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as a result thereof. In order for such mitigating circumstance to be appreciated, it is necessary to establish the existence of an act both unlawful and sufficient to produce such a condition of mind that the culprit is precluded from a sober realization of the wrongfulness of the course of action about to be taken.[22]

WHEREFORE, the decision appealed from is modified; appellant Teodoro Lanza is hereby found guilty of the crime of Homicide and sentenced to an indeterminate penalty ranging from EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of *reclusion temporal*, as maximum, with the accessory penalties provided by law. The awards of ₱12,000.00 as civil indemnity, without subsidiary imprisonment, ₱2,000.00 as moral damages and ₱500.00 as hospital and burial expenses are hereby affirmed.

SO ORDERED.

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

EN BANC

[G.R. No. L-33228. December 14, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINGO GUEVARRA** ***alias*** **"Enchong Guevarra,"** *defendant-appellant.*

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[22] *People v. Gervacio*, L-21965, Aug. 30, 1968, 24 SCRA 960; *People v. Layson*, L-25177, Oct. 31, 1969, 30 SCRA 92; *People v. Pareja*, L-21937, Nov. 29, 1969, 30 SCRA 693.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN OMMISSIONS IN THE TESTIMONY DO NOT AFFECT THE WITNESS' CREDIBILITY.**— Fear of reprisal is a valid excuse for the momentary silence of a prosecution witness. Strong psychological stress under which one gives his statement before the police investigator or executes an affidavit just three days after witnessing the slaying of his father, a traumatic experience that affects one's equanimity, is also reasonable explanation for witness Manuzon's failing to relate all the details of the commission of the crime in the statement he gave to Pat. Rodriguez.

2. **ID.; ID.; MOTIVE; LACK OF.**— There was, indeed, no intimation of any motive on the part of Lorenzo Manuzon to falsely implicate appellant in the commission of the heinous crime. That appellant is the son of a policeman of the town should have deterred witness Manuzon from pointing said appellant as among the dastardly authors of the crime, unless he actually participated in its commission.

3. **ID.; ID.; ALIBI; INHERENTLY WEAK DEFENSE.**— Appellant's alibi was notoriously and inherently weak. During the commission of the crime, he was allegedly only within hearing distance of the shooting that took place at the scene of the crime. The person he was allegedly with, his cousin Fred Lacsamana, in the latter's house, was not presented to corroborate him as to his whereabouts at the precise time that the crime was being committed. The weakness of appellant's alibi is, thus, so apparent that it cannot outweigh the evidence against him in the form of his having been positively identified by Lorenzo Manuzon who was not shown to have any motive to falsely charge appellant with so grave a crime as a capital offense, appellant being even a son of one of the town policemen at the time.

4. **CRIMINAL LAW; CONSPIRACY; LIABILITY OF CONSPIRATOR.**— In convicting the appellant, the court *a quo* thus correctly found the evidence sufficient to prove guilt beyond reasonable doubt. While the actual act of asportation and the killing was done by appellant's co-accused, appellant is equally guilty for the crime committed, notwithstanding that

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he did not even go up the house robbed. That a previous conspiracy existed among the four accused, including appellant, is evident from his presence at the scene of the crime with an evidently assigned role in the perpetration thereof — that of being the lookout downstairs, while his companions went up the house. This alloted duty was made manifest when he fired at Lorenzo Manuzon when the latter reached the balcony of his house when attempting to pursue Eduardo Catindihan who rushed out of the house on using up all his ammunitions. The existence of conspiracy is, therefore, clearly proved by the concert of criminal design among the culprits, so patent from the common object which their individual acts were aimed to attain. Accordingly, the liability of each is that of co-principals, the act of one, being in contemplation of law, the act of all.

APPEARANCES OF COUNSEL

Miguel Pineda for appellant.

Solicitor General Estelito P. Mendoza, Assistant Solicitor Dominador L. Quiroz and Trial Attorney Reynaldo Saavedra for appellee.

D E C I S I O N

***PER CURIAM*:**

Charged with robbery in band with homicide and frustrated homicide, with three other persons, in the Circuit Criminal Court of the Fifth Judicial District, Malolos, Bulacan, appellant Domingo Guevarra, *alias* Enchong Guevarra, was convicted in a decision dated December 29, 1970, and sentenced to the extreme penalty of death, to indemnify the heirs of Honorata Sevilla Manuzon in the sum of ₱12,000.00, and to pay said heirs the amount of ₱20,000.00 by way of moral and exemplary damages, with the other accessories of the law, and to pay costs.[1]

This case is before Us for review by reason of the death penalty imposed on the appellant, in the same way and for the

[1] pp. 66-67, *Rollo*.

