

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NEMESIO V. GANAN, JR., HARLEY S. FABICON, ACCUSED-APPELLANTS, DELMAR ALUBOG, ACCUSED. VIRGILIO G. GANAN, JOHN DOE, WILLIAM DOE...

G.R. No. 119722. December 02, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

In chronological sequence are the following pertinent antecedents in Criminal Case No. 203 of the Regional Trial Court of Odiongan, Romblon, Branch 82:

JUNE 5, 1986: An information for the Murder of Salvador Leño, Sr., was filed by the 1st Assistant Provincial Fiscal of Odiongan, Romblon, Atty. R. Rocero, against accused Nemesio Ganan, Jr., Delmar Alubog, Harley S. Fabicon, Virgilio Ganan, John Doe, William Doe, Richard Doe, Charlie Doe and Henry Doe. The information alleges:

"x x x the said accused with intent to kill, conspiring, confederating and mutually helping one another, did then and there, with abuse of their superior strength and with evident premeditation, wilfully, unlawfully and feloniously take SALVADOR LEÑO [SR.] Precinct No. 11 of San Andres, Romblon at gunpoint and loaded him on an ISUZU red jeep with Plate No. SBX-702, and brought him away and shot him with a firearm while inside the said vehicle, inflicting upon the latter, gunshot wound in his body and sustained several mortal injuries in different parts of his body which were the direct and immediate cause of his death." [1]

AUGUST 11, 1987: The case was archived, upon order of the court, "due to the non-arrest"[2] of the accused.

DECEMBER 23, 1991: The court approved the cash bond posted by the accused Nemesio V. Ganan, Jr. and ordered his release.

FEBRUARY 12, 1992: An amended information against the same accused, based on the affidavits of Liwanag G. Leño, dated February 3, 1992[3]; Salvador G. Leño, Jr., dated February 11, 1993[4]; Benjamin Galicia, dated February 3, 1992[5]; Gregorio Panaguiton, dated February 17, 1986[6] and Dory Fabella, dated February 17, 1986,[7] was filed by the Prosecutor II of Odiongan, Romblon, Atty. Alexander M. Mortel. The information avers in part:

"... the above-named accused, for the purpose of enabling them to commit election frauds, did then and there, with evident premeditation and abuse of superior strength, unlawfully, criminally and feloniously conspire, confederate and help one another in removing and kidnapping SALVADOR F. LEÑO [SR.] from his post as election watcher for the UNIDO in Precinct No. 11 of San Andres, Romblon, by forcibly taking him out of said precinct at gunpoint and forcing him to board with them in a red ISUZU jeep with Plate No. SHX-702 and thereafter killed him by shooting him and inflicting upon him mortal wounds in different parts of his body after which they concealed his body by burying him in a secluded grassy area in the ranch of the father-in-law of the accused Nemesio V. Ganan, Jr. in barangay Pili, Looc, Romblon where it was found decomposing six (6) days later and as a consequence thereof, his heirs incurred actual expenses for the recovery and burial of his body in

the amount of P60,000.00 and to suffer moral damages in the sum of P500,000.00 due to physical suffering, mental anguish, serious anxiety and fright, and exemplary damages in the amount of P100,000.00." [8]

Notably, in both the original and amended informations, the witnesses listed are the same, namely: Mrs. Dory M. Fabella, Mr. Gregorio Panaguiton, Mr. Val Leaña, Jr., Pag-alad, Ex-Mayor Daniel Mortel, Dr. Marcelino P. Badillo, and Mrs. Liwanag Leaña, and others. [9]

APRIL 14, 1992: A motion for the cancellation of the bail of the accused Nemesio V. Ganan, Jr. was filed by the prosecution.

APRIL 20, 1992: Nemesio V. Ganan, Jr., upon arraignment, entered a plea of not guilty.

APRIL 28, 1992: Opposition to the motion for the cancellation of the bail was filed by the accused Nemesio V. Ganan, Jr.

JULY 27, 1992: The trial court denied the motion for the cancellation of the bail filed by the prosecution. The order reads in part:

"The affidavits (Exhibits `1' and `2') executed by Gregorio Panaguiton and Dory Fabella, clearly repudiated the contents of their previous affidavits (dated February 17, 1986), as not true and correct, because they were merely made to sign these affidavits which were already prepared while they were in Looc, Romblon. The affidavit of Dory Fabella (Exhibit `2') further states, that the content of said affidavit of February 17, 1986, were suggested and supplied by Daniel Mortel, the former Municipal Mayor of San Andres, Romblon. The contents of their affidavits of February 17, 1986, were not based on their (witnesses') own personal perception. They could not be taken or considered as credible. Their subsequent affidavits (Exhibits `1' and `2') plus the subsequent affidavit (Exhibit `3') executed by Benjamin Galicia, repudiating his previous affidavit made the evidence for the prosecution in support of its motion for the cancellation of the bail for the accused weak and therefore did not fully meet or satisfy the requirement under Sec. 13 of Article III of our Constitution 'when the evidence of guilt is strong'. "[10]

DECEMBER 20, 1993: A motion to discharge accused Delmar Alubog to be a state witness was filed by the prosecution on the ground that "for lack of a witness who directly and actually saw how the deceased Salvador Leaña was shot and killed after being kidnapped at the Voting Center in the mountain barangay of Jun Carlo, San Andres, Romblon, and how his cadaver happened to be buried in a shallow grave in the ranch of the father-in-law of accused Nemesio V. Ganan, Jr. in barangay Pili, Looc, Romblon, more than fifty (50) kilometers away where his cadaver was found seven (7) days later, there is absolute necessity for the testimony of accused Delmar Alubog whose discharge is requested in order to establish clearly and unmistakably beyond any shadow of doubt who was or were responsible for the commission of the heinous crime, which testimony could not be supplied by any available witness except that of the accused Delmar Alubog." [11]

JANUARY 10, 1994: A supplemental motion for the discharge of Delmar Alubog to become a state witness was filed by the prosecution alleging that:

"[A]s shown in said sworn statement (ANNEX-A) the testimony of accused Delmar Alubog is absolutely necessary to clinch the evidence for the prosecution in the above-entitled case and leave no room for any doubt that accused Nemesio V. Ganan, Jr. and his co-accused are guilty of the crime charged in the above-entitled case; however, in view of the provision contained in the last paragraph of Section 9, Rule 119, of the Revised Rules of Court which reads:

'Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for the discharge of the accused as state witness, the sworn statement shall be inadmissible in evidence.'

and of Section 20, Article IV of the New Constitution which provides that 'no person shall be compelled to be a witness against himself,' the discharge of Delmar Alubog as one of the accused in the above-entitled case is absolutely necessary and imperative." [12]

JANUARY 13, 1994: Accused Delmar Alubog, assisted by counsel de oficio, also pleaded not guilty upon arraignment.

MARCH 15, 1994: An opposition to the prosecution's motion to discharge accused Delmar Alubog to become a state witness was filed by the accused Nemesio V. Ganan, Jr. It alleged in part: ". . . the Prosecution has illegally obtained the 'sworn statement' of the accused Alubog, only a few days after Prosecution filed the Motion, and while the accused was under detention; in fact the Prosecution even tried to represent the accused during the scheduled arraignment on January 11, 1994; the Private Prosecutor had actually stood up to do so; but the attempt was noted as improper when the undersigned counsel called the attention of the Court which postponed the arraignment of the accused Alubog to January 13, 1994 in order to let him be represented by a counsel of his choice or by counsel de oficio, and not by Private Prosecutor Victoriano, brother of the Public Prosecutor." [13]

MARCH 28, 1994: A memorandum of authorities and jurisprudence in support of its motion to discharge Delmar Abulog to become a state witness was filed by the prosecution.

