

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SORIANO ALCARAZ Y LICUANAN ALIAS ANO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. Nos. L-9064-67. April 30, 1958

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PER CURIAM:

Late in the evening of May 19, 1954, Alberto Agaran and the three Canary brothers named Jaime, Lorenzo, and Romeo were inside a calesa parked on Bankusay Street, District of Tondo, Manila, at a point between Capulong and Inocencio Streets, evidently waiting for someone or awaiting developments. Shortly after Bernabe Villalon, the cochero of the calesa had steppe'd down and gone toward a store to take some coffee, the calesa with its occupants and the horse became the target of a concentrated murderous gunfire from in front and behind, resulting in the death of Alberto Agaran and Jaime Canary and the serious wounding of Lorenzo. Romeo jumped down from the calesa, ran northward and then turned right on Kapulong Street, but was intercepted and stabbed in the neck by Celso Carillo, one of the assailants purposely stationed there to cut off all escape of the victims. The calesa was riddled with bullets, and even the horse was not spared, having received two gunshots.

For the death of Alberto, the following persons were accused of murder in band in Criminal Case No. 27149, namely: Soriano Alcaraz y Licuanan alias Ano, Amando Santos y Quinto alias Amading, Melchor Martinez y Licuanan alms Melchor, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano, Jose Halili y Alcaraz, Ambrosio Diaz y Dimandal, Santos Cruz, Elinio Manzano y Cabansag alias Totoy Manzano alias Totoy Eje, Celso Carillo y Sangca, Moises Halili, William Doe, Peter Doe, and Joseph Doe. For the death of Jaime Canary, the same persons were accused of murder in band in Criminal Case No. 27150. For the wounding of Lorenzo Canary, the same individuals were charged with frustrated murder in band in Criminal Case No. 27165, and for the wounding of Romeo Canary, the same men were accused of frustrated murder in band in Criminal Case No. 27166. Before trial, Elinio Manzano was killed in a gun battle with the police that tried to arrest him on June 3, 1954. Ambrosio Diaz was discharged from the informations in the four cases and utilized as a witness for the prosecution. For the reason that William Doe, Peter Doe and Joseph Doe, the three last named accused, had not been apprehended or identified, they were not included in the trial of the four cases. After the joint trial, the lower court finding the defense of alibi interposed by Moises Halili, Amando Santos and Melchor Martinez to be well founded, acquitted them in each of the four cases. The remaining accused were sentenced as follows:

"In Criminal Case No. 27149, sentencing Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz to reclusion perpetua, and Santos Cruz and Celso Carillo y Sangca to imprisonment of from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. The six defendants are also ordered, jointly and severally, to indemnify the heirs of Alberto' Agaran in the sum of P6,000 and to pay their proportionate shares of the costs; "In Criminal Case No. 27150, sentencing Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz to reclusion perpetua, and Santos Cruz and Celso Carillo y Sangca to imprisonment of from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one

(1) day of reclusion temporal as maximum. The six defendants are also sentenced, jointly and severally, to indemnify the heirs of Jaime Canary in the amount of P6,000 and to pay their proportionate shares of the costs;

"In Criminal Case No. 27165, sentencing Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz to imprisonment of 'from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal as maximum, and Santos Cruz and Celso Carillo y Sarigca, to imprisonment of from four (4) years, two (2) months and one (1) day of prison correctional as minimum to ten (10) years and one (1) day of prision mayor as maximum. The six defendants are also ordered to pay their proportionate shares of the costs; and

"In Criminal Case No. 27166, sentencing Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz to imprisonment of from one (1) year, seven (7) months and eleven (11) days of prision correctional as minimum to six (6) years, one (1) month and eleven (11) days of prision mayor as maximum, and Santos Cruz and Celso Carillo y Sangca to imprisonment of one (1) year, seven (7) months and ten (10) days of prison correctional as minimum to six (6) years, one (1) month and ten (10) days of prision correcional as maximum. The six defendants are also ordered to pay their proportionate shares of the costs.

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"Notwithstanding the sentences herein imposed in these four cases, pursuant to Article 70 of the Revised Penal Code, as amended by Commonwealth Act No, 217, the total imprisonment "which each defendant shall serve shall not exceed forty (40) years.

"Since there is no probability of Wiliiam Doe, Peter Doe and Joseph Doe being apprehended or identified within a reasonable time, the four cases as to them only are dismissed with the proportionate costs de oficio.

