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We agree with the Solicitor General that rather than remand petitioner's appeal to the Minister of Labor, which could prove but a futile exercise because of the absence of evidence, the more appropriate action is to return the records to respondent Director for the reception of the parties' evidence on the circumstances surrounding Petilos' suspension.

WHEREFORE, let the records of this case be remanded to Regional Office No. V of the Ministry of Labor, Legaspi City, which is hereby required to receive petitioner's evidence conformably herewith and to render judgment accordingly. The Restraining Order heretofore issued is hereby made permanent.

SO ORDERED.

Teehankee, Acting C.J. (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.

EN BANC

[G.R. No. L-32629. October 23, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GUILLERMO TABION, ENRIQUE FAGEL, LUCIANO TABULOC, IGNACIO TADENA @ ASIONG, SIMO TABULOC and JOHN DOE,** *defendants.* **ENRIQUE FAGEL,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED; CASE AT BAR.— The defense of alibi cannot prevail over the positive testimony of the witnesses identifying and pointing to the accused Enrique Fagel as one of the policemen involved in the shooting incident in question. Pat. Florentino Tabarnilla of the Sto. Domingo police force testified that Enrique Fagel was in the group of policemen who went towards the drugstore on

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the night in question: and that not long thereafter he heard gunshots coming from that direction. He further stated that after the shooting incident, Luciano Tabuloc and Enrique Fagel returned to the municipal building and challenged the other policemen who did not join them in the shooting incident. Ignacio Tadena, another member of the police force of Sto. Domingo, who was discharged from the information and utilized as a state witness, categorically declared that Enrique Fagel was one of the policemen who shot at the persons inside the drugstore. Susante Tobias also identified Enrique Fagel as one of the policemen who shot at them. Deogracias Tobias, likewise, stated that Enrique Fagel was one of the armed policemen who confronted them at the drugstore.

2. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; WHEN PRESENT.— It appears that a month previous to the incident, Susante Tobias filed an administrative case with the Municipal Council of Sto. Domingo, Ilocos Sur against the accused policemen Guillermo Tabion, Enrique Fagel, and Luciano Tabuloc for having maltreated a boy and a barrio captain. Susante Tobias also brought the mother of the boy and some witnesses to the NBI Branch office at Vigan, Ilocos Sur, and after investigation, Guillermo Tabion, Enrique Fagel, and Luciano Tabuloc were charged in court. Because of this, the aforenamed policemen harbored ill-feelings against Susante Tobias. They no longer talked with him. At about 3:00 o'clock in the afternoon of June 27, 1965, Guillermo Tabion openly showed his ill-feelings and personal grudge against Susante Tobias when, upon seeing Martin Tela, first cousin of the wife of Susante Tobias, in the house of Mrs. Cristeta Tela, he stabbed him three times with a balisong, saying: "I do not like you because I suppose you are not with us including Atty. Susante Tobias who has not been helping us in spite of the fact that he is the present councilor of Sto. Domingo, Ilocos Sur." "If I will only meet your brother-in-law, he does not care to take our side, there will be a time when I will be able to find him." Then, at about 7:30 o'clock in the evening Guillermo Tabion, Enrique Fagel, Luciano Tabuloc and Maximo Tabuloc arrived at the municipal building of Sto. Domingo. All were armed with firearms and appeared to have drank some wine. Thirty minutes later, they told Ignacio Tadena to go with them and look for Martin Tela. But, they proceeded towards the house of Susante Tobias. Before reaching the said house, however, they saw a group of

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persons in the highway, in front of the drugstore. Guillermo Tabion said: "They are the ones now." and went towards them. As they approached the group, the policemen deployed and took up strategic positions. After exchanging a few words with Atty. Susante Tobias, who thereafter ran to the drugstore for his life, the policemen fired at the men inside the drugstore.

3. ID.; ID.; THAT ADVANTAGE BE TAKEN BY THE OFFENDER OF HIS PUBLIC POSITION; WHEN CONSIDERED.— The trial court did not also err in finding that the accused took advantage of his public position as a policeman. He committed the crime with the aid of a gun which he had been authorized to carry as a peace officer.

4. ID.; ID.; TREACHERY; WHEN PRESENT.— Treachery was also present. Guillermo Tabion shot the unarmed, unsuspecting and defenseless Jesus Tobias who was then hiding behind some panels inside the drugstore, where he had taken refuge from the combined firepower of the high powered guns of the policemen.

5. ID.; ID.; BAND; WHEN CONSIDERED.— Although not alleged in the information, We hold as proven by the evidence the aggravating circumstance that the offense was committed by a band because there were more than three attackers all armed with high-powered guns, and all firing in concert around the besieged drugstore.

