

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONILA OGA-OGA, DOMINGO OGA-OGA, AND JUANITO OGA-OGA @
JOHN, ACCUSED-APPELLANTS.**

G.R. Nos. 69070-72. November 29, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the defunct Court of First Instance of Leyte, DOMINGO OGA-OGA, Jr., JOHN OGA-OGA and LEONILA OGA-OGA were charged with triple murder. In Criminal Case No. BN-1851 it was for the death of Antonio Oga-Oga; and in Criminal Case No. BN-1995 it was for the death of Anita Oga-Oga; and in Criminal Case No. BN-1996 it was for the death of Alfredo Oga-Oga. The crimes were said to have been committed on the same day and place, i.e. April 1, 1981, in Sitio Bilibol, San Jose East, Burauen, Leyte.

The trial judge, Fortunato B. Cuna found the three accused guilty in all the three cases and thereafter pronounced the following sentences:

On Domingo and John Oga-Oga, three indeterminate prison terms of "not less than TWELVE (12) YEARS OF prison mayor as Minimum to not more than SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Reclusion Temporal as Maximum." (Expendiente, p. 171.)

On Leonila Oga-Oga, three indeterminate prison terms of "not less than TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal as minimum, to not more than RECLUSION PERPETUA as Maximum." (Id., p. 171.)

The three were also sentenced to pay the usual jurisprudential civil indemnity to the heirs of the three deceased.

The accused appealed their conviction and because of the penalties which the trial court had imposed, the appeal was elevated to the Intermediate Appellate Court and there they made the following assignment of errors, namely:

"I. THE TRIAL COURT ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESS QUIRICO QUINABO AND FRUCTUOSO ANOTA, THE ALLEGED ONLY TWO EYE-WITNESSES TO THE INCIDENT, NOTWITHSTANDING THE FACT THAT THE SAID WITNESSES TESTIFIED TO FACTS ABOUT THE INCIDENT, NOT OF THEIR OWN KNOWLEDGE AND PERCEPTION BUT TO FACTS FURNISHED THEM THROUGH INFORMATION BY OTHER PERSON OR PERSONS OR SOURCES. SAID WITNESSES WERE NOT PRESENT DURING THE INCIDENT.

"II. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF QUIRICO QUINABO AND FRUCTUOSO ANOTA, NOTWITHSTANDING THE FACT THAT THEIR TESTIMONIES ARE VAGUE, INCONSISTENT, INCREDIBLE, IMPROBABLE FOR NOT BEING IN ACCORDANCE WITH THE ORDINARY COURSE OF NATURE AND ORDINARY HABITS OF LIFE (RULE 131, SECTION 5 (z), RULES OF COURT) ARE NOT CANDID, ARE EVASIVE, BEAR EARMARKS OF FABRICATION.

"III. THE TRIAL COURT ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONIES OF QUIRICO QUINABO AND FRUCTUOSO ANOTA, NOTWITHSTANDING THE LACK OF MOTIVE ON THE PART OF ACCUSED - APPELLANTS IN KILLING THE THREE (3) VICTIMS ACCORDING TO THE MANNER AND UNDER THE CIRCUMSTANCES AS TESTIFIED TO BY SAID WITNESSES.

"IV. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF FRUCTUOSO ANOTA NOT- WITHSTANDING THE FACT THAT FRUCTUOSO ANOTA IS A BIASED WITNESS HE BEING THE FATHER-IN-LAW OF ANTONIO OGA-OGA, ONE OF THE VICTIMS (ANTONIO'S WIFE, LETICIA BEING THE DAUGHTER OF FRUCTUOSO ANOTA).

"V. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF QUIRICO QUINABO AND FRUCTUOSO ANOTA NOTWITHSTANDING THE FACT THAT THE JUDGE WHO RENDERED THE DECISION DID NOT HAVE THE OPPORTUNITY TO OBSERVE THE CONDUCT AND Demeanor OF SAID WITNESSES WHILE THEY TESTIFIED ON THE WITNESS STAND BECAUSE THEIR TESTIMONIES WERE ALL HEARD BY ANOTHER JUDGE.

"VI. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT LEONILA OGA-OGA AS PRINCIPAL BY INDUCEMENT, NOTWITHSTANDING THE FACT THAT THERE WAS NO EVIDENCE AT ALL TO ESTABLISH LEONILA'S GUILT AS PRINCIPAL BY INDUCEMENT.

"VII. THE TRIAL COURT ERRED IN CONVICTING LEONILA OGA-OGA OF THE CRIME OF MURDER AS PRINCIPAL BY INDUCEMENT IN THE THREE ABOVE-ENTITLED.

CASES, NOTWITHSTANDING THE ABSENCE OF EVIDENCE TO SHOW THAT LEONILA INDUCED DOMINGO OGA-OGA, AND JOHN OGA-OGA TO COMMIT THE CRIMES WITH THE USE OF SUPERIOR STRENGTH. IF AT ALL, LEONILA CAN ONLY BE FOUND GUILTY AS PRINCIPAL BY INDUCEMENT, NOT OF MURDER BUT OF SIMPLE HOMICIDE.

"VIII. THE TRIAL COURT ERRED IN FINDING THAT THE KILLING IN THE THREE ABOVE-ENTITLED CASES WAS ATTENDED BY THE QUALIFYING CIRCUM- STANCE OF ABUSE OF SUPERIOR STRENGTH NOT- WITHSTANDING THE LACK OF SUFFICIENT EVIDENCE TO ESTABLISH IT.

"IX. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DOMINGO OGA-OGA AND JOHN OGA-OGA OF THE CRIMES NOTWITHSTANDING THE FACT THAT THE KILLING OF THE THREE (3) VICTIMS WERE JUSTIFIED BY THE JUSTIFYING CIRCUMSTANCE OF COMPLETE SELF-DEFENSE. (ART. II, REVISED PENAL CODE).