"The firearms, the clips for automatic weapons, the live ammunition and the daggers submitted in evidence at the trial are confiscated in favor of the Government."

The reason for the relatively lighter penalty imposed on Santos Cruz and Celso Carillo is that, having surrendered to the authorities, they were given the benefit of this mitigating circumstance.

We have carefully revised and studied the record and considered the briefs filed on behalf of the appellants and the prosecution. Judge Edilberto Barot of the trial court who saw and heard the witnesses on the witness stand and received and evaluated the exhibits, including the written statements of some of the accused, has prepared a well written, detailed, and reasoned decision, and we are reproducing the most pertinent part thereof, and making it our own, with the exception of a certain portion or detail which we shall explain later.

"There are four separate cases, two for murder in band and two for frustrated murder in band, with Alberto Agaran and Jaime Canary, respectively, as the victims in Criminal Cases Nos. 27149 and 27150, and Lorenzo Canary and Romeo Canary the complainants, respectively, in Criminal Cases Nos. 27165 and 27166, and Soriano Alcaraz y Licuanan alias Ano,. Amando Santos y Quinto alias Amading, Melchor Martinez y Licuanan alias Melchor, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano, Jose Halili y Alcaraz, Ambrosio Diaz y Dimandal aftas Bondat, Santos Cruz, Elino Manzano y Cabansag alias Totoy Manzano alias Totoy Eje, Cclso Carillo y Sangca, Moisea Halili alias Eseng, William Doe, Peter Doe and Joseph Doe as the defendants in each of the four cases.

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"Elino Manzano was killed in a gun battle with policemen who tried to arrest him on the night of June 3, 1954, and on motion of the fiscal the four cases as to him only were dismissed on June 9, 1954. Ambrosio Diaz was discharged from the informations in the four cases, also on motion of the fiscal, before the prosecution commenced the presentation of its evidence to enable him to utilize this defendant as a witness for the

prosecution. William Doe, Peter Doe and Joseph Doe have not been apprehended or identified and were not included in the joint trial of the four cases. Only Soriano Alcaraz, Amando Santos, Melchor Martinez, Carlos Espino, Manuel Samonte, Jose Halili, Santos Cruz, Celso Carillo and Moises Halili, who all pleaded not guilty upon arraignment, stood trial.

"Between 9:00 and 10:00 o'clock on the night of May 19, 1954, Alberto Agaran and the Canary brothers, Jaime, Lorenzo and Romeo, were inside a Calesa parked on Bangkusay Street between Kapulong and Inocencio Streets in the District of Tondo, City of Manila, when the quiet of the night was suddenly broken by gunshots in rapid succession. When the firing stopped, Jaime Canary and Alberto Agaran were dead. Lorenzo Canary was alive but in serious condition. Romeo Canary jumped from the calesa a split second before the firing started and was not hit. He ran north on Bankusay and turned east on Kapulong and was stabbed at the intersection of Kapulong and Velasquez Streets.

"Alberto Agaran and Jaime Canary both died from severe shock and profuse hemorrhage due to gunshot wounds, according to Dr. Mariano B. Lara, chief medical examiner of the Manila Police Department. (Exhibits JJ, JJ-1, JJ-2, KK-2 RK-3, KK-4) Lorenzo Canary, too, received multiple gunshot wounds, one causing a compound comminuted fracture of the right arm; another, a comminuted fracture of the left thigh; another, a comminuted fracture of the left leg; another, with the wound of entrance on the left eyebrow and the point of exit on the right fronto parietal area. (Exhibit MM.) The last wound lacerated the brain, Lorenzo Canary would have died if he had not received timely medical aid, according to Dr. Melanio Paulino of the National Orthopedic Hospital where the wounded man was confined from May 20, 1954, to August 4, 1954. when he was discharged before he was cured. Romeo Canary received a stab wound on the left side of the neck, one inch wide at its opening and one and one-half inches deep and directed medially and downward. (Exhibit NN) Dr. Rizalino de la Fuente of the North General Hospital testified that the wounded man would probably have died from loss of blood and infection if he had not received timely medical attendance.

"The police arrived at the scene of the shooting within a few minutes after it occurred. They found that the calesa with its gory passengers near the intersection of Bankusay and Inoeenclo Streets. The horse, still hitched to the vehicle, received two shots and must have run south during or immediately after the shooting. The calesa had bullet holes on the seat and on the body.

