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[G.R. No. L-36936. August 5, 1985]

**THE PEOPLE OF THE PHILIPPINES**, *plaintiff-appellee*, *vs.* **ARSENIO ARBOIS, LEONARDO ROLLO, PEDRO LAUDERES, and BLARITO ARBOIS**, ***defendants***, **ARSENIO ARBOIS**, *defendant-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; UNAVAILING WHEN THE ACCUSED IS POSITIVELY IDENTIFIED BY THE WITNESSES.**— Alibi is unavailing once the accused is positively identified by one without motive to charge falsely the accused, especially with a grave offense that could bring death by execution to the culprit. In the instant case, the alibi of the appellant Arsenio Arbois is negated by the testimonies of Rosita Borden, Arsenio Bocabo and Demetrio Sanico who all categorically declared that the said appellant had actively participated in the killing of Castor Borden.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES AND IMPROBABILITIES WOULD NOT IMPAIR THE CREDIBILITY OF THE WITNESS.**— The appellant claims, however, that the testimonies of the witnesses for the prosecution are unworthy of belief in view of certain errors, inconsistencies and improbabilities in their declarations. But, the discrepancies and inconsistencies pointed out by the appellant in the testimonies of the witnesses for the prosecution are not of a nature and magnitude that would impair the credibility of said witnesses. They refer to minor details which are naturally to be expected from uncoached witnesses.

3. **ID.; CRIMINAL PROCEDURE; INFORMATION; SUFFICIENT WHEN THE FACTS ESSENTIAL TO THE DESCRIPTION OF THE OFFENSE ARE AVERRED THEREIN.**— Counsel for the appellant is questioning the sufficiency of the information in that the details of the killing should have been averred in the information. The rule, however, is that matters of evidence, as distinguished from the facts essential to the description of the

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offense, need not be averred. All that is required is that the charge be set forth with particularity as will reasonably indicate the exact offense which the accused is alleged to have committed and will enable him to intelligently prepare his defense.

4. **ID.; ID.; ID.; EFFECT OF THE LACK OF CERTIFICATION BY THE FISCAL THAT A PRELIMINARY INVESTIGATION HAS BEEN CONDUCTED.**— Suffice it to state in this connection that the certification by the fiscal that a preliminary investigation had been conducted in accordance with law is not an essential part of the information and its absence cannot vitiate it as such. Besides, the failure to make a preliminary investigation of a criminal charge to which no objection was raised in the court below, may not be questioned for the first time on appeal. Furthermore, the accused in a criminal case has a right to waive preliminary investigation and the appellant herein had in fact waived preliminary investigation.

5. **CRIMINAL LAW; CONSPIRACY; IMPLIED WHEN THE FOUR ACCUSED TOOK PART IN THE DEED AND COOPERATED WITH UNITY OF PURPOSE AND CRIMINAL INTENT.**— Conspiracy could be implied since all the four accused took part in the deed and cooperated with unity of purpose and criminal intent when they took turns in stabbing the deceased Castor Borden.

## D E C I S I O N

**CONCEPCION, JR. *J.*:**

Arsenio Arbois, Leonardo Rollo, Pedro Lauderes and Blarito Arbois were charged with the crime of Murder before the Court of First Instance of Samar, committed as follows:

"That on or about the 27th day of February, 1971, at nighttime, in the Municipality of Gandara, Province of Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill, and with abuse of superior strength, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, stab and hack one Castor Borden, with sharp-pointed instruments, with which the accused had

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conveniently provided themselves for the purpose, thereby inflicting several wounds on the different parts of the body of said Castor Borden, which wounds caused the instantaneous death of said Castor Borden."

