

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
ROMARICO ELIZAGA, VENERANDO TOBIAS, CARLITO CABIERA,
JAIME DE LA CRUZ, VICENTE CORTEZ AND CRESENCIO ELIZAGA,
DEFENDANTS-APP...**

G.R. No. L-23202. April 30, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

On August 20, 1963, an information for murder was filed in the Court of First Instance of Cagayan, against Romarico Elizaga, Cresencio Elizaga, Venerando Tobias, Carlito Cabiera, Grevel Galindon, Jaime de la Cruz and Vicente Cortes. The information alleges that the said accused, conspiring and helping one another, with intent to kill, and with evident premeditation and treachery, shot and inflicted gunshot wound on Rodolfo Paulino.

As evidenced by the medical certificate issued by Dr. Urbano Apigo, municipal health officer of Faire, Cagayan, who autopsied the cadaver, the cause of death was “Hemorrhage from the wound on the middle third of the arm” caused by gunshot (Exhibit A).

After trial, the court acquitted Grevel Galindon “in view of the absence of any evidence showing his participation on the alleged shooting on the night of June 26, 1963, which led to the death of Rodolfo Paulino”, and finding the other accused guilty of the offense as charged, sentenced them to reclusion perpetua, to indemnify the heirs of Rodolfo Paulino in the sum of “P6,000.00, without subsidiary imprisonment in case of insolvency, and to suffer the accessories of the law, with the proportionate costs. Hence, this appeal by Romarico Elizaga, Cresencio Elizaga, Venerando Tobias, Carlito Cabiera, Jaime de la Cruz and Vicente Cortes.

On October 18, 1967, the appeal of Romarico Elizaga was dismissed in view of the death of said accused.

In this appeal, the appellants have assailed the decision of the trial court on the following assignments of error: (1) “in holding that the accused were the ones who fired at the house of Antonio Singson, resulting in the death of Rodolfo Paulino”; (2) “in holding that Carlito Cabiera and Vicente Cortes were participants in the alleged raid of the house of Antonio Singson”; (3) “in holding that the identity of the accused has been established”; (4) “in holding that there was conspiracy”; and (5) “in admitting the confession of Cresencio Elizaga, and in not holding that said confession was extracted by force and intimidation.”

After several motions for extension of time to file a brief, which were granted, the appellee failed to file the same, and the case was submitted for decision without the appellee’s brief.

In the evening of June 26, 1963, Antonio Singson and his wife, with Cpl. Elias Soriano of the PC and his wife, Jaime Collado, Carlos Manalo and Rodolfo Paulino were in the house of its owner, Antonio Singson at Abariungan Ruar, Faire, Cagayan. Singson and Paulino were in the sala of the main floor of the house, conversing, and the others were on second floor, sleeping. Singson saw to it that the windows of the house were closed and locked by clips. At about 11:30 o'clock that night, Singson’s house was showered with bullets from

outside. After the first volley of gunfire, Singson stood up and peeped through a window, and at a distance of about 20 meters, saw six persons approaching the house. (Answer to question No. 16, Statement of Singson, Exhibit A.

In his said statement, Singson also said:

“5. Q.- What was the unusual thing that happened?

A .Romarico Elizaga and his companions came, raided us at our house at barrio Abariungan Ruar, Faire, Cagayan.

xx xx xx

“8.Q .How do you know that they were Romarico Elizaga and his companions who shot to death Rodolfo Paulino?

A. I know, sir, because they were immediately apprehended by the PC soldiers when they were running and about to leave.”

Cpl. Elias Soriano of the PC, who was in the house of Singson on the night in question at the request of the latter, corroborated Singson in respect to the occurrence in the house. He admitted, however, that he did not recognize the persons who fired at the house of Singson.

“Q.- Now, can you tell us during that incident of the shooting when you said you were awoken by the gunfire whether you were able to identify any of those persons you saw among the coconut grove?

A.- I could not identify them, sir, but I know pretty well that those were the Rico gangs. (TSN, p. 138).

xx xx xx

Q.- Now, you said you could not identify those persons; that is so because it was then pitch-dark, is it not?

A.- Yes, sir.” (TSN, p. 156.)

