

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. M/SGT. REYNALDO LANDICHO, PAT. JOHNNY BUNYI, C1C ERIC MANLUSOC, AND C2C LEOVINO CANUEL, ACCUSED, C1C ERIC ANLUSOC, ACCUSED-AP...

G.R. No. 116600. July 03, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

As Juvenal once asked, "But who is to guard the guards themselves?"[1] This case deals not with a mere appeal from a conviction in a murder case. It is a tale, rather, an expose, of the warped sense of camaraderie which binds certain members of the law enforcement and penal systems in our country. This account of betrayal of the public trust stands as yet another stain on the honor of the Philippine National Police (PNP), at a time when its reputation and integrity are already in serious question.

On 8 January 1991, at 9:30 p.m., in Calapan, Oriental Mindoro, four members of the PNP gunned down Isagani Mazon in cold blood. Mazon died instantly, having suffered twenty-one (21) gunshot wounds, a number of which were at his back. As a result, the accused were charged with murder,[2] but in the interim, the trial court endowed them the privilege of being detained by their superiors, instead of customary incarceration at the provincial jail. And if only to exacerbate matters, the accused then escaped through the connivance or inexcusable negligence of their guardians. Of the accused, only the appellant was subsequently arrested.

On 30 August 1991, the accused were charged with murder in an information filed with the Regional Trial Court (RTC), Branch 39, Calapan, Oriental Mindoro, in Criminal Case No. C-3496, the accusatory portion reading:

That on or about January 8, 1991, at the Municipality of Calapan, Province of Mindoro Oriental, Philippines and within the Jurisdiction of this Honorable Court, the abovenamed accused, all public officers, being members of the Philippine National Police (PNP), conspiring with each other, with deliberate intent to kill and with the use of firearms, did then and there, willfully, unlawfully, feloniously and treacherously attack and shoot Isagani Mazon, a private person, hitting him at the vital parts of his body and inflicting upon him mortal wounds, thereby causing his instantaneous death.

CONTRARY TO LAW.[3]

No bail was recommended for their temporary liberty.

On 17 October 1991, the trial court, through Judge Marciano T. Virola, issued a warrant for the arrest of the accused.[4] On 24 October 1991, the accused allegedly surrendered at the PNP office in Oriental Mindoro. Then, in a first endorsement dated 25 October 1991, Superintendent Jaime L. Lasar, PNP Provincial Director of Oriental Mindoro, committed the accused to the trial court, but requested that they be detained at the PNP Stockade as they were members of the PNP Mindoro Oriental Command.[5]

On 29 October 1991, the accused filed a petition for bail and motion to transfer their detention from the Provincial

Jail to the PNP Headquarters pending hearing of their petition.[6] Judge Virola immediately granted the motion for transfer to the PNP Stockade at the PNP Mindoro Oriental Command Headquarters, on the condition that the accused would not be allowed to leave the stockade or "be placed in the custody of any person without order from [the] Court." [7] The trial court, however, denied the application for bail as the motion did not set the application for hearing. Branch Clerk of Court Rolando Caguete then committed the accused to Supt. Lasar for detention at the PNP Stockade.[8] Meanwhile, First Assistant Provincial Prosecutor Emmanuel S. Panaligan opposed the petition for bail and prayed that it be denied for lack of merit.[9] On 30 October 1991, the accused filed a notice to set for hearing the petition for bail.[10]

Upon arraignment on 5 November 1991, each of the accused entered a plea of not guilty.[11] The trial court then set the hearing on the petition for bail on 11, 18, and 19 November 1991, and the per-trial on 18 November 1991.[12] On even date, the private prosecutor, Atty. Alvin T. Sarita, moved to suspend the accused from the service pursuant to Section 47[13] of R.A. No. 6975 (Department of Interior and Local Government Act), which the trial court granted on 6 November 1991.[14]

The 11 November 1991 hearing on the petition for bail was cancelled but reset to 18, 19, and 20 November 1991.

In a letter dated 13 November 1991, Pedro Mazon, father of the victim, sought Judge Virola's assistance regarding information that all the accused were seen aboard the boat M.B. San Miguel bound for Batangas.[15] Judge Virola ordered the Calapan RTC Clerk of Court as ex-officio sheriff and his Branch Clerk of Court to investigate the matter[16] and directed Supt. Lasar to comment on Pedro Mazon's letter.[17]

In their report,[18] the aforementioned Clerks of Court informed Judge Virola that they went to the Oriental Mindoro PNP Command on 13 November 1991 at around 12:00 p.m., only to discover that accused Landicho and Bunyi were not there. According to the guard on duty, SP03 Fortunato Mendoza, the said accused, escorted by SP03 Julian Bilog, left the Mindoro Oriental PNP Command at about 11:50 a.m. and ate lunch outside the PNP Command. Later, at around 1: 10 p.m., Landicho and Bunyi returned with their escort SP03 Bilog. Bilog then informed the Clerks of Court that on 12 November 1991, at around 11:30 a.m., while he was the guard on duty, the four accused left the stockade for lunch and talked to someone about their case, with Landicho and Bunyi escorted by P02 Edilberto Santos, and accused Manlusoc and Canuel by SP02 Ernesto Javier. An hour later, only Bunyi returned; further, when the Clerks of Court left at about 2:00 p.m., Manlusoc and Canuel had not yet returned.

In his comment, Supt. Lasar confirmed that the four accused "were present at the place as they were seen [but] were guarded by escort." [19]

In his report[20] to the trial court, Senior Inspector Jesus T. Gatchalian, Commanding Officer of the 269th PNP Mobile Force Company, declared that at 11:20 a.m. of 12 November 1991, all the accused left for lunch with escorts. While Landicho and Bunyi returned to the PNP Stockade at 1:00 p.m. that day, Manlusoc and Canuel proceeded to Batangas, with escorts, to get financial support for their case. However, they returned to the PNP Stockade at 3:00 p.m. on 14 November 1991.

At the scheduled pre-trial on 18 November 1991, the trial court granted the motion of the accused to terminate the pre-trial and reset the hearing of the petition for bail on 23, 24, 27, and 30 January 1992.[21]

In his letter of 16 December 1991, Pedro Mazon informed Judge Virola that on 13 December 1991, he saw the four accused watching a cockfight in Barangay Sta. Isabel, Calapan.[22] Judge Virola referred the matter to Supt. Lasar,[23] who replied that on 13 December 1991, the accused were at the PNP Stockade, as evidenced by the certification issued by the Sgt. of the Guard and Guards on Duty at the time." [24]

The petition for bail was initially heard on 23 January 1992, with the prosecution presenting eyewitness Lilian Francisco. The hearing continued the following day with the prosecution ready to present Dr. Arturo Alberto; however, the defense and the prosecution agreed the dispense with Dr. Alberto's testimony and mark the following exhibits:

Exhs. "B"

--Necropsy Report "B-1"

--Dorsal Side of Exh. "B"

"B-2"

--Signature of Dr. Alberto On Exh. "B-1"

"C"

--Rough Illustration report

"C-1"

--Signature of Dr. Alberto on Exh. "C"

"D"

--Certificate of Death

"D-1"

--Signature of Dr. Alberto on Exh. "D"[25]

Consequently, the trial court issued an order, the pertinent portions providing:

After the prosecutor announced that the text witness that he is presenting is Dr. Arturo Alberto as medico legal expert, whose qualification as such was admitted by counsel for the accused, for the purposes to wit:

- (a) to identify the Necropsy Report issued by him connection with the Post Mortem examination conducted on the body of Isagani Mason;
- (b) to testify on the character and nature of the wounds sustained by Isagani Mason as well as the cause of the wound sustained by the victim which according to his opinion as stated in the Necropsy Report were all sustained by gunshot wound;
- (c) to testify as to the number of wounds sustained which is 21 gunshot wounds;
- (d) to testify to the effect that the victim sustained 7 gunshot wounds at the back;
- (e) to testify that the victim sustained 14 gunshot wounds in front of his body, two of which were inflicted on the head;
- (f) to identify the rough sketch showing the anterior and posterior position of a human body and to testify that the wounds sustained by the deceased as indicated were in front and at the back of the body;
- (g) to identify the certificate of death of Isagani Mason;
- (h) to testify as to the cause of death which is multiple internal injuries, secondary to gunshot wounds.

