

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICTORIANO DAMASO ALIAS ROGELIO DAMASO, REYNALDO O.  
CALPO AND JUANITO FAVIE, JR., ACCUSED, VICTORIANO DAMASO  
ALIAS ROGELIO DAM...**

*G.R. Nos. L-41490-92. October 18, 1990*

Ponente: BIDIN, J.

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**BIDIN, J.:**

This is an appeal from the Decision\* of the then Court of First Instance of Rizal, Branch XXIV, at Pasig, Rizal, dated June 16, 1975, in Criminal Cases Nos. 6934-36, all entitled "People of the Philippines, plaintiff vs. Victoriano Damaso alias Rogelio Damaso, Reynaldo Oliveros Calpo and Juanito P. Favie, Jr., accused," the dispositive portion of which reads:

"WHEREFORE, the Court Finds:

"(a) In Criminal Case No. 6934, Victoriano Damaso alias Rogelio Damaso, Reynaldo Oliveros Calpo, and Juanito Favie, Jr. guilty beyond reasonable doubt of the crime of Murder qualified by treachery, and there being one generic aggravating circumstance of use of motor vehicle and one mitigating circumstance of vindication of grave offenses, all of the accused are each sentenced to suffer the penalty of reclusion perpetua (life imprisonment); to pay jointly and severally the heirs of Roberto Villalino y Gilber the sum of P12,000.00 as indemnity; P20,000.00 as moral damages without subsidiary imprisonment in case of insolvency; and to pay the costs;

"(b) In Criminal Case No. 6935, Victoriano Damaso alias Rogelio Damaso, Reynaldo Oliveros Calpo and Juanito Favie, Jr. guilty beyond reasonable doubt of the crime of Murder qualified by treachery, and there being one generic aggravating circumstance of use of motor vehicle and one mitigating circumstance of vindication of grave offense, all of the accused are each sentenced to suffer the penalty of reclusion perpetua (life imprisonment); to pay jointly and severally the heirs of Alfredo Antiporda, Jr. the sum of P12,000.00 as indemnity; P20,000.00 as moral damages without subsidiary imprisonment in case of insolvency; and to pay the costs;

"(c) In Criminal Case No. 6936, Victoriano Damaso alias Rogelio Damaso, Reynaldo Oliveros Calpo and Juanito Favie, Jr., guilty beyond reasonable doubt of the crime of Frustrated Murder qualified by treachery, and there being one generic aggravating circumstance of use of motor vehicle and one mitigating circumstance of vindication of grave offenses, all the accused are each sentenced to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of Prision Mayor, as minimum, to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as maximum; to indemnify jointly and severally Edmundo Relova the sum of P158.00 as actual damages without subsidiary imprisonment in case of insolvency; and to pay the costs.

"SO ORDERED." (Rollo, pp. 36-37; Records, pp. 462-463).

Three separate criminal informations, all dated December 7, 1972, were filed against the same accused on

December 13, 1972 in the Court of First Instance of Rizal by Assistant Provincial Fiscal Eliseo C. de Guzman, and docketed thereat as Criminal Cases Nos. 6934, 6935 and 6936.

The Information in Criminal Case No. 6934 accused Victoriano Damaso alias Rogelio Damaso, Reynaldo Oliveros Calpo and Juanito P. Favie, Jr. of murder for the fatal gunshot wounds inflicted upon Roberto Villalino y Gilber committed as follows:

"That on or about the 21st day of September 1972, in the municipality of San Juan, province of Rizal, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, with intent to kill, evident premeditation and treachery did, then and there willfully, unlawfully and feloniously armed with guns shoot one Roberto Villalino y Gilber, as a result thereof Roberto Villalino y Gilber sustained mortal gunshot wounds on the vital parts of his body which directly caused his death." (Records of Criminal Case No. 6934, p. 1).

Similarly, for the mortal gunshot wounds sustained by Alfredo M. Antiporda, Jr., the Information in Criminal Case No. 6935 accused Victoriano Damaso alias Rogelio Damaso, Reynaldo Oliveros Calpo, and Juanito P. Favie, Jr. of murder committed as follows:

"That on or about the 21st day of September 1972, in the municipality of San Juan, province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, with intent to kill, evident premeditation and treachery did, then and there willfully, unlawfully, and feloniously, armed with guns shoot one Alfredo Antiporda, as a result thereof Alfredo Antiporda sustained mortal gunshot wounds on the vital parts of his body which directly caused his death." (Records of Criminal Case No. 6935, p. 1).

And for the near fatal gunshot wounds suffered by Edmundo Relova y Agra, the Information in Criminal Case No. 6936 accused Victoriano Damaso alias Rogelio Damaso, Reynaldo Oliveros Calpo and Juanito P. Favie, Jr. of the crime of frustrated murder committed as follows:

"That on or about 21st day of September, 1972, in the municipality of San Juan, province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another armed with guns, with evident premeditation, treachery and intent to kill, did then and there willfully, unlawfully and feloniously, attack and shoot one Edmundo Relova y Agra who as a result thereof sustained injuries on the vital parts of his body which would ordinarily cause his death, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason independent of his will, that is due to the timely and able medical attendance rendered to said Edmundo Relova y Agra which prevented his death." (Records of Criminal Case No. 6936, p. 1).

