

**THE PEOPLE of THE PHILIPPINES, PLAINTIFF and APPELLEE,
VS. CIRIACO ALIPIS, ET AL., DEFENDANTS, CIRIACO ALIPIS,
DEFENDANT and APPELLANT**

G. R. No. L-17214. June 21, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Death sentence upon Sergeant Ciriaco Alipis was pronounced by the Court of First Instance of Quezon after finding him guilty of murder with the aggravating circumstances of "abuse of confidence, nighttime and in band".

Sergeant Enrique Lloren, a co-accused, was acquitted. Four others—John-Doe, Peter Doe, Richard Doe and William Doe - jointly accused but unidentified and at large, were not included in the trial.

The following are facts established in the record and uncontroverted:

Captain Apolonio Pagsuberon was the Commanding Officer of Headquarters and Headquarters Service Company, the Finance and PX Officer, of the 2nd Battalion Combat Team, stationed at Atimonan, Quezon.

At about, 5:30 A.M. of October 15, 1957, Sergeant Ciriaco Alipis reported to the Sergeant of the Guards, Julio Jacinto, that Captain Pagsuberon, their Commanding Officer, was missing from camp.

Thereupon a search party - composed of Sergeant Jacinto, Sergeant Alipis, Corporal Remante and Private First Class Billones - set out in a jeep to look for the Captain.

After a fruitless search in the town proper of Atimonan (about a kilometer from the camp), the party followed the road to Gumaca, Quezon. On the road, about 400 yards from the camp, they came upon scattered pieces of paper. At the bottom of a thirty-foot cliff along the road, they found the lifeless body of Captain Pagsuberon, still bleeding from a gunshot wound through the head. The Captain's .45 caliber pistol was near his body.

Private First Class Billones drove back to camp and reported the discovery to Major Guillermo T. Marfori, Battalion Commander of the 2nd BCT. Shortly thereafter, Major Marfori, Captain Aguinaldo and Captain Enriquez arrived at the aforesaid site. Philippine Constabulary soldiers, the Mayor, Justice of the Peace, and policemen of Atimonan, came after them. At Major Marfori's order, the deceased was placed on a stretcher, loaded in a jeep and brought to the headquarters at the camp. An empty .45 caliber shell was also found by Major Marfori somewhere near the place where the body was found.

At the headquarters Major Antonio Briones, Medico-Legal Officer of the Philippine Constabulary, performed an autopsy, on Captain Pagsuberon's body. The Necropsy Report thereon states these postmortem findings:

"A well developed and well nourished adult individual of about 38 years in the early stage of rigor mortis observed in the neck and trunk region. Postmortem lividity absent. The following external signs of violence were found:

"1. Contusion, extensive, around the left eye, with reddish brown discoloration. Slight corneal hemorrhage was observed on the external canthus. The same contusion but moderate in degree was also noted around the right eye.

"2. Contusion, 5 x 10 cm on the scapular region of the back of left shoulder, with reddish brown discoloration.

"3. Abrasion 1.8 x 1.4 cm on the inferior aspect of the chin, 1 cm right of the median line.

"4. Abrasion, 2.5 x 2.5 cm with irregular border on the anterior aspect of the upper third portion of the left leg about 3 inches below the left knee.

"5. Abrasion, 2.5 x 7.5 cm on the anterior medial aspect of the middle third of left leg with slight amount of hemorrhage

"6. A gunshot wound of entrance, measuring 1.3 x 1.4 cm diameter with irregular border, with scorched lacerated edge and with carbon deposition in the dermal layer, tattooing and seining of the hair. The hole in the outer table of the skull measured 1.1 x 1.1 cm diameter, circular with marginal radiating fractures. One meridional fracture running inferiorward is connected with an anterior segment of a linear fracture of the Tigh parietal bone. The path of the bullet was directed inward toward the left slightly backward and downward penetrating the substance of both hemispheres of the brain and emerged on the left lateral side at a point on the parieto-mastoid suture of the skull causing a compound comminuted fracture on that area of about 2.5 x 2.5 cm with several fragments of the bone almost detached. The scalp wound of exit measured 1.0 x 2.0 cm, slit-like in appearance with brain-substance coming out of it.

"7. There was a linear fracture of the right parietal bone running almost vertically from the sagittal suture on the vertex down to the right temporal suture into an anterior branch which connects with a meridional fracture originating at the point of entrance of the gunshot wound, and an inferior branch which goes down to the mastoid bone and becomes continuous with the fracture- on the right middle fossa of the base.

"8. The sagittal suture throughout was fissured to a gaping distance of about 0.5 cm. An inch-length, median portion of the coronal suture at its junction with the sagittal suture, as well as both segments of the lambdoidal sutures were fissured.

