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EN BANC

[G.R. No. L-29979. September 28, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiffs-appellees, vs.* **MADA-I SANTALANI, TAMBUTSO PATUHIN, JAYRI JAMARI, TAMBUSONG MOHAMADSALI, SAMINDI COSING, ET AL.,** *defendants,* **TAMBUTSO PATUHIN, JAYRI JAMARI, TAMBUSONG MOHAMADSALI and SAMINDI COSING,** *defendants-appellants.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; MAY BE INFERRED FROM THE ACTS OF ACCUSED TENDING TO SHOW A COMMUNITY OF CRIMINAL PURPOSE.— Although no previous agreement to commit the crime was evidently proven, the existence of a conspiracy may be inferred from the acts of appellants tending to show a community of criminal purpose or design. "The agreement of which the law speaks is not limited to one which is written or otherwise expressly or directly made prior to the commission of the crime. It is not necessary that the malefactors, for an appreciable time prior to the commission of the crime, had actually come together and agreed in terms to pursue a common design. For conspiracy to exist, it is enough that the participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances. To establish conspiracy, it is not necessary to prove previous agreement to commit a crime if there be proof that the malefactors have acted in concert and in pursuance of the objectives. Conspiracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. Their action must be judged not by what they say, for what men do is the best index of their intention."

2. ID.; MURDER WITH DIRECT ASSAULT UPON AGENTS OF PERSONS IN AUTHORITY; COMMITTED IN CASE AT BAR.— The nature of the crime committed is Murder because of the presence of the qualifying circumstance of having been committed by means of explosion (Art. 248(3), Revised Penal

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Code) "A person who threw a hand grenade at his victim who was killed as a result of the explosion is guilty of murder." It is complexed with the crime of Direct Assault upon Agents of Persons in Authority as it has been proven that the two PC enlisted men were engaged in the performance of their official duties at the time they were attacked by the accused.

3. ID.; COMPLEX CRIMES; PENALTY; CASE AT BAR.— Under Article 48 of the Revised Penal Code, when a single act constitutes two or more grave or less grave felonies, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. The penalty prescribed for Murder under Article 248 of the Revised Penal Code is *reclusion temporal* in its maximum period to death. The imposable penalty therefore, is death. Being a single indivisible penalty, it has to be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. However, in view of the dissent of Justice Ramon C. Aquino, concurred in by Justice Antonio P. Barredo, the required number of votes for the imposition of the capital punishment has not been obtained and, therefore, the penalty to be imposed is the next lower in degree, or *reclusion perpetua.*

AQUINO, *J.*, *concurring and dissenting opinion:*

CRIMINAL LAW; CRIMINAL LIABILITY; LIABILITY FOR SEPARATE OFFENSES, WHEN ALLOWED; CASE AT BAR.— I concur in the holding that the four accused-appellants are criminally liable. But they should be convicted of three separate offenses because there were three victims who were killed by means of separate acts and not by a single act. They are guilty of *two separate* complex crimes of murder with *atentado* as to the two Constabulary sergeants and of simple murder as to the dead civilian. I dissent as to the imposition of the death penalty on the three accused because they were not the leaders of the assault. The two leaders, Pabling Bisaya and Jawali Badjao, are at large. (See *People vs. Cabrera*, 43 Phil. 64 and 82; *People vs. Sakam*, 61 Phil. 27, 35; *People vs. Moreno*, L-37801-05, October 23, 1978, 85 SCRA 649; *People vs. John Doe*, L-2463, March 31, 1950.) Moreover, the fact that the accused are non-Christians should be taken into account (Sec. 106, Administrative Code of Mindanao and Sulu; *People vs. Main*, 51 Phil. 933;

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People vs. Mori, L-23511 and L-23512, January 31, 1974, 55 SCRA 382, 404). Hence, the three accused, who were sentenced to death, should each be sentenced to three *reclusion perpetuas*, subject to the forty-year limit.

APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Crispin V. Bautista and *Solicitor Enrique M. Reyes* for plaintiffs-appellees.

