

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAPNAYO
BUKA @ “LAPNAYO LIBAT”, PRAL NGAY, ANGEL PRAL,
BEREN MANDONG, PURONG BILAAN @ “PURONG”, AND
TWO JOHN DOES, ACCUSED, AN...**

G.R. Nos. 68311-13. January 30, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

At around noontime on 14 December 1978, a weapons carrier with several passengers on board was ambushed by armed men in Sitio Samlang, Datal Batong, Malungon, South Cotabato, causing the deaths of Elena Pamoso and Estelita Imarga and the physical injuries of Felipe Noquera. As a consequence thereof, three (3) separate informations were filed on 5 March 1980 against Lapnayo Buka, Angel Pral, Pral Ngay, Beren Mandong, and Purong Bilaan with the then Court of First Instance (now Regional Trial Court) of South Cotabato. The first charges them with the crime of Murder in connection with the death of Elena Pamoso, committed as follows:

"That on or about the 14th day of December, 1978 at 11:00 o'clock in the morning to 12:00 o'clock noon time, at Sitio Samlang, Barangay Datal Batong, Municipality of Malungon, Province of South Cotabato, Philippines and within the jurisdiction of this Honorable Court, the above-named accused said to be in company with two John Does, whose identities are still unknown and who are still at-large armed with assorted high powered weapons such as Surit, shotgun rifle and garand rifle and with evident premeditation and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously ambush, attack, assault and shoot with the use of assorted firearms at the weapon (sic) carrier of Edon Escobillo, boarded by 15 passengers and as a result thereof, inflicting and mortally wounding Elena Pamuso which resulted to (sic) her instantaneous death.

CONTRARY TO LAW, with qualifying circumstance of evident pre-meditation and with generic aggravating circumstance that the act was committed by a band and with deliberate disregard of the respect due the offended (sic) party on account of her sex, being a woman." [1] (underscoring supplied).

Said case was docketed as Criminal Case No. 1893.

The second[2] charges them with Frustrated Murder in the case of Felipe Noquera on account of the wounds he suffered which would have "ordinarily cause his death ..., but nevertheless did not produce it by reason of causes independent of their will that is, due to the timely and able medical assistance rendered to said Felipe Noquera which prevented his death." The same qualifying and aggravating circumstances were alleged in the information except for the aggravating circumstance of disregard of respect due the offended party on account of her sex. This was docketed as Criminal Case No. 1894.

The third,[3] docketed as Criminal Case No. 1895, charges them with the crime of Murder in connection with the death of Estelita Imarga and alleges the same qualifying and aggravating circumstances as those alleged in Criminal Case No. 1893.

The foregoing cases were ordered archived by the trial court on 30 September 1980 because all the accused were

still at large; nevertheless, warrants for their arrest were issued.[4]

On 30 July 1981, the prosecution filed a motion to revive the cases which asked for the issuance of an alias warrant of arrest.[5] On 6 November 1981, accused Beren Mandong and Angel Pral were arrested and brought under the custody of the law.[6] The others remain at large up to the present.

The three (3) cases were then consolidated for joint trial as against Beren Mandong and Angel Pral, who pleaded not guilty when arraigned on 19 November 1981.[7]

At the joint trial on the merits, the prosecution presented ten (10) witnesses, while the defense presented eight (8) witnesses, including the appellants themselves.[8] All of the witnesses testified before then Judge Pedro Samson C. Animas.

After joint trial on the merits, the lower court, per Judge Marcelino R. Valdez, rendered a consolidated decision,[9] promulgated on 20 January 1984, finding the accused Angel Pral and Beren Mandong each guilty of "two (2) crimes of murder" and of the crime of frustrated murder and sentencing them as follows:

"WHEREFORE AND IN VIEW OF ALL THE FOREGOING, this Court finds the accused Angel Pral and Beren Mandong guilty beyond reasonable doubt and hereby convicts each of them of two crimes of murder and Frustrated Murder.

As no mitigating nor (sic) aggravating circumstances were proven, this Court hereby sentences each of them to suffer the penalty of Reclusion Perpetua in Crim. Cases Nos. 1895 and 1893. However, in Crim. Case No. 1894 accused is hereby sentenced to an indeterminate penalty of eight (8) years and twenty (20) days of Prison Mayor as Minimum to fourteen (14) years, ten (10) months and twenty (20) days of Reclusion Temporal as maximum and to pay the following damages to the heirs of the victims, to wit:

- a) Twelve Thousand (P12,000.00) Pesos each by reason of the death of Estelita Imarga and Elena Pamoso and Six thousand (P6,000.00) Pesos for the Frustrated death (sic) of Felipe Noquera;
- b) Five Thousand (P5,000.00) Pesos each in concept of actual and moral damages;
- c) Five Thousand (P5,000.00) Pesos each in concept of exemplary damages and to pay the cost.

SO ORDERED."