Cpl. Leon Bumagat of the PC declared that he, together with four soldiers, went to Abariungan Ruar, Faire, Cagayan, on the afternoon of June 26, 1963, because “Cpl. Elias Soriano sent word that there was something that happened there in Abariungan.” (The incident referred to occurred at noontime that day between Romarico Elizaga and Rogelio Barieng which shall be narrated hereafter.)

While Bumagat and his companions were resting at a place called La Villa de Madrid on their way to Abariungan Ruar, they heard gunshot detonations from the direction of Abariungan Ruar. Proceeding to, and approaching the

place whence the gunshots came, “they heard the sounds of gun bullets passing by the roof of the house of Antonio Singson.” Approaching the house “to verify who were firing the shots, we heard people running,” . . . “coming from the direction of the house of Singson,” . . . “going towards the direction of the river.” Bumagat and his companion soldiers followed them. Upon reaching the bank of the river, the soldiers hid behind the bushes thereat, and watched. The persons boarded a motor- banca. Then Cpl. Bumagat flashed a flashlight towards the group of persons and shouted: “I am corporal Bumagat — surrender.” The persons, eight in number, surrendered. One of them, Vicente Cortes, was found lying in the banca, wounded. The eight persons apprehended by the soldiers were Romarico Elizaga, Cresencio Elizaga, Venerando Tobias, Carlito Cabiera, Grevel Galindon, Vicente Castro and Gaspar Casili. They were investigated. Cresencio Elizaga and Gaspar Casili executed individual statements.

In view of the information contained in the statement of Cresencio Elizaga that: “Romarico Elizaga and his companions threw their firearms to the river”, Cpl. Bumagat ordered the dredging of the river, and at the bottom thereof, were retrieved the following: One (1) .45 caliber automatic pistol, serial No. 2024645, and a clip with several live ammunitions, Exhibits F and F-I; one (1) carbine with magazine containing eight live bullets, Exhibits G-and G-I; and one (1) homemade paltik, Exhibit H

Gaspar Casili, one of the persons caught in the banca, declared that he knows Romarico Elizaga because he had worked for him as his ferryboat operator since January 1, 1963; that at about 12:00 o'clock in the evening of June 26, 1963, he was sleeping “inside the compound of the camarín of La Villa de Manila” in Abariungan Ruar , Faire, Cagayan; that Carlito Cabiera came, woke him up and said: “Gaspar wake up because we have to cross the river, Rico said one of our companions was wounded”; that he (Casili) proceeded to the house of Romarico Elizaga to get the motor-engine, and thereat saw Romarico in the premises of the house “in prone position” holding a buck-shot; that Romarico told him: “You bring down the motor and ferry us across, one of our companions was wounded, anyhow we got one of them”; that he took the motor-engine to the river and attached it to the banca; that his companions were Romarico Elizaga and Carlito Cabiera; that the persons boarded the banca, but before it started to move, constabulary soldiers came, and one of them shouted: “We are PC soldiers. You surrender”; that the persons caught in the banca were the accused who thereafter were taken to Nassiping headquarters of the PC for investigation. Only Cresencio Elizaga and Gaspar Casili made statements.

The pertinent portions of the statement of Cresencio Elizaga are as follows:

“Q.-

Why were you there at barrio Abariungan Ruar, Faire, Cagayan, at that time?

A.-

I went to deliver Romarico Elizaga- and Venerando Tobias from Callao , Lasam, Cagayan to Calapangan, Lasam, Cagayan, with my jeep. Romarico Elizaga, Venerando Tobias, Carlito Cabiera, Jaime de la Cruz, Grevel Galindon, Vicente Cortes and I proceeded to Abariungan Ruar, Faire, Cagayan, by using a motor boat.

Q.—

When you boarded the motor boat at Calapangan, Lasam, Cagayan, what have you noticed, if any?

A.—

I noticed that before we boarded in the motor boat for Abariungan Ruar, Faire, Cagayan, Carlito Cabrera, Grevel Galindon, and Vicente Cortes were already in the motor boat at that time.

Q.—

When you arrived at Abariungan Ruar, Faire, Cagayan, where did you proceed?

A.-

We proceeded immediately to the house of Romarico Elizaga.