"Various fractures of varying size and shape were also noted at the left middle and anterior fossa and right middle fossa of the base of the skull. Extensive amount of subdural and subarachnoid hemorrhage was noted at the base of the brain.

"All the organs on the body except the brain were all normal. The brain was hemorrhagic all throughout and patches of subarachnoid and subdural hemorrhage were found in the frontal, parietal and occipital regions. The stomach was partially filled with mixture of mucus and partly digested food. The urinary bladder was empty. All other organs of the body were found normal.

"CAUSE OF DEATH:

"Cerebral shock and hemorrhage secondary to gunshot wound of the head.

"REMARKS:

"From the appearance and extent of the rigor mortis and the intestinal condition, death must have happened between 0300H-0500H of the same day.

"The entire brain and about 50 cc of blood from the heart was saved and submitted to the laboratory for alcohol analysis.

"The entrance gunshot wound in the skull indicated that the caliber of the bullet used was caliber .45' and was

fired in direct contact with the scalp.

"The contusions around both eyes, the abrasion below, the chin,, that of the scapular- region of the right back and the abrasion on the left upper third of the leg appears to have been inflicted antemortem, (before death or immediately, before death).

"There were indications of traumatic injury of varying amount of force inflicted all over the head without apparent scalp injury, by the presence of sub-aponeurotic contusion especially on the frontal parietal and occipital regions.

"The gunshot wound was inflicted antemortem or may have been inflicted while the victim was already unconscious- to provide the "coup de grace" or to simulate a case of suicide.

"The multiple fractures and fissuring of the cranial sutures may have been due to the fall of the victim from the precipice after death.

"The autopsy was witnessed by Judge C. de Gracia, J.P. Atimonan, Dr. Primo Montes, MHO, Lt Col Sebastian, Cascade Sector Commander, AFP, Major B. Valdes, 2nd BCT Bn Surgeon, Major Guillermo Marfori, CO 2nd BCT and all other officer of the 2nd BCT, Atimonan, Quezon,

"Paraffin cast of the victim's hand, and 6 other suspects were turned over to the Forensic Chemistry for dermonitrate test.

"An empty shell of cal. .4-5 bullet recovered at the scene and 8 pairs of other empty shells fired from 8 suspected firearms were also submitted to the laboratory, for examination."

At about 7:30 A.M. of that day - October 15 - Major Marfori ordered the investigation of the personnel stationed at the headquarters and the surrender of their pistols. Supply Sergeant Praxedio Sornilla was able to collect that morning only the pistols of Sergeant Pacelo, Sergeant Quiries, Sergeant Jacinto and Sergeant Lloren. Sergeant Alipis was then being investigated by Sergeant Leafio and his pistol was taken by the Supply Sergeant only at 5:30 in the afternoon.

At 11:00 A.M. the pistols of Facelo, Quines, Jacinto and Lloren were brought to the beach and test-fired for ballistic examination of their empty shells. The ballistics expert, Major Agapito P. Figueroa of the Philippine Constabulary's Criminal Investigation. Service, found Sergeant Lloren's pistol - a 45 caliber, Remington-Rand, with Serial Number 1991156 - positive for comparison with the questionable shell that was taken from near the site where the body was found.

Paraffin tests for gunpowder were also made. They proved negative on accused Ciriaco Alipis and the other soldiers Julio Jacinto, Cenon Noriel, Jose Saunar, Mamon Marete, Paustino Medalle and Abelardo Magpaya. They turned positive on Captain Pagsuberon's right hand and on both hands of Sergeant Lloren.

Sergeant Alipis pants was -found stained with human blood.

Philippine Constabulary officers investigated Sergeant Alipis, among other soldiers. A series of three investigations was made on Alipis: First, in the morning of October 15, by Sergeant Alberto Leño second, in the evening of October 15 up to the early hours of October 16, by Captain Emigdio Jose; and third, in the evening of October 16, lasting up to midnight, by Captain Onofre Alzate. The results of the investigations were three statements in writing purportedly signed by Alipis.

On October 30, 1957, Captain Alzate filed in the Justice of the Peace Court of Atimonan a complaint for murder against Alipis, Lloren and four unidentified persons. Preliminary investigation, however, was waived by the accused, and the record of the case was transmitted to the Court of First Instance for trial.

