

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE VS.
RUDILLIO LEBUMFACIL ALIAS RUDY RODRIGUEZ ALIAS ROMEO
LEBUMFACIL, JR. Y RODRIGUEZ, CIRILO QUIMNO ALIAS LOLOY
LAGUION AND ROSE...**

G.R. No. L-32910. March 28, 1980

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PER CURIAM:

Automatic review of the judgment of the trial court in Criminal Case No. 1551, dated August 25, 1975, finding accused Rudillo Lebumfacil, Cirilo Quimno, alias Loloy Laguion and Rosendo Salvador guilty of the murder of Pablo Chua, and imposing upon appellants Rudillo Lebumfacil and Cirilo Quimno the penalty of death, and on appellants Rosendo Salvador the penalty of reclusion perpetua, in addition to their civil liabilities in the amount of P12,000.00.

The facts, as found by the trial court, are as follows:

During the last week of February 1968, appellant Rosendo Salvador went to the office of the Misamis Mahogany Timber Company to see its manager, Pablo Chua, in order to collect his unpaid claim for deliveries of gravel and sand to the company. The office was located at the Garcia Building in Iligan City. After Salvador had conferred with the manager and on his way out of the building, Segundo Bolocon, the security guard, inquired from him whether he was able to collect his claim. Appellant Salvador answered in the negative, further informing Bolocon that he would return the following day. The following day, Rosendo Salvador returned to the office of the company to see Pablo Chua. He was not able, however, to see Chua as the security guard, Segundo Bolocon, informed him that he was instructed by the manager not to allow him to enter the office. Salvador then protested that such action was unjustified since he was there to collect the money that was due to him. According to Bolocon, he told Salvador that he was instructed by Pablo Chua to inform him that he should submit his claim to Atty. Garcia, legal, legal counsel of the company. Salvador, however, retorted that his business was not with Atty. Garcia but with manager. Bolocon then replied that Salvador should, therefore, file his case in court. Salvador, however, countered that without any affidavit or document to support his claim, his action would be futile. It was at this instance when Bolocon allegedly heard Salvador utter: "These people will regret this incident. There are many ways of killing a chicken!" Later in the day, Bolocon informed Pablo Chua that Salvador was mad him, but Chua not say anything.

At about him 2:30 o'clock in the afternoon of March 23, 1968, Rudillo Lebumfacil, Rosendo Salvador and Cirilo Quimno were seen by Rolando Mendoza conversing and drinking "tuba" in the store of a certain Roquina at Hinaplanon in the Iligan City. Mendoza testified that at about 2:00 o'clock he went to the store of Ester Capangpangan to buy cigarettes. After buying cigarettes he sat on the stone between the store of Capangpangan and the store of Roquina for nearly two hours. Mendoza claimed that he overheard Rosendo Salvador telling his two co-appellants in loud voice: "This afternoon will payday and Pablo Chua will pass by, you take care of him" and to this, appellant Rudillo Lebumfacil purportedly replied: "Areglado, boss." After a while, Mendoza saw the car of Pablo Chua approaching, proceeding towards the compound of the Misamis Mahogany Timber Company at