The evidence for the prosecution upon which the convictions were based is summarized by the trial court as follows:

"On December 14, 1978, the victim with some other companions were bound for General Santos City from Miasong Malungon, South Cotabato, riding on a weapons carrier. Upon reaching Sitio Samlang, Brgy Datal Batong, of said Municipality, at around 11:30 A.M. they were ambushed by the accused resulting to (sic) the death of Estelita Imarga, Elena Pamoso and wounding (sic) Felipe Noquera. The weapons carrier was driven by Paquito Alvarez. Per Medical report the cause of death of Estelita Imarga was 'gun shot wounds left chest,' Elena Pamoso was 'gun shot wounds, right chest' (Exhibits "D" and "D-1") while Felipe Noquera suffered injuries, to wit:

'Wound - gunshot with avulsion of outer layer of skin 4 cm. long, one cm. wide left interscapular area.

Wound - gunshot with avulsion of outer layer of skin, 6 cm. long, one cm. wide right, infrascapular area. (Exhibit "A")'

x x x

Paquito Alvarez, driver of the weapons carrier which was ambushed declared that he saw the ambushers with

guns and recognized two of them as Beren and Puring, the real name (sic) are Beren Mandong and Puring Bilaan. He recognized these two among the ambushers because he is acquainted with them long time (sic) before the incident. The others were new to him and hence did not recognize them.

When they were shot at, he speed (sic) up his truck until they reached Datal Kangil, a place three kilometers, more or less, from the ambush scene where he asked for help from the Barangay Captain. They went back to retrieve one of the victims Estelita Imarga who fell from the weapons carrier and brought her to Datal Kangil. (TSN, pp. 7-14, Feb. 1, 1982)

Felipe Noquera, the one who sustained gun shot wounds but escaped death, testified that they were ambushed at Sitio Samlang, Datal Batong, Malungon, at around 11:00-11:30 o'clock A.M., on December 14, 1978, on their way to General Santos City from Brgy. Miasong of said Municipality, riding on weapons Carrier (sic). He saw the ambushers and recognized Angel, Beren, Pral and Lapnayo whose real names are Angel Pral, Beren Mandong, Ngay Pral, Lapnayo Buka and Puring Bilaan. This witness was acquainted with these persons long (sic) time before the incident for he used to see them in Datal Batong. He (Noquera) being a driver himself of a weapons carrier. He identified Angel Pral and Beren Mandong in court during his open testimony. (TSN, pp. 25-29, Feb. 2, 1982). He saw each of these two ambushers with long firearms. In spite of the rigid cross examination on this witness he stood pat on the identity of the two accused, testifying firmly that he saw them (accused) holding long firearm each, but he did not know what kind of firearms were those. He was investigated by the office of the Provincial Fiscal and he told the same version -- re -- the identity of these two accused. (TSN, pp. 39-40, Feb. 2, 1982)

Luis Esconde, one of the persons on board the weapon (sic) carrier at the time of the of the time (sic) of the ambushcade (sic) testified that upon reaching sitio Samlang, he saw the ambushers more than five, who fired at them and he recognized three of them, Lapnayo, Beren, and Angel, whose real name (sic) are Lapnayo Buka, Beren Mandong, and Angel Pral. He did not recognized (sic) the others. He readily pointed to the accused Angel Pral and Beren Mandong when he was made to identify them in Court. He is acquainted with said accused because he usually see (sic) them in Datal Batong during market days, cockfighting and card games. He saw the victims of the ambush Estelita Imarga and Elena Pamoso who died immediately thereafter, while Felipe Noquera suffered gun shot wounds (TSN. pp. 46-51, Feb. 3, 1982). Upon rigid cross-examination this witness also stand (sic) pat on the identity of these two accused whom he saw holding long firearm (sic) each.

Ricardo Salvador, one of the persons on the (sic) board the weapon (sic) carrier at the time and date of the ambush, stated that he saw the ambushers, but he only recognized Beren, whose real name is Beren Mandong, also holding a long firearm. He saw the victims Estelita Imarga and Elena Pamoso who died immediately thereafter while Felipe Noquera suffered gunshot wounds. (TSN, pp. 61-64, Feb. 3, 1982). On cross (sic), this witness firmly stated that he knew personally Beren Mandong before the incident because he usually saw him in Datal Batong, while the rest of the ambushers were not known to him, hence, he could not recognize them (TSN, pp. 64-65, Feb. 3, 1982)."

The trial court rejected the defense of alibi presented by both accused, summarizing and disposing of it as follows:

"Conversely, accused Angel Pral took up the defense of Alibi. He denied having participated in the ambush killing at Sitio Samlang, Brgy. Datal Batong, Malungon, South Cotabato, on December 14, 1978, for at the time of the alleged ambush he was in General Santos City, together with his father, Fral Ngay; that on December 13, 1978 he went to General Santos City with Elisias Pempillo with (sic) whom he sold his corn produce, that they arrive (sic) General Santos City at around 3:00 o'clock P.M. on that date; that he did not go back to Datal Batong on December 14, 1978 but slept in Llidos home General Santos City (sic) and went back to Datal Batong only on December 15, 1978; that Lising Pempillo the buyer of his corn was the only one who returned to Datal Barong on the 13th of December and went back to General Santos City on December 14, 1978, arriving thereat at 1:00 o'clock P.M. (TSN, pp. 174-178, July 22, 1982).