Manuel O. Chan (Counsel de Oficio) for defendants-appellants.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

Automatic review of the judgment of the Court of First Instance of Davao, dated September 18, 1968, in Criminal Case No. 10537, for Multiple Murder with Direct Assault upon Agents of Persons in Authority which meted out the penalty of death on *Tambutso Patuhin, Jayri Jamari* and *Tambusong Mohamadsali. Samindi Cosing*, who was sentenced to life imprisonment, has also appealed.

The dispositive portion of the trial Court's judgment reads:

"The guilt of the following accused, namely, *Tambutso Patuhin, Jayri Jamari* and *Tambusong Mohamadsali* have been definitely established and for which reason, considering the nature of the crime committed and the means of its commission as well as the presence of aggravating circumstances proven with no mitigating circumstances it is the painful duty of this Court to impose upon them the supreme penalty of *DEATH*.

"The guilt of Saminde Cosing has also been established beyond doubt, considering however, that he is a minor which from observation of the Court is only 17 years old, he is hereby sentenced to *RECLUSION PERPETUA*, plus accessory penalties of the law.

"Regarding accused Sapal Jabal as already shown he being an accessory, he is hereby sentenced to SIX (6) YEARS and ONE (1)

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DAY of *prision mayor* to TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal* with accessory penalties of the law and to pay the costs.

"Furthermore, the accused Tambutso Patuhin, Saminde Cosing, Jayri Jamari, and Tambusong Mohamadsali are hereby ordered to indemnify the heirs of the deceased, Sgt. Bonifacio Bonotan, Sgt. Salvador Geraldo and Felix Bildera the sum of ₱10,000.00 for each of them with no subsidiary imprisonment in case of insolvency by reason of the penalty imposed.

"Further, the banca used in the commission of this crime is hereby declared confiscated in favor of the government.

"With respect of the accused, Madai Santalani, Pangalasa Anodin, Montolgawi Tolawi, Talasan Sansiwa, Mastalgari Pawaki, Abubakar Aplasi and Jaray Apsari are hereby *ACQUITTED* on reasonable doubt."

"SO ORDERED."[1]

The Information against the original twelve accused reads as follows:

"The undersigned accuses Madai Santalani, Pangalawan Anodin, Mantolgawi Tulawi, Talasan Sansiwi *alias* Atalan, Sapal Jabal, Tambutso Patuhin, Jayri Jamari, Janay Apsari, Mastalgari Pawaki, Abubakar Aplasi, Samindi Cosing and Tambusong Mohamadsali of the crime of Multiple Murder with Direct Assault Upon Agents of Persons in Authority, under Art. 48 of the Revised Penal Code, committed as follows:

"That on or about April 7, 1967, in the municipality of Peñaplata, Samal, Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, conspiring and confederating together with Jawali Badjao and Pabling (Bisaya) who are still at large and helping one another, with treachery and evident premeditation and with the use of explosives and with intent to kill, did then and there wilfully, unlawfully and feloniously throw sticks of dynamite upon S/Sgt. Bonifacio Bonutan and Sgt. Salvador Geraldo, who are agents upon persons in authority and while in the performance of their official duties as peace officers together with Felix Beldera, a civilian, while

[1] pp. 129-130, Original Records.

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riding on an outboard motor in the sea between Talicud Island and Samal Island, which exploded thereby causing instant death to the afore-mentioned.

"The commission of the foregoing offense is attended by the aggravating circumstance that the crime was committed in an uninhabited place for the purpose of impunity.