MAKASIAR, *J.*, *dissenting*:

CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; WHEN APPRECIATED.— The qualifying circumstance of evident premeditation could be appreciated only against accused Enrique Fagel, insofar as the attempted murder on Susante Tobias is concerned; because he bore a grudge against and repeatedly threatened Susante Tobias for filing administrative charges against him and the other accused policemen for maltreating a boy and a barrio captain, which is also the basis of a criminal charge filed in court by the NBI. The murder victim Jesus Tobias and the victims of the attempted murder happened only to be with Susante Tobias at the time the crime was committed at about 8:00 P.M. of June 27, 1965. The appellant had no ill-will towards the victims other than Susante Tobias.

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APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Bernardo P. Pardo and *Solicitor Jose A. Janolo* for plaintiff-appellee.

Arturo B. Atienza for defendant-appellant.

D E C I S I O N

CONCEPCION JR., *J.*:

MANDATORY REVIEW' of the death sentence imposed upon the accused Enrique Fagel by the Court of First Instance of Ilocos Sur, the dispositive portion of the decision reading as follows:

"In view hereof this Court hereby finds the accused Enrique Fagel guilty beyond a reasonable doubt of the crime charged in the Information and sentences him to death for the killing of the late Jesus Tobias. and also six prison terms of eight (8) years and twenty-one (21) days of *prision mayor* in its maximum period to four (4) years and two (2) months of *prision correccional* in its minimum period for attempted murder on the lives of Susante Tobias. Regulo Tobias, Deogracias Tobias, Justino Tobias. Ramon Villaflor and Rolando Jaramillo, there being three aggravating circumstances present in the commission of this crime and no mitigating circumstance to upset them; said accused is also hereby directed to indemnify the heirs of Jesus Tobias the sum of ₱25,000.00 and to pay ₱5,000.00 as moral damages, also to said heirs.

Costs against the accused.

SO ORDERED."[1]

The record shows that at about 8:00 o'clock in the evening of June 27, 1965, Susante Tobias. Regulo Tobias. Justino Tobias. Deogracias Tobias, Ramon Villafor, Rolando Jaramillo, and the late Jesus Tobias were in the national highway. in front of a drugstore, in Sto. Domingo. Ilocos Sur, waiting for a bus bound

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[1] pp. 44-A-45-A. Accused-Appellant's Brief.

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for Manila. Upon seeing the group, Guillermo Tabion, a member of the police force of Sto. Domingo, Ilocos Sur, addressed his companions:[2] "They are these ones now," and went towards the said group.[3] As they were approaching the Tobias group, the policemen deployed and took up strategic positions. Upon seeing Susante Tobias, then a member of the town council, Luciano Tabuloc sidled up to him and put his hands on his shoulders, saying: "Would you mind coming here, lawyer, and let us have a talk,"[4] Susante Tobias went with Luciano Tabuloc. Sensing some trouble, the rest of the Tobias group went inside the drugstore. As Susante Tobias came near the other policemen, he noted that their weapons were aimed at him. Realizing the danger he was in, Susante Tobias parried the muzzles of the guns nearest him and dashed into the drugstore. No sooner had he entered the drugstore than the policemen fired at them in the drugstore.[5] To escape the barrage, Susante Tobias and his companions sought refuge at the back of the drugstore and hid behind some "sidings."[6] After a time, the policemen stopped shooting as Guillermo Tabion entered the drugstore.[7] Once inside, Guillermo Tabion went towards the back of the drugstore and fired his gun indiscriminately at the persons hiding thereat and immediately went out. Shooting, thereafter, continued.[8]

The gunshot fired by Guillermo Tabion hit Jesus Tobias who was hiding behind some panels. He exclaimed that he had been shot and was evacuated to the nearby house of Ramon Villaflor even as the shooting continued. From the house of Villaflor,

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[2] Enrique Fagel, Luciano Tabuloc, Maximo Tabuloc, Ignacio Tadena, and an unidentified person. Enrique Fagel, Luciano Tabuloc and Ignacio Tadena were members of the police force of Sto. Domingo, Ilocos Sur.

[3] t.s.n., p. 34.

[4] *Id.*, p. 99.

[5] *Id.*, p. 100.

[6] *Id.*, p. 101.

[7] *Id.*, pp. 38, 102.

[8] *Id.*, p. 103.

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Jesus Tobias was brought to the house of one Mrs. Tremor where they borrowed a jeep and in which Jesus Tobias was taken to the provincial hospital where he died a few minutes later.[9]

As a result, Guillermo Tabion, Enrique Fagel, Luciano Tabuloc, Ignacio Tadena, Maximo Tabuloc, and one John Doe were charged with the crime of Murder with Multiple Attempted Murder before the Court of First Instance of Ilocos Sur. But, Maximo Tabuloc and the unidentified person have not been apprehended and remain at large.[10] Ignacio Tadena, upon motion of the prosecution, was discharged as defendant and utilized as a state witness.[11] Guillermo Tabion and Luciano Tabuloc died during the trial of the case,[12] so that only Enrique Fagel was tried and thereafter convicted of the crime charged.