JUNE 29, 1994: A manifestation was filed by the accused Delmar Alubog to the effect that "he never offered himself to become a state witness and that his sworn statement marked as Annex 'A' of the prosecution's supplemental motion for [his] discharge was improperly procured and should therefore be expunged from the records." [14]

JULY 13, 1994: Accused Harley S. Fabicon, assisted by counsel de oficio, likewise pleaded not guilty upon arraignment.

FEBRUARY 7, 1995: A decision was rendered by the trial court the dispositive part of which reads as follows:

"WHEREFORE, this Court finds the accused (1) NEMESIO V. GANAN, JR., (2) DELMAR ALUBOG, and (3) HARLEY S. FABICON GUILTY beyond reasonable doubt of the crime of KIDNAPPING under the Amended Information, dated February 12, 1992, and sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties of the law.

"These three (3) accused, jointly and severally, are ORDERED to pay Mrs. Liwanag Gadon Leaño, Sr. the sums of P20,000.00 by way of actual damages and P150,000.00 by way of moral damages; the heirs of the deceased Salvador F. Leaño, Sr. the sum of P50,000.00 by way of civil indemnity for his death, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"The bail bonds of the three (3) accused are ORDERED CANCELLED and all said accused are ORDERED immediately confined in jail.

"The period of preventive imprisonment the accused had undergone shall be credited in their favor to its full extent pursuant to Article 29 of the Revised Penal Code.

"The case against co-accused VIRGILIO G. GANAN and the five (5) other co-accused who are at large is ORDERED ARCHIVED pending their arrest or surrender.

"SO ORDERED." [15]

The case is now before us on appeal by Nemesio V. Ganan, Jr. and Harley Fabicon alleging the following common grounds in their respective briefs:

"I

THE TRIAL COURT ERRED IN RELYING ON THE LONE SO-CALLED 'EYEWITNESS' AGUSTIN TAN, (1) WHOSE TESTIMONY HAS BEEN SHOWN TO BE ENTIRELY FALSE, FABRICATED, OVERCOME BY VERY RELIABLE, REPUTABLE, HONEST, RESPECTABLE, TRUSTWORTHY WITNESSES, (2) WHOSE TESTIMONY IS REplete WITH SERIOUS CONTRADICTIONS ON MATERIAL POINTS, INCONSISTENCIES, INCREDIBILITIES, AND IMPOSSIBILITIES, (3) WHOSE TESTIMONY WAS GIVEN FOR A MONETARY CONSIDERATION, AND WHOSE TESTIMONY HAS BEEN SHOWN TO BE COMPLETELY UNTRUSTWORTHY AND UNRELIABLE."[16]

"II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF THE BOARD OF ELECTION INSPECTORS CHAIRMAN JESSIE FAMADICO, THIRD MEMBER SIONY GALUS, POLL CLERK LUDELENE GAAC, ELECTION REGISTRAR DOMINGUITO TACASA AND TAN'S NEIGHBOR LEA MORTEL."[17]

"III

THE TRIAL COURT ERRED IN NOT BELIEVING THE DEFENSE OF ACCUSED-APPELLANT NEMESIO V. GANAN, JR., THAT HE WAS IN FAR-AWAY ROMBLON ISLAND AT THE TIME WHEN SALVADOR LEAÑO, SR., WAS ALLEGEDLY KIDNAPPED, WHICH DEFENSE WAS THE PLAIN AND SIMPLE TRUTH, ALBEIT IT IS AN ALIBI."[18]

"IV

THE PROSECUTION HAS NOT DISCHARGED ITS ONUS TO PROVE BEYOND REASONABLE DOUBT THE CULPABILITY OF THE ACCUSED."[19]

"V

THE COURT A QUO COMMITTED GRAVE ERROR WHEN IT FOUND THAT THE ACCUSED CONSPIRED IN COMMITTING THE CRIME."[20]

"VI

THE COURT A QUO COMMITTED GRAVE ERROR WHEN IT FOUND THE ACCUSED GUILTY OF KIDNAPPING UNDER PAR. 1, ART. 267 OF THE REVISED PENAL CODE."[21]

In lieu of appellee's brief, the Solicitor General in behalf of the People of the Philippines filed instead a 101 page Manifestation and Motion with the following:

"PREFATORY STATEMENT

"Studying the evidence, the applicable laws and relevant jurisprudence, the Solicitor General finds that the guilt of appellants has not been established by proof beyond reasonable doubt as required by law. Hence, pursuant to the pronouncement of this Honorable Court in Gonzales vs. Chaves (205 SCRA 816, 817) that it is not entirely impossible that the Solicitor General may take a position adverse to his clients, like the Civil Service Commission, the National Labor Relations Commission, and even the People of the Philippines, the Solicitor General is submitting this Manifestation and Motion recommending appellant's acquittal, in lieu of appellee's brief."[22]

The question of immediate import is whether or not the prosecution has established the guilt of the appellants beyond reasonable doubt in line with the recommendation of the Solicitor General. This is the main question that has to be answered upon the evidence on record.

Now to the evidence.

Six witnesses were presented by the prosecution during the trial, namely, Agustin Tan, Salvador Leño, Jr., Liwanag Leño, Rudy Leño, Dr. Renato Bautista and Sunny Talamisan. The gist of their testimonies is reproduced hereunder in seriatim:

Agustin Tan,[23] the prosecution's lone eyewitness, essentially narrated that: During the February 7, 1986, snap presidential election, he was appointed as election inspector by ex-assemblyman Natalio Beltran, Jr., the chairman of the Unido party of Romblon province, and assigned at Precinct No. 11 in Barangay Jun Carlo, San Andres, Romblon. The provincial chairman of the KBL party in Romblon was Nemesio Ganan, Jr. Salvador Leaño, Sr., the victim, was a watcher for the Unido party.

In the early morning of February 7, 1986, Tan was at home in Barangay Pag-alad preparing for some provisions as he was then scheduled to go to Barangay Jun Carlo. Before heading to the said barangay, he cast his vote in a precinct at Barangay Pag-alad, San Andres, Romblon as a registered voter. En route to Barangay Jun Carlo, Tan took a jeep with Daniel Mortel, Sulpicio Gadon, Oscar Vergara, Salvador Leaño, Sr., Benjamin Galicia and Dory Fabella on board. Upon his arrival, Tan, together with Dory Fabella who was then the designated assistant watcher of the victim; Benjamin Galicia, the assigned assistant inspector; and the victim proceeded to Precinct No. 11 where they gave their respective appointments to the chairman of the voting center, Jessie Famadico. The other election inspectors present at the voting center were Poll Clerk Ludy Gaac and Siony Galus, inspector for the KBL party.

