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ANTONIO, *J., concurring:*

The policeman who, taking advantage of his public position, commits murder, does not deserve judicial leniency. As stated in a previous case: "While the law protects the police officer in the proper discharge of his duties, it must at the same time just as effectively protect the individual from abuse of the police." (*U.S. vs. Pabalan,* 37 Phil. 352).

EN BANC

[G.R. No. L-31900. August 6, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUANITO BAUTISTA *y* AQUINO, LEONARDO MACAPAGAL *y* RUIZ, and ROLANDO REBUTAR *y* GONZALES,** *defendants,* **ROLANDO REBUTAR *y* GONZALES,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREBILITY OF WITNESSES; TRIAL JUDGE'S FINDINGS OF FACT SHALL NOT BE DISTURBED; EXCEPTION.**— On matters of credibility, this Court has accorded the highest degree of respect for the findings of the trial judge because he had the opportunity to see, hear and observe the witnesses testify and to weight their testimonies. The trial judge's findings of fact shall not be disturbed unless it appears from the record that facts or circumstances of weight or influence were overlooked, their significance misinterpreted, or there were inherent weaknesses in the supporting evidence.

2. **CRIMINAL LAW; CONSPIRACY; WHEN PRESENT.**— It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective.

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When the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the Court will be justified in concluding that said defendants were engaged in conspiracy.

3. **ID.; ID.; ARISES ON THE VERY INSTANT THE PLOTTERS AGREE, EXPRESSLY OR IMPLIEDLY, TO COMMIT THE FELONY AND FORTHWITH DECIDE TO PURSUE IT.**—Unlike evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and for the perpetrator to deliberate on the consequences of his intended deed, conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it.

4. **ID.; ID.; LIABILITY OF CONSPIRATORS**— Considering the existence of conspiracy, the claim of appellant Rebutar that he did not inflict the fatal wound on the victim is of no moment. As a conspirator, he is equally responsible for the acts of his co-conspirators.

5. **ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED.** — It is evident from the record that the killing is qualified by treachery. The attack on the victim was not only sudden and unexpected, but the fatal wounds appeared to have been inflicted when he was held firmly by one of the accused and also after he fell on the ground.

6. **ID.; ID.; EVIDENT PREMEDITATION; WHEN NOT CONSIDERED.**— We find tenable, however, the contention of counsel *de oficio* Alice V. Pesigan that evident premeditation has not been proven beyond reasonable doubt. There is no testimonial evidence as to how and when the assailants agreed to kill the victim. According to the extrajudicial confession of Rolando Rebutar, "Juanky" Oding picked him up on the afternoon of September 19, 1969 for the purpose of looking for Crisanto Barredo. There is no iota of proof as to *when* the culprits agreed to kill the deceased. There must be a basis for determining whether the accused had sufficient time, between inception of the plan and its fulfillment, dispassionately to

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consider and accept its consequences. The circumstance of evident premeditation must be established with equal certainty and clearness as the criminal act itself.

7. **ID.; MURDER; IMPOSABLE PENALTY.**— The judgment, insofar as it finds appellant Rolando Rebutar *y* Gonzales guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, is hereby AFFIRMED, but the penalty is reduced to *reclusion perpetua*, in the absence of any modifying circumstance.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor Octavio R. Ramirez and *Solicitor Enrique M. Reyes* for plaintiff-appellee.

Alice V. Pesigan for defendant-appellant.

D E C I S I O N

ANTONIO, *J.*:

Automatic review of the judgment of the Circuit Criminal Court of Manila on February 13, 1970, finding appellant Rolando Rebutar *y* Gonzales guilty beyond reasonable doubt of the crime of Murder, qualified by treachery and aggravated by evident premeditation, and sentencing him to suffer the supreme penalty of death. Juanito Bautista *y* Aquino and Leonardo Macapagal *y* Ruiz, who were likewise found guilty of the crime and sentenced to suffer *reclusion perpetua*, did not appeal from the judgment. Hence, the review refers only to the case of Rolando Rebutar *y* Gonzales.

On the night of September 19, 1969, Crisanto Barredo *y* Recto was stabbed and boloed by his assailants inside the house of Teodora Gonzales de la Cruz at 1007 Batangas Street, Tondo, Manila. The victim died as a result of hemorrhage, shock due to multiple hacking wounds and stabbing wounds lacerating the lungs, stomach, liver, intestines and right and left kidney (Exhibit "E").