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same purpose, as an earlier decision also imposing the death penalty on his co-accused, Eduardo Catindihan, has been elevated to this Court after an earlier trial. The two other accused, Eduardo Duria and Eduardo Agujo have not been brought to trial for they have remained at large.

The facts as presented by the Government in the People's brief, with page reference to the transcript of the stenographic notes, and the records of the case, bear the mark of accuracy, and may well be quoted for a narration of the events that constituted the actual commission of the crime and those that preceded and followed the same, specially as appellant's defense of alibi does not dispute the facts except only as to deny the acts imputed to him.[2] Thus:

"At about the hours of 8:00 o'clock and 9:00 o'clock in the evening of March 12, 1969, Lorenzo Manuzon was in his house in barrio Batasan, San Miguel, Bulacan, (p. 2, t.s.n., Aug. 3, 1970, Bacani) with his wife, Honorata Sevilla Manuzon, his mother, Flaviana Cato, their maid, Tarcila Vaculanta, and their four children, namely, Hercules, Henry, Laarni and Leny (p. 3, *ibid.*). He was already lying down as he had finished eating ahead of his wife who was still partaking of her meal. Before eating that supper, he turned over to her the sum of ₱80.00 which was the earnings of their one jeep and five jeepneys (pp. 4, 8-9, *ibid.*). She put the money in her pocket (p. 7, t.s.n., Aug. 3, 1970, Victoria). While still lying down, he heard a thud ("*balabag*") and footsteps ("*yabag*") and somebody shouting to bring out their money. He was about to stand up when he saw accused Eduardo Catindihan and Eduardo Duria, who were both armed with carbines, pushing his wife towards the room where he was lying down. When his wife reached the door, he heard a shot and saw her fall down. Eduardo Catindihan fired his carbine at him successively (pp. 4-6, t.s.n., Aug. 3, Bacani). He intentionally made himself fall down from the bed at the end portion of which his three children were sleeping. The youngest child, who was less than a year old, was in her cradle and about four meters away from him and about two meters from Eduardo Catindihan and Eduardo Duria. Eduardo Catindihan continued firing at him and when he was already out of ammunition, he ran away (pp. 6-9, *ibid.*). From under the bed where he hid in a crawling

[2] pp. 5-10, Appellee's Brief, p. 223, *Rollo*.

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position, he saw Eduardo Agujo, another accused, in the sala of the house holding his daughter Leny with his left hand and a .45 cal. pistol with the right. Eduardo Agujo saw him and fired at him but hit the crib instead. At the time, Eduardo Catindihan and Eduardo Duria were still in the sala. Eduardo Duria and Eduardo Agujo escaped ahead of Eduardo Catindihan (pp. 9-12, *ibid.*). After Eduardo Catindihan left, Lorenzo Manuzon followed him up to the balcony where Domingo Guevarra, another accused, fired at him but missed from the foot of the stairs with a Garand rifle (pp. 13-14, *ibid.*). Lorenzo Manuzon then went back to the room where his wife was already unconscious, with wounds in the left palm and in the left chest above the nipple (pp. 14-16, *ibid.*). He brought her to the San Miguel Emergency Hospital (p. 20, *ibid.*). In that hospital, he found out that her pocket was opened, without the money and contained only colgate (p. 8, t.s.n., Aug. 3, 1970, Victoria). Dr. Lucila S. Zafra, a physician in hospital, treated Mr. and Mrs. Manuzon at 9:30 o'clock of March 12, 1969 (pp. 4, 8, 20-21, t.s.n., Aug. 3, 1970, Bacani; Exhs. "A," "A-1"). As Mrs. Manuzon was in serious condition and needing a major operation which could not be performed at the emergency hospital for lack of adequate facilities, the patient was transferred to the Philippine General Hospital (pp. 5, 7, 20, *ibid.*) where she was operated on by Dr. Acosta, but she died on the operating table on March —, 1969 (p. 22, *ibid.*; p. 4, t.s.n., Aug. 24, 1970). At the time of her death, she was a public school teacher and more than five months pregnant (p. 23, t.s.n., Aug. 3, 1970, Bacani).

