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Barredo (Chairman), Concepcion Jr, Santos, and *Abad Santos, JJ.*, concur.

Aquino, J., concurs in the result.

EN BANC

[G.R. No. L-38730. December 14, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO RESURRECCION, ROMEO MARANAN, and AMADOR ATIENZA,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEING A CONVICT DOES NOT MAKE HIS TESTIMONY UNWORTHY OF CREDENCE.**— It is true that Rogelio was a convict but that fact alone does not make his testimony unworthy of credence. For there was no motive for him to implicate appellants.

2. **CRIMINAL LAW; CONSPIRACY; PRESENT IN CASE AT BAR.**— The behavior of appellants unmistakably indicated a community of design to kill the victim. They belonged to the same gang and the same dormitory; they were seen talking together before the actual assault or the victim; they were all armed; they all stabbed the victim who sustained multiple wounds, three of which proved to be mortal; they al chased the victim who was already wounded when the latter tried to run away before finally expiring in front of the administration building; and, they left the scene of the crime together. The tacit and spontaneous coordination of their assaults showed that they collaborated to bring about the death of the victim.

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3. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN NOT CONSIDERED.— But treachery cannot be presumed from the suddenness or unexpectedness of the attack where there is no proof that such mode of attack was consciously adopted to facilitate the commission of the crime without risk to appellants. Neither can it be established from the fact that the injuries of the victim were inflicted from behind where it does not appear that appellants purposely chose to employ that means of attack so that there could be no risk to themselves from any defense which the offended party might have made. Nor can it be supposed under the circumstances that appellants knew before hand that the deceased was unarmed. Furthermore, the victim was not completely unaware of the impending danger to himself as he was adequately warned by his companion, Rogelio Bulalayao, who saw the suspicious behavior of the appellants. He had time to flee or to make his defense had he wished to.

4. ID.; ID.; EVIDENT PREMEDITATION; WHEN NOT CONSIDERED.— Neither was there evident premeditation, and on this score the Solicitor General agrees, for there was no evidence to show that the appellants meditated and reflected on their intention between the time when the crime was conceived and the time it was actually perpetrated. Evident premeditation cannot be appreciated where it cannot be determined whether the accused had sufficient time within which to reflect on the evil character of the crime before he committed the same.

APPEARANCES OF COUNSEL

Benjamin R. Domingo for appellants Resurreccion & Maranan.

Jose O. Galvan for appellant Atienza.

Solicitor Mendoza, Assistant Solicitor General Sempio Diy & Solicitor A. D. Aquino for appellee.

D E C I S I O N

ABAD SANTOS, *J.*:

This is an automatic review of the decision dated April 26, 1974, of the Circuit Criminal Court of Pasig, Rizal, in Criminal

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Case No. 1327, imposing the death penalty on Danilo Resurreccion, Romeo Maranan and Amador Atienza, for the crime of murder, the dispositive portion of which reads:

"WHEREFORE, finding the accused namely: Danilo Resurreccion, Romeo Maranan and Amador Atienza, ALL GUILTY, beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences each one of them to suffer the penalty of DEATH; to indemnify the heirs of the offended party the amount of ₱12,000.00, jointly and severally: to pay moral damages in the amount of ₱6,000.00 and another ₱6,000.00, as exemplary damages, jointly and severally; and to pay their proportionate shares of the costs."

On March 25, 1971, at about 3:00 p.m., prisoner Suliman Santiago, an inmate of the New Bilibid Prison, Muntinlupa, Rizal, was stabbed to death infront of the prison boxing office. He was first stabbed by his assailants in the alley between the Education Section and the Commander's Office and from there chased and stabbed again infront of the boxing office. Charged with the crime of murder were Danilo Resurreccion, Romeo Maranan and Amador Atienza, in an information dated April 17, 1973, alleging:

"That on or about March 20, 1971, in the New Bilibid Prison, Muntinlupa, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above named accused while then confined at the said institution conspiring, confederating and helping one another with treachery and evident premeditation, and each armed with improvised deadly weapons did then and there wilfully, unlawfully and feloniously, assault and wound therewith one SULIMAN SANTIAGO, No. 28167-P sentenced prisoner in the same institution, inflicting upon him multiple stab wounds while then unarmed and unable to defend himself from the attack launched by the accused, as a result of which the said Suliman Santiago died instantly;

That the offense when committed by the above accused was attended by the aggravating circumstance of recidivism in the case of Amador Atienza, having been convicted of the crime of Attempted Robbery with Homicide by the Criminal Circuit Court of Manila."