"Contrary to law."[2]

Following is a summary of the evidence presented by the prosecution:

On April 7, 1967, Sgts. Bonifacio Bonotan and Salvador Geraldo, both members of the 431st PC Company, were at Caputian Island to conduct an investigation of the reported suicide of a Chinese named Pa Uy. At about 10:30 in the morning of the same date, some fishermen reported that they had very little catch that morning because there were Muslims who had been dynamite fishing. Responding to said report, the two PC soldiers boarded a PC 40 HP motor boat with Felix Bildera, a civilian, as, motorman, and pulled out to sea. Some of the accused, who were in two bancas, were caught with the dynamited fish. After their arrest, the two bancas were towed with a rope, one behind the other, by the PC motorboat towards the direction of the PC Barracks at Davao City. On board the FIRST BANCA immediately behind the PC motorboat, were the accused Abubakar Aplasi, Mastalgari Pawaki, Janay Apsari and *Tambutso Patuhin*. Aboard the SECOND BANCA, which was farther from the PC motorboat, were the accused *Samindi Cosing, Jayri Jamari* and *Tambusong Mohamadsali.* Before long, another motorboat of 18 HP (the ATTACKING MOTORBOAT) carrying the accused Pangalsan Anodin, Pabling (Bisaya), Jawali (Badjao), Madai Santalani, Montalgawi Tolawi, Talasan Sansiwi, and Sapal Jabal, intercepted the PC motorboat while still in the open sea between Talicud Island and Samal Island. Pabling (Bisaya), still at-large at the time of the trial, acting as the leader of the group in the ATTACKING MOTORBOAT together with Jawali (Badjao), also a fugitive

[2] pp. 18-19, *ibid.*

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from justice, tried to negotiate with the apprehending PC Sergeants for the release of the arrested fishermen and of the bancas which were being towed. Failing in their efforts, Pabling (Bisaya) suddenly threw a stick of dynamite at the PC motorboat but did not hit the PC soldiers.[3] Thereafter, at least three shots were heard to have been fired by the PC soldiers and Jawali (Badjao) was, in fact, hit and was bleeding.[4] Pabling (Bisaya) and Jawali (Badjao) then each threw two more sticks of dynamite at the PC motor boat. One PC soldier was thrown out of the PC motorboat after one of the explosions. Appellants *Tambutso Patuhin* in the FIRST BANCA, and *Tambusong Mohamadsali* and *Samindi Cosing* in the SECOND BANCA also threw dynamite sticks at the PC motorboat. After the dynamiting was over, Pabling (Bisaya) and Jawali (Badjao) picked up the dead bodies of the other PC soldier and the civilian in the PC motorboat, tied a stone each to their feet and dropped them into the sea.

A PC patrol was dispatched to the sea area to hunt for the culprits and to recover the bodies of the victims but this proved unsuccessful. Only pieces of the PC motorboat as well as the outboard motor itself were recovered (Exhibits F and G).

There was no eyewitness to the crime committed in the open sea. The lead came when one of the investigating officers, Captain Avelon, came upon the accused Sapal Jabal at Piapi, Davao City, repainting a banca. When about to be apprehended, Sapal Jabal ran but chased and apprehended. He admitted that he was with the group who dynamited the PC motorboat and likewise mentioned as his companions Talasan Sansiwi, Mantolgawi Tolawi, Pangalawan Anodin and Madai Santalani. Apprehension of the eleven other accused followed thereafter. Investigation conducted by the PC in the Tausog dialect, a dialect understood by the accused, which was interpreted to them by Corporal Espantaleon (Exhibits C, D, E, K, L, M, N, O, P, Q and R), wherein they respectively admitted having been with

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[3] Answer to Q. 14, Exhibit C, Sworn Statement of Tambusong Mohamadsali.

[4] Answer to Q. 20, Exhibit L, Sworn Statement of Pangalawan Anodin.

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the group and described their respective participations in the dynamiting incident. The statements were sworn to, some before Assistant Provincial Fiscal Matondo, Jr. and others before Special Counsel Escovilla.

Despite their confessions, the accused, testifying individually, except for Talasan Sansiwi, who is dumb and did not take the witness stand, denied having killed the victims and invoked the common defense of alibi, claiming that they were not present at the scene of the crime during the alleged time of its commission but were in their respective homes.

Contradicting the evidence presented by the prosecution to establish the voluntariness of the extrajudicial confessions they had executed, they countered that they suffered different forms of maltreatment inflicted upon their persons by the PC soldiers during the investigation to force them to affix their thumbmarks *in their respective Affidavits and to admit complicity in the* killing of the two PC soldiers and one civilian.

