

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CHARLY GANOHON Y SAMIA ALIAS “DONGDONG,”
ACCUSED-APPELLANT.**

G.R. Nos. 74670-74. April 30, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Charly Ganothon y Samia alias Dongdong, was charged with the crime of murder in Criminal Cases Nos. 71(3313), 72(3314), 73(3315), 74(3316) and 75(3317) before the Regional Trial Court of Bukidnon, Tenth Judicial Region, Branch XI. The informations filed in said cases read, as follows (pp. 12-12-D, Rollo):

Criminal Case No. 71(3313)

"That on or about the 16[th] day of August, 1982, in the evening, at barangay Ticalaan, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Gerardo Obod alias Meka, who is still at large, conspiring together and mutually helping one another, with intent to kill, taking advantage of their superior strength, and by means of treachery, with the use of a double blade long bolo (kris), did then and there willfully, unlawfully and criminally attack, assault and hack EDUARDO ANOOS, inflicting on him multiple incised wounds all over the body, head and extremities (sic), which cause his instantaneous death.

"Contrary to and in violation of Article 248 of the Revised Penal Code."

Criminal Case No. 72(3314)

"That on or about the 16[th] day of August, 1982, in the evening, at barangay Ticalaan, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Gerardo Obod alias Meka, who is still at large, conspiring together and mutually helping one another, with intent to kill, taking advantage of their superior strength, and by means of treachery, with the use of a double blade long bolo (Kris), did then and there wilfully, unlawfully and criminally attack, assault and hack ELINA ANOOS, inflicting on her multiple incised wounds all over the body, head and extremities, which caused her instantaneous death.

"Contrary to and in violation of Article 248 of the Revised Penal Code."

Criminal Case No. 73(3315)

"That on or about the 16th day of August, 1982, in the evening, at barangay Ticalaan, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Gerardo Obod alias Meka, who is still at large, conspiring together and mutually helping one another, with intent to kill, taking advantage of their superior strength, and by means of treachery, with the use of a double blade long bolo (Kris), did then and there wilfully, unlawfully and criminally attack, assault and hack EDGAR NUERA, inflicting on him multiple incised wounds all over the head and extremity,

which caused his instantaneous death.

"Contrary to and in violation of Article 248 of the Revised Penal Code."

Criminal Case No. 74(3316)

"That on or about the 16[th] day of August, 1982, in the evening, at barangay Ticalaan, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Gerardo Obod alias Meka, who is still at large, conspiring together and mutually helping one another, with intent to kill, taking advantage of their superior strength, and by means of treachery, with the use of a double blade long bolo (Kris), did then and there wilfully, unlawfully and criminally attack, assault and hack GINA ANOOS, inflicting on her multiple incised wound all over the body, head and extremity, which caused her instantaneous death.

"Contrary to and in violation of Article 248 of the Revised Penal Code."

Criminal Case No. 75(3317)

"That on or about the 16[th] day of August, 1982, in the evening, at barangay Ticalaan, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Gerardo Obod alias Meka, who is still at large, conspiring together and mutually helping one another, with intent to kill, taking advantage of their superior strength, and by means of treachery, with the use of a double blade long bolo (Kris), did then and there wilfully, unlawfully and criminally attack, assault and hack TUTO ANOOS, inflicting on him multiple incised wound on the head with brain coming out, which accused (sic) his instantaneous death.

"Contrary to and in violation of Article 248 of the Revised Penal Code."

Upon being arraigned on November 9, 1982, the accused-appellant entered the plea of not guilty to the crime charged in all five cases. After joint trial on the merits, the trial court rendered its decision on December 21, 1984, the dispositive portion of which, reads (pp. 66-67, Rollo):

"WHEREFORE, premises considered, this Court finds the accused Charly Ganohon y Samia alias Dongdong Ganohon, guilty beyond reasonable doubt of five (5) crimes of Murder as charged in the above-entitled cases (Criminal Cases Nos. 71(3313), 72(3314), 73(3315), 74(3316) and 75(3317), defined and penalized under Article 148 (248) of the Revised Penal Code, qualified by treachery (Art. 14, par. 16, RPC), with the generic aggravating circumstance of dwelling (Art. 14, par. 3, RPC), for the violent deaths of Eduardo Anoos, Elina Pantao Anoos, Edgar Nuera, Gina Anoos and Tuto Anoos, and he is hereby sentenced in each of the five (5) cases to the penalty of reclusion perpetua, to indemnify the heirs of the five (5) victims the sum of P30,000.00 each, without however subsidiary imprisonment in case of insolvency, to suffer the other accessory penalties provided for by law, and to pay the costs of the proceedings.

