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Lee Tay which should be properly distributed among his surviving spouse and heirs."[19]

In other words, the appointment of the Receiver must be viewed from the preservative standpoint. He has been appointed not to take sides nor to mismanage the properties. At the end of the receivership, he will be required to report and make an accounting of his management. The Receiver is an officer of the Court, a delegate who acts for and in behalf of nobody else but the Court.[20]

In fine, we hold that the Court of Appeals erred in promulgating the Amendatory Decision.

WHEREFORE, the Amendatory Decision dated April 11, 1966, as well as the Resolution of August 17, 1966, is hereby reversed and set aside, and the original Decision in CA-G.R. No. 36093-R, promulgated on November 29, 1965, hereby revived.

Costs against private respondents.

SO ORDERED.

Makasiar, Fernandez and *Guerrero, JJ.*, concur.
Teehankee, J. (Chairman), concurs in the result.

EN BANC

[G.R. No. L-33127. July 15, 1981]

PEOPLE OF THE PHILIPPINES, plaintiff-appellee *vs.* SATURNINO MENDOZA, JESUS LIRASAN, AGRIPINO "NONOY" MAMACANG, EUFROCINO PEREZ, GENOVEVO POTESTAS and CONRADO SAYSON, defendants-appellants.

SYNOPSIS

During a drinking session one morning where state witness Baterna was invited, appellants, among whom were the mayor of Mahayag, Zamboanga

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[19] Decision, CA-G.R. No. 53009-R, p. 14; p. 157, Rollo.

[20] Teal Motor Co. *vs.* CFI of Manila, 51 Phil. 549 (1928); Pacific Merchandising Corp. *vs.* Consolacion Insurance & Surety Co., Inc., 73 SCRA 564 (1979).

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del Sur, and two of his policemen, planned and agreed to liquidate, for a fee, Alberto Alforque, a barrio captain who had earlier been the object of the mayor's continuous harrassment as a result of his refusal to recognize the jurisdiction of the mayor over his barrio. That same afternoon, the policemen-appellants took Baterna with them under threats to barrio New Tangub where they were joined later in the evening by the mayor's other cohorts who were all armed. Upon reaching the house of the victim, Baterna was posted as lookout near a window overlooking the sala, while the two policemen proceeded to the sala and informed the victim that they were taking him to Mahayag. When the victim refused to go and started struggling for possession of a gun pointed at his stomach, one of the policemen struck him with a knife and the butt of his gun, and a companion thereafter finished him off with a knife. In the meantime, Mamacang, followed by Potestas (still at large), stabbed the victim's wife to death when instead of heeding Mamacang's admonition to stay away inflicted blows on Mamacang with a piece of wood. Charged before the Court of First Instance of Zamboanga del Norte, all the appellants were convicted of murder as co-conspirators in the killing of Alberto, while Mamacang was found guilty of murder for the death of Alberto's wife. The penalty of *reclusion perpetua* was imposed in both cases. On appeal, appellants assailed the jurisdiction of the trial court of Zamboanga del Norte and the credibility of the prosecution witnesses.

The Supreme Court held that the flimsy contentions of appellants that New Tangub is part of Mahayag, Zamboanga del Sur are belied by the law and the testimonies of officials of the Highway District Engineer's Office, and that the findings and assessment of credibility of witnesses by the trial court are entitled to great weight and respect.

Judgment modified in that the appellants who did not withdraw their appeals were sentenced to death as co-conspirators for the murder of Alberto, and Mamacang was only held liable for homicide for the killing of Alberto's wife and was sentenced to suffer a separate indeterminate sentence.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FLIMSY CONTENTIONS BELIED BY CONCRETE FACTS IN CASE AT BAR.— Where appellants' pose that barrio New Tangub is within the territorial jurisdiction of Mahayag, Zamboanga del Sur is solely based on flimsy contentions, such as that since barrio New Tangub is very much nearer the boundary of the municipality of Mahayag, Zamboanga del Sur than that of the municipality of Sergio Osmeña, Zamboanga del Norte, it is part of the former, but on the other hand the record attests that none of the appellants dispute that barrio New Tangub was formerly known as barrio Sibulan, upon this premise, there can be no question that New

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Tangub cannot be part of Zamboanga del Norte, for Republic Act No. 3697, provides categorically that the "barrios of *Sibulan,* Dampalan, Labag, Princesa La Maya and Marapong are separated from the Municipality of Piñan in the Province of Zamboanga del Norte, and constituted into a separate and independent municipality in the same province to be known as the Municipality of Sergio Osmeña, with the seat of government at the present side of the barrio of *Sibulan.*" The technical description of the barrios to be incorporated into the new municipality of Sergio Osmeña is specifically set out therein. Such technical description includes the barrio of New Tangub. This was undisputably proven by the declaration of an engineer of the Office of Highway District Engineer of Zamboanga del Norte who prepared the sketch map of the municipality of Sergio Osmeña as corroborated by a surveyman of the same office. The defense was not able to overthrow these concrete facts of the prosecution.

2. CONSTITUTIONAL LAW; LEGISLATIVE POWER; LAW MUST TREAT OF ONLY ONE SUBJECT MATTER; REPUBLIC ACT NO. 3697 SATISFIES CONSTITUTIONAL REQUIREMENT.— A cursory and brief perusal of Republic Act 3697 creating the municipality of Sergio Osmeña instantly reveals that it treats of only one subject matter, that is: the creation of the territory described therein into a new, separate and independent corporate entity to be known as the municipality of Sergio Osmeña. Republic Act No. 3697 contains three (3) sections, and none of said sections cover a different and distinct subject matter.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS; NOT IMPAIRED BY ALLEGED CONTRADICTIONS AND INCONSISTENCIES IN TESTIMONY OF WITNESS IN CASE AT BAR.— The supposed contradictions and inconsistencies in the testimony of state witness Baterna cannot detract substantially from the evident veracity of the incriminatory facts related by him, convincingly indicative of the guilt of the appellants. Otherwise stated, notwithstanding the persistent arguments of appellants against its credibility, the intrinsic truthfulness of Baterna's testimony was not materially impaired.

4. ID.; ID.; ID.; NOT IMPAIRED WHERE INCONSISTENCIES ARE SUFFICIENTLY EXPLAINED OR ARE FLIMSY.— The prosecution witness' explanation as to the inconsistencies in her statements is sufficient to overcome any shadow upon the veracity of her whole testimony. Thus, she explained that since Alberto Alforque was seated on top of the dining table, to her he (Alberto)

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looked bigger and taller than the persons in front of him. Besides, she found no difficulty in identifying appellant Lirasan at the trial as the person who pointed the thompson submachine gun at the victim on the night in question by his almond eyes and wide nose which she distinctly remembered.

5. ID.; ID.; ID.; DECLARATIONS OF PROSECUTION WITNESS NOT OVERTHROWN BY DEFENSE.— The declarations of a prosecution witness, obviously presented to prove a motive on the part of the appellants, were not overthrown successfully by the defense with proof to the contrary except their weak alibi. Besides, this prosecution witness was corroborated strongly by two other prosecution witnesses. Lengthy cross-examination conducted by the defense of these witnesses only strengthened their credibility.

6. ID.; ID.; ID.; FINDINGS OF CREDIBILITY OF WITNESSES BY TRIAL COURT ENTITLED TO WEIGHT AND RESPECT.— The trial judge in the case at bar who had every opportunity to observe the demeanor of all the witnesses, analyzed the evidence in an unusually long decision of 457 pages and found the prosecution witnesses more reliable. Findings or assessments of credibility of witnesses by the trial court are as a rule entitled to great weight and respect.

7. ID.; ID.; ID.; MOTIVE SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— Appellants may not claim that the victim Alforque's refusal to accede to Mayor Mendoza's wish to recognize that barrio New Tangub is within the territorial jurisdiction of Mahayag, Zamboanga del Sur, of which he (Mendoza) was then the appointed mayor, was not sufficient or compelling enough to move them to kill the Alforque couple, because the record is replete with evidence showing beyond doubt that Alforque was subjected to continuous harrassments by Mendoza ever since the former openly spoke against the latter's proposal to claim New Tangub under his (Mendoza's) jurisdiction.

8. ID.; ID.; CONSPIRACY ESTABLISHED IN CASE AT BAR.— The record which amply show that appellants implemented their nefarious plan through their collective endeavors or acts before and after its commission of the offense are mute but eloquent testimony of the existence of their conspiracy. There is no reason to doubt that the commission of the instant offense was hatched in a meeting of all the appellants at the house of Sayson on the morning of November 4, 1960, where a prize of ₱300.00 to each of them was offered by

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Mendoza; that all of them agreed to the proposal and Sayson was designated as the leader of the group; that before proceeding to the house of the Alforques, all of them agreed that policemen Lirasan and Mamacang would be the first ones to enter the house; that as ordered by Sayson, one of them posted himself in a strategic position (according to plan) to ensure their security, the secrecy of their mission and the accomplishment of the same unhindered by any outside obstacles; that after appellant Lirasan felled Alforque by striking him almost below his left ear, with the butt of his gun, Perez approached Alforque and made several thrusts with his knife causing the latter his total fall; that while appellant Mamacang was stabbing Valeriana Alforque, appellant Potestas also approached and stabbed her with his 8-inch knife, causing her to stagger and fall face downward; and that after assuring themselves that the Alforque spouses were dead, Sayson ordered Lirasan and Mamacang to search the second floor for other persons, after which they left the house. It is thus evident that the appellants acted in concert pursuant to the same objectives, the joint purpose and design, namely, to do away with the obstinate and adamant Alforque.

