]

According to the prosecution, said crimes stemmed from an altercation between the son of the Madali spouses, Ramon, and the group of Felix Gasang, who was twenty years old when he was killed.[3] It appears that on October 26, 1979, Felix figured in a fistfight with someone who was a friend of Ramon. The latter interceded and

mauled Felix with a "chako".[4] One of Felix's companions then was Agustin Reloj.[5]

The following day, the police summoned Felix to the municipal building. Felix's mother, Desamparada Gasang, went with him.[6] At the police station, Ricarte Madali, a police officer, angrily scolded Felix and his cousin, Arnaldo Fadriquilan, and told them that because they were "very brave", he would put them in jail for twelve hours. Madali added after asking about Felix's age that he would "sow bullets" in the body of Felix.[7] According to witness policeman Aristeo Fetalino, Madali also uttered, "Kailangan sa imo lubongan bala" which means, what you need is a bullet embedded in you.[8] Madali's father-in-law, Agustin Mortel, who arrived at the police station, agreed with Madali that Felix and his group must be "sown with bullets" to eradicate them.[9] Another group mate of Felix was detained at the municipal jail but Felix was sent home with his mother.[10]

At around 9:00 o'clock in the evening of October 31, 1979, Felix and his cousin, Agustin Reloj, went home together from the town plaza. Their houses were located near each other in sitio Marawi, barangay Cagbo-aya, San Agustin, Romblon.

Felix and Agustin parted ways at the Marawi bridge. Felix dropped by the store of Coroy Mangao to buy cigarettes while Agustin proceeded home. Around fifteen meters from the house of Ricarte Madali, the latter accosted him, held him by his arm and said, "So you are here, you devil, now you are finished. I have been waiting for you. I have been watching for you for three nights already." [11] Then Madali dragged Agustin towards the gate of his (Madali's) house. When Agustin asked Madali why he was dragging him, Madali said that the reason was because Agustin helped in fighting his son.

As one of Agustin's feet stepped over the knee-high fence at the gate of the Madali residence, he was clubbed by Annie Madali with a piece of wood. Annie struck him first on the left shoulder and would have given him another blow had not Agustin freed himself from Madali's hold. Annie landed that blow on Madali instead.[12]

Agustin was looking back as he ran away when Madali shot him. He was hit below his right hip. He fell to the ground and did not get up fearing that Madali might shoot him again. Agustin was still lying down on the ground with his eyes focused on Madali when Felix Gasang arrived. He saw Annie beamed her flashlight at Felix and she said, "Here comes another." [13]

Agustin saw Felix raising his hands as Annie focused her flashlight on Felix. Felix told Madali that he would not fight with him but then Madali shot Felix twice. Felix fell to the ground. Madali was still near the gate of his house when Cipriano Gasang arrived. Annie beamed her flashlight at Cipriano and she said, "Here comes, here comes another, fire upon him." [14] Madali shot Cipriano who fell to the ground. Merlinda Gasang, who was with her father Cipriano, clung to the fence nearby and shouted that she was also hit. Then Desamparada Gasang arrived and shouted for help. One Romeo Manes came and carried away Merlinda. Agustin slowly stood up and as he walked towards his house, he saw Roman Galicia (Galicha) and the Madali spouses who were then entering their gate.[15]

Merlinda Gasang* was at home when she heard an explosion. Her father, Cipriano, was also at home then but after the second shot, he went out of the house towards the direction of the source of the gunfire. There was a minute interval between the first and the second shots but only a second elapsed between the second and the third shots. The fourth shot came about two minutes later.[16]

Cipriano was "beyond the gate" of the Madali residence when he was shot by Madali. Merlinda was around three meters from her father.[17] She saw Annie focused her flashlight at Cipriano and she heard Annie say, "Yara pa, yara pa, barila" meaning "Here comes another one, here comes another one, shoot." [18] That was when the fourth explosion occurred and Merlinda heard her father exclaim that he was hit. Merlinda felt that she was also hit.[19]

