

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN ISRAEL Y BISMONTE, ACCUSED-APPELLANT.

G.R. Nos. 94130-32. May 05, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Juan Israel y Bismonte was charged with frustrated murder and two (2) counts of murder in Criminal Cases numbered Q-55757, Q-55758 and Q-55759, respectively, of the Regional Trial Court of Quezon City, Branch 88. The accusatory portions of the informations in these cases read as follows:

Criminal Case No. Q-55757

That on or about the 2nd day of February, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, willfully, unlawfully and feloniously [sic] with treachery stab PETER SY Y GO, with the use of a bladed weapon, hitting him on the left anterior axillary line, thereby inflicting upon him [a] serious and mortal wound, thus performing all the acts of execution which would have produced the crime of MURDER, but which nevertheless did not produce it, by reason of causes independent of his own will, that is the [sic] timely medical intervention, to the damage and prejudice of said PETER SY Y GO in such amount as may be awarded to him under the provisions of the New Civil Code of the Philippines.[1]

Criminal Case No. Q- 55758

That on or about the 2nd day of February, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, wilfully, unlawfully and feloniously [sic] with treachery, stab PABLO QUIOHILAG Y LIM, with the use of [a] bladed weapon, hitting him on the body, thereby inflicting upon him [a] serious and mortal wound, which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said PABLO QUIOHILAG Y LIM in such amount as may be awarded to them under the provisions of the New Civil Code of the Philippines.[2]

Criminal Case No. Q-55759

That on or about the 2nd day of February, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, wilfully, unlawfully and feloniously [sic] with treachery stab JOHNNY QUIOHILAG Y LIM, thereby inflicting upon him [a] serious stab wound, which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said JOHNNY QUIOHILAG Y LIM in such amount as may be awarded to them under the provisions of the New Civil Code of the Philippines.[3]

The three cases were consolidated and jointly tried. At his arraignment on 22 February 1988, accused entered a plea of not guilty in each of the three cases.[4]

The prosecution's version of the event as testified to by its witnesses, namely: Tomas Abril, an eyewitness; Patrolman Jonah Manajo; Patrolman Rolando Fernandez; Aida Quiohilag; Dr. Isaias Cupino; Dr. Norberto

Lengleng-Uy; Dr. Maximo Reyes, Sr., Medico-Legal Officer of the National Bureau of Investigation; and Dr. Mariano Cueva, Jr., Medico-Legal Officer of the National Bureau of Investigation, is summarized in the Appellee's Brief as follows:

Pablo Quiohilag was the owner of Tramcar Accessories Shop, a retail establishment concentrating on car accessories located at 135 G. Araneta Avenue, Barangay Imelda and co-managed by his brother Johnny Quiohilag (TSN dated July 20, 1988, p.19). On February 2, 1988 at about 11:00 o'clock in the morning inside the store, the two brothers and a certain Eric Espiritu had a heated argument. The argument apparently stemmed from the information relayed by Johnny Quiohilag to a lady customer who asked [for the] assistance of any person who could help her repair the lock of her car. As Johnny Quiohilag told her to get a freelance locksmith, this was resented by Eric Espiritu who was a locksmith and who was then present (TSN dated August 14, 1988, p. 19). In the course of the argument, Eric Espiritu shouted "If you will come out, I will finish you" (lumabas ka lamang at yari ka) to Johnny Quiohilag. Afterwards, Johnny Quiohilag went about his normal work inside the store while Eric Espiritu stood guard outside near the cigarette vendor (TSN dated July 20, 1988, p.14).

At around 4:00 o'clock in the afternoon, Johnny Quiohilag went out of the store to attend to a customer. Eric Espiritu followed him and boxed him on the face (Ibid.). Johnny Quiohilag retaliated and a scuffle ensued. A customer by the name of Peter Sy tried to pacify the two. Pablo Quiohilag also went out of the store to pacify the two and it was at this point that appellant Juan Israel, a close friend of Eric Espiritu followed behind with his hand in his pocket (p. 15, TSN dated August 4, 1988, p.2, p. 6).

Without any warning, appellant Juan Israel took out a balisong and suddenly started stabbing his victims (TSN dated August 4, 1988, p. 25). He first stabbed Pablo Quiohilag. Then he stabbed Johnny Quiohilag. Finally, he stabbed Peter Sy. All three sustained stab wounds on their left armpits below the nipple (Ibid.).