"X. THE TRIAL COURT ERRED IN CONVICTING LEONILA OGA-OGA NOTWITHSTANDING THE FACT THAT LEONILA'S DEFENSE OF 'ALIBI' OR 'QUASI-ALIBI,' WAS PROVEN." (Brief, pp. 1-3.)

It is to be noted that the assignment of errors raises factual issues only.

The decision in the Intermediate Appellate Court was penned by Justice Emilio A. Gancayco with the concurrence of Justices Federico B. Alfonso, Jr. and Loma S. Lombos-de la Fuente. Insofar as relevant, it reads:

"The Statement of Facts in the People's brief which is substantially borne by the records are to wit:

'Appellants Domingo and Leonila Oga-Oga are spouses while John Oga-Oga alias Junjun, is the brother of Domingo. On the other hand, the victims in the instant case were spouses Alfredo and Anita Oga-Oga and their son Antonio.

'The tenancy of a portion of a land situated at Sitio Bilibol, San Jose, Burauen, Leyte, which was formerly tenanted by appellant John Oga-Oga was awarded to the victim spouses Alfredo and Anita Oga-Oga when the former abandoned it and left for Manila. Said award of tenancy was resented by herein appellants since

appellant spouses Domingo and Leonila Oga- Oga wanted and expected the tenancy thereof, they already being the tenants of the adjacent portion of the subject land.

'The strained relation between the two families involved in the instant case was further inflamed by the alleged utterances of defamatory words by Leticia Oga-Oga, wife of Antonio, against appellant Leonila Oga-Oga who filed in court a case for oral defamation against Leticia Oga-Oga which was calendared for hearing on April 7, 1981.

'On April 1,1981, at about 7:00o'clock in the morning, spouses Alfredo and Anita Oga-Oga, their son Antonio, together with Fructuoso Aota and Quirico Quinabo started to plant corn in the land the tenancy of which had been awarded to them. At about 12:00 o'clock in the afternoon, Fructuoso Aota left to get their food for lunch. In the meantime, Antonio Oga-Oga was wallowing his carabao about a hundred (100) meters away while Ms father Alfredo was resting in a coconut kiln about forty-five (45) meters away. Thus, only Anita Oga-Oga and Quirico Quinabo were left in the field planting corn.

'At about 1:00 o'clock in the afternoon, herein appellants arrived at the cornfield where Anita Oga-Oga and Quirico Quinabo were planting. Appellant Leonila Oga-Oga approached Anita and a heated argument between them ensued. Thereafter, appellant Leonila Oga-Oga shouted at the other appellants, her husband Domingo and brother-in-law John, 'Come here, they are here, kill them.' Thus, appellants Domingo and John Oga-Oga, with drawn boloes, came running towards Anita Oga-Oga. Anita tried to run towards the coconut kiln where her husband was resting. But before she could reach it, she tumbled and fell flat on her face. She shouted at her husband for help. At this juncture, appellants Domingo and John Oga-Oga helped each other in delivering hacking blows to the victim Anita who was lying down with her face on the ground. Anita sustained six (6) wounds, five (5) of which were mortal, causing her instantaneous death as shown by the medical certificate (Exhibit B).

'As the victim Anita Oga-Oga was able to shout for help before she died, her husband Alfredo rushed to her aid. He was however met by appellants Domingo and John who likewise hacked him to death with their boloes, without having given the victim an opportunity to draw his bolo for defense. The victim Alfredo sustained nine (9) wounds, five of which were fatal, one (1) in the eye and four (4) at the back.

' When Antonio Oga-Oga came out of the bushes from where he wallowed his carabao, he went directly to the direction of his mortally wounded parents who were both lying on the ground.

He was however immediately hacked on the stomach by appellant Domingo Oga-Oga. Antonio tried to escape by running towards the cogon grasses but was chased by his assailants. Upon overtaking the victim Antonio, appellants Domingo and John likewise hacked him to death. Antonio sustained eight (8) wounds, four (4) of which were at the back, including mortal wounds on the head and neck as shown in the medical certificate (Exhibit A).

'The commission of the crime in question was witnessed by Quirico Quinabo who hid behind the cogon grasses after having seen the first victim, Anita Oga-Oga about to be attacked by appellants Domingo and John Oga-Oga (p, 25, tsn., July 14, 1982). The incident in question was also witnessed by Fructuoso Aota, upon his return to the cornfield to bring food for his group. He hid behind the coconut groove about twenty meters away from the scene of the crime (p. 6, tsn., December 17,1982).

'The subject crime was reported on that same day to the police authorities by Leticia Oga-Oga, wife of the victim Antonio.' (pp. 4-7, appellee's brief)

"The first to the fifth assigned errors raise the issue of credibility of the testimonies of prosecution witnesses Quirico Quinabo and Fructuoso Aota. Firstly, the appellants claim that the testimony of said prosecution witnesses were a mere repetition of the facts related in their affidavits which they claim not to have executed and of which they were merely asked to sign. It is contended that they were not even investigated by the police or the

judge and thus their testimony is hearsay.

"The Court finds no merit in this contention, An examination of the affidavit referred to of witness Quirico Quinabo shows that it is a sworn statement that he gave during the preliminary examination of the case by the municipal judge on the 9th of April, 1981 and which was sworn to by him before the Asst. Provincial Fiscal (Exhs. 1 to 1-A). Similarly the affidavit referred to of witness Fructuoso Anota refers to the preliminary examination that the municipal judge conducted of this witness on April 6, 1981 before whom this witness affirmed the truth of the same under oath (Exhs. 2 and 2-A).

"While it is true that said witnesses were not investigated by the police the fact remains that they were investigated by the municipal judge during the preliminary examination. It is noted that these witnesses do not know how to read and write that is why they signed the same without reading. However witness Anota asserted that before he signed the same its contents were translated to him in the local dialect (Tsn., Jan. 14, 1983, p. 5) which demonstrates that he knew the contents of the sworn statement before he signed it. Under the assumption that the municipal judge conducting the preliminary examination performed his official duties regularly (Section 5(m), Rule 131, Rules of Court), by the same token before witness Quinabo was made to swear and sign to his sworn statement the judge must have read the contents of the statement to him in the local dialect.