She did not fall to the ground because she was able to take hold of the wooden fence.[20] She saw both her brother Felix and Agustin lying flat on the ground with the latter's head turned to one side.[21]

Merlinda shouted for help, Romeo Manes came and brought her to the Tablas Island Emergency Hospital.[22] She did not notice anymore where Ricarte Madali was at that time because she was looking towards the direction of their house. She saw her mother running to her.[23]

Desamparada Gasang was washing the dishes after supper when she heard the first shot. After the fourth shot, she became apprehensive because a policeman was mad at her family.[24] She proceeded to where she heard the gunbursts and she met her daughter Merlinda who informed her that she was shot by Madali and that she saw Annie focused a flashlight on her. Then Desamparada saw her husband crawling on the ground. She asked him to stand up but he could not do so. Cipriano told her, "Ging iwagan ako ni Annie Madali cag ging baril ako ni Ricarte Madali." (Annie focused a light on me and Ricarte Madali shot me.) She then went back to her daughter and shouted for help.

The bodies of Cipriano and Felix Gasang were not removed from the road until around midnight. They were brought to the Gasang residence for autopsy.[25] The rural health physician who conducted the postmortem examinations on both Cipriano and Felix found that Cipriano sustained a gunshot wound at the right lower quadrant of the abdomen along the mammary line. From that point of entry, the bullet followed an obliquely downward course penetrating the small and large intestines and the urinary bladder, and exited at the middle of the left buttock. Cipriano's death was caused by hemorrhage due to the gunshot wound.[26]

Felix also died of hemorrhage resulting from the gunshot wound at the right second intercostal space within the midclavicular line of the chest. The bullet veered backwards towards the left hitting the right lung, its blood vessels and the fourth cervical vertebra. The second gunshot wound was at the right side of the abdomen at about the level of the navel and within the right anterior axillary line. The bullet hit the subcutaneous tissues and exited at the posterior axillary line.[27]

Merlyn (Merlinda) Gasang sustained a gunshot wound at the anterior upper third portion of her right leg with no exit wound and which would incapacitate her for ten to fifteen days.[28] However, she stayed for treatment at the emergency hospital in San Agustin for 39 days. Later, she was brought to the hospital in Romblon for extraction of the slug lodged in her leg. For the treatment of her wound, Merlinda spent P6,200.00. She could not go to school for three months.[29]

Agustin Reloj suffered a gunshot wound at the gluteal region of the right thigh. The bullet entered the lateral aspect of the upper third of the right thigh and exited at the posterior aspect of the gluteus maximus muscle. The attending physician certified that Agustin's injury would incapacitate him for seven to nine days.[30] Agustin, who was then a laborer, stayed one week at the hospital and spent P200 for the treatment of his wound. For his pain and anxiety, he stated that he should be compensated in the amount of P500.00.[31]

Madali voluntarily surrendered to the San Agustin police.[32] He handed his .38 caliber service revolver to the policemen who arrived at the scene of the crime and they noted that there were only two remaining bullets in the revolver.[33] He was placed under technical arrest by the provincial commander of the Philippine Constabulary.[34]

After the investigation, on February 1, 1980, two informations were filed against Patrolman Madali and his wife, Annie Mortel Madali. In Criminal Case No. 981, said spouses were charged with multiple murder for the killing of Felix and Cipriano Gasang. The information alleged that they conspired, confederated and mutually helped each other in killing Felix and Cipriano treacherously, with evident premeditation and with the use of a .38 caliber

revolver.[35]

In the separate information for multiple frustrated murder in Criminal Case No. 982, conspiracy, treachery and evident premeditation were also alleged as having attended the felonious assault with the use of a .38 caliber revolver on Merlinda Gasang and Agustin Reloj which could have resulted in the crime of murder had not timely and able medical assistance intervened.[36]

At the trial, both Madali and his wife, who had pleaded not guilty to the crimes charged, testified in their own defense. According to Madali, at around 9:00 o'clock in the evening of October 31, 1979, he and his family were about to sleep when a stone was hurled at their house. His wife said that it could have been a stray stone. But then, three other stones landed on the GI sidings, and the lawanit and bamboo walls of their house. Madali went to their porch where he noticed a person crouching near their gabi plants. He could not identify the person because of the fog so he went inside their room and dressed up in his fatigue trousers and jacket. He went down the house and noticed that there was no one in the gabi plants anymore.