"The accused is fully credited of the service of his detention since his arrest as it appears that he agreed in writing to abide by the rules for convicted prisoners in accordance with Republic Act No. 6127.

"SO ORDERED."

Hence, the present appeal.

The facts of the case, as found by the trial court, are as follows (pp. 55-62, Rollo):

"In the evening of August 16, 1982, a brutal and gruesome massacre was perpetrated in barangay Ticalaan, Municipality of Talakag, province of Bukidnon, wherein Eduardo Anoos, Elina Pantao Anoos, Edgar Nuera, Gina Anoos and Tuto Anoos met unexpected violent deaths. No one ever witnessed the horrible incident, but accused Charly Ganohon y Samia alias Dongdong Ganohon, together with a certain Gerardo Obod alias 'Meka'

who is still at large, were charged of 5 separate cases of murders.

x x x x x x x x

"x x x. The prosecution evidence consisted of the oral testimonies of Benjamin Anoos, Bernardino Signawan, Ruperto Aynon, Cpl. Leopoldo Pol, Jr., Recto Obod, Dr. Demetrio Sto. Domingo and Patrocinio Enecito alias Datu Ladlaran, and the documentary and physical exhibits marked as Exhs. A, A-1, A--2, B, C, C-1, D, D-1, E, E-1, F, F-1, G, G-1, H and H-1. The evidence for the defense consisted mainly of the oral testimonies of Charly Ganohon alias Dongdong Ganohon, Paulina Ganohon Gacosan and Cristituto Haniogan.

"Witness Benjamin Anoos, a photographer, testified that he is the younger brother of the late Eduardo Anoos; that the said Eduardo Anoos and his family lived in barangay Ticalaan in the house of one Renato Neri as tenant; that this house is about 150 meters to the house of his mother where he is living; that his brother Eduardo was married to Elina Pantao, and they had two children, namely: Gina and Tuto Anoos, 6 years old and 1 year old respectively. Edgar Nuera, their half-brother, about 10 (sic) years old, was also living with the family of Eduardo Anoos. That at about 7:00 o'clock in the morning of August 17, 1982, a certain Nono, a companion of Eduardo, came running to their house asking if Eduardo was in their house; that after answering him the negative, he asked him why. The said Nono told him that he saw under their house the bloody sack; that they immediately proceeded towards the house of Eduardo Anoos and investigated the sacks on the ground below the house 4 feet from the floor level; they saw the dead bodies of Eduardo and his family all laying on the floor; that witness Benjamin Anoos got his camera and took pictures of the scene. He took pictures of the bloody sacks under the house (Exh. A), and the picture of the 5 cadavers (Exh. A-1) and another picture of the dead bodies before they were placed in their coffins (Exh. A-2). Said witness immediately reported the incident to the barangay captain Restituto Dalupa, who requested a truck for the bodies, and Benjamin Anoos went to Talakag town to report the incident to the Station Commander, Cpl. Leopoldo Pol, Jr. Said witness also went to Cagayan de Oro City to report to Renato Neri the tragedy that befell his tenant and his family; that he initiated the filing of the cases against Charly Ganohon y Samia alias Dongdong Ganohon and Gerardo Obod alias Meka because x x x according to information furnished by Ruperto Aynon, they were responsible for the killing of his brother and his family; that prior to the death of Eduardo Anoos, the latter confided to said witness that if anything happened to him, Gerardo Obod alias Meka and Recto Obod will be responsible for his death as he is a survivor of the killing of 3 persons at Kilometer 28, TIPI UNIT 2, Ticalaan, Talahag, Bukidnon, months ago and they were planning to kill him as a potential witness; that accused is (sic) Charly Ganohon is a resident of sitio Calapat, Mirayon, and Gerardo Obod alias Meka is a resident of Kibansag, Ticalaan; Kalapat is about 30 kilometers from Kibansag, but Kibansag is only 7 kilometers from Ticalaan proper.