Q.—

When you arrived in the house of Romarico Elizaga, what happened, if any?

A.—

When we alighted from the motor boat, I was surprised that Romarico Elizaga and his companions were armed with guns and when we arrived in the house of said Romarico Elizaga, they made a plan to raid the house of Antonio Singson, and after that Romarico Elizaga, Beny Tobias, Carlito Cabrera, Grevel Galindon and Vicente Cortes proceeded to the house of Antonio Singson while Jaime de la Cruz and I left behind. After they left, Jaime de la Cruz and I went away with the intent to go home but after a few minutes, we heard gunfire several times, and we stopped and observed and after a few minutes, Romarico Elizaga and said companions were running towards the bank of the river together with Vicente Cortes who was shot and wounded. When Romarico Elizaga saw us they called us to help them to load Vicente Cortes to a motor boat and when we were about to start crossing the river, the PC soldiers arrived and I saw Romarico Elizaga and his companions threw their firearms to the river.”

At the trial, Cresencio Elizaga repudiated his statement sworn to before Monico Beltran, justice of the peace of Faire, Cagayan, on June 27, 1963, Exhibit D, claiming that his statement was obtained thru force and intimidation by the PC soldiers.

Monico Beltran, justice of the peace of Faire, Cagayan, declared that on June 27, 1963, he was asked to go to Abariungan Ruar, to investigate a case; that Cresencio Elizaga swore to his statement and signed it before him after he had translated the contents of said statement to the affiant in the local dialect.

Cresencio Elizaga confirmed the testimony of the justice of the peace, To quote from Cresencio’s testimony:

“Q.-

Judge Beltran also read and translated to you question No. 3 and the answer appearing also in Exhibit C, etc.?

A.—

Yes, sir.

Q.—

And the question was asked of you by Pastores (PC), is that right?

A.—

Yes, sir.

Q.-

And you gave the answer which appears on Exhibit C, is that right?

A.—

Yes, sir.

Q.—

And all the other questions propounded, from question No. 4 up to question No. 20 and the answers given thereto were also read and translated to you in Ilocano by judge Beltran, is that right?

A.—

Yes, sir.”

We are persuaded, as the trial court did believe, that Exhibit D, was voluntarily executed by Cresencio Elizaga. The trial court said:

“The details therein narrated demonstrate that they could not have been concocted by one who did not take part in the acts narrated therein. They could not have been conceived by one who is a stranger to the plot. It is only one who has taken part in the plot who can be in a position to relate them. The allegation of Cresencio Elizaga that he was maltreated by the PC soldiers, and the testimony of Dr. Dominador Elizaga when he examined Cresencio Elizaga on June 28, 1963, he noticed a lacerated wound at the lateral angle of the lower lip of Cresencio Elizaga, scratch wound on the neck, right side, and some abrasions at the back, if true, it is strange why Dr. Elizaga, who is a government physician, did not put in writing his findings. Had he done so, it would be a great help to determine whether Cresencio Elizaga was really the victim of maltreatment just to extract from him a confession. The fact that Dr. Elizaga did not dare put in writing his supposed findings, could mean no other thing than that there was no such injuries on the body of Cresencio Elizaga. Moreover, on July 20, 1963, the accused were brought before the justice of the peace for arraignment, yet, they did not complain, and that would have been the most opportune time to air their grievances against the soldiers.”

The reasons adduced by the court are logical and merits our approval.

According to Cresencio Elizaga, both the Justice of the Peace and Dr. Urbano Apigo saw his injuries. However, neither one of them declared that they saw injuries on Cresencio. The Justice of the Peace would not have allowed Cresencio to swear to his confession if the latter had complained of having been maltreated and had shown his injuries. There were two other persons who were with the Justice of the Peace and Dr. Apigo when Cresencio