After the stabbing incident, appellant Juan Israel quickly ran away. However, he was collared by Patrolman Jonah S. Manojó of the Western Police District, Manila who incidentally happened to be near the scene of the crime. Patrolman Jonah S. Manojó seized the fan knife of appellant Juan Israel and brought him to the station for questioning (TSN dated August 12, 1988, p.3).

Meanwhile, all the three victims were rushed to U.E.R.M. Hospital for immediate medical treatment. Among the persons who helped bring the victims to the hospital was Tomas Abril, an employee of Pablo Quiohilag and the prosecution star witness (TSN dated July 20, 1988). Of the three victims, only Peter Sy survived. Pablo and Johnny Quiohilag died several hours later from hemorrhage secondary to stab wound each sustained on the chest (TSN dated April 12, 1989, p. 5; TSN dated January 10, 1989, p. 6).[5]

The postmortem findings of Dr. Maximo Reyes entered in his Autopsy Report[6] show that Pablo Quiohilag sustained the following stab wounds:

- 1) Illiptical, gaping, 3.0 cm. with clean cut edges and with one extremity sharp, the other is contused; located over the left side of the chest, 10.0 cm. From the anterior median line, level of the 4th intercostal space, directed medially, downward and backward, involving skin and soft tissues into the thoracic cavity, lacerating the left ventricle of the heart with an approximate depth of 11.5 cm.
- 2) Illiptical, gaping, 3.0 cm. with clean cut edges and with one extremity sharp, the other the contused, located over the left side of the chest, level of 5th intercostal space and 14.0 cm. from the anterior median line, directed medially backwards and slightly downwards involving skin and soft tissues into the left thoracic cavity, lacerating the upper lobe of the left lung with an approximate depth of 11.0 cm.
- 3) Illiptical, gaping, 3.0 cm. with clean cut edges and with one extremity sharp, then other is contused, located over the left side of the chest, 16.0 cm. from the anterior median line and level of 6th intercostal space, directed

medially, downwards and backwards, involving skin and soft tissues into the thoracic cavity, lacerating the lower lobe of left lung with an approximate depth of 10.5 cm.

The postmortem findings of Dr. Mariano Cueva, Jr. entered in his Autopsy Report[7] show that Johnny Quiohilag[8] suffered the following:

Wound, stab: infraaxillary region, left, 19.0 cm. from the posterior midline, 2.0 cm. long, gaping, clean cut, supero-lateral extremity slightly contused and sharp infero-medial extremity, directed forwards, slightly upwards and medially, into the chest cavity at the level of fourth intercostal space, involving the left lower lobe of the lungs, aorta and through and through the right ventricle of the heart.

As to the civil liability of the accused, the trial court observed:

The cancelled checks in the total amount of P68,530.00 proves the expenses incurred by heirs of the Quiohilag brothers in regards to the stabbing and death of said Quiohilag brothers. (Exhibits “E,” “E-2,” “F” and “F-1”) considering that his net annual income of the Accessories Shop jointly operated by the Quiohilag brothers was in the amount of P300,000.00. This business is now lost to the family of both the aforesaid surviving spouses. As the victim[s] died in their late thirties, a three-year operation by the victims of the said business would have yielded them an income of P900,000.00. Each surviving spouse is entitled to one-half of this amount, (Article 2202, 2205, and 2206, Civil Code) plus moral damages in the amount of P20,000.00 each surviving spouse is entitled.[9]

Accused, corroborated by his witness Rey Chico, had a different story to tell. We quote verbatim the trial court’s summary of his story, to wit:

Accused JUAN ISRAEL is taking up the cudgel for his defense, testified that as a freelance locksmith of Tramcar Accessories, he has no employer. In his trade he duplicates car keys with ease and sometimes installs rubber compartments in cars using the tools of his trade. He knows Eric Espiritu alias “Baka.” He knows that Pablo and Johnny are owners of Tramcar Accessories and that there was an attitude of resentment “sama-an ng loob” between Johnny and Eric Espiritu. He knows Rey Chico being his companion in his work.