"Secondly, the appellants claim that the testimonies of said witnesses are vague, inconsistent, incredible and improbable. The argument is that it is unnatural that Quinabo would stay in hiding while watching the killing considering that he was seized by fear and that the natural impulse for him would be to run away. The reason why Quinabo elected to remain in hiding during the killing must be because that if he stood up and ran away, the appellants may see him and possibly pursue and kill him. It was more prudent for him to stay put in hiding where the appellants did not know then of his presence in the vicinity, as in fact said appellants testified that he was not present then.

"It is also pointed out that considering Quinabo was only 7 arms length away while he clearly heard the call of Leonila Oga-Oga to her co-appellants saying 'you come here . . . you kill them' and yet he did not hear a single word of the heated arguments that preceded this statement. The explanation of Quinabo is that the heated argument was not in a too loud voice, unlike when Leonila called to the appellants to kill the victims. Such explanation is plausible.

"It is also argued it is unnatural that immediately after the killing Quinabo did not inform Leticia Oga-Oga, wife of the victim Antonio Oga-Oga about the killing nor did he report to the police. Suffice it to state that the reason must be because Quinabo out of fear of the appellants did not make such report.

"The same observation also applies to the witness, Anota on the observation why he remained hiding instead of running away. It must be for fear that he might be killed. Anota however testified that immediately after the killing he informed the wife of Antonio (Leticia) who is his daughter about the matter. But this is allegedly belied by Leticia who testified that she learned of the killing from her small daughter Anabelle who informed her mother about it. If Anota did not report the incident to the police it must be also out of fear of the appellants.

"The alleged inconsistency between the testimony of witness Anota in court and in his earlier sworn statement as to whether Antonio Oga-Oga offered any resistance when assaulted, is more apparent than real. What the witness asserted is that Antonio was also armed but he was not able to offer any resistance to the assault of the appellants. Moreover it must be remembered that a sworn statement or affidavit can hardly be accurate if not incomplete as it is invariably prepared by third persons and in the haste of the preparation of the same, more so in this case where the witnesses do not know how to read or write.

"The appellants argue that there are other inconsistencies between the testimony of Anota and Quinabo in court and in their previous sworn statement without indicating what these inconsistencies are. However in the brief for the appellants they admitted that these affidavits or sworn statements of said witnesses and their testimonies in court are substantially confirmatory of each other.

"Thirdly, it is claimed that the prosecution failed to establish the motive in the killing. On this aspect, the trial court made the following observations:

'The motive of the killing of the victims is the resentment of the spouses Domingo Oga-Oga, Jr. and Leonila Oga-Oga that when John Oga-Oga left for Manila sometime in 1978, the land of Atty. Pelagio Nuevo tenanted by John but administered by Tito Nerja was turned over by the administrator for tenancy to the spouses Antonio Oga-Oga and Leticia Oga-Oga instead of the spouses Domingo Oga-Oga Jr. and Leonila Oga-Oga who were already tenants of one portion but expected and wanted to be the tenants of the whole land of Atty. Pelagio Nuevo. Such strained relation between the two spouses was inflamed upon the utterances of allegedly defamatory words by Leticia Oga-Oga, wife of Antonio Oga-Oga, against Leonila Oga-Oga who filed a case in the Municipal Court of Burauen, Leyte for Oral Defamation against Leticia Oga-Oga which was calendared to be heard that April 7, 1981. Because of this explosive relations between the spouses Antonio Oga-Oga and Leticia Oga-Oga and spouses Domingo Oga-Oga, Jr. and Leonila Oga-Oga together with the return from Manila of John Oga-Oga (who lost his tenancy over the land), Domingo Oga-Oga, Jr. planned to liquidate Antonio Oga-Oga. This plan was overheard by Fructuoso Anota in the morning of April 1, 1981, while passing by the house of the accused Domingo Oga-Oga, Jr.

This fact is stated in the Affidavit (Exhibit "2") of Fructuoso Anota taken on April 3, 1981, before the Station Commander of the INP of Burauen, Question and Answer No. 9 in said Affidavit is herein quoted:

'Q 9. Do you know any motive of this killing?

'A Domingo Oga-Oga, Jr. has filed a criminal case against Leticia Oga-Oga in the Municipal Court of Burauen, and in the morning of the same day April, 1981, while I was passing by the house of the accused and while they were engaged in a drinking spree, I heard Domingo Oga-Oga, Jr. say that it's better to get rid of Antonio Oga-Oga, the husband of Leticia Oga-Oga.' (Exhibit "2", Italics supplied), (p. 13, Decision, appellant's brief).

"We agree,

"At any rate motive is not essential for the conviction of the appellants, Well settled is the rule that proof of motive is not indispensable when the record shows clearly as in this case, that the death of the victim was due to injuries inflicted by the appellants who were identified as the culprits. (People v. Verzo, 21 SCRA 1403; People v. Reyes, 13 SCRA 647; People v. Ner, 28 SCRA 1151).

"Fourthly, the testimony of the witness Anota is assailed for being allegedly biased because he is the father-in-law of Antonio Oga-Oga, one of the victims, his daughter being the wife of Antonio. The settled rule is that relationship to the victim by itself does not impair the credibility of the witness, On the contrary it would be unnatural for such witness interested in seeing retribution to impute the crime to any person other than those responsible for the crime (People v. Aquino, 122 SCRA 797). It is not rightly supposed that the relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they know are innocent (People v. Libed, 14 SCRA 410; P. vs. Demetrio, G.R. No. L-48255, Sept. 30, 1983).

"Moreover the testimony of this witness is corroborated in all its material points by witness Quinabo who is certainly is a disinterested witness. Indeed the sole testimony of this witness Quinabo can be a sufficient basis for conviction (People v. Badoso, 60 SCRA 60; People v. Aquino, 122, 707).