"On the same night of March 12, 1969, the Police Department of San Miguel, Bulacan, received reports of the commission of the crime. A team of policemen was sent to the house of the Manuzons consisting of Sgt. Ricardo Violago, team leader, and Patrolmen Leonardo J. Rodriguez, Florentino Rivera, Dionisio Pascual and Federico Abosa, members, to make on-the-spot investigation (pp. 2-4, t.s.n., Aug. 10, 1970). The team interrogated neighbors of the deceased and obtained or found physical evidence among which were the following: Five (5) empty shells of cal. 30 carbine near the bedroom of Honorata Sevilla Manuzon; five (5) empty shells of cal. .45 along the road in front of the house of the Manuzons going to Candaba; one (1) empty shell of Cal. 30 M-1 beneath the front staircase; three (3) slugs inside the dresser; one (1) bullet hole on the front door, one (1) in the beam of the ceiling, and two (2) in the window; blood stains near the door of the bedroom (pp. 4-7, *ibid.*).

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The team was also able to trace that the escape route of the culprits to be at the rear of the house leading to the ricefield (p. 8, *ibid.*).

"On March 16, 1969, the cadaver of Honorata Sevilla Manuzon was autopsied by Dr. Plaridel F. Vidal, an NBI medico-legal officer, at the NBI office morgue at Funeraria Popular, Manila. Externally, Dr. Vidal found contusions, abrasions and gunshot wounds on the body of the deceased. Opening the body, the medico-legal officer found two (2) gunshot wounds. Gunshot wound No. 1 is located at the anterior chest wall the direction of which is backward, laterally and downward, perforating particularly the upper lobe of the left lung, then making its exit at infra scapular region, at the left. Gunshot wound No. 2 is located at the left-hand, dorsal aspect and the exit is located in the opposite side (pp. 1-4, t.s.n., Aug. 24, 1970). The cause of death is Gunshot wound No. 1 (p. 8, *ibid.*). Dr. Vidal embodied his findings in a Necropsy Report (p. 3, *ibid.*; Exh. "I").

"After the perpetration of the heinous crime, the four accused went in hiding. On the part of Domingo Guevarra, Philippine Constabulary soldiers tried many times to apprehend him, on the strength of a warrant of arrest, at his house at barrio Batasan, San Miguel, Bulacan, but without success, for persons in the vicinity from whom inquiries were made, including his father, Pedro Guevarra, a policeman of San Miguel when the crime at bar was committed (pp. 35-36, t.s.n., Aug. 10, 1970) told the arresting officers that Domingo Guevarra was not at home (pp. 1-4, t.s.n., Aug. 10, 1970). On June 11, 1970, however, upon a tip from Lorenzo Manuzon that Domingo Guevarra was hiding in the house of his aunt who was the sister of his father, PC Sgt. Diosdado Ramirez, Cpl. Tolentino and Cpl. Rodolfo Garcia accompanied by Lorenzo Manuzon, proceeded to said house situated in barrio Batasan and surrounded it. The group asked a woman near the house if Domingo Guevarra was inside and her answer was in the negative. But when they heard footsteps of someone running in the house, they rushed towards the window facing the river to prevent him from escaping. On seeing Domingo Guevarra about to jump from the window, Cpl. Garcia and Lorenzo Manuzon fired warning shots, Cpl. Garcia at the same time shouting: "Don't try to escape anymore and surrender peacefully and nothing will happen to you." Apparently, this dissuaded the wanted man from trying a getaway. Sgt. Ramirez was about to go upstairs when Domingo Guevarra's father came running along from his house which was 200 meters away, telling Sgt. Ramirez not to go up the house anymore

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as he would surrender his son, Domingo Guevarra, who was escorted to the Municipal building (pp. 7-10, t.s.n., Aug. 20, 1970; pp. 2-5, t.s.n., Aug. 10, 1970)."

In his instant appeal, appellant alleges that the trial court committed[3] the following errors:

I

"In basing its decision of conviction of defendant-appellant on the testimony of a lone principal witness to the crime which was uncorroborated, inherently improbable, full of inconsistencies and contradictions in the important details of the crime;

II

"In making findings of facts not supported by evidence in utter disregard of and in violation of existing law and jurisprudence on the matter;

III

"In not giving credence to the evidence for the defendant-appellant; and.

IV

"In convicting the accused or defendant-appellant although the prosecution failed to establish the guilt of defendant-appellant beyond a reasonable doubt."

In effect, appellant contends that the evidence for the prosecution is insufficient to establish his guilt beyond reasonable doubt, against his defense of alibi which, he likewise contends, was erroneously not given credence by the court *a quo*.