It was at around 11:00 o’clock in the morning of February 2, 1988 when there was a heated argument between Eric Espiritu and Johnny Quiohilag but the proverbial cooler heads managed to pacify the two. At 4:30 P.M. of the same date, Johnny, Pablo and a companion went out of their store and ganged up on Eric Espiritu until he was sprawled on the ground. Eric Espiritu got up and run to his tool box retrieving a knife therefrom and used the same in stabbing the three, Johnny, Pablo, and their companion. The stabbing lasted for 5 minutes. After the [sic] stabbing the three, Espiritu ran away. It is not true that he, Juan Israel was the one who stabbed Johnny, Pablo and the other person. Tomas Abril who testified against him did so because when he gave me a customer he wanted a share of my profits which was bigger than mine. He held this grudge against me by refusing to talk to me. Whenever Tomas Abril would bring out some accessories, Juan Israel would report the matter to [the] brothers Quiohilags and sometimes Tomas Abril was scolded. Accused continuing his narration says that the three wounded persons, Johnny, Pablo, and their companion were taken to the hospital; that on his way home and at the corner of Palanca and Araneta Streets, a policeman invited him and poked a gun at him and he was taken to the Galas Police Station where he was tortured and this torture made him admit the killings; that it is not true that he was arrested in front of Tramcar Accessories but some 100 meters from said place. On cross-examination accused states that the stabbing happened at around 4:30 P.M.; that he was with Rey Chico at the time some 12 to 13 meters from the place of incident; and that he did not sign any paper.

Continuing his narration accused asserts that as Deacon of the Iglesia Ni Cristo, he has not quarreled with anyone for the last five years and he preaches to people not inside their chapel but outside their chapel or church or temple in Bago Bantay every Tuesday or Thursday; that the first commandments enunciated in the “PASUGO” (Exhibit “2”) is Join the INK and be saved”; and that a member of the Iglesia Ni Kristo are [sic] excommunicated when convicted for a criminal case like Dario and Jose DecoreDa, one of his inmates, who

was convicted of theft.[10]

The trial court gave full credit to the prosecution's version. It found Tomas Abril's testimony "positive and credible" and observed that "in spite of the extensive cross-examination [he] steadfastly maintained in his mind and narration that he has actually witnessed the commission of the crime on that fateful late afternoon of February 2, 1988 and positively identified the accused as the perpetrator of the crime of murder on two counts and frustrated murder." [11] On the other hand, it rejected the version of the accused not only because he admitted the killing at the Galas Police Sub-station, but also because his subsequent denial could not prevail over the positive identification made by witness Abril that the accused was the killer. It did not believe the claim of accused that he was tortured and forced to admit the killing for lack of evidence and for his failure to file a complaint against the police officer who allegedly tortured him, and considered against the accused as strong indication of guilt his flight immediately after committing the crime which, nevertheless, was aborted by his arrest.

Finally, the trial court appreciated against the accused the qualifying aggravating circumstance of treachery, which was duly alleged in the informations. As to the killing of Pablo Quiohilag, it found undisputed that accused, with his arms folded below his breast, while watching Eric Espiritu and Johnny Quiohilag boxing each other, followed Pablo as the latter was coming out of Tramcar, then suddenly stabbed Pablo with a balisong which the accused drew from his pocket. However, it made no finding as to how Johnny Quiohilag was stabbed. As to the stabbing of Peter Sy, it observed:

On the stabbing of Peter Sy, Patrolman Rolando Fernandez testified that he was able to interview the former who said that he did not see the person who stabbed him; neither did he see the knife used in the stabbing, although Tomas Abril pointed the accused as the person who stabbed Peter Sy (TSN, Nov. 8, 1988, p.7) because of the suddenness of the attack [sic] on Peter Sy. The latter's attention was focused on trying to pacify the fighting protagonists, Eric and Johnny. This circumstance and the suddenness of the assault on him by the accused (which the accused took advantage of to ensure the execution of his nefarious objective without risk to himself arising from the defense which Peter Sy might make) rendered Peter Sy bereft of any means to defend himself.[12]

Accordingly, in its decision[13] of 27 April 1990, the trial court found the accused guilty beyond reasonable doubt of murder on two counts as charged in Criminal Case Nos. Q-55758 and Q-55759, and of frustrated murder in Criminal Case No. Q-55757, and sentenced the accused:

- 1) To suffer the penalty of Reclusion Perpetua for the death of Johnny Quiohilag y Lim, there being no aggravating or mitigating circumstance to appreciate;
- 2) To suffer the penalty of Reclusion Perpetua for the death of Pablo Quiohilag y Lim, there being no aggravating or mitigating circumstance to consider;
- 3) To suffer the indeterminate penalty of 4 years, 2 months and 1 day of Prision Correccional to 15 years and 6 months of Reclusion Temporal for the frustrated murder of Peter Sy; and
- 4) To pay a death indemnity of P30,000.00 to the surviving spouse of Johnny Quiohilag and another death indemnity of P30,000.00 to the surviving spouse of Pablo Quiohilag y Lim; as the cancelled checks in the amount of P68, 530.00 proves the expenses incurred by the heirs of the Quiohilag brothers, each surviving spouse must be paid by accused the amount of P34,265.00 for the funeral expenses; as the Tramcar Accessories Shop jointly operated by the Quiohilag brothers having been killed in their late thirties a three year operation from February 2, 1988 would net them the amount of P900,000.00 and each surviving spouse is to be paid by the accused the amount of P450,000.00 for lost income (Article 2202, 2205, and 2206, Civil Code); and each surviving spouse is to be paid by the accused the amount of P10,000.00 for moral damages.[14]

Unsatisfied with the verdict, accused filed a Notice of Appeal[15] indicating therein that he was appealing to the Court of Appeals. In its order[16] of 14 May 1990, the trial court gave due course to the appeal and ordered the transmittal of the records and the evidence to the Court of Appeals.

On 17 July 1990, the Court of Appeals forwarded to us the records of the cases “considering that the penalty imposed ... is RECLUSION PERPETUA.”[17] We accepted the appeal on 22 August 1990.

Since the transcripts of the stenographic notes (TSN) were incomplete, we directed the Branch Clerk of Court of Branch 88 of the Regional Trial Court (Quezon City) to require the stenographers concerned to complete and submit their TSNs. All the lacking TSNs were subsequently submitted, save for the TSNs of Ms. Mirasol Ramos for the hearings on 12 December 1988 and 3 and 5 May, 1989. Ms. Ramos never submitted her TSNs, despite our resolution of 17 August 1992 imposing upon her a fine of P500.00, payable within ten days from notice, and ordering her imprisonment for five days should she fail to do so and further withholding the payment of her salary. We also required Judge Tirso Velasco to supervise compliance by Ms. Ramos with the order requiring the submission of her TSNs. In his letter dated 15 September 1992, Judge Velasco informed us that he could not provide the required supervision because Ms. Ramos had been absent without leave since October 1989. In view thereof, we required Atty. Manuela F. Lorenzo, the Clerk of Court of the RTC of Quezon City to inform us of the whereabouts of Ms. Ramos. In her letter of 24 November 1992, Atty. Lorenzo informed us that Ms. Ramos was employed at the Department of Agrarian Reform Office in Baguio City.

It turned out, as subsequently reported by the Office of the Court Administrator, that Ms. Ramos had been dropped from the service effective 2 October 1989 yet.

On 25 August 1994, Ms. Ramos submitted an affidavit explaining that the required TSNs were “totally damage [sic] by the killer earthquake of 16 July 1990 in Baguio City.”[18] In view of this, we required the parties to manifest if they were willing to dispense with the submission of the TSNs of Ms. Ramos. Only the Office of the Solicitor-General (OSG) expressed its willingness to dispense with said TSNs.

Meanwhile, as we received a notice of the death of accused's counsel, Atty. Saturnino V. Bermudez, we required the accused to inform us of the name and address of his new counsel. Hearing nothing from him, we directed the Clerk of Court to appoint counsel de oficio for the accused. Atty. Pete Quirino-Quadra accepted his appointment as such.

The foregoing circumstances caused the delay in the termination of this appeal.

Earlier, one Domingo Israel, brother of the accused, filed a Manifestation and Motion to Withdraw Appeal. We required the accused himself to file a comment thereon.

In his Compliance and Comment on the Manifestation and Motion to Withdraw Appeal, counsel de oficio manifested that the accused explained to him that the real purpose of the suggestion to withdraw his appeal was to enable his relatives to work for his possible pardon or parole, but that the accused could not give a categorical confirmation if he was indeed withdrawing his appeal. Counsel then concluded that it was his impression that accused had not made up his mind whether or not to withdraw his appeal.

