

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NENITO ALINCASTRE Y NABOR, PABLO SALCEDO Y PINEDA,
ROGELIO LORENZO Y VILLAFUERTE AND MAMERTO LORENZO Y
CHICO, DEFENDANTS-A...**

G.R. No. L-29891. August 30, 1971

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PER CURIAM:

Appeal taken by the defendants from a decision of the Court of First Instance of Zambales, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered:

"1. Finding accused Nenito Alincaastre guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery and there being proven the aggravating circumstances of price, reward or promise, evident premeditation and disregard of the respect due to the offended party on account of his rank, offset only by the mitigating circumstance of plea of guilty, sentences him to DEATH;

"2. Finding accused Mamerto Lorenzo guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery and there being proven the aggravating circumstances of price, reward or promise, evident premeditation and disregard of the respect due to the offended party on account of his rank without any mitigating circumstance to offset the same, sentences him to DEATH;

"3. Finding accused Pablo Salcedo guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery and there being proven the aggravating circumstances of evident premeditation and disregard of the respect due to the offended party on account of his rank without any mitigating circumstance to offset the same, sentences him to DEATH;

"4. Finding accused Rogelio Lorenzo guilty beyond reasonable doubt as accomplice of the crime of murder qualified by treachery and there being proven the aggravating circumstances of evident premeditation and disregard of the respect due to the offended party on account of his rank without any mitigating circumstance to offset the same, sentences him to an indeterminate penalty ranging from TEN (10) YEARS of prison mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal as maximum;

"5. Ordering accused Nenito Alincaastre, Mamerto Lorenzo and Pablo Salcedo to jointly and severally indemnify the heirs of the deceased James L. Gordon the sum of P12,000.00;

"6. Ordering Rogelio Lorenzo to pay the heirs of the deceased James L. Gordon the sum of P4,000.00 of the P12,000.00 ordered to be paid by accused Nenito Alincaastre, Mamerto Lorenzo and Pablo Salcedo;

"7. Confiscating Exhibit 'M', the firearm involved, in favor of the State;

"8. Ordering all accused to pay proportionately the costs;

"9. Denying bail to all of the accused for the evidence of guilt against them is very strong; and

"10. Awarding an attorney's fee of P500.00 to Atty. Rufino Navarro as counsel de oficio of accused Nenito Alincastre."

It is not disputed that, while James L. Gordon, the City Mayor of Olongapo, was at the ground floor of its city hall, conversing with a woman, on February 20, 1967, at about 9:30 a.m., appellant Nenito Alincastre shot him on the right-hand side of the occipital region, thereby inflicting therein a fatal bullet wound that pierced the skull through and through. In the ensuing commotion, Nenito managed to run away, board a jeep whose driver brought him, at the point of his (Nenito's) gun, to the public market, where Porfirio Layao, Gordon's bodyguard, who pursued Nenito, lost track of him. Thereafter, Nenito proceeded, aboard a tricycle, to the house of appellant Pablo Salcedo, at No. 19, 20th Street, East Bajac-bajac, not far away from the city hall. Soon after, peace officers arrested Nenito inside a dug-out under said house of Pablo Salcedo, in one of the rooms of which they, also, found him and appellant Rogelio Lorenzo. A search, made that noon by Patrolman Relator, of the local police force, yielded, in said dug-out, the .32 caliber revolver, Exhibit M - used by Nenito in killing Mayor Gordon - containing five (5) live bullets. Upon investigation, immediately after their apprehension, Nenito, Pablo and Rogelio made sworn statements implicating each other as well as appellant Mamerto Lorenzo, father of Rogelio and former chief of police of Olongapo, who had been relieved of said office by James L. Gordon, when he became the city mayor.