Upon motion of the prosecution, the three criminal cases were consolidated and tried jointly by the Hon. Judge Buenaventura J. Guerrero of the CFI of Rizal, Branch XXIV. Upon arraignment, the three accused entered their individual pleas of not guilty to each of the aforequoted information.

A careful perusal of the voluminous records of the three cases on appeal before this Court and the accompanying evidence on record supports the following basic antecedent facts found by the trial court in favor of the prosecution's version, to wit:

"At about 8:00 p.m. on September 20, 1972 (the eve of the declaration of Martial Law) Victoriano Damaso alias Rogelio Damaso arrived at 'Aling Meding's Carinderia' located at 185 Aurora Boulevard, San Juan, Rizal, and ordered beer. Two (2) hours later, while Victoriano Damaso, a security guard of the Rizal Security and Protective Agency, then under suspension because of an illegal possession of firearms case against him, was still drinking beer, his co-security guards in the persons of Juanito Favie, Jr. and Reynaldo Calpo, and one

Perlito Serrano arrived and joined him. The three ordered beer. At about midnight, as the four were enjoying their drinks, a group consisting of Alfredo Antiporda, Jr., Roberto Villalino, Edmundo Relova, Artemio Lao (sometimes referred to in the evidence as Artemio Santos) and Danilo Santos arrived in two cars and seated themselves at the counter where the Damaso group was drinking. The Antiporda group also ordered beer. As the two groups were thus drinking beer, Victoriano Damaso poured beer on Roberto Villalino. When he repeated this, Roberto Villalino stood up and slapped Victoriano Damaso. At this moment, Perlito Serrano ran from the scene to call for a policeman. Before Roberto Villalino and Victoriano Damaso could lunge at each other, Aling Meding, the proprietress of the carinderia, and Alfredo Antiporda, Jr., intervened and pacified the two. After making Roberto Villalino y Gilber and Victoriano Damaso shake hands, Aling Meding hailed a taxicab for the Damaso group whom she requested to go home. As soon as the Damaso group stood up, Victoriano Damaso remarked: 'Pare, hintay kayo, babalik kami.'

"With Victoriano Damaso, Reynaldo O. Calpo and Juanito Favie, Jr. gone on board a taxicab, a policeman arrived and inquired what the trouble was about. This policeman was summoned by Perlito Serrano. Changing his position by facing the policeman along Aurora Boulevard, Edmundo Relova and his group advised him that the incident was just a misunderstanding and that it was already settled. The policeman left the scene.

"Meanwhile, on board the taxicab, Damaso, Calpo and Favie, hurt by the humiliation and insult they received because of the slapping incident, discussed the manner of killing the persons with whom they quarrelled. Upon instruction of Reynaldo Calpo, the taxicab proceeded to Unimart at Greenhills. Reaching said place, the three accused disembarked. Claiming that because of the incident elsewhere in Greenhills, the three tried to borrow the carbine of Charles Miane. At first, Charles Miane refused but since there is a standing instruction of Captain Algose of the Rizal Security and Protective Agency that in case of an emergency a security guard may lend his firearm to another security guard, he finally agreed. Charles Miane made Reynaldo Calpo and Juanito Favie, Jr. sign the logbook. Thereupon, although the three tried to get the firearm simultaneously from Charles Miane, the latter handed it to Reynaldo Calpo. Riding in the same taxicab, the three returned to 'Aling Meding's Carinderia.'

"Upon approaching 'Aling Meding's Carinderia', and travelling along Aurora Boulevard towards Quezon City, Reynaldo Calpo ordered the taxi driver to slow down. At about fifteen (15) meters from the Antiporda group who were still at the counter of 'Aling Meding's Carinderia', the taxicab stopped. Thereupon, Calpo aimed his carbine towards the Antiporda group and commenced firing. Shooting at this position, Calpo continued to press the trigger as the taxicab started to speed away towards the direction of Quezon City. Calpo's bullets found their marks on Roberto Villalino who died instantaneously, Alfredo Antiporda, Jr. and Edmundo Relova.

"With Alfredo Antiporda, Jr. on board his Datsun car, Edmundo Relova, although wounded, drove towards St. Luke's Hospital. At the corner of Aurora Boulevard and Broadway Street, Quezon City. Edmundo Relova flagged down a passing Quezon City Police Patrol car which hailed them to St. Luke's Hospital.

"At about that time, Pat. Danilo Pumareja and Pat. Augusto Cruz of the San Juan Police Department were taking snack at N. Domingo. They were notified of the shooting. On board their patrol vehicle, they rushed to the scene of the shooting at about 2:00 a.m. Upon arriving thereat, at about 2:00 a.m., they met Pat. Angeles who advised them that some of the victims were brought to St. Luke's Hospital. Since Pat. Angeles of the same Police Department was there to investigate Artemio Lao and Danilo Santos, Pat. Pumareja left for St. Luke's Hospital to interview the other victims. At St. Luke's Hospital, Alfredo Antiporda, Jr. was dead on arrival. Edmundo Relova was given emergency treatment and at about 3:30 a.m. Dr. Alfredo C. Valderama performed an emergency operation on his gunshot wound.