On cross (sic), this accused admitted he has not gone to school; that he is an illiterate and does not know the

month of the year; that he knew only that he had been selling his corn produce in the month of December, 1978, because he was told by the christians (sic) thereat; that he harvested his corn on December 9, 1978 and finished the same on December 12; that he remembered very well December 9-12, when he harvested his corn, December 13, when he sold his corn to Lising Pempillo, December 14, when he slept in General Santos City and December 15, when he went back to Datal Batong. But when he was ask (sic) the date when he testified on July 22, 1982, he answered 'I don't know'. Asked further how he remembered those dates, December 9, 12, 13, 14 and 15, 1978, he answered that he was informed by the christians (sic) thereat, that those were the dates (TSN, pp. 180-184, July 22, 1982). Then this accused was again asked the date when he was born and he said he does not know; he does not also know when he got married, nor does he know the birth date of his child. He does not also know the distance from Dadiangas to Datal Batong, nor (sic) does he know how to tell the time. (TSN, pp. 185-186, July 22, 1982).

The version of this accused was corroborated by Elisias Pempillo, the businessman with (sic) whom accused Angel Pral sold his corn harvest. This witness testified that he knew personally Angel Pral; that on December 12, Angel Pral informed him that his corn was ready for hauling; that he had been hauling Angel Pral's corn from December 12-13 when he hauled the corn to General Santos City on the latter date bringing with him the accused. When this witness return (sic) to Datal Batong on December 13, 1978, Angel Pral was left in General Santos City. He (Pempillo) again hauled the corn on December 14, arriving in General Santos City at around 1:00 P.M. where he saw accused Angel Pral. On December 15, 1978, all of them returned to Datal Batong (TSN, pp. 131-136, July 20, 1982). It took more than a year when Angel Pral was apprehended and brought to the custody of the law. This witness knew the arrest of Angel Pral by the police authorities but inspite of his knowledge, he did not care to inform the police authorities that Angel Pral was innocent of the crime charged against him. He did not also tell anybody about what he knew about Angel Pral, that this accused was with him since December 13-15, 1978; that Angel Pral was in General Santos City on December 14, the date of the ambush. (TSN, pp. 138-139, July 20, 1982).

However, this witness was confronted with his sworn statement before the fiscal's (sic) Office taken on July 17, 1979, where he stated that on December 12, 1978 they were not able to go back to General Santos City, but instead they slept in Malungon, South Cotabato in their house at Data (sic) Batong. Then he was asked.

'Q So what you declared here before the Investigating Fiscal was not true?

A. I cannot remember it correctly but what I can remember is that I delivered corn on December 13 and 14, (TSN, pp. 143, July 20, 1982).'

Asked further how he came to remember the dates of December 13, 14 and 15, 1978, and (sic) he answered: 'Because those were the dates, I delivered corn.' However, when he was asked the date when he testified before the Provincial Fiscal's Office, he could not remember. Then his credibility was tested. He was asked how many children he has and he answered 'Twelve.' When he was asked the date of birth of his tenth child, he answered: 'I cannot recall.' Of the seventh child, Charlin, he said, he cannot recall. Of the twelve (sic) child, he said he cannot remember. Of the eleventh, he could not also remember. Of the sixth child, he said he cannot also remember. Under the circumstances, there is indeed a doubt as to the credibility of this witness. The veracity for (sic) truth of his testimony is very doubtful. What he could remember only were those dates, December 13, 14 and 15, 1978, in comparison with dates of more significant events, which goes to show, that such line of testimony could be dubbed as coach (sic) testimony.

On the other hand, accused Beren Mandong has the same nature of defense. He is a bilaan (sic), and an illiterate (sic). He was arrested sixteen months after the complaint was filed. He declared that at the time and date of the ambush on December 14, 1978, he was farming in the farm of Serafin Sunio at Datal Batong as a hired laborer; that he knew of this date because Serafin Sunio told him; that when he was asked the date he testified in Court, he answered: 'I don't know' (TSN, pp. 199-201, Nov. 18, 1982).

The foregoing version was affirmed by Serafin Sunio, that on December 14, 1978, he had his land at Datal Batong cleared and he employed 24 laborers, out of whom were more than ten bilaans (sic). These laborers had been working at 7:00 A.M. to 11:30 A.M., and one of them was accused Beren Mandong. They worked the whole day up to 5:00 P.M. under the direct supervision of Serafin Sunio. This witness learned of the ambush at Sitio Samlang, Datal Batong which is three kilometers away from his farm. (TSN, pp. 159-161, July 21, 1982). There were of course clear and distinct discrepancies (sic) between the open testimony of this witness in open court with that of his sworn statement with the Fiscal's Office regarding the number of laborers he employed on December 14, 1978 from 24 to 33 in number. He also testified in open Court that there were more christians (sic) than bilaans (sic) while in his sworn statement with the Fiscal's Office there were more Bilaans than christians (sic); and when asked what were their names he only know (sic) five, namely: Pilang, Beren, Oro and Ondan, and nothing more. The probative value of this line of testimony is fatally infirmed by its unreliability.