"Appellants also question the appreciation of the credibility of the witnesses by the trial judge who did not

receive the evidence for the prosecution as he took over the case only when the defense presented its evidence so he did not have the opportunity to observe the conduct and behaviour of the witnesses while testifying. This maybe true as to the prosecution witnesses but certainly as to the witnesses of the defense, the trial judge who penned the appealed decision saw and heard the appellants and their witnesses while testifying in court.

"Nevertheless, upon examination of the entire records of the case, the Court finds no reason why it should disturb the findings of the trial court on the credibility of the witnesses.

"Under the sixth assigned error appellants claim that there was no evidence that appellant Leonila Oga-Oga was a principal by inducement. In this connection, the trial court reproduces with approval the arguments adduced by the Solicitor General in refutation of this assigned error:

"Contrary to appellant's claim, her participation in the commission of the instant crime as a principal by induction was sufficiently established by the testimonies of prosecution witness Quirico Quinabo pointing to her as the one who commanded her co-appellants (her husband and brother-in-law, respectively) to kill the victims in this case.

VU1RJCO QUINABO (CROSS-EXAMINATION)

Q How did you happen ... At around one o'clock more or less did you see Domingo Oga-Oga or Jun at Brgy. Bilibol?

A Yes sir, because they were standing from the place where we planted corn.

Q Now. when Leonila arrived in the cornfield and she met Anita and you what happened?

A That is it they have an altercation sir.

Q Did you know the words uttered by both of them as you were in that corn field?

A What I could hear clearly was the shout of Leonila saying you come kill them.

Q You mean to say you were far from the place where they have the altercation?

A About five arms length sir.

COURT:

Q Will you indicate that distance?

A Witness indicating to a distance of 8 meters more or less.

ATTY. VILLEGAS:

Q And when she uttered which you have heard. Leonila saying the words, what happened after these words were uttered?

A That is it, Domingo Oga-Oga and Jun ran towards Anita with drawn boloes, sir.

Q At the time Jun Oga-Oga and Domingo Oga-Oga ran towards the place where Anita was situated, where were you?

A I was there, a distance of around 8 meters sir.

Q Seeing them with boloes running towards Anita you still stand on your place?

A I ran away to the cogon grasses because I was afraid when Anita was being hacked sir.

Q And about how far was that cogon grasses to the place where Anita was being hacked at as you said by the two brothers?

A About five arms length sir.

Q Will you please point to a distance that can indicate the place where you hide from that cogon grasses?

A From this place to those trees, witness pointing to a distance of 40 meters more or less.

Q From the place where Anita was being hacked was there any cogon grasses that could obstruct your sight?

A None sir' (pp. 24-26, tsn., July 14, 1982)

"The testimony of the prosecution witness Quinabo against appellant Leonila Oga-Oga is further bolstered by the proof of Leonila's motive against the victims' family. She resented the award of the tenancy of a land to the victim spouses as she and her spouse were expecting the tenancy thereof. She had a pending case for oral defamation against the wife of one of the victims, Antonio Oga-Oga.

"The records indicate that she was not only a principal by induction but a conspirator as well. Her utterance of 'come, they are all here, kill them,' constituted as the signal for her co- appellants to strike the first victim, Anita Oga-Oga who was evidently unarmed and defenseless. Her actions together with the actual killing of the victims by her co-appellants clearly show a community of design and purpose among appellants to perpetrate the crime in question. Well settled is the rule that conspiracy need not be established by direct proof, it can be inferred from the acts of appellant as in the case at bar (People vs. Muñoz, 107 SCRA 313). Appellant Leonila Oga-Oga being a conspirator is liable for the aggravating circumstances such as abuse of superior strength in the case at bar, since there is collective responsibility when there is conspiracy (People v.v. Carzano, 95 SCRA 146). (pp. 14-17, appellee's brief)"

"Leonila Oga-Oga is the wife of Domingo Oga-Oga and John Oga-Oga is the brother of Domingo. From the evidence adduced it appears that Leonila has ascendancy and moral influence upon her co-appellants as in fact upon the cue from her directing that her co-appellants kill the victims, her co-appellants together and armed with boloes assaulted the victims one after the other. The contention of the appellants that it is unnatural that the wife should give command to the husband since the rule is the other way, is without basis. It is too well-known that there are many husbands who submit to the desires and biddings of their wives. Thus, the Court agrees with the following findings of the trial court:

"That upon the command of Leonila Oga-Oga to her husband, Domingo Oga-Oga and her brother-in-law, John Oga-Oga and two brothers, Domingo Oga-Oga, Jr. and John Oga-Oga, killed one after the other, Anita Oga-Oga, Alfredo Oga-Oga and Antonio Oga-Oga by mutually helping each other in inflicting the fatal wounds that resulted to the death one after the other of each of the three (3) victims in the hands of the two accused brothers thus qualifying with superior strength the killing of the three (3) victims to Murder, (p. 26, Decision, Appellant's brief)"

"Under the seventh assigned error it is alleged that if at all, Leonila can be convicted as principal by inducement for simple homicide and not for murder and that there is no evidence to show that she induced them to commit the crime with the use of superior strength, Again, the record shows that appellant Leonila directed her co-appellants together to kill the victims obviously taking advantage of their superior strength.

"Under the eighth assigned error appellants contend that the prosecution has not established the qualifying circumstance of abuse of superior strength. In this connection, the Solicitor General made the following observations:

The prosecution witnesses Quinabo and Anota testified that herein victims were attacked and hacked to death

with the use of their respective boloes with the victims completely defenseless. The records will show that the victim Anita Oga-Oga was unarmed (pp. 8-10, tsn., December 17, 1982; p. 9, tsn., July 14, 1982). The victim Alfredo Oga-Oga was unable to defend himself from the sudden attack and overpowering strength of his two assailants with their boloes drawn already (p. 19, tsn., December 17, 1982; p. 17, tsn., August 9, 1982). The victim Antonio Oga-Oga had not even drawn his bolo and therefore defenseless when hacked to death while running away from his assailants, (p. 16, tsn., August 9, 1982; pp. 3, 6, tsn., January 14, 1982). (pp. 22-23, Appellee's brief)

"Whereas in this case the appellants took advantage of their greater number and that they were all armed then when they assaulted and killed the victims one after the other who are then unarmed and defenseless certainly, the aggravating or qualifying circumstance of abuse of superior strength must be considered (US vs. Tandoc, 40 Phil. 954; People vs. Boyles, 11 SCRA 88; People vs. Casillar, 30 SCRA 352).