Madali was behind their kitchen and about to go back to his house when someone hit his left shoulder. The person struck him again but he was able to catch the club aimed at him and strike the person with his nightstick. Madali was about to give him another blow with his nightstick but the person caught it. They tried to get each other's club.

They were in that position when Madali's foot stepped into a low canal, causing him to fall down flat on his back. The intruder fell with him and landed on Madali's stomach. The person shouted at someone in the vicinity what the latter was tarrying about. As Madali tried to get up, he heard his wife call, "Carte, Carte." Just then he kicked the intruder on the stomach and the latter fell to the ground.

Madali hurriedly stood up, pulled his gun and fired at the intruder. He noticed two other persons approaching him. One person had a club and the other had what looked like a knife. He warned them, "This is a policeman. Do not come near." One of the persons proceeded to strike him and Madali was hit on his forehead by the man with the club. Madali in turn dealt him with a blow by swinging back his left forearm. The man with a club fell down.

When the man with the knife was about to stab him, Madali fired his gun at him. As that man was still closing in on him, Madali shot him again. The man with the knife retreated to the gate and fell just outside of it.

After firing two shots, Madali turned sideward and saw the man with the club about to strike him. So, Madali shot him. The man walked away. Madali later identified the man crouching amidst their gabi plants as Agustin Reloj.[37]

Annie Mortel Madali corroborated her husband's testimony from the stoning of their house until he dressed up, got his gun and nightstick, and went out of the house. When she heard Madali opening the door to the stairs, Annie got up and went to their balcony to peep. She saw her husband going around their house in a clockwise direction. When he was near their kitchen, Annie saw him grappling with someone over the possession of a club. Her husband and his protagonist fell into a canal, trampling the gabi plants. She heard the man say, "Hay, naga tanga pa kamo dira!" meaning "What are you still waiting for!"

Annie then saw two persons rushing inside their premises. One person was holding a club while the other one had something which he appeared to thrust forward. Losing her composure, Annie warned her husband by calling out his name, "Carte, Carte!" Then she heard a gunshot and the person holding a club who grappled with her husband ran out of the premises.

Annie heard her husband say, "Pulis ini, ayaw mag-lapit" meaning "This is a policeman do not come near." After

that, she heard three more gunshots. The two who came rushing inside their premises scampered away and out of their fence. She could not recognize the three intruders. Madali then walked towards her and asked her to call the police. Annie went inside their sala and told her daughter Agnes to summon the police.[38]

Policeman Numeriano Galang who heard the gun reports, met Agnes on his way to sitio Marawi. When he arrived at the Madali residence, he found Madali with his face and jacket smeared with mud and with a swollen forehead.[39] Galang asked Madali what happened but he did not put his investigation in writing.[40] At the yard, he found stones, two slippers and a nightstick."[41] He did not find bloodstains in the yard because it was drizzling.[42] Neither did he find bloodstains outside the yard because he inspected only the areas surrounding the Madali house.[43]

Policeman Antonio Morales arrived at the scene of the crime with two other policemen. He found Felix Gasang lying flat on his belly about one foot from the gate.[44] To identify him, they turned Felix's body face up and found that his right hand was holding a knife.[45] Later, that knife was turned over to police investigator Pfc. Ernesto Solano.[46] The other victim (Cipriano) was found about five to six meters from the body of Felix.[47] Like Galang, Morales saw pieces of stones which were different from the stones found in Madali's yard which were mere corals or "boga", two pairs of slippers and the gabi plants which appeared to have been trampled upon.[48]