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According to Dr. Angelo Singian, Assistant Medico-Legal Officer of the Manila Police Department, he found the following external and internal injuries on the body of the deceased:

"*POSTMORTEM FINDINGS*

EXTERNAL INJURIES:

(1) A group of four contused lacerated wounds on the right periorbital region.

(2) Incised wound, left pinna.

(3) Superficial glancing hacking wound on the lateral side of the right neck.

(4) Superficial small stab wound, right upper lip.

(5) Abrasion, right anterior shoulder. Hacking wound on the upper anterior lateral surface of the right arm.

(6) Stab wound on the right upper lateral chest midaxillary line measuring 2 x 1 cm. lacerating upper lobe of right lung.

(7) Penetrating stab wound on the right anterolateral chest anterior axillary line lacerating upper lobe of the left lung and measuring 2 x 0.5 cm.

(8) & (8-a) Thru and thru superficial stab wound on the right anterior chest, piercing thru the skin and soft tissues.

(9) Hacking wound on the right arm, a little below wound No. (5).

(10) & (10-a)Thru and thru stab wound, medial surface, right arm.

(11) A group of 3 penetrating stab wounds on the lower right anterior chest, lacerating the liver and both kidneys, diaphragm, and duodenum.

(12) Two superficial incised wounds, postero-lateral right forearm.

(13) Abrasions, right knee.

(14) Hacking wound on the left upper parietal region of the head, *cutting outer table of left parietal bone.*

(15) Hacking wound on the left mastoid to upper nape of neck cutting mastoid bone.

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(16) Hacking wound on right scapula which is non-penetrating.

(17) Stab wound below and lateral wound No. (16).

(18) Stab wound, non-penetrating, posterior chest near midline.

(19) Stab wound, penetrating posterior chest slightly to the left of midline lacerating upper lobe of left lung.

(20) Hacking wound, non-penetrating, right lower posterior chest.

(21) Penetrating stab wounds posterior lumbar lacerating right kidney.

(22) Penetrating stab wound postero-lateral chest, left, lacerating the diaphragm, spleen and duodenum.

(23) Superficial glancing hacking wound posterior surface, left arm.

(24) Superficial hacking wound below wound No. 23.

(25) Hacking wound postero-medial surface distal portion left forearm.

INTERNAL FINDINGS:

RESPIRATORY SYSTEM:

Two stab wounds in the right lung and one in the left.

LIVER:

Three stab wounds, liver.

GENITOURINARY SYSTEM:

Stab wound, right & left kidney.

GASTROINTESTINAL TRACT:

Stab wound, stomach, duodenum and jejunum.

BONES AND JOINTS:

Cutting fracture, outer table of left parietal bone and right 6th rib.

CAUSE OF DEATH:

Hemorrhage and shock due to multiple hacking wounds and stab wounds lacerating the lungs, stomach, liver, intestines and right & left kidney." (*Exhibit* "E").

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Dr. Singian testified that wound No. 1 was caused by a blunt hard object such as the butt of a gun; while the stab wounds Nos. 2, 6, 7, 8, 8-a, 11, 17, 18, 19, 21 and 22 might have been caused by sharp-pointed instruments, and the hacking wounds Nos. 3, 5, 9, 14, 15, 16, 20, 23, 24 and 25 by a bolo. He declared that wounds Nos. 6, 7, 11 and 15 are fatal wounds.

Abelardo Liwanag, 22 years old, declared that he knows Juanito Bautista, *alias* "Juanky," "Narding" (Leonardo) Macapagal, Reynaldo Ebes, *alias* "Boy Suman" and Rolando Rebutar, *alias* "Bansoy." At around 8:00 o'clock p.m. on September 19, 1969, he and his friend Crisanto Barredo, *alias* "Magong," were watching the TV show on the ground floor of the house of Teodora de la Cruz at Batangas St., Tondo, Manila. While they were thus seated infront of the television set at about 8:30 p.m., four men, namely "Boy Suman," "Bansoy," "Juanky" and "Narding" suddenly entered the room. "Bansoy," whom he identified as appellant Rolando Rebutar, ordered them not to move. Meanwhile, "Narding" Macapagal, who was armed with an "open knife," stood as guard. Juanito Bautista was holding a jungle bolo about 12 to 14 inches in length. "Boy Suman" was armed with a "double-bladed instrument" while "Bansoy" was holding a revolver. All of a sudden, Rebutar held Crisanto Barredo from behind by the neck. As Crisanto Barredo struggled and was about to extricate himself from the hold of Rebutar, the latter clubbed him with the butt of his gun. Thereafter, Macapagal grabbed and held the victim. It was at this juncture that "Boy Suman" stabbed the victim. He further declared that he saw Bautista hack the victim twice with the jungle bolo although he was already lying on the floor. When "Boy Suman" attempted to stab him, he ran up the stairs. From the room on the second floor, he peeped thru the slit on the floor and saw that the four men "helped one another" in attacking Crisanto Barredo.[1] After a while, upon noticing that the assailants had left the premises, he went down the house and saw Crisanto Barredo already prostrate on the ground, 18 meters from the house. The victim was gasping for breath. Together with the