Accordingly, an information was filed in the Court of First Instance of Quezon on February 24, 1958, alleging:

"That on or about the 15th day of October 1957 in the Municipality of Atimonan, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said Accused, Sgt. CIRIACO ALIPIS and Sgt. ENRIQUE LLOREN, together with JOHN DOE, PETER DOE, RICHARD DOE and WILLIAM DOE who are still at large, conspiring and confederating together and mutually helping each other, with intent to kill and evident premeditation and treachery, armed with a piece of wood and pistol caliber 45, Serial Number 1991156, Remington, did then and there willfully, unlawfully and feloniously, attack, assault and hit with the said piece of wood Captain APOLONIO PAGSUBERON, Commanding Officer of Hq. and Hq Service Company, in the different parts of his body and after rendering him unconscious, same was brought to barrio Angeles, Atimonan, Quezon, and while thereat, was shot at the right temple with the said pistol, passing thru and thru and later dumped the body of said Captain from the precipice of the river bank which caused his instantaneous death.

"That in the commission of the above described crime, the aggravating circumstances present were: (1) Night time, (2) In band, (3) Superior strength and (4) Abuse of confidence, the deceased, being their superior officer."

Duly assisted by counsel, Alipis and Lloren pleaded not guilty and stood joint trial. On December 3, 1959, the trial court rendered judgment, as aforesaid, thus:

"PREMISED on the foregoing considerations, the Court hereby finds the accused CIRIACO ALIPIS: GUILTY beyond reasonable doubt of the crime of murder, defined and punished by Article 248 of the Revised Penal Code, committed with the three aggravating circumstances of abuse of confidence, nighttime and in band, without any mitigating to offset them, and hereby sentences him to die by electrocution as provided by law, to Indemnify the heirs of the deceased Captain Apolonio Pagsuberon in the sum of to P6,000, and to pay the costs.

"The accused ENRIQUE LLOREN is hereby ACQUITTED on the ground of reasonable doubt, with one-fifth of the costs de officio, declaring the bail bond executed by him for his provisional release from the custody of the law cancelled and of no further force and effect.

"So ordered."

Defendant Alipis appealed to this Court.

A review of the record has shown no direct and positive evidence that appellant, alone or with others, killed Captain Pagsuberon. The court a quo, however, premised his conviction upon a "series of circumstances", as follows:

"(1) Sergeant Alipis was the first to broadcast the news before the reveille (5:30 o'clock, a.m., October 15) that Captain Pagsuberon was not in the camp and was missing; (2) the body of Captain Pagsuberon was found by Alipis himself by pretending to have seen it from an elevated cement ramp on the road to Gumaca overlooking the place where Captain Pagsuberon lay dead; (3) Sergeant Alipis gave several versions of the whereabouts of Captain Pagsuberon on October 14 and of his death, attributing it to suicide which was impossible because of the presence of marks of violence on the person of the victim inflicted ante-mortem (See supplement to medico legal report, Exhibits B-1, B-1-B, B-1-C, B-1-D and B-1-E); (4) in one statement (Exhibit Z) Sergeant Alipis admitted having squeezed the trigger of the pistol of Captain Pagsuberon which the latter aimed with his left hand at his right temple; (5) it is awkward, nay out of the ordinary that with the left hand Captain Pagsuberon would point his pistol at his right temple because if Captain Pagsuberon really wanted to commit suicide he would have used his pistol with his right hand and point it to his right temple be insure the success of the end sought instead of using the left hand to point to the right temple; (6) Sergeant Alipis was alone when he returned at 4:00 o'clock a.m. on October 15 to the house of Tamares asking for women; (7) when he arrived

later at the mess hall at 4:30 a.m., he asked the mess sergeant (De Luna) if the latter had heard a shot to which De Luna answered no ("wala"), remarking that Alipis might be dreaming; (8) at that precise moment, Sergeant Tredente arrived in the mess hall and joyfully embraced Alipis, saying Peace time na, meaning that they both rejoiced over the death of Captain Pagsuberon; (9) at 9:00 a.m., October 15, before his investigation by the authorities, Alipis changed the slide assembly of his pistol and attached it to the pistol of another sergeant (Lloren) to escape detection and to shift to another party the responsibility for the crime (10) Sergeant Sornilla became a turncoat against the prosecution after the release on bail of Alipis but it is still a fact that the change of the slide assembly of Alipis' pistol took place at 9:00 a.m. while his investigation started at 9:30 a.m. on October 15; (11) the story of Alipis picturing the desperate financial situation of Captain Pagsuberon prior to the murder stating that Captain Pagsuberon asked Alipis to borrow P600 from any party in Atimonan is highly incredible, there being no concrete evidence that the deceased was really short in his money and property accountability; (12) the lower portion of Alipis' pants bore stains of human blood."

Section 5, Rule 133 (formerly Section 98 of Rule 123) of the Rules of Court provides that circumstantial evidence is sufficient for conviction if: "(a) There is more than one circumstance; (b) The facts from which the inference's are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt."

We shall examine the "series of circumstances", Separately and as a whole, in the light of these requisites.

"(1) Sergeant Alipis, was the first to broadcast the news before the reveille (5:30 A.M., October 15) that Captain Pagsuberon was not in camp and was missing;" -.