The accused Enrique Fagel does not deny that the late Jesus Tobias died as a result of the gunshot wounds inflicted upon him by Guillermo Tabion. Enrique Fagel claims that he did not participate in the shooting incident and was somewhere else when it happened. He said that he arrived at the municipal building of Sto. Domingo a few minutes before 6:00 o'clock in the evening of June 27, 1965 and immediately proceeded to the back of the municipal building in order to cook their supper, which he and Pat. Tualla and some other members of the municipal force ate. After he had eaten, he went to buy some cigarettes at a store located north of the municipal hall. While there, he heard a gun report coming from the south. Being a policeman, he went to the place where the shot emanated from. While on his way, he met Pat. Ignacio Tadena. The latter was helping Guillermo Tabion who was wounded. So, he helped Pat. Tadena in taking Guillermo Tabion to the hospital at Vigan. But, before they lifted Tabion to the jeep which would carry him to the

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[9] *Id.*, pp. 111, 113-114; See also Exh. "A".

[10] See Information, Original Record, p. 31.

[11] Original Record, p. 65.

[12] *Id.*, pp. 203, 224.

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hospital, he fired his gun into the air in order to scare those who shot Tabion.[13]

The defense of alibi cannot prevail over the positive testimony of the witnesses identifying and pointing to the accused Enrique Fagel as one of the policemen involved in the shooting incident in question. Pat. Florentino Tabarnilla of the Sto. Domingo police force testified that Enrique Fagel was in the group of policemen who went towards the drugstore on the night in question; and that not long thereafter he heard gunshots coming from that direction. He further stated that after the shooting incident, Luciano Tabuloc and Enrique Fagel returned to the municipal building and challenged the other policemen who did not join them in the shooting incident.[14] Ignacio Tadena, another member of the police force of Sto. Domingo, who was discharged from the information and utilized as a state witness, categorically declared that Enrique Fagel was one of the policemen who shot at the persons inside the drugstore.[15] Susante Tobias also identified Enrique Fagel as one of the policemen who shot at them.[16] Deogracias Tobias, likewise, stated that Enrique Fagel was one of the armed policemen who confronted them at the drugstore.[17]

Besides, this claim is inconsistent with his earlier admission that he was present during the said shooting incident.

Thus, in his sworn statement given to PC investigators after the incident, Enrique Fagel stated:

"Q Will you narrate what really happened in the night of June 27, 1965 at Sto. Domingo, Ilocos Sur?

A At about 8:00 o'clock in the night of June 27, 1965, I was in the municipal building of Sto. Domingo, Ilocos Sur when I

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[13] t.s.n., pp. 311-321.

[14] *Id.*, pp. 73, 75-76.

[15] *Id.*, p. 36.

[16] *Id.*, p. 98.

[17] *Id.*, p. 201.

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> was called by Pat. Luciano Tabuloc informing me that Pat. Guillermo Tabion saw a boy by the name Lando loaded a carbine and proceeded towards the south and entered inside the Farmacia Sto. Domingo, Ilocos Sur. We went to Farmacia Sto. Domingo taking our way to the plaza and approached in front of the Farmacia and while we were near to the Farmacia, Councilor Zusante Tobias approached us and said "*ANNIATI UMAYYO SISIIMUN DITOY*" and Pat. Tabuloc answered that we were not watching them and told them that a boy name Lando loaded a carbine and entered inside the drugstore, but Councilor Zusante Tobias said that Lando is not there and simultaneously Lando came out of the door of the drugstore holding a carbine at his back."[18]

The accused also contends that he cannot be found guilty of the crime charged because of the absence of conspiracy between him and Guillermo Tabion who fired the fatal shot that killed Tobias.

The contention is without merit. Conspiracy has been clearly shown by Fagel's direct and active participation in shooting at the persons inside the drugstore. He is, therefore, as guilty as the actual assailant in the commission of the crime.

The accused further contends that evident premeditation was not present in the commission of the crime. This contention is, likewise, without merit. It appears that a month previous to the incident, Susante Tobias filed an administrative case with the Municipal Council of Sto. Domingo, Ilocos Sur against the accused policemen Guillermo Tabion, Enrique Fagel, and Luciano Tabuloc for having maltreated a boy and a barrio captain.[19] Susante Tobias also brought the mother of the boy and some witnesses to the NBI Branch office at Vigan, Ilocos Sur, and after investigation, Guillermo Tabion, Enrique Fagel, and Luciano Tabuloc were charged in court.[20] Because of this, the aforenamed policemen harbored ill-feelings against Susante Tobias. They

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[18] Exhibit "R".