After due trial, judgment was rendered as follows:

"WHEREFORE, considering the foregoing facts and circumstances, the Court finds the evidence of the defense unvailing in the face of the overwhelming proofs sufficiently and convincingly established by the prosecution. Therefore, the Court finds each of the four accused, namely: BLARITO ARBOIS, PEDRO LAUDERES, LEONARDO ROLLO and ARSENIO ARBOIS guilty of the crime of Murder qualified by treachery and attended by two generic aggravating circumstances, dwelling and band, beyond a reasonable doubt. Consequently, they are hereby sentenced to each suffer the penalty of *reclusion perpetua*; to pay the costs of the proceedings and to indemnify the heirs of the deceased Castor Borden jointly and severally, the sum of Twelve Thousand Pesos (₱12,000.00) and the additional sum of Ten Thousand Pesos (₱10,000.00) as moral and exemplary damages. Accused Pedro Landeres alleged in his testimony in Court that he surrendered to the proper authorities here in Calbayog City. That mitigating circumstance is offset by one aggravating circumstance present in the commission of the crime. There being one remaining aggravating circumstance, the penalty of *reclusion perpetua* imposed upon him is proper and legal.

"The accused are entitled to the full benefits of the preventive imprisonment they may have undergone in connection with this case in accordance with Republic Act No. 6127. The penalty of *reclusion perpetua* is computed at thirty (30) years according to Article 27 of the Revised Penal Code. Article 29 of the same Code as amended by R.A. 6127 makes no distinctions between temporary and perpetual penalties. In all penalties consisting of deprivation of liberty the accused is entitled to credit of one-half (½) (now full) of the time during which he underwent preventive imprisonment. Even in the case of *reclusion perpetua* such credit should be allowed because it is more favorable to the convict (*U.S. v. Ortencio*, 38 Phil. 341, *People v. Jose Gabriel*, L-13756, October 30, 1959)."

From this judgment, all four accused appealed. On May 12, 1980, however, Pedro Lauderes and Blarito Arbois withdrew

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their appeal;[1] and on March 2, 1981, Leonardo Rollo also withdrew his appeal.[2] For consideration is the appeal of Arsenio Arbois.

The record shows that on February 27,1971, Blarito Arbois gave a party in his house at Sambulawan, La Paz, Gandara, Samar, on the occasion of the first post natal bath of his wife Imelda. Among those invited was his *compadre*, Castor Borden who went to the party after lunch. At about 5:00 o'clock in the afternoon, Rosita Borden went to the house of Blarito Arbois to fetch her husband, Castor Borden. There, she saw Arsenio Arbois, Pedro Lauderes, Blarito Arbois and Leonardo Rollo drinking with her husband Castor. She tried to bring her husband home with her since Castor was already drunk, but Castor was restrained by Blarito and Arsenio Arbois who promised to take Castor home later. So Rosita went home alone with her infant child.[3]

At about 7:00 o'clock in the evening of the same day, while Rosita was sitting on the stairs of their house, waiting for her husband, Castor arrived and immediately went to the back of the house to defecate. A few moments later, Arsenio Arbois, Blarito Arbois, Pedro Lauderes and Leonardo Rollo arrived. Arsenio Arbois then called Castor to join them in singing. Castor, however, answered that he was defecating. But after he was through, Castor joined the group. While they were singing, Pedro Lauderes suddenly extinguished the torch he was holding and Rosita heard "thudding sounds" as Blarito Arbois hacked her husband at the nape with a bolo, locally known as *itak*. Castor ran towards their house but he was chased by Blarito Arbois, Arsenio Arbois, Pedro Lauderes and Leonardo Rollo and while Castor was climbing the stairs, Blarito Arbois again hit Castor on the right leg, causing him to fall. Castor crawled under their house, but the four men followed him and then took turns in stabbing him. Rosita pleaded with them not to kill Castor, but

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[1] *Rollo*, p. 236.

[2] *Id.*, p. 244.

[3] tsn of July 18, 1972, pp. 36-38.

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she was not heeded. Thereafter, the four men dragged Castor from under the house and brought him to a nearby stream. Rosita tried to take her husband from them but she was pushed aside. After dumping the body of Castor in the stream, the four men left. Rosita then went to her husband and found him submerged in knee-deep water. She returned home and informed her father who pulled Castor's head from the water.[4]

Dr. Victorino Feral, the Rural Health Physician of Gandara, Samar, who performed an autopsy on the body of Castor Borden found eleven (11) incised wounds and six (6) stab wounds of different sizes in various parts of the body, and abrasions on the chest, which may have resulted when Castor Borden was dragged on the ground.[5]