To prove aggression on the part of his victims, Madali presented a medical certificate stating that on November 1, 1979, he was examined at the Tablas Island Emergency Hospital for a vertical contusion (hematoma) on his left forehead and another contusion on the left deltoid region.[49]

The lower court gave full faith and credit to the evidence of the prosecution, especially the testimonies of eyewitnesses-victims Agustin Reloj and Merlinda Gasang. It found that the concerted acts of Madali and his wife while committing the crimes proved conspiracy between them thereby making their criminal responsibility collective. While finding that the prosecution failed to prove evident premeditation, the lower court positively appreciated treachery to qualify as murder the killing of both Cipriano and Felix Gasang. It noted, however, that the prosecution erred in charging as the separate crimes of murder and frustrated murder the killing of Cipriano and the wounding of Merlinda. Observing that only one bullet hit Cipriano and his daughter, Merlinda, the lower court concluded that the Madali spouses should have been charged with the complex crime of murder and frustrated murder. Accordingly, it imposed the penalties set out above for the crimes of frustrated murder, murder and the complex crime of murder and frustrated murder.

In this appeal, the Madali spouses pray for their acquittal arguing that the lower court erred in: [a] finding Annie Mortel Madali guilty as principal by direct participation; [b] not finding that the Gasangs and their kins were motivated by revenge; [c] not finding that Ricarte Madali acted in self-defense; and [d] in giving credence and/or adopting the theory of the prosecution instead of that of the defense.

The prosecution of these cases was highlighted by notable developments. Firstly, before the defense could present its evidence, on September 6, 1980, the capitol building of Romblon was razed to the ground. All court records were lost. The records of Criminal Cases Nos. 981 and 982 were, however, reconstituted and the accused arraigned anew.[50] Secondly, prosecution eyewitness, Roman Galicia recanted his testimony and appeared for the defense claiming that he did not see the gunwielder.[51] He alleged that he testified for the prosecution for fear that the special prosecutor would revive the rape case against him.[52] The lower court thereafter disregarded his entire testimony inasmuch as only the transcript of his cross-examination as prosecution witness could be reproduced.[53] Thirdly, only the testimony of Ricarte Madali was heard by the ponente below as the previous presiding judge was transferred to another sala.[54]

In view of the disqualification of Roman Galicia as a witness, the issue of the credibility of the eyewitnesses has gained importance in this case. Significantly, it is the word of the accused Madali spouses as against that of the surviving victims, Agustin Reloj and Merlinda Gasang. Both prosecution and defense failed to present corroborative witnesses to buttress their testimonies.

Matters of credibility are ordinarily addressed to the discretion and discernment of the trial court which is presumed to have observed the demeanor of the witnesses at the stand. While the ponente of the decision below was able to hear only the testimony of accused Ricarte Madali, the Court sees no reason for not giving sufficient weight to his factual findings considering that he took pains in thoroughly studying the case even to the extent of conducting an ocular inspection of the scene of the crimes and hearing part of the cross-examination of Madali thereat.[55]

The defense is anchored on the justifying circumstance of self-defense. In order that such plea can prosper, it must be positively shown that there was a previous unlawful and unprovoked attack that placed the defendant's life in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist the said attack.[56]

The defense miserably failed to pass said test. Its allegation that the Madali residence was hurled with stones before Madali confronted the Gasang group, was not credibly established. No one was able to positively identify the stone-throwers. Not even Madali and his wife, Annie. There is no proof that the stones found in the Madali yard were indeed the stones thrown at their house. It is interesting to note that even defense witness Antonio Morales, a fellow policeman of Madali, testified that he did not have personal knowledge on where the stones were discovered because he was only informed by Galang (another policeman) "who in turn was only told by Ricarte that the latter was stoned." [57]

