

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE DAQUIPIL, HORACE DAQUIPIL, NOEL DAQUIPIL, GARET DAQUIPIL, PRIMA DAQUIPIL AND GRACE DAQUIPIL, DEFENDANTS, JOSE DAQUIPIL, H...

G.R. Nos. 86305-06. January 20, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

Incensed by the demolition of his house some two years back, allegedly upon the instruction of Rafael Francisco, husband of the administratrix of the land on which their house was built, Jose Daquipil, aided by members of his family, stabbed and hacked to death Rafael Francisco, dealing him no less than thirty-five wounds. This incident resulted in the filing of an information dated November 14, 1979 charging Jose, his wife Prima, and their children Horace, Noel and Grace with murder. The information reads:

"That on or about the 26th day of May, 1979, in the municipality of Ilog, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the first four (4) above-named accused, in company of their co-accused Grace Daquipil y Padilla, who is still at-large, and Gareth Daquipil y Padilla, a minor, who has been also charged of the same offense in the court of competent jurisdiction, armed with bolos and a bladed instrument locally called 'tagad', conspiring, confederating and helping one another, with evident premeditation, treachery, abuse of superior strength and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault, strike, hit, stab and hack one Rafael Francisco, thereby inflicting multiple mortal wounds on the different parts of the body of the latter, which caused the death of the said Rafael Francisco.

CONTRARY TO LAW."

The case was docketed as Crim. Case No. CCC-XII-1905. On November 22, 1979, a similar information, docketed as Crim. Case No. CCC-XII-1964, was filed against Gareth Daquipil, a minor, before the then Juvenile and Domestic Relations Court in Bacolod City. Upon their arraignment on December 10, 1979, Jose, Prima, Horace and Noel pleaded not guilty to the charge. Grace, who was later apprehended, also pleaded not guilty when she was arraigned on July 15, 1981 while Gareth entered the same plea on November 4, 1981. The two cases were thereafter consolidated. [1]

At the trial, the prosecution proved the following version of the crime:

Anacorita Francisco was the administratrix of Lot No. 1933-A of the cadastral survey of Ilog, Negros Occidental. Situated in the sitio of Mo-og, barangay Vista Alegre, the lot was where Jose Daquipil built a house. [2] However, on September 25, 1977, Anacorita's husband, Rafael Francisco, had the house pulled down by attaching a cable to a moving tractor on the pretext that Jose had not asked permission to build the house. [3]

A year and eight months later or on May 26, 1979, Porferio Padilla, constructed a guardhouse for Rafael Francisco on subject lot. He was assisted by a certain Inocencio. At around 8:00 that morning, Jose arrived and

asked Inocencio who instructed them to do the same and when Inocencio answered that it was Rafael Francisco, Jose told them to stop working; he then left for home taking with him the "tagad," a shovel-like farming implement with a flat iron bar and wooden handle measuring about a yard. [4]

At about the same time, Jorge (George) Alayon was cleaning his yard when he noticed Horace Daquipil plowing the field beside the house being constructed by Francisco. After plowing about one and a half arms' length of the field, Horace proceeded home with his carabao. At around 10:00, as Jorge was chopping wood, he saw Jose pass by. Jose was followed by his sons Noel, Horace and Gareth. Behind them were Jose's wife, Prima and their daughter, Grace. Jose was carrying a "tagad" while his three sons were carrying bladed instruments. Surprised by what he saw, Jorge shouted, "Nong Jose, where are you going?" Jose, however, did not answer him and proceeded to the house being constructed by Francisco.

Francisco was then standing with his right hand resting on the post of the structure being constructed and his left on his waist. As he was looking at his helpers unload stones from his truck, Jose emerged from behind and struck Francisco with the "tagad." Francisco turned to his left but he was met with the "tagad" of Jose, that hit him on the stomach. As Francisco fell to the ground with his hands and knees supporting him, Noel hacked his left shoulder. Francisco moved slightly but Horace also hacked his right shoulder. Jose then struck Francisco once more with the "tagad." When Gareth was about to hack Francisco, Jorge ran towards the house of police auxiliary Nazario Vargas which was around twenty meters away, but he failed to find the latter there. Hence, he went to the store and still finding no police auxiliary around, he went home.