9. CRIMINAL LAW; CONSPIRACY; RESPONSIBILITY OF CO-CONSPIRATORS.— With conspiracy established, each appellant must be held responsible for the acts of each of them in the furtherance of their common design.

10. ID.; MURDER; PENALTY IN CASE AT BAR.— The extreme penalty of DEATH is imposed upon each of the appellants who did not withdraw their appeal for the killing of Alberto Alforque, the offense committed by the accused in conspiracy with each other being murder, qualified by evident premeditation, with the generic aggravating circumstances of (1) superior strength, Eufrocino Perez and Jesus Lirasan having helped each other in taking the victim's life; (2) having committed the offense in the residence of the offended party; (3) by a band; (4) in consideration of the price promised by the principal by inducement, accused Saturnino Mendoza: and (5) taking advantage of their public position in respect to Lirasan and Mamacang, who were policemen and purposely used their being such to gain ready entrance into the residence of the victims, and also as to Mendoza, being then Mayor and as such gave instructions to his policemen and henchmen to kill Alforque, offset by the sole mitigating circumstance that they voluntarily surrendered as found by the trial court.

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11. ID.; HOMICIDE; OFFENSE COMMITTED IN CASE AT BAR DUE TO CIRCUMSTANCE THAT VICTIM FIRST STRUCK HER ASSAILANTS.— With respect to the killing of Valeriana Reble de Alforque, the accused Mamacang, is found guilty beyond reasonable doubt only of the crime of homicide, inasmuch as he and Genovevo Potestas (who has not yet been arrested) stabbed her to death because she struck Mamacang several times with the piece of firewood she was carrying when Mamacang admonished her not to interfere in the affair between them and her husband, Alforque, with the aggravating circumstances, however, of disregard of sex, superior strength and dwelling, for which he is sentenced to suffer the separate penalty of *reclusion temporal* in its maximum period, which by applying the Indeterminate Sentence Law is a minimum of ten (10) years and one (1) day of *prision mayor* to a maximum of twenty (20) years of *reclusion temporal*.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Martin V. Vera Cruz for appellants.

DECISION

PER CURIAM:

Appeal from the decision of the Court of First Instance of Zamboanga del Norte, dated October 16, 1970, finding the accused Saturnino Mendoza, Jesus Lirasan, Agripino Mamacang, Conrado Sayson and Eufrocino Perez guilty of the crime of murder for the killing of Alberto Alforque, the first as principal by induction and the last four as principals by direct participation, and likewise finding the accused Agripino Mamacang guilty of murder for the killing of Valeriana Reble de Alforque, both killings having been committed in the evening of November 4, 1960, in barrio New Tangub, municipality of Sergio Osmeña, Zamboanga del Norte. The dispositive portion of said decision reads as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court, declaring that the prosecution has proved beyond reasonable doubt the guilt of accused Saturnino Mendoza, Jesus Lirasan, Agripino Mamacang, Conrado Sayson and Eufrocino Perez of the crime of murder of Alberto Alforque, the former as principal by induction and the last four as principals

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by direct participation, and of the guilt of accused Agripino Mamacang of the crime of murder of Valeriana Reble de Alforque, and appreciating against accused Saturnino Mendoza, Jesus Lirasan and Agripino Mamacang the generic aggravating circumstance of public position, which is offset, however, by the mitigating circumstance of their voluntary surrender to authorities, hereby sentences each of accused Saturnino Mendoza, Jesus Lirasan, Agripino Mamacang, Conrado Sayson and Eufrocino Perez to *reclusion perpetua* for the murder of Alberto Alforque, with the accessories of the law, to indemnify, jointly and severally, the lawful heirs of the deceased victim Alberto Alforque in the sum of Twelve Thousand Pesos (₱12,000.00), without subsidiary imprisonment in case of insolvency, and to pay each one-sixth (1/6) of the costs, and sentences accused Agripino Mamacang to *reclusion perpetua* for the murder of Valeriana Reble de Alforque, with the accessories of the law, and to indemnify the lawful heirs of his said deceased victim in the sum of Twelve Thousand Pesos (₱12,000.00), without subsidiary imprisonment in case of insolvency, the total of his penalty not to exceed forty years, however, pursuant to the antepenultimate paragraph of Article 70 of the Revised Penal Code.

"Each of said accused shall be credited with his preventive imprisonment in full, if he will agree in writing to abide by the rules and regulations imposed upon convicted prisoners; otherwise, with only four-fifth (4/5) thereof." (Pp. 456-457, Decision.)

From the foregoing decision, all the convicted accused coursed an appeal to this Court. On March 9, 1976, however, a duly indorsed motion to withdraw appeal of appellant Conrado Sayson was forwarded for the consideration of this Court. On June 29, 1976, this Court, *en banc,* granted appellant Sayson's motion. On September 29, 1977, this Court also granted the motion of appellant Eufrocino Perez to withdraw his appeal. (p. 794, Rollo)

Before going to the gruesome incident of November 4, 1960, a clearer picture of the event in question would appear if We related first certain antecedent facts, duly established by the prosecution to wit:

On July 3, 1960, the Municipal Council of Mahayag, Zamboanga del Sur, headed by appellant Saturnino Mendoza, held a "floating session" in Dampalan, Polanco, Zamboanga del Norte. (T.s.n., p. 31, Santillana) All barrio lieutenants, including Alberto Alforque and Bienvenido Andilab, barrio captains of New Tangub and Princesa Lamaya, respectively, were

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summoned by Mendoza to attend the session. (T.s.n., pp. 33-34, Santillana) Appellant Jesus Lirasan, who was then a policeman of Mahayag, was also present. (T.s.n., p. 32, Santillana) Obviously, the intention of Mendoza in convening said session was to inform those present thereat that the barrios of New Tangub, Princesa Lamaya and San Isidro are within the jurisdiction of the Municipality of Mahayag, Zamboanga del Sur, (T.s.n., p. 35, Santillana) for he lost no time in so informing them. Alberto Alforque and Bienvenido Andilab, who had already previously taken their oaths as barrio captains of New Tangub and Princesa Lamaya under the jurisdiction of Polanco, province in Zamboanga del Norte, were taken by surprise and immediately conferred with each other. Confused, they did not know what to say except to plead for time within which to study and think about the matter. (T.s.n., p. 36, Santillana) Irked by their response, Mendoza bluntly told them that whether or not they liked it, they had to submit to the jurisdiction of Mahayag and if they did not like the situation they were free to vacate their positions. (T.s.n., p. 36, Santillana) A heated discussion between Alberto Alforque and Mendoza ensued. (T.s.n., p. 37, Santillana) The discussion lengthened without one or the other giving way, so that Lirasan, also irked by the stand taken by Alforque, together with two other policemen, cocked his gun, as did the two other policemen and said: "By hook or by crook they have to join their jurisdiction". (T.s.n., pp. 37-38, Santillana)

The jurisdictional dispute was far from over because the following day, July 4, 1960, at about 2:00 o'clock in the afternoon, Mendoza attended a meeting being held by Alforque in his house in barrio New Tangub, i.e., a meeting of Alforque with his councilmen Pedro Sayson (vice-barrio captain), Loreto Mirafuentes, Panfilo Dataligti, Ramon Balawit and Villamor Dagundol. (T.s.n., pp. 160-162, Santillana) Appellant Mendoza was accompanied by the barrio captain of Dansalan, Eugenio Tantug, Juanito Paler and some policemen of Mahayag. (T.s.n., pp. 162-163, Santillana) During the said session, while Alforque was explaining that the people of New Tangub were under the jurisdiction of the Municipality of Polanco, Zamboanga del

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Norte, Mendoza rudely interrupted him, asserting that Alforque's barrio is under the territorial jurisdiction of Mahayag. He branded Alforque as a philosopher. Not satisfied with merely berating Alforque verbally, Mendoza went on to threaten him (Alforque) by saying that he could order him boxed, butt-stricken or tied or even imprisoned. (T.s.n., pp. 164-165, Santillana) Alforque then kept quiet. (T.s.n., p. 166, Santillana) Before leaving the congregation, however, Mendoza instructed the barrio councilors to see him in Mahayag on the 9th (of July) to receive their appointments as members of the barrio council. (T.s.n., pp. 168-170, Santillana)

Disregarding Mendoza's admonition, the barrio councilors of New Tangub did not go to Mahayag on July 9. (T.s.n., p. 170, Santillana) Instead, on July 5, 1960, Alforque reported the incident of July 4, 1960 to Mayor Anacleto Olvis of Polanco, Zamboanga del Norte. (T.s.n., pp. 171-379, Santillana) Mayor Olvis, in turn, referred the matter to the Provincial Governor of Zamboanga del Norte (Exhs. "AA" and "CC", pp. 18-20, Folder 1 of Exhibits) who indorsed it to the Provincial Fiscal of Zamboanga del Norte (Exhibit "DD", p. 17, Folder 1 of Exhibits; pp. 380-384, Santillana). On August 12, 1960, acting on the Governor's indorsement, the provincial fiscal filed an information for grave threats against Mendoza before the Court of First Instance of Zamboanga del Norte. (Exh. "X-1", p. 2, Folder 1 of Exhibits)