"Witness Bernardino Signawan testified that he is a resident of Ticalaan, Talakag, Bukidnon, and he knew personally Charly Ganohon as he is always there in Ticalaan, although he is a resident of Calapat, Mirayon, Talakag, some 10 kilometers away from Ticalaan; that he also know (sic) personally Gerardo Obod alias Meka as he is also from Ticalaan, and his brother Dorico Obod is his neighbor. The house of Dorico Obod is about 60 meters from his house, and the house of the late Eduardo Anoos is about 200 meters from his house. That on August 16, 1982, at about 8:30 P.M., he was at the window of his house observing other persons passing by as there was a previous warning about it. That at about the same time, accused Charly Ganohon alias Dongdong and Gerardo Obod alias Meka passed by with long bolos (kris) tagged along (sic) their waistline (sic), going towards the direction of the house of Eduardo Anoos. They were only 10 meters from his window when they passed by, and after they were gone, he closed his window and went to bed. The following morning of August 17, 1982, he was informed by Benjamin Anoos that Eduardo Anoos and his family were killed the previous night. He went to the scene of the crime, together with his wife, Marcelo Dalaus, Catalino Dalaus, Olivia Pantao, mother of one of the victims, and Gaudencio Labjosa, and saw the dead bodies of Eduardo Anoos and members of his family inside their house. He suspected Charly Ganohon alias Dongdong and Gerardo Obod alias Meka as the ones who killed the victims in order that the killing of 3 persons ar (sic) TIPI

UNIT No. 2 at Kilometers 28, Ticalaan, will not be exposed by Eduardo Anos as a survivor of said massacre.

"Witness Ruperto Aynon testified that he is a resident of sitio Calapat, barangay Tagbak, Talakag, Bukidnon, and is an elected councilman of barangay Tagbak. Sitio Calapat is 9 kilometers away from Ticalaan and there is a road connecting them. That only a road separated his house from the house of Andalicio Ganohon, father of Dongdong Ganohon, and he used to see Charly Ganohon and Gerardo Obod alias Meka together in Ticalaan. That while he was at his house in the early morning of August 17, 1982, at about 6:00 o'clock, he saw Dongdong Ganohon and Meka Obod at a distance of 20 meters going to the house of Andalicio Ganohon, father of Dongdong Ganohon. He noticed that Dongdong and Meka were wet and muddy, each carrying a long bolo (kris), coming from barangay Ticalaan. x x x. Because of their suspicious behavior, witness Ruperto Aynon went to the house of Andalicio Ganohon to see them. x x x, it was Andalicio Ganohon who came out of the house and talked to him. Later on, after he was back in his house, Andalicio Ganohon went to see him, and expressed his anxiety about what the two accused had done x x x, as Charly Ganohon refused to tell him although he said that he will know later. Witness Ruperto Aynon later went to sitio Paganan to verify whether or not Gerardo Obod alias Meka and Charly Ganohon passed there, and he learned from Jose Suclatan that they just passed from (sic) there and bought biscuits (sopas). And about 10:00 o'clock that morning, he was told by Atoy Inta that there was killing in Ticalaan, and the victims were Eduardo Anos and members of his family. Upon learning of the incident, said witness went to view the victims and reported to the police authorities his observation of the behavior of the accused that early morning.

"Witness Leopoldo Pol, Jr. testified that he was police investigator of the PC INP Station of Talakag, Bukidnon on August 16, 1982. That he investigated the witnesses Benjamin Anos, Bernardino Signawan, Ruperto Aynon and Recto Obod. He also identified the prosecution exhibit, the long double bladed bolo, with curve blade, marked as exhibit B, as the one delivered to him by Barangay Captain Amador Sabilla of barangay Lapok and Tribal Chieftain Patrocinio Enecito who reported that it was the bolo used by Dongdong Ganohon in killing Eduardo Anos and members of his family. Sabilla and Enecito further reported to him that accused Charly Ganohon alias Dongdong confessed to them about the killing. While Charly Ganohon told him that it was not his bolo, the said accused did not show any reaction when he was confronted about his confession that he killed Eduardo Anos and members of his family. The accused Charly Ganohon even told witness Pol, Jr. that he was the one who hacked the legs of Eduardo Anos, and explained that they have a previous grudge against Eduardo (sic) Anos as he was previously boxed by him.