From his house, Jorge saw Noel, Horace and Gareth hacking Francisco who was lying on the mud as Jose stood by Francisco's foot. After Jose remarked that Francisco was already dead, the men set out to leave the place but Prima shouted, "You return and finish him off!" Grace also said, "Cut off his head!" So Jose and Gareth returned to Francisco; Gareth hacked him on the neck while Jose struck Francisco's right finger with the "tagad." It was only then that the Daquipil family went home. [5]

Nicasia Tibus was at the store of Mariquita Bana-ag in Crossing Mo-og intending to buy salt when she noticed Francisco standing by the third post of the hut with his back towards Nicasia. Francisco's right hand was resting on the post while his left arm was akimbo. Francisco was watching his helpers unload stones from a truck.

Then Nicasia saw from a distance of six or seven arms' length, Jose, his wife and four children, hurriedly heading in the direction of Francisco. Without much ado, Jose struck Francisco with the "tagad." As Francisco turned, Jose stabbed him again with the "tagad" which was pointed like a chisel. As Francisco was kneeling on the ground, Noel hacked his left shoulder with a bolo. When Francisco jerked and looked upward, Jose hit his throat with the "tagad." Francisco tried to hold the "tagad" but Jose forcefully pulled it sending Francisco to the ground in a prone position. Horace then hacked his right shoulder with a bolo, shaped like a butcher's knife. Joining the trio, Gareth hacked Francisco on the nape and when Francisco turned around, Gareth successively stabbed and hacked him. As Francisco rolled towards the mud pond, Jose continuously hit Francisco on the shoulders and on the legs.

Horace and Noel chased away the stone-haulers while Jose, upon seeing that Francisco was no longer moving, said, "Let's go, he is already dead." The group left but when they were four or five yards away from Francisco, Prima shouted, "Kill him, finish him if he is still alive!" Grace also shouted, "Cut off his head!" Jose and Gareth then went back and Gareth hit Francisco three more times while Jose struck him. [6]

One of the three stone-haulers, Rodolfo Decena, saw Jose strike Francisco's back with the "tagad." Impulsively, he and his fellow haulers jumped off the truck. As he was jumping, Rodolfo saw Noel and Gareth hacking Francisco who was crawling on the ground. Then Horace and Noel menacingly approached the three haulers who, instinctively, fled to the fields. Rodolfo went to Anacorita's house but she was not around. [7]

News of the incident reached the village. When Dr. Ricardo Garrido heard it, he went posthaste to the place where the incident occurred to find out if he could be of help. He saw the body in the carabao mudpool obviously dead. Sensing that he would be interfering with a police matter if he did anything, Dr. Garrido went to the police station only to meet policemen on the way. [8] At 4:00 that same afternoon, Dr. Garrido autopsied the 5'9" tall body of Francisco. In Dr. Garrido's necropsy report, he made the following findings:

"I. External:

1. Incised wound - $\frac{3}{4}$ " x $\frac{1}{2}$ " horizontal bisecting the bridge of the nose at the level of the medial canthus of the eyes.
2. Incised wound - $2\frac{1}{2}$ " x $\frac{1}{2}$ " x cutting the muscle and bone there at and lower anterior part of the left ear left face, horizontal in position from the lower lateral base of the left nostril anteriorly to the lower third of the pinna left ear posteriorly.
3. Incised wound - $1\frac{1}{2}$ " x $\frac{1}{4}$ " x cutting the antero-medial portion of the left ear and posterior part of the left cheek, lower end bisect the tip, posterior tip of wound no. 2, diagonal, supero-anteriorly and infero-posteriorly.
4. Incised wound - $\frac{3}{4}$ " x $\frac{1}{4}$ " x reaches the bones of the left fact biseting the lower posterior third of wound no. 2, diagonal supero-posteriorly and infero-anteriorly.
5. Incised wound - left fact $1\frac{1}{2}$ " x $\frac{1}{2}$ " x cutting the muscles and bones, at the level of the left lateral angle of the mouth, horizontal in position inferior to wound no. 3 and anterior to wound no. 4.
6. Chop wound - clean edges, left postero--parietal area, $2\frac{1}{2}$ " x $1\frac{1}{2}$ " affecting and exposing the skull bone with the flap directed downward laterally.
7. Chop wound - $3\frac{1}{2}$ " x $2\frac{1}{2}$ " x scalp removed involved and exposed the skull at the supra-occipital area.
8. Lacerated wound - $4\frac{1}{2}$ " x $1\frac{1}{2}$ " x cutting the larynx and esophagus, diagonal from right midclavicular area inferiorly to the lateral left at the level of Adam's apple.
9. Punctured wound - $\frac{3}{4}$ " x $\frac{1}{4}$ " x cutting the larynx at the anterior base of the neck.
10. Punctured wound - $1\frac{1}{2}$ " x $\frac{1}{4}$ " x cutting carotid vessels vertical in position bisecting the superior tip of wound no. 8.
11. Punctured wound - 1 " x $\frac{1}{2}$ " x $1\frac{1}{4}$ " cutting the larynx horizontally located on the superior part of the Adam's apple.
12. Punctured wound - $1\frac{1}{2}$ " x $\frac{3}{4}$ " from the right base of the neck superiorly to the neck of the sternum infero-medially.
13. & 14. Incised wounds - Two incised wounds adjacent to each other $7\frac{1}{2}$ " x 2 " x whole back of the nec posteriorly to the left lateral side anteriorly cutting the muscles, blood vessels and cervical bone with two horizontal cuts.
15. Incised wounds - $\frac{1}{2}$ " x $\frac{1}{2}$ " back of the neck right lateral side converging with right end of wound no. 13 & 14, horizontally.
16. Incised wound - $1\frac{3}{4}$ " x $\frac{1}{2}$ " x same location at wound no. 15 but inferior to it, horizontal in position.
17. Lacerated wound - Right shoulder lateral third 5 " x $2\frac{1}{4}$ " x cutting the muscles, clavicle and socket of right shoulder bone. Trajection supero-laterally infero-medially.
18. Lacerated wound - 2 " x $1\frac{1}{2}$ " x cutting also the socket of the right shoulder bone bisecting the anterior third

of wound no. 17.

19. Chop wound - half moon shape wound 6 1/2" x 1 1/2" cutting the muscles and dorso-lateral part of the right shoulder blade.

20. Lacerated wound - 4 1/2" x 1/2" right supra-lateral back super-imposed on the middle and inferior portion of wound No. 19 and its superior end joins the posterior tip of wound no. 17. Slightly diagonal, supero-medially and infero-laterally right.

21. Lacerated wound - 4 1/4" x 2 1/2" x cutting the anterior border of the ball and socket, cutting the superior portion of the left lateral third of the left shoulder in a vertical manner. Left supero-laterally and infero-medially right.

22. Incised wound - 3 3/4" x 1 3/4" x cutting the muscle and bones of the left shoulder, superior third portion. Horizontal, its middle portion joins the posterior tip of wound no. 21.

23. Contusions - 2" x 2 3/4" diameter with puncture at the superior portion located at the mid-epigastrium.

24. Lacerated wound - 4" x 2" x cutting the muscle and ribs of the left axillary area, horizontal in position.

25. Incised wound - 2 1/4" x 1/2" x cutting the muscles and exposed the bone of the left forearm distal third at the postero-medial aspect. Supero-medially and infero-laterally.

26. Lacerated wound - right fingers from the index to the small fingers totally extirpated.

27. Incised wound - 6 1/2" x 1 1/4" x cutting the scapular bone upperback right side slightly vertical supero-dorso-laterally and infero-medially, parascapular area.

28. Incised wound - 7 1/2" x 1 1/4" x cutting the scapula and exposed the ribs. Vertical at the paravertebral line, upper back area.

29. Incised wound - 6 1/2" x 2" x cutting the muscles touches the ribs at the paravertebral line right adjacent and parallel to wound no. 28.