The testimony of Rosita Borden is corroborated by the testimonies of her father, Demetrio Sanico, with whom they were living at the time;[6] Arsenio Bocabo, a neighbor with whom they shared a common yard;[7] and Paquito Beduya, a member of the Gandara Police Department, who investigated the case and found blood stains under the house of Castor Borden and signs indicating that Castor was dragged to the nearby brook where he found the body of Castor half-submerged in water.[8]

The appellant, Arsenio Arbois, for his part, while admitting that he was present at the party given by his son, Blarito, on February 27,1971, denied participation in the killing of Castor Borden. He claimed that he went home at about 3:00 o'clock in the afternoon and was at home until about 7:00 o'clock in the evening when he went to the house of his son, Norberto, upon being informed that Blarito lay wounded there and was in a critical condition. He fetched Blarito from the house of Norberto and brought him to the Calbayog City Hospital for

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[4] *Id.*, pp. 40-51.

[5] tsn of Nov. 27, 1971, pp. 9-18; Exh. A.

[6] tsn of Aug. 16, 1972, pp. 86, *et seq.*

[7] tsn of Feb. 9, 1972, pp. 46-49.

[8] tsn of Nov. 17, 1971, pp. 5-7.

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treatment. He was accompanied by Pedro Lauderes who told him that he (Pedro Lauderes) had killed Castor Borden.[9]

We find, however, that the appellant Arsenio Arbois was an active participant in the killing of Castor Borden since he was positively and clearly identified by the witnesses for the prosecution as one of the persons who assaulted Castor Borden. Said the court:

"The *alibi* of Leonardo Rollo can not prosper as his participation in the commission of the offense has been duly established. The same is true with Arsenio Arbois. His *alibi* cannot merit serious consideration for like Leonardo Rollos's he was an active participant in the inhuman killing of Castor Borden. Leonardo Rollo and Arsenio Arbois were positively and clearly identified by the eyewitnesses of the prosecution in a manner that leaves no room to doubt their active participation in the crime at bar. There were lights from the house of Arsenio Bocabo and their identities could not be mistaken, especially so because Bocabo, Sanico and Rosita Borden have known them for quite a time. The testimonies left no doubt as to the identities of the killers of Castor Borden because they were made in a forthright, clear and explicit manner. It must be remembered that the record of the trial discloses the fact that there were lights from the houses of Arsenio Bocabo and Castor Borden and these two houses are so close to each other that they enjoy a common yard. The identities, therefore, of the accused were clear and positive because the eyewitnesses to the commission of the offense were not only familiar with their faces but particularly because of the light that emanated from the improvised torches in the house of Arsenio Bocabo and the house of Castor Borden. The Court entertains no doubt and it is satisfied that the four accused, namely Leonardo Rollo, Blarito Arbois, Pedro Lauderes and Arsenio Arbois were conclusively and sufficiently identified as the persons who helped and cooperated with each other in brutally killing a defenseless Castor Borden, by eyewitnesses whose credibility as observed by the Court cannot be impugned. The Court remembers that Rosita Borden, widow of the deceased Castor Borden suddenly cried while testifying on the part of the incident at bar when her late husband was stabbed by the four accused herein. The Court noted that Rosita Borden was not

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[9] tsn of Dec. 8, 1972, pp. 137-144.

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shedding crocodile tears but was simply moved to tears presumably because of the recollection as to how her husband was ruthlessly and brutally killed."

Indeed, alibi is unavailing once the accused is positively identified by one without motive to charge falsely the accused, especially with a grave offense that could bring death by execution to the culprit.[10] In the instant case, the alibi of the appellant Arsenio Arbois is negated by the testimonies of Rosita Borden, Arsenio Bocabo and Demetrio Sanico who all categorically declared that the said appellant had actively participated in the killing of Castor Borden.

The appellant claims, however, that the testimonies of the witnesses for the prosecution are unworthy of belief in view of certain errors, inconsistencies and improbabilities in their declarations. But, the discrepancies and inconsistencies pointed out by the appellant in the testimonies of the witnesses for the prosecution are not of a nature and magnitude that would impair the credibility of said witnesses. They refer to minor details which are naturally to be expected from uncoached witnesses.