After trial, the lower Court held that "the following namely: Pabling (Bisaya) and Jawali (Badjao), who are still at large, Samindi Cosing and Jayri Jamari and Tambusong Mohamadsali were all responsible for the act of throwing dynamites which blasted the two (2) PC soldiers and one (1) civilian."[5] Although, according to the trial Court, the accused *Tambutso Patuhin*, *Samindi Cosing* and *Jayri Jamari* mentioned in their respective statements that they did not hit the PC motorboat, the trial Court opined that "there was concert of action with the leader of the group who blasted the said PC soldiers and thereby proved the existence of conspiracy among them."[6]

Sentence was meted out accordingly, as heretofore quoted. Accused-appellants, through their counsel *de oficio*, attribute to the trial Court the following errors:

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[5] p. 17, Decision.

[6] p. 22. *ibid.*

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FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS WHEN THE EVIDENCE DOES NOT SHOW THAT THEY PARTICIPATED IN THE MATERIAL EXECUTION OF THE ACTS THAT CAUSED THE DEATH OF THE TWO PC SOLDIERS, NAMELY, BONIFACIO BONUTAN AND SALVADOR GERALDO AND OF THEIR CIVILIAN COMPANION NAMED FELIX BILDERA.

SECOND ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS WHEN, EVEN ASSUMING THAT THEIR ALLEGED EXTRAJUDICIAL CONFESSIONS ARE VALID AND ADMISSIBLE IN EVIDENCE, THE PROSECUTION DID NOT ESTABLISH THAT THERE WAS A CRIMINAL CONSPIRACY AMONG THEM AND THE PERSONS WHO ACTUALLY KILLED THE ALLEGED VICTIMS.

THIRD ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN CONVICTING SAPAL JABAL AS AN ACCESSORY TO THE CRIME CHARGED IN THE INFORMATION, THERE BEING NO EVIDENCE TO SHOW THAT THE ACTS IMPUTED TO HIM FALL WITHIN THE PURVIEW OF ARTICLE 19 OF THE REVISED PENAL CODE.

FOURTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED WHEN IT ADMITTED IN EVIDENCE THE ALLEGED EXTRAJUDICIAL CONFESSIONS OF THE ACCUSED-APPELLANTS AND THOSE OF THEIR CO-ACCUSED AND WHEN IT CONVICTED THEM ON THE BASIS THEREOF.[7]

The third assigned error relative to Sapal Jabal need not be considered. He was not an appellant,[8] and he has passed away, according to a Manifestation, dated May 26, 1969, submitted by counsel *de oficio*.[9]

1. It is a fact that, in its judgment, the trial Court relied heavily on the extra-judicial confessions executed by the accused.

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[7] p. 89. *Rollo*.

[8] Resolution Dated August 11, 1969, p. 171. *Rollo*.

[9] p. 149. *Rollo*.

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The latter would have us believe that duress and violence were used in procuring those affidavits from them. We are not persuaded. Corporal Felipe T. Tuvilla, who took the statements of Madai Santalani, Janay Apsari, Sapal Jabal, Tambutso Patuhin, and Abubakar Aplasi (Exhibits K to R) declared that the statements were given freely and voluntarily.[10] Sgt. Carbonnel, who obtained the statements of *Samindi Cosing* and *Tambusong Mohamadsali* (Exhibits C and E) also made a similar declaration. Assistant Provincial Fiscal Matondo, before whom Madai Santalani, Mantolgawi Tolawi, Janay Apsari, Sapal Jabal, Tambutso Patuhin, Pangalawan Anodin, Mastalgari Pawaki, Abubakar Aplasi subscribed their statements, declared that he interrogated the accused and each one of them voluntarily admitted the contents thereof. In fact, he added that relative to the statement of Sapal Jabal (Exhibit O), this accused repudiated a particular portion of his statement and denied participation in the killing so that he crossed it out (Q. & A. No. 12, Exhibit O).[11] Fiscal Mantilla also testified that he was with the PC patrol dispatched to the crime scene and he knew for a fact that the accused *Tambusong Mohamadsali* and Pangalawan Anodin volunteered to point to the exact spot where the blasting took place. Special Counsel Escovilla, before whom *Tambusong Mohamadsali* and *Samindi Cosing* subscribed their affidavits, also declared that those two accused gave their statements freely and voluntarily.[12]