"At the scene of the shooting, pictures were taken of the carinderia (Exh. I); Roberto Villalino as he slumped dead on the counter (Exh. I-1); the cartridges near the manhole (Exh. I-2); the bullet-riddled Datsun car (Exhs. I-3 to I-5). That dawn, the investigation continued at the San Juan Police Headquarters wherein Danilo Santos and Artemio Santos y Lao gave their individual statements (Exhs. A and L). In the course of their

interrogation, when shown a picture of police characters in the policy gallery, Artemio Santos pointed to a picture of Rogelio Damaso (Exh. K) as one in the group who shot them that evening. Perlito Serrano being the person who had earlier sought police assistance in connection with the trouble at 'Aling Meding's Carinderia' was also interviewed. He identified Reynaldo Calpo and Juanito Favie, Jr. as his companions that evening. At about 11:00 p.m. on September 22, 1972, Zeny Navela's statement (Exh. D) was also taken by Patrolman Danilo Pumareja. On the basis of the statements given by Danilo Santos, Artemio Santos y Lao and Zeny Navela as well as interviews made at the scene of the crime, Pat. Danilo Pumareja drafted his official report on the incident (Exhs. G to G-7) including a sketch thereto (Exh. H).

"In the meantime, the three accused returned to the post of Charles Miane and handed back his carbine, tearing the page of the logbook where they had earlier signed their names. At Ortigas Avenue, they disembarked from the taxicab to which Victoriano Damaso paid the fare, and walked to the headquarters of the Rizal Security and Protective Agency. Meeting the guards constituting the third shift. Reynaldo Calpo and Rogelio Damaso related to them that they had killed somebody. Reynaldo Calpo also advised Captain Delfin Casia, then acting as Desk Officer that evening, that they killed somebody. In reply, Delfin Casia said 'Bahala na kayo diyan.' The three accused went home to the boarding house of Reynaldo Calpo and Juanito Favie, Jr. at J.P. Rizal, San Juan, Rizal, where they spent the night.

"At about 8:00 a.m. the following morning, while at 'Aling Meding's Carinderia', Zeny Navela, one of the waitresses at the said carinderia on the night of the incident, saw Rogelio Damaso and beckoned him. Asked if he had anything to do with the shooting that night, Damaso replied to Zeny, 'Huwag ka lang maingay, dahil sa gumanti lang kami at wala kaming kasalanan.' Zeny advised Victoriano Damaso to go into hiding as there is a shoot to kill order and the police authorities were looking for him. That same morning, because of information received that one of the assailants had just visited the scene of the crime that morning, the parents of Edmundo Relova transferred him from St. Luke's Hospital to V. Luna Hospital where he was confined up to October 15, 1972. At St. Luke's Hospital he paid the sum of P158.58 (Exh. R).

"The cadavers of Roberto Villalino y Gilber and Alfredo Antiporda, Jr. were autopsied by Ricardo G. Ibarola, Medico-Legal Officer of the National Bureau of Investigation. In the case of Roberto Villalino y Gilber the cause of his death was certified to as 'Shock secondary to gunshot wound of the face' (Exh. Y). As regards Alfredo Antiporda, Jr., the cause of his death was 'hemorrhage, acute, massive, secondary to gunshot wound of the abdomen' (Exh. AA).

"On November 27, 1972, Victoriano Damaso was arrested at Barrio Bascaran, Solan, Nueva Vizcaya. From the PC Headquarters at Bayombong, Nueva Vizcaya said accused was brought to Camp Crame arriving in the evening of November 28, 1972. He was referred to Investigator Master Sergeant Felicito Ricardo who took down his written statement in question and answer form (Exh. M). The following day, Victoriano H. Damaso swore to his statement before Lt. Cecilio R. Penilia of the Philippine Constabulary, after investigator Felicito Ricardo had left the two alone in accordance with the policy of the office. On November 29, 1972, the statement (Exh. Q) of Delfin Casia was reduced to writing before Agent Calayog of the Philippine Constabulary.

"Two days later, or on December 1st, Reynaldo Calpo was also arrested at his home at Sta. Maria, Laguna. The following day, December 2, 1972, Calpo likewise executed a written statement consisting of four pages (Exh. N). On the same day, Charles Miane also gave his written statement before the same investigator (Exh. P). At Orense, Narvacan, Ilocos Sur at about 2:00 p.m. that day, Juanito Favie, Jr. was similarly arrested by Philippine Constabulary soldiers. After having been brought to Camp Crame, on December 4, 1972 he gave his statement to Master Sgt. Felicito Ricardo, consisting of four pages (Exh. O)." Records of Criminal Case No. 6934, pp. 432-438; Trial Court Decision, Rollo, pp. 6-12).