On February 23, 1967, a complaint for murder was filed against Nenito Alincastre, Pablo Salcedo, Rogelio Lorenzo, Mamerto Lorenzo, John Doe, Peter Doe and Richard Doe. When the case was called, before the City Court of Olongapo, on March 14, 1967, for the second stage of the preliminary investigation, Nenito stated that he was going to plead guilty to the charge. Subsequently, Pablo Salcedo and the Lorenzos (Rogelio and Mamerto) refused to introduce any evidence, which the City Judge construed as an implied waiver of their right to a preliminary investigation. The record of the case was, thereafter, forwarded to the Court of First Instance of Zambales, where the corresponding information, charging Nenito Alincastre, Pablo Salcedo, Rogelio Lorenzo and Mamerto Lorenzo with murder, was filed. Upon arraignment before the latter court, Nenito Alincastre, assisted by his de oficio counsel, entered a plea of guilty, with the request that he be allowed to prove the surrounding circumstances, insofar as he is concerned. The other defendants later refused to plead, whereupon the trial Judge ordered that a plea of not guilty be entered for them. The court, subsequently, proceeded to hear the case on the merits, and took the evidence for the prosecution, as well as that of the defense - which did not include the testimony of Nenito Alincastre - after which the prosecution introduced its rebuttal evidence. Then His Honor, the trial Judge, announced that, by agreement of the parties, the case would be deemed submitted for decision upon the submission of their respective memoranda, on or before October 15, 1968.

When the accused appeared before the court, on November 4, 1968, for the promulgation of its decision, Nenito Alincastre asked ? without the benefit of counsel, who did not show up then - that he be allowed to state what he knew about the case. On motion of the prosecution, the court, accordingly, deferred the reading of the sentence, reopened the case and set it for continuation of the trial on November 5, 1968. On that date, Nenito Alincastre testified that he had killed the mayor in pursuance of a plan concocted by Mamerto Lorenzo, with the assistance and cooperation of his son, Rogelio Lorenzo, of appellant Pablo Salcedo, and one Narciso Cruz, as well as other prominent politicians in the locality and elsewhere. Thereupon, the case was declared submitted for decision, which was promulgated on November 9, 1968.

All four (4) defendants appealed from said decision, but Nenito Alincastre died in the New Bilibid Prison on September 28, 1970, in view of which the case should be dismissed, insofar as he is concerned, with the proportional part of the costs de oficio. Hence, the present decision refers only to defendants Pablo Salcedo, Rogelio Lorenzo and Mamerto Lorenzo - hereinafter referred to collectively as the appellants - who maintain that

the trial court erred: 1) in "reopening the trial of the case x x x and x x x allow-ing x x x Alincastré to testify against himself and the other accused"; 2) in considering the testimony of Nenito Alincastré in convicting them; 3) in not acquitting the appellants; 4) in considering, inso-far as they are concerned, that the crime had been committed with treachery; 5) in considering, against Mamerto Lorenzo, the aggra-vating circumstance of price or reward; and 6) in not considering in his favor the mitigating circumstance of voluntary surrender to the authorities.

Under their first assignment of error, appellants maintain that the trial court had abused its discretion in ordering a reopen-ing of the trial, their substantive rights having allegedly been injured thereby. This pretense is manifestly untenable. Appellants had no procedural or substantive right to prevent Alincastré from taking the witness stand. Besides, in entering his plea of guilty, upon arraignment, Nenito Alincastré had already announced his intention to introduce evidence to mitigate his liability, and the trial court had, in effect, agreed thereto when it stated, in its order of July 18, 1967, that "the presentation of the evidence on the matter be made when the case is heard on the merits." It so happened, however, that counsel de oficio for Nenito Alincastré was Atty. Rufino Navarro, who, likewise, represented appellants herein, as their counsel de parte, and that Atty. Navarro did not place Nenito Alincastré on the witness stand. Hence, when he appeared before the lower court, without counsel, on November 4, 1968, for the reading of the sentence, Nenito Alincastré ex-pressed the conviction that his "wishes" had been completely ignored by counsel de oficio and that the latter had taken into account only those of appellant Mamerto Lorenzo.

Then, too, well-settled is the rule that, even when the defen-dant pleads guilty to a capital offense, the court must assure itself that he is fully aware of the implications of said plea and that, to this end, it may or should take some evidence to be reasonably certain that no injustice is done to him.¹ Since the trial court had discretion to take said evidence and to assume the initiative in doing so, it obviously did not err in granting Nenito Alincastré the opportunity he sought - even prior to the commencement of the trial - to give his side of the case, before judgment was passed upon him.