The fact that the accused-appellants were not informed of their right to remain silent and to counsel will not render their extrajudicial confessions inadmissible as the confessions were obtained in 1967, or prior to the effectivity of the new Charter on January 17, 1973.[13]

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[10] T.s.n., March 14, 1968, p. 162.

[11] T.s.n., March 25, 1968, p. 244.

[12] T.s.n., April 2, 1968, p. 312.

[13] *Magtoto vs. Manguera*, 63 SCRA 4 (1975); *People vs. Dumdum, Jr., et al.*, G.R. No. L-35279, promulgated July 30, 1979.

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For its part, the defense has not presented any evidence of compulsion or duress nor violence on their persons. They failed to complain to the swearing officers (t.s.n., April 4, 1968, p. 48);[14] they did not institute any criminal or administrative action against their alleged torturers for maltreatment (t.s.n., May 13, 1968, p. 349);[15] they showed no mark of violence in their bodies (t.s.n., July 31, 1968, p. 109);[16] neither did they have themselves examined by a reputable physician to buttress their claims.[17] Additionally, the fact that the accused, in their respective statements, tended to exculpate themselves and instead pointed to Pabling (Bisaya) and Jawali (Badjao) as their leaders but who are still at large, as the real culprits (Exhibits K, N, P and R), is another factor indicating voluntariness.

"Where the narration of the declarant tends to explain his conduct or shift the blame to others, this is a circumstance that may be considered as demonstrative of voluntariness rather than of compulsion."[18]

In fine, the extrajudicial confessions of the accused, having been voluntarily given, are admissible in evidence. The commission of the crime is corroborated by evidence of the *corpus delicti,* particularly, the debris of the PC patrol boat which were recovered, (Exhs. F and G), and by the statement of Fiscal Montilla that *Tambusong Mohamadsali* and Pangalawan Anodin could point to the exact spot where the felony was committed. The element of death in the *corpus delicti* and the criminal agency causing it have been established, besides the fact that it may be proven circumstantially or presumptively.[19]

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[14] *People vs. Pulido,* 85 Phil. 705 (1950); *People vs. Libre,* 93 Phil. 5 (1953); *People vs. Tuazon,* 6 SCRA 249 (1962).

[15] *People vs. Dela Cruz,* 88 Phil. 29 (1951); *People vs. Francisco,* 93 Phil. 28 (1953).

[16] *People vs. Lastimoso,* 83 Phil. 714 (1949).

[17] *People vs. Palencia,* 71 SCRA 679 (1976).

[18] *People vs. Palencia, supra.*

[19] *People vs. Sasota, et al.,* 91 Phil. 111 (1952).

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2. The respective statements of the accused (Exhibits C, D, E, K to R) are unanimous in that Pabling (Bisaya) and Jawali (Badjao) were the leaders of the group and the actual perpetrators of the criminal act. Typical of such a declaration is that of Pangalawan Anodin, one of their companions in the same motorboat, who stated:

Q. 18 – What happened, after this?

A. – We intercepted the PC sea patrol who was towing the 2 pump-boats and when we were already near them, Pabling (Visaya) talked to the members of the PC sea patrol. Shortly thereafter, Pabling (Visaya) lighted a dynamite that he was holding, then stood up and threw it to the PC Outboard Motor hitting the rear portion of same resulting to the death of a civilian who was operating and one (1) soldier near him and destroying the said portion of the Out-Board Motor. That the throwing of dynamite by Pabling (Visaya) was immediately followed by the two throws of Jawali (Badjao) of 2 dynamites wherein I did not see anymore whether it hit the PC Out- Board Motor or not as I was already taking cover inside our Out-Board Motor. Then, I again saw Pabling (Visaya) threw 2 dynamites and after this, I stood up and saw the already blasted PC Out-Board Motor. That we went near and there I saw two (2) dead bodies, that of a civilian and that of a soldier. Then Pabling (Visaya) and Jawali (Badjao) tied a stone of a head size respectively to one of the legs of each dead body and dumped them into the sea. After this, we left for Piapi, Davao City." (Exhibit L)