In view of said comment we denied on 27 May 1996 the Manifestation and Motion to Withdraw Appeal, and required accused's counsel de oficio to file the Appellant's Brief, which he did on 5 September 1996. Accused therein submits the following assignment of errors:

1. THE LOWER COURT ERRED IN RULING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY ALLEGEDLY ATTENDED THE COMMISSION OF THE ALLEGED CRIMES OF DOUBLE

MURDER AND FRUSTRATED MURDER. ON THE BASIS OF THE PROSECUTION EVIDENCE, THE ALLEGED CRIME COMMITTED IS ONLY HOMICIDE;² THE LOWER COURT ERRED IN CONVICTING THE ACCUSED JUAN ISRAEL OF THE CRIME OF FRUSTRATED MURDER BECAUSE THE PROSECUTION WITNESS TOMAS ABRIL FAILED TO IDENTIFY THE APPELLANT;³ THE LOWER COURT ERRED IN CONVICTING THE ACCUSED JUAN ISRAEL OF DOUBLE MURDER FOR THE DEATH OF THE QUIOHILAG BROTHERS.

By the filing of the Appellant's Brief, accused impliedly agreed to dispense with the TSNs of Ms. Mirasol.

Accused insists that the prosecution failed to prove treachery considering that the sole testimony of Tomas Abril did not establish the "means, methods or forms" in the execution of the crime so as to meet the requirements of treachery prescribed in Article 14(16) of the Revised Penal Code; besides, there could have been no treachery because the stabbing incident was preceded by a quarrel and the locations of the stab wounds show that he and the victims were facing each other. He assails as "irregular" his conviction for frustrated murder as Tomas Abril only testified as to the stabbing of the Quiohilag brothers, but not that of Peter Sy, who was unable to identify the accused as his assailant. Finally, accused asserts that he had no motive in assaulting the victims; hence the evidence for the prosecution is unbelievable and improbable.

In the Brief for the Appellee, the Office of the Solicitor General recommended the affirmation of the conviction of the accused with a modification as to the indemnity for the deaths, which should be increased to P50,000.00.

We have no doubt whatsoever that accused stabbed Pablo Quiohilag, Johnny Quiohilag and Peter Sy. Eyewitness Tomas Abril saw the accused when the latter stabbed them. Accused then fled, but Patrolman Manojó pursued and arrested him, then recovered from the accused the fatal weapon, a balisong, which was turned over to the Galas Police sub-station and presented and admitted in evidence as Exhibit "A." Accused's flight was, as correctly ruled by the trial court, a strong indication of guilt.^[19]

Nevertheless, a painstaking scrutiny of the evidence in Criminal Cases Nos. Q-55757, Q-55758, and Q-55759 leads us to agree with the accused's first and third assigned errors that the crime committed as a consequence of the deaths of Johnny Quiohilag and Pablo Quiohilag was not murder, but only two counts HOMICIDE. The qualifying aggravating circumstance of treachery, which was alleged in the informations and relied upon by the trial court to elevate the killings to murder, was not proven by convincing evidence. Abril failed to testify on the details of how Johnny Quiohilag was stabbed. All that Abril could state is that he saw the stabbing incident, which was too general, thus:

COURT

Q Did you actually see the stabbing incident?

A Yes, your Honor.

COURT

Proceed.

ATTY. E. GACAD

Q When you said you saw the stabbing, actually of these three victims who was first stabbed?

A Pablo, sir. ^[20]

x x x

ATTY. E. GACAD

Q When your employer Mr. Pablo Quiohilag was stabbed as you said, what happened to Mr. Johnny Quihilag (sic) if any?

x x x

WITNESS

A He leaned on the car, sir, after he was stabbed.

ATTY. E. GACAD

Q When did these two gentlemen the late Pablo Quihilag (sic) and Johnny Quiohilag lean on the car? What did they do if any to defend themselves?

ATTY. S. BERMUDEZ

At this juncture your honor, we are constrained to object, your honor.

COURT

Strike out the words to defend themselves.

ATTY. E. GACAD

Q What happened next?

A He also stabbed Peter Sy.

Q Who is that he?

A Juan Israel, sir.

Q After these three (3) gentlemen were stabbed, what happened next if any?