The propriety of the action taken by the lower court becomes more apparent when we consider that the testimony of Nenito Alin-castré was, from the very beginning, part of his plan to avoid the imposition of the death penalty. Indeed, Nenito Alincastré took the witness stand, with the assistance, no longer, of his de oficio counsel - who was, also, counsel de parte for appellants herein - but of his own counsel de parte, who, in his brief, maintains that the testimony voluntarily given by Nenito, without being discharged from the prosecution and without any promise of reward or leniency, should be considered as a mitigating circumstance analogous to those specified in the first nine (9) subdivisions of Art. 13 of the Revised Penal Code - although deserving greater weight, because of the attending circumstances - and that, together with his plea of guilty, said mitigating circumstance should suffice to offset the aggravating circumstances present in the commission of the offense and prevent the application of the extreme penalty.

Worthy of notice, also, is a factor that deterred Nenito Alin-castré from testifying before November 4, 1968, namely, the fear that his safety and that of his family might thereby be jeopardized. Regardless of whether or not it was justified, the record shows that Nenito, in fact, entertained such fear. Indeed, soon after the institution of this case, he asked the court to have him transferred from the custody of the police department of Olongapo, in whose office he was being investigated, to that of the Constabulary. Nenito even dreaded detention in the provincial jail. He was afraid of liquidation in the latter, as well as in the city jail, because of his belief that appellants - particularly Mamerto Lorenzo - had the backing of influential politicians in the city and the provincial government. He had been told that members of his family would be killed, should he reveal what he knew about the case. Accord-ingly, Nenito delayed, until the last moment, the introduction of his testimony. He evidently

anticipated it would provoke appellants' animosity; but, he apparently felt that the duration of the danger, arising therefrom, to himself and his family had thereby been shortened materially. At any rate, the trial ended with the reception of his testimony, so that, thereafter, he no longer had to meet the appellants, as he used to, from his arraignment on July 18, 1967, to November 5, 1968, when the case was submitted for decision.

Lastly, appellants did not seek to postpone the taking of Nenito's testimony or ask for time to prepare for his cross-examination. What is more, their counsel cross-examined him, thereby waiving impliedly whatever objection they had to the taking of his testimony.² Said counsel did not even try to rebut it. The first assignment of error is thus clearly devoid of merit.

So is the second. Indeed, the defendants in this case were jointly tried. What is more, appellants' counsel de parte was the same counsel de oficio for Nenito Alincastre. The evidence for the prosecution was intended against each and every one of the defendants, in much the same way that the evidence for the defense was meant to be for all of the defendants. Although prompted by a statement of Nenito Alincastre, conveying his wish to reveal in open court what he knew about the case, the trial court's order reopening the trial, on motion of the prosecution, was neither qualified nor limited to him, to the exclusion of his co-defendants, the appellants herein. And this is confirmed by the latter's claim that the lower court had erred in "allowing x x x Alincastre to testify against himself and the other accused." Since the four (4) defendants were tried jointly, every piece of evidence introduced at the trial - regardless of who had offered it or on whose behalf it had been submitted - could affect the whole case and every one of said defendants, insofar as relevant to them.³

The third assignment of error is predicated upon the premise that the testimony of Nenito Alincastre cannot be considered in determining the innocence or guilt of appellants herein, which is not true. Appellants' criminal liability for the assassination of Mayor Gordon by Nenito Alincastre is dependent upon the existence of conspiracy between the latter and appellants. Indeed, Nenito had no personal motive to kill Mayor Gordon, who was absolutely unknown to him. Nenito saw the mayor for the first time a few seconds only before he was shot. In fact, Narciso Cruz had to signal Nenito in order to assure him of the mayor's identity.