Further, that Pabling (Bisaya) and Jawali (Badjao) were actually the ones who disposed of the bodies of the victims is corroborated by *Tambusong Mohamadsali* in his statement (Exh. C), when he stated:

Q. 13 – After killing the two PC soldiers and their civilian companion, what did you do to them?

A. – After killing them with dynamite blasts, Pabling (Visaya) picked up the dead bodies of one PC and the civilian from the PC motor boat with the help of his companions in their group. The body of the other PC soldier was thrown

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> out after the blasts. Pabling (Visaya) tied a big stone in the feet of the PC soldier whose body was found on board and also the civilian companion with big stone tied in his feet and dropped them to the sea all both were sunk." (Exh. C)

The statements of *Jayri Jamari,* Madai Santalani, Pangalawan Anodin, Mantolgawi Tolawi and Sapal Jabal are to the same effect (Exhs. D, K, L, M and O)

The crucial question to determine is whether, on the part of the accused-appellants, as found by the trial Court, there was "concert of action with the leaders of the group who blasted the said PC soldiers and thereby proved the existence of conspiracy among them."

We rule affirmatively. Although no previous agreement to commit the crime was evidently proven, the existence of a conspiracy may be inferred from the acts of appellants tending to show a community of criminal purpose or design.

> "The agreement of which the law speaks is not limited to one which is written or otherwise expressly or directly made prior to the commission of the crime. It is not necessary that the malefactors, for an appreciable time prior to the commission of the crime, had actually come together and agreed in terms to pursue a common design. For conspiracy to exist, it is enough that the participates had the same purpose and were united in its execution, as may be inferred from the attendant circumstances. To establish conspiracy, it is not necessary to prove previous agreement to commit a crime if there be proof that the malefactors have acted in concert and in pursuance of the objectives. Conspiracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. Their action must be judged not by what they say, for what men do is the best index of their intention."[20]

That the accused-appellants were animated by the same purpose and were united in the execution of the criminal act may be deduced from their own statements. By their respective

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[20] *People vs. Largo*, 46 SCRA 597, 598 (1972); *People vs. Cariño*, 55 SCRA 517 (1974).

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admissions, accused-appellants stated in their Affidavits that they actually participated in the throwing of dynamite at the PC motorboat. To quote *Tambutso Patuhin*:

"Q. 7 – What is your participation in this killing incident?

"A. – That *I have thrown one (1) dynamite* to the already blasted PC Outboard Motor per order of Pabling (Visaya) but it did not hit the said Outboard Motor." (Exh. P-1)

Tambusong Mohamadsali's Affidavit reads in part:

"Q. 11 – Will you please relate how the incident took place?

"A. – x x x After throwing their dynamites, the men in the third banca shouted at us riding in the two bancas being towed that we must also throw our dynamites at the PC motorboat or else they would blast us also with dynamites and so *we also threw dynamites* at the PC motorboat." (Exh. C)

Similarly, *Samindi Cosing* admitted his participation in the dynamite throwing in his Affidavit, partly quoted as follows:

"Q. 20 – Who threw dynamites at them?

"A. – *I threw dynamite* but it did not hit the PC." (Exh. E)

In so far as *Jayri Jamari* is concerned, the incriminating evidence is clear from the answer he gave to the following question.

"Q. 8 – Samindi Cosing and Tambusong Mohamadsali declared that you with the rest of your companions in another banca that was also apprehended by the same PC patrol to include that other banca which intercepted the PC while you were being towed *killed the PC soldiers by blasting them with dynamites,* is this also true?