Elizaga swore to his statement. These were the chief of police Juan Aguinaldo and policeman Jose Mallari of Faire. These two testified for the defense, yet neither of them mentioned Cresencio's alleged injuries. Aguinaldo even expressly mentioned the fact that he saw Cresencio in the sala of Singson's house, but he made not the slightest hint that he saw wounds on his face. (TSN, p. 4, Suriaga) If there had been such injuries on the face of Cresencio, Aguinaldo would certainly have noticed the same, and would have declared about them in court. The fact is that he made no such declaration. Upon the foregoing considerations, there is no reason to believe that Cresencio was coerced into signing his confession. In the face of the abundant evidence showing voluntariness of the execution thereof, it cannot be said that the statement was extracted by force or intimidation. It may be further asked why of all those who were apprehended, Cresencio was the only one singled out to be maltreated into making a statement. The testimony of Sgt. Pastores is more credible, that when he interrogated the eight persons, only Cresencio and Casili, the motor-boat operator, were willing to give statements, while the others refused to do so.

The confession was corroborated by evidence allunde dovetailing with the essential facts in the confession. Thus, Cpl. Bumagat declared that when he and his companion soldiers were nearing the house of Singson "they heard sounds of gunfire passing by the roof of the house of Singson", and they heard footsteps of persons running away and going to the direction of the river; that he saw them board the banca; that Vicente Cortes was found lying in the banca, wounded; that the firearms, which, as stated in Cresencio's confession, were thrown into the river, were retrieved therefrom; and the persons apprehended in the banca were the appellants. A confession so corroborated by witnesses and by subsequent events, is admissible against the declarant.

The prosecution also presented evidence showing that prior to June 26, 1963, the relations between Singson and Romarico Elizaga were already very much strained, as an aftermath of a court case for frustrated murder filed by Rogelio Barieng against Romarico Elizaga, and of another case of grave threats filed by Singson against Romarico Elizaga. Romarico Elizaga suspected that the case filed by Barieng was at the instigation of Singson.

At about noontime on June 26, 1963, Rogelio Barieng tried to assault Romarico Elizaga. Cpl. Soriano investigated the incident that same afternoon. He interviewed Romarico Elizaga and asked him to present witnesses in order that the case may be filed in court. Instead of cooperating in the investigation, Romarico Elizaga asked Soriano to be allowed to go to Capalangan, Lasam, on the pretext of going to rest for a while. Romarico, however, never returned. Cpl. Soriano noticed during the questioning of Romarico that the latter was mad at Singson as he had suspected that Singson was the one responsible for the filing of the case of frustrated murder. Fearing that there might be trouble, Cpl. Soriano sent word to Cpl. Pastores to dispatch a patrol that evening to Abariungan Ruar to forestall any disorder. Cpl. Leon Bumagat was dispatched to Abariungan Ruar. What Cpl. Bumagat saw and heard upon arriving at Abariungan Ruar were those which he had testified to, as narrated hereinabove.

Romarico Elizaga is a man of violent character, and by his own admission, he was convicted for the killing of Father Guevarra at Gattaran, Cagayan. Romarico and Singson were competitors in the business operation of ferryboats across the Cagavan river. The latter had charged the former of grave threats in court arising out of their business competition. Rodolfo Paulino was one of Singson's witnesses against Romarico in the case. Romarico suspected that the case of frustrated murder filed against him by Barieng was instigated by Singson. Romarico's anger was aggravated when on midday of June 26, 1963, Barieng attempted to assault him. Romarico Elizaga, evidently had a motive to commit the crime.

The evidence for the defense, as stated in the appellants' brief, and we quote, is as follows:

"Romarico Elizaga, Carlito Cabiera, Venerando Tobias and Grevel Galindon were at the house of Romarico Elizaga at Abariurigan on the night of June 26, 1963. Cabiera and Tobias were boarding there because they were both working at the La Villa de Manila. Grevel Galindon went there to ask money from Romarico

Elizaga, his uncle, “for his expense in going to Manila to study. (TSN, p. 276-278, Oct. 3, 1963). He was told by Romarico Elizaga to wait for his auntie and as it was late in the evening, told him to sleep there. He saw Carlito Cabrera and Venerando Tobias there. (TSN, pp. 319-321, Nov. 19, 1963) While they were sleeping, they were awakened by gunshots and sometime after the last gun report, they heard somebody calling “Mang Rico” and identified himself as “Ising”. Romarico Elizaga went out to see him and when he came back he told Carlito Cabrera to get the motor because they had to bring a wounded person across the river. (TSN, pp. 279-281, Oct. 3, 1963; TSN, pp. 321-324, Oct. 3, 1963.) After Carlito Cabrera got the motor, he brought it to the river. Grevel Galindon went with him because he was afraid to be left alone in the house. (TSN, p. 323, Oct. 3, 1963) When they reached the river, they affixed the motor to the banca. There were about seven persons, then present, as others had joined them. When they had boarded the boat, the P.C. stopped them and they were brought to Nassiping and investigated. (TSN, pp. 296-297, Oct. 2, 1963)