The prosecution presented before the trial court twelve (12) witnesses, namely: Danilo Santos, who was among the five companions of the Antiporda group who sat and drank at Aling Meding's Carinderia immediately before

that fateful incident; Zeny Navela, a waitress at Aling Meding's Carinderia, who sat between the Antiporda group and the Damaso group and saw the encounter and the aftermath thereof moments thereafter; Danilo Pumareja, a policeman of San Juan, Rizal Police Department who responded to the reported shooting incident; Artemio Lao Santos, the assistant manager of Sky-Liner Taxicab and a companion of the Antiporda group who were drinking at Aling Meding's Carinderia and who witnessed the incident between the deceased Roberto Villalino and accused Victoriano Damaso as well as the fatal shooting of his companions thereafter; Felicito Ricardo, a master sergeant of the Philippine Constabulary who investigated Victoriano Damaso and took the latter's extrajudicial statement; Charles Miane, a security guard of Rizal Security and Protective Agency who loaned his carbin service rifle to accused Calpo and his companions sometime past midnight of September 21, 1972; Delfin Casia, the Recruitment and Training Officer of Rizal Security and Protective Agency who was very familiar with accused Victoriano Damaso and his two other co-accused and who saw them at about 1:00 a.m. of September 21, 1972 at their headquarters and overheard accused Calpo talking about the victims he had killed with the two co-accused; Alfredo Antiporda, Sr., the father of the deceased Alfredo Antiporda, Jr.; Edmundo Relova, a member of the Antiporda group who was himself seriously wounded in the bloody shooting incident; Juanita Gilver, mother of the deceased Roberto Villalino, who was with the Antiporda group; Alfredo Balderama, a physician at St. Luke's Hospital where the injured victims were rushed immediately after the shooting; Ricardo Ibarola, a medico-legal officer of the National Bureau of Investigation, who performed post-mortem examination over the cadavers of the victims; Roberto Villalino and Alfredo Antiporda, Jr.; and fifty (50) exhibits.

On the other hand, the version of the defense sought to be established by the testimonies of the three (3) accused and by two (2) exhibits, consist of disclaimers from any criminal involvement or liability.

On the witness stand, accused Reynaldo Calpo admitted that he was at the carinderia, the scene of the crime, at around 10:00 p.m. of September 20, 1972, drinking beer with his companions Juanita Favie, Jr., Perlito Serrano and Victoriano Damaso, but in defense, he sought to establish the fact that he was unaware of what transpired that fateful night because after drinking beer for a couple of hours, he was overcome by drowsiness and he slept at a corner of the store where he was later awakened by the owner when the latter told him and his companions Victoriano Damaso and Juanito Favie, Jr. to go home without being informed of the reason therefor. Nonetheless, they boarded a taxicab and passed the night at the residence of Maximo Salomon at J.P. Rizal Street, San Juan, Rizal. At about 8:00 a.m. of the following day, he and Favie went to the offices of Rizal Security and Protective Agency to get their salaries. Thereafter, he went home to his parents at Sta. Maria, Laguna where he stayed until December 1, 1972 when he returned to Manila where he was arrested and brought to Camp Crame for questioning at which place he executed a sworn statement (Exhibit N) admitting, among others, that he shot the victims but only to scare them and in the process, he provided the details of the incident which jibe with the prosecution's version and the antecedent facts established by the trial court. He claimed, however, that he signed the statement under threats of a firing squad because he was being dubbed as a member of the New People's Army and that he had signed the said statement without reading due to fear, coercion and duress.

On the other hand, the other two accused Juanito P. Favie, Jr. and Victoriano Damaso while testifying on substantially the same facts, categorically pointed out that it was Calpo who fired the fatal shots that ended the lives of the two victims and nearly killed another. Like Calpo, they admitted being in the said carinderia in the evening of September 20, 1972 drinking beer and added that later, the Antiporda group arrived and one of them approached Damaso, held his testicles and boxed him and then slapped Favie, Jr. Such strange turn of events were explained by the Antiporda group as retaliation for Calpo's provocation in dousing beer on one of their members. Both Favie and Damaso vehemently denied, however, that they were in conspiracy with Calpo. On the contrary, they maintained that they have already settled their differences with the other group, and shook hands with them after they were pacified by the carinderia owner, and before they left, they were surprised when their taxicab

which was supposed to be headed for the offices of their employer's firm, went directly to the Unimart, Greenhills where Calpo borrowed a carbine and proceeded back to the carinderia against their protest, with the assurance of Calpo that he will only scare the Antiporda group. The rest transpired as already narrated. Favie went to his hometown at Ilocos Sur where he was arrested on December 2, 1972 and brought to Camp Crame for questioning. He executed a sworn statement (Exhibit O) admitting, among others, that when they left the carinderia that fateful evening, they agreed to get a gun (carbine) from the Security Guard Charles Miane, in Unimart, returned to the carinderia and shot the victims to avenge themselves. He also stated that after the shooting, they were reassigned to San Pablo City by their Chief Security in order to hide them.

