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and therefore, recommends that the instant complaint be dismissed as the charges against respondent have not been sufficiently established.

Considering the said report and recommendation of the Solicitor General's Office and finding no reason to disagree with the same, the Court has resolved to dismiss this administrative complaint against respondent Atty. Per Olandesca for lack of merit.

SO ORDERED.

Aquino (Chairman), Concepcion Jr., Abad Santos, De la Fuente, and *Cuevas, JJ.*, concur.

Escolin, J., took no part.

EN BANC

[G.R. Nos. L-37168-69. September 13, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELFINO BELTRAN,** ***alias*** **Minong; DOMINGO HERNANDEZ,** ***alias*** **Doming; CEFERINO BELTRAN,** ***alias*** **Ebing; MANUEL PUZON** ***alias*** **Noling; CRESENCIO SIAZON,** ***alias*** **Ising; and ROGELIO BUGARIN,** ***alias*** **Boy,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WITNESSES; CREDIBILITY; WHEN THE ISSUE IS ONE OF CREDIBILITY OF WITNESSES, APPELLATE COURTS WILL GENERALLY NOT DISTURB THE FINDINGS OF THE TRIAL COURT.**— On the first assigned error. We reiterate the established doctrine that when the issue is one of credibility of witnesses, appellate

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courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the hearing, unless it had overlooked certain facts of substance and value that, if considered, might affect the result of the case.

2. ID.; ID.; ID.; ID.; **STANDS IN THE ABSENCE OF ILL-MOTIVE TO FALSELY TESTIFY AGAINST THE ACCUSED.**— The denial of appellants Rogelio Bugarin, Ceferino Beltran and Manuel Puzon cannot, therefore, prevail over their positive identification, as the perpetrators of the crime by the aforenamed eyewitnesses who have not been shown to have any evil motive to testify falsely against them.

3. ID.; ID.; **CONSPIRACY; HOW PROVEN.**— For conspiracy to exist, it is enough that at the time the offense was committed, the participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances. Further, conspiracy does not require an agreement for an appreciable period prior to the occurrence, as conspiracy legally exists if, at the time of the offense, the accused had the same criminal purpose and were united in its execution. Appellants' conduct and/or actuations before, during and after the commission of the crime charged in Criminal Case No. 158-S are circumstances proving conspiracy.

4. ID.; ID.; ID.; ID.; **EFFECT OF CONSPIRACY.**— Conspiracy having established, the act of one is the act of all. It is no longer necessary to specifically lay out the particular participation of each participant.

5. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; PREMEDIATION IS PRESENT WHERE THERE WAS A LAPSE OF TWO HOURS FROM THE INCEPTION TO EXECUTION.**— Relative to the third assigned error, the trial court properly appreciated the existence of the aggravating circumstances of evident premeditation and treachery. From 9:00 in the evening to 12:00 midnight of the same day, appellants had three (3) long hours to meditate and reflect on their evil design and they clung in their determination to kill the Mayor, which fortunately failed. "Premeditation is present where there was a lapse of two hours from the inception to execution."

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6. **ID.; ID.; TREACHERY; WHEN PRESENT.**— The existence of the aggravating circumstance of treachery was shown in the simultaneous and sudden firing by the accused on the newly arrived Mayor's group, without warning. We are convinced that they employed means, methods or forms which could have tended directly or insured the accomplishment of their evil design against the Mayor, with whom they have no personal grudge, without risk to themselves arising from the defense which the offended party had made. No one from herein appellants sustained a scratch as they were really prepared for the coming Mayor.

7. **ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES.**— With respect to the fourth assigned error, the claim of Delfino Beltran that he had just acted in self-defense, suffice it to say, that the one invoking this justifying circumstance must prove beyond reasonable doubt that all the necessary requisites of self-defense are present, namely: (1) Unlawful aggression on the part of the offended party; (2) Reasonable necessity of the means employed to prevent or repel it; and, (3) Lack of sufficient provocation on the part of the person defending himself. Delfino Beltran had not proved any one of these. Thus, his claim of self-defense was properly dismissed by the trial court.

8. **ID.; ATTEMPTED MURDER WITH DIRECT ASSAULT; WHEN COMMITTED.**— Regarding the fifth assigned error, considering that Mayor Quirolgico is a person in authority and Pat. Rolando Tolentino is a policeman who at the time was in his uniform and both were performing their official duties to maintain peace and order in the community, the finding of the trial court that appellants are guilty of attempted murder with direct assault on the persons of Mayor Quirolgico and Pat. Tolentino is correct.