Alibi is a weak defense and cannot prevail over the testimony of truthful witnesses. The reason is that alibi is easy of (sic) fabrication. (Peop. vs. Bulawin, 29 SCRA 710; Peop. vs. Gomez 28 SCRA 440). Courts should exercise great caution in accepting the defense of alibi because it is easily concocted (Peop. vs. Bagsican, 6 SCRA 400). In order that an (sic) alibi as a defense may prosper, the evidence to support it must be clear and convincing as to preclude the possibility of the accused's presence at the scene of the crime, while the evidence as to its identification must be weak and insufficient. (Peop. vs. Jamero, 24 SCRA 207; Peop. vs. Lumantas, 28 SCRA 764; Peop. vs. Alcantara 33 SCRA 813). To establish alibi, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (Peop. vs. Lumantas, 28 SCRA 754). The claim of the accused that they were far from the scene of the crime is not credible, where there is probability that they might have spread out in the neighboring towns and barrios to eliminate their enemies (Peop. vs. Corpuz, 1 SCRA, 33; Peop. vs. Almeriz, 3 SCRA 252). The defense of alibi cannot prevail over the positive identification of witnesses (Peop. vs. Baiaga, 1 SCRA 283; Peop. vs. Estrada, 22 SCRA 111).

All the foregoing doctrines play a vital role against the defense of alibi of the accused. It could not be improbable for the accused to have been at the scene of the ambush from the place where they allegedly were on the date of December 14, 1978, considering the distance which is approachable within few (sic) minutes or hours. Were it a fact that the accused were not definitely identified by witnesses for the prosecution, then the accused (sic) defense of alibi assumes importance. But such was not the case, for the accused were definitely identified by the prosecution witnesses to be the companions of the ambushers on that fatal day. Not only were they definitely identified but that after the commission of the offense, on December 14, 1978 these two accused went into hiding and were only arrested on November 6, 1981 or there about (sic), after a period of over two years. This (sic) cases were archived on September 30, 1980, for the accused escaped from their permanent residence, at Datal Batong, Miasong, Malungon South Cotabato, and up to the present their other co-accused are still at large and could (sic) not be found. 'The wicked fleeth while no man pursueth but the righteous are as bold a (sic) lions', goes the saying. There could have been no other to have staged the ambushcade (sic), except the herein accused and their gang, for there were no other persons seem (sic) by the prosecution witnesses except the herein accused and their co-accused who are still at large. On the foregoing scores, this court arrives at the conclusion that the presumption of innocence of the accused as provided in the Constitution had been overcome. The denials of the accused to have (sic) participated in the ambushcade (sic) are ineffective to overcome the evidence of the prosecution, particularly the positive testimonies of Felipe Noquera and Luis Esconde, passenger (sic) of the weapons carrier when the ambush was committed. Surprisingly the conduct of these accused right after the shooting incident has been very suspicious, for immediately thereafter all the accused escaped and could no longer be found. Compared to the true identification and testimonies of the prosecution witnesses this court does not doubt their veracity for

being disinterested witnesses and whose impartiality has not been placed in doubt.

As to the testimony of Mayor Felipe Constantino of the Municipality of Malungon that there had been a confrontation in July, 1980 with some of the rebels responsible of (sic) the ambushcade (sic) on December 14, 1978, with Col. Bumanglang and a Major from the Army, 3rd Inf. Btn., wherein four of the rebels namely: Olding Golac, So Dol, Toy Maliang, and Dano Pandayong admitted responsibility for the ambush, this court believes that said result of the alleged confrontation cannot be taken on its face value 'hook line and sinker' because of the hearsay nature of said confrontation. The confrontation was allegedly made in July, 1980, after the case had already been filed in court. However, this witness, a Municipal Mayor at that, did not care to give the complete details of such confrontation to the court for its guidance, especially at that time when the accused were all still at large and warrants of arrest had been issued against them. Nor was there an information given to the prosecution arm of the government regarding said confrontation whereby four of the surrenderees admitted responsibility of (sic) the ambushcade (sic). And if the accused were not really the perpetrators of the dastard (sic) crime, why is it that immediately after December 14, 1978, these accused could no longer be found at their respective residence (sic) and could not be apprehended until November 6, 1981 when two of them were brought to the custody of the law.

Besides, the surrenderees were not brought to court before the alleged amnesty was given to them, so this case should have been resolved pursuant to law. Under the circumstances, this court cannot exculpate the accused based on a flimsy defense of alibi, against the clear, convincing testimonies of government witnesses that the accused were indeed the ones responsible for the murder and frustrated murder or ambush shooting resulting to (sic) the instantaneous death of Estelita Imarga, Elena Pamoso and wounding Felipe Noquera."[10]

In convicting each of the accused for murder as charged in Criminal Cases Nos. 1893 and 1895 and frustrated murder in Criminal Case No. 1894, the trial court considered the qualifying circumstances of treachery and evident premeditation since the "ambush or shooting was so sudden and unexpected assault (sic) perpetrated by all the accused insured the killing of the two defenseless victims Estelita Imarga and Elena Pamoso and the frustrated death (sic) of Felipe Noquera."[11]

Unable to accept the verdict, accused Angel Pral and Beren Mandong, hereinafter referred to as the Appellants, filed their Notice of Appeal[12] on 6 February 1984 wherein they manifested their intention to appeal to the then Intermediate Appellate Court (now Court of Appeals). In view of the penalty imposed, the appeal should have been brought directly before this Court. The Intermediate Appellate Court, upon receipt of the records of the cases, correctly forwarded the same to this Court on 15 August 1984;[13] the cases were then docketed as G.R. Nos. 68311-13.