The principal witness for the prosecution was Rogelio Bulalayao, an inmate serving a sentence for theft of motor

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vehicle and homicide. He testified that both he and the deceased belonged to Dormitory 2-C and were members of the same gang, the Sigue-Sigue-Commando. On March 25, 1971, at about 2:15 p.m., he was on his way to the hospital having just come from Camp 3 where he was "mayor" when he met a certain Mr. Perfecto Mane. He stopped to talk with his friend facing the Commander's office. It was then that he saw the accused prisoners, Amador Atienza, Danilo Resurreccion and Romeo Maranan coversing with each other in what he considered a suspicious manner, in the alley near the Identification Section. This prompted him to go near Suliman Santiago who was at that time talking with a visitor in the alley between the Education Section and the Commander's Office. He told Santiago that he and his companion should leave right away as he suspected that Atienza, Resurreccion and Maranan intended to do him harm. However, Santiago told him not to mind the three. While he was beside the visitor facing Santiago, the three accused approached and Danilo Resurreccion drew a deadly weapon "*yaring bilibid*" with which he stabbed Santiago at the back. Fearing for his own life, he retreated backwards, his eyes, focused at the scene before him. Although he was backtracking he could see Santiago parrying with his hands the repeated thrusts of Resurreccion, Maranan and Atienza who were all armed with similar improvised weapons. While he could not see the exact spots where the stabs were made he could see that they were all aimed at Santiago's back. After the stabbing the three ran back to their brigade while he stayed near the Control gate where he remained until dismissal time which was about 4:30 to 5:00 p.m. He waited for the employees to come and walked home with them. He was one of those who took the deceased to the hospital.

Suliman Santiago sustained five stab wounds, three of which were mortal. The Necropsy Report established the cause of death as multiple stab wounds of the chest and abdomen. Dr. Ricardo G. Ibarrola who made the post mortem examination testified that the three stab wounds which he considered mortal in his Necropsy Report were: stab wound No. 1, located at the

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left breast perforating the left side of the diaphragm and also the stomach; stab wound No. 2, located at the right side of the abdomen and penetrated the region; and stab wound No. 3 at the right upper back involving the right lung. He was of the opinion that the wounds were caused by double-bladed, pointed, sharp instruments. He did not discount the possibility, however, that there was only one double bladed instrument used by only one assailant.

Among the witnesses presented by the defense was Gilberto Llamoso, another inmate present at the scene of the crime. In his statement given to prison guard Jesus B. Tomagan on May 5, 1971, marked as Exhibit 1 by the defense, he stated that at about 2:15 p.m. on March 25, 1971, he was sitting at the last door of the control gate when he saw Suliman Santiago and Rogelio Bulalayao conversing. Then he saw Romeo Maranan and some companions approach the two. He saw Maranan draw a weapon, stab Santiago who then ran chased by Maranan and his companions. Santiago fell down by the window of the Office of the Board of Discipline, managed to stand again and continued running still followed by Maranan and his companions. He stated that it was only Maranan he saw who stabbed the deceased at the back with a weapon which he described as "*gawang bilibid*" but when Santiago was fleeing he could see that the others were also armed with bladed weapons. After the stabbing they ran to the direction of the hospital.