30. Incised wound - 3/4" x 1/4" x subcutaneously parallel and lateral to the dorsal tip of wound no. 29.

31. Incised wound - 3/4" x 1/2" x subcutaneously bisecting the middle portion of wound no. 30 and joining the tip of wound no. 28 superiorly.

32. Incised wound - 4 1/2" x 1/2" x 1 1/4", right upper lumbar slightly horizontal in position. Right supero-laterally and left infero-medially.

33. Lacerated wound - 6 1/2" x 1 1/2" x 2 1/2" reaching the femoral bone. Diagonal in position, left supero-laterally, infero-medially right, involving the posterior middle third of the left thigh.

34. Lacerated wound - 2" x 1/2" x 3/4" left leg cutting the superior part of the fibula left, diagonal supero-medially infero-laterally at the posterior upper third of the left leg.

35. Lacerated wound - 4" x 1/8" x bisecting the middle portion of the posterior part of the left leg diagonally. Supero-medially right and infero-laterally left.

II. INTERNAL FINDINGS:

1. Both lungs with multiple blackish discoloration and a laceration on the posterior middle portion of the right lungs.

2. Minimal amount of blackish fluid on the right pleural cavity left side normal.

3. Middle and inferior portion of the right thoracic cavity with dark blue discoloration at the paravertebral area with a diameter of 2 1/2".

CAUSE OF DEATH - HEMORRHAGE (severe) external, sec. to Multiple lacerated and incised wounds." [9]

When it was their turn to present their defenses, the Daquipil family tried to prove (a) self-defense, (b) defense of relative and (c) alibi. Jose claimed that he was a tenant of the heirs of Felipe Buenaventura which included the victim's wife. At around 9:45 in the morning of May 26, 1979, he was in his "landholding" helping his son Horace plow the field. Francisco arrived in a truck with two laborers. After alighting from the truck, Francisco called him. Jose approached Francisco and they talked about the extension of the garage Francisco was constructing.

In the course of their conversation, Jose asked Francisco if he could rebuild his house which Francisco had pulled down with the tractor. Francisco got mad and shouted: "Hijo de puta ka, punyita!" Jose retorted that if they would just calm down, they could settle the matter peacefully. Still, Francisco angrily continued talking and suddenly kicked Jose. The latter fell down and as he was about to rise, Francisco kicked him again. It was then that Jose saw Francisco drawing his firearm from his waist. Since the "tagad" was stuck on the ground near him, Jose got it and struck Francisco with it. Remembering his bolo, Jose drew it from its scabbard and repeatedly hacked Francisco. While hacking Francisco, he saw Horace and Gareth running toward him. He then shouted at them, ordering both to go home.

Later, he himself went home and found Gareth and Horace already there. When Noel arrived, Jose told him to fetch his mother at Dancalan. But before Noel could leave, Jose's wife arrived from Kabankalan. His daughter, Grace, who had gone early that morning to the PC Headquarters in Hinigaran, met them as they were being brought to the municipal hall by the police. [10]

Horace admitted that he was plowing the field that fateful morning. He was about to go home when he heard his father arguing loudly with Francisco. Horace was about five arms' length away when he saw Francisco kick his father. As his father was about to fall, he saw Francisco trying to get something from his waist. Afraid that Francisco would shoot his father, Horace hurriedly went to Francisco and hacked him. He knew Francisco had a gun because everytime he went to that place, he always carried a pistol in his waist. When his father was about to stand up, Francisco went near Jose and the latter stabbed Francisco with the "tagad." At that moment, Francisco's workers, armed with shovels, drew near Horace and Jose. When Horace turned to them, they ran away. Horace was about to return to where his father was when Gareth arrived. Both of them were not able to go near their father because Jose told them to go home. [11]

Gareth, who was fifteen years [12] old when the crime happened, denied having participated in its commission. According to him, he left the house early that morning to graze the carabao. He left for home at around 10:00 in the morning. When he arrived home, his father and brother, Horace, were already there but he could not remember when the other members of the family arrived. [13]

On his part, Noel swore that he was not at the scene of the crime when it happened. Since he just arrived from Manila a couple of days ago, he was eager to see his friend Rustico Cuenca whom he visited on that fateful day. While Noel was at his friend's place, a certain Alfonso Dolojo dropped by to inquire from Noel whether his own son, Molong, who was also working in Manila, had sent a letter. While Noel and Alfonso were conversing, a woman selling shrimps passed by and told them, "May patyanay didto" meaning "there was a killing" at the junction of sitio Mo-og. Alfonso admonished them not to mind the killing because they had nothing to do with it.