9. **ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER, PRESENT.**— Relative to the last assigned error, following Our latest ruling in *People vs. Nicolas Canamo, et al.*, G.R. No. 62043, promulgated on August 13, 1985, We agree with appellants that they should be credited with the mitigating circumstance of voluntary surrender, as they in fact presented themselves voluntarily to the authorities.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ernesto P. Pagayatan for accused-appellants.

DECISION

RELOVA, *J.*:

Accused-appellants Delfino Beltran, *alias* Minong; Rogelio Bugarin, *alias* Boy; Cresencio Siazon, *alias* Ising; Manuel Puzon, *alias* Noling; Domingo Hernandez, *alias* Doming; and, Ceferino Beltran, *alias* Ebing, were indicted for murder and double attempted murder with direct assault in the then Court of First Instance of Cagayan, docketed as Criminal Case No. 158-S. Likewise, Delfino Beltran was charged with attempted murder in Criminal Case No. 160-S.

After trial they were convicted and sentenced as follows:

"WHEREFORE, the Court finds all the accused DELFINO BELTRAN *alias* Minong, ROGELIO BUGARIN *alias* Boy, CRESENCIO SIAZON *alias* Ising, MANUEL PUZON *alias* Noling, DOMINGO HERNANDEZ *alias* Doming and CEFERINO BELTRAN *alias* Ebing, guilty beyond reasonable doubt of the crime of murder for the death of VICENTE QUIROLGICO. There being no mitigating circumstance, the Court has no other alternative than to impose the maximum penalty provided for by law. Accused Delfino Beltran, Rogelio Bugarin, Cresencio Siazon, Manuel Puzon Domingo Hernandez and Ceferino Beltran are hereby sentenced to the maximum penalty of DEATH, to indemnify the heirs of Vicente Quirolgico the sum of ₱12,000.00 for the loss of his life; ₱75,000.00 as reimbursement for expenses covering medical, funeral, embalming, mausoleum and burial lot, and the further sum of ₱50,000.00 for moral damages, jointly and severally and to pay the costs, without subsidiary imprisonment in case of insolvency, taking into consideration the nature of the principal penalty imposed.

"The Court likewise finds all the accused guilty beyond reasonable doubt of the crime of DOUBLE ATTEMPTED MURDER WITH DIRECT ASSAULT and hereby imposes upon all of them the penalty of *RECLUSION TEMPORAL* in its medium period and orders them

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to undergo a prison term ranging from 14 years, 8 months and 1 day as miminum to 17 years and 4 months as maximum and to pay the costs.

"Under Crim. Case No. 160-S, accused DELFINO BELTRAN is hereby found guilty beyond reasonable doubt of the crime of ATTEMPTED HOMICIDE and hereby sentence him to undergo a prison term ranging from 2 years, 4 months and 1 day to 3 years, 6 months and 20 days of *prision correccional* and to pay the costs." (pp. 402-403, Record)

The People's evidence shows that in the evening of January 11, 1972, between 9:00 and 10:00, in Ballesteros, Cagayan, Ernesto Alvarado was bringing Calixto Urbi home in a jeep. Passing by the Puzon Compound, Delfino Beltran *alias* Minong, shouted at them, "*Oki ni inayo*" (Vulva of your mother). They proceeded on their way and ignored Delfino. After Alvarado had brought Urbi to his house he went to the house of Mayor Bienvenido Quirolgico and reported the matter. The newly elected Mayor told the Chief of Police that something should be done about it.

They decided to go to the Puzon Compound with the intention to talk to Delfino Beltran and his companions to surrender considering that he knew them personally as all of them were once working for Congressman David Puzon. When they came near the compound, they saw appellants Delfino Beltran, Rogelio Bugarin and Domingo Hernandez and suddenly there was a simultaneous discharge of gunfire. The mayor's son, Vicente, who was with them, cried: "I am already hit, Daddy." As he fell, Vicente pushed his father and both fell down. Mayor Quirolgico and Patrolman Rolando Tolentino also suffered injuries. When the firing had stopped, they decided to bring Vicente to the hospital. As the jeep left the compound, three (3) men came out of the Puzon Compound and fired at the fleeing vehicle. They were Cresencio Siazon, Ceferino Beltran and Noling Puzon. Likewise, Domingo Hernandez and Minong Beltran and Boy Bugarin tried to give chase. After a while, all the six men returned inside the compound.