Pigsoutan. When the car of Pablo Chua passed in front of the store of Roquina, Cirilo Quimno went out of the store and signaled the driver of the car to stop. Pablo Chua, upon seeing Quimno, directed the driver, Bonifacio Anob, not to stop and to proceed to the company compound. The three appellants then transferred to the store of Agapito Cabisay where they resumed their drinking of "tuba". Mendoza declared that he followed appellants by walking towards to store of Dering Soledad which was about twelve (12) meters from the store of Cabisay. It was there where he (Rolando Mendoza) allegedly heard appellant Rosendo Salvador say twice or thrice in a loud voice: "When the car comes back, you take care of him." Some hours later, at about 4:00 o'clock in the afternoon, the car of Pablo Chua came out of the company compound. Cirilio Quimno shouted and signaled the drive to stop. According to Bonifacio Anob, Chua ordered him to stop the car, after which Chua alighted and walked towards Cirilio Quimno. Anob declared that at this juncture Quimno said: "Why did you suspect me of puncturing your tires and stealing some spare parts?" Pablo Chua replied: "No, I am not blaming you, you just go to the office and we will talk about it." But Quimno retorted: "Now that you are here, we will kill you." At that instance, Quimno placed his hand on his hunting knife and approached Chua. Chua stepped back, drew his .22 Caliber Magnum (Exhibit "C") and fired a warning shot into the air. When Quimno released his hold on the hunting knife, Pablo Chua approached Quimbo, patted him on the shoulder, and said: "You jus to go the office and we will talk about it there". After saying this, Pablo Chua returned to his car. When Chua was to board the car, appellant Rudillo Lebumfacil suddenly approached Chua from behind and grabbed his gun. After wresting the possession of the gun, Lebumfacil aimed the revolver at Pablo Chua saying: "Now, you cannot do anything, I have your gun with me." Pablo Chua raised both his arms in surrender saying: "I have no fault, you are not my enemy, don't, don't." At that moment, Quimno shouted to Rudillo Lebumfacil: "Go ahead, kill him." It was at this instance when Lebumfacil allegedly turned towards Rosendo Salvador and the latter nodded his head. Lebumfacil then fired point blank at Chua, hitting the victim on the chest. Chua fell on the ground, and while he was trying to raise his head, Lebumfacil shot him again. The bullet penetrated the skull of the victim just below the right eye. Lebumfacil and Quimno fled towards the direction of Pigsoutan abroad a "Sanbar" (a small utility vehicle). Rosendo Salvador also left the scene of the crime. Bonifacio Anob drove Chua's car to Iligan City where he reported the shooting to the police authorities.

At about 8:00 o'clock in the evening of March 23, 1968, Dr. Wilfredo Jagdon, Medico-Legal Officer of the Iligan City Police Department, performed the autopsy on the deceased. According to Dr. Jagdon, he found the bullet wounds, one below the right eye and the other on the right chest, and wounds were without exit. The cause of death was shock due to hemorrhage. The autopsy report (Exhibit "A"), issued by Dr. Jagdon in hereunder quoted as follows:

"NAME – PABLO CHUA

Findings:

- GUNSHOT WOUND OF ENTRANCE – 1 inch below the right eye, 3 mm. in diameter, with regular inverted edges, surround with gunpower marks, directed antero-posteriorly and obliquely to the medical side to a distance of 4 inches without exit.
- GUNSHOT WOUND OF ENTRANCE – 3d intercostals space, right chest, 4 inches below the mid clavicular line, directed anteroposteriorly towards the right thoracic vertebra, the bullet lodge at the right paravertebral muscle at the level of the 5th thoracic vertebra, piercing the right upper lobe of the lungs and pulmonary vessels contributing to the intrathoracic hemorrhage.
- Primary flaccidity – present.

Cause death – shock due to intarthoracic and intracranial hemorrhage secondary to bullet wound."

He also covered a slug from at the back of deceased at the vertal column.

At about 2:00 o'clock in the early morning of July 3, 1968, the police authorities of Iligan City began the manhunt for Lebumfacil and Quimno. A posse of constabulary soldiers and policeman proceeded to Barrio Taparak, Iligan City, to look for Rudillo Lebumfacil who was reportedly hiding there with his family. After surrounding the house and after ordering Lebumfacil to surrender, the latter came out of his hideout and gave himself up. The police authorities searched his hideout and found a caliber .22 Magnum under the bed. This firearm turned out to be the licensed revolver of Pablo Chua (Exhibit "C"), which was used by appellant Rudillo Lebumfacil in shooting the victim. When Lebumfacil was questioned regarding the whereabouts of his companions, he revealed that Cirilo Quimno was hiding in Maria Cristina. Quimno was later found by the police authorities hiding inside a house in Maria Cristina. After searhing the house, the police officers found a .22 Caliber "paltik" revolver (Exhibit "D") under the pillow of Quimno. The two appellants were then brought to the police headquarters at Iligan City where they were investigated. In that investigation, appellant Quimno executed a sworn statement (Exhibit "K"), stating in part as follows:

"Q

Do you have knowledge as to the death of PABLO CHUA?