On the other hand, seemingly as a countermove, a few days thereafter, or on August 27, 1960, a criminal information was filed before the Municipal Court of Mahayag charging Alforque with the crime of robbery (Exh. "HH-4", p. 4, Folder 1 of Exhibits), which was allegedly committed in Silubos, Barrio Yabu, Mahayag, on June 6, 1960 involving the amount of ₱3.00. Another complaint for robbery was also filed with the same court against the same Alforque for the amount of ₱2.50 allegedly committed on June 7, 1960 also in Silubos, Yabu, Mahayag. (Exh. "GG-4"; "GG-4-a", "GG-4-c", p. 4, Folder 1 of Exhibits) Likewise, on August 29, 1960, another complaint for robbery was filed against

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Alforque with the same court, this time involving the amount of ₱7.50, supposedly committed likewise in Silubos, Yabu, Mahayag on June 7, 1960. (Exh. "II-4", "II-4-a", "II-4-b", II-4-d", p. 4, Folder 1 of Exhibits) Based on these complaints, Mendoza himself signed a warrant for the arrest of Alforque, signing the same in his capacity as Ex-officio Justice of the Peace of Mahayag. (Exh. "II-7", Folder 1 of Exhibits) Armed with this warrant of arrest, two policemen of Mahayag, including appellant Jesus Lirasan, went to barrio New Tangub and arrested Alforque. (T.s.n., pp. 173-175; 317-318, Santillana) Thereafter, appellant Mendoza signed three orders, dated October 17, 1960 (also as ex-officio Justice of the Peace of Mahayag) for the commitment of Alforque during trial. (Exhs. "II-8", "HH-8", "GG-9", pp. 8-9, Folder 1 of Exhibits)

In the meantime, Mayor Anacleto Olvis of Polanco, Zamboanga del Norte, was informed by Roberto Ratificar, a public school teacher of New Tangub, that Alforque had been arrested and taken to Mahayag. (T.s.n., p. 318, Santillana) So, Mayor Olvis went immediately to Mahayag intending to bail Alforque out. (T.s.n., p. 386, Santillana) Upon arrival thereat, however, Mendoza informed him that Alforque was not arrested but merely investigated although he (Mayor Olvis) actually saw Alforque inside the jail of Mahayag. (T.s.n., pp. 386-387, Santillana) Alforque was released without any bail. (T.s.n., pp. 388-399, Santillana) Eventually, all the robbery cases against Alforque were dismissed. (Exhs. "II-B", "HH-3", "GG-3", Folder 1 of Exhibits)

Coming now to the incidents that happened on the fatal day of November 4, 1960, here is a resumé of the facts duly established by the prosecution:

In the early morning of November 4, 1960, witness Roberto Baterna went to the house of his cousin in Goripan, west of Mahayag to ask for a fighting cock. (T.s.n., pp. 275-276, Gako) However, he was not able to obtain one as they found it difficult to catch one. He returned to his aunt's (Aquilina Baterna) house, passing the house of appellant Conrado Sayson. (T.s.n., pp.

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277-278, Gako) As he was nearing Sayson's house, he was called by his friend, Genovevo Potestas, who was then at the window of Sayson's house. (T.s.n., pp. 279-281, Gako) Potestas told him to come up as there were some drinks and to partake of the same. When he went up, he saw a group consisting of Mendoza, Jesus Lirasan, Nonoy Mamacang, Conrado Sayson, Eufrocino Perez and Genovevo Potestas drinking wine mixed with Pepsi-Cola. (T.s.n., pp. 282-284, Gako) Baterna was invited to sit at the table occupied by Sayson and Potestas, the other table being headed by appellant Mendoza. (T.s.n., pp. 286-292, Gako) While Baterna was drinking, Perez told him straight that appellant Mendoza would pay to any one who would agree to kill his (Mendoza's) enemy in the mountains. Taken by surprise, Baterna was rendered speechless. (T.s.n., pp. 294-295, Gako) Sensing his confusion, surprise and reluctance, Perez persisted and urged him (Baterna) to accept the proposition and join them, telling the latter that he would surely make money out of it. Still, Baterna kept silent. (T.s.n., pp. 285-296, Gako) Sayson then brought Baterna to the kitchen where he personally and patiently explained the stability of the proposition, i.e., that he should not be afraid as the order came from the Mayor himself (Mendoza), who is the one interested in the killing. Still, Baterna withheld his conformity, by keeping silent. So, Sayson brought him back to the table where the drinking was still going on. Mendoza then called him (Baterna) and repeated the offer, persuasively adding that he had nothing to fear as he was the mayor there. Although Baterna still did not commit himself and only said that he would think about it, Mendoza asked the others present if they were willing to follow his request and Lirasan, Mamacang, Potestas, Perez and Sayson answered in unison that they would. (T.s.n., pp. 296-305, Gako) Before the group dispersed, Mendoza admonished them not to use their firearms because they are all under certificates of registration and might only cause panic in the neighborhood and to use hunting knives instead. (T.s.n., pp. 311, Gako) He also told them that he was leaving the date of execution, whether that very day or the following, to Sayson and that he would leave the reward money also with him (Sayson). (T.s.n., pp. 311-313, Gako)

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That same day, Roberto Baterna took his lunch at the house of his aunt, after which he left for the nearby market intending to witness some games and meet some friends. (T.s.n., pp. 316-317, Gako) While walking within the vicinity of the market, Baterna saw Lirasan and Mamacang drinking tuba inside the store. Lirasan asked him to join them. So, he did. While thus drinking, Lirasan asked him if he had already considered the request of Mendoza. Baterna replied that he was not ready to give a positive answer as yet, whereupon Lirasan retorted that he has no choice anymore as he was present during their meeting. Appellant Mamacang butted in and said that since he was present during the meeting, it was dangerous for him not to go with them and that it was better that he (Baterna) should die first should something happen. (T.s.n., pp. 318-326, Gako) Then, Lirasan pulled out a gun and poked it hard against Baterna's body and pushed him forward. (T.s.n., pp. 326-328, Gako) Afraid that they might kill him, Baterna walked with them towards the municipal building where Lirasan and Mamacang changed their uniforms into maong loafers. (T.s.n., pp. 328-332, Gako) At about 2:00 o'clock, they proceeded to barrio New Tangub. (T.s.n., p. 333, Gako)

At twilight time (i.e., almost 6:00 o'clock in the evening) of that same day (November 4, 1960), Lirasan and Mamacang, together with Baterna, arrived in New Tangub. Somewhere within the land of Alforque, they stopped and waited for Sayson, Perez, Genovevo Potestas and Juanito Paler. Sayson was wearing a black jacket, while Perez was in maong loafer. (T.s.n., pp. 333-335, Gako) Baterna was carrying a small knife known as "mais-mais" which he used in sharpening the nails of his roosters; Lirasan had a buttless Thompson sub-machine gun and a hunting knife tucked inside; Sayson had a buttless folding carbine; and Perez and Potestas each had hunting knives on their waists. (T.s.n., pp. 337-341, Gako) Juanito Paler pointed out the trail leading to the house of Alforque. (T.s.n., p. 341, Gako) Upon suggestion of Sayson, the two policemen of Mahayag, Lirasan and Mamacang led the group, this agreement being acceptable to the others

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because thereby the owner of the house would have confidence and they would admit them to the house. (T.s.n., p. 343, Gako) As soon as they started towards the house, Paler left the group and Baterna did not see him thereafter. (T.s.n., p. 344, Gako)

Upon arrival at the house of Alforque, they immediately knocked at the door, Lirasan and Mamacang identifying themselves as policemen of Mahayag. (T.s.n., pp. 346-347, Gako) Alforque opened the door and readily let them in. Lirasan and Mamacang immediately proceeded to the sala of the house, while Perez and Potestas went inside the store, which was a part of the house. Sayson remained in the yard. (T.s.n., pp. 352-356, Gako; Exh. L) As directed by Sayson, Baterna stood beside a window overlooking the sala, to serve as watcher. (T.s.n., pp. 359, Gako; Exh. L) At that time, the house was lighted by a petromax lamp which hung in the ceiling of the house. (T.s.n., pp. 368, 370, Gako) Alforque then inquired from Lirasan and Mamacang about their purpose and Lirasan replied that they were sent by appellant Mendoza because he was wanted by the latter and that they are bringing him with them back to Mahayag. (T.s.n., pp. 371-1056, Gako) Alforque then further asked why Mayor Mendoza would still need him, since his cases were already settled and he had not committed anything wrong, to which appellant Lirasan felt instant irritation prompting him to point his Thompson submachine gun at Alforque's stomach and threaten to kill him if he did not go with them. (T.s.n., pp. 372, 373, 1057, Gako) Notwithstanding his predicament and fear, Alforque still managed to ask Lirasan what his fault was that they were threatening him with death, to which Lirasan again rudely retorted that he would be killed if he refused to go with them. (T.s.n., pp. 373-375, Gako) This moved Alforque into action and he then seized the muzzle of the gun pointed by appellant Lirasan against him and a struggle for the possession of said gun ensued. (T.s.n., pp. 376, 1968, Gako) Although Alforque was smaller and weaker, he was able to have the upper hand in the struggle because he was holding the muzzle of the gun while Lirasan was clinging only to its handle. This made the