The three accused testified. Danilo Resurreccion, 27 years old, single, was serving sentence for robbery; Romeo Maranan, 25 years old, married, was convicted in 1967 and serving sentence for frustrated murder; and, Amador Atienza, 22 years old, married, was there for attempted robbery with homicide and robbery (snatching). All three professed innocence for the death of Suliman Santiago; all three claimed alibi — that they were together in Dormitory 4-C at 3:00 p.m. on March 25, 1971, the gate of which was padlocked. Each said that the other two were with him inside the dormitory, in the afternoon of March 25, 1971. All three were members of the Sigue-Sigue-Sputnik gang. They said they had never known Suliman Santiago and

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came to know Rogelio Bulalayao only inside the investigation room during the inquiry conducted by Jesus B. Tomagan and were surprised when Bulalayao pointed to them as the authors of the killing. All three testified that they never had any misunderstanding with investigator Tomagan or his co-investigators; did not harbor him any grudge; were not maltreated nor threatened by him when they refused to give any statement during the investigation, since they preferred to do it in court. They also said that they did not see Bulalayao maltreated during the investigation nor see any bruises on his face. When they individually asked Bulalayao why he pointed to them as the killers of Santiago, Bulalayao replied, according to Resurreccion, that it was what was called for by the circumstance (*hinihingi ng pagkakataon*) because if he did not testify against them he would not be released; but according to Atienza, Bulalayao gave him no answer while according to Maranan, Bulalayao said that it was but natural to point at him because he was the one who did it.

Amador Atienza testified that all the inmates of Dormitory 4-B which included him and his co-accused were transferred to Dormitory 4-C at around 2:45 p.m. of March 25, 1971, but two witnesses, Ricardo Rodriguez and Ernesto Garcia, both also inmates, testified that they were transferred from Dormitory 4-B to 4-C at more or less 9:00 o'clock in the morning of that day and there padlocked.

Danilo Resurreccion and Romeo Maranan filed a common brief while Amador Atienza filed a separate brief. In both briefs, however, the principal claim is to the effect that their evidence should have been given credence. Thus the resolution of the case, as is usual in most criminal cases, hinges on the credibility of witnesses.

Appellants have interposed the defense of denial and alibi. These defenses, however, cannot prevail over the positive testimony of Rogelio Bulalayao that it was the appellants who in concert inflicted the fatal wounds on Suliman Santiago. Rogelio's testimony was corroborated in substance by the appellants' own witness, Gilberto Llamoso who said he saw

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Santiago stabbed by Maranan who had companions who were also armed with bladed weapons.

Appellants have attempted to impugn the credibility of Rogelio on the ground that he was a convict and had to cooperate with the prison authorities lest he be implicated and his imminent release jeopardized. It is true that Rogelio was a convict but that fact alone does not make his testimony unworthy of credence. For there was no motive for him to implicate appellants. All three accused testified that they did not know Rogelio until the investigation which was conducted by prison guard Tomagan; they did not see him maltreated nor manhandled in the investigation room by the investigator; they did not even notice any bruises on his face. In other words, there were no indications that Rogelio was forced to testify against his will. Neither were they themselves threatened or maltreated by Tomagan and his companions when they refused to give any statement during the investigation, preferring to give their statements in court. Granting that Rogelio was compelled to testify in order not to be implicated in the case there was no logic on his picking on the three accused to be the sacrificial lambs. He did not know them; he bore them no ill will. The only valid reason that comes to mind as to why Rogelio should point to the three accused as the assailants is that he really saw them, as he said so upon being questioned by Maranan. There is therefore no valid reason why the testimony of Bulalayao should not be given the credence it deserves.

Appellants contended that they were locked in Dormitory 4-C at 3:00 p.m. on March 25, 1971, when Suliman was killed. It is to be noted, however, that Amador Atienza testified that at about 2:45 o'clock in the afternoon of the day in question, he and the other appellants were transferred from dormitory 4-B to dormitory 4-C, and that he did not know whether dormitory 4-B had been padlocked before they were transferred to the other dormitory. This testimony from one of the appellants strongly indicates that said three appellants could have killed prisoner Suliman Santiago at or about 3:00 o'clock that same afternoon before they were transferred to dormitory 4-C.