Counsel for the accused manifested that he is admitting that if presented on the witness stand said witness will testify according to the tenor and for the purposes as stated by the prosecutor in open court.

Forthwith, the prosecutor caused the marking of the Necropsy Report as Exhibits "B", "B-1", and "B-2", the Sketch showing the anterior view and posterior view and the location of the wounds indicated therein as Exhibits "C" and "C-1", the Certificate of Death of Isagani Mazon as Exhibits "D" and "D-1" and thereafter dispensed with the presentation of Dr. Arturo Alberto in view of the stipulation between the parties.[26]

On 16 March 1992, the prosecution presented Herman Mejico, Jr. as its third witness on the petition for bail and, thereafter, rested its case for the purpose.[27]

At the hearing on 17 March 1992, as their evidence in connection with the petition for bail, the accused only caused to be marked some documents and then rested their case. The documents marked were:

Exh. "1" -Alias Warrant of Arrest for Isagani Mazon in Criminal Case No. 3201, for violation of R.A. 6539 - Anti- Carnapping Act of 1972 - dated 2 January 1990;

Exh. "2" -Warrant of Arrest for Herman Mejico in Crim. Case No. C-2675 for attempted murder dated 28 January 1988;

Exh. "3" -Order of 28 August 1988 in Crim. Case No.C-2675 archiving the case since Mejico has not been arrested;

Exh. "4" -Warrant of Arrest for Isagani Mazon dated 27 August 1990 in Crim. Case No. C-3201;

Exh. "5" -Order of 18 December 1990 in Crim. Case No. C-3201 archiving the case.[28]

The trial court then considered the petition for bail submitted for resolution and set the reception of the prosecution's evidence on the merits of the case on 23 April and 24 April 1992.[29]

On the same date, 17 March 1992, the court granted Atty. Edgardo Acheron's withdrawal as defense counsel on the ground that he would seek election as Governor of Mindoro Oriental.[30] Likewise, the private prosecutor moved to transfer the detention of the accused to the Provincial Jail and cite the accused and the PNP Provincial Director in contempt of court because of persistent violations of the court's order not to allow the accused to leave the PNP Stockade nor to place them in the custody of any person without a court order.[31] The court deferred action on the motion for transfer until the petition for bail was resolved and required Supt. Lasar to comment on the motion to cite him in contempt.[32] Supt. Lasar responded that he had not received any information that the accused left the stockade without escorts and the accused were never moved to any detention cell other than the PNP Stockade.[33]

On 24 March 1992, the trial court issued an order[34] denying the petition for bail on the ground that evidence of guilt was strong, directing the transfer of the accused from the PNP Stockade to the Calapan Jail Center, and reiterating its previous order that the accused would not be allowed to leave the Jail nor be placed in the custody of any person, unless otherwise ordered by the court.

On 27 March 1992, the trial court denied the prosecution's motion to cite the accused and the PNP Provincial Director in contempt of court due to "humanitarian reasons"; moreover, the prosecution failed to substantiate its allegations in the said motion.[35]

The hearing on the merits of 23 April and 24 April 1992 were reset to 20 May and 21 May 1992.[36]

In a letter dated 5 May 1992, Pedro Mazon complained once more to Judge Virola that he saw the four accused roaming the town of San Vicente, Calapan, and often staying in a house in Libis, another town in Calapan.[37] Judge Virola asked the Provincial Jail Warden to comment[38] and the latter replied that the accused "are at present inside the jail," although at one time "they requested to be escorted by Mr. Saure, Prison Guard, to consult their legal counsel, hence it may have been possible that they were seen outside.[39]

On 10 May 1992, the prosecution moved for the issuance of a bench warrant for the arrest of the accused who had been roaming around Calapan without police escorts.[40] Thus the trial court ordered the PNP Provincial Director to cause the immediate arrest of all the accused and place them inside the Provincial Jail, and the Provincial Jail Warden to show cause why he should not be cited for contempt of court for allowing the accused to roam around.[41]

On oral order of Judge Virola, Clerk of Court Armando E. Fortus went to the Provincial Jail on 12 May and 13 May 1992 to verify the private prosecutor's allegations that all the accused were seen "roaming around without any escorts and carrying firearms." Fortus reported that on the said dates Bunyi, Manlusoc, and Canuel "were all out of the Provincial Jail Center for the reasons that they were in the custody of the Provincial Governor, however, M/Sgt. Reynaldo Landicho was there . . ."[42]

Since Supt. Lasar did not comply with the above order, the court issued on 14 May 1992 another bench warrant for the arrest of all the accused, except Landicho, and redirected the Provincial Jail Warden not to allow the accused to be placed in the custody of any person, including the Governor.[43]

Then, on 15 May 1992, the trial court received information from Provincial Jail Warden Menandro S. Abac that:

[T]he four (4) ... accused were reported in the Logbook as escaped prisoners as of May 9, 1992 while Guard-on-Duty was busy attending in serving meals for lunch to our inmates. The four accused left unnoticed and might have used the exit way going to the Provincial Capitol Compound.[44]

At the scheduled hearing on 20 May 1992, none of the accused appeared despite notice. Upon request of Atty. Ligorio Turiano of the Public Attorney's Office (PAO), who was appointed by the court as de officio counsel for the accused, the hearing on that day was adjourned until the following day, as scheduled.

The accused did not appear on 21 May 1992. The prosecution rested its case by adopting as its evidence on the merits the evidence it had presented on the petition for bail. The trial court then set the reception of the evidence for the defense on 1, 4, 8, 9, and 10 June 1992.[45]

At the scheduled hearing on 1 June 1992, counsel for the accused asked for a postponement on the ground that he had not been able to contact the accused who, according to the Provincial Jail Warden, had escaped. The court, granted the motion but directed the hearing to proceed on the succeeding scheduled dates of 4, 8, 9, and 10 June 1992.[46]

The hearing on 4 June 1992 was also postponed on motion of counsel for the accused.[47] At the hearing on 8 June 1992, the defense presented Sgt. Rogelio M. Rogelio[48] who merely identified photocopies of certain documents.[49] The defense then moved to reset the next scheduled hearings because the wife of accused Landicho was still trying to convince the latter to return to the folds of the law.[50] The trial court, for humanitarian reasons, but over the vehement objections of the prosecution, granted the motion and reset the trial on 16 June and 17 June 1992.[51]

On 16 June 1992, the accused, through their new counsel, Atty. Renato G. dela Cruz, moved to quash the information on the ground that the trial court had no jurisdiction over the subject matter of the case. They claimed that under P.D. No. 1486, crimes committed by public officers were within the original and exclusive Jurisdiction of the Sandiganbayan, and although Section 46 of R.A. No. 6975 provided that "criminal cases involving PNP members shall be within the Jurisdiction of the regular courts," the term "courts" referred to the Sandiganbayan.[52] The trial court denied the motion to quash[53] and considered Atty. dela Cruz' verbal motion for a grant of five days within which to file a motion for reconsideration as dilatory.[54]

Since Atty. dela Cruz manifested that he was not ready to present evidence, the trial court issued on 16 June 1992

an order declaring the accused as having, waived the presentation of evidence since they had not been re-arrested and repeatedly failed to present evidence despite the several occasions afforded them. Thus, the trial court set the promulgation of judgment on 1 July 1992.[55]

On 29 June 1992, however, Atty. dela Cruz filed a motion praying that the scheduled promulgation be cancelled and further proceedings suspended, citing *Eternal Gardens Memorial Park vs. Court of Appeals*,[56] because the accused had filed a "25-page Petition for Certiorari, Prohibition With Writ of Preliminary Injunction & Prayer for Temporary Restraining Order" before the Court of Appeals, docketed therein as CA-G.R. SP No. 28210. On 1 July 1992, the trial court denied the motion and promulgated its decision[57] as scheduled. The dispositive portion reads:

ACCORDINGLY, the Court finds all the accused guilty beyond reasonable doubt, as principals, of the crime of Murder, defined under Art. 248 of the Revised Penal Code and penalized therein by reclusion temporal in its maximum period, to death, with the qualifying circumstance of treachery and with the ordinary aggravating circumstance of the crime having been committed by a band and advantage having been taken of superior strength. Considering that there are two ordinary aggravating circumstances and no mitigating circumstance present, the penalty that accused must suffer should be the maximum period of the penalty provided by law. Considering, however, the abolition of the death penalty under the Constitution of 1987, the hands of the Court are tied in imposing the supreme penalty of death.