The record shows that Sergeant Alipis was the one who reported to the Sergeant of the Guards that Captain Pagsuberon was missing. Nothing therein justifies the statement that he was the first to broadcast the news". As a subordinate of Captain Pagsuberon, it was appellant's duty to report that he was missing. The record-further shows that Sergeant Alipis was previously instructed by the Captain to wake him up that morning.

"(2) The body of Captain Pagsuberon was found by Alipis himself by pretending to have seen it from an elevated cement ramp on the road to Gumaca overlooking the place where Captain Pagsuberon lay dead;"

Prosecution witness Sergeant Jacinto testified that Sergeant-Alipis was the first to find the Captain's body. But no one testified that Sergeant Alipis "pretended" to have seen it. Furthermore, Sergeant Alipis denied that he was the first to see the body, stating that Sergeant Jacinto-saw it ahead of him. Private First Class Bilonen, also a member of the search party, testified that Sergeant Jacinto was the one who first saw the Captain's body (Tsn., Feb. 2, 1959; p. 25). We do not find it clearly proven that Sergeant Alipis was the first to find the Captain's body.

"(3) Sergeant Alipis gave several versions of the whereabouts of Captain Pagsuberon on October 14 and his death, attributing it to suicide which is impossible because of the presence of marks of violence on the person of the victim inflicted antemortem;"

Appellant's purported statements are Exhibit BB, from the investigation by Sergeant Leaño; Exhibit Y, from the investigation by Captain Jose; and Exhibit Z, from the investigation by Captain Alzate. They differ as to what transpired between 3:00 A.M. and 5:00 A.M, of October 15.

Regarding this, we quote from Exhibit BB:

"Tanong

—

Anong oras ikaw muling nagising at ano ang iyong ginawa?

"Sagot

—

Ng ako'y maglising ay ako'y bumangon ng aking higaan at ako ay pumunta sa lugar na kanyang (Apolonio Pagsuberon) tinutulugan, subalit siya ay wala kung kaya't ako'y muling tumulog sa ang oras na noon ay mag aalas 3:30.

"Tanong

—

Ikaw ba ay muli pang nagising ng umagang yaon?

"Sagot

—

Opo, ako po ay nagising ng oras humigit kumulang sa mag aalas 4:30 ng umaga ng fecha 15 ng Octubre 1957 at muling pumunta ako sa higaan ni Captain Pagsuberon upang alamin kung siya ay naroroon na.

"Tanong

—

Iyo rin ba namang natagpuan ang iyong hinahanap na si Captain Pagsuberon?

"Sagot

—

Hindi po, "ngunit sa aking paghahanap sa tapat ng Coco Night Club ay aking natagpuan si Col. Faustino Medalle, S/Sgt. Julio Jacinto at N/Sgt. Noriel ng 17th BCT. At aking ipinagtanong kung nakikita nila si Captain Pagsuberon, ngunit sinabi sa akin nila na hindi nila nakikita, kung kaya't ako'y muling bumalik na sa barracks.

"Tanong

—

Sa iyong paghahanap kay Captain Pagsuberon na hindi mo matagpuan ay saan ka na pumunta at ano na iyong ginawa?

"Sagot

—

Ng hindi ko po makita si Captain Pagsuberon ay ang aking ginawa ay ako ay muling bumalik sa barracks at sinabi ko kay T/Sgt. Juan Facelo na wala si Captain Pagsuberon sa kanyang quarter."

from Exhibit Y:

"T

—

Will you account for all your activities s observations and everything you know from 9:30 PM 14 October 1937 up to the time you saw Captain Pagsuberon dead?

"S

—

* * * At exactly 3:30 AM same date was awakened by somebody sitting beside me on my cot. It was dark and I could not recognize him, I recognized his voice to be that of Capt. Pagsuberon. Our conversation was as follows:

"Sgt. Alipis

—

'Bakit, isipin mo muna iyong mga anak mo at ang familia mo'.

"Capt Pagsuberon

—

'basta tulungan mo ako na hindi malaman na ako ay nagpakamatay'.

"After the above conversation Capt Pagsuberon immediately left my room and I saw him passed the Mess Hall and jumped the fence behind the mess hall. I opened the light and put on my pants and shoes without tying them and tried to follow Capt Pagsuberon passing behind the house of Sgt Cordova. I ran all over the town looking for him. My route was as follows: From Marivic to Zigzag Hotel, to the beach behind of the Governor, and from there I proceeded to the street where the house of Sgt Catakutan is located. But I could not still find him so I returned to camp asking the guard on post,. Cpl Javier, and he told me that the CO has not returned to camp, after which I returned to my cot and rested. At about 4:40 AM while I was inside my room I heard a shot in the direction of the cemetery. I went out of my room and I saw S/Sgt de Luna and asked him where the shot came from. S/Sgt de Luna who was at the time cooking answered back that I am only dreaming. At 5:00 AM I reported the matter to T/Sgt Facelo that the CO is not in his quarters.