In their Brief, Appellants assign only one (1) error:

"THE TRIAL COURT ERRED IN CONVICTING THE APPELLANTS OF TWO (2) CRIMES OF MURDER AND FRUSTRATED MURDER NOTWITHSTANDING THE INSUFFICIENCY OF EVIDENCE ADDUCED BY THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT."[14]

and in support thereof, they assert and argue that:

(a) Their defense of alibi should have been given more credence considering that it is corroborated by two (2) other people, namely Elisias Pempillo (corroborating the alibi of Angel Pral) and Serafin Sunio (corroborating the testimony of Beren Mandong);[15]

(b) The testimonies of Mayor Felipe Constantino of Malungon, South Cotabato and Barangay Captain Venancio Malayon of Barangay Bilaan[16] that the real ambushers had already surrendered and had been

granted amnesty, clearly show their innocence; said testimonies should have been given more weight by the trial court;

(c) The testimonies of the prosecution witnesses, heavily relied upon by the trial court in convicting the Appellants, were full of inconsistencies such that there was a failure to positively identify the perpetrators of the crime;[17]

(d) On the credibility of the prosecution witnesses, the findings of the trial court in the case at bar are not controlling and should not be given much weight because the judge who rendered the decision is not the same judge who heard the case;[18] and

(e) Finally, even assuming arguendo, that the Appellants were among those who staged the ambush, they cannot be convicted for Frustrated Murder in G.R. No. 68312 (Criminal Case. No. 1894 in the court below) because as per the testimony of prosecution witness Dr. Casimiro Mansilla, the victim, Felipe Noquera, would have lived even without medical attendance considering that the wound was just a slight physical injury.[19]

The People, in its Brief filed by the Solicitor General, disagrees with the Appellants and maintains that the prosecution was able to prove their guilt beyond reasonable doubt. It stressed that at least four (4) eye-witnesses positively identified them as those who ambushed the victims.[20] It further claims that as against the positive identification by the prosecution witnesses, the Appellants' defense of alibi is weak and not plausible.[21]

Anent the contention that the testimonies of the prosecution witnesses are full of inconsistencies, the People painstakingly contradicted each and every inconsistency mentioned, to wit:

"The appellants contend that the testimony of witness Paquito Alvarez is not to be believed because there is an inconsistency when he admitted having pointed to all the accused during the preliminary investigation before the fiscal, while in his testimony in court he claimed to have recognized only accused Beren Mandong and Purong Bilaan.

The contention is without merit. There is no showing in the testimony that when counsel mentioned the word 'accused', he was referring to all the accused, including those at-large, or that he was referring only to all the accused who had been apprehended. Hence, the alleged inconsistency is wanting. As to the alleged testimony of the defense witness Barangay Captain Malayon that when he interviewed Alvarez and the other passengers, no one told him as to who were the ambushers, suffice it to say that the testimony of said witness cannot be used to impeach the testimony of eye-witness Alvarez. Besides, there is no showing that Barangay Captain Malayon ever asked Alvarez nor (sic) the passengers as to the identity of the ambushers.

The appellants likewise contends (sic) that eye-witness Felipe Noquera is not credible because the said witness allegedly declared that when he heard gun reports he immediately took cover by lying face down on the roof of the weapon (sic) carrier, and that when cross-examined, the said witness forgot the shirt worn by the accused, their distance from one another and their relative position from (sic) each other.

The contention lacks merit. It is not true that eye-witness Noquera immediately took cover face down upon hearing the gun reports. What he testified during cross-examination is that he first looked sidewise from where the gun report came before taking cover. Thus:

'Q And when you dived on the roof of the vehicle on your belly, you did that instantaneously upon hearing the gunburst?

A. Yes, sir. I looked sidewise from where the gun report came (P. 33, tsn, Feb. 2, 1982).'

As regards his failure to remember the shirt worn by the accused, their distance from one another and their relative position from (sic) each other, suffice it to say that the same is not uncommon, for under such a situation where they were ambushed, the natural tendency of a witness is only to focus his vision at the face of

the person firing at them in order to see recognize (sic) malefactors. Hence, he could not have a clear vision of the shirts they were wearing, their distance from one another and relative position from (sic) each other. Besides, the witness testified after the lapsed (sic) of about four (4) years. Hence, he could not have possibly remembered all the minute details which to him are not of great significance.

The appellant further contends that the testimony of eye-witness Ricardo Salvador that he recognized Beren Mandong as one of the ambushers cannot also be given full credit because Salvador was seated at the middle of the weapon (sic) carrier and that the said vehicle has a roof which could have prevented him from seeing the accused who were on top of a hill.