A Pablo, Johnny and Peter Sy ran to the store, sir.[21]

Abril's failure to testify as to the circumstances constituting treachery was not necessarily due to his lack of personal knowledge thereof. It could have been due to the failure of the private prosecutor who conducted the direct examination, under the control and supervision of the trial fiscal, to ask the pertinent questions. Indeed, the TSNs readily expose the lack of thoroughness, and even basic preparation, of the private prosecutor. At one point, the trial judge remarked in exasperation that the private prosecutor's questions jumped "from one place to another." [22] At another point, the trial judge bluntly told the private prosecutor that "[t]he court is confused with your way of asking the direct examination." [23] The trial fiscal, on his part, merely sat passively and did nothing, even when the trial court asked him if he had additional questions to ask. [24]

The cross-examination by counsel for the accused, which sought to obtain the details of what transpired, only established the bare and general act of stabbing, but not its details, of the three victims. Thus:

ATTY. S. BERMUDEZ

x x x

Q At that time you said Juan . . . it was at that time this Juan Israel, the accused in this case made the stabbing? I am asking that particular question to be answered?

A While Eric Espiritu alias "Baka" and Johnny Quiohilag were fighting, Pablo came out and he was immediately followed by Juan Israel. At that time when Pablo was about to pacify the two, Juan Israel stabbed first Pablo and then he stabbed Johnny.

x x x

ATTY. S. BERMUDEZ

Q The first one who was stabbed was Pablo Quiohilag. Is that correct?

A Yes, sir.

Q Where was Pablo hit?

A On the left armpit below the nipple.

Q Only one?

A Yes, sir.

Q Where was Johnny hit?

A At the same place, sir.

Q Where was Peter Sy hit?

A Also in that same place, sir.

Q And it was so sudden. Is that correct?

A Yes, sir.

Q And yet you knew all these facts according to you, you knew all these things that happened that you have witnessed?

A Yes, sir. I saw them all. [25]

Neither are we convinced of the trial court's findings that treachery attended the stabbing of Pablo Quiohilag. The testimony of Tomas Abril on this matter was simply too sketchy. All he could state was that while Eric Espiritu and Johnny Quiohilag were boxing each other, Pablo came out from the store to pacify the protagonists. At that time, the accused followed him and then pulled a balisong from his pocket and stabbed Pablo with it on the latter's breast. That Pablo came out to "pacify" the protagonists is nothing more than Abril's conclusion. As revealed by Abril on cross-examination, Pablo came out when Eric and Johnny had already fought for about ten minutes in the presence of many people -- more than twenty, as he admitted.[26] Eric had in fact already fallen to the ground, but he stood up again to fight.[27]

When Pablo Quiohilag then came out of the store, he could have done so not necessarily to pacify the protagonists, but to help his brother Johnny. But whether his purpose was to pacify, Johnny could not have been, in view of the many onlookers, totally unaware of the presence of the accused, a friend of Eric Espiritu and could not have forgotten the fact that Eric had threatened "to finish" off Johnny a few hours earlier if only Johnny would come out. Thus, Pablo Quiohilag could not have been unaware of the risks to his life and limb which his bold enterprise at the moment. He knew, or ought to have known, that friends of Eric could or would come to the latter's rescue. In the nature of things or in the natural course of events, he expected something to befall him, and it cannot, therefore, be logically concluded that he was caught unaware of accused's attack and afforded no opportunity to defend himself.

In *People v. Genobia*,[28] we held that circumstances which qualify criminal responsibility must in no case rest upon mere presumptions, no matter how reasonable or probable, but must be based on facts of unquestioned existence, and that it is settled that circumstances which qualify killing to murder must be proved as indubitably as the crime itself. As to treachery,[29]the rule is equally settled that two (2) conditions must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) said means of execution were deliberately and consciously adopted.[30] Accordingly, where no particulars are known as to the manner by which the aggression was made or how the act which resulted in the death of the victim began and developed indicating convincingly the existence of these conditions, treachery cannot be said to

exist.[31]With the sketchy evidence for the prosecution in this case which could only be attributed to the lackadaisical manner by which the prosecution presented its evidence, our minds cannot rest with a conclusion that treachery was proven.

Since no other qualifying circumstance was alleged in the informations in Criminal Case Nos. Q-55758 and Q-55759, accused is liable only for homicide, as defined and penalized in Article 249 of the Revised Penal Code. The penalty prescribed is reclusion temporal, which may be imposed in its medium period since no modifying circumstance, whether mitigating or aggravating, was proven,[32] on two counts for the killing of Pablo Quiohilag in the first case, and of Johnny Quiohilag, in the second case.