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An hour after admission to the hospital Vicente Quirolgico died. Autopsy examination on the deceased Vicente Quirolgico showed the following findings:

"1. Gunshot wound, inlet wound at the posterior portion of right Mid-axillary line, at the level of the 5th costal ribs at the back, traversing the right side of the chest, harrowing the right lung, and fracturing the four (4) costal ribs on the right side front causing an outlet wound almost six (6) inches long over the right side of the chest diagonally from above the right nipple downward near the right mid-axillary line. The inlet has almost one (1) cm. diameter.

"2. Gunshot wound left knee, inlet wound at the exterior and posterior side of the left knee, almost 1 cm. diameter, directed towards the medial side of the left knee, fracturing the left knee and inlet wound two (2) inches long.

"3. Gunshot wound of the right thigh, inlet wound, anterior or front side of the right thigh at the middle thirds, measuring almost one (1) cm. diameter.

"4. Gunshot wound at the internal angle of the left eye inlet wound almost one (1) cm. diameter, directed downwards and medially, traversing the right side of the face.

"CAUSE OF DEATH: INTERNAL HEMORRHAGE secondary to Gunshot wound of the chest and left eye."
(Exh. "B", p. 10, Record)

and the examination on Mayor Quirolgico shows the following injuries:

"(1) Wound, gunshot, face right;
(2) Wound, gunshot, upper lips right;
(3) Wound, gunshot, leg, right;
(4) Wound, gunshot, big toe, right;
(5) Wound, gunshot, 2nd toe, right"
(Exh. "A-1", p. 22, Record).

and on Patrolman Rolando Tolentino, the following injuries:

"(1) Wound, gunshot, amper fated index, middle and ring fingers, right;
(2) Wound, lacerated, 1 cm. long, 1/3 cm. deep lumbar region, right;

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(3) Wound, lacerated 1/4 cm. long, 1/3 cm. deep forearm, left." (Exh. "A", p. 20, Record)

On November 23, 1982, this Court, upon receipt of the information of the death of appellant Cresencio Siazon *alias* Ising on February 17, 1982 due to "Cardio Respiratory Arrest Secondary to Carcinoma Liver, Pulmonary Tuberculosis," from Mr. Ramon J. Liwag, Officer-in-Charge, New Bilibid Prisons, Muntinlupa, as well as the Comment filed by the Solicitor General on the aforesaid information, Resolved to dismiss the case insofar as the criminal liability of the deceased Cresencio Siazon *alias* Ising is concerned.

Appellant Rogelio Bugarin claims that between 5:00 and 5:30 in the afternoon of January 11, 1972, the armed men inside the passing jeep of Mayor Quirolgico fired at Rogelio Bugarin, who was then standing at the main gate of Puzon Compound. After the armed men had passed by, Rogelio Bugarin proceeded to the office of Congressman Puzon where he met Ebing Beltran and Delfino Beltran who both asked him about the gun reports. They just dismissed the incident as no one was hurt. Rogelio Bugarin played guitar while waiting for supper.

Around 10:30 in the evening of the same date, or after appellants had taken their supper at Puzon Compound, they heard an unusual sound which appeared to be a six by six truck that was bumped. Thereafter, at about 12:00 midnight of the same day, Delfino Beltran, posted himself as guard and positioned himself in front of the gate of the Rural Bank. While at the place he saw a group of persons, numbering more than ten, along the road in front of the Rural Bank. Among the group of armed men, he was able to recognize the Chief of Police of Ballesteros, Gavino Collado, holding a swinging flashlight, Gerry, Bundiok Usita and Bunti Pinzon. When the group reached the gate of Puzon Compound, he peeped and took hold of the gate with an iron chain. Accidentally, he dropped the chain and it created a sound which cause the group of armed men to fire upon his direction for about half an hour. In retaliation, he loaded his gun following which he saw a man falling down from the fence. As the firing continued, he stealthily mounted his gun on top of the fence and fired the same.

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When the firing ceased, he proceeded to the residence of Congressman Puzon. In the sala, he saw Boy Bugarin, Doming Hernandez, Ising Siazon, Noling Puzon, Ebing Beltran and Floresida Amayon, conversing. Upon seeing him, his companions asked him what was that firing all about. He told them that he traded shots with a group of armed men. Thereafter, they hid in the basement of the residence of the Congressman, staying there for one whole day. The following day, Delfino Beltran surrendered to Captain Retuta, while the rest escaped but thereafter surrendered.