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latter strike Alforque with his hunting knife, which he was able to draw from his waist, causing Alforque to fall on the floor. (T.s.n., pp. 377, 379, Gako) Undaunted by the knife thrust, Alforque stood up and again tried to take possession of the gun from appellant Lirasan, but the latter struck him again, this time with the gun's butt, hitting him below the left ear and felling him again on the floor. (T.s.n., pp. 379, 382-383, Gako) At this precise moment, Perez approached them and since Alforque was still alive, Lirasan ordered Perez to finish him off, which Perez did by striking Alforque several times with his knife until the latter fell to the floor again with his hands forward and his body bathed in blood. (T.s.n., pp. 406-407, Gako)

In the meantime, while Alforque and appellant Lirasan were grappling for the possession of the gun, Alforque's wife, Valeriana Reble de Alforque, came out of a small room and approached them. She demanded to know why they were going to kill her husband. (T.s.n., pp. 376-409, Gako) Appellant Mamacang immediately met her and, ignoring her question, admonished her to go away. (T.s.n., p. 376, Gako) Instead of leaving, however, Valeriana struck Mamacang several times with the piece of firewood she was carrying. (T.s.n., pp. 376-377, Gako) Although surprised at the attack of Valeriana, Mamacang was able to parry off some of the blows and then got hold of her neck and stabbed her with his hunting knife. (T.s.n., pp. 409-410, Gako) Valeriana was not instantly felled and she continued fighting Mamacang, at the same time shouting for help. This forced Potestas to approach the two and strike Valeriana several times with his hunting knife. The force of the latter thrusts made Valeriana spin around staggering, after which she fell on the floor, face downward. (T.s.n., pp. 428-429, Gako)

When Alberto Alforque and his wife were already lying prostrate on the floor, appellant Sayson went inside and ordered the house searched to ascertain whether there were other people inside. So, Lirasan and Mamacang went upstairs, while Perez and Potestas searched the kitchen. (T.s.n., pp. 438-441, Gako) Their

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search yielding nothing, the group left immediately. (T.s.n., p. 443, Gako)

At this juncture, important to be observed is the fact that while Alforque and Lirasan were still arguing on the advisability of the latter being brought to Mahayag and why appellant Mendoza would want to see him (Alforque), a young girl, Rustica Flores, who was about 16 years and who was staying at the house of the Alforques, heard the argument while she was in a bedroom in the second story of the house. Curious, she went downstairs to find out what it was all about, bringing with her a lighted kerosene lamp. (T.s.n., pp. 370-430, 1054, 1056, Gako) She proceeded to the place where the two were arguing, place the lamp on the table where Alforque was sitting or seemed to be leaning on, and then returned and stood in a place near the door where she witnessed everything that transpired up to the time when Alforque and Lirasan fought for the possession of the gun. However, when the fight started, fright overcame her and so, she went back to her room upstairs. (T.s.n., pp. 1057, 1059-1060, 1069, Gako) In her room, she could hear the noise or commotion downstairs. After the commotion subsided and she heard somebody moaning, she jumped out of a window and ran to the bushes where she hid. (T.s.n., pp. 1071, 1075, Gako) After a while, when the house was already quiet, she came out of her hiding place and returned to the house where she saw the Alforque couple already dead on the floor. (T.s.n., 1075, 1076-1077, Gako) Although numbed with fright, she ran towards the house of their neighbor, Cesar Opsiar. Reaching the same, she (Flores) lost consciousness, but upon regaining her senses, she immediately informed Opsiar about the horrible killing. Opsiar in turn, went to the house of Alforque's brother-in-law, Loreto Mirafuentes, and informed the latter about what happened to the Alforques. (T.s.n., pp. 1077-1078, Gako) Mirafuentes immediately informed their other neighbors, then went to the house of the Alforques and took charge of transferring the children of the slain couple, who at the time of the incident were all asleep. (T.s.n., p. 1079)

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The following day, November 5, two policemen from Mahayag conducted an investigation primarily questioning Rustica Flores. (T.s.n., pp. 1083-1085, Gako) Later, the policemen from the municipality of Polanco, led by the Chief of Police himself, made a separate investigation, also questioning Rustica Flores and taking pictures of the scene of crime. (T.s.n., pp. 1086-1087, Gako) Dr. Bartolome Regencia, Rural Health Physician of Polanco, examined the two dead bodies. He found out that Alberto Alforque sustained several stab and incised wounds, four of which were fatal and caused his death, to wit:

"1. Contusion about 1.5 cm. wide running from behind the left ear to the outer third of the left lower mandible. Cause: Blunt instrument applied with force.

"2. Stab wound 3 cm. long, 1 cm. inward from and at the level of the left nipple in the direction from forward, backward and slightly downward, penetrating the thoracic cavity injuring the heart and left lung. Cause: Single bladed sharp pointed instrument thrushed with force.

"3. Stab wound 2.5 cm. long between the right lateral side of the Xyphoid and costo chondral junction, penetrating the upper portion of the abdominal cavity injuring the liver and pyloric end of the stomach. Cause: Single bladed sharp pointed instrument.

"4. Stab wound 2.5 cm. long at the level of the 4th intercostal space, 3 inches lateral of the right nipple, penetrating the thoracic cavity in the direction of from forward, backward and inward. Caused by a single bladed instrument, the sharp blade down.

"5. Stab wound about 4 cm. long 1.5 cm. below the right axilla penetrating the upper portion of the right lung. Caused by a sharp instrument thrushed in the direction from lateralward inward.

"6. Incised wound 3 cm. long about 1/2 cm. Caused by sharp instrument.

"7. Stab wound 1 cm. long and 1 cm. deep posterior middle of the right forearm. Caused by a single bladed pointed instrument applied with force hitting the ulnar bone.

"Cause of death: External and internal hemorrhage caused by stab wounds Nos. 2, 3, 4, & 5, which were fatal." (Exh. C)

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As to the deceased Valeriana Reble de Alforque, Dr. Regencia found out that she sustained also several stab wounds, three of them being fatal, to wit:

"1. Incised wound 3 cm. long from outward inward at the base of the right thumb. Caused by a sharp instrument.

"2. Stab wound 2.5 cm. long at the 1st interspace sharp blade downward about 3 cm. from midsternal line to the right penetrating the right thoracic cavity in the direction from forward-backward, injuring the right lung.

"3. Stab wound 2.5 cm. long 3 cm. from midsternal line to the right at the second interspace penetrating the right thoracic cavity. Direction forward-backward. Sharp blade down injuring the right lung.

"4. Stab wound 3 cm. long left side about 2 inches below the left axilla at the level of the 6th rib, penetrating the left thoracic cavity injuring the left lung.

"5. Four stab wounds 1 cm. long each in nearly straight line outward about the level of the 10th rib of the right thorax penetrating the cavity injuring possibly the liver.

"Cause of death: External and internal hemorrhage caused by stab wounds Nos. 2, 3 & 4 which were fatal." (Exh. E)

On May 11, 1966, an information was filed with the lower court charging Saturnino Mendoza, Jesus Lirasan, Nonoy Mamacang, Eufrocino Perez, Genovevo Potestas and Conrado Sayson with the crime of double murder. However, accused Genovevo Potestas was not arrested and so, trial proceeded only against the other five accused.

After trial, the lower court rendered the judgment the dispositive portion of which We have already quoted at the beginning of this opinion.

RESOLUTION OF ASSIGNMENT OF ERRORS

Appellant's first attack is jurisdictional. They contend that the trial court erred in assuming jurisdiction over their case because the crime imputed to them was allegedly committed within the territorial jurisdiction of Mahayag, Zamboanga del Sur, and there is no question that the Alforque spouses were killed in their own home in barrio New Tangub. They claim that barrio New Tangub

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was originally a part of the municipality of Molave; that when Zamboanga was divided by Republic Act No. 711 into two provinces—Zamboanga del Sur and Zamboanga del Norte—Molave became a part of the former (del Sur); that subsequently the town of Mahayag was created and carved out of the territorial jurisdiction of Zamboanga del Sur, one of its barrios being New Tangub; and that upon the other hand, when the municipality of Sergio Osmeña was created in the year 1963 by Republic Act No. 3697, it provided that said town and the barrios constituting said municipality would be within the provinces of Zamboanga del Norte; and that the technical description provided in said Republic Act No. 3697, regarding the northern and southern boundaries of the barrio of New Tangub is entirely within the original territorial jurisdiction of Mahayag, Zamboanga del Sur. (Appellants' Brief, pp. 13-16) In other words, the thrust of appellants' pose is that barrio New Tangub is within the territorial jurisdiction of Mahayag, Zamboanga del Sur.