While voting was going on, a red jeep arrived. From the road, the red jeep moved backwards toward the voting center and stopped about five meters away from the door of the voting center. Appellant Nemesio alighted from the jeep, headed to the door of the voting center and called the victim, who was then inside, to come out. The victim did not oblige as he answered that he had work to accomplish. Nemesio went back to the red jeep and there he instructed appellants Delmar Alubog and Harley Fabicon who were inside the jeep to pull the victim out. Both armed with a gun, Alubog and Fabicon advanced to the voting center, with the former entering the voting center and the latter staying at the doorway. Pointing a gun at the victim's back, Alubog started to push the victim. Fabicon went inside and helped pushed the victim out; and outside, the victim was ordered to board the jeep. Nemesio who was then near the side of the jeep "lowered the curtain (trapal) in the side of the jeep [sic] and in the other side [sic] the same thing was done by Virgilio Ganan, the driver." [24] The jeep left with Nemesio and Virgilio seated at the front seat, with Virgilio driving the wheels. The victim, meanwhile, "was seated on the left seat, second from the rear, sandwiched by . . . Fabicon and . . . Alubog." [25] There were ten (10) persons inside the jeep including the victim.

The incident, as well as the temporary stoppage and subsequent resumption of voting, was noted in the minutes of the voting proceedings by Ludy Gaac. The minutes, written in Tagalog, was signed by Ludy Gaac, Famadico, Siony Galus and by Tan himself.

After the red jeep left, Daniel Mortel arrived and he narrated the incident to him. "Gregorio Panaguition, a Namfrel [member], who was standing with others outside the voting center, boarded a motorcycle driven by one Noche [and] followed the red jeep." [26] Mortel also followed. Minutes later, they heard a gunfire. Upon hearing it, he asked Poll Clerk Ludy Gaac for the time who answered 9:15 a.m. Thereafter, they continued their work. At 3:00 o'clock p.m. voting stopped and counting of the votes followed ending at 5:00 o'clock p.m. He subsequently hiked carrying the ballot box from Barangay Jun Carlo to the town proper together with Jessie Famadico and Judy Gaac. On their way, they noticed streaks of blood about one and a half kilometers (1 1/2 km.) long starting near the voting center. When they arrived, he delivered the box to Councilor Domingo Tacasa and afterwards he went home. Several days after, he saw the victim at the victim's house lying inside a coffin.

Salvador Leaño, Jr. [27] substantially testified that: Late in the afternoon of February 5, 1986, Nemesio went to their place where Nemesio forbade his father, the victim, from going to Barangay Jun Carlo on election day because something wrong might happen. However, on election day and after casting his vote in Barangay Pag-alad, the victim proceeded to Barangay Jun Carlo. At around 11:00 o'clock of the same day, Salvador Leaño, Jr., received an information about some gunshots and blood on the road. He went to the provincial hospital to look for his father, but did not find him. Thus, he reported the disappearance of his father to the police station. In the morning of February 10, 1986, in the company of others, he searched for the whereabouts

of his father. In Looc, Romblon, which their group reached in searching he inquired from Nemesio where the victim was and Nemesio replied that the victim alighted at the steel bridge. In the afternoon of February 13, 1986, a report reached Salvador Leño, Jr. involving a decomposing body found buried in a shallow grave at Pili, Looc, Romblon, to where he and his companions went. He viewed the cadaver and based on the pants, dress, belt, shoes and bible found within the make shift grave, he concluded that the cadaver is his father.

Liwanag Leño,[28] the victim's wife, corroborated Salvador's testimony and also identified the cadaver to be her husband. She also testified that the expenses for the coffin and the wake amounted to P20,000.00. She asked for the amount of P500,000.00 as damages.

Rudy Leño,[29] the nephew of the victim essentially narrated that: He was with the group that went out to look for the victim. The decomposing body was found in the shallow grave inside the ranch of appellant Nemesio's father-in-law at Pili, Looc, Romblon. He took some pictures of the cadaver, as well as the autopsy conducted on it, and identified these pictures during the trial.

Dr. Renato Bautista,[30] a member of the National Bureau of Investigation, conducted an autopsy on the cadaver at San Andres, Romblon and testified that: He found two wounds, one, an entry wound at the back of the cadaver's head, and two, an exit wound located almost at the apex of the head. He concluded that a gunshot could have been the cause of the wounds, but found it difficult to identify the caliber of a gun which could have caused the wounds.

Sunny Talamisan,[31] the last witness for the prosecution, is the victim's nephew who substantially testified that: He was then the Chief of Police of San Andres, Romblon. On February 7, 1986 at around 9:00 o'clock a.m. while on his way to Barangay Jun Carlo, he saw Nemesio and Virgilio seated on the front seat of a speedily moving jeep. He failed to see the passengers of the jeep, although the jeep's window shield or 'trapal' was rolled up. At around 4:00 o'clock p.m. of February 7, 1986, he received a report that Nemesio, together with his bodyguards, kidnapped the victim. The next day, he met Nemesio in the house of the latter's parents-in-law where he inquired about the victim's location. Nemesio answered that the victim was at the steel bridge in San Andres and added that Talamisan should continue his search. On February 13, 1986, he received an information from Looc Police Station involving a cadaver buried at Pili, Looc, Romblon. He formed a team and on their way to Looc, they were joined by Rudy Leño and several others. They found the cadaver which he identified as the victim. They prepared the necessary complaint against Nemesio, Virgilio, Fabicon, Alubog and other unknown persons. Warrants of arrest were issued, but were not served as the accused can not anymore be located.

For its part, the defense presented the following witnesses: Mrs. Jessie Famadico, a public school teacher, chairman of the Board of Inspectors of Precinct No. 11, and a niece of the victim; Siony Galus, Tan's neighbor and his daughter's godmother and the election inspector assigned to Precinct No. 11 in Barangay Jun Carlo. San Andres, Romblon; Lea Mortel, a housekeeper and a resident of Barangay Pag-alad, San Andres, Romblon; Atty. Manuel B. Gadon, the Clerk of Court of Branch 82, Regional Trial Court, Odiongan, Romblon; Alejandro Miñano, 81 years old and a resident of Alcantara, Romblon; Dominguito Tacasa, an election registrar; Jesusa Ganan, a BIR examiner and a sister of Nemesio; Gualberto Lumauig, an ex-congressman; and appellant Nemesio himself. The substance of their testimonies is as follows:

Jessie Famadico[32] essentially testified that: She was the Chairman of the Board of Election Inspectors at Precinct No. 11, Barangay Jun Carlo, San Andres, Romblon during the February 7, 1986 presidential elections. There was neither interruption nor suspension of the voting in her precinct. She knew the victim as he is her uncle who, at around 9:30 a.m., presented his appointment as Unido watcher which she did not accept since there were already two watchers for the Unido and that her uncle was not a registered voter of the precinct. She belied Tan's claim anent the forcible taking of her uncle and stated such incident never happened. She declared Tan was not a member of the Board of Election Inspectors. Neither was Tan present when they

delivered the ballot box to Mr. Jose Mingoa, the COMELEC Registrar.

Siony Galus[33] narrated that: She was a member of the Board of Election Inspectors of Precinct No. 11 of Jun Carlo, San Andres, Romblon, and stayed at the precinct the whole day. The election proceedings was not interrupted and neither was there an incident involving the victim being brought out of the precinct at gunpoint by Alubog and Fabicon. She did not see Tan inside the precinct. It was her husband who carried the ballot box from the precinct up to the Health Center. The ballot box was thereafter given to Jessie Famadico who took a ride in the company of Ludy Gaac and others in proceeding to the town proper. She knew Tan testified in favor of the prosecution for a three thousand peso consideration.