"Q

—
From the time Capt Pagsuberon told you about waking him up at 4:00 AM who were persons you saw and that saw;

"A

—
At 4:30 AM while looking for Capt Pagsuberon I passed the gambling house near Coco Grove Nite Club and there I talked to Medalle asking him the whereabouts of the CO, Capt Pagsuberon and he told me he is there in the Cabaret, so I went to the cabaret and I found out it was closed already. I also saw M/Sgt Noriel/ Sgt Jacinto in the gambling house.

"Q

—
Did Sgt. Jacinto talked to you in the gambling house?

"A

—
I was the one who asked him if he saw Capt. Pagsuberon and he said I do not know and I returned to the camp." and from Exhibit Z:

"Q

—
You told the investigator that you went home to the barracks at about 11:00 P.M. to sleep/ were you able to sleep on that night?

"A

—
Yes sir, until 3:30 A.M. 15 October 1957.

"Q

—

Why were you able to sleep only until at about 3:30 A.M. 15 October 1957.

"A

—

Because Captain PAGSUBERON arrived and woke me up.

"Q

—

What is the reason why Captain PAGSUBERON woke you up?

"A

—

He invited me to go with him to the house of the prostitutes at the front of the house of Governor LEON GUINTO.

"Q

—

Were you able to enter the house of the prostitutes?

"A

—

No sir, because according to the occupant there was no available prostitutes.

"Q

—

Where did you go next after knowing that there was no prostitutes in the prostitution house?

"A

—

Captain PAGSUBERON Invited me to the house of his querida near the cemetery.

“Q

—

Were you able to see his querida?

“A

—

No sir, because upon arrival at the cemetery found out that he has no querida and that was only his alibi.

“Q

—

What did Captain PAGSUBERON tell you upon arriving thereat?

“A

—

He asked to go with him a little bit further to the road going to Gumaca and he held my right arm. When we reached to the place where garbage being thrown (basuran) he (Capt PAGSUBERON) sat down on the cement wall still holding me and pulled his pistol caliber 45 with his left-hand, he hold it pointing to his right temple. I advised not to do that because of his family and children. He still insist and grab my hand (right) telling me to pull the trigger of the pistol and told further that after squeezing the trigger I will throw the pistol away, but I refused to do it, he grabbed again my hand and placed again to the trigger of the pistol, but not knowing the pistol was locked I was forced to squeeze the trigger and the pistol exploded, causing him to fall down.

“Q

—

What happen next after squeezing the trigger of the pistol?

“A

—

I grabbed him to prevent him from falling at the deep ravine".

“Q

—

Were you able to hold his body?

“A

—

No sir, because he is too big and I was not able to prevent him from falling into the deep ravine.

“Q

—

Where you able to throw the pistol after squeezing the trigger, as instructed by Capt PAGSUBERON?

“A

—

No sir, because the pistol was still with his hand when he fell into the ravine.

“Q

—

Where did you go after that incident?

“A

—

I returned to the Camp.

“Q

—

Have you tell somebody what happen to Capt PAGSUBERON during that night?

“A

—

No body sir.”

The statements afore-quoted contain several versions; but that Exhibits Y and Z are statements of appellant is doubtful. Appellant denies the signatures in Exhibit Z, the only statement linking him to the Captain's death, and a comparison of said signatures with those that, are admittedly genuine (Exhibits BB-1, Y-2, and Y-4) shows a striking dissimilarity. Furthermore, the original of Exhibit Y is unsigned at the end; the carbon copy of Exhibit Y, namely, Exhibit Y-3, is signed at the end, but the signature (Exhibit Y-5) Is also disowned by appellant, and likewise appears different from the admitted signatures. Finally Exhibits Y and Z are not under oath, whereas Exhibit BB appears subscribed and sworn to before the Justice of the Peace.

"(4) in one statement (Exhibit Z) Sergeant Alipis admitted having squeezed the trigger of the pistol of Captain Pagsuberon ' which the latter aimed with his left hand at nisi right temple;

" (5) if is awkward, nay out of the ordinary that with his left hand Captain Pagsuberon would point his pistol to his right temple: because if Captain Pagsuberon really wanted to commit suicide he would have used his pistol with his right hand and point It to his right temple to insure the success of the end sought instead of using the left hand to point to the right temple;"

Number 5 is not a separate circumstance but an opinion of [the court regarding circumstance Number 4.