The contention is without merit. In the first place, it is not true that the entire weapon (sic) carrier was covered by a roof. Only the driver's cabin has a roof, while the portion at the rear thereof was uncovered. Secondly, the ambushers were standing on the hill and were openly exposed. There is nothing, therefore, to obstruct the view of eye-witness. Salvador when he glanced at the ambushers who were on top of the hills firing at them."^[22]

The People further contends that the Appellants were correctly convicted of Frustrated Murder in Criminal Case No. 1894 (G.R. Nos. 63811-13, herein) because "all the elements of the crime of murder, including the intent to kill with the use of deadly weapon, are present" and "it is inconsequential whether the wound inflicted is serious or less serious or slight."^[23]

Lastly, the People submits that the indemnity of P12,000.00 each, to be paid to the heirs of the deceased Estelita Imarga and Elena Pamoso, should be increased to P30,000.00 each, in view of the ruling in *People vs. Dioso*.^[24]

We have meticulously examined and painstakingly scrutinized the records of this case and the challenged decision and We are convinced that the Appellants have been positively identified as two (2) of those who staged the ambushade whose guilt has been established beyond reasonable doubt by the testimonies given by the prosecution witnesses, particularly that of Paquito Alvarez (driver of the weapons carrier), Felipe Noquera (the injured victim) and Luis Esconde and Ricardo Salvador (both passengers of the weapons carrier).

The inconsistencies in the testimonies of Alvarez and Noquera, which Appellants capitalized on, pertain to minor details only and cannot destroy their credibility. Inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, their veracity or the weight of their testimony.^[25] In fact, these inconsistencies, if only in minor details, reinforce rather than weaken their credibility, for it is usual that witnesses to a stirring event should see differently some details of a startling occurrence.^[26] Rather than discredit the testimony of the witnesses, such discrepancies on minor details serve to add credence and veracity to their categorical, straightforward and spontaneous testimony.^[27] Besides, as earlier stated, the People took extra efforts to explain the alleged inconsistencies and, in the process, demonstrate the weakness of Appellants' claim.

As to the defense of alibi, We agree with the trial court that it could not prevail over the positive identification of the Appellants. Alibi is a weak defense and cannot prevail over the testimony of truthful witnesses because it is easy to fabricate.^[28] Furthermore, for alibi to prosper, it must be established by clear evidence that the accused was in another place for such a period of time as to negate his presence at the scene of the crime when it was committed.^[29] In the case at bar, the trial court found that "it could not be improbable for the accused to have been at the scene of the ambush from the place where they allegedly were on the date of December 14, 1978, considering the distance which is approachable within few (sic) minutes or hours."^[30] We find no reason to disagree with the trial court as the Appellants failed to show Us any basis for overturning this finding.

The testimonies of Mayor Felipe Constantino of the Municipality of Malungon and Barangay Captain Venancio Malayon of Barangay Bilaan do not inspire belief. Firstly, the alleged surrender and grant of amnesty to the

"ambushers" who, as claimed by Mayor Constantino, were not the appellants, was not corroborated by "Col. Bumanglag", the person who allegedly accepted the surrender and granted the amnesty. Secondly, Constantino's claim of an ambush is based on what he allegedly heard during the meeting. There was no specific reference to the ambush in question. Thirdly, Col. Bumanglag, if he indeed even existed, had no authority to grant amnesty. Under the Constitution then in force, more particularly Section 13, Article VII of the 1973 Constitution, only the President, with the concurrence of the Batasang Pambansa, had the power to grant amnesty. Fourthly, there is an irreconcilable conflict between the testimonies of the Mayor and the barangay captain as to the date of the alleged surrender. The former claims that it took place in July 1980[31] while the latter alleges that it was in "1979".[32] Worse, while the Mayor asserts that those who admitted to have staged the ambush were Olding Gola-e, So Dol, Toy Maliang and Dano Pandayong,[33] witness Malayon claims that the suspects were Toy Golas, Olding Golas, Lagono Lagayong and So Golaing.[34] This witness also claims that one of the victims of the ambush who died was Lolita Agupitan.[35] Per prosecution's evidence, only Elena Pamoso and Estelita Imarga died as a consequence of the ambush. Finally, Appellants exerted no effort to present as witness any of the ambushers who "surrendered." Their non-availability or hostility was not shown. The "surrender" and "amnesty" story then is nothing but a crude fabrication.

On the factual findings of the trial court, the Appellants urge Us not to give weight to said findings as the judge who rendered the decision did not hear the case himself.[36] As they correctly pointed out, "Appellate courts will generally not disturb the findings of fact of the trial court,[37] except where the judge who rendered the decision is not the judge who heard the case." [38] However, the foregoing rule and its exception do not apply in a case where the trial court's conclusions are fully substantiated and supported by the evidence on record and warrants the affirmance of such findings.[39]

As held in the case of *People vs. Bocatcat*: [40]

"Finally, the Court notes that the lower court's judgment was penned by a judge who did not hear the evidence. And so, while the rule is settled that findings of fact by the trial court are entitled to great weight on appeal, as they are in a better position to examine and observe the demeanor of witnesses, this rule does not, however, apply in the case at bar, yet, we find no cogent reason to reverse His Honor's judgment as his conclusions are fully substantiated and supported by the evidence on record."