Indeed, the defense story is riddled with contradictions and loopholes which the appellants failed to rectify. At the trial, Agustin Reloj sketched a map of the neighborhood and placed Felix Gasang's body on a spot across the road from the Madali gate.[58] The defense tried to discredit Reloj's sketch and his testimony thereon by presenting policemen Morales and Galang who testified that Felix's body was found close to the gate of the Madali residence. However, the testimonies of said policemen clashed with each other. Morales testified that both the two dead bodies were found close to the gate while Galang swore that while one body was near the gate, the other body was five meters away from the Madali fence.[59] It should be noted that ten days after the alleged commission of the crime, police investigator Fetalino found blood stains in the middle of the street indicating that a blood-drenched body had been dragged across the street.[60]

If it were really true that both Agustin and Cipriano were armed with clubs, at least Cipriano's club would have been found as he died on the spot. The nightstick found by the police could not have been the one used by any of the victims. According to defense witness policeman Galang, the nightstick was similar to that of a policeman.[61] Hence, it could have been the same nightstick which Madali admittedly used in striking one of the intruders.[62]

Granting that Agustin Reloj and Felix and Cipriano Gasang were armed with clubs and a knife, Madali's means of resisting them was unreasonable under the circumstance. Having known that an interloper was inside his yard, Madali, being a policeman, should have first fired a warning shot to deter said intruder from executing whatever vicious plans he had. As it were, he fired directly at his victims and all four shots hit their targets.

Moreover, if Agustin, Felix and Cipriano were the intruders, then they should be credited for their extraordinary bravery in entering the Madali yard. They were neighbors and they must have known that as a policeman, Madali possessed a service revolver. The lower court, which saw for itself the Madali yard considered it "rather

inconceivable" for people like the victims to ever dare go inside the premises armed only with a knife and clubs.[63]

The lower court is correct in characterizing the felonious assault on Agustin Reloj as frustrated murder. While Agustin Reloj was hit only below his right hip, Madali's act of shooting was plainly attended by an intent to kill. This is evidenced by the revealing statements of Madali while accosting Agustin Reloj some fifteen (15) meters from Madali's house, thus: "So you are here, you devil, now you are finished. I have been waiting for you. I have been waiting for you for three nights already." [64] The statements "now you are finished" and "I have been waiting for you for three nights already" sufficiently show that Madali not only intended to do away with Agustin Reloj but also that the crime had been premeditated. They satisfactorily prove that Madali had formed a determination to commit the crime prior to the moment of its execution; that he had clung to his determination and that there was sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[65]

Moreover, after uttering those damaging statements, Madali dragged Reloj towards his gate. Annie then clubbed Reloj who, however, succeeded in freeing himself from Madali's hold. Reloj was running away when Madali shot him, hitting him below the right hip.[66]

Indeed, firing at his fleeing victim and subsequently shooting to death two (2) other persons on the same occasion, to our mind, evince quite clearly the intent to kill being then entertained by Madali.

There is likewise no doubt that Madali committed murder when he shot Felix Gasang twice in the body. Treachery qualified the killing to murder punishable under Article 248 of the Revised Penal Code. There was treachery because of the suddenness of the attack. Felix was raising his hands,[67] and saying that he would not fight back when Madali feloniously fired at him twice. Annie Madali's uttering "Here comes another" before Madali shot Felix may not be considered sufficient warning so as to rule out suddenness of the attack.[68] However, no generic aggravating circumstance has been sufficiently proven.

We agree with the trial court that with respect to the killing of Cipriano Gasang and the wounding of Merlinda Gasang, the crime committed was the complex crime of murder with frustrated murder inasmuch as a single shot hit them both.[69] It is immaterial that Merlinda Gasang was wounded on the leg and not on a vital part of her body. What is of primordial consideration is the fact that the criminal act which killed Cipriano also caused Merlinda's injury.[70] As in the killing of Felix, treachery qualified the killing of Cipriano to murder because of the suddenness of the attack.