"Witness Recto Obod testified that he is a resident of sitio Kibansag, Barangay Ticalaan, Talakag, Bukidnon, 7 kilometers away from Ticalaan proper. The accused Gerardo Obod alias Meka, who is still at large, is his younger brother by two years. On August 16, 1982, at about midnight, he saw accused Charly Ganohon alias Dongdong together with his younger brother, Gerardo Obod alias Meka, standing near his house at Kibansag, Dongdong Ganohon carrying a kris, and Meka Obod a long bolo, they were shouting that they have just killed Eduardo Anos. Witness Recto Obod refused them admittance in his house that night by not opening his door as he was afraid and fearful that he will be implicated in the commission of the crime. Accused Charly Ganohon and Gerardo Obod left the place after they were refused admittance by the witness. The following morning, the said witness went to sitio Intalwas, part of Ticalaan, to see his brother-in-law Perfecto Mugto to consult him about what his younger brother Meka Obod had done. He learned there that Eduardo Anos and members of his family were killed the previous night. It was his brother-in-law who made the report to the police authorities about the facts he knew about the killing as he was then afraid that the relatives of Eduardo Anos might take revenge against him. On cross examination, witness Recto Obod admitted that one of his brothers, Dorico Obod, was living near the house of Eduardo Anos in Ticalaan on August 16, 1982. That his father was shot and killed in an ambush by unknown killers somewhere in Kakawon, and the killers were never apprehended or brought to court. While they did not suspect anybody as the killer, he did not know if his brother Gerardo Obod ever suspected Eduardo Anos. His brother Dorico Obod transferred his residence to San Pablo after the killing of the Anos family. That he only saw Charly Ganohon with his brother Gerardo in the night of August 16, 1982, and his brother Gerardo Obod has not previously gone to his house in sitio

Kibansag before August 16, 1982, x x x as he was living and working in sitio Intalwas.

"Witness Dr. Demetrio Sto. Domingo, Jr. testified that he was the Municipal Health Officer of Talakag, Bukidnon, on August 17, 1982. That about 12:40 P.M. of said day, he conducted a medico-legal examination of some victims of hacking and stabbing wounds. He identified the anatomical sketch of the body of the deceased Eduardo Anos as Exh. D, showing the different incised wounds on the body caused by a sharp-edged instrument like a bolo or kris and issued the death certificate, marked Exh. D-1.

"Said witness also examined the dead body of Edgar Nuera and prepared the anatomical sketch marked Exh. E, showing the incised wounds inflicted on said victim on different parts of his body, and issued the death certificate marked Exh. E-1.

"Witness also conducted a medico-legal examination on the dead body of Gina Anos and prepared the anatomical sketch marked Exh. F showing the incised wounds inflicted upon her, and issued the death certificate marked Exh. F-1.

"Said witness also examined the dead body of Tuto Anos and prepared the anatomical sketch marked Exh. G, showing the location of the incised wounds inflicted upon him, and issued the death certificate marked Exh. G-1.

"Said witness also examined the dead body of Elena Pantao Anos and prepared the anatomical sketch marked Exh. H showing the location of the different incised wounds inflicted upon her body. He also issued the death certificate marked Exh. H-1. The said medical witness testified that all the wounds inflicted on the five victims were caused by sharp-edge instrument and it is possible that they could be caused by a bolo or kris like Exh. B, as long as they were sharp-edged. He further declared that all the victims died of shock secondary to hemorrhage due to multiple incised wounds all over their bodies, and it was also possible that all the victims may have been killed by one and the same bolo, like Exh. B.