We find no merit in such claim. The only leg it is purported to stand on is the assertion that since territorially New Tangub is very much nearer Mahayag than Sergio Osmeña, Congress could not have intended to curve out any portion of Zamboanga del Sur in favor of Zamboanga del Norte. On the other hand, the record attests that none of appellants disputes that barrio New Tangub was formerly known as barrio Sibulan. Upon this premise, there can be no question that New Tangub cannot be but part of Zamboanga del Norte, for Republic Act No. 3697, which took effect on June 22, 1963, provides categorically that the "barrios of *Sibulan,* Dampalan, Labag, Princess La Maya and Marapong are separated from the Municipality of Piñan in the Province of Zamboanga del Norte, and constituted into a separate and independent municipality in the same province to be known as the Municipality of Sergio Osmeña, with the seat of government at the present site of the barrio of *Sibulan.*" The technical description of the barrios to be incorporated into the new municipality of Sergio Osmeña is specifically set out therein. Such technical description includes the barrio of New Tangub. This

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was undisputably proven by the declaration of Engineer Beeny C. Empaynado of the Office of Highway District Engineer of Zamboanga del Norte. Empaynado was the one who prepared the sketch map of the municipality of Sergio Osmeña, Zamboanga del Norte (Exh. A) from official maps of the U.S. Coast and Geodetic Survey in relation to the official maps of the Office of Highway District Engineer and the Bureau of Lands. In said "Exh. A", he clearly indicated the technical description not only of the municipality of Sergio Osmeña but also that of the municipalities of Polanco and Piñan, Zamboanga del Norte. Through Exh. A, he traced the new municipality of Sergio Osmeña as indicated in Republic Act No. 3697. (T.s.n., pp. 347-348, 350-351, May 23, 1967)

Corroborating the testimony of Empaynado is that of prosecution witness Florencio Sevilla, a surveyman, also of the Office of the Highway District Engineer of Zamboanga del Norte. Explaining likewise Exh. A, Sevilla declared that he took part in the preparation of said sketch map (Exh. A); that he was sent and actually went to the barrios newly constituting the municipality of Sergio Osmeña, one of which is barrio New Tangub; that he actually conducted an ocular inspection and investigation of the area, and made sightings and plottings to determine the relative location of barrio New Tangub to the boundary line separating the provinces of Zamboanga del Norte and Zamboanga del Sur; that he is certain that the said barrio New Tangub is very well within the territorial jurisdiction of the province of Zamboanga del Norte as technically described in Republic Act No. 3697. (T.s.n., pp. 359-360, 363-364, May 23, 1967) The defense was not able to overthrow these concrete facts of the prosecution. As already stated, they just alleged flimsy contentions, such as that since barrio New Tangub is very much nearer the boundary of the municipality of Mahayag, Zamboanga del Sur, it is part of said municipality, etc. In other words, appellants question the veracity of the technical description of the territorial boundaries of the new Municipality of Sergio Osmeña, as explained by above-mentioned government officials.

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We have no alternative, under such circumstances, but to overrule their first assignment of error.

In connection with the same point, appellants claim alternatively that Republic Act No. 3697 creating the municipality of Sergio Osmeña is unconstitutional because it embraces more than one subject. This contention needs no extended disquisition. A cursory and brief perusal of said law instantly reveals that it treats of only one subject matter, that is: the creation of the territory described therein into a new, separate and independent corporate entity to be known as the municipality of Sergio Osmeña. Republic Act No. 3697 contains three (3) sections, and none of the said sections cover a different and distinct subject matter. The Act provides thus:

"SECTION. 1. The barrios of Sibulan, Dampalan, Labag, Princess La Maya and Marapong are separated from the Municipality of Piñan in the Province of Zamboanga del Norte, and constituted into a separate and independent municipality in the same province to be known as the Municipality of Sergio Osmeña, with the seat of government at the present site of the barrio of Sibulan. The boundaries of the said municipality shall be as follows:

'From the intersection of longitude one hundred twenty-nine degrees ten minutes (129° 10') and latitude eight degrees twenty minutes (8° 20') in a straight line due east until it intersects the provincial boundary of Misamis Occidental and Zamboanga del Norte; thence due south to latitude eight degrees thirteen minutes (8° 13'); thence due west until it intersects longitude one hundred twenty-nine degrees ten minutes (129° 10'); thence due north to latitude eight degrees twenty minutes (8° 20'), the point of beginning.'

"SEC. 2. The first mayor, vice-mayor and councilors of the newly created municipality shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and shall hold office until their successors shall have been elected in the next general election for local officials and shall have qualified.

"SEC. 3. This Act shall take effect upon its approval. (Approved, June 22, 1963.)

In their second assignment of error, appellants assail the lower court for giving credit to the testimony of state witness Roberto Baterna, who, as it appears above, was merely forced to join

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Mendoza's group on the occasion in question.[1] First, they claim that it is highly improbable that Baterna could have befriended them (all of the appellants) because of gambling, since none of them indulge in gambling. (Pp. 23-25, Appellants' Brief) But such pretension is belied by the evidence. The record shows that Baterna came to know appellants Saturnino Mendoza and Jesus Lirasan in the year 1960 because precisely they are gamblers. Mendoza himself admitted that in 1957, he owned a cockpit in Molave which he gave up when he became Mayor of the municipality of Mahayag and thereafter merely engaged in cockfighting. (T.s.n., pp. 1179-1180, Gako) Baterna came to know Nonoy Mamacang, Eufrocino Perez and Conrado Sayson long before the year 1960 in various fiestas where cockfighting and ferias always took place and became acquainted with them as fellow *aficionados* of games of chance. (T.s.n., pp. 766-767, Gako) True, Baterna might not have been a "friend" of appellants in the real sense of the word. But the fact remains that he, Baterna, knew them and was acquainted with them in some way, i.e., in the gambling world. In fact, particularly, between Baterna and appellant Mendoza, their relation may be considered more of that of master and boy because Baterna used to run errands for Mendoza.

Secondly, appellants point out as unbelievable that part of Baterna's testimony wherein he declared that appellants, at first, kept from him the identity of their would-be-victim and where said victim lives, considering that Baterna was supposed to be an effective instrument in the execution of their nefarious plot. In other words, since Baterna was supposed to be one of the conspirators, their contention is that it is inconceivable that he was kept in the dark as to the identity of their would-be-victim. (Appellants' Brief, pp. 26-27) This argument is plainly untenable. There is nothing wrong or incongruous or unusual about appellants not revealing the identity of their would-be-victim to

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[1] Baterna was charged separately in Criminal Cases Nos. 4259 and 4260 but when the said case was consolidated with Criminal Case No. 4458 against Mendoza, et al., the prosecution asked for and succeeded in having Baterna discharged and made a state witness.

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Baterna. It was enough that they asked him to go with them to the mountains to kill somebody. Considering Baterna's initial consistent hesitancy, if not refusal to join them, appellants could not be one hundred percent sure that Baterna would not squeal on them somehow. Indeed, Baterna refused at first to do appellant Mendoza's bidding and was also hesitant and uncertain when the proposal was put out to him for the second time. As a matter of fact, Lirasan and Mamacang had to prod him to join them in going to the mountains—to the scene of the crime. Besides, it was a little difficult, if not pointless, for the appellants to readily reveal all the details of their plan to Baterna since Mendoza left the date of the execution of said plan only to Sayson. Sayson appears to have been the leader of the group to whom details of the plan had been entrusted by Mendoza. Thus, Baterna testified that during the meeting at the house of Sayson, in the morning of November 4, 1960, Mendoza left the execution of their plan to kill to the discretion of said Sayson. (T.s.n., p. 312, Gako) Nowhere in Sayson's testimony before the lower court is this declaration of Baterna rebutted. If the date of the execution of the plan was withheld from the other appellants, except Sayson, nothing is then unbelievable about the fact that the identity of the would-be-victim was also withheld from Baterna.

Thirdly, appellants brand as incredible Baterna's testimony that appellant Mendoza gave his parting advice to the group, to wit:

"If you are on your way, don't use the firearms because they are under certificate of registration they will cause panic in the neighborhood, use only hunting knives." (T.s.n., p. 311, Gako).

Appellants claim that if these were true, then there was absolutely no necessity for Lirasan to have brought with him his Thompson submachine gun and for appellant Mamacang to do the same with his firearm, nor for Sayson to also do so with his carbine. Again, this claim is not meritorious. Mendoza's advice evidently referred to the use of their firearms in killing the Alforques and not to completely not taking any other weapons with them. Mendoza was just advising them to be cautious in using their firearms. For

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obvious reasons, it would have been risky for them to embark in such a dangerous task if they did not take with them firearms. At any rate, the fact is that pursuant to Mendoza's advice, they did not use their firearms in killing the Alforques, except the butts thereof, in order precisely to avoid creating the explosive sounds that might be heard by the neighbors. Appellants used their hunting knives in inflicting numerous stab wounds upon their victims. (T.s.n., pp. 377, 406-409-411, Gako)

Fourthly, appellants also question the credibility of Baterna's testimony stating that the date of execution of the nefarious plot was left to the discretion of Sayson. They contend that Sayson could not have possibly disseminated his decision to his cohorts for the execution of their plan in the evening of that same day because after their meeting at Sayson's house in the morning of November 4, 1960, all of them went home to their respective houses. (Pp. 35-38, Appellants' Brief) But then, it is of record that the co-conspirators met again that very same afternoon within the land of their victims and successfully accomplished their plot to kill them that evening. This merely indicates beyond doubt that the plan to kill Alforque was already thoroughly discussed beforehand by the conspirators in the house of Sayson. The fact that Baterna became aware only that very afternoon that the plan to kill Alforque would be carried out that very same evening of November 4, 1960 when appellants Lirasan and Mamacang forced him to join them, does not detract from the truth that indeed the details of the evil plan were already known to the appellants. This in fact shows that Baterna was not exactly in the plot; that he was forced by Sayson and Mendoza to join them even as a mere look-out; and that Lirasan and Mamacang had to force him to join them that afternoon because, after all, they are already revealed to him more than they should. Besides, Baterna's failure to provide himself with a deadly weapon to effectively aid the appellants in the execution of the criminal act strengthens the conclusion that he (Baterna) was just an unwilling or reluctant participant in the commission of the offense. He cannot at that stage get out or extricate himself anymore from the situation