Lea Mortel,[34] a resident of Barangay Pag-alad, San Andres, Romblon testified that: On February 7, 1986, she went to Precinct No. 4 in her barangay at 9:00 o'clock a.m. to cast her vote. There she saw Agustin Tan together with his wife seated on a bench right beside the door of the school building where they conversed about Cory and Marcos. Tan and his wife left the place at about 9:30 a.m.

Manuel Gadon,[35] the Clerk of Court of RTC, Branch 82, Odiongan Romblon, substantially testified that: He had known Agustin Tan since time immemorial and knew him, in fact, as a habitual drinker and liar. Tan requested him to arrange a meeting with Nemesio for Tan to apologize for testifying in a case Tan knew nothing about as he (Tan) was merely paid to lie. Tan and Nemesio had a meeting and there Tan apologized which apology Nemesio accepted as they cannot do anything to extract Tan's testimony from the records. He did not ask Tan to sign any retraction paper.

Alejandro Minaño,[36] an octogenarian and a farmer from Alcantara, Romblon testified that: Nemesio went to his house in Romblon at 9:30 a.m. on February 7, 1986 and conferred with some KBL leaders. Nemesio stayed for twenty to thirty minutes then left for San Agustin, Romblon.

Dominguito Tacasa,[37] COMELEC Registrar of Calatrava, Romblon, narrated that: During the February 1986 presidential election, he was detailed at Ferrol, Romblon, as Election Registrar. Agustin Tan did not deliver to him the ballot box of Precinct No. 11.

Jesusa Ganan,[38] a sister of Nemesio, stated that: She confronted Tan due to his false testimony, but Tan countered he did it since Nemesio never gave him anything.

Gualberto Lumauig,[39] an ex-congressman, narrated that: He saw Nemesio on February 5, 1986 in a meeting at Malacañang where the party leaders were given a final briefing. The affair lasted the whole day. He also prepared a letter addressed to Nemesio in accordance with the instruction of then President Marcos to advise the KBL leaders of the danger of arrest by the Aquino government.

Nemesio V. Ganan, Jr.,[40] the appellant himself, testified that: He was the KBL Chairman in the province of Romblon. He did not visit the victim on February 5, 1986 and he never knew where the victim's house was located. He never threatened anybody not even the victim. The victim's daughter, Liza Leaño, worked with him in his farm as an agriculturist until 1986. He was only charged of the offense because of Atty. Pedro Victoriano, Jr., who considered him a mortal enemy. On February 7, 1986, 8:00 o'clock a.m., he left his farm house for Calatrava, Romblon. He did not drop by Precinct No. 11 and it was not true that he ordered Alubog and Fabicon to force the victim out of the precinct. From Calatrava, he proceeded to Romblon arriving there at around 9:40 a.m. At 10:30 a.m. he went to Tablas, then headed back home for lunch and asked his wife to join him in voting. He voted at 1:00 o'clock p.m. on February 7, 1986.

On February 10, 1986, he was at the house of his parents-in-law where he received some visitors among them were Talamisan, Salvador Leaño, Jr., Mayor Gadon and others who were looking for the victim. On February 11, 1986, he left for Manila upon the call of Malacañang in relation to the recently concluded presidential election. From February 11 to 17, he attended the canvassing of the results of the elections at the Batasan Pambansa. On February 27, 1986, he was advised, through a letter from the Presidential Assistant for

Information, Gualberto Lumauig, to leave the country to avoid persecution by the Aquino government. He thereafter left for the U.S. He was one of those who was included in a plane load of people who accompanied Mrs. Imelda Marcos in her return to the Philippines. The version of the prosecution witnesses to the effect that he stated that the victim disembarked at the steel bridge was a mere fabrication by Atty. Victoriano who was not yet fiscal at the time and who considered him an enemy.

The pivotal issue is one of credibility. In this connection, the prosecution leans heavily on the testimony of Agustin Tan, the lone eyewitness to the incident. We have meticulously examined Agustin Tan's account relative to the alleged kidnapping and murder of the victim, Salvador Leano, Sr. We find the same fraught with contradictions and inconsistencies and inherent incredibilities that we cannot agree, much more approve of, the trial court's reliance on his testimony as a basis for convicting the appellants. While it is settled that conclusions and findings of fact of the trial court, as well as the assessment of the witnesses' credibility, are binding on us, yet it is equally settled that this rule admits of an exception, i.e., where the trial court ignored and overlooked facts and circumstances of weight and influence which when considered could alter the result.[41] In the case at bench, we find that there is more to the exception than to the rule.

Unexplained silence of the eyewitness evokes disbelief.

What initially struck the Court's attention as to cautiously and skeptically consider the testimony of Agustin Tan, the sole eyewitness, is his long silence about the incident which remained unbroken until during the questioning conducted by the fiscal on September 27, 1993. No reason was proffered for Agustin Tan's silence for seven years despite his professed close ties of friendship with the victim and his family. Indeed, if any iota of credibility were to be attached to this witness, the most natural thing for him to have done was to bring the matter to the proper authorities or to the superior officials of the COMELEC and offer himself as a witness especially as he claimed himself to be an election officer, i.e., a member of the Board of Inspectors. This he failed to do. In fact, Agustin Tan did not even inform his wife and other close relatives of what he had witnessed immediately thereafter.[42] On this score, we lift from *People v. Quiritan*, the following:

"Altogether, the prosecution proffered no convincing explanation why two supposedly material witnesses were not presented to the police investigators. The almost two-year silence of Pacolanang and Sabanal may well give rise to the suspicion that they were ill-motivated and unworthy of credence." [43]

Contradictions and Improbabilities in Agustin Tan's identification of the accused.

In his direct testimony, Tan categorically stated that he saw appellant Nemesisio disembark from the red jeep, thus:

"Q:

Can you tell the Court whom you saw alighted from the jeep?

A:

Nemesisio V. Ganan, Jr.

Q:

And when Nemesisio V. Ganan, Jr., alighted from that jeep, what did you do?

A:

I went to the door of the voting center." [44]

x x x x x x x x

"Q:

At that time when Harley Fabicon and Delmar Alubog were pushing Salvador Leaña out of the precinct, where was the accused, Nemesio V. Ganan, Jr.?

A:

On the side of the jeep.

Q:

Where was he facing at that time while Salvador Leaña was being pushed by Harley Fabicon and Delmar Alubog?

A:

Towards them while they were pushing Salvador Leaña.

Q:

And up to where did that pushing to Salvador Leaña?

A:

Up to the jeep.

Q:

And upon reaching the jeep, what did Harley Fabicon and Delmar Alubog do with Salvador Leaña?

A:

They made him go up the jeep.

Q:

How did Harley Fabicon and Delmar Alubog make Salvador Leaña go up the jeep?

A:

By pushing. (witness demonstrating with his right hand in the pushing gesture.)"[45]

When cross-examined, Tan gave a conflicting narrative, thus:

"Q:

When Assemblyman Ganan arrived for the first time that you saw him, where were you?

A:

I was here on the doorway, on the table.