Serious doubts, as stated, exist as to whether the statement Exhibit 2 is that of the appellant. Furthermore, the statement therein is “I was forced to squeeze the trigger and the pistol exploded”, It is therefore identified thereunder with the very act by which Captain Pagsuberon allegedly shot himself. As such, it suffers from the same improbability that impelled the court a quo to disbelieve the aforesaid act of suicide and it cannot be isolated into an independent statement that Alipis shot Captain Pagsuberon.

"(6) Sergeant Alipis was alone when he returned at 4:00 o'clock a.m., on October 15 to the house of Tamares looking for women; "

Segundo Tamares, the owner of the ill-reputed house, testified as follows: At 10 P.M. of October 14 Sergeant Saunar and three persons unknown to him went to his house Sergeant Saunar presented to him one Captain Pagsuberon; they were looking for girls but he told them he had none; after five minutes, they left. At 12:00 midnight these same persons, returned; they asked if there were girls, and, upon being told there were none, they left. At about 3:00 A.M. of October 15 three persons came to his house; these persons were different from the four that came at 10:00 P.M. and 12:00 midnight; the person introduced to him as Captain Pagsuberon was not in this group; this group stayed for ten minutes; one of them "laid on the lap of Rosie", "the other one was laughing and the other one was sitting." (Tsn., pp. 43-56.)

Rosa Caballero, a prostitute in Tamares' house, testified, thus: At about 10:00 p.m. of October 14 Captain Pagsuberon, Sergeants Saunar and Tredente came to Tamares house; they asked for a woman, but left when told there was none. At about 3:00 A.M. of October 15 they returned but Captain Pagsuberon was not with them;

specifically, Tredente and Caluyo were the ones who came at 3:00 A.M. Rosa Caballero noticed that Tredente's uniform had plenty of sand; she asked Tredente where he came from and he said they cranked somewhere. They left after five minutes. At 4:00 A.M. Alipis came and asked for women. (Tsn., pp. 64-71.)

These witnesses, therefore, testified that Sergeant Alipis went to the house of Tamares alone and only at 4:00 A.M. of October 15. They did not see him with Captain Pagsuberon nor with the group that went with Captain Pagsuberon. The court a quo had no basis in finding that appellant "returned" to the house of Tamares at 4:00 A.M., since, as stated, he was not among those who went there earlier that night.

"(7) when he arrived later at the mess hall at 4:30 A.M., he asked the mess sergeant (De Luna) if the latter had heard a shot to which de Luna answered no ('wala'), remarking that Alipis might be dreaming;"

The foregoing incident was testified to by Sergeant De Luna and by appellant himself; however, they did not state that the time was 4:30 A.M. Sergeant De Lima said he was in the kitchen at 3:45 A.M., and Alipis approached him "after four o'clock" (Tsn., p. 324.) Appellant testified that at 4:00 A.M. he woke up, went to the quarters of Captain Pagsuberon to wake him up per instructions, saw he was not there, went back towards his own room, heard a shot, proceeded to the kitchen and asked De Luna if the latter heard it. (Tsn., p. 706.)

"(8) at that precise moment, Sergeant Tredente arrived in the mess hall and joyfully embraced Alipis, saying, 'Peace time NA,1 meaning that they both rejoiced over' the death of Captain Pagsuberon;"

Sergeant De Luna testified for the prosecution that: Alipis returned to his room after he had told Alipis he heard no shot; five minutes later Alipis returned and asked for a cup of coffee; another enlisted man, Sergeant Tredente, came to the kitchen. (Tsn., pp. 325-326.)

Still on direct examination, Sergeant De Luna went on:

"Q

—

When Sergeant Tredente came to the kitchen, what did he do in the kitchen?

"A

—

While Sergeant Alipis was drinking coffee, Sergeant Tredente came and embraced Sergeant Alipis, saying 'Peace time' and both of them laughed.

"Q

—

When Sergeant Tredente embraced Sergeant Alipis and told Sergeant Alipis 'Peace time NA' did you hear some more words aside from that from Sergeant Tredente and Sergeant Alipis?

"A

—

The statement uttered by Sergeant Tredente is 'Peace time,' not 'Peace time na.'

"Q

—

You are not answering my question. My question is this - Aside from the words 'Peace time' as uttered by Sergeant Tredente did you hear some more words from Sergeant Tredente aside from the words "Peace time?

"A

—

When Sergeant Alipis and Tredente were talking, as they were talking in a language which I think was Ilongo, I could, not understand it very well. They were talking about women." (Tsn., pp. 326-327; italics supplied.)

Appellant testified that Sergeant Tredente "told me 'Peace time' and the latter laughed and told me he was not able to fuck a woman because she is bleeding". (Tsn., 720.)

There is nothing in the record to show that Sergeant Tredente and appellant, by the words "Peace time", or in any other way, rejoiced over the death of Captain Pagsuberon.