Consequently, all the accused are hereby sentenced to suffer the penalty of reclusion perpetua, together with all the accessory penalties provided by law and to pay the costs.

Accused are likewise ordered to pay jointly and severally the legal heirs of the victim Isagani Mazon the amount of P50,000.00 by way of actual and compensatory damages without subsidiary imprisonment in case of insolvency.

Let warrants of arrest be issued for the arrest of the accused and the different police agencies be furnished with copies thereof to effect the recapture of all the accused who had escaped from confinement during the progress of the trial.[58]

The following disquisitions of the trial court support its judgment:

To substantiate the allegation of the Information, the prosecution presented Lilian Francisco and German Mejico, Jr. The presentation of Dr. Arturo Alberto whose qualification as medico legal expert was admitted by counsel for the accused, was dispensed with in view of the stipulation that, should said witness be presented on the witness stand, he would testify, among others, that he was the one who conducted the post mortem examination on the body of deceased Isagani Mazon; that the victim sustained 21 gunshot wounds, 7 of which were sustained at the back, 14 of which were in front, and 2 of which were on the head; and that the cause of the death of the victim is multiple internal injuries secondary to gunshot wounds.

From the evidence adduced by the prosecution, it has been sufficiently established that sometime on January 8, 1991, at around 9:30 in the evening, while the victim Isagani Mazon was walking together with German Mejico, Jr. on J.P. Rizal St., Calapan, Oriental Mindoro near the Main Deck which is opposite the building where the Pizza Galera Restaurant and Hotel Domini are housed, accused Johnny Bunyi and Eric Manlusoc approached them. Isagani Mazon told German Mejico, Jr. to go away and after German Mejico, Jr. had moved away around 10 arms length from Isagani Mazon, accused Johnny Bunyi and Eric Manlusoc fired their short firearms at Isagani Mazon while accused Sgt. Reynaldo Landicho and Leovino Canuel rushed towards Isagani Mazon and likewise fired their guns at Isagani Mazon. The shooting incident was also witnessed by Lilian Francisco who was then ascending the stairs of the building where the Domini Hotel and Pizza Galera Restaurant are housed. Lilian Francisco recognized all the accused because she knew all of them prior to the incident in question. She knew Johnny Bunyi for around one month prior to the incident in question; Eric

Manlusoc around a year prior to the incident in question; Leovino Canuel also around a year prior to the incident in question; and Reynaldo Landicho even before the COSAC organized by the military was disbanded. She recalled that accused Reynaldo Landicho formerly resided at the back of the Mindoro College and accused Johnny Bunyi, Eric Manlusoc and Leovino Canuel used to visit and drink in the Mariwasa Restaurant where she formerly worked as floor manager of the ladies working thereat.

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After the cancellation of the scheduled dates of trial on June 1 and 4 at the instance of counsel for the accused, counsel for the accused presented SP03 Rogelio Rogelio on June 8, 1992 who identified certain documents namely, xerox copy of the statement of M/Sgt; Landicho, xerox copy of the statement of Johnny Bunyi, xerox copies of the joint statements of Leovino Canuel and Eric Manlusoc, xerox copy of the Investigation Report of SP03 Rogelio, xerox copy of alias warrant of arrest against Isagani Mazon in Criminal Case No. C - 3201 of this Court. Thereafter, counsel for the accused asked for continuance and for the cancellation of the trial on June 9 and 10 and prayed that accused be given another opportunity to present further evidence on June 16 and 17, 1992, all starting at 8:30 in the morning and the same was granted by the Court in view of the manifestation of the counsel for the accused that the wife of one of the accused is trying her best to convince the accused to return to the fold of the law in order to testify in this case.

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For repeated failure of the accused to present their evidence despite the fact that they were given several opportunities to do so although they had escaped from the Provincial Jail, the Court considered the accused to have waived the presentation of their evidence and the case was considered submitted for decision.

Even admitting that there was a warrant issued by the Court for the arrest of Isagani Mazon in Crim. Case No. 3201 the accused were ordered by their Commanding Officer to serve the same, the accused were not by that fact alone justified to shoot and kill Isagani Mazon. They have to establish by clear and convincing evidence that they were justified in killing Isagani Mazon. Instead of testifying in their favor to prove justifying or exempting circumstance accused escaped from the provincial jail after the prosecution has rested its case.

The act of the accused in escaping from the custody of the law during the progress of the trial of the case against them is indicative of their guilt (citations omitted).

Considering that in killing Isagani Mazon accused employed means, methods and forms in the execution thereof which tended directly and especially to ensure its execution without risk to themselves arising from the defense which said Isagani Mazon might make, the commission of the crime is attended by the qualifying circumstance of treachery. The commission of the crime is likewise attended by the ordinary aggravating circumstance of the crime having been committed by a band considering that all the four accused were all armed with firearms and acted together in the commission of the offense. The commission of the offense is also attended by the ordinary aggravating circumstance of advantage having been taken of superior strength considering that the victim Isagani Mazon was unarmed while the four accused were armed with firearms.[59]

At the promulgation of judgment, the trial court was informed by the PNP Criminal Investigation Service Command (PNP-CISC), Fourth Regional Office, that accused Manlusoc was arrested on 26 June 1992 at Barangay Mendez Crossing, Tagaytay City.[60] With this information, the trial court, pursuant to its judgment, caused warrants of arrest to issue against Landicho, Canuel, and Bunyi.[61]

On 3 July 1992, accused Manlusoc was surrendered to the court pursuant to its order for the purpose of committing him to the National Penitentiary in Muntinlupa.[62] Manlusoc was then turned over to the custody of the Provincial Jail Warden of Calapan.[63]

On 8 July 1992, accused Landicho, Bunyi, and Canuel, who remained at large, through Atty. dela Cruz, filed a

motion to quash the warrant of arrest issued against them on the ground that the Court of Appeals had given due course to their petition questioning the trial court's jurisdiction.[64] In a supplemental manifestation filed the following day, Atty. dela Cruz called the attention of the trial court to the resolution of the Court of Appeals in CA-G.R. SP No. 28210 directing the trial court to answer the petition and to show cause why injunction should not issue.[65] Agreeing with the prosecutor's opposition that the motion to quash was premature as giving due course to the accused's petition did not automatically render void the proceedings before it,[66] the trial court denied the motion.[67]

On 15 July 1992, the trial court denied the Provincial Jail Warden's request to allow him to escort Manlusoc to Tagaytay City for a hearing in a case of illegal possession of firearms filed against Manlusoc. Further, the trial court directed the Provincial Jail Warden to commit Manlusoc to the National Penitentiary in Muntinlupa "under tight security." [68]

On 16 July 1992, Atty. dela Cruz filed a Notice of Appeal Ad Cautelam[69] which the trial court denied due course to as it was remotely contingent upon the Court of Appeals finding that the trial court had jurisdiction over the case.[70]

Later, on 30 September 1992, the four accused filed a Supplemental Petition before the Court of Appeals in CA-G.R. SP No. 28210 asking the said court to declare the trial court to be without Jurisdiction over Criminal Case No. C-3496 and as null and void the subsequent orders of the trial court, including its denial of their notice of Appeal Ad Cautelam.[71] This supplemental petition was verified by the four accused who subscribed and swore to such verification before their counsel, Atty. dela Cruz, in his capacity as a notary public and who entered such fact in his notarial register as Doc. No. 320; Page No. 65; Book No. III, Series of 1992.[72]