"Where the calesa with its four passengers was parked when the shooting started the police picked up a dozen empty shells, all for automatic weapons, caliber .45 Too, on different dates during the intensive police investigation that followed, operatives of the homicide unit of the Detective Bureau of the Manila Police Department recovered assorted firearms of different calibers, but with the exception of the grease gun, Exhibit B, none of the firearms was used in the shooting. (Exhibits Z, CC, CC-1 CC-2, CC-3, CC-4, CC-5 and CC-6.)

"The police apparently made no progress towards the solution of the quadruple crime until May 27, 1954, when Ambrosio Diaz surrendered to the police. As a result of revelations Diaz' made, teams of homicide operative subsequently arrested Soriano Alcaraz, Amando Santos, Melchor Martinez, Carlos Espino, Manuel Samonte, Jose Halili and Moises Halili as among the authors of the crimes. Santos Cruz and Celso Carillo surrendered to the authorities upon learning that they, too, were wanted by the police.

"Of the ten suspects then in the custody of the police only Ambrosio Diaz, Manuel Saraonte, Santos Cruz and Colso' Carillo gave confessions. In their respective confessions these four defendants describe the events immediately before, during and after the attack, and give a description of the attack as well as the identities of the persons who took part in it and the names of those who, shortly before the shooting, agreed to kill Alberto Agaran and the Canary brothers. The confessions of Samonto, Cruz, and Carillo were presented at the trial as Exhibits I, J and LL, respectively.

"Ambrosio Diaz, Romeo Canary and Bernabe Villalon took the witness stand at the trial and substantially corroborated the afore-said confessions.

"Diaz testified that he lived with his wife, Clarita Samonte, at No. 1079 Asuncion Street, City of Manila. He accompanied his wife to the Tondo Catholic Church where they attended a novena on May 19, 1954. Coming from, the church they went directly to his father's house on Kapulong, near corner Bankusay, arriving there at about 8 o'clock in the evening.

"He sat near a window and from the street Soriano Alcaraz whistled at him and gave him a signal to go down. He went down and Alcaraz led him towards the house of Moises Halili on Bankusay near Kapulong. As they walked, Alcaraz informed him that they were going to shoot somebody.

"They found Melchor Martinez, Santos Cruz, Celso Carrillo, Jose Halili, Manuel Samonte, and Amando Santos under the house of Moises Halili. (The witness later in his testimony added Elinio Manzano and Moises Halili as among the persons they found there when they arrived.) Alcaraz addressed the group and told them that they were going to kill the Canary brothers who with Alberto Agaran were in a calesa parked on Bankusay between Kapulong and Inocencio. Then they dispersed and deployed along Bankusay between Kapulong and Inocencio.

"Manzano, armed with a grease gun, took his place in an alley in front of the calesa. Alcaraz, Santos Cruz, and Diaz occupied another alley behind the calesa. Alcaraz gave Diaz a pistol, caliber .45, and told him to fire. He did,—in the air, according to him, because Alcaraz threatened him if he did not. The single shot fired by Diaz was immediately followed by successive shots from the direction of Manzano. Alcaraz and Santos Cruz, too, fired towards the direction of the calesa.

"Alcaraz took Diaz to the house of Melchor Martinez after the shooting. When Diaz woke up the following morning he heard Alcaraz, Moises Halili and Santos Cruz discussing their plan of surrendering him to the authorities as the author of the fatal shooting. Diaz escaped from the house and went to hide in Bulacan.

"Romeo Canary in substance testified that his parents needed pigs for the Gagalangin fiesta. About a week prior to May 19, 1954, Jose Halili agreed to help him find cheap pigs to buy from viajeros or traveling hog dealers. Halili told him that he would send word to him when he found the pigs.

"Jaime and Lorenzo, another brother, and Alberto Agaran arrived in a calesa at his residence at Bankusay, corner Pacheco, at about 8 o'clock on May 19, 1954. They came for the pigs. They had not been long at his residence when Carlos Espino arrived to tell him that Halili was waiting with the pigs.

"Espino immediately left in a passenger jeep after transmitting the message from Jose Halili Jaime, Lorenzo, Romeo and Agaran followed in the calesa shortly after Espino left.

"The house of Jose Halili is on Bankusay, near corner Kapulong, on the opposite side of the street from where the house of his father, Moises Halili, stands, (Moises' house is No. 1452 Bankusay.) Not finding Jose Halili at Bankusay, near corner Kapulong they drove slowly back and forth, then parked on Bankusay between Kapulong and Inocencio, the calesa facing south. Romeo saw Amando Santos in a passenger jeep and Santos invited Romeo to go with him to Culi-culi for a good time. Romeo declined the invitation and the passenger jeep proceeded south towards Herbosa Street with Santos in it.