"(9) at 9:00 A.M., October 15, before his investigation by the authorities, Alipis changed the slide assembly of his pistol and attached it to the pistol of another sergeant (Lloren) to escape detection and to shift to another party the responsibility for the crime;"

Supply Sergeant Praxedio Sornilla testified that upon orders of Captain Alvarez he collected the pistols of Sergeants Lloren, Facelo, Quines and Jacinto when they were in formation at about 7:30 A.M. of October 15; that after putting tags on the pistols he placed them inside the estante at the supply room; that at about 9:00 A.M. Alipis came to the supply room, poked a pistol at him and threatened him:. "Noy, Huag kang umimik, at kung iimik ka ay isusunod kita"; that Alipis went inside the supply room, took a pistol from the estante and, from behind a partition, did something that produced the sound of changing spare parts of pistols that Alipis came out, placed a pistol in his waist and left.

According, however, to Manuel Campomanes the policeman who helped in Sergeant Leaño's investigation of Alipis - all the time from 8:00 A.M. to 11:00 A.M. of October 15, Alipis was inside the room of Major Baga under investigation by Sergeant Leafio (Tsn. p. 595). There is no reason to doubt this testimony from an impartial source. Furthermore, Praxedio Sornilla later retracted upon cross-examination, stating that Alipis did not come to the supply room at all and that he so testified only because he was threatened by Captain Alzate (Tsn., p. 353) In his rebuttal testimony, Captain Alzate never denied this point.

"(10) Sergeant Sornilla became a turncoat against the prosecution after the release on bail of Alipis but it is still a fact that the change of the slide assembly of Alipis1 pistol took place at 9:00 A.M. while his investigation started at 9:30 A.M. on October 15;"

The investigation of Alipis by Sergeant Leaño in the room of Major Baga was, as stated, from 8:00 A.M. to 11:00 A.M. Sergeant Sornilla even stated, in testifying for the prosecution:

"COURT:

"Q

—

Why was the pistol of Ciriaco Alipis not taken by you when the pistols were surrendered?

"A

—

Because he was not there in the formation, because he was being investigated at that time in the office of the S-2 by the PC." (Tsn., p. 99.)

There is no basis in the record for stating that the aforesaid investigation started at 9:00 A.M. Policeman Campomanes, on the other hand, positively testified that it started at 8:00 A.M.

"(11) the story of Alipis picturing the desperate financial situation of Captain Pagsuberon prior to the murder, stating that Captain Pagsuberon asked Alipis to borrow P600 from any party in Atimonan is highly incredible, there being no concrete evidence that the deceased was really short in his money and property accountability;"

A fact established in the record is that Captain Pagsuberon paid only one-half of his men on the pay-clay of October 14 (Tsn., p. 657). This tends to support Alipis testimony that Captain Pagsuberon was short of funds. If this were not true, the result of the postmortem auditing of his funds as the Finance Officer of 'the 2nd Battalion Combat Team could have easily rebutted it. But, none was offered and the authorities concerned were conspicuously silent on this point.

There are further indications that Captain Pagsuberon used to borrow money from civilians in and out of Atimonan (Tsn. p. 696) and used to spend a lot (of money on women (Tsn., p. 722).

"(12) the lower portion of Alipis' pants bore stains of human blood."

This point is a fact duly proved; but so is the fact that Alipis was one of those who, upon Major Marfori's order, carried the bleeding corpse of Captain Pagsuberon on a stretcher, loaded it on a jeep and brought it to the camp. (Tsn., 704; Feb. 2, 1959. P. 31.) The lower court evidently assumed that the stains of human blood were in Alipis' pants from the time the Captain was killed up to the time Alipis was investigated. Considering however that according to the autopsy the victim must have been killed between 3:00 A.M. and 5:00 A.M., Alipis had plenty of time to change his pants to avoid' detection of such incriminatory stains of blood on his pants, instead of going around with it in company with the other soldiers and officers searching for the missing commanding officer whom he himself reported to be missing to the guard on duty. That is assuming an unusual behaviors on the part, of a guilty person. Alipis' explanation is more in consonance with the ordinary occurrence of events.

Accordingly, as far as the record shows, the circumstances duly proven are as follows: (1) Appellant was the first to report, at about 5:30 A.M. of October 15, 1957 that Captain Pagsuberon was not in camp; (2) At 4:00 A.M. of October 15, 1957 appellant went to Tamares' house alone, "looking for women"; (3) After 4:00 A.M. of October 15, 1957 appellant, at the camp's kitchen, asked Mess Sergeant De Luna if he heard a shot and the latter replied

"No,,"; (4) Shortly afterwards , Sergeant Tredente came, embraced appellant, said "Peace time" and talked about women; and (5) Appellant's pants was stained with human blood.