"A. – That is true, sir. " (Exh. D) (Italics supplied)

The fact that accused-appellants directly participated in dynamiting the PC motorboat was corroborated by Sapal Jabal who was in the same ATTACKING BOAT as the leaders, Pabling (Bisaya) and Jawali (Badjao), thus:

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"Q. 26 – Aside from your group of seven men, do you recall if any on board the two Pump-Boat had also thrown dynamites to the PC OutBoard Motor?

"A. – Yes, sir. In the first Pump-Boat I saw *Tambutso Patuhin throw the dynamite once* but it did not reach the PC Outboard Motor and in the other Pump-Boat I saw *Samindi Cosing throw one* but it did not also hit the PC Outboard Motor." (Exh. O) (Italics supplied)

Mastalbari Pawaki corroborated that fact when he said in his Affidavit:

"Q. 21 – While you were already towed by the PC sea-patrol towards the direction of Davao City, what happened, if any?

"A. – x x xI also saw Jawali (Badjao), *Tambutso Patuhin* and *Samindi Cosing throw dynamite to the banca* where the two (2) soldiers and one (1) civilian rode on." (Exh. Q) (Italics supplied)

Abubakar Aplasi's declaration was in the same vein:

"Q. 7 – Aside from Pabling and Jawali, who else of your companions you also saw threw dynamites to the PC Outboard Motor?

"A. – Tambutso Patuhin and Samindi Cosing." (Exh. R)

The Affidavits of Pangalawan Anodin and Madai Santalani were to the same effect (Exhs. L-3 and K-3, respectively).

Although they admittedly hurled dynamite, the accused-appellants tried to exculpate themselves from criminal liability by interposing the defense that they did so only in obedience to the command of their leaders and under "compulsion of an irresistible force or under the impulse of an uncontrollable fear of an equal or greater injury," that of being dynamited themselves. We do not find such defense a valid one. In some early cases, it has been held:

"A threat, in order to induce insuperable fear, must promise such grave results, and such results must be so imminent, that the common

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run of men would succumb. The crime threatened must be greater than, or at least equal to, that which we are compelled to commit."

"x x x before a force can be considered to be an irresistible one, it must produce such an effect upon the individual that, in spite of all resistance, it reduces him to a mere instrument and, as such, it compels his members to act and his mind to obey."[21]

"Duress as a valid defense should be based on reasonable fear of a real and imminent danger to one's life or limb. It should not consist of speculative, fanciful, or remote fear." [22]

Assuming that the command was, in fact, given, and the threat made, the fear engendered thereby was more fanciful and remote rather than real. For one thing, it is doubtful than the leaders Pabling (Bisaya) and Jawali (Badjao) would have made good their threat considering that they themselves were negotiating for the release of the entire group. For another, they all had a common cause against the PC, then a common enemy. It is more logical to conclude, therefore, that accused-appellants hurled dynamite because they were motivated by a common sentiment, that of escaping the clutches of the law. The contention that when they did so the PC motorboat had already been blasted and the victims dead so that the situation would not have been altered, is hardly plausible under the circumstances surrounding the incident and has not been sufficiently established. Besides, for conspiracy to exist, participation in every detail of execution is not indispensable. Where there is "a closeness of personal association and a concurrence of sentiments," as in this case, "conspiracy may be inferred."

"Conspiracy implies concert of design and not participation in every detail of execution. If it is proved that two or more persons aimed, by their acts, at the accomplishment of some unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of

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[21] *U.S. vs. Elicanal*, 35 Phil. 209, 212 (1916).

[22] *People vs. Jesus*, 88 Phil. 53 (1951).

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personal association and a concurrence of sentiments, conspiracy may be inferred although no actual meeting between them to conspire is proved, for the prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all stages of the conspiracy."[23]

Conspiracy having been established, the act of one is the act of all.

"Everyone of the conspirators who took active part in its execution, is therefore responsible for all of the acts of the others in furtherance of the common design."[24]

3. The nature of the crime committed is Murder because of the presence of the qualifying circumstance of having been committed by means of explosion (Art. 248(3), Revised Penal Code).