[19] t.s.n., p. 115.

[20] *Id.*, pp. 158-160.

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no longer talked with him.[21] At about 3:00 o'clock in the afternoon of June 27, 1965, Guillermo Tabion openly showed his ill-feelings and personal grudge against Susante Tobias when, upon seeing Martin Tela, first cousin of the wife of Susante Tobias, in the house of Mrs. Cristeta Tela, he stabbed him three times with a *balisong*, saying: "I do not like you because I suppose you are not with us including Atty. Susante Tobias who has not been helping us in spite of the fact that he is the present councilor of Sto. Domingo, Ilocos Sur."[22] "If I will only meet your brother-in-law, he does not care to take our side, there will be a time when I will be able to find him."[23] Then, at about 7:30 o'clock in the evening Guillermo Tabion, Enrique Fagel, Luciano Tabuloc and Maximo Tabuloc arrived at the municipal building of Sto. Domingo. All were armed with firearms and appeared to have drank some wine. Thirty minutes later, they told Ignacio Tadena to go with them and look for Martin Tela. But, they proceeded towards the house of Susante Tobias. Before reaching the said house, however, they saw a group of persons in the highway, in front of the drugstore. Guillermo Tabion said: "They are the ones now," and went towards them. As they approached the group, the policemen deployed and took up strategic positions.[24] After exchanging a few words with Atty. Susante Tobias, who thereafter ran to the drugstore for his life, the policemen fired at the men inside the drugstore.

These circumstances speak eloquently of a conspiracy generated by an all consuming hatred to kill Susante Tobias. The lower court, therefore, did not err in considering that evident premeditation qualified the crime.

The trial court did not also err in finding that the accused took advantage of his public position as a policeman. He committed the crime with the aid of a gun which he had been authorized to carry as a peace officer.[25]

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[21] *Id.*, p. 164.

[22] *Id.*, pp. 185-186.

[23] *Id.*, p. 187.

[24] *Id.*, pp. 27, 29, 35.

[25] *People vs. Madrid*, 88 Phil. 1.

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Treachery was also present. Guillermo Tabion shot the unarmed, unsuspecting and defenseless Jesus Tobias who was then hiding behind some panels inside the drugstore, where he had taken refuge from the combined firepower of the high powered guns of the policemen.

Although not alleged in the information, We hold as proven by the evidence the aggravating circumstance that the offense was committed by a band because there were more than three attackers all armed with high-powered guns, and all firing in concert around the besieged drugstore.[26]

For the killing of Jesus Tobias, therefore, the crime committed is murder qualified by evident premeditation and aggravated by the circumstances of treachery, taking advantage of his public position, and committed by a band. The six cases of attempted murders are likewise qualified by evident premeditation and committed with the same aggravating circumstances.

WHEREFORE, the decision of the lower court should be, as it is hereby, affirmed. However, for lack of the required number of votes for the imposition of the death penalty, the accused Enrique Fagel is sentenced to suffer the penalty of *reclusion perpetua*.

SO ORDERED.

Teehankee, Barredo, Aquino, Santos, Fernandez, Abad Santos, De Castro, and *Melencio-Herrera, JJ.*, concur.

Fernando, C.J., in the result.

Makasiar, J., dissents in part.

*Antonio** and *Guerrero*,** *JJ.*, took no part.

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[26] *People vs. Collado*, 60 Phil. 610.

* Mr. Justice Felix Q. Antonio took no part being the Solicitor General at the time.

** Mr. Justice Juvenal K. Guerrero took no part being the Provincial Fiscal at the time.

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MAKASIAR, *J.*, *dissenting*:

The qualifying circumstance of evident premeditation could be appreciated only against accused Enrique Fagel, insofar as the attempted murder on Susante Tobias is concerned; because he bore a grudge against and repeatedly threatened Susante Tobias for filing administrative charges against him and the other accused policemen for maltreating a boy and a barrio captain, which is also the basis of a criminal charge filed in court by the NBI. The murder victim Jesus Tobias and the victims of the attempted murder happened only to be with Susante Tobias at the time the crime was committed at about 8:00 P.M. of June 27, 1965. The appellant had no ill-will towards the victims other than Susante Tobias.

This point is emphasized only in the interest of legal precision; because it will not alter the result due to the presence of the qualifying and aggravating circumstances of treachery, armed band, and taking advantage of public position.

EN BANC

[G.R. No. L-32690. October 23, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALD TANCHICO *y* PABLO,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONFESSION; EXTRAJUDICIAL CONFESSION; ELEMENT OF VOLUNTARINESS; WHEN ESTABLISHED.— There are facts and circumstances which render untenable the claim of appellant that his extrajudicial confession was extracted through compulsion and duress. Appellant's confession is replete with details of the actual