In its decision of 22 September 1993 in CA-G.R. SP No. 28210, the Court of Appeals dismissed the accused's petition for certiorari and prohibition, but partially granted the supplemental petition in favor of Eric Manlusoc, by ordering the trial court to give due course to Manlusoc's appeal to this Court.[73]

Unsatisfied, the accused filed in this Court a petition for review, G.R. No. 110792, which we denied in our resolution of 22 November 1993 as the Court of Appeals committed no reversible error. We also denied the motion to reconsider the resolution.[74] Meanwhile, the trial court to gave due course to the appeal of Manlusoc as directed by the Court of Appeals.[75]

The only valid appeal then is that of accused C1C Eric Manlusoc who was re-arrested five days before the promulgation.[76] On 29 May 1995, this Court accepted Manlusoc's appeal.[77]

In his Appellant's Brief, Manlusoc imputes to the trial court seventeen "errors." He contends that:

I. THE JUDGMENT OF THE TRIAL COURT WAS A NULLITY IN THAT IT FAILED TO CONTAIN SUFFICIENT FINDINGS OF FACT TO PRONOUNCE A JUDGMENT OF CONVICTION AS MANDATED UNDER THE CONSTITUTION;

and that the trial court erred:

II....IN HAVING CONVICTED APPELLANT WITH MURDER DESPITE THE LACK OF PROOF OF THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED IN THE INFORMATION;

III....IN HAVING FOUND APPELLANT GUILTY OF MURDER DESPITE THE FAILURE OF THE MEDICO-LEGAL, OFFICER TO TESTIFY ON THE FACT OF DEATH OF TTIE VICTIM; TTIE NATURE OF THE INJURIES SUSTAINED AND THE CAUSE OF DEATH;

IV. ...IN HAVING FOUND THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS

PRESENT NOTWITHSTANDING THAT NO LESS THAN PROSECUTION'S OWN EVIDENCE HAD ESTABLISHED ITS ABSENCE;

V. ...IN NOT HAVING MADE ANY FINDING IN ITS DECISION THAT THE BULLET WHICH CAME FROM THE GUN OF APPELLANT HIT THE VICTIM;

VI. ...IN HAVING MADE [THE] ASSUMPTION AND CONCLUSION THAT BECAUSE THE APPELLANT AND HIS CO-ACCUSED FIRED THEIR GUNS, THE VICTIM'S DEATH RESULTED THEREFROM;

VII....IN HAVING MADE A GENERALIZED CONCLUSION OF THE DEATH OF THE VICTIM SIMPLY BECAUSE HE WAS SHOT BY THE APPELLANT AND HIS CO-ACCUSED;

VIII....IN FINDING APPELLANT GUILTY OF MURDER DESPITE LACK OF PROOF THAT THE GUNSHOT COMING FROM APPELLANT'S FIREARM HIT THE VICTIM;

IX. ...IN FINDING APPELLANT GUILTY OF MURDER DESPITE THE ABSENCE OF EVIDENCE AS TO WHO'S GUNSHOT WOUND WAS FATAL;

X. ...IN FINDING APPELLANT GUILTY OF MURDER DESPITE THE ABSENCE OF PROOF OF CONSPIRACY BETWEEN AND AMONG THE APPELLANT AND HIS CO-ACCUSED;

XI. ...IN HAVING FOUND THE AGGRAVATING CIRCUMSTANCE OF BAND TO BE ATTENDANT IN THE COMMISSION OF THE ALLEGED CRIME OF MURDER;

XII....IN HOLDING THAT THE APPELLANT AND HIS CO-ACCUSED IN FACT ESCAPED;

XIII....IN HAVING RULED THAT THE ALLEGED ESCAPE OF THE APPELLANT AND HIS CO-ACCUSED DURING THE TRIAL INDICATED AN ADMISSION OF GUILT;

XIV....IN NOT HAVING MADE A FINDING IN ITS; DECISION AS TO THAT PART OF THE TESTIMONY OF THE WITNESSES WHICH IT CONSIDERED BELIEVABLE;

XV....IN NOT HAVING RULED THAT THE TESTIMONY OF BOTH PROSECUTION WITNESSES LILIAN FRANCISCO AND HERMAN MEJICO, JR. WAS REplete WITH MATERIAL INCONSISTENCY AFFECTING THEIR CREDIBILITY;

XVI....IN HAVING GIVEN CREDENCE TO THE TESTIMONY OF LILIAN FRANCISCO AND HERMAN MEJICO, JR. NOTWITHSTANDING PRESENCE OF CIRCUMSTANCES INDUBITABLY SHOWING THAT THEIR TALE OF THE ALLEGED SHOOTING WAS UNBELIEVABLE AND CONTRARY TO HUMAN EXPERIENCE; and

XVII....IN NOT HAVING ACQUITTED APPELLANT CONSIDERING THAT THE PROSECUTION HAD FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[78]

In its Brief for the Appellee, the Office of the Solicitor General refutes all errors assigned by the appellant, but recommends, however, that the appellant should only be convicted of the crime of homicide because:

[I]t cannot be said that the killing of Mazon was attended by treachery. No evidence was presented to show that prior to the killing, appellant and his co-accused had determined to commit the crime and consciously adopted the mode of attack.[79]

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[W]here there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime or there is no proof that the death of the victim was the result of meditation, calculation, or reflection,

treachery cannot be considered.[80]

If the decision to kill was sudden, there is no treachery, even if the position of the victim was vulnerable, because it was not deliberately sought by the accused, but was purely accidental.[81]

It asserts, further, that the aggravating circumstance of abuse of superior strength was duly proven by the prosecution; nevertheless, since it was not alleged in the Information, it may only be considered as a generic aggravating circumstance.

We cannot proceed to resolve the assigned errors without first commenting on certain lapses of the trial court, which only heighten a suspicion that the accused initially obtained generous concessions from it. It immediately granted, ex-parte, their request to be detained at the PNP stockade but, at the same time, denied the accompanying motion for bail solely on the ground that it did not set it for hearing, although both motions were contained in one petition. It took no positive action against the accused, the PNP Provincial Director, and the Provincial Jail Warden, despite admissions that the accused had been allowed to roam around unescorted and even go to Batangas without leave of court in all instances. Then strangely, it rejected the motion for contempt on the flimsy ground of "humanitarian" considerations. Worse, it did not pursue any disciplinary action against the Provincial Jail Warden despite the latter's failure to comply with the "show cause" order of 10 May 1992.

Compounding the matter, although the trial court had been belatedly informed by the Provincial Jail Warden on 15 May 1992 that the accused had escaped from the Provincial Jail on 9 May 1992, and by Clerk of Court Fortus that on 12 May and 13 May 1992 accused Bunyi, Manlusoc, and Canuel were in the custody of the Provincial Governor, the trial court did not either order the Provincial Jail Warden to formally investigate the escape nor direct the Provincial Governor to show cause why he kept the "escaped" prisoners.

What is more appalling is that although it validly tried the accused in absentia[82] because they escaped, it conveniently forgot that by their escape, the accused waived their right to present evidence and cross-examine the witnesses against them.[83] Accordingly, the testimony of Sgt. Rogelio M. Rogelio on 8 June 1992 and all documents identified by him (Exhibits "1" to "5-A," inclusive) must be rejected.

Needless to say, the conduct of the trial court leaves much to be desired.

We now turn to the assigned errors.

The first assigned error is patently without merit. The challenged decision substantially complied with the requirements of both Section 14, Article VIII of the Constitution[84] and Section 2, Rule 120 of the Rules of Court.[85] The pertinent disquisitions therein, as well as its dispositive portion earlier quoted, readily show such compliance. It sets out the facts which it believed were proved and the law upon which the judgment was based, and states the legal qualifications of the offense constituted by the facts proved, the modifying circumstances, the participation of the accused, the penalty imposed, and the civil liability.