"Witness Patrocinio Enecito, also known as Datu Ladlaran, testified that he is a member of the Sangguniang Panglungsod of Talakag, Bukidnon, and resident of Mirayon, Talakag. That on August 20, 1982, at about 3:30 P.M., he was in barangay Lapok, together with members of the Civilian Home Defense Force and some barangay residents in a meeting. Their CHDF headquarters (sic) is located in barangay Lapok and they were holding a meeting because of the incident they heard from Andalicio Ganohon, father of Dongdong Ganohon, that the latter committed something bad before August 20, 1982. Said witness pointed to the accused Charly Ganohon alias Dongdong Ganohon as a person whom he personally know (sic) before August 20, 1982, having been born in Imbatug, Lapok, Talakag, Bukidnon. That at about 4:00 o'clock that afternoon, a certain Pacita Suclatan informed them that accused Dongdong Ganohon was in sitio Imbatug, about 2 kilometers from barangay Lapok proper. Witness Enecito, together with more than 10 CHDF members immediately went to sitio Imbatug to apprehend accused Charly Ganohon, who was then at the hut of his sister Paulina Gacosan. They immediately surrounded the hut and asked the owner if Charly Ganohon was there. Taken by surprise, Paulina Gacosan could not answer, but Enecito already saw Dondong Ganohon inside the hut covering himself with a mat laying (sic) down on the floor. Getting inside the hut, Enecito and his men removed the mat and saw Dongdong Ganohon laying (sic) down with the kris (Exh. B) parallel his body. Said accused was wearing a headband and armband and wearing amulets for killing persons. The same headband and armband worn by Ganohon were the same things worn by the rebels in Mirayon in the year 1975 when said rebels fought against the army. Ganohon was one of those rebels who later surrendered to Panamin Secretary Elizalde. Witness Enecito is a native of Talakag, belonging to the Talaandig tribe and he holds the position of tribal chieftain of Mirayon and Imbatug, Talakag. The said witness also identified the kris (Exh. B) as the weapon taken from accused Charly Ganohon while covering himself with a mat inside the hut of his sister Paulina Gacosan, and he specifically pointed to the dent in the blade allegedly caused by the hacking of the Anos family. Said witness further declared that accused Dongdong Ganohon specifically told him upon his arrest that it was the same weapon they used in hacking the Anos family and that Dongdong Ganohon and Gerardo Obod alias Meka

took turns in hacking the victims with the same kris (Exh. B). Said witness also known as Datu Ladlaran, identified his signature on the written statement Exh. C & C-1, allegedly the confession of accused Charly Ganohon about the killing after he was arrested. According to said witness, he asked all the questions on Exh. C, and it was the accused Charly Ganohon who made the answers to said questions. Said witness stated also that he typed said statement, Exh. C, himself, and accused Ganohon already knew that he was under arrest for the killing of the Anoos family. While there was no lawyer to assist him in the investigation, he was assisted by his father-in-law, Datu Lohoyan, Marcelo Camingao. The cousin of Ganohon, Sulatan, was also present during the taking of the statement, Exh. C. The accused Charly Ganohon was residing in Kalapat, Tagbak, on August 16, 1982, which is 12 kilometers to Imbatug. And it takes more than 2 hours to travel from Kalapat to Imbatug, and kalapat (sic) is 9 kilometers to Ticalaan.

"On the other hand, the defense of accused Charly Ganohon alias Dongdong Ganohon is mere denial of the accusation against him, particularly the killing of the Anoos family. He declared under oath that on August 20, 1982, he was at the house of his sister, Paulina Gacosan, at sitio Imbatug, barangay Lapok, to inspect his potato plants. That while he was eating at about 2:00 o'clock, (sic) P.M., he was picked by members of the Civilian Home Defense Force (CHDF) led by Patrocinio Enecito also known as Datu Ladlaran, in the presence of his sister and brother-in-law. Then he was arrested for the killing of the Anoos family, he told them that he did not commit any crime. That he was forced to admit the killing and signed the statement Exh. C & C-1, because he was mauled by the members of the CHDF led by Datu Ladlaran on their way to barangay Lapok and he vomitted blood and his face became swollen. He stated that he did not cover himself with a mat when Patrocinio Enecito and his men suddenly surrounded the hut while he was eating. His bolo or kris (Exh. B) was then placed on top of the luggage of his sister, and the headband and the armbands were inside the luggage. He was tied when brought to barangay Lapok hall and vomitted blood upon arriving there. Before he was investigated, he was told that his answers to the questions will be the ones dictated to him. He was forced to obey Enecito in order not to be mauled again. He told the court that he knew that before Eduardo Anoos died, the latter said that if anything happened to him, Gerardo Obod alias Meka and Recto Obod will be responsible. He denied the testimony of Recto Obod that he and Gerardo Obod were at his house about midnight of August 16, 1982, shouting that they have killed Eduardo Anoos and his family. Accused Charly Ganohon also admitted that he knew all the persons with Patrocinio Enecito who arrested him and some of them were his relatives, and they were present when he was made to sign the written statement Exh. C & C-1. That he was not able to report said mauling to any government authority, although he told his inmates in the Provincial Jail at Malaybalay when he was sent there. Accused Charly Ganohon admitted to the Court his membership of that rebellious group which fought the government forces in Mirayon, Talakag, Bukidnon, in the year 1975, and later on surrendered to the Panamin Secretary Elizalde.