It is not disputed that, up to February 7, 1967, Nenito Alincastre was confined in the New Bilibid Prison in Muntinlupa, Rizal, serving a sentence for robbery. At that time, Nenito must have been barely 20 years of age, for he was only 21 years old when he took the witness stand, on November 5, 1968. He was one of eight (8) children of a poor family, whose head was paralytic and had been bedridden for five (5) years. The only bread-earner was the mother, whose small store was not sufficiently lucrative to provide Nenito with education beyond the fifth grade. He spent around six (6) months in military training at Camp Aquino, San Miguel, Tarlac. The family resided at San Agustin, Malolos, Bulacan, near the house of Mamerto Lorenzo, who was well known for his reputed involvement in the assassination of several persons.

The evidence for the prosecution is to the effect that prior to February 7, 1967, Pablo Salcedo, Rogelio Lorenzo, and one Narciso Cruz had twice visited Nenito Alincastre, in said prison, and persuaded him to escape therefrom, because "the old man" needed him. Nenito's testimony on said visit was corroborated by that of Ernesto Castañeda and Jesus Anicete, who were, also, serving sentence in said penal institution. The visitors of Nenito gave him a sum of money and promised a bigger amount later, in addition to a house and a jeep, and to being included in the payroll of the city government of Olongapo, as well as becoming the collector of "tongs" from gambling dens and night clubs in that city, once Mayor Gordon had been eliminated and his successor in office had reinstated Mamerto Lorenzo as chief of police, apart from a commitment to seek his (Nenito's) pardon.

As agreed upon, Nenito escaped from the penitentiary in the afternoon of February 6 or 7, 1967. At the rotunda, near said institution, he boarded a car, brought by Pablo Salcedo and Narciso Cruz, who were waiting for him and

then took him to the house of Mamerto Lorenzo, in Malolos, Bulacan. Upon seeing Cruz therein, Mamerto inquired whether or not Nenito was with him. Inasmuch as several other persons were then gathered in that place, Mamerto bade Nenito to, meanwhile, go elsewhere. So Nenito went to the house of his friend, Adriano Espenida - in the same locality - who, upon his request, furnished him a polo shirt, and, later, accompanied him to Mamerto's residence. There being still many people there, Nenito left once more. When he returned, later that evening, Mamerto was already dressed up. Upon the arrival of the car bearing Nenito, Mamerto boarded it and said "Let us go," whereupon they proceeded to the house of Rogelio Lorenzo in Olongapo.

The next morning, Narciso Cruz, Pablo Salcedo, Rogelio Lorenzo, Mamerto Lorenzo, his "compadre," Jaime Guevara - then vice-mayor of Olongapo, who Nenito found to be "the old man" alluded to before by Rogelio Lorenzo - and two (2) high ranking officials of Zambales, whose names Nenito did not give, discussed with him the plan to liquidate Mayor Gordon. Mamerto showed to Nenito a picture of the mayor and described his physical appearance, as well as explained that the mayor used to go to church. Mamerto, also, made several sketches: one, of the layout of the church, another, of that of Gordon's residence, and a third one, of the city hall. On February 13, 1967, Mamerto made a more detailed sketch of said church, indicating its side entrance, the place where the mayor's car used to park and the spot where Narciso Cruz would post himself, so that he could point the mayor to Nenito when he (the mayor) arrived. The next morning, however, Nenito and Narciso vainly waited for him in the church.

On February 17 or 18, Nenito Alincastre, Narciso Cruz, Pablo Salcedo, Rogelio Lorenzo, Mamerto Lorenzo, Jaime Guevara and two (2) other persons - whose names were not disclosed - met, once more, in Rogelio's house and discussed the assassination of Mayor Gordon. One of said unidentified persons - believed to be a ranking officer of the Government - inquired whether Nenito was "the boy" they had in mind. Mamerto answered in the affirmative, adding that "he is good." Before leaving, said official admonished: "take care of him as we might be put in an embarrassing position."

In the evening of February 19, 1967, the plan to kill the mayor was finalized with Mamerto Lorenzo, who commented that much time had already been wasted, and reiterated the promises made to Nenito Alincastre. Mamerto said, moreover, that, upon the elimination of Mayor Gordon, his successor would be his (Mamerto's) compadre, vice-mayor Jaime Guevara, under whose incumbency he (Mamerto) would be the chief of police, and, as such, would investigate the mayor's liquidation. Later, that evening, Mamerto took the bus for Malolos, so that he may not be in Olongapo at the time of the occurrence.