Annie Mortel Madali's defense strategy is to deny participation in the commission of the crimes and to interpose an alibi. She insists that like any other wife, her natural reaction to situations which involve risk is "to stay away, meditate and to shout and warn her husband of the intruders rushing towards him." [71] She bewails the fact that the prosecution has pictured her as "a brave, pugnacious and aggressive wife like the heroine of the pre-war movie 'Annie of the Indies'." [72] Indeed, Annie's role in the commission of the crimes may appear to be straight out of an action picture were it not for the fact that her denials and uncorroborated alibi cannot stand against the categorical declarations of prosecution eyewitnesses Agustin Reloj and Merlinda Gasang on her participation therein.[73] She should have presented witnesses to support her story. As she herself admitted, she and her husband were not alone in their house when they were allegedly stoned. Six of their children were home then.[74] Some of them must have been within the age of discernment inasmuch as their eldest child was 21 years old and therefore, any one of them could have corroborated her story.

Nevertheless, the Court finds that proof beyond reasonable doubt has not been established as to the existence of conspiracy between the Madali spouses. While direct proof is not essential to prove conspiracy as it may be

shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense(s) charged, the evidence to prove the same must be positive and convincing considering that conspiracy is a facile devise by which an accused may be ensnared and kept within the penal fold.[75] With this and the principle that in criminal prosecution, doubts must be resolved in favor of the accused, as guides, the Court rules that the liability of Annie Mortel Madali with respect to the crimes committed herein, is only that of an accomplice.

Annie's participation in the shooting of the victims consisted of beaming her flashlight at them and warning her husband of the presence of other persons in the vicinity. By beaming her flashlight at a victim, Annie assisted her husband in taking a good aim. However, such assistance merely facilitated the commission of the felonious acts of shooting. Considering that, according to both of the Madali spouses, "it was not so dark nor too bright"[76] that night or that "brightness and darkness were equally of the same intensity,"[77] Ricarte Madali could have nevertheless accomplished his criminal acts without Annie's cooperation and assistance.

Neither may Annie's shouts of "here comes, here comes another, shoot" be considered as having incited Ricarte to fire at the victims to make Annie a principal by inducement. There is no proof that those inciting words had great dominance and influence over Madali as to become the determining cause of the crimes.[78] The rapidity with which Madali admittedly fired the shots[79] eliminated the necessity of encouraging words such as those uttered by Annie.

The fact that Annie dealt a blow on Agustin while he was being dragged by Madali to their yard does not make her a principal by direct participation. Annie's act, being previous to Madali's act of shooting Agustin, was actually not indispensable to the crime committed against Agustin.[80]

Proof of motive is unnecessary where there is a clear identification of the accused.[81] More so in this case where the principal accused does not deny having fired the fatal shots. But the Madali spouses must have harbored a deep resentment against the Gasang family to put into action Madali's threat of "sowing bullets" on them. What makes Madali's crimes even more reprehensible is the fact that he claims to have committed them in the pursuit of his task as a peace officer. He even went to the extent of wearing his fatigue jacket and trousers to create a facade of performance of an official function. Sadly, he misused his authority and his wife, harboring an improper sense of connubial cooperation, did not even try to dissuade him.

Under Article 48 of the Revised Penal Code, the penalty for a complex crime shall be the maximum period of the penalty for the most serious crime. The death penalty being the maximum period of the penalty for murder of reclusion temporal maximum to death under Article 248 of the same Code, the death penalty should be imposed for the complex crime of murder with frustrated murder considering that under Article 63, an indivisible penalty cannot be affected by the presence of any mitigating or aggravating circumstance. It should be noted that under the ruling in *People v. Muñoz*, L-38968-70, February 9, 1989, Article III, Section 19(1) of the 1987 Constitution does not change the period of the penalty for murder except only insofar as it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. Hence, the lower court correctly imposed the penalty of reclusion perpetua on Ricarte Madali for said complex crime.