The appellant also claims that Arsenio Bocabo testified against him because at one time, on Christmas Day of December, 1970, Bocabo became drunk and disorderly prompting him, as *barrio* captain of the locality, to order Bocabo to be tied up and imprisoned at the *barrio* hall. The appellant further said that Rosita Borden testified against him in obedience to the wishes of her brother-in-law, Antonio Borden, who bore him a grudge.[11] However, these are mere conjectures and are not sufficient to motivate the said witnesses to testify falsely against the appellant. Besides, Castor Borden was a *compadre* and close to Blarito Arbois so that his widow, Rosita Borden, would not have testified against Blarito and his companions unless impelled to tell the truth and see justice done.

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[10] *People vs. Estante*, L-30354, July 29, 1979, 92 SCRA 122; *People vs. Cabeltes*, L-38145-48, June 29, 1979, 91 SCRA 208; *People vs. Artieda*, L-37825, May 15, 1979.

[11] tsn of Dec. 8, 1972; pp. 146-147.

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Counsel for the appellant contends that the trial court had allowed the introduction of evidence showing the gory details of the killing which were not alleged in the information. Obviously, counsel for the appellant is questioning the sufficiency of the information in that the details of the killing should have been averred in the information. The rule, however, is that matters of evidence, as distinguished from the facts essential to the description of the offense, need not be averred. All that is required is that the charge be set forth with particularity as will reasonably indicate the exact offense which the accused is alleged to have committed and will enable him to intelligently prepare his defense.[12]

Counsel for the appellant also contends that for lack of certification under oath in the information that a preliminary investigation was conducted, the accused should be acquitted.

Suffice it to state in this connection that the certification by the fiscal that a preliminary investigation had been conducted in accordance with law is not an essential part of the information and its absence cannot vitiate it as such.[13] Besides, the failure to make a preliminary investigation of a criminal charge to which no objection was raised in the court below, may not be questioned for the first time on appeal.[14] Furthermore, the accused in a criminal case has a right to waive preliminary investigation and the appellant herein had in fact waived preliminary investigation.[15]

Counsel for the appellant further contends that there was no conspiracy in the killing of Castor Borden. Counsel argues that if there was a conspiracy or confederation to kill Castor Borden, the slaying could have been done while they were traversing a dark mountain trail and not in the house of Castor Borden. But, Castor Borden may not have been killed along the mountain trail since the accused Blarito Arbois and Pedro

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[12] Francisco, *Rules of Court. Criminal Procedure*, 1969 ed., p. 131.

[13] *Estrella vs. Ruiz*, L-38621, Aug. 30, 1974, 58 SCRA 779.

[14] *People vs. Lara*, 75 Phil. 786.

[15] Original Record, p. 38.

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Lauderes both declared that Castor Borden ran ahead of them when they were about 100 meters away from the house of Castor Borden. Castor Borden must have run so fast that the accused lost the opportunity to kill him along the way. However, conspiracy could be implied since all the four accused took part in the deed and cooperated with unity of purpose and criminal intent when they took turns in stabbing the deceased Castor Borden.

All things considered, We find no tenable reason to justify a reversal of the judgment appealed from. The positive testimonies of the witnesses for the prosecution deserve more weight than the bare denial of the appellant.

The crime committed is murder characterized by *alevosia* as the attack on Castor Borden was sudden and unexpected and he was totally unprepared to make a defense, attended by the aggravating circumstances of dwelling and that the crime was committed by a band. The generic aggravating circumstance that the crime was committed by a band, however, cannot be appreciated since it is absorbed by treachery.[16] There being one aggravating circumstance present with no mitigating circumstance to offset it, the penalty to be imposed upon the appellant should be the maximum thereof, or death. However, for lack of the required number of votes, the death penalty cannot be imposed upon him.

**WHEREFORE**, with the modification that the indemnity to be paid to the heirs of the victim should be increased to ₱30,000.00, the judgment appealed from should be, as it is hereby, AFFIRMED. With proportionate costs against the appellant.

**SO ORDERED.**

*Makasiar, C.J., Teehankee, Aquino, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas,* and *Alampay, JJ.*, concur.

*Abad Santos, J.*, on official leave.

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[16] *People vs. Sangalang*, L-32914, Aug. 30, 1974, 58 SCRA 737.