Thus, appellant points out that the statement of the lone witness against him, Lorenzo Manuzon, in fact the only witness to the commission of the crime, was uncorroborated, inherently improbable and full of inconsistencies and contradictions on important details. He particularly cites, in support of his contention, the fact that in his written statement given at the Police

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[3] pp. 1-2, Appellant's Brief, p. 120. *Rollo*.

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Department of San Miguel, Bulacan, Lorenzo Manuzon made no mention of appellant, Domingo Guevarra, among the perpetrators of the crime, the three others he allegedly recognized to be Eduardo Catindihan, Eduardo Duria and Eduardo Agujo, despite that the witness had known appellant since their childhood days, and that the latter allegedly fired at him from the foot of the stairs of the witness Manuzon's house.[4]

The facts adverted to by appellant would, indeed, seriously affect the credibility of the lone state witness on the actual commission of the crime, had he not given explanation for the very significant omission. These facts are apparently what appellants claim to be the inconsistencies or contradictions on important details committed by the aforenamed State witness. Lorenzo Manuzon had, however, satisfactorily explained the omission with his testimony that he was afraid to point to appellant as one of the malefactors because his father, Pedro Guevarra was one of the policemen of San Miguel at the time, and that the shocking experience he had then just gone through when he gave his statement left him confused under very heavy emotional stress.

Fear of reprisal is a valid excuse for the momentary silence of a prosecution witness.[5] Strong psychological stress under which one gives his statement before the police investigator or executes an affidavit just three days after witnessing the slaying of his father, a traumatic experience that affects one's equanimity,[6] is also reasonable explanation for witness Manuzon's failing to relate all the details of the commission of the crime in the statement he gave to Pat. Rodriguez.

It is a proven fact that appellant left his barrio Batasan, San Miguel, after the commission of the crime and the filing of the complaint against him and his co-accused. He went to Talavera,

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[4] pp. 7-8, Appellant's Brief, pp. 126-127, *Rollo*.

[5] *People vs. Hernandez*, L-14209, May 27, 1969, 14 SCRA 89.

[6] *People vs. Alipis, et. al.*, 14 SCRA 297.

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Nueva Ecija, and did not return to Batasan until the second week of June, 1970 a period of more than one year and two months. When he returned, he did so surreptitiously, and went to live in the house of an aunt where he was arrested on June 11, 1970, not in the house of his father, only 200 meters distant. His presence in the house was even tried to be concealed from the peace officers who went there to arrest him by a woman seen near the house. Appellant himself tried to jump out of the window to avoid arrest, his attempted escape having been foiled only by the alertness of the arresting officers. Appellant's father arrived from his house, and he asked the arresting officers not to go up the house anymore, as he would surrender his son to them. The acts of appellant as just described were obviously those of one actually fleeing from the scene of the crime, a flight clearly indicative of a guilty mind.[7]

There was, indeed, no intimation of any motive on the part of Lorenzo Manuzon to falsely implicate appellant in the commission of the heinous crime. That appellant is the son of a policeman of the town should have deterred witness Manuzon from pointing said appellant as among the dastardly authors of the crime, unless he actually participated in its commission. The facts above narrated as to the flight of appellant, his surreptitious return to his barrio only after more than a year's absence therefrom, living not in his father's house as he used to but in that of an aunt, and his attempted escape when his arrest was imminent, lend credence to the testimony of the state witness whose veracity appellant tries hard, but vainly, to attack and impugn. For, indeed, with such gravely damaging testimony, particularly as to appellant's having been identified as one of the culprits, his defense of alibi would completely fall to pieces, unavailing against such solid evidence of his having actually participated in the commission of the crime, beyond

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[7] *People vs. Sibayan*, 31 SCRA 246: *People vs. dela Cruz*, 36 SCRA 452; *People vs. Amiscua y Ojeda*, 37 SCRA 813; *People vs. Cornelio*, L-1289, June 10, 1971, 39 SCRA 435; *People vs. Samonte, Jr.*, L-31225, June 11, 1975, 64 SCRA 319.

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that of a mere co-conspirator, absent from the scene of the crime.[8]

Appellant's alibi was notoriously and inherently weak. During the commission of the crime, he was allegedly only within hearing distance of the shooting that took place at the scene of the crime. The person he was allegedly with, his cousin Fred Lacsamana, in the latter's house, was not presented to corroborate him as to his whereabouts at the precise time that the crime was being committed. The weakness of appellant's alibi is, thus, so apparent that it cannot outweigh the evidence against him in the form of his having been positively identified by Lorenzo Manuzon who was not shown to have any motive to falsely charge appellant with so grave a crime as a capital offense, appellant being even a son of one of the town policemen at the time.