Rogelio Lorenzo woke up Nenito Alincastre, early the next morning, stating that Mamerto would otherwise get mad. Somewhat fidgety, Nenito did not feel like taking any food or even a cup of coffee. As he and Rogelio thereafter left the house, Narciso Cruz beckoned them to come back, which they did. They checked the details of their plan of action, after which Nenito, Rogelio, Narciso Cruz and Pablo Salcedo headed for the city hall, which they reached at about 8:00 a.m. Nenito then carried the revolver, Exhibit M, and a hand grenade, both given by Pablo Salcedo. Rogelio posted himself outside the city hall, near a grandstand, from which he was to signal Cruz - at or near the door of the city hall - when the mayor's car showed up, so that Cruz could relay the signal to Nenito inside the building. Then, Salcedo departed, stating that his assignment was merely to hide Nenito in the dug-out, under his (Salcedo's) house.

At about 9:30 a.m., a Volkswagen car arrived at the city hall, whereupon Narciso Cruz gave the agreed signal to Nenito, who noticed that a man, resembling that in the picture of Mayor Gordon, shown to him by Mamerto, and fitting the description given by the latter, alighted from said vehicle. As Gordon entered the building, Nenito turned his back at him and resolved to do his job regardless of its consequences. When Nenito turned to face Gordon, the latter was talking to a woman. Approaching Gordon, on his right side, Nenito whipped out his gun.

The mayor noticed this, and turned to the left, but, too late, for Nenito had pressed the trigger and fatally wounded him.

The mayor's bodyguard, policeman Porfirio Layao, was then about two meters away, looking in another direction. At the sound of gunfire, he turned and saw Nenito Alincastre, still holding the gun, run away, although, in his haste, the paper bag containing the hand grenade fell down. Layao's attempt to pursue him was, however, thwarted, momentarily, by the falling body of Mayor Gordon, which Layao held and then placed on the floor. Thereupon, he went after Nenito, who had stopped a passing jeep which took him to the public market. There, Nenito boarded a tricycle that brought him to the house of Pablo Salcedo, whom he (Nenito) informed that he had already shot the mayor. Upon Nenito's request, Pablo paid the fare due to the tricycle driver, and then hid Nenito in the dug-out under said house. Later, that morning, Nenito was apprehended in said dug-out by peace officers, who, also, found Rogelio Lorenzo and Pablo Salcedo in the house. Thereupon, intensive interrogatories and investigations were conducted by officers and members of the police force of Olongapo, the National Bureau of Investigation and the Philippine Constabulary. In the course thereof, Nenito Alincastre, Pablo Salcedo and Rogelio Lorenzo subscribed to several affidavits implicating each other, as well as Mamerto Lorenzo, who surrendered to the Constabulary, at Camp Crame, in the afternoon of February 21, 1967.

Testifying in their own defense, Pablo Salcedo, Rogelio Lorenzo and Mamerto Lorenzo disclaimed any part whatsoever in the mayor's assassination. The defense would, also, have us believe that Pablo Salcedo was, on February 20, 1967, asleep in his house, up to 10:00 a.m., when Rogelio Lorenzo awakened him and demanded payment of his share in the earnings for bringing, the previous evening, a man and a woman who used the place as a skibby house, and that their aforementioned affidavits had been made under duress. Moreover, the defense introduced the testimony of: a) City Judge Jose L. Uy of Olongapo, who declared that Salcedo's head was bandaged when he subscribed and swore to the truth of his statement Exh. I before him (the Judge); b) Sergeant Orlando Acierto of the Constabulary, who testified that he was in the premises of the police department in Olongapo City, on February 20, 1967, between 4 and 5 p.m. and that he there saw Pablo Salcedo with injuries in his head and face and Rogelio Lorenzo with burns in his neck; and c) Dr. Geronimo Lipumano, of the Olongapo City General Hospital, who examined Salcedo and Rogelio Lorenzo, on February 25, 1967, and found in the former:

- "1. Scab covered abrasion at the mastoid area, left.
- "2. Abrasion base of neck, left.
- "3. 1 Cm. scab covered laceration mastoid area, right.
- "4. Scab covered abrasion shoulder, right.
- "5. Abrasion covered with scab chest anterior.
- "6. Contusion - abrasion arm, right,
- "7. Contusion - arm, left.
- "8. Scab covered abrasion, upper mid portion.
- "9. Multiple abrasion linear, lumbar area, bilateral.
- "10. Abrasion - right thigh medial area."

and in Rogelio Lorenzo:

- "1. Scab covered abrasion at the outer 3rd of the left auditory canal.

"2. Scab covered abrasion at the anterior surface of the neck.

"3. Multiple linear abrasion anterior chest and abdomen.

"4. Scab covered contusion - abrasion at the right upper back and right shoulder.

"5. Three (3) linear abrasion at the lumbar area, back.

"6. Scab covered abrasion at the upper 3rd of the right anterior leg."

Needless to say, the prosecution sought to offset the evidence for the defense on the duress allegedly availed of to obtain the incriminatory admissions contained in the affidavits of Pablo Salcedo and Rogelio Lorenzo. For this purpose, it introduced, inter alia, the testimony of: 1) said City Judge Uy concerning the circumstances under which said affidavits were subscribed and sworn to before him and ranking police officers, and officers of the Constabulary and the NBI; 2) Vicente C. Bacay, Rural Health Officer of Olongapo City, who asserted that the aforementioned injuries of Pablo Salcedo and Rogelio Lorenzo were of a minor nature; 3) Benjamin Vergara, an officer of the police force of Olongapo, who stated, inter alia, that when Nenito Alincastre, Pablo Salcedo and Rogelio Lorenzo were arrested in Pablo's house on February 20, 1967, the people in the vicinity mobbed said defendants, and threw stones and bottles at them; and 4) Mariano Mision, Herminio Realubin and Doroteo L. Rocha, all of the NBI, and Colonel Pelagio C. Perez and agent Reynaldo Cruz of the Philippine Constabulary, who testified about the circumstances under which the aforementioned affidavits were made.

In the final analysis, the issue before Us boils down to one of balancing the credibility and weight of the opposing testimonial evidence, His Honor, the trial Judge having - independently of the extra-judicial statements made by appellants herein - accepted the version of the prosecution and found the evidence for the defense unworthy of credence. Indeed, the theory of the prosecution was fully corroborated by Nenito Alincastre, whose testimony bears all the earmarks of truthfulness and who had no possible reason to falsely incriminate the appellants. What is more, the evidence for the prosecution has been borne out by the following circumstances, among others, that have been duly established, namely: 1) Nenito Alincastre did not know Mayor Gordon and had no personal motive to kill him; 2) Nenito Alincastre and the Lorenzos knew each other well, for they were neighbors and the Lorenzos were aware that Nenito was serving sentence in prison; 3) accompanied by Narciso Cruz, Rogelio Lorenzo had visited Nenito at the New Bilibid Prison, in Muntinlupa, and given him money sometime before February 6, 1967; 4) having escaped from said prison, in the afternoon of February 7, 1967, Nenito went with Adriano Espenida - as testified to by the latter - to the house of Mamerto Lorenzo, in Malolos, Bulacan, that evening; 5) Nenito Alincastre corroborated the testimony of Adriano Espenida to the effect that he (Nenito) was then on board a car with Narciso Cruz; 6) the affidavit of Mamerto Lorenzo Exh. N - concededly made voluntarily - confirmed the fact that he had been with Nenito Alincastre in the house of Rogelio Lorenzo in Olongapo, on February 17 or 18, 1967, and that he (Mamerto) left Olongapo, on February 19, 1967 - on the eve of the liquidation of Mayor Gordon - at about 10:30 p.m.; 7) Nenito was apprehended in the dug-out under the house of Pablo Salcedo; 8) the latter and Rogelio Lorenzo were then in said house; 9) the obvious artificiality of the story given by Pablo Salcedo and Rogelio Lorenzo to explain their presence therein; 10) said house of Pablo Salcedo was used for purposes of prostitution; 11) the revolver Exh. M, with which Nenito had killed Mayor Gordon, was stolen from a naval officer of the U.S., late in 1966, while he was in a house of prostitution, in Olongapo; 12) Mamerto Lorenzo had the motive to commit the offense charged, for Mayor Gordon had relieved him of his office as Chief of Police of Olongapo, thereby leaving him jobless and in a precarious financial condition and the vice-mayor - who would become mayor, in case of death of Mayor Gordon - was the "compadre" of Mamerto, who, in such event, expected to be made, once more, the chief of police; and 13) Pablo Salcedo, whose house was used for purposes of prostitution, and Rogelio Lorenzo, who supplied customers therefor, would gain materially in these activities should Mamerto Lorenzo become the chief of police.