A

Same person was shot to death by RUDILLO LEBUMFACIL (Alias RUDY RODRIGUEZ) (affiant pointing to the person answering to said name) with the use of a revolver cal. 22 Magnum wrested from PABLO CHUA hitting the victim two consecutive time.

Q.

Why did RUDILLO shoot PABLO CHUA? Do you know the reason why?

A.

PABLO CHUA accused us of an offense which we both had not done.

Q.

How did RUDILLO shoot PABLO CHUA?

A.

While we were at Hinaplanon, Iligan City, we saw Mr. CHUA riding in his Mercedes Benz, so I signaled the driver to stop about 20 meters away, in order to stop and inquire from him why he accused us of slashing his tire. Upon nearing us CHUA pulled out his revolver Cal. .22 Magnum and fired at my person and then the driver made a sudden stop and backed the car towards us and then alighted from his car with same revolver pointed at me, uttering the following remarks: 'AKALA KO HOLDUP NA ITO', in return, I answered him 'DILI SIR, DILI HOLDUP KAY WALA KAMI'Y ARMAS.' After that he said the following words in Tagalog: 'KAYA KITANG BAYARAN'. After saying those Tagalog, I told him in Visayan: 'MOPATAY KA DIAY TAO SIR, NGA DILI MAN AKO MUHILABOT NIMO'. He tapped me on the rights shoulder and later on I walked away about 5 meters from him. I turned back because I heard some clicking. RUDILLO and PABLO grappled with each other for the revolver Cal. .22 Magnum pointed to RUDILLO by CHUA and after a struggle, RUDILLO easily grabbed the revolver Cal. .22 Magnum and fired the same at the person of CHUA hitting him on the breast and the second time on the right eye. After the shooting we immediately fled away."

In the afternoon of July 5, 1968, Rudillo Lebumfacil was investigated by Special Counsel Hector Obach, in the presence of the City Mayor and Assistant City Fiscal Padilla. The questions of the investigator and the answers

given by the appellant were taken down by a stenographer in the Mayor's office. After the statements were transcribed, Special Counsel Obach, together with City Judge Pompeyo Palarca, proceeded to the city jail where the typewritten statement was given to Lebumfacil. When he was asked to sign the statement, the latter refused and claimed that he was advised by his counsel not to sign the statement. The stenographer testified during the trial on the statements of Lebumfacil (Exhibit "E").

Both Quimno and Lebumfacil had been previously convicted by final judgment of homicide. Thus, Cirilo Quimno was previously convicted of homicide by the Court of First Instance of Lanao on August 3, 1953. After serving the sentence in the national penitentiary, he was released on parole on December 23, 1960. Lebumfacil was also previously convicted by the same court of the crime of homicide on November 18, 1957. In view of his minority, however, he was confined at Welfareville, Mandaluyong, Rizal.

Appellant Lebumfacil admitted having shot the deceased Pablo Chua with the latter's .22 Caliber Magnum revolver. He, however, insisted that he did so in self-defense. He declared that after Pablo Chua alighted from his car, he immediately shot at Cirilo Quimno, alias Loloy Laguion, who was then eight (8) meters away, but failed to hit him. Cirilo Quimno then told Chua that he had no bad intentions and at the same time raised his hands. Pablo Chua then approached Cirilo and they conversed with each other. Afterwards, Chua patted the back of Cirilo, then turned his back and walked towards his car. Upon reaching his car, Pablo Chua allegedly aimed his revolver at Lebumfacil, who was then six (6) meters away, saying that Lebumfacil was one of those who destroyed his truck. When Lebumfacil denied the accusation, Chua allegedly answered: "I can afford to pay for your life which is just worth one shipment of logs." Chua then walked towards Lebumfacil, still aiming his gun at him, and said: "I can kill you and I can afford to pay you." It was at that juncture when Lebumfacil allegedly grabbed the revolver of Chua. After wresting the gun from Chua's possession, he stepped back and shouted at Chua in Tagalog: "Mr. Chua, wala ka nang magagawa", at the same time pointing the revolver at Pablo Chua. When Pablo Chua rushed towards him, that was the time he shot Chua. After Chua fell, he again shot him because of his anger. He admitted that at the time he shot Chua for the second time, the latter was already lying prostrate on the ground. Appellant Quimno's testimony followed Lebumfacil's narration of the incident.