[1] t.s.n., p. 13, Session of January 21, 1970.

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assistance of the neighbors, they got a tricycle, which they used in their attempt to bring the victim to the hospital.

On the way, however, they met appellant Rebutar. When they saw Rebutar running towards them with a gun, they became scared and fled to the railroad tracks. In the meantime, they saw Rebutar pull the victim from the tricycle and place him on the ground.

Normita Pangilinan, 24 years old, widow of the deceased Crisanto Barredo, declared that upon hearing her neighbor's shouts for help she went out. Upon seeing her husband wounded lying inside a tricyle, she raised the body of her husband and cradled him on her lap. According to her, it was at that moment when appellant Rebutar appeared and told her that her husband was already dead. After saying this, Rebutar removed the body of the victim from the tricyle and then stabbed the victim with a jungle bolo.

Pat. Carmelito Valmonte testified that he investigated Rebutar, Bautista, Macapagal, de la Cruz, Pangilinan and Abelardo Liwanag; that Abelardo Liwanag and appellant Rolando Rebutar voluntarily executed written statements admitting their complicity in the crime (Exhibits "F" and "G"); that although Abelardo Liwanag affirmed the veracity of his statement before the Assistant City Fiscal (Exhibit "F") Rolando Rebuttar refused to do so after he was advised by his lawyer; that Bautista and Macapagal refused to give any oral or written statements to the police. In his statement before the investigator (Exhibit "G"), Rebutar admitted that he and his co-accused were members of the Sigue-Sigue Gang; while the victim, Crisanto Barredo, was of the *Bahala na Gang*; that he and his companions attacked Crisanto Barredo that night because of a previous physical altercation between Crisanto and "Boy Suman" over a stolen bicycle.

Appellant Rolando Rebutar, while admitting his presence at the scene of the crime, denied any involvement therein. The thrust of his defense is that it was Crisanto Barredo who was the aggressor, claiming that upon Barredo's arrival at the house of Aling Doray, where he, Bautista and Macapagal were

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watching television, Crisanto immediately mauled "Boy Suman." It was in retaliation of this attack that "Boy Suman" drew his knife and stabbed Crisanto on the chest. Crisanto then ran out of the house pursued by "Boy Suman." He did not know anymore what happened because he did not follow them. He also declared that he was arrested at 1:00 p.m. on October 19, 1969 by Pat. Valmonte but he claimed that he was told that he was being apprehended for vagrancy. He claimed that he never made the statements contained in Exhibit "G" and that he signed that statement because he was maltreated by Valmonte. He claimed that Liwanag implicated him in the crime because he and Liwanag had a fight over the loss of some vegetables in the market. He admitted, however, that their quarrel was settled by Capt. Hernando of the police in Precinct No. 3.

Appellant's claim of maltreatment was debunked by Pat. Carmelito Valmonte who explained that they could not have maltreated the appellant in the investigation room because during the investigation, the parents, wife and other relatives of appellant Rebutar were allowed to be present. He further declared that he was not able to get any written statement from Bautista or Macapagal because the two invoked their constitutional rights and refused to answer their questions.

We are satisfied, on the basis of the evidence, that appellant Rebutar voluntarily executed Exhibit "G". It discloses details about antecedent facts which led to the incident of the 19th of September which only the perpetrators of the crime could have known. The voluntary nature of the statement is further indicated by the presence of mitigating assertions by appellant. Prescinding, however, from Rebutar's extrajudicial confession (Exhibit "G"), the testimonies of the eyewitnesses of the prosecution, Abelardo Liwanag and Normita Pangilinan, are by themselves sufficient to establish the guilt of appellant. According to the trial court, Liwanag's testimony is credible as it "was given in a very clear, spontaneous, natural and straight forward manner which are the earmarks of truth. His gesture, inflection of voice and demeanor on the witness stand, especially in the cross examination to which he has been exposed further strengthened the credibility of his testimony." On matters of credibility, this