For his part, Damaso stated that he went back to the carinderia to find out what happened and upon learning from one Zeny Navela, that the men they quarreled with were already dead and that he was a wanted man with a "shoot to kill order" issued against him, he proceeded to Bascaran, Solano, Nueva Ecija where he was arrested on November 27, 1972. He was likewise investigated at Camp Crame where he executed his sworn extrajudicial statement (Exhibit M) admitting, among others, that all three of them proceeded to Unimart, Greenhills to borrow a carbine; that it was Calpo who alighted and got the carbine and then they all returned to the carinderia and with Calpo as the triggerman, shot the victims who were still at the carinderia drinking beer. Thereafter, they went back to Greenhills and returned the fatal weapon and then proceeded to their boarding house.

As regards his written extrajudicial statement, Favie, Jr. avers that it did not reflect correctly all the answers given by him as the investigation was first jotted down in handwriting and was later on handed to another to be typewritten. Throughout the investigation, he was not assisted by his lawyer.

Accused Damaso asserts that his extrajudicial confession was already prepared when he signed it on November 29, 1972, after having been intimidated, coerced and even tortured. He claimed further that his investigators told him to cooperate and that they would be nice to him and he reacted by telling them the truth regarding the circumstances of the case but when asked where Calpo got the gun and he answered that he did not know, they allegedly brought him inside the C-2 room where he was tortured and when he could no longer bear the maltreatment, he gave the name of Alfonso Rana who was already dead.

The trial court gave more credence to the evidence of the prosecution and convicted the accused as aforesated.

Only Victoriano Damaso alias Rogelio Damaso and Juanito P. Favie, Jr. appealed. Accused Reynaldo Calpo choose not to appeal.

On March 1, 1976, the Brief for the Defendants-Appellants was filed. On August 28, 1976, the Brief for the Appellee was filed by the Office of the Solicitor General. On November 27, 1978, accused Juanito P. Favie, Jr. filed a motion withdrawing his appeal herein, which was granted by this Court in its Resolution dated December 11, 1978. Entry of judgment with respect to Favie, Jr.'s conviction was made immediately thereafter. Hence, only accused Victoriano Damaso alias Rogelio Damaso's appeal remains to be resolved.

The following assignment of errors were raised by counsel for the accused-appellant in his brief, to wit:

## I

THE TRIAL COURT ERRED IN NOT FINDING THE EXTRAJUDICIAL CONFESSIONS OF APPELLANTS WERE OBTAINED BY FORCE AND INTIMIDATION AND IN NOT HOLDING THEM INADMISSIBLE AS EVIDENCE.

## II

THE TRIAL COURT ERRED IN FINDING THAT THE APPELLANTS CONSPIRED WITH REYNALDO CALPO IN THE KILLING OF ALFREDO ANTIPORDA AND ROBERTO GILBER AND IN THE ASSAULT OF, WITH INTENT TO KILL, EDMUNDO RELOVA.

## III

THE TRIAL COURT ERRED IN FINDING THAT THE FLIGHT OF THE APPELLANTS WAS AN INDICATION OF THEIR GUILT.

## IV

THE TRIAL COURT ERRED IN NOT FINDING THAT APPELLANTS MUST, IF AT ALL, ON THE BASIS OF THE EVIDENCE IT CONSIDERED IN CONVICTING THEM, BE HELD CULPABLE AS ACCOMPLICES NOT AS PRINCIPALS.

## V

THE TRIAL COURT ERRED IN NOT CONSIDERING IN ITS DECISION THE NON-REBUTTAL OF THE VERSIONS OF THE APPELLANTS BY THE PROSECUTION.

## VI

THE TRIAL COURT ERRED IN NOT CONSIDERING THE RETURN OF DAMASO TO THE SCENE OF THE CRIME A FEW HOURS AFTER THE INCIDENT AS AN INDICATION OF HIS LACK OF COMPLICITY.

## VII

THE TRIAL COURT ERRED IN NOT HOLDING APPELLANTS AS MERELY CONSPIRATORS TO SCARE THE ANTIPORDA GROUP.

The main issue in this case is whether or not there is conspiracy among the three accused in the commission of the crime to render the accused-appellant liable for the offenses charged even if he did not perform the act of shooting the victims himself.

## I

As earlier stated, both accused Damaso and Favie contend that it was Reynaldo Calpo and no other, who fired the fatal shots. Said contention was given credence by the trial court. Moreover, Calpo did not appeal while Favie withdrew his appeal. Consequently, the issue narrows down to the participation of accused-appellant Damaso in the commission of the crimes charged. He insists that his extrajudicial statement as well as those of his co-accused were allegedly obtained by force and intimidation and therefore, inadmissible in evidence, to prove that there was conspiracy among them. Accordingly, his counsel argued that said statements cannot be used to implicate Damaso in this case.

Counsel for appellant Victoriano Damaso and accused Juanito Favie, Jr., who (Favie, Jr.) later withdrew his appeal, contends that bereft of the extrajudicial confessions of the appellants, there is nothing left to prop up the judgment of conviction. Among the matters specified and pointed out as proofs of involuntariness of appellant's extrajudicial statements, are: (1) the remonstrance of Damaso over the inaccuracy and even the incompleteness of the statement (Exhibit M) taken from him and prepared by the investigator Sgt. Ricardo; (2) the implication of the

need to mention the name "Alfredo Rana" as the person who loaned his automatic carbine to accused Reynaldo Calpo despite knowledge that said Alfredo Rana was already dead; and (3) the fact that he failed to file charges against his tormentors because Martial Law had just been proclaimed and it was highly improbable for such action to prosper, or to secure a medical certificate to show the physical harm inflicted upon him by the investigators because his sister, who could have been his medium for ventilating his grievances, was denied the privilege of visiting him at the Camp Crame Stockade (Brief for the Accused-Appellants, pp. 4-10).