"His sister, Paulina Ganohon Gacosa, corroborated him on the circumstances of his arrest at their hut in the afternoon of August 20, 1982. She also declared that he saw the swollen face of Charly Ganohon and the bruises on his body when he reported to her that he was mauled by Patrocinio Enecito and the CHDF members.

"Punong Barangay Cristituto Haniogan of Tagbak, Talakag, testified for accused Charly Ganohon stating that he knew Charly Ganohon for a long time as he is a resident of sitio Kalapat, barangay Tagbak, and a member of his constituency. That sometime in August 1982, he received a letter from Patrocinio Enecito directing him to get Charly Ganohon at barangay Lapok and to bring him to Talakag. The next morning following receipt of said letter, he went to barangay Lapok, and he was told by Enecito that they had arrested Charly Ganohon for the killing of the Anoos family in Ticalaan. He brought said Charly Ganohon to the municipal jail at Talakag, and saw that his face was swollen. He was instructed to bring accused to Talakag as he was one of his followers. When he asked Ganohon why his face was swollen, he said that he was boxed by the members of the CHDF so that he will tell falsehood. He also declared that he knew also that Gerardo Obod alias Meka was a good friend of Charly Ganohon and who is still at large. He further declared that accused Charly Ganohon is living in sitio Kalapat and he is a farmer."

The accused-appellant assigns as errors committed by the trial court the following (p. 47, Rollo):

"I.

IN NOT REJECTING THE EXTRA-JUDICIAL CONFESSION (EXHIBIT C) EXTRACTED FROM APPELLANT BY MEANS OF TORTURE AND THE TRUTH OF WHICH HE LATER REPUDIATED;

"II.

IN HOLDING THAT APPELLANT HAS NOT SERIOUSLY REBUTTED THE INCRIMINATING STATEMENTS AND SINCE THERE ARE NO EVIDENCE POINTING TO OTHER PERSONS AS SUSPECTS OR PERPETRATORS, APPELLANT IS GUILTY; and

"III.

IN NOT ACQUITTING APPELLANT FOR LACK OF SUFFICIENT EVIDENCE TO PROVE THE GUILT OF APPELLANT BEYOND REASONABLE DOUBT."

He alleges that the admission of Exhibit C is a violation of the rights guaranteed under the Bill of Rights of the Constitution because he signed it only to avoid further mauling by those who arrested him. He contends also that it is unjust that only because there is no evidence pointing to other suspects, he should be adjudged guilty. This is contrary to Section 2, Rule 31 of the Rules of Court which provides that "[t]he burden of proof as to the offense charged lies in the prosecution." Furthermore, he submits that his denials are sufficient to rebut the incriminating circumstances testified to by the prosecution witnesses.

The brief filed by the accused-appellant is nothing but a scrap of paper. The arguments presented therein are either without any basis or misplaced.

In convicting the accused-appellant, the trial court certainly did not rely on Exhibit C. It expressed the opinion that (p. 66, Rollo):

"x x x. While the statement of Charly Ganohon marked Exh. C & C-1, cannot be made the sole basis of the conclusion that he indeed committed the killings together with Meka Obod as he denied the truth and voluntariness of the same, and that his constitutional rights may have been violated, the other incriminatory statements and circumstances testified to by the other witnesses have never been seriously rebutted or contradicted by him."

It is true that the trial court stated that "[a]nd there are no other evidence pointing to other persons as suspects or perpetrators of that brutal killings, except to Charly Ganohon and Gerardo Obod" (ibid). However, this statement was made by it in connection with its finding that the attendant circumstantial evidence conclusively points to the liability of the accused-appellant for the deaths of the five victims:

"x x x In other words, the series of incriminatory circumstances proved by the prosecution and not sufficiently rebutted by the accused, produced a combination of circumstances leading to the satisfactory conclusion that accused Charly Ganohon and Gerardo Obod indeed killed Eduardo Anos and members of his family on the night of August 16, 1982. The seemingly impotent and weak denial of the accused, and his failure to attribute motives to said witnesses to discredit their testimonies ultimately led to the inference that his guilt in the commission of the crime was established beyond reasonable doubt."