Those are the facts regarding the whereabouts of Romarico Elizaga, Venerando Tobias, Carlito Cabrera and Grevel Galindon. Vicente Cortes, Cresencio Elizaga and Jaime de la Cruz were at a different place that day and night. Thus after Vicente Cortes had finished gathering rattan at Sicalao, he met Cresencio Elizaga and Jaime de la Cruz who were going to Callao. Inasmuch as he had finished gathering rattan and was then going home to Callao, he asked them if he could ride with them. Cresencio Elizaga and Jaime de la Cruz agreed to let him ride with them. (TSN, pp. 378, Dec. 9, 1963; TSN, pp. 14-15, Jan. 14, 1964) Upon arrival at Calapangan, however, Cresencio Elizaga asked if they could go to Abariungan for a short while, as he wanted to bring the reports he was asked to bring to La Villa de Manila. They agreed and leaving the jeep behind because of the river, they proceeded to Abariungan on foot. (TSN, p. 397, Dec. 9, 1963; TSN, p. 16, Jan. 14, 1964) Cresencio Elizaga had to go to Abariungan Ruar to report to the La Villa de Manila and Tan Boon Diok. (TSN, p. 4, Jan. 14, 1964; TSN, pp. 265-266, Oct. 2, 1963) While they were on their way, however, having reached the vicinity of the Log Pond of the La Villa de Manila, they were stopped by somebody who asked them who they were. When Cresencio Elizaga identified himself they were fired at. The fire came from the house of Antonio Singson, Cresencio Elizaga and Jaime de la Cruz ran eastward. Vicente Cortes was hit on the left side above the hips. He fell down and tried to crawl. His companion then came back and carried him. He was brought to the house of Romarico Elizaga. Cresencio asked his help to bring Cortes across the river. Romarico Elizaga and his companion at the house then proceeded to help the wounded across the river, but they were stopped by the P.C. Vicente Cortes passed out and woke up on the morning of June 27, 1963, in the provincial hospital of Tuguegarao (TSN, pp. 16-18, Jan. 14, 1964).

After a careful evaluation of the evidence, the pertinent question first to be considered is: How and whereat was Rodolfo Paulino shot which caused his death?

The evidence has shown that Rodolfo Paulino was shot outside the house. It is so stated in the statement of Antonio Singson sworn, to before the Justice of the Peace of Faire on June 27, 1963, Exhibit A, thus:

“A.- At about 11:00 o'clock p.m. on June 26, 1963, while we were conversing with Rodolfo Paulino and Jaime Collado, I was surprised when I heard gunfire outside my premises towards my house. At this instant, I looked around to verify where was this firing and I saw six (6) persons at a distance of more or less 20 meters away north of my house. When I saw them that they have a bad intention at us, I immediately concealed myself while Rodolfo Paulino took my shotgun and went out of our house. ... When the PC soldiers arrived after the incident, I went out and found that Rodolfo Paulino was lying dead under our stairway.”

Rodolfo Paulino was fatally shot when he was outside Singson's house. When Cpl. Soriano and Singson came down from the second floor of the house, after the last burst of gunfire, they found Paulino dying on the third rung of the ladder to the kitchen. As graphically illustrated by both Singson and Soriano (Exhibits B and E), there was a trail of blood starting in front of the house. The trail passed through the east side of the house. The house was built close to the road. Across were the warehouse and the coconut grove from where the assailants had fired at the house. That Paulino was hit in front of the house, and probably a little to the east side, is to some extent,

corroborated by the testimony of defense witness Aguinaldo that he saw a “pellet hole” on the bamboo fence “a little northeast of the house of Singson.” (TSN, p. 5, Suriaga)

The next question is: Who shot Rodolfo Paulino?