Noel did not take interest in the news as he did not know the protagonists. At around 11:00 that morning, Alfonso invited him for lunch but Noel declined saying he would rather go home. When he arrived home, he saw that his father and brothers Horace and Gareth were unusually silent. Upon his inquiry, his father told him about what

happened between him and Francisco. So, Noel changed his clothes intending to fetch his mother. Momentarily, however, his mother arrived and Noel was not even able to answer her question as to why he wanted to fetch her in Dancalan because the police arrived. Pat. Tabligan ordered all the men to go with him to the municipal hall. Jose complied notwithstanding Noel's protestation that he had nothing to do with what happened.

On March 27, 1987, the lower court [14] rendered a 3-page Decision [15] disposing of the cases as follows:

“WHEREFORE, premises considered, the Court finds JOSE DAQUIPIL, HORACE DAQUIPIL, NOEL DAQUIPIL, GARET DAQUIPIL and PRIMA DAQUIPIL all equally GUILTY of Murder with aggravating circumstances of treachery, abuse of superior strength and evident premeditation, and sentences them to Reclusion Perpetua and to indemnify the heirs of the victim in the amount of P50,000.00.

Accused Grace Daquipil is ordered acquitted on reasonable doubt.

SO ORDERED.”

Upon the motion of the defendants, on April 21, 1987, the lower court reconsidered the Decision by acquitting Prima who was a public school teacher, on reasonable doubt but affirmed its Decision as far as Jose, Horace, Garet and Noel were concerned. [16] Hence the instant appeal alleging that the lower court erred in: (a) finding that the crime was attended by treachery, abuse of superior strength and evident premeditation; (b) giving full faith and credit to the assertions of the prosecution witnesses while brushing aside the testimonies of the defense witnesses, and (c) convicting the herein defendants and sentencing them "to suffer imprisonment for life" and to indemnify the heirs of the victim in the amount of P50,000.

As a rule, factual findings and conclusions of the trial court are entitled to great weight and are not disturbed on appeal considering that the trial court is in a better position to analyze the evidence, as well as to observe the demeanor of the witnesses on the stand. Thus, unless the trial court failed to appreciate certain material facts and circumstances which, if taken into account would materially affect the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to an acquittal, such findings and conclusions are final and binding on this Court. [17] In this case, we took extra effort to reexamine the records and transcripts of stenographic notes of the proceedings below, considering the gravity of the offense committed and the number of people of the same family who are implicated. We find, however, that there is no reason to depart from the lower court's findings and conclusions.

Appellants aver that the prosecution's evidence is “anchored on exaggerated testimonies,” [18] obviously referring to the eyewitnesses detailed account of the commission of the crime which mentions even the number of blows perpetrated by each of the appellants. The simple fact that the testimonies of the prosecution eyewitnesses may at times seem to be too detailed, [19] may not necessarily destroy their credibility. A detailed testimony, if given in a simple, straightforward manner, indicates sincerity in the narration of facts and may not in the least be considered as concocted. [20] In murder or homicide, such testimony acquires greater weight and credibility if it jibes with the autopsy findings. [21] While it is true that a startling event such as the one the prosecution eyewitnesses saw in this case does not elicit a standard form of human behavioral response, [22] experience shows that oftentimes a startling occurrence creates an indelible impression in the mind that can be recalled vividly. The prosecution eyewitnesses in this case did not only give a coherent narration of the crime but unlike the defendants whose testimonies were uncorroborated by unbiased witnesses, corroborated each other's testimony.