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because of fear of appellants Lirasan and Mamacang, they having virtually dragged him to join them at the point of their guns. Baterna likewise feared Mendoza not only because he was the incumbent Mayor of the Municipality of Mahayag (Zamboanga del Sur), but also because at one time he had had the occasion to taste the physical punishment inflicted upon him—that is, when he once disobeyed Mendoza's order to maltreat a friend of Baterna, who was caught peeping to see a boxing bout sponsored by Mendoza, and he (Mendoza) ordered Lirasan to whip him (Baterna) with the tail of a stingray fish. (T.s.n., p. 476, Gako)

Fifthly, appellants would discredit Baterna because of alleged contradictions among his testimony in chief, his four affidavits (Exhibits 75, 3 and 3-A also marked as Exhibits 76 and 76-A and marked by the prosecution as Exhibits QQ and QQ-A; pp. 6, 50-51, Folder of Exhibits; Exhibits 4, 4-S) and his declarations during the preliminary investigation conducted by Assistant Provincial Fiscal Hermogenes Balisado (Exhibits 11 to 58; pp. 1-58, Record of CFI). Like the lower court, We have taken pains to carefully scrutinize all such alleged contradictions and We do not hesitate to hold that they are more apparent than real. Appellants claim, for instance, that while Baterna stated in his affidavit, Exhibit 76, that Mayor Mendoza mentioned to him the name of their intended victim, he testified on the witness stand that Mayor Mendoza did not mention the name of Alberto Alforque. (Pp. 55-57, Appellant's Brief) Exhibit 76 was taken when the plot to kill was successfully executed already and after Baterna had been apprehended for involvement in the killing of Alberto Alforque. For Baterna to have mentioned Alberto Alforque as the victim appellant Mendoza had ordered him previously to slay is quite understandable. Exhibit 76 (affidavit of Baterna) was taken by an investigator who usually is not a lawyer and who propounds, types and interprets the questions and answers all by himself and thereafter let the affiant read the same before attaching his signature thereto. Most often the affiant in such a situation goes over the contents thereof only haphazardly. It is possible that errors are committed therein. What

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is important in the present case, however is that Baterna stood pat on his declaration under oath on the witness stand that appellant Mendoza, and later appellant Sayson, did not mention at first the name of Alberto Alforque. In People *vs.* Resayaga y Bohol, G.R. No. L-23234, December 26, 1973 (54 SCRA 350), this Court reviewed and laid down our rulings on the probative value attached to affidavits of this kind, thus:

"Much importance cannot be attached to that discrepancy because, as has been truthfully observed, the infirmity of affidavit evidence is a matter of judicial experience. Since, generally, an affidavit is not prepared by the affiant himself but by another who uses his own language in writing the affiant's statements, omissions and misunderstanding by the writer are not infrequent particularly under the circumstances of hurry and impatience. (People *vs.* Mariquina, 84 Phil. 39, 42)

"An affidavit, 'being taken *ex parte,* is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject.' (People *vs.* Alcantra, L-26867, June 30, 1970, 33 SCRA 812, 820)

" 'We have too much experience of the great infirmity of affidavit evidence. When the witness is illiterate and ignorant, the language presented to the court is not his; it is, and must be, the language of the person who prepares the affidavit, and it may be, and too often is, the experience of that person's erroneous inference as to the meaning of the language used by the witness himself; and however, carefully the affidavit may be read over to the witness, he may not understand what is said in language so different from that which he is accustomed to use. Having expressed his meaning in his own language, and finding it translated by a person on whom he relies, into language not his own, and which he does not perfectly understand, he is too apt to acquiesce; and testimony not intended by him is brought before the court as his.' (2 Moore on Facts, Sec. 952, p. 1105; People *vs.* Timbang, 74 Phil. 295, 299)."

Appellants further point out that in Baterna's affidavit, Exhibit 76, he stated that he and his companion waited for one Juanito Paler under the house of Alberto Alforque. This, they claim, runs counter to the declaration of Baterna on the witness stand that after Juanito Paler pointed the way to the house of the Alforques,

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the latter disappeared and he did not know where he went. (Pp. 57-59, Appellants' Brief) We cannot consider such a flaw grave or significant enough to destroy the veracity of the whole testimony of Baterna. At any rate, Baterna admitted in his testimony that he committed a mistake and successfully explained it, thus:

"A. That was the answer I gave but when I gave that answer I was mistaken. The truth is that upon arriving at the place where we stopped, Conrado Sayson, Genovevo Potestas, Eufrocina Perez and Juanito Paler after pointing to us the trail to be taken by us towards the house of Alberto Alforque, this Juanito Paler disappeared and I did not know where he went and that is the truth." (Tsn, p. 832, Gako)

Further cross examination failed to make the witness change his testimony:

"ATTY. VERA CRUZ:

(To the Witness)

"Were you asked this question by Atty. Cerilles: 'During your travel some of you fetched Juanito Paler and then Juanito Paler went with your group and pointed the house of Alberto Alforque, is that the house near the house of Juanito Paler?' and your answer was 'Yes sir.' Did you make that answer to the question?

"A. That was my answer to the question propounded but that answer was given in a hurry because actually what transpired was this, after Juanito Paler arrived he just pointed to us the trail to be followed and after that Juanito Paler disappeared and I cannot also determine whether the house of Alberto Alforque was very close already to the house of Juanito Paler because that was the first time I have gone to the place." (Tsn, p. 834, Gako)

Still another alleged doubtful part in the declaration of Baterna in his affidavit is that part where he said that he was ordered to kill anybody who will go to the house of Alberto Alforque to find out what happens. Appellants maintain that this is inconsistent with his testimony that he was posted by the window to report to the group if there are persons passing by. (Tsn, p. 359, Gako; p. 59, Appellants' Brief). There is actually no substantial inconsistency there. At most, we can say that these refer to two orders which, far from being inconsistent, complement each other. One is to kill anybody who will attempt

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to go to the house inquiring about what is happening and the other is to inform the others when somebody is passing by. It is altogether possible that both instructions were issued to Baterna.

Insisting in their attempt to pull down the weight of Baterna's testimony, appellants make capital of the testimony of Dr. Regencia, to wit:

> "Q.— Could it (Exhibit 'C-2') be caused by the butt of a gun? Exhibit 'C-2' refers to the injury on the curvature below the left ear of Alberto Alforque)
>
> "A.— It could be possible to be caused by it." (Tsn, p. 96, Gako)

Appellants maintain that this testimony of Dr. Regencia only means that the injury which followed the curvature below the left ear of the late Alberto Alforque (Exhibit C-2) must have been inflicted or caused by the butt of a gun *because of its curvature.*(P. 64, Appellants' Brief) The claim that, therefore, Baterna's testimony that Alforque was hit by a buttless submachine gun could not be true. To prove their point, they call Our attention to Exhibit "90" which is a picture of a buttless submachine gun without a butt, the rear end of which is *not curved.* Dr. Regencia did not categorically state that the injury to the left mandible of Alberto Alforque was caused by the butt of a submachine gun because of its curvature. Certainly, the above-quoted answer of Dr. Regencia did not exclude any other possibility.

By and large, as already noted, the supposed contradictions and inconsistencies in the testimony of Baterna cannot detract substantially from the evident veracity of the incriminatory facts related by him, convincingly indicative of the guilt of the appellants. Otherwise stated, notwithstanding the persistent arguments of appellants against its credibility, the intrinsic truthfulness of Baterna's testimony was not materially impaired.

In their third assignment of error, the target of appellants' attack is also about the credibility of the other prosecution witness, Rustica Flores. Before weighing the alleged inconsistencies in her testimony, it is best to correct first the impression erroneously being given by appellants that said Rustica Flores is the "lone eyewitness" to the gruesome killing of the Alforque spouses.

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Flores was *not* the lone eyewitness thereto. She and Roberto Baterna saw the incident. In fact, it can be safely stated that Baterna was the only one who actually saw the actual killing from beginning to end because as soon as the deceased Alberto Alforque and appellant Lirasan started grappling for the possession of the gun, Rustica Flores fled and went up again to her room in the second floor. At most, Flores corroborated, with obvious sincerity the declaration of prosecution witness Roberto Baterna regarding the details of the commission of the crime.