There cannot be any doubt that on the night in question, several persons fired at the house of Singson and as a result, Paulino was hit. Romarico Elizaga was recognized by Singson and Cpl. Soriano as the leader of the group of persons who raided Singson’s house on the night in question, but as to the rest of Romarico’s companions, there is no direct evidence showing that Singson or Soriano were able to recognize them. The affirmation of Singson that the companions of Romarico Elizaga were the appellants was not based on his recognition of the identity of the appellants, but is founded solely on a mere belief that they were the appellants “because they were immediately apprehended by the PC soldiers.” Neither Cpl. Soriano was able to recognize the raiders, as admitted by him. However, it is a conclusive fact established by the evidence that when Cpl. Bumagat and his companion soldiers were approaching Singson’s house, they heard footsteps of persons running away from the house of Singson and going towards the river, and having followed them, Bumagat overtook them at the bank of the river, and when they were ordered to surrender, it was ascertained that they were the appellants. Considering that the appellants were apprehended at the vicinity of the place of crime immediately after the firing of the house of Singson, inasmuch as the presence of the appellants thereat has not been satisfactorily accounted for, these facts are indicative of a very strong and persuasive circumstance pointing to the appellants Cresencio Elizaga, Jaime de la Cruz, Vicente Cortes and Romarico Elizaga as the perpetrators of the crime. The chain of circumstances which transpired from the moment the appellants Cresencio Elizaga, Jaime de la Cruz and Vicente Cortes left their jeep at the roadside of Capalangan, then walked towards the direction of the house of Singson, until they were noticed by the PC soldiers after the latter heard gunshots near the house of Singson, and seen running away towards the river and boarding a banca, and ultimately apprehended by the PC soldiers, are so associated with the incident, that in the relation of cause and effect, they lead to a satisfactory conclusion that said persons were the ones who ran away from the house of Singson and committed the act complained of. The events constitute a compact mass of circumstantial evidence, the existence of every bit of which was satisfactorily proved, and the proof of each being confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion, the circumstantial evidence are sufficient to establish beyond reasonable doubt that the aforementioned appellants were the persons who fired at the house of Singson on the occasion of which Rodolfo Paulino was fatally wounded.

The claim of Cresencio Elizaga in his confession, in an attempt to exonerate himself and his companion Jaime de la Cruz, that they did not join the group of Romarico Elizaga in raiding the house of Singson because they separated from them before reaching the vicinity of the house, cannot be believed, because even the evidence adduced by the defense, as narrated in the appellants’ brief, let alone the evidence of the prosecution, have shown that Cresencio Elizaga was with the group of Romarico Elizaga when the exchange of gunfire took place during which Rodolfo Paulino was hit.

We are persuaded upon the evidence that the participation of Romarico Elizaga, Cresencio Elizaga, Jaime de la Cruz and Vicente Cortes have been clearly established. The unbroken chain of circumstances dovetailing with each other lead to no other conclusion than that the said appellants were the ones who showered the house of Singson with bullets on the night in question. By the confession of Cresencio Elizaga, and the evidence aliunde of the prosecution and the defense, it was shown that Romarico Elizaga, Jaime de la Cruz and Vicente Cortes were in the company of Cresencio Elizaga who passed by the house of Singson on the night in question, during which time Vicente Cortes was shot. The claim that the group of Cresencio Elizaga was fired at without provocation on their part when they were nearing the house of Singson, is hard to believe. In the first place, the claim is refuted

by the confession of Cresencio Elizaga that Vicente Cortes was shot during the exchange of fire at the vicinity of the house, and in the second place, evidence other than the confession have demonstrated that Cresencio Elizaga, together with Romarico Elizaga, Jaime de la Cruz and Vicente Cortes, was apprehended by the PC soldiers at the banca immediately after the shooting of the house of Singson. The firearms retrieved from the bed of the river must have been the weapons carried about the persons of, and used by, Cresencio Elizaga, Jaime de la Cruz and Vicente Cortes, for, as Romarico was concerned, his buckshot was with him which was seen by Casili when Romarico Elizaga ordered Cabrera to call for Casili so that the latter may ferry them across the river.