Moreover, the defense failed to dent the credibility of the prosecution eyewitnesses by evidence of an ill motive for testifying against the defendants. To be sure, the defense tried to destroy the prosecution witnesses' credibility by insinuating bias on their part. At one point, while Nicasia Tibus was testifying, the defense manifested that

while drawing a sketch, she was "angry" and that the court even told her to relax. [23] However, Nicasia averred that anyone who had seen the "assassination" would feel the same as she did.

Neither is this Court convinced of the defense's theory of self-defense. Jose's admission that he inflicted wounds on the victim is founded on his claim of self-defense. For such a defense to succeed, the following requisites must be proved by clear and convincing evidence: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack of sufficient provocation on the part of the person defending himself. [24] Appellant Jose claims that the victim kicked him twice and that, as he was about to rise after he had fallen from the first kick, the victim drew a firearm from his waist. Corroborated by his son Horace, this testimony indeed creates a semblance of unlawful aggression were it not for its sources who, being the accused father and son themselves, are naturally reflective of self-interest and, therefore, polluted. In addition, no gun was ever presented in court to rebut the testimony of the victim's widow, Anacorita Francisco, that her husband did not have a gun. [25] Apart from the accused themselves, there was no other testimonial evidence that the victim was indeed armed with a gun. In fact, Horace appears to have simply concluded that the victim was about to draw a gun from his waist because he used to see the victim carrying one. [26] Unlawful aggression, however, must be such as to put in real peril the life or personal safety of the person defending himself or of a relative sought to be defended and not an imagined threat. [27]

There certainly was no reasonable necessity to inflict upon Francisco thirty-five wounds, especially when according to the version of the defense, only two members of the Daquipil family attacked the victim. None of the defendants sustained any injury from the alleged "fight". On the other hand, the nature, character, location and extent of the wounds suffered by the deceased belie any supposition that it was the deceased Francisco who was the unlawful aggressor. The nature and number of wounds inflicted by an assailant are constantly and unremittingly considered important indicia which disprove a plea of self-defense.

In the same manner, Horace may not be benefited by his claim of defense of a relative. As earlier observed, unlawful aggression on the part of the victim was not proven by clear and convincing evidence. Completely uncorroborated by unbiased witnesses, the testimony of Jose and Horace to the effect that the victim kicked Jose was no more than a hollow effort at exoneration.

The defense of alibi interposed by Noel and Gareth cannot stand against the positive identification by the prosecution witnesses of the said defendants as co-authors of the crime. [28] To repeat, there was no evidence that the same prosecution witnesses were impelled by evil motives in imputing to the defendants such a grave offense. Moreover, a close scrutiny of their respective defense of alibi confirms the fact that it was not impossible for Noel and Gareth to have participated in the dastardly act if indeed they were in the places alleged by them.

According to Noel, at the time of the commission of the crime, he was at the place of Rustico Cuenca near the provincial road in the same sitio of Mo-og conversing with friends. [29] While the Daquipils' house was situated between the junction of Mo-og where the crime transpired and the house of Cuenca where Noel was, the junction or Crossing Mo-og could be seen from Cuenca's house because the road led there directly. [30] Surprisingly, neither the unusual news of the shrimp vendor nor the fact that at around 11:00 o'clock that morning, there were people at the Campillos' store in the junction [31] who were certainly seen by Noel's group, sufficiently aroused Noel's curiosity. In fact, not even the hundred-meter distance of their house [32] from the scene of the crime impelled Noel to make an investigation in spite of the possibility that his relatives could have been involved in the incident. Such unusual and unnatural behavior certainly does not bespeak of the truth. It is settled that alibi must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission. [33] As his own testimony reveals, it was not impossible for Noel to be present at the scene of the crime.

The same may be said of the defense of Gareth. Like Noel, he tried to distance himself from the scene of the crime. He swore that after grazing the carabao somewhere in Vista Alegre at around 10 o'clock, he directly went home where he found his father and Horace. [34] Gareth's testimony, however, is contradicted by his own father who said that Gareth and Horace were at the scene of the crime and in fact, he ordered them to go home. [35] As we have time and again said, alibi is unconvincing when the distance where the accused was and the scene of the crime can be negotiated within minutes. [36] Moreover, alibi is not credible in this case as Gareth was positively identified as one of the perpetrators of the crime by at least three eyewitnesses [37] whose credibility remained unsullied.