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Moreover, as stated by the trial court: "A perusal of the testimonies of the three accused reveal that the same are heavily clouded with improbabilities not consistent with common sense and common experience. It does not necessarily mean that because the door was padlocked they could not get out of their brigade, because, also, from the lips of the other prisoners in Muntinglupa, and the same has been proven in several riot cases inside the National Penitentiary, that they could open the lock by means of improvised tin key, aside from sawing the iron grills, if only to escape and satisfy their evil designs by killing their co-inmates." On the whole we are satisfied that appellants' denial and alibi cannot prevail over the positive identification made by Rogelio Bulalayao which was substantially corroborated by their own witness, Gilberto Llamoso.

The behavior of appellants unmistakably indicated a community of design to kill the victim. They belonged to the same gang and the same dormitory; they were seen talking together before the actual assault or the victim; they were all armed; they all stabbed the victim who sustained multiple wounds, three of which proved to be mortal; they al chased the victim who was already wounded when the latter tried to run away before finally expiring in front of the administration building; and, they left the scene of the crime together. The tacit and spontaneous coordination of their assaults showed that they collaborated to bring about the death of the victim.

The information mentions two qualifying circumstances, namely: treachery and evident premediation. The Solicitor General contends that there was treachery since the attack was so sudden and unexpected and aimed at the back giving the victim no chance to defend himself, citing *People vs. Torejas*, L-29935, Jan. 31, 1972; 43 SCRA 158, where it was held that alevosia exists if the victim is caught completely unaware and deprived of any chance to ward off the assault. But treachery cannot be presumed from the suddenness or unexpectedness of the attack where there is no proof that such mode of attack was consciously adopted to facilitate the commission of the crime without risk to appellants. Neither can it be established

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from the fact that the injuries of the victim were inflicted from behind where it does not appear that appellants purposely chose to employ that means of attack so that there could be no risk to themselves from any defense which the offended party might have made. Nor can it be supposed under the circumstances that appellants knew before hand that the deceased was unarmed. Furthermore, the victim was not completely unaware of the impending danger to himself as he was adequately warned by his companion, Rogelio Bulalayao, who saw the suspicious behavior of the appellants. He had time to flee or to make his defense had he wished to. Neither was there evident premeditation, and on this score the Solicitor General agrees, for there was no evidence to show that the appellants meditated and reflected on their intention between the time when the crime was conceived and the time it was actually perpetrated. Evident premeditation cannot be appreciated where it cannot be determined whether the accused had sufficient time within which to reflect on the evil character of the crime before he committed the same. (*People vs. Villaseñor*, L-28574, October 24, 1970, 35 SCRA 460.).

In view of the foregoing, the crime committed by the appellants is not murder but homicide only which is punishable by *reclusion temporal*.

No mitigating circumstance can be appreciated in favor of the appellants. We now consider the aggravating circumstances.

We believe, that the generic aggravating circumstance of abuse of superior strength was present in the commission of the crime. For the three appellants were all armed with bladed weapons while the deceased was unarmed. His means of defense was thus weakened if not rendered inutile.

The aggravating circumstance of recidivism cannot be considered against Resurreccion and Atienza for their previous convictions were not embraced in the same title of the Revised Penal Code — Title Eight, Crimes against Persons. With respect to Maranan recidivism is an aggravating circumstance for he had been previously convicted of the crime of frustrated murder.

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Art. 160 of the Revised Penal Code has also to be applied. It reads:

"Art. 160. *Commission of another crime during service of penalty imposed for another previous offense — Penalty.* — Besides the provisions of Rule 5 of Article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.

Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency."

In resumé, we find that the aggravating circumstances of abuse of superior strength and quasi-recidivism (Art. 160, R.P.C.) have to be attributed to all of the appellants and with respect to Romeo Maranan only that of recidivism.

WHEREFORE, we find the appellants DANILO RESURRECCION, ROMEO MARANAN and AMADOR ATIENZA, guilty of the crime of homicide. Considering the absence of any mitigating circumstance and the presence of aggravating circumstance mentioned above, the penalty of *reclusion temporal* has to be applied in its maximum period. Accordingly, each of the appellants is hereby sentenced to an indeterminate imprisonment of twelve (12) years of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum. As thus modified the sentence of the lower court is affirmed in all other respects. Costs *de oficio*.

SO ORDERED.

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

Teehankee, J., took no part.