In the case at bar, We find that the findings of fact of the trial court are amply supported by the evidence on record.

We agree, however, with Appellants that they cannot be convicted for the crime of Murder in Criminal Case No. 1894 because, as testified to by Dr. Casimiro Mansilla, the doctor who examined the victim, Felipe Noquera, the latter would have lived even without medical attendance because the "wound was just a slight physical injury." [41] Per the medical certificate, [42] the following were the injuries inflicted on Noquera:

"= Wound, gunshot with avulsion of outer layer of skin 4 centimeter (sic) long, one centimeter wide left interscapular area.

= Wound, gunshot with avulsion of outer layer of skin 6 centimeter (sic) long, one centimeter wide right, infrascapular area."

which "require medical attendance for the period of seven (7) to nine (9) days, unless complications set in or manifestations due to internal injuries which are not apparent at the time of the examination appear later."

A crime is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.[43] However, if the offender commences the commission of a felony directly by overt acts, and does

not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance, the crime is only attempted.[44] It is quite obvious that, in respect to Noquera, the crime never passed the "attempted" stage.

The trial court, in ruling that murder was committed in the case of Elena Pamaso and Estelita Imarga and frustrated murder in the case of Felipe Noquera, considered the qualifying circumstances of evident premeditation and treachery.

We disagree with the trial court on this score.

For evident premeditation to be present, the following requisites must concur:

- (1) the time when the offender determined to commit the crime;
- (2) an act manifestly indicating that he has clung to his determination; and,
- (3) sufficient lapse of time between determination and execution to allow him to reflect upon the consequences of his act.[45]

It must be proved as clearly as the crime itself and cannot be deduced from mere conclusions and inferences.[46] The evidence presented against the appellants miserably failed to prove the foregoing requisites.

Treachery is present when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[47] While treachery was duly proven against appellants because the ambush was so sudden and unexpected that the victims were unable to defend themselves and, obviously, the means of execution were deliberately and consciously adopted, such circumstance is not, however, alleged in the three (3) informations.

For treachery to qualify the crime of homicide to murder, it must be alleged in the information, otherwise it will only be considered a generic aggravating circumstance, if proven.[48] Therefore, treachery is only a generic aggravating circumstance in these cases. The informations allege that the aggravating circumstance of band attended the commission of the crimes charged. There is a band whenever more than three (3) armed malefactors shall have acted together in the commission of an offense.[49] The accusatory portions of the informations elaborate this circumstance by stating that the five (5) named accused, two (2) of whom are the Appellants, and two (2) other John Does "armed with assorted high-powered weapons such as Garand rifle, shotgun and surit and with evident premeditation and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously ambush, attack, assault and shoot with assorted high powered weapons" the weapons carrier of Edon Escobillo thereby causing the death and injuries described therein. Evidently, the prosecution did not intend to make the aggravating circumstance of aid of armed men as a qualifying circumstance under Article 248 of the Revised Penal Code. Otherwise, it would have expressly alleged it as such as in the case of the qualifying circumstance of treachery and evident premeditation. Accordingly, band absorbed aid of armed men.[50]

The aggravating circumstance of disregard of the respect due the offended party on account of sex alleged in Criminal Cases Nos. 1893 and 1895 cannot be appreciated against the Appellants, there being no proof that they deliberately intended to offend the sex of the victims or show manifest disrespect towards them.[51]

Accordingly, the Appellants are guilty of homicide on two (2) counts and of attempted homicide, with the generic aggravating circumstances of treachery and band.

The penalty for Homicide under Article 249 of the Revised Penal Code is reclusion temporal. In view of the generic aggravating circumstances of treachery and band, the penalty shall be imposed in its maximum period.

They are entitled to the benefits of the Indeterminate Sentence Law^[52] which authorizes the imposition of an indeterminate penalty the maximum of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. The penalty for attempted homicide (Criminal Case No. 1894) is, pursuant to Article 50 of the Revised Penal Code, two (2) degrees lower than that provided for in Article 249, which is prision correccional. Appellants are also entitled to the benefits of the Indeterminate Sentence Law.

In accordance e ^[53] the civil indemnity for each death should be increased from P12,000.00 to P50,000.00.

WHEREFORE, in view of the foregoing, the appealed judgment is hereby modified. As modified, Appellants Angel Pral and Beren Mandong are hereby found and declared guilty beyond reasonable doubt of the crime of Homicide on two (2) counts for the death of Elena Pamoso in Criminal Case No. 1893 and for the death of Estelita Imarga in Criminal Case No. 1895, and of the crime of Attempted Homicide in Criminal Case No. 1894. Taking into account the absence of any mitigating circumstance and the presence of the aggravating circumstances of treachery and band, and applying the Indeterminate Sentence Law, each of them is hereby sentenced to suffer as follows:

- 1) In Criminal Case No. 1893, an indeterminate penalty ranging from Ten (10) years and One (1) day of Prision Mayor as minimum to Seventeen (17) years, Eight (8) months and One (1) day of Reclusion Temporal as maximum;
- 2) In Criminal Case No. 1895, an indeterminate penalty ranging from Ten (10) years and One (1) day of Prision Mayor as minimum to Seventeen (17) years, Eight (8) months and One (1) day of Reclusion Temporal as maximum;
- 3) In Criminal Case No. 1894, an indeterminate penalty ranging from Four (4) months and One (1) day of Arresto Mayor as minimum to Four (4) years, Two (2) months and One (1) day of Prision Correccional as maximum;

and to indemnify, jointly and severally, the heirs of the deceased Elena Pamoso in Criminal Case No. 1893 in the sum of P50,000.00 and the heirs of the deceased Estrelita Imarga in Criminal Case No. 1895 in the sum of P50,000.00, without prejudice to the seeking of reimbursement from their co-accused in the event the latter are arrested, tried and convicted.