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Court has accorded the highest degree of respect for the findings of the trial judge because he had the opportunity to see, hear and observe the witnesses testify and to weight their testimonies. The trial judge's findings of fact shall not be disturbed unless it appears from the record that facts or circumstances of weight or influence were overlooked, their significance misinterpreted, or there were inherent weaknesses in the supporting evidence. Such is not the situation here. On the contrary, the testimony of Liwanag that the victim was stabbed and boloed by appellant and his companions finds support from the nature, character and direction of the wounds found on the victim. The *post mortem* findings indicated that the victim sustained no less than twenty-seven (27) hacking wounds, stab wounds, incised wounds, abrasions and contusions. Five of the wounds were located on the back of the victim. The fatal wounds were located on the right and left side of the deceased. These facts confirm the declaration of Liwanag on the manner the assailants attacked the victim.

Appellant nevertheless contends that the prosecution was not able to prove conspiracy. It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective. When the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the Court will be justified in concluding that said defendants were engaged in conspiracy.[2] Unlike evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and for the perpetrator to deliberate on the consequences of his intended deed, conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it.[3] In the case at bar, appellant

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[2] *People v. Geronimo*, L-35709, Oct. 15, 1973, 53 SCRA 246.

[3] *People vs. Monroy, et al.*, L-11177, Oct. 30, 1958, 104 Phil. 759.

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Rolando Rebutar and his companions, Juanito Bautista, Leonardo Macapagal and "Boy Suman," entered together the ground floor of the house of Teodora Gonzales de la Cruz in Batangas St., Tondo, Manila, at 8:00 o'clock in the evening of September 19, 1969. All of them were armed. As appellant ordered Crisanto Barredo and his companions not to move, Macapagal stood guard armed with a pointed fan knife. Rebutar then held Barredo by the collar. As Barredo tried to extricate himself from Rebutar's hold, the latter hit him with the butt of his gun while Macapagal also held him by the neck. At this juncture, "Boy Suman" stabbed the victim. Bautista hacked the victim with his jungle bolo while he was already lying on the floor. According to the witnesses, "Boy Suman," Macapagal, Bautista and Rebutar helped one another in assaulting the victim. These circumstances sufficiently show the evidence of conspiracy between appellants and his companions. Considering the existence of conspiracy, the claim of appellant Rebutar that he did not inflict the fatal wound on the victim is of no moment. As a conspirator, he is equally responsible for the acts of his co-conspirators.[4]

It is evident from the record that the killing is qualified by treachery. The attack on the victim was not only sudden and unexpected, but the fatal wounds appeared to have been inflicted when he was held firmly by one of the accused and also after he fell on the ground.

We find tenable, however, the contention of counsel *de oficio* Alice V. Pesigan that evident premeditation has not been proven beyond reasonable doubt. There is no testimonial evidence as to how and when the assailants agreed to kill the victim. According to the extrajudicial confession of Rolando Rebutar (Exhibit "G"), "Juanky" Oding picked him up on the afternoon of September 19, 1969 for the purpose of looking for Crisanto Barredo. There is no *iota* of proof as to *when* the culprits agreed to kill the deceased. There must be a basis for determining whether the accused had sufficient time, between inception of the plan and its fulfillment, dispassionately to consider and accept its consequences.

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[4] *People v. Santos, et al.*, L-1820-21, June 27, 1949, 84 Phil. 97.

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The circumstance of evident premeditation must be established with equal certainty and clearness as the criminal act itself.

WHEREFORE, the judgment, insofar as it finds appellant Rolando Rebutar *y* Gonzales guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, is hereby AFFIRMED, but the penalty is reduced to *reclusion perpetua,* in the absence of any modifying circumstance. The other portions of the decision are hereby likewise AFFIRMED.

SO ORDERED.

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

Santos and *Abad Santos, JJ.*, on leave.

FIRST DIVISION

[G.R. No. L-32066. August 6, 1979]

MANUEL LAGUNZAD, *petitioner, vs.* **MARIA SOTO VDA. DE GONZALES and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; JUDGMENTS FOR RECOVERY WITH ACCOUNTING ARE FINAL AND APPEALABLE.**— The doctrine enunciated in *Fuentebella vs. Carrascoso* relied upon by petitioner, which held that whether or not the action for accounting is the principal or is incidental to another, the judgment requiring such accounting cannot be final, has been abandoned in *Miranda vs. Court of Appeals* which ruled: "For the guidance of bench