The mitigating circumstance of voluntary surrender which was proven but not appreciated in favor of Ricarte Madali by the trial court, should be considered in imposing on him the penalty for the murder of Felix Gasang. The presence of this mitigating circumstance without any aggravating circumstance to offset the same justified the imposition of the minimum period of the penalty for murder pursuant to Article 64(2) of the Revised Penal Code. Accordingly, the proper penalty should be the indeterminate sentence of not less than ten (10) years and one (1) day of prision mayor as minimum and not more than twenty (20) years of reclusion temporal as maximum.[82]

The same mitigating circumstance should be considered in the imposition of the penalty on Ricarte Madali for the crime of frustrated murder committed against Agustin Reloj. The penalty for frustrated murder in accordance with Article 50 in relation to Article 248 is prision mayor in its maximum period to reclusion temporal in its medium period. Taking into consideration the mitigating circumstance of voluntary surrender and applying the Indeterminate Sentence Law, the penalty imposed on Ricarte Madali is four (4) years, two (2) months and one (1) day of prision correccional as minimum to 12 years of prision mayor as maximum.

As an accomplice, Annie Mortel Madali should be imposed the penalty next lower in degree than that prescribed by law for the consummated felonies.[83] For the complex crime of murder and frustrated murder, like her husband, she shall be imposed the penalty of reclusion perpetua,[84] considering that the penalty prescribed by law for Ricarte Madali is the death penalty. For the murder of Felix Gasang, the penalty imposable on her is prision mayor maximum to reclusion temporal medium,[85] and there being no aggravating nor mitigating circumstances, the penalty should be reclusion temporal minimum.[86] Applying the Indeterminate Sentence Law, Annie Mortel Madali should therefore be meted the penalty of six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum. For the crime of frustrated murder committed against Agustin Reloj, Annie Mortel Madali shall be sentenced to an indeterminate penalty of from six (6) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum.

Ricarte Madali and Annie Mortel Madali shall also be liable to the heirs of Cipriano and Felix Gasang for indemnity in the total amount of sixty thousand pesos (P60,000) in the proportion of 2:1 (2 shares for Ricarte Madali as principal and 1 share for Annie Mortel Madali as accomplice), with each accused-appellant being subsidiarily liable for the other in case of insolvency. The Court sees no reason to disturb the lower court's findings on the reimbursement of hospitalization and medical expenses in favor of Merlinda Gasang and Agustin Reloj as well as the award of damages, except to clarify that payment thereof shall likewise be in the proportion of 2:1 as above stated and with each accused being subsidiarily liable for the other in case of insolvency.

WHEREFORE, except as hereinabove modified, the decision of the lower court is hereby affirmed. Costs against the appellants.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Presided by Judge Wilfredo D. Reyes.

[2] Criminal Cases Nos. 981 & 982.

[3] Exh. E.

[4] TSN, August 21, 1982, p. 14.

[5] TSN, March 25, 1980, p. 55.

[6] Ibid., p. 56.

[7] TSN, August 21, 1982, pp. 8-9.

[8] TSN, January 18, 1982, p. 10.

[9] TSN, August 21, 1982, p. 10.

[10] TSN, January 18, 1982, p. 10.

[11] TSN, August 20, 1981, p. 8.

[12] Ibid., p. 9.

[13] Ibid., pp. 10-12.

[14] Ibid., p. 13.

[15] Ibid., pp. 13-15.

* Merlinda Gasang testified before the fire burned down the capitol building in Romblon destroying court records including those of Criminal Cases Nos. 981-982. Counsel for the prosecution and the defense agreed not to present Merlinda and Roman Galicia anymore (TSN, August 20, 1981). A copy of the complete transcript of stenographic notes of the testimony of Merlinda was submitted by the private prosecutor to the court (Record, pp. 98-121).

[16] TSN, March 25, 1980, pp. 46-47; Record, pp. 100-101.

[17] Ibid., p. 57.

[18] Ibid., p. 45.

[19] Ibid., p. 46.

[20] Ibid., p. 52.

[21] Ibid., pp. 49-50.