"Under the ninth assigned error the appellants Domingo and John Oga-Oga advanced the theory of self-defense as a justifying circumstance. In this connection the court reproduces the extended analysis by the court a quo of the evidence before it, as follows:

'The issue now raised before this Court is whether the killing of the spouses Alfredo Oga-Oga and Leticia Anota Oga-Oga and their son, Antonio Oga-Oga, by the three accused, spouses Domingo Oga-Oga, Jr. and Leonila Oga-Oga and John Oga-Oga was committed in complete self-defense and whether Leonila Oga-Oga was actually present during the incident and is a principal by induction or inducement.

'It is the version of the defense that while Domingo Oga-Oga, Jr. was cutting the banana plant which he planted as a tenant on the land of Atty. Pelagio Nuevo, Anita Oga-Oga saw Domingo and she ran to Domingo with a bolo in her hand and at the same time calling her husband Alfredo Oga-Oga and her son Antonio Oga-Oga to come because Domingo Oga-Oga, Jr. was cutting the banana plant. That in response to her call her husband and her son came running following her with raised boloes in their hands.

'That despite the pleading of John Oga-Oga that they should not fight because they have no misunderstanding, Antonio Oga-Oga immediately stabbed John who was wounded four times and Anita Oga-Oga and Alfredo also hacked Domingo Oga-Oga, Jr. who was never wounded.

'That, in defense of this aggression the two brothers killed the three victims and for which the two brothers now pray the Court for acquittal on the basis of complete self-defense and Leonila Oga-Oga on the basis of alibi.

' A close perusal of the evidence of the defense alone, granting without admitting that the testimonies of the two prosecution witnesses, Quirico Quinabo and Fructuoso Anota are 'vague,' inconsistent, incredible for not being in accordance with the ordinary course of nature and ordinary habits of life (R 131, Sec. 5, (z), RC) are not candid, are evasive, do not bear the earmarks of truth because they are fabricated. Therefore, they should be entirely discarded as evidence. (Memorandum for the Accused, page 1), already convinces this Court that the plea of complete self-defense of the three accused should not be granted because of the following observations:

1) Domingo Oga-Oga, Jr. alleges that both the spouses Alfredo Oga-Oga and Anita Oga-Oga suddenly attacked him with long bolos and he retaliated killing Anita Oga-Oga with five (5) fatal wounds and one non-fatal wound all at the back (Exhibits "A", "B" and "C") and also killing Alfredo Oga-Oga with four (4) fatal wounds on the left eye, and four (4) non-fatal wounds on the left chest, right waist, left arm and left forearm (Exhibits "A", "B" and "C"). Domingo Oga-Oga inflicted a total of fifteen (15) wounds on the two victims with not even a scratch on his body, and yet Domingo claims that he was attacked suddenly by the two victims. This Court finds it hard to believe how Anita Oga-Oga, who is alleged to be an aggressor, would have all her six (6) wounds at her back and not a single wound on the front of her body if she fought Domingo Oga-Oga in actual combat. This Court finds the version of the prosecution more credible than the six (6)

wounds of Anita Oga-Oga were inflicted by the two accused Domingo Oga-Oga, Jr. and John Oga-Oga when she was on the ground face downward.

2) This Court also doubts very much the allegation of Domingo Oga-Oga, Jr. that he was also suddenly attacked by Alfredo Oga-Oga and yet Domingo Oga-Oga, Jr. did not have any single scratch or injury to prove the sudden attack but inflicted nine (9) wounds on Alfredo Oga-Oga, Alfredo had two wounds on the left arm and forearm showing how he must have parried the hacking blows of his attacker or attackers. After his fatal wound on the left eye he must have fallen face downward as shown in the picture (Exhibit "A"), Crim. Case No. Bn~1955) and while in that position the four fatal wounds on his back were inflicted by his attacker or attackers. The Court again finds credible the version of the prosecution that Alfredo was attacked by the two accused Domingo Oga-Oga, Jr. and John Oga-Oga while he was running to his wife who had shouted for help.

3) If Alfredo Oga-Oga and Anita Oga-Oga suddenly attacked Domingo Oga-Oga, Jr. as alleged by the latter, why Domingo Oga-Oga, Jr. not get hold of the bolos allegedly used by Anita and Alfredo since both of them were killed on the spot and present these bolos as evidence of the aggression of the two victims against him?

4) Domingo Oga-Oga, Jr. testified that after Anita and Alfredo were already down, he just kept on looking on them but he did not anymore strike them when the victims were already down. Could Anita Oga-Oga have remained standing and fighting after she was fatally wounded at the back of her neck with a wound 6 inches long; 3 1/2 inches wide; and 4 inches deep, cutting off her spinal cord or could Anita still remain standing and fighting after receiving her fatal wound across her back 8 inches long; 1 inch wide; and 1 inch deep; or could she remain standing and fighting after receiving the other fatal wounds at her back? This Court can hardly believe that after receiving anyone of those fatal wound across her back 8 inches long; 1 inch wide; and 1 inch deep; or could she remain standing and fighting after receiving the other fatal wounds at her back? This Court can hardly believe that after receiving anyone of those fatal wounds she would still be standing and fighting. As a matter of fact there must be truth to the prosecution's evidence that all the wounds at the back were inflicted by both accused Domingo Oga-Oga, Jr. and John Oga-Oga when Anita Oga-Oga was lying down on the ground face downward. If so, could the defense rightly claim for complete self-defense in killing a woman lying down face downward and inflicting five (5) fatal wounds and one non-fatal wound? What else can you call this kind of killing but murder?