As to the culpability of the accused in Criminal Case No. Q-55757 for the stabbing of Peter Sy, the prosecution's evidence leaves much to be desired. Although Dr. Cupino testified on 12 December 1988[33] and pursuant to the subpoena[34] issued to him he was to testify on the medical certificate he issued to Peter Sy, no such medical certificate is found in the original record nor the folder of exhibits. As regards Dr. Cupino's testimony on 12 December 1988, the Office of the Solicitor General, as stated earlier, agreed to waive the submission of the TSN therefor. No extant evidence then proves the nature and extent of Peter Sy's injuries. Finally, there is no showing that Peter Sy himself took the witness stand. What the prosecution presented was merely the first page of a duplicate copy of Peter Sy's statement taken by Patrolman Fernandez. Unfortunately, however, it was not signed by Peter Sy. While it is true that Thomas Abril saw the stabbing, he failed to specify the extent of the injury produced thereof. Thus, for lack of evidence, accused should be acquitted in Criminal Case No. Q-55757.

Finally, we find no substantial evidence for the awards of P450,000.00 for lost income to each of the surviving spouses of Pablo Quiohilag and Johnny Quiohilag. However, the civil indemnity should be increased from P30,000.00 to P50,000.00 for each death pursuant to prevailing case law.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered MODIFYING the appealed decision of 27 April 1990 of the Regional Trial Court of Quezon City, Branch 88, in Criminal Cases Nos. Q-55757, Q-55758 and Q-55759. As MODIFIED, the accused-appellant JUAN ISRAEL y BISMONTE is (a) found guilty beyond reasonable doubt of the crime of HOMICIDE only on two counts in Criminal Case No. Q-55758 and in Criminal Case No. Q-55759, and considering the absence of any modifying circumstance and applying the indeterminate Sentence Law, he is sentenced in each of said cases to an indeterminate penalty ranging from ten (10) years of prision mayor medium as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal medium as maximum, and (b) is ACQUITTED in Criminal Case No. Q-55757, for lack of evidence.

As to the civil liability, the awards of P30,000.00 as indemnity for the death each in Criminal Case No. Q-55758 and in Criminal Case No. Q-55759 are increased to P50,000.00, while the awards of P450,000.00 for each of the surviving spouses of the victims Pablo Quiohilag and Johnny Quiohilag, are deleted. The awards for moral damages are affirmed.

Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), Criminal Case No. Q-55757, 1; Rollo, 4.

[2] OR, Criminal Case No. 55758, 1; Rollo, 6.

[3] Id., Criminal Case No. Q-55759, 1; Id., 8.

[4] Id., Criminal Case No. Q-55757, 8.

[5] Rollo, 150, et seq., Brief for the Plaintiff-Appellee, 4-7.

[6] Exhibit “G,” Folder of Exhibits, 9.

[7] Exhibit “J,” Folder of Exhibits, 12.

[8] “Quihilang” in the report.

[9] OR, Criminal Case No. Q-55757, 126; Rollo, 24.

[10] OR, Crim. Case No. Q-55757, 177-178; Rollo, 25-26.

[11] Id., 179; Id., 27.

[12] OR, Crim. Case No. Q-55757, 179-180; Rollo, 27.

[13] Id., 170-182; Id., 18-19. Per Judge Tirso D. Velasco.

[14] OR, Crim. Case No. Q-55757, 181-182; Rollo, 29.

[15] Id., 186.

[16] Id., 187.

[17] Rollo, 1.

[18] Rollo, 19.

[19] *People v. Garcia*, 209 SCRA 164, 177 [1992]; *People v. Martinado*, 214 SCRA 712, 732 [1992]; *People v. Castor*, 216 SCRA 410, 420 [1992]; *People v. Enciso*, 223 SCRA 675, 687-688 [1993]; *People v. Alvero*, 224 SCRA 16, 33 [1993].

[20] TSN, 20 July 1988, 8.

[21] TSN, 20 July 1988, 12.

[22] Id., 10.

[23] Id., 17.

[24] Id., 20.

[25] TSN, 4 August 1988, 16, 25.

[26] Id., 10, 14.

[27] Id., 15.

[28] 234 SCRA 699, 709 [1994].

[29] Article 14(16) of the Revised Penal Code provides:

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

[30] *People v. de la Cruz*, 207 SCRA 632, 650 [1992].

[31] *People v. Narit*, 197 SCRA 334, 351 [1991]; *People v. Tiozon*, 198 SCRA 368, 388 [1991].

[32] Article 64(1), Revised Penal Code.

[33] Minutes of the session, OR Crim. Case No. Q-55757, 108.

[34] *Id.*, 83.

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