In the light of the foregoing, We are fully satisfied that the conspiracy between Nenito Alincaestre and appellants herein, as well as their guilt, have been duly established.

Appellants argue, under their fourth and fifth assignments of error, that the element of treachery should not be considered against them, because they allegedly had no previous knowledge of the manner in which the mayor would be killed by Nenito Alincaestre. This pretense is, however, refuted by the conspiracy they had with him. Besides, they, particularly Mamerto Lorenzo, planned, in the presence of Rogelio Lorenzo and Pablo Salcedo, the conditions or circumstances under which the mayor would be liquidated. What is, more, Nenito told them to map out what should be done and that he would merely carry out the plan thus made. In fact, before leaving for the city hall, in the morning of February 20, 1967, Rogelio Lorenzo, Pablo Salcedo, Narciso Cruz and Nenito Alincaestre checked the details of the plan, as devised by and agreed upon with Mamerto Lorenzo.

Citing *People v. Talledo* (L-1778, Feb. 23, 1950), it is urged - under appellants' sixth assignment of error - that the ag-gravating circumstance of price or reward should not be consi-dered against Mamerto Lorenzo, inasmuch as it was not he, but Nenito Alincaestre, who committed the crime in consideration of a price or reward. We find no merit in this pretense. The Talledo case is not authority on this question. The relevant passage in the decision therein was part of the reasons given to explain why some members of the court - not the majority - believed that the evidence was not sufficiently strong to warrant the imposition of the death penalty. Besides, in *U.S. v. Maharaja Alim*,⁴ it was held:

"As a price and reward were offered by Maha-raja Alim to the other defendants, this circumstance classifies the crime as murder. As all the defendants contributed towards the attendance of this circumstance, it should affect each and all of them."⁵

Indeed, the established rule in the Spanish jurisprudence is to the effect that the aggravating circumstance of price, reward or promise thereof affects equally the offeror and the acceptor. It was so consistently held by the Supreme Court of Spain in its decisions of, inter alia, March 3, 1888, June 20, 1892, June 26 and 30, 1894, June 8, 1903, March 8, 1909, August 23, 1917, November 30, 1923 and January 20, 1947. Puig Peña,⁶ Groizard,⁷ Viada⁸ and Manuel de la Plaza⁹ unanimously support the foregoing view.

In fact, under certain conditions - such as those obtaining in the case at bar - the circumstance under consideration may evince even greater moral depravity in the offeror than in the acceptor. At any rate, Mamerto Lorenzo made the offer or pro-mise of reward to Nenito Alincaestre in consideration of a price or reward for himself - the office of chief of police of Olongapo and the "tongs" that were expected to go with it.

Although, as contended under the seventh assignment of error, Mamerto Lorenzo had voluntarily surrendered to the authorities, this mitigating circumstance is not sufficient to offset the aggravating circumstances of evident premeditation, price or reward, and disregard of the respect due to the offended party on account of his office or rank.