"Romeo, Jaime, Lorenzo and Agaran remained in the parked calesa. Romeo saw Elinio Manzano with a grease gun in an alley on Bankusay in front of the calesa. Then Carlos Espino, Jose Halili and Manuel Samonte, all holding firearms, crossed Bankusay from where Manzano was posted, (See Exhibits X7 X—1 and X-2 and Exhibit X-Court.) With a premonition of danger Romeo touched Jaime and told him to jump from the calesa, as he himself jumped from the vehicle and started running as the firing started. He ran northward towards Kapulong, passing Alcaraz, Cruz and Diaz, all with guns, in an alley on his left on Bankusay.

The sketches marked Exhibits X, X-1, X-2, and X-Court show the positions of Manzano, Alcaraz, Diaz and Cruz as indicated by the witness. He also passed Moises Halili and saw him crossing Bankusay and walking towards his house. He looked back as he ran and saw Jose Halili and Carlos Espino running after him and

firing at him.

"He turned right to Kapulong and continued running. At the intersection of this street and Velasquez he was met by Celso Carillo who stabbed him once on the neck. He ran south on Velasquez and proceeded to the police outpost at Pritil where he reported the shooting and the stabbing. The police took him to the North General Hospital for treatment.

"Romeo did not see Melchor Martinez at the scene of the shooting.

"Bornabe Villalon was the cochero of the calesa involved in the fatal shooting. This witness stated that Jaime Canary and Alberto Agaran boarded his calesa in front of a place known as Club 9 on Juan Luna Street in Gagalangin, Manila. His two passengers directed him to drive them to the North Bay Boulevard and to stop in front of police precinct No. 3. After his passengers conversed with a man in front of the police station he was ordered to proceed. At the intersection of Herbosa and Bankusay his two passengers talked with Manuel Samonte from whom they asked where Komeo Canary lived. Samonte replied that Romeo could be found at the corner of Bankusay and Pacheco Streets. He was directed to drive to that place.

"It was a little past 8 o'clock at night when he reached the corner of Paeheco and Bankusay Streets. He parked his calesa and Romeo Canary and Lorenzo Canary got in. With his four passengers, Alberto Agaran and the three Canary brothers, he was directed to drive northward on Bankusay. Upon reaching Kapulong Street he was ordered to turn back and to stop on Bankusay between Kapulong and Inocencio. His four passengers remained in the calesa except for a short time when Lorenzo Canary alighted to buy cigarettes.

"Villalon himself alighted after about 15 minutes, patted his horse to keep it awake, then started to cross Bankusay to drink coffee, while his four passengers remained in the calesa. He had not gone far when the firing started,—a single shot, followed by successive shots, directed at his passengers in the calesa. He ran to the police outpost at Pritil to report the shooting.

"The nine defendants who faced trial took the witness stand and denied participation in the fatal shooting. They also denied having attended a meeting under the house of Moises Halili shortly before the shooting.

"All put up the defense of alibi. Manuel Samonte testified that he was on a drinking spree with friends from 8 to past 10 o'clock on the night of the quadruple offense. Celso Carillo stated that he was in his house at No. 1407, interior, Bankusay. Jose Halili claimed that he was in his father's house at No. 1452 Bankusay, Soriano Alcaraz, too, was at home, asleep, at No. 1453 Bankusay, according to him. Santos Cruz and Carlos Espino said that they were on Kaxa Bago Street, the first playing panguingue in the house of a sister, and the second playing ping-pong with a friend in another house. Melchor Martinez, a fisherman by occupation, was fishing in Manila Bay, according to his testimony, Amando Santos told the court that he was with a friend in a night spot known as the Yellow Bar in Culi-Culi, Paranaque, Rizal. And Moises Halili presented evidence, oral and documentary, to show that he was at the City Jail bailing put three detention prisoners.

"The court will first consider the defense of Moises Halili, Amando Santos and Melchor Martinez.

"The alibi of Moises Halili is well supported by both documentary and oral evidence, including the testimony of policemen which the court cannot lightly disregard. The testimony of Amando Santos that he was in the Yellow Bar in Culi-culi is fully corroborated by the testimony of Ismael Javier and that, of Romeo Canary who, testifying as a witness for the prosecution, stated that he saw Santos in a passenger jeep before the shooting; that Santos even invited him to go with him to Culi-culi for a good time but that he declined the invitation. Lastly, Melehor Martinez testified that he was fishing in his own banea in Manila Bay, and Romeo Canary, also testifying for the prosecution, admitted that he did not see him at the scene of the shooting. Nowhere, furthermore, is he mentioned in Exhibits X, X-1 and X-2.