For the well-entrenched rule in evidence is that before conviction can be had upon circumstantial evidence, the

circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the defendant, to the exclusion of all others, as the author of the crime (People v. Ritter, G.R. No. 88582, March 5, 1991; People v. Subano, 73 Phil. 692).

The circumstantial evidence attendant and relied upon by the trial court is sufficient for conviction. There is more than one circumstance. The facts from which the inferences are derived are proven. The combination of all circumstances is such as to produce a conviction beyond reasonable doubt (Section 4, Rule 133 of the Rules of Court; People v. Rodriguez, G.R. No. 90255, January 23, 1991). These circumstances are:

1) Bernardino Signawan testified that on August 16, 1982 at about 8:30 in the evening, he was watching people who pass by their house because there was a previous warning that they should be watchful (p. 15, p. 21, tsn, May 18, 1983). Several months before the present incident, three persons were massacred at Tikalaan (p. 22, *ibid*). From a distance of ten (10) meters, he saw the accused-appellant and Gerardo Obod pass by their house proceeding towards the house of Eduardo Anoos (p. 16, *ibid*). He noticed that bolos were tacked at their hips (*ibid*). He then kept quiet and closed the window of his house (*ibid*). Before the present incident, Eduardo Anoos told him personally that if something happens to him and his family, the persons who will be responsible are the accused-appellant, Gerardo Obod and Recto Obod (p. 17, *ibid*). Eduardo Anoos confided this to him because he was the purok leader (*ibid*).

2) Recto Obod testified that on August 16, 1982, at 12:00 midnight, he saw the accused-appellant and Gerardo Obod, his younger brother, at the side of his house (p. 17, tsn, June 29, 1983). They were two (2) meters from the window of his house. He was able to see their faces because he used a bright lamp. It was also bright outside of their house because of the moonlight (p. 26, *ibid*). The accused-appellant was carrying a kris whereas Gerardo Obod was carrying a bolo (p. 18, *ibid*). Both of them shouted to their neighbors that they have killed Eduardo Anoos and his family (pp. 18-19, *ibid*). Recto Obod closed his house because he became afraid (p. 18, *ibid*). The accused-appellant and Gerardo Obod then went away (*ibid*). The following morning, Recto Obod went to Paterno Mogpoc, his brother-in-law, because he feared that he might be involved in the crime that they committed (*ibid*) and be killed because Gerardo Obod is his brother (p. 19, *ibid*).

Recto Obod's testimony that at 12:00 midnight, the accused-appellant and Gerardo Obod shouted to their neighbors that they have killed Eduardo Anoos and his family is consistent with the testimony of the physician that when he conducted the medico-legal examination on August 17, 1982 at 12:40 noon, about twelve (12) hours have passed since the deaths of the victims (pp. 3-4, tsn, Feb. 3, 1984).

3) Ruperto Aynon testified that on August 17, 1982, at about 6:00 o'clock in the morning, he saw the accused-appellant and Gerardo Obod on the road going to the house of Andalicio Ganohon, father of the accused-appellant. He was only ten (10) meters away from them (p. 31, tsn, May 18, 1983). He noticed that they were wet, there was mud in their trousers and there were bolos at their waists (p. 31, *ibid*) which made him suspicious (p. 32, *ibid*). They came from Tikalaan (*ibid*). They went inside the house of Andalicio Ganohon (*ibid*). Ruperto Aynon then followed them and conversed with Andalicio Ganohon for a minute regarding the latter's work. After this, Ruperto Aynon went home. Later, Andalicio Ganohon went to his house and asked him what happened to his son. When Andalicio Ganohon asked his son what happened his answer was, "You will know later" (p. 33, *ibid*). Ruperto Aynon reported to Chief Manuel Gomez that he saw the accused-appellant and Gerardo Obod pass near his house wet and muddy (p. 34, *ibid*).

4) Cpl. Leopoldo Pol, Jr., who investigated the case, testified that he was told by Barangay Captain Amador Sevilla and Chieftain Patrocinio Enecito that the accused-appellant confessed to them with respect to the killing of the Anoos family. The accused-appellant, who was present when the Barangay Captain and Chieftain made this

statement, even told Cpl. Leopoldo Pol, Jr. that he hacked the legs of Eduardo Anoos (p. 5, tsn, June 29, 1983).