A close scrutiny of Damaso's statement (Exhibit M) and the findings of the trial court would inevitably show that he had narrated certain details that only he could have supplied without force and coercion. Against the testimonies of the prosecution witnesses pointing to him as the triggerman during the shooting incident, Damaso told his interrogators that it was Reynaldo Calpo who shot the victims, then narrated in rich detail his own version of the fleeting events before and after the shooting aside from other facts which his investigators could not have been interested to know and which could have been known only to him, thereby lending credence and reliability thereon (*People v. Torrefranca*, 151 SCRA 143 [1987]; *People v. de los Santos*, 150 SCRA 311 [1987]; *People v. Nillos*, 127 SCRA 207 [1984]; *People v. Jimenez*, 105 SCRA 721 [1981]).

Sgt. Felicito Ricardo, the PC investigator of Damaso, testified that Damaso gave his extrajudicial confession (Exhibit M) freely and voluntarily, the truth of the matter being that after he had signed Exhibit M, he subscribed and swore to the said statement before Lt. Cecilio Penilla in the absence of Sgt. Ricardo, who left Damaso alone with Lt. Penilla during the ratification of said document. (Hearing of March 6, 1974, TSN, p. 315).

Consequently, in the absence of proof that Sgt. Ricardo extracted Damaso's extrajudicial statement by force and intimidation, the same should be considered to have been freely and voluntarily given, as Sgt. Ricardo has in his favor the presumption of regularity in the performance of his duty. Moreover, said investigator did not know the accused before the investigation and there is no cogent reason shown that Sgt. Ricardo had any motive to incriminate Damaso to a serious crime. (Decision, Criminal Cases Nos. 6934-36; Rollo, p. 30).

The claim of appellant Damaso that he was constrained to use the name of "Alfredo Rana" as the source of the fatal weapon because of force and duress, is untenable. Such fact alone is irrelevant and cannot support his claim of force and intimidation. It is more reasonable to believe the findings of the trial court that at the time that Damaso was being investigated, he did not know the name of security guard Charles Miane, from whom the carbine was borrowed because Damaso met the latter for the first time only when that fatal gun was borrowed from him. Furthermore, Damaso was the first to be apprehended and investigated, so much so, that during his investigation he could not have yet learned from his co-accused who were then still at large that the name of the security guard from whom they borrowed the gun is Charles Miane.

Equally incredible is appellant Damaso's claim that he could not have filed charges against his alleged tormentors as Martial Law was then newly imposed throughout the country, and that his unnamed sister was denied the privilege of visiting him at the stockade. The former argument is a legal non sequitur and at most, based on surmise or conjecture. The latter argument could have been better off with the presentation of his supposed sister as his witness to corroborate his claim, but for reason only known to him, he chose to suppress such testimony as evidence and instead risked the adverse inference and legal presumption, "that evidence willfully suppressed would be adverse if produced" (Section 5[e], Rule 131, Rules of Court; *Enriquez, et al. v. Manuel, et al.*, 76 Phil. 558; *Worcester v. Ocampo*, 22 Phil. 42). And even his claim, that had his sister visited him in his confinement, Damaso could have aired his grievances to her, is at most far-fetched, and an afterthought as a last ditch effort to buttress his allegations of force and intimidation in executing his extrajudicial statement.

Be that as it may, Damaso and Favie admitted in their separate extrajudicial confessions (Exhibits M and O) that

with Reynaldo Calpo, they plotted the killing of the persons they quarrelled with; but nowhere in the records did Favie state that his extrajudicial confession was tainted with force and/or coercion. Even on the witness stand, he did not insinuate that he was ever subjected to violence or intimidation before he gave his statement to Sgt. Ricardo, although he claims that some of the answers given to the questions propounded were not his.

But, like Damaso's confession, Favie's confession is likewise replete with details he alone could supply and therefore, deserving of credence (*People v. Pingol*, 33 SCRA 73 [1976]). It is no less important that he withdrew his appeal, thereby giving rise to the implication that he could not support his allegations.

In addition, bare assertions of maltreatment by the police authorities in extracting confessions from the accused are not sufficient in view of the standing rule enunciated in the cases of *People v. Mada-I Santalani* (93 SCRA 317 [1979]; *People v. Balane* (123 SCRA 614 [1983]; and *People v. Villanueva* (128 SCRA 488 [1984]), "that where the defendants did not present evidence of compulsion, or duress nor violence or their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim, all these were considered by this Court as factors indicating voluntariness."

Under the same circumstances, subject confessions, although made without the presence of counsel, cannot be stricken out of the records as inadmissible, the same having been executed before the effectivity of the 1987 Constitution and even earlier than the 1973 Constitution.