"There is testimony that Ambrosio Piaz was taken to the house of Melchor Martinez after the shooting. Assuming; this to be true, Martinez' failure to report to the authorities when he found Diaz in his house as he

came home at midnight would not make him an accessory. Diaz, who left for Bulacan the following morning", did not even mention him as having participated in the discussion of the plan to surrender him to the authorities.

"Neither is Moises Halili an accessory, even if he took part in the discussion to surrender Diaz to the authorities. Diaz was not hidden in his house and the evidence does not show that he helped Soriano Alcaraz take Diaz to the house of Melchior Martinez. "The foregoing leave the evidence against Soriano Alcaraz, Carlos Espino, Manuel Samonte, Jose Halili, Santos Cruz and Celso Carillo for consideration.

"The court at the outset discounts the explanation of Romeo Canary for his presence and that of his brothers and Alberto Agaran in the neighborhood of Bankusay on the night of May 19, 1954. In the first place, Romeo Canary testified that it was his understanding with Jose Halili that 'Halili would notify him when the pigs were available. He also stated that he had no previous agreement with his brothers for the latter to go to him for the pigs that night. Yet they and Carlos Espino went to his house at the same time, allegedly for the same purpose. In the second place, the night was quite advanced. Traveling merchants do not bring their commodities into the city or transact business at that unholy hour. Traveling hog dealers are no exception. Considering the background of the men who played parts in the bloody drama that followed, the court is inclined to think, that the purpose of the trip of the Canary brothers and Agaran to Bankusay was connected with some shady deal, as Jose Halili told the Court.

"Too, the court is not convinced that a meeting was held under the house of Moises Halili immediately preceding the shooting. Santos Cruz and Celso Carillo in their confessions Exhibits J and LL, respectively, denied attending such meeting and stated that they were called directly to the scene of the shooting. Cruz makes mention of it' in his confession, but he adds that he did not attend it and was only told of it.

"Moreover, Romeo Canary and Rernabe Villalon testified that the calesa reached as far north on Rankusay as Kapulong. Moises Halili's house on Bankusay is the second on the east from Kapulong (see Exhibits X, X-I and X-2), and Canary stated that he saw the upper floor of the house lighted. If there was a meeting going on under the house the passengers of the calesa would not have failed to notice it.

"The court, however, is convinced that by and large the testimony of Romeo Canary, Ambrosio Diaz and Rernabe Villalon on the events immediately preceding, during and after the shooting is true. The court is also satisfied that the respective participations of Santos Cruz, Carlos Espino, Manuel Samonte, Celso Carillo, Jose Halili and Soriano Alcaraz as described by Diaz and Canary are substantially correct.

"Diaz' testimony on the identities of the defendants and the participation of each in the attack, corroborates the confessions of Samonte, Cruz and Carillo, Exhibits I, J and LL. Discounting their attempts to minimize their participations, and Samonte's effort to implicate all the persons suspected by the police, obviously to impress them and the fiscal of his usefulness as witness for the prosecution, the court believes that these declarants in the main told the truth in their respective confessions.

"It is true that Samonte, Cruz and Carillo on the witness stand repudiated their confessions and stated that the statements therein attributed to them were not made by them, the same having been allegedly typed by the police without their intervention, but if their testimony is true the inclusion therein of statements which run counter to the theory of the police and which in a sense weaken the confessions, finds no logical explanation. For instance, Cruz denied having attended a meeting under the house of Moises Halili and stated that he was not sure if he saw Amando Santos that night. Carillo, too, denied attending the meeting and fails to name some of his co-defendants.

"Carillo, moreover, led detectives to the hiding place of the dagger used in stabbing Romeo Canary. The dagger, Exhibit Y, was recovered where he hid it and upon his indication and was found to be stained with human blood, according to tests made by the chemist of the criminal investigation laboratory of the Manila Police Department. (Exhibit Y-I.) Carillo's confession is thus corroborated not only by the testimony of

Ambrosio Diaz and Romeo Canary but also by the recovery of the dagger used in the stabbing and the chemical tests of the stains on the weapon.