Q:

Were you sitting down?

A:

Yes, sir.

Q:

And during all the time that Atty. Ganan was calling and asking Salvador Leaña to have a refreshment and asked him to go home, you were sitting down, is that correct?

A:

Yes, sir.

Q:

As a matter of fact, you never stood up from where you were seated until 9:15, is it not?

A:

I already stood up when they were pushing out Salvador Leaña because we would be hit there.

Q:

When you said you had to stand up, when they are pushing out Salvador Leaña, you are referring to that point, when this Delmar and Harly were allegedly pushing out Salvador Leaña, is that right?

A:

Yes, sir.

Q:

And that was the first time that you stood up from where you were sitting?

A:

Yes, sir.

Q:

You are sure of that?

A:

Yes, sir.

Q:

In other words, you were seated where you were in that table when Mr. Ganan, left the voting center in order to go to the jeep before the arrival of Delmar and Harly, is that not correct?

A:

Yes, sir.

Q:

And from where you were seated you cannot see the jeep, can you?

A:

I could see from where I was seated because the jeep was just behind me.

Q:

In short, you could see the jeep, if you tried to but they had the jeep also parked at your back?

A:

Yes, sir.

Q:

When Mr. Ganan got out of the voting center, after talking to Salvador Leaño and he went to the jeep, your back was against the jeep, is that not right?

A:

I was seated and my back was against the jeep.

Q:

In fact, you only presumed that, Mr. Ganan, went to the jeep because you did not actually see him ride on the jeep which was against your back, is that right?

A:

I could hear his voice that he was already in the jeep.

Q:

The jeep from where you were is about five meters from your table, it is not?

A:

Yes, sir.

Q:

And you want to tell the honorable court, that you knew what was going on in that jeep even if your back is against this jeep fifty meters away?

A:

Because I could hear their voices."[46]

And when asked how he was able to distinguish the voice of Nemesio from the rest, Tan compounded the contradiction:

"ATTY. MILLORA:

"Q:

In February 7, 1986, how many times have you talked to Ex-assemblyman Ganan?

A:

We did not converse.

Q:

In other words, you did not have the pleasure and privilege of talking to him and hearing his voice?

A:

I heard his voice at that time when he was in the doorway of the voting center.

Q:

Please repeat the question. (Stenographer reading the question to the witness).

A:

We did not converse.

Q:

In other words, the first time you heard the voice of Ex-assemblyman Ganan was on February 7, 1986, when he talked to Salvador Leño, is that correct?

A:

Yes, when he was calling for Mr. Salvador Leño.

Q:

You did not know which part of the jeep did Atty. Ganan go after talking to Salvador Leño?

A:

I did not know where he went.

Q:

So, you did not know actually who were talking to each other near the jeep, after Atty. Ganan came talking with Salvador Leño?

A:

I did not know.

Q:

As a matter of fact, you were busy attending to those who were voting, is that correct?

A:

Yes, sir."[47]

x x x x x x x x

"Q:

In that point and time, how many voters were you attending to?

A:

About five voters, sir."[48]

The Court is baffled at how Tan was able to pinpoint Nemesio's location outside the precinct when he admitted on cross-examination that he did not know or see where Nemesio went after calling the victim. In fact, he testified that he was attending to the needs of five voters at the time while seated with his back against the red jeep located five meters away.[49] How can he therefore declare with certainty that Nemesio lowered the 'trapal'[50] or that Nemesio and Virgilio boarded the jeep and occupied the front seat?[51] Or, that Nemesio really went back to the jeep?[52] How was he able to see the persons who sat beside the victim[53] and account for the ten passengers of the jeep?[54] The answers to these questions hinge precariously on Tan's unreliable narrative which placed all the more the trial court's finding of guilt in a shadow of doubt.

The amazing memory of Agustin Tan instills disbelief

Similarly, the Court is astonished by Agustin Tan's highly retentive memory as to the minute details of the material incident even to the extent of quoting verbatim the exact statements of appellant Nemesio and the victim, words uttered seven years ago. Thus:

"Q:

And did Salvador Leño, Sr., respond to the call?

A:

Yes, sir.

Q:

What did Salvador Leño do in responding to the call by Nemesio V. Ganan, Jr.?

A:

He said: 'Sigi, salamant guid, busog pa ako', meaning, thank you, I am still satisfied.

Q:

When Salvador Leño, Sr., responded according to what you said, what did the accused Ganan do?

A:

He said: 'Maliy lang anay, may estoryahan kita,' meaning, come for a while, there is something we are going to talk about. (Witness again demonstrating with his right hand in a beaoning manner)." (TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 22.)

x x x x x x x x

Q:

Nemesio V. Ganan, Jr., repeated his calling Salvador Leño to come, what did Salvador Leño do?

A:

He answered: 'Sigi lang Jun, may trabaho ody, hin-aga ugaling kita magsugilanan,' meaning, it is alright Jun, there is work here to do, we can talk tomorrow." (TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 23.)

x x x x x x x x

"Q:

What did you hear Nemesio V. Ganan, Jr., say?

A:

He said: 'Bul-a gani ninyo si Salvador Leño, balbala ninyo, suplado nga yawa ran,' meaning, you get Salvador Leño, you strike him, that devil is hard headed." (TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 24.)

x x x x x x x x

"Q:

What did Salvador Leaña do before he was pushed to board that jeep?

A:

There was something he said to me. x x x.

‘Jun, maski ano man ang mangyari sa akon, ayaw guid pagbaya-e ang urna, dal-a guid sa munisipyo,’ meaning, Jun, whatever happens to me, do not leave the ballot box, bring it to the town hall.” (TSN, Agustin Tan, Direct Examination. September 27, 1993. pp. 27-28.)

x x x x x x x x

"Q:

And when you made that report to Daniel Mortel, what did Daniel Mortel say?

A:

He said: ‘Anong mahimo ta, guin buol ron tato,’ meaning, what can we do, he was already taken.” (TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 30.)

x x x x x x x x

However, when asked on equally significant matters, Tan’s memory faltered and his reasoning betrayed absurdity. Thus, when Tan, who claims to be an inspector for the Unido party, was asked the name of the inspector or watcher of the Unido party for his own barangay, he simply could not answer:

"Q:

Do you know who is the inspector of the UNIDO in precinct No. 4?

A:

I do not anymore remember, sir.

Q:

But do you know the watcher of the UNIDO in precinct 4?

A:

I do not know who is the watcher.[55]

x x x x x x x x

ATTY. MILLORA:

Salvador Leaña is more senior to you in the UNIDO, is it not?

"A:

Of course because he is a watcher.

Q:

You mean to say that a watcher is higher in rank and category in the party than an inspector, is it not?"

A:

Yes, sir.[56]

Another point. According to Tan the victim who was the designated watcher of the Unido party was forcibly taken at 9:00 a.m., and his substitute, Dory Fabella, assumed the post only at 1:00 o'clock p.m. We note, however, that Dory Fabella was in the precinct as early as 8:00 o'clock a.m., thus:

"Q:

Can you tell the Court who was the passengers of that jeep, can you remember who were inside that jeep where you boarded?

A:

Daniel Mortel, Sulpicio Gadon, driver Oscar Vergara, Salvador Leño, Sr., myself, Agustin Tan, Benjamin Galicia and Dory Fabella.

x x x x x x x x

Q:

How about Dory Fabella, will you tell this Court why he was there?