Appellant Rosendo Salvador, upon the other hand, denied any involvement in the commission of the crime. He declared that he was in good terms with the deceased; that four (4) months earlier Chua gave him a lift in his pickup car and that he went to the office of Chua to accompany one Quilino Sumili whom he recommended for employment in the Misamis Mahogany Timber Company. He admitted, however, that the previous manager of the Misamis Mahogany Timber Company failed to pay him for the sand and gravel which he had previously delivered, hence, he tried to collect the payment from Bob Neri. The latter, however, informed him that he would indorse his claim to Chua, who in turn, advised him to make his complaint in writing, which he did. On this claim, Chua told him that he would verify the record of his claim in Manila before he would make the payment. He was, therefore, advised to wait for at least two (2) months. He testified that in the afternoon of March 23, 1968, while he was on his way to the quarry, he saw his co-appellants Rudillo Lebumfacil and Cirilo Quimno in the store of Agapito Cabisay. He acceded to the invitation of Quimno to drink with them because Quimno is his brother-in-law. After drinking alcoholic drinks with them, he started to leave for Iligan City. As he was about to leave, he saw Quimno raising his hands to stop an oncoming car. He advised Quimno not to stop the car, but Quimno replied: "Don't mind me because you do not know what it is all about." It was then that he saw the car stop and Pablo Chua alight therefrom already holding a gun in his hand. As Chua walked towards Quimno, he shot the latter from a distance of ten (10) to twenty (20) meters. He declared that Quimno immediately raised both of his hands while he ran to the store. He heard Quimno tell Chua that his intention was not bad and that he was not armed. Afterwards, Chua approached Quimno, tapped the latter's shoulder and said: "There is no case", and Chua returned to his car. When Chua was walking towards his car, he shouted at Lebumfacil and pointed his gun

at him. Lebumfacil then grabbed the gun. After grabbing the gun, he aimed it at Chua and when the latter tried to wrest the gun from his possession, Lebumfacil shot Chua on the chest. After the shooting, he (Rosendo Salvador) ran away and fled to his house.

Relying on the version given by the prosecution and rejecting the claim of self-defense of Lebumfacil, the trial court found appellants Rudillo Lebumfacil, Cirilo Quimno and Rosendo Salvador guilty beyond reasonable doubt of the crime of murder. Taking into consideration the circumstance of recidivism,[1] the trial court imposed upon Lebumfacil and Quimno the penalty of death, while Rosendo Salvador was sentenced to suffer the penalty of reclusion perpetua. All accused were further ordered to indemnify the heirs of the victim, Pablo Chua, jointly and severally, in the amount of P12,000.00 and each to pay one-third (1/3) of the costs.

We agree with the trial court that appellant Rudillo Lebumfacil has not convincingly proven his claim of self-defense. There could not have been any reason for Pablo Chua to accuse Lebumfacil of having slashed the tire of the truck of the Misamis Mahogany Timber Company, considering that only appellant Cirilo Quimno was suspected of this offense and Pablo Chua did not even know appellant Lebumfacil. It is clear from the evidence of the prosecution and of the defense that Pablo Chua was apparently satisfied with the explanation given by Quimno because as found by the trial court "Pablo Chua patted his shoulder and told him that there is no more case and that they parted in good terms with Pablo Chua walking back towards his car." Equally unpersuasive is the claim of Lebumfacil that while Pablo Chua was approaching him and while he was at a distance of less than a meter he said: "I could kill you and I can afford to pay you", and because of this Lebumfacil grabbed the revolver of Pablo Chua. First, because Chua had no reason to threaten Lebumfacil; and secondly, if Chua wanted to shoot Lebumfacil he could have easily done so before the latter could grab his revolver. It is well-settled that self-defense is an affirmative allegation that must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[2] The action of Lebumfacil in the shooting of the deceased is characterized by treachery. After Pablo Chua was completely disarmed he pleaded with Lebumfacil, thus: "I have no fault, you are not my enemy, don't kill me", but Cirilo Quimno shouted to appellant Lebumfacil: "Go ahead, kill him now." Although Chua's hands were still raised Lebumfacil shot him twice, the first shot hitting the victim at the region of the breast and after the victim fell on the ground and he was trying to raise his head, Lebumfacil shot him again, the bullet penetrating below the right eye of the victim. In previous case, this Court held that where the accused fired ten shots at the unarmed victim after asking the latter to raise his hands sidewise, which the latter did, there was treachery.[3] Similarly, in *People v. Barba*,[4] where the victim had his hands upraised, pleading in a loud voice, "Do not kill me; investigate first what was my fault" and the accused fired a second shot mortally wounding the victim, this Court held that the killing was treacherous.