The remaining assigned errors are interrelated and may be classified as follows:

That the trial court erred:

I. In holding that the crime of murder was committed despite absence of proof of its essential elements (First and Fourth assigned errors);

II. In holding the appellant guilty despite lack of evidence against him (Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Fifteenth, Sixteenth, and Seventeenth assigned errors);

III. In appreciating the aggravating circumstance of band (Eleventh assigned error);

IV. In holding that the appellant and his co-accused had escaped and such escape indicated an admission of guilt (Twelfth and Thirteenth assigned errors);

V. In not making a finding as to what part of the testimony of the witnesses it considered believable (Fourteenth assigned error).

We resolve them in seriatim.

I. The qualifying circumstance alleged in the Information was treachery and the trial court appreciated it as:

[I]n killing Isagani Mazon accused employed means, methods and forms in the execution thereof which tended directly and especially to ensure its execution without risk to themselves arising from the defense which said Mazon might make ...[86]

While the above was a mere conclusion without an accompanying explanation, such a lamentable inadequacy does not, per se, justify a reversal of the decision. Since the appellant's appeal opens the whole case for review,[87] we shall, on the basis of the evidence, determine for ourselves if the killing of Isagani Mazon was attended with treachery.

For treachery to be present, two conditions must concur: (1) the means, method, and form of execution employed giving the person attacked no opportunity to defend himself or to retaliate; and (2) that such means, methods, or form of execution were deliberately and consciously adopted by the accused.[88]

In the case at bench, the victim seemed to have expected trouble, considering that upon seeing Manlusoc and Bunyi approaching him, he told his companion, Mejico, to move away. Nevertheless, treachery may still be appreciated for even when the victim was warned of danger to his person, what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate[89]The evidence clearly bears this out. The victim was unarmed and the accused gave no warning. The victim was then totally unprepared to even guess that the appellant and his co-accused Canuel - who were the first two who appeared - would pepper him with bullets. It was for this reason that the appellant asserted in his Brief:

[I]nstead of running away when he had the opportunity to do so, the victim went straight, continued to walk towards the appellant and Canuel and faced them.[90]

This reaction only showed that the victim had no inkling whatever that he would be fired upon. The assault was indisputably sudden and the victim's premonition of peril did not negate the treacherous nature of the attack.

That it was impossible for the victim to defend himself or retaliate is obvious from other circumstances of this case. While the accused each had a gun, there is no proof that the victim was armed. The appellant's allegation that "[t]ruly, after the shootout, the victim yielded a gun and a dagger,"[91] does not even point to the source of such a conclusion. If it were the testimony or report of defense witness Rogelio, the same, as already noted above, must be rejected. If, indeed, the victim had a gun and dagger, the accused should have presented them at the hearing on the application for bail.

A sudden attack against an unarmed victim shows treachery.[92] Furthermore, it was shown that the first shot, towards the victim's head, came from behind the victim.[93] While it has been said that a dorsal attack alone does not indicate treachery,[94] the assault in this case was also sudden, unexpected, and without warning, thus suggesting treachery.[95]

As to the method of execution, we find that the accused, including the appellant, adopted it deliberately. We disagree with the submission of the Office of the Solicitor General that treachery was absent because of lack of evidence that prior to the killing, appellant and his co-accused had determined to commit the crime and

consciously adopted the mode of attack." [96] The number and location of the gunshot wounds, two in the head, and at both the anterior and posterior portions of the body as shown in Exhibit "C", are enough to banish any motive of an accidental shooting. [97] The severity of the accused's acts indicate a calculated pursuit of a decision to kill.

Treachery being present, it was then error for the trial court to consider the generic aggravating circumstance of abuse of superior strength as an independent aggravating circumstance. It is settled that treachery absorbs abuse of superior strength. [98]

II. Under the second classification of his assigned errors, the appellant contends that the trial court erred in holding him guilty of murder: (a) despite the failures of the medico-legal officer to testify to the fact of death of the victim (Third assigned error) and of the trial court to make a finding that the bullet which came from his (appellant's) gun hit the victim (Fifth assigned error); (b) despite absence of proof that the gunshot coming from his (appellant's) firearm hit the victim (Eighth assigned error) and as to who caused the fatal gunshot wound (Ninth assigned error) and of conspiracy (Tenth assigned error); (c) in having assumed that because he and his co-accused fired their guns, the victim's death resulted therefrom (Sixth assigned error) and made a generalized conclusion of the death of the victim simply because he was shot by him (appellant) and his co-accused (Seventh assigned error); and (d) in giving credit to the testimony of prosecution witnesses Lilian Francisco and Herman Mejico although the same was replete with material inconsistencies affecting their credibility (Fifteenth assigned error) and notwithstanding the presence of circumstances indubitably showing that their tale of the alleged shooting was unbelievable and contrary to human experience (Sixteenth assigned error).

These errors fail to impress.

It is untrue that the medico-legal officer failed to testify to the fact of death of the victim. As earlier shown, the said officer, Dr. Arturo Alberto, was ready to testify on 24 January 1992 in connection with the petition for bail, but the defense and the prosecution dispensed with his testimony on the basis of the stipulation as to the nature, tenor, and extent of his testimony and admission by the former of the qualifications of Dr. Alberto. Further, the defense chose not to cross-examine him. It probably intended to subject him to more searching questions during trial on the merits. But they escaped before such time. Thus, when the prosecution rested its case for the trial on the merits by adopting the evidence it introduced at the hearing of the petition for bail, which included that of Dr. Alberto and the documents prepared by him, the appellant lost his opportunity to cross-examine Dr. Alberto, through no fault of the prosecution or any other, but solely his own. The appellant cannot now be heard to complain.

There is equally no basis for the sixth and seventh assigned errors. The appellant admitted in his Brief that he, Canel, and Bunyi shot Isagani Mazon. [99] Dr. Alberto attributed the victim's death to multiple internal injuries secondary to gunshot wounds, [100] which was undisputed.

The victim suffered no other injury aside from those inflicted by the accused. The unbroken chain of events from the accused's wounding of the victim to the latter's death induces no other conclusion than that the accused's acts led to the victim's death.

As to conspiracy among the four accused (Tenth assigned error), the challenged decision does not, indeed, mention conspiracy. Nevertheless, one cannot infer the absence of conspiracy from such silence. Direct proof is not essential to prove such a scheme, and its existence may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of intent. [101] It is sufficient that the malefactors acted in concert pursuant to the same objective. [102]

There was conspiracy in this case considering that the accused's synchronous presence at the crime scene was not mere coincidence. The appellant admitted that he and his co-accused belonged to the same intelligence team which was then purposely searching for Mazon.[103] Additionally, the evidence on record shows that Bunyi shot the victim from behind,[104] after which Manlusoc, positioned in front of the victim, also shot the latter.[105] Canuel and Landicho then rushed to the scene and shot the victim again while he was lying on the ground.[106] Afterwards, the four accused dumped the victim in a Philippine Constabulary service vehicle and drove away in the said vehicle.[107] The accused's simultaneous movement towards and concerted attack on the victim, and their coordinated escape from the crime scene clearly evince the existence of conspiracy.

There being conspiracy and it being proven that the victim died by the hands of the conspirators, the fifth, eighth, and ninth errors need not detain us long. Manlusoc claims it was never proven that he shot the fatal bullet, thus, he cannot be held liable for the victim's death. However, where conspiracy is proven, the act of one is the act of all.[108] Consequently, it does not matter if Manlusoc did not fire the fatal shot, for all the accused are equally responsible for the killing of the victim.[109]

The fifteenth and sixteenth assigned errors concern the credibility of the two prosecution witnesses, Lilian Francisco and Herman Mejico. Often emphasized is the rule that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[110]

The appellant gives this Court no reason to overturn the trial court's assessment of the prosecution witnesses' credibility, even though he claims the two witnesses:

[a]lmost jibed in their declarations in claiming that they both saw all the four (4) appellant and the co-accused shot the victim, just to be sure they got convicted.