In view of the foregoing considerations, it is evident that the extrajudicial confessions of the accused, more particularly of appellant Damaso herein, have been freely and voluntarily given, despite protestations to the contrary.

## II

Nonetheless, appellant finds fault with the trial court's conclusion that conspiracy does in fact exist which implicates all the accused as principals by common design.

It is well-settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through the physical volition of one or all, proceeding severally or collectively (*People v. Laguardia*, 148 SCRA 133 [1987]; *People v. Petenia*, 143 SCRA 361 [1986]; *People v. Agda*, 111 SCRA 330 [1982]; *People v. Sy*, 113 SCRA 207 [1982]; *People v. Labinia*, 115 SCRA 223 [1982]; *People v. Manage*, 118 SCRA 466 [1982]; *People v. Dayag*, 98 SCRA 235 [1980]). While it is desirable that the conspiracy be proved by direct evidence, like an express understanding among the plotters affirming their commitment and defining their respective roles, it may nevertheless be established at times by circumstantial evidence (*People v. Petil*, 149 SCRA 92 [1987]; *Castillo v. Sandiganbayan*, 151 SCRA 425 [1987]; *People v. Ancheta*, 148 SCRA 178 [1987]; *People v. Viray*, 147 SCRA 146 [1987]). Conspiracy is established by evidence of unity of purpose at the time of the commission of the offense and unity in its execution (*People v. Bravante*, 150 SCRA 569 [1987]; *People v. Rosas*, 149 SCRA 464 [1987]). And as conspirators, the accused is equally responsible for the acts of the co-conspirators (*People v. Jusep*, 151 SCRA 248 [1987]; *People v. Tamba*, 147 SCRA 427 [1987]).

In the case at bar, will be noted that aside from the extrajudicial confessions of the accused, the following attendant circumstances and/or contemporaneous acts which occurred in uninterrupted sequence, were undisputedly established by the trial court from the mass of evidence, to wit:

(1) A slapping incident preceded the shooting, wherein the deceased Gilber slapped the face of appellant Damaso;

(2) Before the two groups could engage in a physical clash, they were pacified by the carinderia owner who later flagged a taxicab for the three accused; (3) The three boarded the taxicab leaving with Damaso's parting words, "Pare hintay kayo, babalik kami"; (4) They then proceeded to Unimart Greenhills, arriving at the post of Charles Miane where all of them disembarked and persuaded Miane to lend them his carbine; (5) Miane testified that in borrowing the gun, all of them (accused) signed the logbook and when Miane was in the act of handing the carbine, the three accused were grabbing it from him; (6) After having received the gun, they again boarded the same taxicab and returned to the carinderia; (7) Upon arrival, gunshots were fired from the taxicab with the three accused on board, hitting the victims as earlier narrated; (8) After having fired at the victims, the three went back to Charles Miane, returned the weapon and then proceeded to the headquarters of the Rizal Security and Protective Agency where they narrated the incident (Decision; Criminal Cases Nos. 6934-36; Rollo, p. 27).

As correctly observed by the trial court, the foregoing "attendant circumstances" occurring in uninterrupted sequence attest to the concurrence of wills of the three accused and the unity of their purpose and action (Ibid.; Rollo, p. 28).

### III

The trial court was convinced that the flight of the three accused was unquestionably indicative of their guilty conscience. Among others, accused Damaso's claim that he went into hiding as he was informed by Zeny Navela that there was a shoot-to-kill order issued against him by the authorities, was not established by the testimony of Zeny Navela herself despite grilling cross-examination (Hearing of November 14, 1973; TSN, pp. 192-214).

Despite appellant's counsel's protestations that Damaso cannot be expected to expose himself to an invitation of the military authorities during those first few days of Martial Law (Appellants' Brief, p. 19), the trial court did not fail to notice that there was no immediate necessity for Damaso to flee to the province upon learning that Calpo's gunshots had killed the victims. Instead, he should have stayed and cooperated with the authorities in apprehending the culprits. As correctly held by the trial court, appellant's flight only underscored his role in the criminal act. Still further, the actuations of appellant are not consistent with the actuations of a person afraid of Martial Law but of one with a guilty conscience.

Thus, as consistently held by this Court, flight is an indication of a guilty mind (*People v. Ornozo*, 151 SCRA 495 [1987]; *People v. Astor*, 149 SCRA 325 [1987]; *People v. Narjos*, 149 SCRA 99 [1987]). In fact, not even the readily contrived reason of fear of Martial Law averred by counsel for the appellant can overturn such a widely-accepted aphorism.

It has been established beyond dispute that conspiracy exists among the three accused, both by circumstantial and direct evidence. In the same manner, the guilt of appellants' co-accused has been established beyond reasonable doubt. Under the circumstances, Damaso need not have fired any of the shots that killed Antiporda and Gilber and wounded Relova, to be liable for the felonies committed by his co-accused (*People v. Lucman*, 97 Phil. 575 [1955]) because as conspirators, the accused is equally responsible for the acts of his co-conspirators (*People v. Jusep*, supra; *People v. Tamba*, supra). All those who participated in the conspiracy are liable (*People v. Archis*, 144 SCRA 684 [1986]).