Quoting lengthily from her testimony in Criminal Cases Nos. 3298 and 3308, both for murder against Juanito Paler, appellants' claim that Flores never revealed the names of the two persons she saw inside the house of the Alforques nor did she mention that the person facing Alberto Alforque and the latter's wife was tall, big, robust and muscular. Instead, she allegedly described the person facing Alforque as short and of black complexion. (Pp. 79-86, Appellants' Brief) Rustica Flores' declaration in said two previous criminal cases does not impair materially her whole testimony in the instant case where she declared that she was of the impression that the person facing Alforque (Alberto) was short and black because the latter was sitting on the table so that the person in front of him appeared taller. She did not mention their build because she was not asked that particular question. She did not also reveal the names of appellants Lirasan and Mamacang because she did not yet then know their names. The important thing, however, is that in the instant case, she was emphatic in stating that she could recognize them if she will see them again, which she actually did from the witness stand. (T.s.n., pp. 1059-1060, Gako)

Rustica Flores testified among other things: At about 7:00 o'clock in the evening of November 4, 1960, while she was already in bed in her room upstairs, she heard some sort of discussion emanating from the first floor, somebody asking, "Why are you not going with us when Mayor Orning Mendoza sent for you?" Taking a kerosene lamp with her, she went downstairs and upon reaching the dining room of the first floor, she saw a man pointing

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a gun at her uncle, Alberto Alforque, who was sitting at the edge of the table. She placed the kerosene lamp on the table against which Alberto Alforque was leaning. She said the man was smaller and shorter than Alberto Alforque, while the other man facing Valeriana Reble de Alforque "was small fellow, short and slender." (T.s.n., pp. 1056, 1057, 1059, 1074 and 1130, Gako) Appellants claim that said descriptions do not fit the size of prosecution witness Roberto Baterna. (Pp. 91-92, Appellants' Brief)

There is an explanation to this by Rustica Flores which We believe is sufficient to overcome any shadow of doubt upon the veracity of her whole testimony. She explained that since Alberto Alforque was seated on top of the dining table, to her he (Alberto) looked bigger and taller than the person in front of him. Besides, she found no difficulty in identifying appellant Lirasan at the trial as the person who pointed the thompson submachine gun at the victim on the night in question by his almond eyes and wide nose which she distinctly remembered. (Tsn, p. 1059, Gako)

Appellants also brand as incredible that part of Rustica's testimony where she declared that she jumped out of a window, hid behind some bush, then when silence reigned over the place, went back to the house to verify whether or not the Alforque spouses were already dead because first, she was then suffering from uncontrollable fear and second, there is no opening or window overlooking the sala. (Pp. 95-96, Appellants' Brief) This contention is also untenable. There is nothing unbelievable in the act of Rustica in going back to the house. She did that after she had ascertained that all intruders had left and stillness already crept all over the place. In fact, it is but natural for her to verify what happened to her relatives, despite her fear. Fear does not prevent one from doing anything natural. It sometimes causes one to do the impossible, up to a certain point, as what Rustica did. Or she might have regained courage, at least to verify what happened to her uncle and aunt, and it was after she had informed their nearest neighbors, the Opsiars, about the incident that she fell unconscious. Now, as to the presence of the window

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overlooking the place where the killing occurred, the prosecution had established beyond reasonable doubt that there is indeed such window. Prosecution witness Roberto Baterna was adamant in stating that he was posted beside that window and he witnessed the struggles between appellant Lirasan and Alberto Alforque and between Valeriana Reble de Alforque and appellant Mamacang. Rustica Flores said that it was through that window that she jumped out of the house and through the same that she re-entered the house to verify what happened to the Alforque spouses. What is more, Exhibits "00" and "63" show that there is indeed an opening in the room where the stabbing took place.

Appellants recite other statements of Rustica which they contend to be inconsistent with each other. We have gone through them with care, and We find said alleged inconsistencies to be very flimsy and cannot overthrow the reliability as a whole of her testimony.

In their fourth assignment of error, appellants again have resorted to trying to discredit the testimony of another prosecution witness, Bienvenido Andilab. Andilab, an incumbent mayor of Sergio Osmeña, was then a barrio lieutenant of Princesa Lamaya, Polanco, Zamboanga del Norte in the year 1960. He testified that a certain municipal council meeting was held in the barrio of Dampalan, Polanco, Zamboanga del Norte on July 3, 1960, which was convened by appellant Saturnino Mendoza who was then accompanied by appellants Jesus Lirasan and Agripino Mamacang. This meeting was attended by the leaders of, particularly the barrio lieutenants of Princesa Lamaya, Dampalan and New Tangub and the prominent residents thereof. They discussed, among other things, the territorial jurisdiction of Mahayag, Zamboanga del Sur and Polanco, Zamboanga del Norte over New Tangub. No definite understanding was reached, though appellant Mendoza insisted that said barrio is under the jurisdiction of his municipality, Mahayag. Another meeting was held on July 4, 1960 in the house of the deceased Alberto Alforque, then a barrio lieutenant, located at barrio New Tangub, Polanco, Zamboanga del Norte. Another heated discussion ensued

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between appellant Mendoza and the late Alberto Alforque concerning the jurisdiction over barrio New Tangub. Appellant Mendoza threatened the victim.

The above declarations, obviously presented to prove a motive on the part of the appellants, were not overthrown successfully by the defense with proof to the contrary except their weak alibi. Besides, prosecution witness Andilab was corroborated strongly by prosecution witnesses Loreto Mirafuentes and Pedro Sayson. Lengthy cross-examinations conducted by the defense of these witnesses only strengthened their credibility.

Appellants assert that their defense witness Elias Lacaya completely refuted the claim of Bienvenido Andilab that on November 5, 1960, the latter reported the incident in question to Mayor Olvis and contend that this cannot be so because of the following: In the morning of November 4, 1960, Andilab went to see him (Lacaya) at the municipal building of Polanco to request him to help the people declare their land for taxation purposes; that on that same morning of November 4, 1960 at 10:00 o'clock, together with Cpl. Damoag, Pat. Olario, 2 PC soldiers, and with Andilab as their guide, they went to Princesa Lamaya passing by Dilawa where they passed the night; that in the morning of November 5, 1960 they proceeded to Princesa Lamaya and passed the night in Andilab's house; that after breakfast in the morning of November 6, 1960, they went to the market place to collect taxes from the people and there they were informed of the killing of the Alforque couple; that Cpl. Damoag immediately led the same group to New Tangub; and that Andilab never told them anything about the Alforque incident in New Tangub. (Pp. 134-138, Appellants' Brief) But the trial court correctly disregarded Lacaya's declaration, and We cannot add or detract from its observations, to wit:

"The weakness of Lacaya's declaration lies in the fact that Andilab went to Polanco only on November 5, 1960, after PC soldiers Locop and Abanilla, who were with him in his house in Princesa Lamaya on the night of November 4, 1960, had left for the house of the slain Alforque spouses, to report to Mayor Olvis what he had seen in the dining room of the house

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of said couple in New Tangub at about 7:30 o'clock in the evening of November 4, 1960, and that he (Andilab) rode on the jeep of Mayor Olvis up to Pinian, when the said Mayor with some companions, among whom were his Chief of Police Francisco Saso and Dr. Regencia, Rural Health Officer hereof, left for New Tangub, via Ozamis City and Mahayag, early in the morning of November 6, 1960. Andilab's joining Mayor Olvis was corroborated by the latter. Lacaya's testimony about his being with Andilab in the municipal building of Polanco until 10:00 o'clock in the morning of November 4, 1960 is also weak, because his daily time record, Exhibits SS, positively shows that on November 4, 1960 he was already in barrio Dilawa Damo-ag's house at noon on February 15, 1968 when he testified 'to inquire from him about the times and dates which I could not exactly remember anymore'—and because even as he said that although he has a diary in his house, he cannot remember 'If there is November 1960' therein, even as he said that his having left Polanco on November 4, 1960 'appears in it'. Lacaya did not say that he lost his diary, but he did not ask for the time to go to his house, which is in Dipolog, to get it and show it to the Court." (Decision of lower court, pp. 367-368).

In brief, the foregoing discussed assignments of error of appellants are all centered on the credibility of the prosecution witnesses. We reiterate, We have carefully considered appellants' arguments in the light of the evidence on record and We are morally convinced, despite their arguments, that they are guilty of the offense charged. The trial judge who had every opportunity to observe the demeanor of all the witnesses, analyzed the evidence in an unusually long decision of 457 pages and found the prosecution witnesses more reliable. We hardly have to say again that findings or assessment of credibility of witnesses by the trial court are as a rule entitled to great weight and respect.

"Clearly, the local issue presented here revolves around the credibility of witnesses, i.e., whether or not the trial court was correct in giving weight to the testimony of the prosecution witnesses. And the well-established rule on this point is that the factual conclusion reached by the trial court, which had the opportunity more than the reviewing tribunal to observe and gauge the demeanor and conduct of the witnesses while testifying and to properly appreciate the same, is not to be disturbed, unless there is proof of misapprehension of evidence." *(People vs. Baduso, 60 SCRA 61; People vs. De la Victoria, 64 SCRA 400; People vs. Cariño, 55 SCRA 516-517; People vs. Dorado, 30 SCRA 53; People vs. Legones, L-30245, January*

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30, 1976, 69 SCRA 210; See also People vs. Estero, L-32574, June 29, 1979, 91 SCRA 93)

". . . This then is a case where the well-settled principle as to the acceptance of the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies, finds application. This Court had gone so far as to hold in People *vs.* Tila-on (2 SCRA 653): 'Finally, the rule is now firmly established to the point of becoming elementary in this jurisdiction and elsewhere that where there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from." *(Citing People vs. Payao, L-29364, Nov. 21, 1975; People vs. Gumahin, L-22357, Oct. 31, 1967; 21 SCRA 729; People vs. Panganiban, L-22476, Feb. 27, 1968, 22 SCRA 817; People vs. Pelago, L-24884, Aug. 31, 1968, 24 SCRA 1027; People vs. Manos, L-27791, Dec. 24, 1970, 36 SCRA 457; People vs. Beraces, L-25016, March 27, 1971, 38 SCRA 107; People vs. Sabandal, L-31129, Sept. 30, 1971, 41 SCRA 179; People vs. Dramayo, L-21325, Oct. 29, 1971, 42 SCRA 59; People vs. Angcap, L-28748, Feb. 29, 1972, 43 SCRA 437; People vs. Carandang, L-31012, Aug. 15, 1973, 52 SCRA 259; People vs. Macaraeg, L-32906, Oct. 23, 1973, 53 SCRA 285; 64 SCRA 400; People vs. de la Victoria, L-30037, June 27, 1975, (64 SCRA 400) (People vs. Ordonio, L-33829, December 19, 1975)*