5) This Court cannot also believe that Alfredo Oga-Oga kept on fighting Domingo Oga-Oga, Jr. until he received his ninth wound and fell down dead. Anyone of the four (4) fatal wounds at his back could have immobilized him or could have caused his fall to the ground. While Domingo Oga-Oga, Jr. was busy inflicting the six (6) wounds on Anita Oga-Oga, Alfredo could have inflicted on him even only one wound if Alfredo was really the aggressor. But the fact that Alfredo suffered nine (9) wounds without Domingo Oga-Oga, Jr. suffering any injury, proves the evidence of the prosecution that Alfredo was hacked and stabbed by the two accused, Domingo Oga-Oga, Jr. and John Oga-Oga, when Alfredo was rushing to the aid of his wife. The fact that Domingo Oga-Oga, Jr. did not have any injury also proves that the two victims Alfredo Oga-Oga and Anita Oga-Oga were attacked without being given a chance to defend themselves. Hence, the Court believes that the killing of Alfredo Oga-Oga could not have been done by Domingo Oga-Oga, Jr. in complete self-defense but it could be murder.

6) The version of John Oga-Oga is that he killed Antonio Oga-Oga after the latter suddenly attacked him when he told Alfredo Oga-Oga that they should not fight because they have no misunderstanding and that John Oga-Oga fought back after receiving four (4) wounds from Antonio Oga-Oga the scars of which were exhibited to this Court by John. The wounds of John Oga-Oga are described by Dr. Amparo P. Villanueva in the Medical Certificate (Exhibit "7") she issued as two (2) incised wounds and two (2) abrasions. John Oga-Oga testified that the four wounds were caused by the hacking blows delivered to him by Antonio Oga-Oga. The Court is in doubt whether John Oga-Oga was telling the truth because abrasions do not leave scars as they are mere scratches on the skin. Moreover, John Oga-Oga claims that after he inflicted the wounds on Antonio Oga-Oga, the latter ran towards the bushes and fell down. The Medical Certificate (Exhibit "D")

issued for Antonio Oga-Oga shows that of the eight (8) wounds on his body the three wounds, on the abdomen, front of the head which cracked his skull and injured the brain, and back of the neck which caused instant death (TSN.Portilla, page 11) were allegedly inflicted by John Oga-Oga before Antonio was able to run because after Antonio ran, John alleges that he did not chase Antonio but just kept on looking at Antonio until Antonio fell down dead. This Court doubts very much this testimony of John because this Court can hardly believe that Antonio could still run a distance of about twenty-five (25) meters considering that the wound at the back of his neck caused instant death. Antonio should have fallen right where that wound was inflicted. This Court, therefore, believes the evidence of the prosecution that after Antonio was suddenly hacked by Domingo Oga-Oga, Jr. on the stomach, Antonio ran towards the bushes and was chased by the two accused Domingo Oga-Oga, Jr. and John Oga-Oga and when Antonio fell down face downward that fatal wound at the back of his neck were inflicted by the two accused.

'It is true that John suffered two incised wounds and two abrasions which he claims to have been inflicted by Antonio Oga-Oga. These wounds of John Oga-Oga could have been inflicted by Antonio Oga-Oga or any one of the victims in their attempt to defend themselves. The Court believes that the wounding of Antonio Oga-Oga by John Oga-Oga was not in self-defense because after the first wound of Antonio on the stomach which Dr. Dionisio Conde considered as fatal or after his wound on the front of his head which cracked his skull and injured his brain or the wound at the back of his neck which caused instant death, there was no more necessity of inflicting on him the other wounds because one of these three wounds would have immobilized him to fight.

'Hence this Court is of the considered opinion that the evidence of the two eyewitnesses of the prosecution, Quirico Quinabo and Fructuoso Anota, are more truthful because their explanations as to how the victims were wounded and the nature and locations of their wounds appear more to be credible and in consonance with the findings of Dr. Dionisio Conde as shown in the Medical Certificates he issued for each of the three victims.

The accused, however, in their Memorandum alleged the following conclusions:

a) "We therefore, submit our conclusion that the affidavit signed by Quinabo (Exhibit "1", "1-A") and the affidavit signed by Fructuoso Anota (Exhibit "2", "2-A") do not reflect the statements of Quinabo and Anota respectively but are the statement of other persons. These documents are, therefore, falsified documents. The testimony in court of Quinabo and Anota conform in material aspects with the two affidavits (Exhibit "1" and Exhibit "2"). Such testimony, therefore, are perjured, the same not coming from the witnesses themselves on the basis of their own personal knowledge of the facts testified to. (Section 30, Rule 130, Rules of Court).

b) The whole testimony of Anota should be discarded for being stranger to the truth.

c) "The motive was not established by the prosecution even by a scintilla of evidence.'

'The accused wants this Court to believe that the testimonies of the two (2) eyewitnesses, Quirico Quinabo and Fructuoso Anota, are based on the affidavits made by other persons. But the accused testified that they did not see other persons in the scene of the incident except the three victims and the brothers themselves, Domingo Oga-Oga, Jr. and John Oga-Oga. How could other persons who were not present manufacture such evidence of the prosecution which is more credible than the version of the two accused Domingo Oga-Oga, Jr. and John Oga-Oga? It is true that there are certain inconsistencies in the affidavit and the oral testimonies of the two prosecution eyewitnesses but it does not mean that on the basis of these inconsistencies their whole testimonies should be totally discarded because their very presence and personal knowledge of the actual happenings are reflected in the credibility of their own versions of the incident against the incredible testimonies of the two accused.