A:

He was an assistant of Salvador Leño.

x x x x x x x x

Q:

Can you tell this Court the approximate time when you arrived in the voting center No. 11 in Jun Carlo?

A:

We arrived there at 8:00 o'clock.

Q:

When you arrived in Jun Carlo, together with your companion, what did you and your companion do?

A:

When we arrived there in the precinct No. 11, we gave to the chairman our appointment.[57]

The Court cannot see its way clear why it would take Dory Fabella, who was in the precinct all the while, four hours (from 9:00 o'clock a.m. to 1:00 o'clock p.m.) to take over the vacated position of the victim.[58]

In this connection, we advert to the observation laid down by Justice Street seventy five years ago In U.S. v. Burns:[59]

"The experience of courts and the general observation of humanity teach us that the natural limitations of our inventive faculties are such that if a witness undertakes to fabricate and deliver in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message.

"For this reason it will be found that perjurers usually confine themselves to the incidents immediately related to the principal fact about which they testify, and when asked about collateral facts by which their truthfulness could be tested, their answers not infrequently take the stereotyped form of such expressions as 'I don't know' or 'I don't remember.'"[60]

Agustin Tan's inclination to speculate erodes faith in his eyewitness account.

The court is deeply disturbed by Tan's apparent propensity to assume and speculate on vital facts. His testimony as shown below is replete with speculations:

One:

"Q:

In other words, you are saying that Daniel Mortel did not report this incident to the COMELEC?

A:

No, sir, they only followed the jeep.

Q:

Who told you that they followed the jeep?

A:

Because when they left, they followed the jeep.

Q:

You are presuming that Daniel Mortel followed the jeep?

A:

Because when they left the place uphill, they followed the jeep.

... ..

ATTY. MILLORA:

Daniel Mortel did not tell you that he is going to follow the jeep?

A:

They only followed the jeep.

Q:

I am asking you whether Daniel Mortel told you, he was following the jeep.

A:

Yes, sir.

Q:

What did he tell you?

A:

That they are going to follow the jeep because Salvador Leaño was there.

Q:

In short, you can tell the Court that Daniel Mortel was following the jeep all the way to town, is that correct?

A:

They did not really follow it up to town.

Q:

Did you also know up to where Daniel Mortel follow the jeep?

A:

How could I tell that because I was there in the voting center, it is simply that they followed up the jeep.

Q:

You did not know up to what point did they follow the jeep?

A:

Yes, sir.

Q:

You merely presumed that they did not follow the jeep all the way?

A:

Yes, sir.

Q:

And yet you have the temerity to testify that they followed the jeep to certain point?

ATTY. VICTORIANO:

May I ask that the word "temerity" be stricken out from the record?

COURT:

Let it remain.[61]

x x x x x x x x

Two:

"Q:

On February 7, 1986 according to you, you heard a gun fire, from the time that the jeep left voting center No. 11 to the time you allegedly heard the alleged gunfire, how long?

A:

It was not long, they have gone already far distance before we heard the gunfire.

Q:

How far would that be, about 3 kilometers?

A:

Not also.

Q:

Two (2) kilometers?

A:

About one half (1/2) kilometers.

Q:

From that distance that the jeep traveled, were you seeing the jeep traveling?

A:

How can I see there were many trees along the road, I cannot see the jeep.

Q:

In short, when you said it is far, you are only guessing, is that correct?

A:

Yes, sir.

Q:

You were only estimating that it was about 1/2 kilometer, is that correct, because in fact you never saw the jeep running?

A:

Yes, sir.

COURT:

You answer the question.

A:

The gunfire really came from that jeep.

Q:

Were you present, did you see when the gun fire?

A:

I did not see.

Q:

Did you see the jeep at the time you heard the gun fire?

A:

Said jeep can not be seen because along the way are trees.

Q:

And you wanted to tell the Court that gunfire came from that jeep?

A:

Because it was they who had arms.

Q:

In other words you just presumed that because they had a gun which you saw earlier, that gun fire could not have come from any other gun, is that your presumption?

A:

Yes, sir."[62]

x x x x x x x x

Courts, we reiterate, are not permitted to render judgments upon guesses or surmises. Suspicion, it has been said, cannot give probative force to testimony which in itself is insufficient to establish or to justify an inference of a particular fact. "The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass."[63]

Agustin Tan's testimony is riddled with additional inconsistencies.

In his direct examination, he testified that after delivering the ballot boxes to Councilor Dominguito Tacasa he immediately went home.[64] When cross-examined, Tan changed his story:

"Q:

Did you tell, Mrs. Leaño that you saw him that morning of February 7, 1986 riding in a jeep?

A:

Yes, sir. After delivering the ballot boxes to the town hall, I passed by the place of Mrs. Leaño and told her that her husband was taken on a jeep.

Q:

Did you tell her that you also saw Mr. Ganan in that jeep?

A:

Yes, sir."[65]

which tale he readily discarded upon further questioning, thus:

"Q:

And you went to the house of Salvador Leaño only after eight days after February 7, 1986?

A:

Yes, sir.

Q:

And that was at night time?

A:

About 10:00 day time."[66]

The witness further impressed upon the trial court that he never talked either to Fiscal Victoriano or to Atty. N. Victoriano:

"Q:

You wanted to tell the Court, you never talked to both, Atty. N. Victoriano and Fiscal Victoriano, in connection with this case?

A:

None at all.[67]

but when questioned again, Tan made a complete turn around.

"Q.

These words that you claim to have heard, "Get Salvador Leño, you strike him, that devil is hard headed" you did not tell this statement to Fiscal Victoriano when you met him on Sept. 25, 1993, the first time that you said this is before this court, is that correct?

A:

He asked me that and I told that to him.

Q:

Are you saying that you told this statement for the first time to anybody only in September 25, 1993, is that correct?

A:

Yes, sir.

COURT:

You did not tell that to Mrs. Liwanag Leño before?

A:

I told that also to her because she was asking me.

Q:

So, you are now changing your answer because you said for the first time you told Fiscal Victoriano about that was on September 25, 1993?

A:

If that is what you hear, that is what you should tell the court."[68]

And also:

"Q:

The jeep from where you were is about five meters from your table, it is not?

A:

Yes, sir.

Q:

And you want to tell the honorable court, that you knew what was going on in that jeep even if your back is

against this jeep fifty meters away?

A:

Because I could hear their voices." [69]

These inconsistencies and material contradictions detract from Tan's credibility and weaken the probative value of his testimony. [70]

Agustin Tan's questionable reputation for truth and veracity.