We are not satisfied, however, that the evidence of the prosecution has established to a degree beyond reasonable doubt the criminal involvement of appellant Rosendo Salvador. While it is possible that Salvador had harbored ill-feelings against Chua for his failure to collect the sums due to him, this alone is not sufficient to hold him liable as a co-conspirator. Conspiracy must be shown to exist as clearly and convincingly as the commission of the crime itself.[5]

To implicate Salvador, the prosecution relied principally on the testimony of Rolando Mendoza, former employee of the deceased and at the time of his testimony, driver-operator of the Iligan Fire Department. The infirmity of Mendoza's testimony lies in its improbability. It is well-settled that where the testimony of the witness is clouded with uncertainty and improbability or unworthy of belief, the Court may disregard it.[6] Considering that Rolando Mendoza's alleged purpose was only to purchase cigarettes at 2:00 o'clock in the afternoon of March 23, 1968, it is quite unusual that instead of going back to his work after purchasing the cigarettes he would still waste his time

by sitting on a stone for about two (2) hours or until 4:00 o'clock in the afternoon. He claims that while sitting on the stone he heard appellants who were allegedly twelve (12) meters away from him plotting the crime in question. It is not in accord with common experience and the normal conduct of man for one planning a heinous offense to reveal his criminal plans publicly. And this was precisely the story foisted by Mendoza upon the court, because he claims plans publicly. And this was precisely the story foisted by Mendoza upon the court, because he claims that Salvador, in a voice that could be heard at a distance of fifteen (15) meters, told the two other appellants: "Since this afternoon is payday, Pablo Chua will pass by, you take care of him. When Pablo Chua returns, take care of him." This he allegedly did, not only once but two or three times. It must be recalled that when Salvador allegedly uttered these remarks, there were other people inside the store of Pito.

It has been said that the credit to be given the testimony of a witness may depend very much upon the accuracy of his memory, as well as upon his disinterestedness and honesty, in the case at bar, Mendoza appears deficient on this score.

Thus, during the cross examination, Mendoza pleaded forgetfulness not only once or twice but several times on the fact of his previous conviction by final judgment of the crime of illegal possession of firearms.

"ATTY. QUIJANO:

* * * * *

Q.

Before you came to Iligan City, you have gone to Cotabato, is that correct?

A.

Yes, sir.

Q.

As a matter of fact, you have gone to Kidapawan, Cotabato?

A.

I was there.

Q.

As a matter of fact, when you were in Cotabato you were convicted of a crime?

ATTY. LOPEZ:

I object to that question, Your Honor, they cannot prove the nature of that crime.

COURT:

Witness may answer.

A.

I do not know.

Q.

Did you understand my question? When you were in Cotabato, you were convicted of a crime and was sentenced to serve the penalty?

A.

Yes, sir.

* * * * *

Q.

Before you were accepted as firearm, you naturally submitted an application to mayor's office, is that correct?

A.

Yes, sir.

Q.

Did you state in your application that you were convicted of a crime of illegal possession of firearm?

ATTY. LOPEZ:

Objection, Your Honor.

COURT:

Let the witness answer the question.

A.

I cannot remember"[7] (Italics supplied.)

He even conveniently forgot the very simple matter of whether or not he voted in Iligan City in the elections of November 1967. It should be noted that he was testifying in 1968 and yet his memory on whether he voted or not in he 1967 elections had already abandoned him.

"ATTY. SEPULVEDA.

* * * * *

Q.

You testified in the preliminary investigation of this case before Judge Palarca, is that correct?

A.

Yes, sir

Q.

And before I go to that point, you voted in the City of Iligan?

A.

I cannot remember.