The lower court erred, however, in finding that Rogelio Lorenzo was merely an accomplice. Considering: that he had actively participated in persuading Nenito Alincaestre to escape from Muntinglupa, as well as in the conspiratorial meetings held in his (Rogelio's) house, where Nenito Alincaestre stayed in Olon-gapo, in urging him, early in the morning of February 20, 1967, to prepare himself for the job he had to perform on that date, and in the checking of their respective assignments, before leaving the house, that morning; that he went to the city hall with Nenito, Pablo Salcedo and Narciso Cruz and posted himself near the grand-stand in order to signal Narciso Cruz when the mayor showed up, so that Cruz could, in turn, transmit the signal to Nenito Alincaestre, inside the city hall; that, thereafter, he (Rogelio) went to and stayed in the house of Pablo Salcedo, evidently to see to it that he did his (Pablo's) own part of the agreed plan; and that he was a party to the conspiracy to liquidate

the mayor, Rogelio Lorenzo is clearly guilty of the crime charged, not merely as an accomplice, but, as a principal, and, should, accordingly, be sentenced to the extreme penalty, and to indemnify the heirs of Mayor Gordon, jointly and severally with Mamerto Lorenzo and Pablo Salcedo, in the sum of P12,000.

In his brief, the Solicitor General says:

"In view of the evidence positively indicating their participation in the criminal conspiracy, Jaime Guevara and Narciso Cruz should likewise be prosecuted for the murder of Mayor James Gordon of Olongapo City, so that the ends of justice will be fully served. The two other 'ranking officials of Zambales' should also be prosecuted after their identity shall have been ascertained."

Obviously, the Government should take appropriate measures in connection with the participation of Jaime Guevara, Narciso Cruz and said ranking officials of Zambales, in the assassination of Mayor Gordon.

Modified as above stated, as regards Rogelio Lorenzo, apart from the dismissal of the case, insofar as Nenito Alincastre is concerned, with the proportional part of the costs de oficio, the decision appealed from should be as it is hereby affirmed, therefore, in all other respects, with three fourths of the costs against the appellants.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Barredo, and Villamor, JJ., concur.

Teehankee and Makasiar, JJ., took no part.

1 People vs. Estebia, L-26868, July 29, 1971; People vs. Tolen-tino, L-27708, Dec. 19, 1970; People vs. Englatera, L-30820, July 31, 1970; Longao vs. Fakat, Dec. 27, 1969; People vs. Tilos, L-27151, Nov. 29, 1969; People vs. Serafica, L-29092-93, Aug. 28, 1969; People vs. Solacito, L-29209, Aug. 25, 1969; People vs. Na-bual, L-27758, July 14, 1969; People vs. Mongado, L-24877, June 30, 1969; People vs. Arpa, L-26789, April 25, 1969; People vs. Villas, L-20953, April 21, 1969; People vs. Aduhan, L-19491, Aug. 30, 1968; People vs. Bulalake, 106 Phil. 767; U.S. vs. Rota, 9 Phil. 426; U.S. vs. Talbanos, 6 Phil. 541.

2 Abrenica v. Gonda, 34 Phil. 739, 747; Tongco v. Vian-zon, 50 Phil. 698, 702-703; Macfarlane v. Green, 54 Phil. 551, 555-556; Wright v. Tinio, L-4004, May 29, 1952; Abraham v. Recto-Kasten, L-16741, Jan. 31, 1962.

3 U.S. v. Ocampo, 5 Phil. 339, 341-342; U.S. v. Grant, 18 Phil. 122, 170; U.S. v. Wayne Shoup, 35 Phil. 56; U.S. v. Remigio, 37 Phil. 599, 610; U.S. v. Maharaja Alim, 38 Phil. 1, 5; People v. De Otero, 51 Phil. 201; People v. Aranua, 98 Phil. 912; People v. Paredes, L-19149-50, Aug. 16, 1968.

4 38 Phil. 1, 7; emphasis supplied.

5 See, also, U.S. v. Parro, 36 Phil. 923; U.S. v. Valdez, 30 Phil. 293; U.S. v. Indanan, 24 Phil. 203.

6 Derecho Penal, Vol. II, pp. 117-118.

7 ElCodigo Penal de 1870, Vol. I, pp. 461-462.

8 Codigo Penal, Vol. II, p. 181.

9 Comentarios al Codigo Penal, Vol. I, p. 215.

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