Our review and evaluation of the records strengthen our skepticism that the so called eyewitness, Agustin Tan, could have been "conjured" by the prosecution as an "afterthought." We observed that Agustin Tan was not included in the list of witnesses mentioned in the original and amended Informations. [71] To the same effect, he was not mentioned in the affidavit dated February 3, 1992, of Mrs. Liwanag Leaño, [72] widow of the victim, who was informed by Agustin Tan about the incident as early as February 7, 1986. [73] To make matters even more peculiar, the record is devoid of any affidavit of Agustin Tan relating to the incident. Finally, if it were true that Agustin Tan is the "only eyewitness" [74] to the incident, why did the prosecution move for the discharge of the accused Delmar Alubog to become a state witness on December 20, 1993, as supplemented by a motion dated January 10, 1994, despite the fact that Agustin Tan has already testified on material points as early as September 27, 1993? In fact, notwithstanding Tan's testimony, the prosecution had serious doubts on the strength of its case as borne out by its allegations in the aforesaid motions that Alubog's testimony about the incident "could not be supplied by any available witness," [75] "is absolutely necessary to clinch the evidence for the prosecution" and would "leave no room for any doubt that accused Nemesio V. Ganan, Jr. and his co-accused are guilty of the crime charged..." [76] We are puzzled.

That Tan was a "planted" and "coached" witness is shown by the following extracts from his testimony, thus:

"ATTY. MILLORA:

Q:

What did you tell the first thing that you told Fiscal Victoriano, when you went to see him on September 25, 1993?

A:

The matter of getting Salvador Leaño from the precinct.

Q:

The first thing that you told Fiscal Victoriano, what was that?

A:

That this is what happened on February 7, 1986.

Q:

It took you from 9:00 to 12:00 p.m. to say just that?

ATTY. VICTORIANO:

I think it is improper, what the counsel was asking is the opening statement.

ATTY. MILLORA:

I will reform that question.

Q:

When you talked for the first time with Fiscal Victoriano did you tell him, "I want to testify for Salvador Leaña" did you say that?

A:

Yes, sir.

Q:

And then you told him that you were in Precinct 2 at Jun Carlo?

A:

Yes, sir.

Q:

What else did you tell him?

A:

It is that, what happened.

Q:

What did you tell him?

A:

Since Mrs. Leaña had no witness, that is why I am presenting myself as a witness.

Q:

In other words, you volunteered to testify to Fiscal Victoriano?

A:

Yes, sir.

Q:

That was the first time you ever went to Fiscal Victoriano, in connection with this case?

A:

(sic) From 9:00 to 12:00, Fiscal Victoriano and you were exchanging questions and answers, is that what you want to impress this Court?

A:

He was asking me questions and I would answer him."[77]

x x x x x x x x

"ATTY. MILLORA:

This lunch break, according to you, Fiscal Victoriano talked to you again did he asked the same questions that

he had asked you last Saturday?

A:

Yes, sir.

Q:

What did you talk about this lunch break?

ATTY. VICTORIANO:

I think the question is already irrelevant to the case, it has no bearing on the case whether the crime was committed or not, the conversation to Fiscal Victoriano has no relevancy.

.....

ATTY. MILLORA:

I will reform my question, your honor.

Q:

Where did you talk with Fiscal Victoriano this lunch break?

A:

In the house of Mr. Alag.

Q:

And you talked about your testimony this morning?

A:

Yes, sir.

Q:

And he told you, what you may have committed as mistakes this morning, is that correct?

A:

He did not say that to me.

Q:

Did he tell you that your testimony was good?

A:

Yes, sir.

Q:

Did he tell you, if there is any part of the testimony that was not so good?

A:

No, sir.

Q:

What then did he ask you?

ATTY. VICTORIANO:

The question has been answered, and very vague, your honor.

ATTY. MILLORA:

I am leading the witness, your honor.

COURT:

Witness may answer.

A:

That is what he asked me, about what happened.

ATTY. MILLORA:

You mean that Fiscal Victoriano asked you again, what happened despite the fact that you have already testified this morning?

A:

Yes, sir.

Q:

Did he also tell you what to testify this afternoon?

A:

He did not tell me.

Q:

Now, when you were with Fiscal Victoriano this lunch break and talked about your testimony this morning was Atty. Victoriano there?

A:

Yes, sir.

Q:

Fiscal Victoriano nor Atty. Victoriano did not tell you that it is not allowed for a witness to talk with others while he has not finish his testimony, they did not?

A:

No, sir."^[78]

Further, extant in the record is that Tan is a perjured witness who was paid to testify in favor of the prosecution. He was also confirmed to be an alcoholic and a liar. Thus:

"Q:

But you said you are neighbors did you know that Agustin Tan testified in this case?

"A:

Yes, sir.

"Q:

How did you come to know this?

"A:

Because he bought rice from me and I asked him why and he had slip of the tongue and he said, this is an advance payment for testifying in the Leaño case.

"Q:

Did he also mention the amount to you?

"A:

P3,000.00.

"Q:

What prompted you to ask Agustin Tan, that question?

"A:

Because I was surprised why he had plenty of money, since when he would buy rice from us, he usually buy only a ganta and not by the sack.

"Q:

How much rice did he buy at that time?

"A:

One sack, sir." (See: TSN, Siony Galus, August 10, 1994, pp. 27-28.)

x x x x x x x x

"Q:

Can you tell the reason why they have a quarrel or misunderstanding with his wife?

"A:

Because this Agustin Tan, Jr., is a habitual-drinker, he is more of an alcoholic, so I advised him to refrain from drinking because you see the effect of your drinking that eventually resulted no good to his family.

"Q:

In connection with that habit of Agustin Tan, Jr., as an alcoholic and his testimony has any connection between his drinking anything to do, (sic) in so fact as it was the subject of your conversation?

"A:

Frankly this Agustin Tan has no money and there are times when he is in need to take a drink, so he has to do something to raise in any amount.

x x x x x x x x

"Q:

Can you tell the Court, why he testified in the manner he did it?

"A:

That is expected of him to testify in that line because as I said before I know him personally and Agustin Tan, Jr., is known and found to be lying always. Even Alipio Gabo knows his characteristic as a liar." (TSN), Manuel B. Gadon, October 3, 1994, pp. 6-7, 9-10.)

Undoubtedly, "there is no better test of the character of a witness than the opinion of his neighbors. Every man has a character where he is best known - where his daily walk and conversation are observed and spoken of. Local prejudices or excitements may sometimes do injustice to an individual. But this is generally temporary. So that upon the whole there is no criterion so safe, in determining as the truth of a witness, as the opinion of his neighbors." [79]

Moreover, there being no controverting testimony with respect to the aforementioned evidence for the appellants, the same stands as unrebutted. Jurisprudence states that failure on the part of the prosecution to present evidence to refute the testimony of the appellant and his witnesses, being able to do so because it had the same at its disposal, necessarily constitutes an argument against said prosecution.[80]

Witnesses for the defense who harbor no motive to falsely testify belie Tan's allegations.

Finally, Tan's entire testimony was strongly belied by the defense witnesses whose credibilities appear to be untarnished. Dominguito Tacasa to whom Tan purportedly delivered the ballot boxes stated that such event is highly impossible as he was then detailed at Ferrol, Romblon,[81] the whole day of the election. Siony Galus, Tan's neighbor and godmother of Tan's daughter, testified that there was no kidnapping that occurred at precinct no. 11 and neither was the voting proceedings therein interrupted.[82] This testimony was corroborated by no less than the Chairman of the Board of Inspectors and a niece of the victim, Jessie Famadico. The minutes of the proceedings, Jessie Famadico declared, did not contain any entry about the alleged suspension or interruption brought about by the kidnapping of the victim.[83] We find no cogent reason, and none was persuasively presented, why a relative of the victim and the other witnesses took a diametrically opposed position from that taken by Tan if it was not the truth.