The defense of appellant Delfino Beltran, *alias* Minong, is self-defense; whereas appellants Rogelio Bugarin, *alias* Boy, Ceferino Beltran, *alias* Ebing, and Manuel Puzon, *alias* Noling denied having anything to do with the incident.

In this appeal, appellants contend that the trial court erred in: (1) giving credence to the evidence for the prosecution; (2) holding that conspiracy existed among them in the commission of the offense charged in Criminal Case No. 158-S; (3) finding that treachery and evident premeditation attended the commission of the crimes; (4) not finding that appellant Delfino Beltran acted in self-defense; (5) finding appellants guilty of attempted murder with direct assault on Mayor Quirolgico and Pat. Rolando Tolentino; and (6) not appreciating in favor of the appellants the mitigating circumstance of voluntary surrender.

On the first assigned error. We reiterate the established doctrine that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the hearing, unless it had overlooked certain facts of substance and value that, if considered, might affect the result of the case.

The judgment of conviction is not bereft of evidence to support the same. Hereunder are the testimonies of the prosecution's eyewitnesses, namely:

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Carmelita Collado who declared the following:

"Q Will you inform the Honorable Court who was that one shouting?

A Minong Beltran, sir.

x x x x x x x x x

Q Will you inform the Court what was that?

A I heard the voice of Mr. Minong Beltran saying, 'Cida, Cida, you bring out the guns now I have already shot at the BRQ jeep and they are sure to come back.

x x x x x x x x x

Q Can you tell us what you saw at that time?

A I saw these three persons, Minong Beltran, Boy Bugarin and Doming Hernandez, sir.

x x x x x x x x x

Q What else did you see if any?

A When these three persons came out, they were already holding long guns.

x x x x x x x x x

Q Will you inform this Court what was that?

A Upon coming out, Delfino Beltran ordered Doming Hernandez to go to the right side of the old office of Congressman Puzon and he also instructed Boy Bugarin to seek cover to the Rural Bank.

x x x x x x x x x

Q During all these time that these were happening, the going out of Doming Hernandez, of Bugarin; the ordering of Minong Beltran to the two, did you see any other persons inside the compound of Congressman Puzon aside from the three?

A After the three had placed themselves in their respective positions, I saw persons coming out but I was not able to recognize them." (tsn., pp. 5-7, 42-45, Nov. 18, 1972 hearing.

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Mayor Bienvenido Quirolgico testified as follows:

"Q And do you know what happened after you walked a few steps to the south?

A When I was looking very well around the vicinity, at the southern part of the Rural Bank about the corner of their fence, and as I tried to look intently, I recognized the face of Minong Beltran.

x x x x x x x x x

Q At the precise moment, when you saw Minong Beltran at the corner of the Rural Bank, what else happened, if any?

A As I tried to look near them, that was the time when there was a burst of gun fire, the direction of which was coming from the place where they were staying.

x x x x x x x x x

Q Will you inform this Honorable Court who the other men were at that time?

A Boy Bugarin and Doming Hernandez.

x x x x x x x x x

Q And after the shooting, there was the shout?

A At the lulling of the shooting, I heard the shout.

x x x x x x x x x

Q And what were the words?

A '*Nala na si Mayor*' (The mayor is already hit). (tsn., pp. 20, 21, 31-32, 58-59, Nov. 17, 1972 hearing)

Patrolman Rolando Usita stated that:

"Q You said that as the mayor was leaving the scene of the incident, you saw three of the accused coming out of the guardhouse, do you confirm that?

A Yes, sir.

x x x x x x x x x

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Q And the persons who came out from this point according to you are the accused Ising Siazon, Ebing Beltran and Noling Puzon do you confirm that?

A Yes, sir.

Q And after that the three other accused named as Coming Hernandez, Boy Bugarin and Minong Beltran came out of the same compound?

A No, sir. They came out from here. (tsn., pp. 84, 87, February 19, 1973 hearing)

Chief of Police Gavino Collado also pointed out the following:

"Q May I see the sketch, your Honor?

A The mayor took this road in going to the hospital (witness pointing to the Bonifacio Cortez Street), and as the jeep was going westward, and reached this point, three men came out from this part of the compound and they fired at the vehicle in which the mayor and his son rode on.

x x x x x x x x x

Q So that the Court would now understand from your statement that it was only after the jeep of the mayor has left already the scene when three persons came out from the gate of the Puzon compound, that you saw for the first time these persons?