"A person who threw a hand grenade at his victim who was killed as a result of the explosion is guilty of murder."[25]

It is complexed with the crime of Direct Assault upon Agents of Persons in Authority as it has been proven that the two PC enlisted men were engaged in the performance of their official duties at the time they were attacked by the accused.

Under Article 48 of the Revised Penal Code, when a single act constitutes two or more grave or less grave felonies, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. The penalty prescribed for Murder under Article 248 of the Revised Penal Code is *reclusion temporal* in its maximum period to death. The imposable penalty therefore, is death. Being a single indivisible penalty, it has to be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.[26] However, in view of the dissent of

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[23] *People vs. Cabiling*, 74 SCRA 285 (1976).

[24] *People vs. Cabiling, supra.*

[25] *People vs. Guillen*, 85 Phil. 307 (1950).

[26] Article 63, Revised Penal Code; *People vs. Guillen, supra.*

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Justice Ramon C. Aquino, concurred in by Justice Antonio P. Barredo, the required number of votes for the imposition of the capital punishment has not been obtained and, therefore, the penalty to be imposed is the next lower in degree, or *reclusion perpetua.*

In so far as *Samindi Cosing* is concerned, considering his minority, the penalty one degree lower, or *reclusion perpetua,* has been correctly imposed (Art. 68(2) in relation to Art. 61(1), Revised Penal Code).

WHEREFORE, the judgment of the trial Court is hereby modified in that *Tambutso Patuhin, Jayri Jamari* and *Tambusong Mohamadsali* shall suffer the penalty of *reclusion perpetua,* and the amount of indemnity to be paid to the heirs of each of the deceased is hereby raised from ₱10,000.00 to ₱12,000.00. In other respects, the judgment is affirmed.

With proportionate costs against the accused-appellants.

SO ORDERED.

Teehankee (Acting C.J.), Concepcion Jr., Fernandez, Guerrero, Abad Santos, and *De Castro, JJ.,* concur.

Barredo, J., concurs in the opinion of Justice Aquino.

Aquino, J., see attached concurring and dissenting opinion.

*Makasiar, Antonio** and *Santos, JJ.,* took no part.

AQUINO, *J., concurring and dissenting:*

I concur in the holding that the four accused-appellants are criminally liable. But they should be convicted of three separate offenses because there were three victims who were killed by means of separate acts and not by a single act.

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* Messrs. Justices Felix V. Makasiar and Felix Q. Antonio took no part as the former was the Solicitor General during the pendency of the appeal, while the latter was the Solicitor General when the People's Brief was filed.

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They are guilty of *two separate* complex crimes of murder with *atentado* as to the two Constabulary sergeants and of simple murder as to the dead civilian.

I dissent as to the imposition of the death penalty on the three accused because they were not the leaders of the assault. The two leaders, Pabling Bisaya and Jawali Badjao, are at large. (See *People vs. Cabrera*, 43 Phil. 64 and 82; *People vs. Sakam*, 61 Phil. 27, 35; *People vs. Moreno*, L-37801-05, October 23, 1978, 85 SCRA 649; *People vs. John Doe*, L-2463, March 31, 1950.)

Moreover, the fact that the accused are non-Christians should be taken into account (Sec. 106, Administrative Code of Mindanao and Sulu; *People vs. Main*, 51 Phil. 933; *People vs. Mori*, L-23511 and L-23512, January 31, 1974, 55 SCRA 382, 404).

Hence, the three accused, who were sentenced to death, should each be sentenced to three *reclusion perpetuas*, subject to the forty-year limit.

EN BANC

[G.R. No. L-33951. September 28, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL COMPACION *alias* MANING, ERNESTO PIALAGO, deceased — (PATERNO BARBECHO), CRISANTO MANTALABA *alias* SANTOS and ELACIO LAOGLAOG,** *defendants-appellants.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; ESTABLISHED IN CASE AT BAR.— *From the manner the crime was committed, there can*