But inconsistency, not consistency, as to material facts is the mark of lack of credibility. Thus, among the tests of integrity of evidence are whether the testimonies agree on the essential facts and whether the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole.[111] The appellant, however, points out the consistency of the testimonies of the prosecution witnesses and, in effect, endorses their honesty.

The appellant also calls our attention to Francisco's former job as a procurer of flesh[112] to discourage this Court from believing her testimony. Francisco revealed her trade through the following exchange:

CROSS-EXAMINATION BY ATTY. ACERON:

Q

You stated on direct examination that you are the floor manager of the ladies in the Mariwasa Restaurant on or about January 8, 1991. Do you affirm that?

A

Yes, sir.

Q

So, do I understand ... that you are an employee and receiving salary from the proprietor or owner of the Mariwasa Restaurant?

A

No, sir.

Q

Why? What is the nature of your work as floor manager of the ladies of the Mariwasa Restaurant on or about that date?

A

I only receive commissions from the ladies thereat.

Q

What for is that commission?

A

I receive a commission of P1.00 for every lady's drink.

Q

And that is the source of your income as floor manager of the ladies?

A

There is an additional amount I receive like for instance when ladies are brought out by customers and whatever they receive they give me a certain percentage.

xxx xxx xxx

Q

And these ladies are prostitutes?

A

That is it, sir.

Q

So you are the procurer or pimp, not-the floor manager of the ladies?

PROSECUTOR PANALIGAN:

Objection, Your Honor, misleading and assumes a fact.

xxx xxx xxx

COURT:

All right, inform the witness that the question tends to incriminate her because the question tends to insinuate that she is a pimp or procurer and said act is penalized by law. Inform her that it is her right not to answer the question if she so desires, but if she wants to answer the question she is at liberty to do so, but she cannot be forced to answer the question.

A

I may answer or I may not.

COURT:

Q

Precisely, you are being asked. It is your right not to answer. Do you want to answer the question?

A

I am willing to answer the question.

COURT:

All right, then answer the question.

A

Yes, sir.[113]

Such admission given openly and after the witness was informed of her right not to disclose her line of work emphasized her trustworthiness. The revelation enhanced, not impaired, Francisco's credibility.[114]

Still doubting her honesty, the appellant claims Francisco's varied reactions to the events she witnessed are contrary to human experience. For instance, Francisco testified:

Q

Now, from the time that you heard the first shot when you were then ascending the Domini Hotel, how many minutes elapsed, more or less, up to the time that you heard again the bully of the second shot?

A

A split while because the shot I heard is like a super lolo.[115]

The appellant then inquires, "If what she heard was a super lolo cracked, why did she have a peculiar interest to find out what it was?" Obviously, the appellant misinterpreted Francisco; if he had read the rest of the testimony he would not have missed the following explanation:

Q

And when you heard the shot you thought it was [a] super lolo and not a report from a gun?

PROSECUTOR PANALIGAN:

Misleading, Your Honor.

ATTY. ACERON:

I am on cross-examination, Your Honor.

COURT:

Witness may answer.

A

The sounds of the shots were like the super lolo because the shots were successive.[116]

As early on as the direct examination, Francisco made it clear that her attention was drawn to the incident because she heard a shot, not an exploding firecracker:

Q

Now, while you were ascending the stairs of the Domini Hotel towards the direction of Pizza Galera upstairs, do you know of anything unusual which occurred?

A

Yes, sir.

Q

What was that incident?

A

While I was ascending and was on the third step I heard a shot.[117]

The appellant cites other incidents testified to by Francisco which he claims is contrary to human experience. However, as with the super lolo example, each alleged contradiction was adequately clarified in Francisco's testimony. Besides, among witnesses there can be no standard reaction to a crime.[118]

Persistent in his attempts to cast doubt on Francisco's credibility, the appellant argues then queries:

Incidentally, her testimony that she heard the victim dared the four (4) lawmen and said: "sige patayin ninyo ako," is this credible? No sane person would utter such statement especially by the victim who was a former Marine soldier. More incredibly, why should Landicho and Canuel under mission to serve a warrant of arrest call the challenge and shoot simultaneously?[119]

This Court cannot be expected to delve into the state of mind of persons, especially deceased victims and escaped detainees, hence, these queries have no bearing on Francisco's credibility.

The appellant also cites omissions in Francisco's sworn statement[120] taken at the National Bureau of Investigation (NBI) office in Batangas City. Particularly, in relating the killing, Francisco failed to give the names of Manlusoc and Bunyi. On the witness stand, she explained that the omission was due to the investigating officer's failure to ask for the names of the said accused.[121] However, Francisco mentioned in her sworn statement the names Landicho and "Bunso" without being asked for the same. Still, the omission is too trivial to dent Francisco's credibility, especially since affidavits are almost always incomplete and often inaccurate,[122] as they are usually not "prepared by the affiant himself but by another who uses his own language in writing the affiant's statements." [123] Moreover, affidavits are generally considered to be inferior to testimonies given in open court,[124] hence, an omission in the affidavit can not automatically discredit a witness. At any rate, the decisive factor is that the witness in fact identified the accused,[125] which Francisco did, not only in her testimony but also in the later portion of her sworn statement where she named one of the assassins as "Tenyente,"

an alias used by the appellant.[126]

The appellant then assaults Francisco's report to the NBI on 21 January 1991, when the killing occurred on 8 January 1991. We, however, take Judicial notice of the actuality that witnesses in this country are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations.[127]

Since the transcript of her testimony consumed 102 pages, Francisco's examination must have taken hours to complete, interrupted only by a short recess[128] and a break at noon.[129] Yet, this witness weathered a grueling cross-examination bordering on harassment and remained coherent and unfeigned throughout. This Court can, therefore, only lend credence to Francisco's testimony.

As regards Mejico, the appellant questions his "bravery" when he opted to witness what would happen to his friend, Mazon, and did not move away as the victim ordered him to do. Bravery is not a cause for disbelieving a witness, and his concern for the well-being of a friend was certainly understandable.

To discredit Mejico, the appellant cites this witness's admission that he had never seen any of the accused, except Landicho, until the incident complained of.[130] The appellant's observation is of no moment, for a witness' statement that he does not know the perpetrators does not mean he cannot identify them.[131]

Still hoping to dilute the witnesses' credibility, the appellant contends that they are under the protection of Barangay Captain "Pae" Roxas, relative of the victim.[132] This fact is immaterial since Roxas was never shown to have influenced the witnesses. On the contrary, that the witnesses needed Roxas's protection only highlighted the banefulness of the accused.

Yet, there is one point of discrepancy between the prosecution witnesses' testimony: the position of the victim when Landicho and Canuel shot him. Francisco claimed the victim was lying face downward[133] while Mejico said he was lying on his back.[134] However, this disparity may be attributed to the different vantage points from which the witnesses observed the event. Francisco observed the killing at an oblique angle[135] and about four or five arms length away,[136] while Mejico viewed the crime some ten meters away and, it seems, not at an angle.[137] At any rate, the discrepancy is not sufficient to cast doubt on the testimonies since the witnesses agree on the material point that while the victim was lying on the ground, Canuel and Landicho shot him.

III. The trial court correctly appreciated the generic aggravating circumstance of band. There is band whenever more than three armed malefactors shall have acted together in the commission of the offense.[138] In the present case, the four accused, each armed with a gun, conspired in the killing of Isagani Mazon, hence this aggravating circumstance was present.

However, the trial court erred in appreciating against the accused the generic aggravating circumstances of abuse of superior strength. As correctly observed by the Office of the Solicitor General in the Appellee's Brief, this circumstance is absorbed by treachery.

IV. We do not think that the appellant and his counsel are serious in the twelfth and thirteenth assigned errors. As shown earlier, their escape on 9 May 1992 was registered in the logbook of the Provincial Jail and reported to the court by the Provincial Jail Warden. Their own counsel de oficio asked for the postponement of the 1 June 1992 hearing because he was unable to contact the accused who had escaped, and after the testimony of Rogelio on 8 June 1992, the counsel asked for the cancellation of the next scheduled hearings because Landicho's wife was still trying to convince the former to return to the folds of the law. And on 16 June 1992, their new counsel, Atty. dela Cruz, could not produce them in court. It is also a fact that the appellant was re-arrested only on 26 June 1992 in

Tagaytay City.