The defense of Vicente Cortes that he did not know the purpose of Cresencio Elizaga and Jaime de la Cruz in going to Abariungan Ruar which, as stated in Cresencio's confession was "to raid the house of Antonio Singson", is not worthy of belief, for, his conduct and behaviour from the moment he joined Cresencio Elizaga have shown knowledge of the purpose. He claimed that he left Callao, his place of residence, in the early morning of June 26, 1963, to go to Sicalao, Lasam, to gather rattan bamboo at Sicalao, travelling five hours trip by bus. At about 4:30 in the afternoon, after having gathered a bundle of ten pieces of rattan and preparing to go home, Cresencio Elizaga happened to pass by in his jeep. He asked Cresencio for a lift to Callao. The latter consented, but instead of proceeding to Callao, they went to Calapangan where they parked the jeep by the roadside, and Cresencio told his companions that they were just going to take a short walk, and they took the road leading to the house of Singson at Abariungan Ruar. Vicente Cortes followed Cresencio Elizaga without any protest until they reached the vicinity of the house of Singson where during the exchange of fire, Cortes was hit. When Cortes was investigated by the PC authorities, he never mentioned the fact that Cresencio waylaid him and that he was in the latter's company against his will.

With respect to Venerando Tobias and Carlito Cabrera, their participation in the crime has not been clearly proven. There is reason to believe that said appellants, Tobias and Cabrera, were in the group of person apprehended by the PC at the house because they just followed Romarico Elizaga and Gaspar Casili after the latter had gotten the motor engine in the house of Romarico and proceeded to the river. Like Grevel Galindon, their participation in the crime has not been clearly established, and they are entitled to acquittal on reasonable doubt.

Showering a house with bullets, knowing that it is inhabited, is a clear proof of the intent to kill the occupants therein. By their acts executed in the darkness of the night, the offenders employed means, methods and forms in the execution of the crime which tended directly to insure the execution of their criminal design without risk to themselves arising from the defense which the occupants of the house might make. For the death of Rodolfo Paulino, the appellants Romarico Elizaga, Cresencio Elizaga, Jaime de la Cruz and Vicente Cortes are responsible. Their act is qualified as treacherous, and the crime committed is murder.

There was conspiracy among Romarico Elizaga, Cresencio Elizaga, Jaime de la Cruz and Vicente Cortes in the execution of the crime charged as shown by their concerted action and mutual cooperation.

The modifying circumstances of evident premeditation and by a band cannot be appreciated against the said appellants because they have not been clearly established by the evidence, and besides, they are not alleged in the information.

During the pendency of this appeal, Cresencio Elizaga filed a motion for new trial based on the alleged newly discovered evidence consisting of the affidavit of Antonio Singson that he did not actually see Cresencio as one of those who raided his house; and the affidavit of Cpl. Leon Bumagat that "the truth of the matter is that I did not actually see that Cresencio Elizaga was actually one of the eight(8) persons whom I saw running on board the boat; for actually I did not know exactly how many persons were in the group that was running, I suspected,

however, that Cresencio Elizaga was one of them as I saw him coming from the direction of a house near the river bank and rode on the boat, after, the persons composing the group were already on board the boat.” Retractions of prosecution witnesses are not considered newly discovered evidence warranting the grant of new trial (*People vs. Curiano*, L-15256-67, Oct. 31, 1963). And even if the affidavits of Singson and Soriano were admitted, they would not change the conclusions reached respecting Cresencio Elizaga’s criminal participation, as discussed herein above.

Upon the foregoing considerations, the decision appealed from is modified, in the sense that the appellants Romarico Elizaga, Cresencio Elizaga, Jaime de la Cruz and Vicente Cortes are found guilty of the offense as charged, and there being no aggravating nor modifying circumstance, the sentence of reclusion perpetua imposed on each of them, is hereby affirmed, to indemnify jointly and severally the heirs of Rodolfo Paulino, in the sum of P6,000.00, with the accessories provided by law, but without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. The appellants Venerando Tobias and Carlito Cabrera are hereby acquitted on reasonable doubt, with proportionate costs de oficio.

Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Fernando, JJ., concur.

Judgment modified.

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