The prosecutory arm of the Government is enjoined to take immediate positive steps to bring into the custody of the law the other accused who shall forthwith be tried by the lower court.

The Appellants are further ordered to pay two-sevenths (2/7) of the costs.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Original Records, Crim. Case No. 1893, 2-3.

[2] Id., Crim. Case No. 1894, 2-3.

[3] Original Records, Crim. Case No. 1895, 2-3.

[4] Id., 12.

- [5] Id., 16.
- [6] Id., 17.
- [7] Id., 21.
- [8] Appellant's Brief, 2, 7.
- [9] Original Records, Crim. Case No. 1895, 54-62; Rollo, 24-32.
- [10] Original Records, Crim. Case No. 1895, 57-62; Rollo, 27-32.
- [11] Id., 62; Id., 32.
- [12] Id., 64.
- [13] Id., 2.
- [14] Rollo, 39.
- [15] Id., 49.
- [16] Id., 50; Appellant's Brief, 12.
- [17] Id., 59; Id., 21.
- [18] Rollo, 59; Appellant's Brief, 21.
- [19] Id., 60-61; Id., 22-23.
- [20] Id., 98; Id., 8.
- [21] Id., 99-100; Id., 9-10.
- [22] Rollo, 101-104; Appellee's Brief, 11-14.
- [23] Id., 105-106; Id., 15-16.
- [24] G.R. No. 38347, 23 October 1984. Rollo, 106; Appellee's Brief, 16.
- [25] People vs. Payumo, 187 SCRA 64; People vs. Raquipo, 188 SCRA 571; People vs. Maspil, Jr., 188 SCRA 751.
- [26] People vs. Payumo, supra.; People vs. Alvero, 187 SCRA 576; People vs. de Gracia, 18 SCRA 197; People vs. Bautista, 147 SCRA 500; People vs. Dava, 149 SCRA 582.
- [27] People vs. Arceo, 187 SCRA 265.
- [28] People vs. Gomez, 28 SCRA 440; People vs. Arceo, supra.; People vs. de Gracia, supra.; People vs. Bautista, supra.; People vs. Dava, supra.
- [29] People vs. Bocatcat, Sr., 188 SCRA 175; People vs. Lumanta, 28 SCRA 764.
- [30] Rollo, 30.
- [31] TSN, 21 July 1982, 154.
- [32] TSN, 11 May 1982, 102.
- [33] Op. cit., 154-155.

[34] Op. cit., 101.

[35] Id., 97.

[36] Rollo, 59.

[37] People vs. Mercado, 97 SCRA 232; People vs. De la Cruz, 97 SCRA 385; People vs. Aguel, 97 SCRA 795; People vs. Laguisma, 98 SCRA 69.

[38] People vs. Arciaga, 98 SCRA 1; People vs. Escalante, 131 SCRA 237; People vs. Villapaña, 161 SCRA 72.

[39] People vs. Marcedonio, 192 SCRA 579.

[40] Supra.

[41] TSN, 1 February 1982, 6.

[42] Exhibit "A". See Folder of Exhibits.

[43] Paragraph 2, Article 6, Revised Penal Code.

[44] Paragraph 3, Article 6, Revised Penal Code.

[45] People vs. Ablao, 183 SCRA 658; People vs. Cardenas, 56 SCRA 631; People vs. Lorenzo, 132 SCRA 17; People vs. Camilet, 142 SCRA 402.

[46] People vs. Bordador, 63 Phil. 305; People vs. Barbosa, 1 Phil. 741; People vs. Ulat, 7 Phil. 559.

[47] Paragraph 16, Article 14, Revised Penal Code. People vs. Gimongala, 170 SCRA 632; People vs. Bustos, 171 SCRA 243; People vs. Samson, 176 SCRA 710; People vs. Manzanares, 177 SCRA 427; People vs. Mabuhay, 185 SCRA 675.

[48] People vs. Cantre, 186 SCRA 76; People vs. Dumlao, 125 SCRA 821; People vs. Navarro, 12 SCRA 530.

[49] Paragraph 6, Article 14, Revised Penal Code.

[50] People vs. Manayao, 78 Phil. 721.

[51] People vs. Mangsant, 65 Phil. 548; People vs. Jaula, 90 Phil. 379; People vs. Metran, 89 Phil. 543.

[52] Act No. 4103, as amended.

[53] People vs. Sison, 139 SCRA 643; People vs. Sazon, 189 SCRA 700; People vs. Baguio, 196 SCRA 459.

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