[22] Ibid., p. 51.

[23] Ibid., pp. 57-58.

[24] TSN, August 21, 1981, p. 8.

[25] Ibid., p. 12.

[26] Exh. C.

[27] Exh. D.

[28] Exh. F.

[29] TSN, March 25, 1980, pp. 51-55.

[30] Exh. A.

[31] TSN, August 20, 1981, pp. 15-16.

[32] Exh. G.

[33] TSN, August 8, 1983, pp. 21-22.

[34] TSN, January 18, 1982, p. 4.

[35] Rollo, p. 6.

[36] Rollo, p. 7.

[37] TSN, July 21, 1983, pp. 4-13 & 25.

[38] TSN, February 8, 1982, pp. 3-11.

[39] TSN, January 22, 1982, pp. 4 & 7.

[40] Ibid., p. 12.

[41] Ibid., p. 6.

[42] Ibid., p. 12.

[43] Ibid., p. 13.

[44] TSN, January 20, 1982, p. 4.

[45] Ibid., p. 5.

[46] Ibid., p. 11.

[47] Ibid., p. 4.

[48] Ibid., pp. 6, 7 & 15.

[49] Exh. I.

[50] RTC Decision, p. 2; Rollo, p. 9.

[51] TSN, January 21, 1982, p. 3.

[52] Ibid., p. 5.

[53] RTC Decision, p. 3.

[54] Ibid.

[55] RTC Decision, p. 13; TSN, August 8, 1983, pp. 7-25.

[56] *People v. Pasco, Jr.*, L-45716, June 24, 1985, 137 SCRA 137, 143.

[57] TSN, January 20, 1982, p. 14.

[58] Exh. I.

[59] TSN, January 20, 1982, pp. 5-6; January 22, 1982, pp. 8-9.

[60] TSN, January 18, 1982, p. 4.

[61] TSN, January 22, 1982, p. 6.

[62] TSN, July 21, 1983, p. 7.

[63] RTC Decision, p. 17.

[64] TSN, August 20, 1981, p. 8.

[65] *People v. Corpuz and Serquina*, 107 Phil. 44; *People v. Custodio*, 97 Phil. 698; *People v. Diva*, 25 SCRA 468; *People v. Ardisa*, 55 SCRA 245; *People v. Ramolete*, 56 SCRA 66; *People v. Cardenas*, 56 SCRA 631.

[66] TSN, August 20, 1981, p. 9.

- [67] *People v. Catipon*, L-49264-66, October 9, 1985, 139 SCRA 192, 204.
- [68] *People v. Rosario*, L-46161, February 25, 1985, 134 SCRA 496, 510.
- [69] *People v. Paculba*, L-37366-67, August 31, 1983, 124 SCRA 383, 392.
- [70] Article 48, Revised Penal Code.
- [71] Brief, p. 24.
- [72] *Ibid.*, p. 22.
- [73] *People v. Tan, Jr.*, G.R. No. 53834, November 24, 1986, 145 SCRA 614; *People v. Delavin*, G.R. Nos. 73762-63, February 27, 1987, 148 SCRA 257.
- [74] TSN, February 8, 1982, pp. 2-3.
- [75] *People v. Tingson*, L-31228, October 24, 1972, 47 SCRA 243, 255.
- [76] TSN, February 8, 1982, p. 18.
- [77] TSN, July 21, 1983, pp. 5-6.
- [78] *People v. Canial*, L-31042-43, August 18, 1972, 46 SCRA 634, 651.
- [79] TSN, August 8, 1983, p. 18.
- [80] *People v. Templonuevo*, 106 Phil. 1003, 1007.
- [81] *People v. Anquillano*, G.R. No. 72318, April 30, 1987, 149 SCRA 442.
- [82] *People v. Aguilar*, 88 Phil. 693.
- [83] Art. 52, Revised Penal Code.
- [84] Art. 61(1).
- [85] Arts. 248 & 61(3).
- [86] Art. 64(1).

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