### V

Counsel for the accused harped on the fact that the claims of Damaso and Favie, Jr. were not rebutted by any of the prosecution witnesses. As correctly observed by the Solicitor General, there is no need for such rebuttal since the versions of the accused were discredited by the trial court for being against human nature and experience. For, evidence to be believed, must not only proceed from the mouth of a credible witness, but must also be credible in

itself such as the common experience and observation of mankind can approve as probable under the circumstances (*Borquilla v. Court of Appeals*, 147 SCRA 9-10 [1987]; *People v. Maribung*, 149 SCRA 292 [1987]). Moreover, it has been held that the Court should give more credence to the testimony of witnesses for the prosecution which is positive in nature than the negative evidence of the defendant and his witnesses (*People v. Labis*, G.R. No. L-33087, November 15, 1987).

## VI

Counsel for the defense capitalizes on the fact that the appellant Damaso returned sometime in the morning of September 21, 1972 at Aling Meding's Store and asked Zeny Navela if there was any casualty from the shooting incident as an indication of his lack of complicity or participation in the commission of the crimes charged. But the records also show that upon learning that some members of the Antiporda group were fatally wounded, Damaso lost no time in leaving and proceeding to Solano, Nueva Vizcaya where he stayed until his arrest on November 27, 1972. Again, as above discussed, had he been innocent, the urge would have been not to hide but to help in the apprehension of the triggerman whom he knew all the while. Consequently, it is more reasonable to believe that Damaso returned, to ascertain the extent of the casualty and/or injuries inflicted by them upon their hapless victims the night before and after acquiring knowledge of the magnitude of their culpability, opted to flee until he was apprehended.

## VII

While counsel for appellant admits hypothetically that appellants agreed to go back to the carinderia only to scare the victims with the use of firearm, but not to kill them, he insists that conspiracy and proposal to commit a felony are not punishable except only in cases where the law specifically provides a penalty therefor (Citing Article 8, Revised Penal Code). He further stated, as conspiracy to scare a person with the use of firearm is not a felony, the act of killing is merely the liability of Calpo.

This defense does not deserve consideration.

Appellant's contention that there was no plan to kill the victims, but only to scare them, is belied by the kind of weapon used; the accuracy of the shots directed against the victims; and the gravity of their wounds. And even granting that such claim was true, it will not relieve appellant of criminal responsibility as co-conspirator. If the intention was merely to scare the victims, the accused could have fired in the air. Having done the contrary, appellant cannot claim that he did not commit an unlawful act. Indeed, it is an established rule that an accused is criminally responsible for acts committed by him in violation of the law and for all the natural and logical consequences resulting therefrom (*U.S. v. Sornito*, 4 Phil. 357 [1905]; *U.S. v. Navarro*, 7 Phil. 715 [1907]; *U.S. v. Zamora*, 32 Phil. 218 [1915]; *People v. Cardenas*, 56 SCRA 631 [1974]).

At this juncture, the oft-repeated aphorism that the appellate courts will not disturb the factual findings of the trial court especially as to credibility of witnesses (*People v. Martinez*, 144 SCRA 303 [1986]; *People v. Royeras*, 130 SCRA 265 [1984]; *People v. Adones*, 144 SCRA 364 [1986]; *People v. Patag*, 144 SCRA 429 9[1986]), deserves reiteration. More specifically, findings of the lower court on the existence of a conspiracy should not be disturbed, not only because they are logical, but also because they are based on evidence appearing in the record (*People v. Arhis*, 144 SCRA 687 [1986]). In fact, even defense counsel's assertion that justice in this case was inconsistent when the trial court credited appellant's testimony that it was Calpo who fired the fatal shots but discredited his testimony as regards other facts (Appellants' Brief, p. 12), cannot overturn this legal truism, because it is equally well established that a testimony of a witness can be believed as to some facts and disbelieved as to other facts (*People v. Pacada, Jr.*, 142 SCRA 427 [1986]; *People v. Pacabes*, 137 SCRA 158 [1985]), depending upon the

corroborative evidence and the probabilities and improbabilities of the case.

Thus, where appellants' extrajudicial confessions and testimonies categorically point to each other's actual participation in the conspiracy and in the execution of the crime, they are admissible in evidence (*People v. Petenia*, 143 SCRA 362 [1986]). More importantly, independent of the extrajudicial confessions of the accused, their guilt has been proven beyond reasonable doubt.

In resume there appears to be no reason to disturb the finding of conviction by the trial court.

WHEREFORE, the decision of the trial court appealed from is hereby Affirmed in toto, with the modification that for the death of Roberto Villalino y Gilber and Alfredo Antiporda, Jr., the amount of their respective indemnities is increased to P50,000.00 each pursuant to the recent Court rulings on the matter.

**SO ORDERED.**

Fernan, C.J., Gutierrez, Jr., and Cortes, JJ., concur.

Feliciano, J., on leave.

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\* Penned by Judge Buenaventura J. Guerrero

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