'The motives of the killing are already explained. It is a more believable motive that the killing of the victims is due to the fact that the accused resented that the land once tenanted by John Oga-Oga was given in tenancy to the victims spouses Antonio Oga-Oga and Leticia Oga-Oga. Leonila Oga-Oga filed a case of Oral Defamation

against Leticia Oga-Oga which was to be tried on that April 7, 1981. The Court does not believe the motive attributed to the spouses Alfredo Oga-Oga and Anita Oga-Oga in the alleged attack against the two brothers, Domingo Oga-Oga, Jr. and John Oga-Oga, to be the mere cutting of a banana plant which was planted by Domingo Oga-Oga in the land of Any. Pelagio Nuevo. For how could Anita Oga-Oga and Alfredo Oga-Oga, first cousin of both accused be so aggrieved when Domingo Oga-Oga, Jr. cut a banana plant in the land of Atty. Pelagio Nuevo which Domingo Oga-Oga, Jr. had himself planted in the land that did not even belong to Anita Oga-Oga?

'But even granting without admitting that the evidence of the prosecution is weakened by the inconsistencies in the oral testimony and the affidavit executed by the two prosecution eyewitnesses, Fructuoso Anota and Quirico Quinabo, it is still the burden of the accused to prove beyond reasonable doubt their defense of complete self-defense and not to rely on the weakness of the evidence of the prosecution. Thus, the Supreme Court ruled in the case of *People vs. Clemente*, L-23463, September 28, 1967, 21 SCRA 261, that:

'The burden of proving self-defense is on the accused.

To prove justification, the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after the accused had admitted the killing (*People vs. Ansoyon*, 75 Phil. 772). *Italics supplied.*

'Self-defense should be established by clear, satisfactory and convincing evidence (*People vs. Libed*, L-20431 June 23, 1965, 14 SCRA 410).

' Self-defense must be proved with certainty by sufficient, satisfactory and convincing evidence that excludes any vintage of criminal aggression on the part of the person invoking it (*People vs. Ramos*, 77 Phil. 4; *People vs. Jorge*, 71 Phil. 451).

'Besides, the allegation of self-defense of the accused is belied by the number and nature of the wounds suffered by the victims, with Anita Oga-Oga suffering five (5) fatal wounds and one (1) non-fatal wound all at her back; with Alfredo Oga-Oga suffering nine (9) wounds, four (4) fatal wounds at the back; one (1) on the left eye which is fatal, two (2) on the left chest and right waist; two (2) on the left arm and left forearm; with Antonio Oga-Oga suffering eight (8) wounds, four (4) wounds at the back, one (1) on the head, another on the left stomach, then right arm and right auxiliary region.

Thus, the Supreme Court ruled that:

The appellants theory of self-defense is belied by the number of wounds found on the body of the victim. (*People vs. Panganiban*, L-22476, February 27, 1968, 22 SCRA 317).

The defense failed to explain how the victims who are supposed to be the aggressors had their fatal wounds at the back, especially Anita Oga-Oga whose wounds are all at her back. Yet Domingo Oga-Oga, Jr. who is supposed to be attacked did not suffer a single scratch.

The fact that the three (3) victims suffered a total of twenty three (23) wounds, fourteen (14) of them were fatal wounds at the back, without a single wound suffered by Domingo Oga-Oga, Jr. belie and negative the plea of self-defense. It is true that John Oga-Oga presented to this Court four scars which he alleged were inflicted by Antonio Oga-Oga. A perusal of the Medical Certificate issued by the doctor (Exhibit "7") shows that two (2) of the four wounds are mere abrasions which do not usually leave scars. John Oga-Oga must have been telling a lie to this Court that these two (2) abrasion wounds were inflicted by the stabbing blows of the bolo of Antonio Oga-Oga because a sharp bladed instrument does not produce abrasion when used to hack or stab.

The Supreme Court also ruled that:

The accused was the only eyewitness to the crime. He admitted that he killed the deceased, but advanced the

claim that he acted in self-defense. Held: The actual, undisputed, physical facts flatly contradicted the whole theory of self-defense. The nature, character, location and extent of the wound, as testified to by the doctor who had examined the wound, clearly show that the deceased was struck either from behind or while his body was in a reclining position. From which it follows that the accused did not act in self-defense, (*People vs. Tolentino*, 54 Phil. 77). Italics supplied.

'Moreover, the accused failed to present to this Court the bolos used by the three victims in their alleged aggression against the two accused. This again belie and negative the plea of self-defense.

'A plea of self-defense may be accepted only when it is established that the accused did not initiate the unlawful aggression (*People vs. Mendoza*, L-16321, January 30, 1965, 13 SCRA 11).

"The allegation of the accused that the three (3) victims were the aggressors being incredible, this Court believes that the accused were the aggressors as testified to by the two prosecution eyewitnesses, Fructuoso Anot and Quirico Quinabo. Hence this Court is of the considered opinion that the plea of self-defense of the accused is not acceptable.

'The Supreme Court ruled:

'There can be no self-defense until there has been unlawful aggression (*People vs. Apolinario*, 58 Phil. 586).

'Even admitting that Antonio Oga-Oga wounded John Oga- Oga but when Antonio Oga-Oga ran, there was no more necessity for the accused to chase him and kill him while on the ground face downward because of his wounds.

'Thus, the Supreme Court ruled:

'When unlawful aggression which has begun no longer exists, because the aggressor runs away, the one making a defense has no more right to kill even to wound the former aggressor. (*People vs. Alconga, et al.*, 78 Phil. 366). (pp. 16-23, appellant's brief)

"Finally, under the tenth assigned error appellant Leonila Oga- Oga advanced the defense of alibi or quasi a alibi. Again this was aptly disposed of by the trial court in this manner:

'It is alleged by the defense that the accused Leonila Oga- Oga was not present during the time of the incident. Her alibi is supported by Segundina Apa the Clerk of Court of Judge Eugenio Arguelles who testified that at about 1:00 o'clock that April 1, 1981, Leonila Oga-Oga was at the Municipal Court of Burauen waiting to see the judge. The judge is supposed to report at 1:00 o'clock but apparently he was not there at that time because Apa told Leonila to wait. Hence it could be possible that Leonila was able to talk with the judge at past 1:00 o'clock as in fact Leonila said it was already 2:00 o'clock that afternoon when she was able to meet the judge. Her allegation that she was in the house of ascertain Indoy Relatorres at 12:00 o'clock cannot be given credence because she did not present Indoy Relatorres nor anyone in the house of Relatorres to support her alibi. It is admitted by Leonila Oga-Oga that the distance from Sitio Bilibol where the incident happened is only one (1) kilometer to the Poblacion. This distance could easily be negotiated in about ten (10) to fifteen (15) minutes. The Court has doubts in this defense of alibi considering the decision of the Supreme Court that:

' Alibi is at best a weak defense and cannot prevail over the testimony of truthful witnesses, The reason is that alibi is easy of fabrication especially between parente and children, relatives and even those not so related. (*People vs. Bulawin*, L-30069, September 30, 1969, 29 SCRA 710)

'In this case, Leonila Oga-Oga, as testified to by Quirico Quinabo, had an altercation and exchange of words with Anita Oga-Oga and was heard by Quirico Quinabo to have uttered the words, 'Come here, they are here, kill them,' which was the signal for her husband Domingo Oga-Oga, Jr. and her brother- in-law, Jose Oga-Oga, to approach and chase Anita Oga-Oga and hacked her to death when she fell down face downward. This

explains why all the wounds of Anita Oga-Oga are at the back.

'The Supreme Court also ruled that:

'Courts should exercise great caution in accepting the defense of alibi because it is easily concocted. (People v.v. Bagsican, L-13486, October 31, 6 SCRA 400).'

'Furthermore, the Supreme Court ruled that:

'The defense of alibi cannot prevail over the positive identification of witnesses (People vs. Gande, L-28163, January 30, 1970, 31 SCRA 347).'

'In order that an 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 his identification must be weak and insufficient. (People vs. Alcantara, L- 26867, June 30, 1970, 33 SCRA 813). Italics supplied.

'In these three cases, the presence of Leonila Oga-Oga at the scene of the incident during the actual killing of the three (3) victims was duly testified to not only by Quirico Quinabo but also by Fructuoso Anota. It was the command of Leonila Oga- Oga to 'Come here, they are here, kill them,' which prompted her husband, Domingo Oga-Oga, Jr. and brother-in-law, John Oga-Oga to act in concert and killed the three victims one after the other, while Leonila Oga-Oga was watching and walking in the cornfield.

'The sworn statement of Fructuoso Anota (Exhibit "2") that he heard Domingo Oga-Oga proposing to kill Antonio Oga-Oga that morning of April 1, 1981, has never been contradicted. It remains therefore as a fact that proves the three accused as the aggressors, acting in concert.

'Moreover, the Supreme Court further ruled:

"To establish alibi, the accused must show 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, (People vs. Lumantas, L-28355, July 17, 1939, 28 SCRA 764).'

'The admission of the accused Leonila Oga-Oga that the scene of the killing incident at Sitio Bilibol is only one (1) kilometer to the poblacion of Barauen shows that it was not impossible for her to be at the scene of the crime at the time the crime was committed.

'From the foregoing considerations this Court is of the considered opinion that the prosecution has been able to present sufficient evidence to prove that the three accused. Leonila Oga- Oga, Domingo Oga-Oga, Jr. and John Oga-Oga are all guilty of s. murder in these three criminal cases, with Leonila Oga-Oga as principal by inducement and Domingo Oga-Oga, Jr. and Jose Oga-Oga as principals by direct participation.

'That upon the command of Leonila Oga-Oga to her husband, Domingo Oga-Oga and her brother-in-law, John Oga-Oga, the two brothers, Domingo Oga-Oga, Jr. and John Oga-Oga, killed : one after the other, Anita Oga-Oga, Alfredo Oga-Oga and Antonio Oga-Oga by mutually helping each other in inflicting the fatal wounds that resulted to the death one after the other of each of ., the three (3) victims in the hands of the two accused brothers thus qualifying with superior strength the killing of the three (3) victims to Murder, (pp. 23-24, appellants brief)

"However, in the imposition of the penalty by the lower court applying the Indeterminate Sentence Law while the minimum of the penalties imposed are within the proper range, the statement as to the minimum penalty that it should 'not be less than' the stated penalty and as to the maximum penalty that it should 'not be more than' the stated penalty renders the indeterminate sentence thus imposed neither fixed nor definite. Said phrases 'not less than' and 'not more than' in the dispositive part of the appealed decision should thus be deleted.

"WHEREFORE, with the deletion of the phrases hereinabove indicated, the decision appealed from is hereby AFFIRMED in all other respects with costs against the appellants. However, in so far as the appellant Leonila Oga-Oga is concerned the maximum penalty imposed being reclusion perpetua, let the records of this case be elevated to the Honorable Supreme Court for review her case being within the exclusive appellate jurisdiction of the highest Court." (Rollo, pp. 48- 74.)

We have examined the record and We agree with the Intermediate Appellate Court that Leonila Oga-Oga is guilty of murder. The trial court imposed on her a more severe sentence because there is no mitigating circumstance in her favor.

The penalty for murder is reclusion temporal in its maximum period to death. Since there are no attendant circumstances in respect of Leonila the applicable penalty is the medium period, i.e. reclusion perpetua.

The Indeterminate Sentence Law (Act No. 4225, as amended) does not apply to persons convicted of offenses punished with death or life imprisonment (reclusion perpetua). (Sec. 2.) It was a mistake on the part of the trial judge to have given Leonila an indeterminate sentence.

WHEREFORE, the judgment convicting Leonila Oga-Oga of the crime of triple murder is hereby affirmed and she is sentenced to suffer the penalty of three reclusion perpetua, to indemnify the heirs of the three deceased each in the amount of P30,000.00 and to pay her proportionate share of the costs.

Let a copy of this decision be sent to Judge Fortunato B. Cuna. SO ORDERED.

Makasiar (Chairman), Aquino, Conception Jr., Escolin, and Cuevas, JJ., concur.

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