There being proof beyond reasonable doubt of appellants' authorship of the crime charged, what remains to be determined is their respective criminal liability. The evidence in this case showed that there was direct participation by all the accused in the killing of the victim. Worth noting is the fact that not one of the appellants even tried to dissuade the others from committing the gory act. In the words of Nicasia Tibus, the crime was committed in such a way that the appellants appeared like they were "pounding rice" - Noel, Horace and Gareth hacked the victim "one at a time." [38]

The commission of the crime was attended by treachery because the two conditions for its existence were present therein, namely: the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and that said means of execution was deliberately or consciously adopted. [39] The appellants attacked the victim from behind when he was not expecting the assault. The presence of this aggravating circumstance suffices to qualify the killing to murder.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. [40] In this case, the deceased, although a tall man as compared to Jose, was an unarmed 67-year-old. Jose, 57 years old and shorter than the victim, was assisted by his children who were all in the prime of youth.

There is, however no direct proof of evident premeditation or that the appellants discussed in advance their decision to kill. Absent direct evidence showing a plan or preparation to kill, evident premeditation cannot be appreciated.[41]

The presence, therefore, of treachery qualified the killing to murder as defined in Art. 248 of the Revised Penal Code. Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion temporal in its maximum period to death. Since both the mitigating circumstance of voluntary surrender[42] and the aggravating circumstance of abuse of superior strength are present in this case, the correct penalty to be imposed in accordance with Article 64 (4)[43] of the Revised Penal Code is reclusion perpetua.

However, in the case of Gareth Daquipil who was 15 years old at the time of the commission of the offense, the privileged mitigating circumstance of minority must be taken into consideration in the computation of the penalty to be imposed upon him since the generic aggravating circumstance of abuse of superior strength cannot offset said privileged mitigating circumstance. Thus, in accordance with Article 68 (2)[44] of the Revised Penal Code, the penalty to be imposed on Gareth Daquipil shall be within the range of prision mayor in its maximum period to reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, accused is sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

WHEREFORE, accused-appellants Jose Daquipil, Horace Daquipil, Noel Daquipil are hereby each sentenced to suffer the penalty of reclusion perpetua. Gareth Daquipil is hereby sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1)

day of reclusion temporal as maximum.

As thus MODIFIED, the trial court's judgment appealed from is hereby AFFIRMED in all other respects.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] With the reorganization of the courts, the case against Garet was docketed anew as Crim. Case No. 1160 of Branch 51 of the Regional Trial Court of Negros Occidental and consolidated with the other case, Crim. Case No. 990, before Branch 47 of the same Regional Trial Court.

[2] Jose Daquipil claimed that he had been tilling the land of the heirs of Felipe Buenaventura since 1966 (TSN, October 17, 1985). According to Anacorita Francisco, Jose worked on the western portion of the land but he constructed a house on the eastern portion (TSN, June 30, 1982, p. 16). The controversy between Jose and the Buenaventuras eventually reached the Court of Agrarian Relations in Bacolod City through CAR Cases Nos. 5536 & 5553. In its decision of January 20, 1982, the CAR declared that Jose was not a tenant of the estate of Felipe Buenaventura and that he had no right to construct a house on the 1/2-hectare upland portion of the Buenaventura property, and ordered him to vacate the one-hectare lowland as well as the said 1/2-hectare upland portion (Exh. "H").

[3] TSN, July 15, 1981, pp. 5-6. On June 6, 1979, eleven days after Francisco was killed, a complaint for malicious mischief arising from the demolition of the Daquipils' house on September 25, 1977, clearly upon the instigation of Prima Daquipil, was filed against Francisco, his wife Anacorita and nine other persons before the Municipal Circuit Court of Ilog-Candoni (Exh. "G").

[4] TSN, January 17, 1990, pp. 5-9.

[5] TSN, February 17, 1981, pp. 13-33.

[6] TSN, June 5, 1980, pp. 12-24; January 16, 1981, p. 13.