Carillo's explanation on the witness stand to the effect that he might have patted a wounded foot or leg with the dagger to stop bleeding, thus staining it with his own blood, stretches one's credulity and deserves no serious thought. Dr. Rizalino de la Fuente testified that Canary's wound on the neck was lacerated and not incised, thus ruling out the dagger as the weapon used, but this conclusion is undoubtedly due to the doctor's perfunctory observation because he was more interested in saving the life of the wounded man, than in the medico-legal aspect of the wound.

"Lastly, if Samonte did not make the statements attributed to him in Exhibit I, he gave no satisfactory explanation why, on June 6, 1954, five days before he gave his confession, he asked to be taken to Major Enrique Morales, the chief of the Secret Service of the Manila Police Department, to tell Major Morales all that he knew or pretended to know of the shooting. Before the motion for his exclusion from the informations was presented he undoubtedly assured the fiscal that he would testify against his codefendants. Of course, he later testified in- his defense, after the court denied the fiscal's motion, that the motion was made without his consent, but no prosecutor would ask for the exclusion of a defendant in a criminal case without first obtaining the assurance from that defendant that his testimony would be useful to the prosecution.

"What Soriano Alcaraz, Carlos Espino and Santos Cruz did after the shooting is worthy of note, Alcaraz, according to Jose Licuanan, worked regularly with him until May 19, 1954. He did not report for work the next day or on any day thereafter, Licuanan went to see him in his house, but he was not there, Espino had his residence on Eankusay in the vicinity of the shooting, but after the shooting he went to live on Herbosa where he was arrested by the police. He testified that he also lived in the house on Herbosa, but on the witness stand ho could not even give the number of the house. Santos Cruz went to Dampalit, Malabon, Rizal, after the shooting. He gave the lame excuse that he went there to work in the salt beds in Dampalit, but his' sudden change of occupation precisely at the time when he .was wanted by the police, from plumber to salt maker, would be too much to be a coincidence. If these three defendants were not haunted by a guilty conscience they did not have to take flight after the shooting.

"The alibi of Soriano Alcaraz, Manuel Samonte, Jose Halili and Celso Carillo places them in the immediate vicinity of the shooting at the time it took place. Their houses and that of Moises Halili, Where Jose Halili was resting, according to him, and the place where Samonte was allegedly with friends, are all in the same neighborhood. Cruz and Espirio, too, live in the same neighborhood and could have been at the scene of the shooting. At any rate, like the alibi of Alcaraz, Samonte, Halili and Carillo, their alibi avails them nothing in the face of their positive identification by witnesses of the prosecution as among the persons they saw at the scene of the shooting.

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"Romeo Canary's testimony as a defense witness, repudiating his prior testimony when he was on the witness stand as a witness of the prosecution, heed not be taken seriously. His brother Jaime and his friend Alberto Agaran are dead and there is nothing he can do to bring them back to life. He must consider himself lucky to be alive. After the nightmare that was May 19, 1954, he must have lived in constant fear for his life, so much so that for a time he lived at police headquarters and came to court to testify as a witness for the prosecution in these cases, accompanied by a bodyguard. This setup could not continue indefinitely. He might as well insure his life by testifying for the defense.

"As to the testimony of Elena Cabangsal, Elinio Manzano's mother, this witness knows that his son died for the defendants' misguided cause. She gave testimony for her son's friends out of a mother's loyalty to the memory of a wayward son.

"The finding that there was no meeting under the house of Moises Halili notwithstanding, conspiracy to kill the

occupants of the calesa is conclusive upon the record: first, Alcaraz gathered his co-defendants, gave them instructions and deployed them along Bankusay between Kapulong and Inocencio to prevent escape; second, Alcaraz instructed Manzano to start firing when he heard the signal. The signal was fired and Manzano started firing at the occupants of the calesa with his grease gun; third, Jose Halili, Espino, Diaz, Cruz and Alcaraz, too, followed by firing at the hapless victims; and fourth, Carillo intercepted Romeo Canary as the latter was escaping from the scene of the attack.

"Soriano Alcaraz, Carlos Espino, Manuel Samonte, Jose Halili, Santos Cruz and Celso Carillo are equally guilty of the resulting crimes.