Finally, the appellant and his counsel are fully aware that the fact of such escape was confirmed by the Court of Appeals in its 22 April 1993 decision in CA-G.R. SP No. 28210, and by this Court in our 22 November 1993 resolution in G.R. No. 110792, to which the Brief for the Appellant makes express reference.[139]

The confirmed escape of the accused is flight from justice. It is doctrinally settled that flight of an accused is an indication of his guilt or of a guilty mind.[140] Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion.[141]

V. The fourteenth assigned error is an exercise in futility, assigned more to annoy this Court than to see justice done. A trial court is not bound to disclose which part of a witness' testimony it deems believable. Generally, a witness' testimony is considered in its entirety,[142] partial credence being an exception as when the testimony of a witness can be reasonably believed as to some facts but disbelieved as to others.[143] Further, it is presumed that a person is innocent of a crime or wrong,[144] including giving false testimony. Hence, unless a court, for some reason, finds a witnesses' testimony unworthy of belief, the court must lend it credence. Moreover, the defense failed to prove that the prosecution witnesses had any ill motive to testify against the accused, and the rule on this matter is that absent proof of ill motive, the testimonies are worthy of belief.[145]

Affirmance then of the appealed judgment is inevitable, which, however, does not write finis to this case. We are compelled, in light of our preface to this decision, to decry the questionable conduct of the trial court, certain law enforcement authorities, and the counsel for the accused appellant.

We earlier detailed the procedural lapses committed by the trial Judge, Honorable Marciano T. Virola, which heighten a suspicion that the accused initially obtained generous concessions from his court. He should be admonished to be more circumspect in the performance of his duty.

We are likewise convinced that PNP Provincial Director of Oriental Mindoro Superintendent Jaime L. Lasar showed manifest bias by tolerating or allowing the accused to leave the PNP stockade without the permission of the court and treating its orders in a cavalier fashion, which ultimately resulted in the highly suspicious "escape" of the accused. The PNP leadership must perforce conduct a thorough investigation to determine his administrative liability.

The Jail Warden of the Provincial Jail of Oriental Mindoro, on his part, displayed gross negligence in the performance of his duty. Worse, he even attempted to deceive the trial court. When asked to show cause why he should not be held in contempt for allowing the accused to roam around, especially on 12 May and 13 May 1992, he lamely explained that the said accused "were reported in the Logbook as escaped prisoners as of May 9, 1992."

Turning to the Provincial Governor of Oriental Mindoro, as of 12 May and 13 May 1992, he had yet to explain why he had in his custody all of the accused, except Landicho, who, by then, were already fugitives from justice.

Finally, we note that while the accused were already fugitives from Justice, Atty. Renato dela Cruz nevertheless, was in constant touch with them as he was able to procure their signatures for their supplemental petition before the Court of Appeals in CA-G.R. SP No. 28210, and in their Magkaanib na Sinumpaang Salaysay.[146] In the latter, the four accused subscribed to it and swore before Atty. dela Cruz as notary public in Makati, Metro Manila, on 20 August 1992, and he entered such act in his notarial register as Doc. No. 263; Page No. 54; Book No. III; Series of 1992. Yet, despite full knowledge that his clients were fugitives from Justice and that bench warrants of arrest[147] and warrants of arrest[148] had been issued against his clients, Atty. dela Cruz made no effort to persuade them to surrender. A lawyer is absolutely prohibited from counseling or abetting activities aimed at defiance of the law or at lessening confidence in the legal system.[149] Hence, lest the general public

venture the thought that lawyers approve of their clients' degeneration into outlaws, Atty. dela Cruz must explain his action, or rather, inaction which, in effect, aided the accused in making a mockery of our judicial and penal systems.

WHEREFORE, the instant appeal is DISMISSED and the challenged decision of Branch 39 of the Regional Trial Court of Calapan, Oriental Mindoro, in Criminal Case No. C-3496 finding accused-appellant ERIC MANLUSOC guilty beyond reasonable doubt of the crime of murder and sentencing him and each of his co-accused to suffer the penalty of reclusion perpetua and to pay Jointly and severally the heirs of the victim Isagani Mazon the sum of P50,000.00 without subsidiary imprisonment in case of insolvency is hereby AFFIRMED in toto.

The Court further resolved to:

(a) ADMONISH Honorable Judge MARCIANO T. VIROLA to be more circumspect in his actuaciones in criminal cases to strengthen the public's trust and confidence in the criminal justice system;

(b) FURNISH the Office of the President with a copy of this Decision that it be informed and take the appropriate action regarding the alleged harboring by the Provincial Governor of Oriental Mindoro of the accused who were then fugitives from justice as of 12 May and 13 May 1992;

(c) DIRECT the Secretary of the Department of Interior and Local Government (DILG), through the Director General of the Philippine National Police, to (1) use the full force of the law to effect the re-arrest of accused M/Sgt. Reynaldo Landicho, Pat. Johnny Bunyi, and C2C Leovino Canuel and thereafter commit them to the New Bilibid Prison in Muntinlupa, Metro Manila, and (2) conduct appropriate administrative proceedings against Superintendent JAIME L. LASAR for gross misconduct or conduct prejudicial to the best interest of the service and to SUBMIT to this Court, within sixty (60) days from notice of this Decision, status reports on such re-arrest and administrative proceedings;

(d) REQUIRE Provincial Jail Warden MENANDRO S. ABAC to SHOW CAUSE, within ten (10) days from notice of this Decision, why he should not be held in contempt of court for the escape of the four accused on 9 May 1992; and

(e) DIRECT Atty. RENATO DELA CRUZ to SHOW CAUSE, within ten (10) days from notice of this Decision, why no disciplinary action should be taken against him for violation of Rule 1.02, Canon 1 of the Code of Professional Responsibility.

Let the Office of the President, Judge Marciano T. Virola, the Secretary of the Department of Interior and Local Government, Superintendent Jaime L. Lasar, Provincial Jail Warden Menandro S. Abac, and Atty. Renato dela Cruz be furnished with copies of this Decision.

Cost against the accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ, concur.

[1] JOHN BARTLETT, BARTLETT'S FAMILIAR QUOTATION 122 (Emily Morison Beck ed., 15th ed. 1980).

[2] See Information, *infra*, note 3.

[3] Original Records (OR) 1; Rollo, 6.

[4] *Id.*, 15.

[5] OR, 16.

- [6] Id., 21-22.
[7] Id., 23.
[8] Id., 17.
[9] Id., 24.
[10] Id., 25.
[11] Id., 32, 34.
[12] Id., 35.
[13] It provides:

Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six (6) years and one (1) day or more, the -court shall immediately suspend the accused from the office until the case is terminated. Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused

[14] OR, 38-39.

- [15] Id., 48.
[16] Id., 51.
[17] Id., 52.
[18] Id., 54-55.

[19] OR, 57.

- [20] Id., 58.
[21] Id., 60.

[22] OR, 71.

- [23] Id., 69.
[24] Id., 76. The "certification" relied upon by Supt. Lasar is not in the records.
[25] Id., 85.

[26] OR, 86-87.

- [27] Id., 94.

[28] OR, 99-105.

- [29] Id., 106.
[30] Id., 107-108.

[31] OR, 109-111.

- [32] Id., 112.
[33] Id., 113.
[34] Id., 114-116.
[35] Id., 121-122.
[36] Id., 124.

[37] OR. 125.

- [38] Id., 126.
[39] Id., 127.
[40] Id., 128-129.
[41] Id., 131-132.

[42] OR, 134.

- [43] Id., 136.
[44] Id., 138.
[45] Id., 147.

[46] OR, 149.