Q.

In 1967, there was an election in November of that year, were in the Iligan City?

ATTY. LOPEZ:

Objection, Your Honor, that is a question of incriminating the witness, Your Honor please.

COURT:

Let the witness answer question.

A.

I cannot remember."^[8] (Italics supplied).

Indeed, it has been observed that no class of testimony is perhaps more unreliable and more frequent cause of error in the courts of justice than the narration of conversations real or pretended.^[9] And here is the witness who claims to have overheard a allegedly was able to recall the conversation among the appellants in connection with their plans to commit the crime in question and yet he forgets significant events of his life. He claims to have witnessed a shocking incident wherein he saw his former employer shot in cold blood and yet unexplainably forgets to inform the police authorities about it. He knew or could have known that the police were investigating the crime since his office in the Iligan Fire Department was adjacent to that of the police. The police had already begun its investigation of the crime in the very day of the occurrence, questioned witnesses on March 23, 24 and 25, 1968, amongst whom were Bonifacio Anob, Segundo Bolocon, Antonio Lomboy and appellant Rosendo Salvador. Indicative of the fact that neither the police nor prosecution knew of the existence of this witness at that time is the fact that he was never investigated by the police, and that the list of witnesses in the information for murder against Rudillo Lebumfacil and Cirilo Ladion filed by the City Fiscal of Iligan City on March 25, 1968 (Exhibit "4") and in the Amended Information filed by the same City Fiscal on July 12, 1968, does not include the name of Mendoza as witness of the State. As a matter of fact, it was only on August 8, 1968 or five (5) months after this incident when Rolando Mendoza appeared for the first time as witness for the prosecution. No explanations had been given why a supposedly vital and important witness was not presented either to the police investigators when they were investigating the crime or to the court who was conducting the preliminary investigation. The long and unexplained silence of a vital witness may well give rise to suspicions as to his motive for breaking that silence. It places in doubt his credibility and creates that suspicion that he is actuated by sinister and ulterior motives.^[10]

The circumstance that this same witness Rolando Mendoza executed on September 20, 1969 an affidavit before Notary Public Narciso Adeva (Exhibit "8") repudiating his testimony in court further casts doubts on the integrity of this witness. In this statement he stated under oath that he falsely implicated appellant Salvador upon instruction of the lawyer of the Misamis Mahogay Timber Company because of his fear that his brother, Rogelio Mendoza, and his father, Delfin Mendoza, would be removed from their jobs with the Misamis Mahogay Timber Company. This affidavit was executed in the presence of two witnesses, Romeo Roa and Antipas Quilacio, and bears the Residence Certificate No. A-3868493, dated April 14, 1969 of Mendoza. While he repudiated this affidavit about eleven (11) days later or on October 1, 1969, when he was presented in court and testified that he signed the document "because they pushed me around in a room and they told me that if I will not sign in this document, they will have me killed", such repudiation is not impressive considering his admission that when he appeared before Notary Public Narciso Adeva to subscribe the affidavit, he did not reveal this alleged threat to his person, much less file any criminal or administrative charge against the persons purportedly involved.

The attempt of the other witness, Bonifacio Anob, to implicate Salvador is equally unavailing. It is true that this witness saw the incident in question but his testimony that Lebumfacil turned his face towards Salvador and Salvador nodded his head after which Lebumfacil shot the victim, appears to be an afterthought.

This is shown by the act that when this witness was investigated by the police in the evening of March 24, 1968 regarding the incident in question, he never mentioned about this alleged involvement of appellant Salvador. Thus, he declared in that investigation as follows:

"Q.

Will you relate how the incident took place?

A.