A Yes, sir.

Q And these persons were identified as Ebing Beltran, Cresencio Siazon and Noling Puzon?

A Yes, sir." (tsn., pp. 59, 80, January 9, 1373 hearing)

The denial of appellants Rogelio Bugarin, Ceferino Beltran and Manuel Puzon cannot, therefore, prevail over their positive identification, as the perpetrators of the crime by the aforenamed eyewitnesses who have not been shown to have any evil motive to testify falsely against them.

Moreover, the physical evidence, as testified to by Dr. Gregorio R. Farin, Municipal Health Officer of Ballesteros, Cagayan,

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who conducted the post mortem examination on the body of the deceased Vicente Quirolgico, shows that several firearms could have caused his wounds.

"Q Considering the nature of the injuries that were found on the body of the deceased, could it be possible that several firearms could have caused these injuries?

A It is possible.

x x x x x x x x x

Q It is also possible that wounds Nos. 2, 3 and 4 were caused by three different bullets, 3 different guns, different calibers?

A Yes, sir. It is possible." (tsn., pp. 65-66, Nov. 17, 1972 hearing)

The foregoing testimony of Dr. Farin finds support from the findings of witnesses Vicente de Vera, a Ballistician, and Lt. Col. Crispin Garcia, Chief Chemistry Branch, both of the Philippine Constabulary Crime Laboratory, Camp Crame, Quezon City, who conducted examinations on the empty shells and on the firearms, respectively, recovered from the premises of the Rural Bank and the Puzon Compound. Vicente de Vera testified on direct examination, the following:

"Q Under your findings No. 1, will you inform us your conclusion?

A My conclusion was that the 27 fired cartridges marked as CIS-1 to 27 were fired from the firearm marked as Exhibit 'R' (SIG Natu Rifle).

Q Your other findings, please tell the Court.

A Under findings No. 2: Microscopic examination and comparison of the 223 Cal. fired cartridge cases marked as CIS 28 to CIS 154 revealed the non-congruency of striations with the test cartridge cases fired from the above-mentioned 223 caliber M16 Armalite rifle with Serial No. 527226. They further revealed the following:

1. CIS 28 to CIS 62 were fired from one (1) firearm;

2. CIS 63 to CIS 95 were fired from one (1) firearm;

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3. CIS 96 to CIS 102 were fired from one (1) firearm;

4. CIS 103 to CIS 154 were fired from one (1) firearm

Q May we know your conclusion of this findings of yours?

A My conclusion is that, the 223 Caliber fired cartridges marked as CIS 28 to CIS 154 were fired from four different firearms but not from the above-mentioned 223 Cal. M16 Armalite with SN-527226." (tsn., pp. 29-30, January 8, 1973 hearing)

and on cross-examination declared that:

"Q Supposing that there are three SIG rifles of the same Serial number and the fired cartridges from this three guns have the same number of similar characteristics or congruency of striations?

A They can have no similar characteristics.

Q Do you mean to say that for every SIG rifle there is its own characteristics; that congruency of striations?

A That is correct." (tsn., p. 36, January 8, 1973 hearing)

whereas, Lt. Col. Crispin B. Garcia on the witness stand declared:

"Q With this request for examination of certain articles, what articles were actually submitted to you for examinations?

A Well, one (1) rifle SIG, Switzerland made with SN-5721, the barrel group bearing Serial Number 15721; the receiver group with SN-5720 and the barrel link bearing SN-9641, and another firearm. (Exh. 'R').

Q Colonel, aside from this article, Exhibit 'R', what other articles or guns did you receive for examination?

A One Armalite with Serial No. 527226. (Exhibit 'S')

x x x x x x x x x

Q With reference to the first rifle which you have mentioned, which is marked as Exhibit 'R', with different serial numbers, in the barrel group, receiver group, and the barrel link, will you inform this Honorable Court your findings?

A I found that the barrel of the Armalite is positive for the presence of gunpowder, sir.

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x x x x x x x x x

Q With reference to this Armalite, M15, marked as Exhibit 'S', in this particular case, will you tell us your findings about the presence of gunpowder?

A Exhibit 'S', the barrel is positive of gunpowder." (tsn., pp. 52, 55, 57, & 58, January 8, 1973 hearing)

The above findings further confirm the truth of the statements of eyewitnesses Gavino Collado, Patrolman Usita, Mayor Quirolgico and Carmelita Collado that appellants traded shots with the Mayor's group, using long or high powered guns.