[7] TSN, July 15, 1981, pp. 17-19.

[8] TSN, August 6, 1980, pp. 16-20.

[9] Exh. "A."

[10] TSN, October 17, 1985, pp. 3-11.

[11] TSN, May 3, 1985, pp. 3-7.

[12] TSN, April 4, 1986, p. 939.

[13] TSN, April 4, 1986, pp. 4-12.

[14] Presided by Judge Enrique T. Jocson.

[15] Rollo, pp. 56-58.

[16] Record, pp. 1025-1026.

[17] *People v. Saulo*, G.R. No. 94547, July 29, 1992, 211 SCRA 888, 895; *People v. Nunez*, G.R. No. 79316, April 10, 1992, 208 SCRA 34, 39; *Tan Hang v. Paredes*, G.R. No. 73627, January 29, 1988, 157 SCRA 695;

People v. Ligon, G.R. No. 74041, July 29, 1987, 152 SCRA 419.

[18] Appellants' Brief, p. 17.

[19] In People v. Nomat, Sr. (L-37012-13, July 3, 1992, 211 SCRA 14, 23) the Court held that a witness who could describe so many minute details while gunfire was going on is not credible.

[20] See: People v. Bañez, G.R. No. 95456, September 18, 1992, 214 SCRA 109, 116.

[21] People v. Molina, G.R. No. 59436, August 28, 1992, 213 SCRA 52, 69.

[22] People v. Raptus, G.R. No. 92169-70, June 19, 1991, 198 SCRA 425, 432.

[23] TSN, January 16, 1981, p. 33.

[24] Art. 11 (1), Revised Penal Code; People v. Nomat, Sr., L-37012-13, July 3, 1992, 211 SCRA 14, 21; People v. Pletado, G.R. No. 98432, July 1, 1992, 210 SCRA 634, 639 and People v. Bayocot, G.R. No. 55285, June 28, 1989, 174 SCRA 285, 291.

[25] TSN, June 30, 1982, p. 49.

[26] TSN, May 3, 1985, pp. 4-5.

[27] People v. Bausing, G.R. No. 64965, July 18, 1991, 199 SCRA 355.

[28] People v. Lascuna, G.R. No. 90626, August 18, 1993, 225 SCRA 386, 398; People v. Florida, G.R. No. 90254, September 24, 1992, 214 SCRA 227, 239; People v. Sabornido, G.R. No. 102141, September 18, 1992, 214 SCRA 150, 157; People v. Villanueva, G.R. Nos. 97144-45, July 10, 1992, 211 SCRA 403, 413; People v. Jimenez, supra at p. 222; People v. Mison, G.R. No. 63480, February 26, 1991, 194 SCRA 432, 442.

[29] TSN, March 1, 1984, pp. 2-3.

[30] Ibid, pp. 17-18.

[31] Ibid, pp. 23-24.

[32] Ibid, p. 5.

[33] People v. Oracoy, G.R. No. 106537, July 27, 1993, 224 SCRA 759, 769.

[34] TSN, April 4, 1986, pp. 11-12.

[35] TSN, October 17, 1985, p. 9.

[36] People v. Salvador, G.R. No. 101215, July 30, 1993, 224 SCRA 819, 825.

[37] People v. Villanueva, G.R. No. 98468, August 17, 1993, 225 SCRA 353, 358.

[38] TSN, November 4, 1981, p. 27.

[39] People v. Suitos, G.R. No. 85951, March 24, 1993, 220 SCRA 419, 430.

[40] People v. Cabato, L-37400, April 15, 1988, 160 SCRA 98, 110; People v. Gaspar, G.R. No. 103303, August 5, 1993, 225 SCRA 189, 198.

[41] People v. Salvador, supra at p. 826; People v. Samson, G.R. No. 55520, August 25, 1989, 176 SCRA 710.

[42] There was voluntary surrender on the part of all the accused as shown by their spontaneous submission to the

authorities.

[43] ART 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

x x x x x x x x

4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.

[44] ART 68. Penalty to be imposed upon a person under eighteen years of age. - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

x x x x x x x x

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

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