"The fiscal alleges iliurder in each of the information in Criminal Cases Nos. 27149 and 27150, the first for the killing of Alberto Agaran, the second for fiat of Jaime Canary. The evidence sustains the 'charge, with treachery as the qualifying circumstance. The information in Criminal Case No. 27165 is for frustrated murder, Lorenzo Canary, according to Dr. Melanlo Paulino, would have died had he not been given timely medical aid. The evidence, too, supports the charge, with treachery as the qualifying circumstance. But the evidence in Criminal Case No. 27166 only establishes attempted murder, with treachery as a qualifying circumstance. Dr. Eizalino de la Fuente testified that Romeo Canary would have probably died from loss of blood and infection if he had not received timely medical assistance, but he would not give absolute assurance that the absence of such, assistance would have necessarily resulted in death.

"Each information alleges evident premeditation and abuse of superior strength, but these aggravating circumstances have not been proved. Santos Cruz and Celso Carillo surrendered to the authorities and should be credited with this mitigating circumstance; hence the minimum of the penalty provided for by law should be imposed on them in each case. Upon the rest the medium of such penalty should be imposed.

"In view of the foregoing, the court finds Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano, Jose Halili y Alcaraz, Santos Cruz and Celso Carillo y Sangca guilty beyond reasonable doubt in each of the four cases and hereby renders judgment as follows:" * * *

According to the record, particularly the written statement of Manuel Samonte y Soriano and the testimony of Romeo Canary, the accused herein were members of that notorious group known as the Grease Gun Gang of Tondo, because of the grease gun which the organization possessed and freely used to liquidate its enemies, specially members of rival gangs. The Tondo Grease Gun Gang was headed by Soriano Alcaraz alias Ano, but the brains of the same was Moises Halili, who made the plans for the killings and took care of filing the necessary bail bonds for those members of the group who, after every killing, were either captured or were made to admit responsibility for the crime. Besides the grease gun, the gang had an assortment of firearms, such as, a Thompson machine gun, a carbine and revolvers of different calibers.

It will be noticed from the decision of the trial court that it was not convinced that there was a meeting held under the house of Moises Halili early in the evening of May 19, 1954. One of the reasons given by it is that, had there been such a meeting, Romeo Canary would have noticed it when he, together with his companions in the calesa, rode along Bankusay Street. In the first place, the house of Moises, although on Bankusay Street, is beyond Kapulong Street, going north, and the calesa did not reach that far, so that Romeo was not in a position to notice anything going on under the house. In the second place, a secret meeting at night held by Alcaraz (Ano) and Moises with members of their gang, to decide on the details of liquidating their enemies that same evening, would, naturally, not be held under bright lights, but would be in darkness or semi-darkness, with windows and doors closed in order to avoid detection. Because of this belief of the trial court, and on the additional ground that about the same time that the shooting took place, Moises Halili was at the City Jail at Meisic, Manila, trying to bail out some prisoners, it acquitted him. The Meisic City Jail was not far from the place of the shooting and Moises could easily have hurried from that place to the jail in order to establish a credible alibi. Besides, Moises

was among those who attended the meeting under his house that night, and to show that he took part in the conspiracy to kill, and no mean part at that, he was even persuading, if not putting pressure, on Ambrosio Diaz to assume responsibility for the killing, because he (Moises) would see to it that Diaz would be bailed out. It would seem that Moises was either in the bail bonding business, or he was the one charged by the Tondo Grease Gun Gang with bailing out its members when jailed. As already stated, Moises was the brains of the gang, who made the plans. He was seen at the place of the killing immediately before the actual shooting. It was therefore, in our opinion, an error on the part of the trial court in acquitting him. Unfortunately, because of the inability of the Government to appeal, this error cannot now be corrected. What we stated about the acquittal of Moises Halili may equally be said of the acquittal of Amando Santos and Melchor Martinez. Both were seen by Ambrosio Diaz being present not only at the meeting held under the house of Moises Halili, but also at the place of the shooting, occupying the strategic positions assigned to them by Ano Alcaraz. But as the law stands, the Government is unable to move to correct the error of the trial court, and this Tribunal is powerless to effect the correction.

As we have already stated, the accused in this case, including those acquitted by the court were members of the Tondo Grease Gun Gang, which maintained a feud with other rival gangs, such as that to which the Canary brothers and Alberto Agaran belonged. To give an idea of the criminal background and violent character of these gang members, the record reveals that Ambrosio Diaz and Romeo Canary were together in the Boys Training School at Welfareville, Diaz having been detained there for estafa and Romeo for frustrated robbery, from which school they escaped several times. Diaz was for sometime engaged with Moises Halili in the fake ring deal not only in Manila, but in the provinces. Totoy Manzano, one of the accused, fought the police that tried to arrest him, and he was killed in the ensuing gun battle. During the trial of this case and after Ambrosio Diaz had testified, Romeo Canary, convinced that Diaz took part in the firing that killed his brother Jaime and almost killed his other brother Lorenzo, met or followed Diaz to the movie theater Clover, and there stabbed him to death.