5) Patrocinio Enecito testified that when they arrested the accused-appellant in the house of his sister, he covered himself with a mat. When they removed the mat, they saw that the kris was on his body. He also had a headband and amulets (p. 14, tsn, February 3, 1984). The accused-appellant volunteered the information that he and Gerardo Obod had only one kris. They took turns in hacking the Anoos family using the same kris (p. 15, *ibid*).

The aforesaid admission is consistent with the testimony of the physician that it is possible that the wounds inflicted on the five victims were caused by only one instrument which could have been a bolo or a kris (p. 11, tsn, Feb. 3, 1984).

The other allegations of the accused-appellant are inconsequential which do not merit Our consideration.

While We agree with the finding of the trial court that the guilt of the accused-appellant for killing Eduardo Anoos and his family has been proven beyond reasonable doubt, it erred in appreciating the aggravating circumstance of treachery as regards the deaths of Eduardo Anoos and Elina Anoos. In the absence of proof as to how the victims were killed, treachery cannot be properly appreciated. The killings must be considered as homicide only and not murder since the circumstance qualifying the killings must be proven as indubitably as the killings themselves (*People v. Vicente*, G.R. No. L-31725, February 18, 1986, 141 SCRA 347; *People v. Gaddi*, G.R. No. 74065, February 27, 1989, 170 SCRA 649). As heretofore stated, not a single eyewitness to the incident had been presented by the prosecution. Thus, the records are totally bereft of any evidence as to the means or method resorted to by the accused-appellant in attacking the victim. It is needless to add that treachery cannot be deduced from mere presumption, much less from sheer speculation. The same degree of proof to dispel reasonable doubt is required before any conclusion may be reached respecting the attendance of alevosia (*People v. Duero*, G.R. No. 65555, May 22, 1985, 136 SCRA 515). With respect to the deaths of Tuto Anoos, who was one year old, Gina Anoos, who was six years old and Edgar Nuera, who was twelve years old (p. 3, tsn, May 18, 1983), the trial court properly appreciated treachery. The killing of a child is murder even if the manner of attack was not shown. The qualifying circumstance of treachery exists in the commission of the crime of murder when an adult person illegally attacks a child of tender years and causes his death (*People v. Retubado*, G.R. No. 58585, June 20, 1998, 162 SCRA 276; *People v. Valerio, et al.*, G.R. No. L-4116, February 25, 1982, 112 SCRA 208; *U.S. v. Lansangan*, 27 Phil. 474; *U.S. v. Baul, et al.*, 39 Phil. 846).

In Criminal Cases Nos. 71(3313) and 72(3314), the accused-appellant is held guilty of homicide only. But, with the presence of the aggravating circumstance of dwelling, the proper penalty is reclusion temporal in its maximum period (Article 249 in relation to Articles 64(3) and 65 of the Revised Penal Code).

In Criminal Cases Nos. 73(3315), 74(3316) and 75(3317), the accused-appellant is held guilty of murder. With the presence of the aggravating circumstance of dwelling, the proper imposable penalty is death (Article 248 in relation to Article 64(3) of the Revised Penal Code). In view, however, of Article III, Section 19(1) of the 1987 Constitution and Our ruling in *People v. Millora, et al.*, G.R. Nos. L-38968-70, February 9, 1989, that the cited Constitutional provision did not declare the abolition of the death penalty but merely prohibits the imposition of the death penalty, the Court has since February 2, 1987 not imposed the death penalty whenever it was called for under the Revised Penal Code but instead reduced the same to reclusion perpetua (*People v. Orita*, G.R. No. 88724, April 3, 1990, 184 SCRA 105; *People v. Solis, et al.*, G.R. Nos. 78732-33, February 14, 1990, 182 SCRA 182).

ACCORDINGLY, the decision appealed from is hereby MODIFIED. The accused-appellant is sentenced to twenty (20) years of reclusion temporal each in Criminal Cases Nos. 71(3313) and 72(3314); and to reclusion perpetua each in Criminal Cases Nos. 73(3315), 74(3316) and 75(3317). The civil indemnity is increased to

P50,000.00 for each of the five victims.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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