- [47] Id., 156.
[48] TSN, 8 June 1992.
[49] OR, 158. Statement of accused Landicho (Exhibits "I" and "I-A"); Statement of accused Bunyi (Exhibits "2" and "2-A"); a Pinagsamang Salaysay (Exhibits "3" and "3-A"); Investigation Report of Sgt. Rogelio (Exhibits "4", "4-A", to "4-D"); and alias warrant of arrest in Criminal Case No. C-3201 (Exhibits "5" and "5-A").
[50] Id., 159; TSN, 8, June 1992, 31.

[51] OR, 159.**[52] OR, 160-161.**

- [53] Id., 162-164.
[54] Id., 166.
[55] Id., 167.

[56] 164 SCRA 421 [1988].

- [57] OR, 177-181; Rollo, 14-17 (missing page 2).
[58] OR 180-181; Rollo, 16-17.

[59] Rollo, 147-150.

[60] OR, 183.

[61] OR, 188.

[62] Rollo, 186.

[63] Id., 200.

[64] Id., 210-211.

[65] Id., 214-215.

[66] Id., 227.

[67] Id., 229.

[68] Rollo, 226-226-A.

[69] Id., 231-232.

[70] Id., 233.

[71] OR, 239-257.

[72] Id., 258.

[73] Rollo, 261.

[74] OR, 266.

[75] Id., 260, 261.

[76] Rollo, 34.

[77] Id., 45.

[78] Rollo, 106-108.

[79] Id., 283.

[80] Id., citing U.S. vs. Balagtas, 19 Phil. 164 [1911].

[81] Id., citing People vs. Cadag, 2 SCRA 388 [1961].

[82] Section 14(2), Article III, Constitution provides:

Sec. 14.-

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[83] *People vs. Salas*, 143 SCRA 163, 167 [1986]; *Gimenez vs. Nazareno*, 160 SCRA 1, 7 [1988]; *People vs. Mapalao*, 197 SCRA 79, 90-91 [1991]; *People vs. Valeriano*, 226 SCRA 694, 708-709 [1993].

[84] It provides that "a decision must express clearly and distinctly the facts and the law on which it is based."

[85] It provides:

SEC. 2. Form and contents of judgment. - The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the accused and the law upon which the judgment is based.

If it is of conviction, the judgment shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any; (b) the participation of the accused in the commission of the offense, whether as principal, accomplice, or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.

In case of acquittal, unless there is a clear showing that the act from which the civil liability might arise did not exist, the judgment shall make a finding on the civil liability of the accused in favor of the offended party.

[86] OR, 180; Rollo, 16.

[87] *People vs. Tiozon*, 198 SCRA 368, 387 [1991].

[88] *People vs. Hubilla*, G.R. No. 114904, 29 January 1996, at 9.

[89] *People vs. Panganiban*, 241 SCRA 91, 101 [1995].

[90] Brief for the Appellant, 60; Rollo, 211.

[91] Brief for the Appellant, 62; Rollo, 213.

[92] *People vs. Kempis*, 221 SCRA 628, 645-646 [1993].

[93] TSN, 16 March 1992, 12, 46; TSN, 23 January 1992, 14.

[94] *People vs. Sunga*, 238 SCRA 274, 282 [1994].

[95] *People vs. Boniao*, 217 SCRA 653, 671 [1993].

[96] Brief for the Appellee, 24; Rollo, 283.

[97] *People vs. Boniao*, *supra*, note 95, at 668.

[98] *People vs. de Leon*, 218 SCRA 609, 624 [1995], citing RAMON.

[99] Brief for the Appellant, 5; Rollo, 156.

[100] OR, 96, 98; Exhibit "D."

[101] *People vs. Martinado* 214 SCRA 712, 732 [1992]; *People vs. Liquiran*, 228 SCRA 62, 74 [1993]; *People vs. Canillo*, 236 SCRA 22, 41 [1994]; *People vs. Laurente*, G.R. No. 116734, 29 March 1996, at 21.

[102] *People vs. Dural*, 223 SCRA 201, 209 [1993].

[103] Brief for the Appellant, 3-4; Rollo, 154-155.

- [104] TSN, 23 January 1992, 14; TSN, 16 March 1992, 12, 46.
- [105] TSN, 23 January 1992, 15; TSN, 16 March 1992, 11.
- [106] Id., 15-16; Id., 12-13.
- [107] TSN, 23 January 1992, 20-21.
- [108] People vs. Rostata, Jr., 218 SCRA 657, 678 [1993].
- [109] People vs. Pama, 216 SCRA 385, 401 [1992].
- [110] People vs. Pamor, 237 SCRA 462, 471 [1994].
- [111] People vs. Jumamoy, 221 SCRA 333, 345 [1993]; People vs. Sibug, 229 SCRA 489, 497 [1994].
- [112] Otherwise known as a "pimp." See U.S. vs. Cruz, 38 Phil. 677, 678 [1918].
- [113] TSN, 23 January 1992, 29-32.
- [114] See People vs. Cañeja, 235 SCRA 328, 337 [1994].
- [115] A super lolo is a type of firecracker, TSN, 23 January 1992, 78.
- [116] TSN, 23 January 1992, 78-79, Misleading questions are, however, not allowed even on cross examination Section 10, Rule 132, Rules of Court).
- [117] Id., 13.
- [118] People vs. Villaruel, 238 SCRA 408, 416 [1994]; People vs. Acob, 246 SCRA 715, 721 [1995].
- [119] Rollo, 231.

[120] OR, 8-10.

- [121] TSN, 23 January 1992, 50, 52, 54-55.
- [122] People vs. Marcelo, 243 SCRA 24, 34 [1993].
- [123] People vs. Mariquina, 84 Phil., 39, 42 [1949]; People vs. Patilan, 197 SCRA 354, 367 [1991].
- [124] People vs. Enciso, 223 SCRA 675, 686 [1993].
- [125] People vs. Viente, 225 SCRA 361, 370 [1993].
- [126] TSN, 23 January 1991, 53.
- [127] People vs. Lase, 219 SCRA 584, 595 [1993]; People vs. Viente, supra, note 125, at 370.
- [128] TSN, 23 January 1992, 29.
- [129] Id., 57.

- [130] TSN, 16 March 1992, 48.
- [131] *People vs. Servillon*, 236 SCRA 385, 389 [1994].
- [132] TSN, 23 January 1992, 45.
- [133] *Id.*, 16, 17.
- [134] TSN, 16 March 1992, 13.
- [135] TSN, 23 January 1992, 76.
- [136] *Id.*, 19.
- [137] TSN, 16 March 1992, 40-42.
- [138] Article 14(6), Revised Penal Code; *People vs. Lee*, 204 SCRA 900, 911 [1991]; *People vs. Buka*, 205 SCRA 567, 588 [1992]; *People vs. de la Cruz*, 217 SCRA 283, 296 [1993].
- [139] Brief for the Appellant, 18, 20-24; Rollo, 76, 78-82.
- [140] *People vs. Martinado*, *supra*, note 101, at 732; *People vs. Enciso*, *supra*, note 124, at 687-688.
- [141] Proverbs, 28: 1; *U.S. vs. Sarikala*, 37 Phil. 486 [1918]; *People vs. Garcia*, 209 SCRA 164, 177 [1992].
- [142] "In analyzing the testimonies of witnesses, the whole impression or effect of what had been said or done must be considered and not individual words or phrases alone" (*People vs. Rosario*, 246 SCRA 658, 668 [1995]).
- [143] *People vs. Cañeja*, *supra*, note 114, at 337. Lending partial credence to testimony is possible since *falsus in uno*, *falsus in omnibus* is not a mandatory rule of evidence (*People vs. Ducay*, 225 SCRA 1, 14 [1993]).
- [144] Section 14(2), Article III, Constitution; Section 3(a), Rule 131, Rules of Court.
- [145] *People vs. Alvero, Jr*, 224 SCRA 16, 30 [1993]; *People vs. De Leon*, 245 SCRA 538, 545 [1995].
- [146] Rollo, 38-42.
- [147] OR, 133, 137.**
- [148] *Id.*, 187-196, 234, 238.
- [149] Rule 1.02, Canon 1, Code of Professional Responsibility.

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