I Was driving Mr. PABLO CHUA to Pigsoutan, Iligan City, and I understood he was bringing payroll money there. When we reached Hinaplanon, Iligan City, CIRILO LADION alias "LOLOY", raised a hand and shouted "PARA", MR. CHUA ordered me to drive on saying he feared that was a hold up attempt. After delivering the money at Pigsoutan we headed back city ward and when we reached Hinaplanon, CIRILO LADION again shouted "PARA". I saw that he stood up beside some persons seated around a table and drinking from glasses at a small tuba store. I recognized the same persons as ROSENDO SALVADOR, RUDY LEBUMFACIL and others, and a few seconds after MR. CHUA told me to stop the car, I did, around a distance of 15 meters from where CIRILO LADION had signaled us to stop. MR. PABLO CHUA then got out of the car and he was met by CIRILO LADION. As LADION got near, I saw him point a finger at MR. CHUA and heard him say "KARON NIA KANA PATYON KA NAMO", and I observed as he talked that he was holding something at his waist which I saw was the handle of some bladed weapon he was armed with. At this outburst MR. PABLO CHUA drew his revolver and fired to the air. CIRILO LADION seeing this took his hand away from his weapon at the waist. Then I heard LADION and MR. CHUA talking. They did so for around five minutes and as they talked MR. PABLO CHUA became amiable and observed him smiling at LADION whom he patted on the shoulder. I noticed RUBY LEBUMFACIL walked towards them from the tuba store, proceed stealthily to the back of MR. PABLO CHUA and treacherously wrest the gun being held by MR. CHUA. I saw LEBUMFACIL then point the gun at MR. CHUA who began to put his arms before him and I heard him saying 'WALA AKONG KASALANAN, HINDI KITA KALABAN, HUWAG, HUWAG'. Plainly I heard CIRILO LADION say to LEBUMFACIL 'SIGI PATYA NA' then I heard the gun go off, saw MR. CHUA fell to the ground and as he lay there I saw LEBUMFACIL aim the gun downwards and fire another shot at MR. CHUA.

Q.

What happened after that?

A.

I put the car into gear and rushed away driving fast city ward and proceeded to the Police headquarters where I reported what I saw." (Exhibit "3").

It is true that, ordinarily, evidence taken on affidavit, being taken ex parte, is almost always incomplete, but the narration of the declarant in this affidavit appears sufficiently detailed to preclude the possibility that such an important matter was not included thru oversight, apart from the fact that this affidavit was executed before the Special Counsel, two days after the incident, and the declarant had, therefore, the opportunity to fully reflect on the details of the incident. Upon the other hand, Quimno admits that Bonifacio Anob is an eyewitness. Anob's testimony that when Chua raised his hands Quimno told Lebumfacil "go ahead, kill him" has not been successfully rebutted.

On the basis of the foregoing, Rudillo Lebum-facil and Cirilo Quimno should be the only ones held criminally responsible for the offense of murder. Since appellants Rudillo Lebumfacil and Cirilo Quimno had earlier been convicted of homicide by the Courts of First Instance of Cebu and Lanao del Norte, respectively, the aggravating circumstance of recidi-vism^[11] must be applied and the penalty for murder in its maximum period, which is death, should be imposed.^[12]

WHEREFORE, the Court finds Rudillo Lebumfacil and Cirilo Quimno guilty beyond reasonable doubt of the crime of murder and AFFIRMS the sentence of death imposed upon them by the trial court, in addition to their

civil liabilities in the sum of P12,000.00. Appellant Rosendo Salvador is hereby ACQUITTED on the ground of reasonable doubt.

SO ORDERED.

Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

[1] Article 248, in conjunction with Article 64, paragraph 3, Revised Penal Code.

[2] *People v. Jorge*, No. 47919, April 8, 1941, 71 Phil. 451.

[3] *People v. Lasafin*, L-5874, Feb. 11, 1953, 92 Phil. 668, 670.

[4] No. L-7136, November 30, 1955.

[5] *People v. Custodio*, L-30463, Oct. 30, 1972, 47 SCRA 289; *People v. Llamera*, L-21604-5-6, May 25, 1973, 51 SCRA 48; and *People v. Geronimo*, L-35700, Oct. 15, 1973, 53 SCRA 246.

[6] 98 C.J.S. 340-341.

[7] T.S.N., Hearings on Nov. 18,19,20, 1968, pp. 52-54.

[8] *Ibid.*, pp. 79-80.

[9] 11 Moore on Facts, 1005.

[10] *U.S. v. Cardona*, No. 11686, Mar. 15, 1917, 36 Phil. 348.

[11] Article 9, Revised Penal Code.

[12] Art. 64, par. 3, in relation to Art. 248, Revised Penal Code.

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