We do not find the foregoing' set of circumstances inconsistent with appellant's innocence: singly or collectively, they do not suffice to establish beyond reasonable doubt that appellant, alone or with others, shot Captain Pagsuberon to death.

The Insufficiency of the circumstances afore-stated becomes all the more clear when we consider them together with-the rest of the facts and circumstances duly proven, upon which prosecution should have been directed against others rather than accused Alipis.

Such facts and circumstances are:

Captain Pagsuberon was seen going with a group of enlisted men, among them Sergeants Tredente and Saunar, shortly before he was killed, but appellant was not seen, with him or with the group that went with him. The ante-mortem injuries of Captain Pagsuberon indicate that he was assaulted by several persons, whereas the prosecution's evidence showed Alipis to be alone when he went to Tamares' house.

The place where the body of Captain Pagsuberon was found was sandy. Sergeant Tredente, whose statement "Peace time" 'was construed together with his behaviour by the court a quo as indicative of a guilty conscience/ went to Tamares¹ house at 3:00 A.M. of October 15 with "plenty of sand" spread in his uniform; the same was not true of Alipis when he went to Tamares ' house that same morning.

Furthermore, no paraffin test was made on Sergeant Tredente, and the pistols of Sergeants Tredente and Saunar were not among those taken for ballistic tests.

The inference that appellant shot 'Captain Pagsuberon is rendered further doubtful, notwithstanding the purported statement of Alipis in Exhibit Z, by the fact that the paraffin test on him proved negative. The court a quo explained such negative results by stating that Alipis could have fired the shot in the direction of the wind or with gloves in his hands, an assumption that has no basis upon.the record. As noted earlier, it was Sergeant Enrique Lloren whose hands showed positive under the paraffin test.

Similarly, from the ballistic, tests, Lloren's pistol was found positive for identifying marks akin to those on the shell taken near the place where Captain Pagsuberon¹ was found. Notwithstanding such evidence, the court a quo found appellant guilty, upon the reason that:

"An examination of Exhibit V shows that the slide assembly described by Lloren as the slide assembly of his pistol Exhibit D is now attached to this service pistol of Alipis Exhibit W. The lettering on the slide assembly is very clear, which shows that it is not a very old slide assembly. This goes to prove conclusively that the slide assembly now attached to the service pistol of Alipis, Exhibit W, is the slide assembly of Lloren's service pistol Exhibit D, Serial No. 1991156. This pistol of Lloren after its slide assembly was changed was fired twice for test purposes and the empty shells resulting from the firing resembled the questionable empty shell Exhibit D-2. This result is but natural because both pistols of Alipis and Lloren were Remington .Rand, caliber .45. The empty shell fired from the slide assembly of the service pistol of Alipis would be the same as the empty shells that were fired from the slide assembly of Alipis which is now attached to the service pistol of Lloren, so that it is safe to conclude that the questionable empty shell was fired from the service pistol of Alipis as well as the two empty shells fired for test purposes,"

The finding that Exhibit W is the pistol of Alipis is not supported by any evidence. The record shows that Exhibit VI - Remington Rand, caliber .45, Serial Number 2458306-is that of Sergeant Cells (Tsn., 342-343). In fact, the same was presented in court only because Major Marfori used it to demonstrate how fast slide assemblies of two

pistols could be changed.(Tsn., 312.) Finally, appellant testified, and nothing to the contrary has been adduced, that his pistol is the one marked "Exhibit 4-Lloren", which is a Colt, and not a Remington Rand (Tsn.3- 679). Clearly, therefore, the court a quo convicted the appellant under the erroneous assumption that the slide assembly attached to Lloren's gun came from appellant's pistol.

Finally, no motive has been shown for appellant to kill Captain Pagsuberon. The court a quo stated it could think of "no other motive than robbery" but this, again has no support in the record.

In the case at bar, we do not find from the circumstantial evidence an unbroken chain leading to a fair and reasonable conclusion that appellant, to the exclusion of all others is guilty of shooting Captain Pagsuberon. Appellant, therefore, cannot be convicted upon the strength of such circumstantial evidence (U.S. vs. Villos, 6 Phil. 510; People vs. Subano, 73 Phil. 6921 People vs. Labita, L-8481, Sept. 15, 195d) They do not link him conclusively to be the author of the crime charged; on the contrary, taken with the other facts on record, they point towards other suspects.

Consequently, the combination of all the circumstances does not produce conviction beyond reasonable doubt. By reasonable doubt is meant "doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt". (United States vs. Lasada, 18 Phil. 90, 96.) .

WHEREFORE, the judgment appealed from is reversed, and appellant Ciriaco Alipis is hereby acquitted, with costs de oficio. So ordered.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

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