CONCLUSION

Considering the aforecited infirmities of the testimony of the prosecution's lone eyewitness, Agustin Tan, we are not satisfied that the constitutional presumption of innocence accorded to appellants has been overcome. Corollarily, we find it unnecessary to examine the other corroborative evidence presented by the prosecution. Where the principal and basic evidence upon which the prosecution rests its case fails, all evidence intended to support or corroborate it must likewise fail.[84]

Proceeding to accused Delmar Alubog who did not appeal, we advert to Rule 122, Section 11 (a) of the Rules of Court which provides:

"SEC. 11. Effect of appeal by any of several accused. -

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter."

Note must be taken that the appeal shall not affect those who did not appeal,"except insofar as the judgment is favorable and applicable to the latter." Since the decision is favorable and applicable to Delmar Alubog, he is affected by and should benefit from it.[85]

WHEREFORE, the appealed decision of Branch 82 of the Regional Trial Court of Odiongan, Romblon in

Criminal Case No. CD-203 is REVERSED and appellants Nemesio V. Ganan, Jr. and Harley S. Fabicon and accused Delmar Alubog are hereby ACQUITTED. Their immediate release from detention is hereby ordered, unless further detention for any lawful cause is warranted.

SO ORDERED.

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

[1] Rollo, p. 2.

[2] Original Record, p. 10.

[3] Original Record, pp. 22A-22D.

[4] Original Record, pp. 23-23A.

[5] Original Record, pp. 24-24A.

[6] Original Record, p. 25.

[7] Original Record, p. 26.

[8] Rollo, p. 3.

[9] Rollo, pp. 2, 4.

[10] Original Record, p. 66.

[11] Original Record, p. 146.

[12] Original Record, pp. 156-157.

[13] Original Record, pp. 179-180.

[14] Original Record, p. 205.

[15] Rollo, p. 48.

[16] Brief for Appellant Nemesio V. Ganan, Jr., p. 4; Rollo, p. 241.

[17] Id., p. 5; Rollo, p. 242.

[18] Id.

[19] Brief for Appellant Harley S. Fabicon, p. 4; Rollo, p. 181.

[20] Id. This assigned error was alleged in Fabicon's Brief, but not in Ganan's Brief.

[21] Id., Id.

[22] Rollo, p. 417.

[23] TSN, September 27, 1993 and August 9, 1994.

[24] TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 28.

[25] RTC Decision, p. 11; See also: TSN, Agustin Tan, Continuation of the Cross-Examination, September 27, 1993, p. 38.

- [26] RTC Decision, p. 11.
- [27] TSN, October 12, 1992.
- [28] TSN, November 9, 1992.
- [29] TSN, September 28 and 29, 1993.
- [30] TSN, March 15, 1994.
- [31] TSN, January 11-12, 1994.
- [32] TSN, August 10, 1994.
- [33] TSN, August 10, 1994.
- [34] TSN, October 26, 1994.
- [35] TSN, October 3, 1994.
- [36] TSN, October 26, 1994.
- [37] TSN, October 3, 1994.
- [38] TSN, October 4, 1994.
- [39] TSN, October 26, 1994.
- [40] TSN, October 4, 1994.
- [41] See: *People v. Aguilar*, 222 SCRA 394, 405; *People v. Frago*, 232 SCRA 653; *People v. Dismuke*, 234 SCRA 51; *People v. Pastores*, 227 SCRA 424.
- [42] Q: When did you tell your wife, if you told her all your story in connection with this case today?
- "A: The other day.
- "Q: So, I presumed that when you talked to your wife and told your story, you kept to yourself this story you narrated before this court on the year 1986 until the other day, is that correct?
- "A: Yes, sir." (TSN, Agustin Tan, Cross-Examination, September 27, 1993, p. 39.)
- [43] 197 SCRA 32, 39; See also *People v. Ompad, Jr.*, 233 SCRA 62, 66.
- [44] TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 21.
- [45] *Id.*, pp. 26-27.
- [46] TSN, Agustin Tan, Continuation of Cross-Examination, September 27, 1993; pp. 19-21.
- [47] *Id.*, at p. 22.
- [48] *Id.*, at p. 23.
- [49] See TSN, Agustin Tan, Continuation of Cross Examination, September 27, 1993, p.20.
- [50] See TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 28.
- [51] *Id.*

- [52] *Id.*, p. 24.
- [53] See TSN, Agustin Tan, Continuation of Cross-examination, September 27, 1993, p. 38.
- [54] *Id.*, at p. 45.
- [55] See TSN, Agustin Tan, Continuation of Cross-Examination, September 27, 1993, p. 45.
- [56] *Id.*, p. 12.
- [57] TSN, Agustin Tan, Direct Examination, September 27, 1993, pp. 17-18.
- [58] "Q: In short he took the place of Salvador Leaña; is that correct?"
- "A: Yes, sir, when he was not there anymore.
- "Q: What time did Dory Fabella replaced Salvador Leaña?"
- "A: At about 1:00 p.m." (*Id.*, p. 37.)
- [59] 41 Phil. 418.
- [60] *Id.*, at 428-429.
- [61] TSN, Agustin Tan, Continuation of Cross-Examination, September 27, 1993, pp. 29-30.61
- [62] TSN, Agustin Tan, Cross-Examination, September 27, 1993, pp. 46-47.
- [63] 1 Moore on Facts, 61-63; cited in Francisco, V.J., VII, The Revised Rules of Court, Part II, Rules 131-134, p. 570.
- [64] See: TSN, Agustin Tan, Direct Examination, September 27, 1993, p. 34.
- [65] TSN, Agustin Tan, Continuation of Cross-Examination, September 27, 1993, pp. 41-42.
- [66] *Id.*, p. 44.
- [67] TSN, Agustin Tan, Cross-Examination, September 27, 1993, p. 40.
- [68] TSN, Agustin Tan, Continuation of Cross-Examination, September 27, 1993, pp. 24-25.
- [69] *Id.*, pp. 20-21.
- [70] See: People v. Olaes, 45 O.G. 2563; People v. Wong, 23 SCRA 146 People v. Rodriguez, 205 SCRA 791.
- [71] Rollo, pp. 2-3.
- [72] Original Record, pp. 22-A-22-D.
- [73] TSN, Agustin Tan, Continuation of Cross-Examination, September 27, 1993, p. 41.
- [74] Decision, p. 4; Rollo, p. 29.
- [75] Original Record, p. 146.
- [76] Original Record, p. 156.
- [77] TSN, Agustin Tan, Continuation of Cross-Examination, September 27, 1993, pp. 4-6.
- [78] *Id.*, pp. 7-9.

[79] U.S. v. Emerson, 6 McLean (U.S.) 406, 408, 25 Fed. Cas. No. 15, 051; cited in V.J. Francisco, VII Revised Rules of Court, Part II, Rules 131-134, pp. 623-624.

[80] People v. Balansag, 60 Phil. 266.

[81] See: TSN, Dominguito Tacasa, October 3, 1994, pp. 5-6.

[82] See: TSN, Siony Galus, August 9, 1994, pp. 23-24.

[83] See: TSN, Jessie Famadico, August 9, 1994, p. 51.

[84] People v. Marcos, et. al., 70 Phil. 468.

[85] See: People v. Fernandez, 186 SCRA 830.

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