It is not true that the Court *a quo* considered the evidence presented during the separate trial of appellant's co-accused, Eduardo Catindihan, in handing down its judgment of conviction against herein appellant. If it did, appellant's complaint of denial of due process would weigh heavily against the validity of the decision appealed from. However, the trial court merely quoted in its decision now under review portions of the decision against Eduardo Catindihan based on the principal evidence presented, namely, the testimony of Lorenzo Manuzon, which was essentially as he gave it in the earlier trial held separately against Eduardo Catindihan, co-accused of appellant under the same information. The trial judge must have thought it more convenient to quote from his earlier decision in presenting both the assessment of the identical evidence presented in both hearings, and the rulings cited in support of his appreciation of said evidence. Appellant's accusation against the trial judge in the procedure or form adopted by the latter in writing his decision is broad and general, without

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[8] *People vs. Damaso*, L-30116, November 20, 1978, 86 SCRA 370; *People vs. Artieda*, L-38725, May 15, 1979; *People vs. Barut, et. al.*, L-42666, March 13, 1979; *People vs. Tizon*, L-29724, August 29, 1975, 66 SCRA 372.

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any specification as to what in the quoted portion incorporated in the decision herein appealed from, is devoid of basis in the evidence presented in the trial of the instant case. We find the accusation, therefore, totally unfounded, and also unfair to His Honor, the trial judge, who must be presumed to know so elementary a rule of procedure as that of considering only evidence duly presented during the trial for or against any party to the action, and made the sole basis of the decision therein.

In convicting the appellant, the court *a quo* thus correctly found the evidence sufficient to prove guilt beyond reasonable doubt. While the actual act of asportation and the killing was done by appellant's co-accused, appellant is equally guilty for the crime committed, notwithstanding that he did not even go up the house robbed. That a previous conspiracy existed among the four accused, including appellant, is evident from his presence at the scene of the crime with an evidently assigned role in the perpetration thereof — that of being the lookout downstairs, while his companions went up the house. This alloted duty was made manifest when he fired at Lorenzo Manuzon when the latter reached the balcony of his house when attempting to pursue Eduardo Catindihan who rushed out of the house on using up all his ammunitions. The existence of conspiracy is, therefore, clearly proved by the concert of criminal design among the culprits, so patent from the common object which their individual acts were aimed to attain.[9] Accordingly, the liability of each is that of co-principals, the act of one, being in contemplation of law, the act of all.[10]

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[9] *People vs. Mojica*, 10 SCRA 515; *People vs. Cercano*, L-37853, November 21, 1978, 87 SCRA 1; *People vs. Molleda*, L-34248, November 21, 1978, 87 SCRA 667; *People vs. Plateros*, L-37162, May 30, 1978, 83 SCRA 401; *People vs. Cagod*, L-36016, January 18, 1978, 81 SCRA 110.

[10] *People vs. Pareja*, 30 SCRA 690; *People vs. Cercano*, L-37853, November 21, 1978, 87 SCRA 1; *People vs. Candado*, L-34089, August 1, 1978, 84 SCRA 508; *People vs. Cabiling*, L-38091, December 17, 1976, 74 SCRA 285; *People vs. Sumayo y Bersebal*, L-30713, April 30, 1976, 70 SCRA 488.

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In imposing the death penalty, the trial court considered the aggravating, circumstance of nighttime, band, superior strength and dwelling, without any mitigating circumstance. We find the presence of the aforesaid aggravating circumstances fully supported by the evidence, and appellant has himself not disputed this finding of the trial court.

WHEREFORE, it is the duty of this Court, unpleasant though it may be, to affirm the judgment appealed from in all respects, with proportionate costs.

SO ORDERED.

Teehankee, Barredo, Makasiar, Antonio, Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio Herrera, JJ.*, concur.

Aquino, J., I vote for the imposition of *reclusion perpetua* on appellant Guevara. However, I wish to point out that the homicide was merely attempted, not frustrated. The robbery was not conclusively proven. This case should be decided jointly with *People vs. Eduardo Catindihan*, L-32508.

Fernando, C.J., took no part.

EN BANC

[G.R. No. L-33314. December 14, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EFREN URMINITA *Y* DE LEON,** *defendant-appellant.*