It will also be observed from the decision of the trial court that it could not believe that the purpose of the trip of the, Canary brothers and Agaran to Bankusay Street, that night of May 19, 1954, was to see Jose Halili in relation with his promise and assurance that he would introduce them to the pig vendor who would sell them the animals at a price much lower than that charged by other pig vendors. We have a different impression.

There is evidence to the effect that the four victims went to Bankusay Street that night for that very purpose, and that their presence there was anticipated and known by Ano Alcaraz and Moises Halili through Carlos Espino, who was sent to the house of Romeo to inform him that Jose Halili was waiting for them at Bankusay Street. Otherwise, Ano Alcaraz would not have been in a position to know that the four victims would be at Bankusay Street at a certain time that evening, round up his followers, including Ambrosio Diaz, get them together under the house of Moises Halili, and give them instructions as to their respective strategic places along Bankusay Street, in front and behind the calesa. In other words, there is reason to believe that the Canary brothers and Agaran were lured to Bankusay Street, thereby establishing the existence of the aggravating circumstance of craft having been employed.

But even considering and accepting the reasons given by the trial court believing and finding that the victims went to Bankusay Street for a different purpose, namely, on a shady deal, without any intervention whatsoever on the part of the accused herein, and in this respect giving the appellants the benefit of any doubt, we still have the aggravating circumstance that the crime was committed in band. According to the evidence, there were at least four firearms used by the accused on that occasion, namely, one grease gun and three revolvers of .45 caliber. In addition, there was the dagger used by Celso Carillo in stabbing Romeo. The trial court evidently overlooked this aggravating circumstance, which was duly alleged in the information and to which our attention is being called by the Solicitor General. Because of the existence of this aggravating circumstance, which circumstance, despite

what has been said in some cases to the effect that it is to be applied only to crimes against property, is in truth, equally applicable to crimes against persons, such as murder,[1] the penalty in these four cases must have to be imposed in its maximum degree, except as to Santos Cruz and Celso Carillo who surrendered to the authorities, this mitigating circumstance in their favor offsetting the aggravating circumstance of in band, in which case, the penalty as to them should be imposed in the medium degree. This means the penalty of death for Soriano Alcaraz, Carlos Espino, Manuel Samonte and Jose Halili, and reclusion perpetua for Santos Cruz and Celso Carillo, for each of the two killings.

Following the recommendation of the Solicitor General, the decision appealed from is modified as follows:

In G. R. No. L-9084 (Criminal Case No. 27149), Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz are each sentenced to the extreme penalty of death, and Santos Cruz and Celso Carillo y Sangca to reclusion perpetua;

In G. R. No. L-9065 (Criminal Case No. 27150), Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz are likewise each sentenced to the extreme penalty of death, and Santos Cruz and Celso Carillo y Sangca to reclusion perpetua;

In G. R. No. L-9066 (Criminal Case No. 27165), Soriano Alcaraz y Licuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz are each sentenced to 'an indeterminate penalty of not less than eight (8) years and one (1) day of prision mayor nor more than fourteen (14) years and one (1) day of reclusion temporal, and Santos Cruz and Celso Carillo y Sangca to an indeterminate penalty of not less than six (6) years and one (1) day of prision mayor nor more than twelve (12) years and one (1) day of reclusion temporal; and

In G. R. No. L-9067 (Criminal Case No. 27166), Soriano Alcaraz y Lieuanan alias Ano, Carlos Espino y Alcaraz alias Carling, Manuel Samonte y Soriano and Jose Halili y Alcaraz are each sentenced to an indeterminate penalty of not less than two (2) years, ten (10) months, and twenty-one (21) days of prision correctional nor more than eight (8) years and one (1) day of prision mayor, and Santos Cruz and Celso Carillo y Sangca to an indeterminate penalty of not less than one (1) year, seven (7) months, and eleven (11) days of prision correctional nor more than six (6) years and one (1) day of prision mayor.

Modified as above indicated, the judgment appealed from is, in other respects, affirmed, with costs against the appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ, concur.

Felix, J., concurs in Cases L-9064, and L-9065 and L-9066.

[1] People vs. Manayao et al., 78 Phil., 721; 44 Oft. Gaz., No. 12, p. 4867; People vs. Laoto, 52 Phil., 401.

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