Anent the second assigned error, We agree with the trial court's finding on the existence of conspiracy. In the case at bar, the sequence of events that transpired in the evening of January 11, 1972, from the time Delfino Beltran first fired upon the passing jeep of Mayor Bienvenido Quirolgico, driven by witness Ernesto Alvarado at around 9:00; the subsequent preparations for the arrival of the Mayor as testified to by eyewitness Carmelita Collado, the shooting on the other passing jeepney to further provoke the Mayor, and the simultaneous and sudden firing at the Mayor's group which had just arrived at about 12:00 midnight in the scene of the crime; the final shooting of the fleeing Mayor; and, the simultaneous common retreat and escape of all the accused, established the presence of conspiracy. For conspiracy to exist, it is enough that at the time the offense was committed, the participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances (*People vs. Manalo*, 133 SCRA 626). Further, conspiracy does not require an agreement for an appreciable period prior to the occurrence, as conspiracy legally exists if, at the time of the offense, the accused had the same criminal purpose and were united in its execution. Appellants' conduct and/or actuations before, during and after the commission of the crime charged in Criminal Case No. 158-S are circumstances proving conspiracy.

Conspiracy having established, the act of one is the act of all. It is no longer necessary to specifically lay out the particular participation of each participant.

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Relative to the third assigned error, the trial court properly appreciated the existence of the aggravating circumstances of evident premeditation and treachery. From 9:00 in the evening to 12:00 midnight of the same day, appellants had three (3) long hours to meditate and reflect on their evil design and they clung in their determination to kill the Mayor, which fortunately failed. In *People vs. Pajenado*, 31 SCRA 812, We held that:

"Premeditation is present where there was a lapse of two hours from the inception to execution."

The existence of the aggravating circumstance of treachery was shown in the simultaneous and sudden firing by the accused on the newly arrived Mayor's group, without warning. We are convinced that they employed means, methods or forms which could have tended directly or insured the accomplishment of their evil design against the Mayor, with whom they have no personal grudge, without risk to themselves arising from the defense which the offended party had made. No one from herein appellants sustained a scratch as they were really prepared for the coming Mayor.

With respect to the fourth assigned error, the claim of Delfino Beltran that he had just acted in self-defense, suffice it to say, that the one invoking this justifying circumstance must prove beyond reasonable doubt that all the necessary requisites of self-defense are present, namely: (1) Unlawful aggression on the part of the offended party; (2) Reasonable necessity of the means employed to prevent or repel it; and, (3) Lack of sufficient provocation on the part of the person defending himself. Delfino Beltran had not proved any one of these. Thus, his claim of self-defense was properly dismissed by the trial court.

Regarding the fifth assigned error, considering that Mayor Quirolgico is a person in authority and Pat. Rolando Tolentino is a policeman who at the time was in his uniform and both were performing their official duties to maintain peace and order in the community, the finding of the trial court that appellants are guilty of attempted murder with direct assault on the persons of Mayor Quirolgico and Pat. Tolentino is correct.

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Relative to the last assigned error, following Our latest ruling in *People vs. Nicolas Canamo, et al.*, G.R. No. 62043, promulgated on August 13, 1985, We agree with appellants that they should be credited with the mitigating circumstance of voluntary surrender, as they in fact presented themselves voluntarily to the authorities. However, this mitigating circumstance is offset by the aggravating circumstance of evident premeditation.

WHEREFORE, in Criminal Case No. 158-S, with the modifications that for lack of necessary votes, the penalty imposed upon appellants Delfino Beltran *alias* Minong, Rogelio Bugarin *alias* Boy, Manuel Puzon *alias* Noling, Domingo Hernandez *alas* Doming and Ceferino Beltran *alias* Ebing, for the death of Vicente Quirolgico, is reduced to *Reclusion Perpetua*, and that the indemnity to the heirs of the deceased Vicente Quirolgico is increased to ₱30,000.00, the appealed decision is AFFIRMED in all other respects.

For the double attempted murder with direct assault, applying the Indeterminate Sentence Law, the penalty imposed on the aforesaid appellants is reduced to four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

In Criminal Case No. 160-S, applying also the Indeterminate Sentence Law, the penalty imposed to the accused Delfino Beltran reduced to Six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

With costs.

SO ORDERED.

Makasiar, C.J., Teehankee, Concepcion Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De la Fuente, Cuevas, Alampay, and *Patajo, JJ.*, concur.

Aquino, J., took no part.