"In raising the issue of credibility, appellant unavoidably comes to grip with the well-settled rule that the assessment of the trial court of the witnesses' credibility is generally and almost invariably given full weight and respect by the reviewing court which is not given the opportunity to observe the witnesses' manner of, and demeanor in, testifying on the stand. We find absolutely no cause in the present case to depart from this rule. The alleged inconsistencies are, as contended by the Solicitor General, on inconsequential details that do not discredit testimony, especially when the supposed inconsistencies consist of variance between said testimony and affidavit executed by the witnesses out of court (Exhibits H and H-1). For the incompleteness and lack of accuracy of affidavits are well known. (People *vs.* Tiongson, 47 SCRA 279) *(People vs. Cabeltes, Nos. L-38145-48, June 1979, 91 SCRA 208)*

The last two defenses put up by appellants are: (1) lack of motive on their part to commit the crime charged; and (2) failure of the prosecution to prove conspiracy.

It is almost absurd for appellants to pretend at all that they had no motive to commit the offense of which they were found

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guilty by the trial court. They claim that Alforque's refusal to accede to Mendoza's wish to recognize that barrio New Tangub is within the territorial jurisdiction of Mahayag, Zamboanga del Sur, of which he (Mendoza) was then the appointed Mayor, was not sufficient or compelling enough to move them to kill the Alforque couple, because by so doing, appellants did not stand to gain anything. (Pp. 90-91, Appellants' Brief) The record is replete with evidence showing beyond doubt that Alforque was subjected to continuous harassment by Mendoza ever since the former openly spoke against the latter's proposal to claim New Tangub to be under his (Mendoza's) jurisdiction. We only have to recall that during the meeting held by Mayor Mendoza and his councilors in the house of Alforque in New Tangub, Polanco, Zamboanga del Norte in the afternoon of July 4, 1960, an acrimonious discussion took place between Alforque and Mendoza that resulted in the latter threatening the former with butt-striking, hand-cuffing and incarceration, if he would not place himself and his barrio within the territorial jurisdiction of Mahayag. (Tsn, pp. 164-165, Jan. 18, 1967 p. 280, Jan. 20, 1968) This was admitted by no other than Mendoza himself, when he conceded that there was indeed a little discussion between him and Alforque during the said meeting. (Tsn, p. 114, August 6, 1969) Proof of said threats of bodily harm, is that Alforque filed a criminal charge against Mendoza for grave threats in the Court of First Instance of Zamboanga del Norte. As counter moves, after the filing of said complaint for grave threats against him, Mendoza pettily filed three (3) criminal cases for robbery against Alforque in the Municipal Court of Mahayag involving the measly amounts of ₱2.50, ₱7.50 and ₱3.00 (Exhibits CC-4, HH-8, and 11-4, pp. 4, Folder of Exhibit 1), all of which were dismissed on motion of the Chief of Police of Mahayag. Besides, Alforque was arrested by the policemen of Mahayag under Mayor Mendoza sometime in October 1960 (P. 318, Tsn, May 22, 1967). When Mayor Olvis of Polanco saw appellant Mendoza in Mahayag in order to bail out Alforque, Mendoza pretended that he (Alforque) was not actually arrested but was only being investigated. The truth, however, was that Mayor Olvis saw Alforque actually

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confined in jail. (Pp. 387, tsn, May 24, 1967) All these circumstances are plain indications of the harassment suffered by Alforque in the hands of Mendoza as a result of the former's stubborn stand already off mentioned above. It is plainly ludicrous that Alforque who was the owner of over 81 hectares of land, a lot and a well constructed house, a store worth ₱25,000.00 and animals such as cows, carabaos, and horses (Tsn, pp. 1084-1086, June 14, 1967) would rob anybody the amounts of ₱2.50, ₱7.50 and ₱3.00. Despite all these harassments, the deceased stood firm and did not relent in his stand. Is it any wonder then that appellants had to resort to his liquidation?

Aside from lack of motive, appellants maintain that the prosecution failed to prove that conspiracy existed among all of them. (Appellants' Brief, pp. 123-124) As all their other previous contentions, this is devoid of merit. The record amply shows that appellants implemented their nefarious plan through their collective endeavors or acts before and after its commission, hence, their duly proven acts before the commission of the offense, are mute but eloquent testimony of the existence of their conspiracy. There is no reason to doubt that the commission of the instant offense was hatched in a meeting of all the appellants at the house of Sayson on the morning of November 4, 1960, where a prize of ₱300.00 to each of them was offered by Mendoza (Pp. 294-295, Gako); that all of them agreed to the proposal and Sayson was designated as the leader of the group (Pp. 301-303 & 312, Gako); that before proceeding to the house of the Alforques, all of them agreed that policemen Lirasan and Mamacang would be the first ones to enter the house (P. 343, Gako); that as ordered by Sayson, each one of them posted himself in a strategic position (according to plan) to ensure their security, the secrecy of their mission and the accomplishment of the same unhindered by any outside obstacles (Pp. 352-353, tsn, Gako); that after appellant Lirasan felled Alforque by striking him almost below his left ear, with the butt of his gun, Perez approached Alberto and made several thrusts with his knife causing the latter his total fall (Pp. 383, 405, 406 & 407, tsn, Gako); that while appellant Mamacang was

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stabbing Valeriana Alforque, appellant Potestas also approached and stabbed her with his 8-inch knife, causing her to stagger and fall face downward (Pp. 411-412, 428-429, tsn, Gako); and that after assuring themselves that the Alforque spouses were dead, Sayson ordered Lirasan and Mamacang to search the second floor of the house, while Potestas and Perez searched the ground floor for other persons, after which they all left the house (Pp. 439, 441, 443, tsn, Gako). It is thus evident that the appellants acted in concert pursuant to the same objective, the joint purpose and design, namely, to do away with the obstinate and adamant Alforque. After killing Alberto, the latter's wife, Valeriana had also to be killed because she came in aid of her husband whom she saw was being manhandled by them.

With conspiracy thus established, each appellant must be held responsible for the acts of each of them in the furtherance of their common design. The lower court committed no error in convicting them. (People *vs.* Alcantara, G.R. No. L-26867, June 30, 1970, 33 SCRA 812; People *vs.* Pajenado, G.R. No. L-26458, January 30, 1976, 69 SCRA 172) And We cannot close this decision without commending His Honor for his industry and meticulousness in painstakingly preparing an extraordinarily extended opinion discussing in detail the bases of his conclusions.

The other assigned errors need no further discussion in view of the above disquisition which inevitably leads to no other conclusion than that the same must be overruled.

JUDGMENT

Unquestionably, as regards the killing of Alberto Alforque, the offense committed by the accused in conspiracy with each other, is murder, qualified by evident premeditation, with the generic aggravating circumstances of (1) superior strength, Eufrocino Perez and Jesus Lirasan having helped each other in taking the victim's life; (2) having committed the offense in the residence of the offended party; (3) by a band; (4) in consideration of the price promised by the principal by inducement, accused Saturnino Mendoza, and (5) taking advantage of their public

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position in respect to Lirasan and Agripino "Nonoy" Mamacang, who were policemen and purposely used their being such to gain ready entrance into the residence of the victims, and also as to Mendoza, being then Mayor and as such gave the instructions to his policemen and henchmen to kill Alforque, offset by the sole mitigating circumstance that they voluntarily surrendered as found by the trial court, for all of which, all three of them, namely Saturnino Mendoza, Jesus Lirasan and Agripino "Nonoy" Mamacang, being hereby found guilty beyond reasonable doubt, as discussed above, are each sentenced to the extreme penalty of DEATH.

With respect to the killing of Valeriana Reble de Alforque, the accused Agripino "Nonoy" Mamacang, who as discussed above is found guilty beyond reasonable doubt of the crime of only homicide, inasmuch as he and Genovevo Potestas (who has not yet been arrested) stabbed her to death because she struck Mamacang several times with the piece of firewood she was carrying when Mamacang admonished her not to interfere in the affair between them and her husband, Alforque, with the aggravating circumstances, however, of disregard of sex, superior strength and dwelling, for which he is hereby sentenced to suffer the separate penalty of *reclusion temporal* in its maximum period, which by applying the Indeterminate Sentence Law is a minimum of ten (10) years and one (1) day of *prision mayor* to a maximum of twenty (20) years of *reclusion temporal.*

All the accused sentenced hereby shall suffer the corresponding accessory penalties, indemnify the heirs of Alfonso Alforque and Valeriana Reble de Alforque in the sum of Twelve Thousand (₱12,000.00) Pesos, for each of them and pay one sixth (1/6) each of the costs.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro and *Melencio-Herrera, JJ.,* concur.