

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO NULLAN Y BINLAIO, VICENTE ALAGABAN Y LAGUNUY
AND EDGAR MALIGAYA Y NULLAN, ACCUSED-APPELLANTS.**

G.R. No. 126303. April 14, 1999

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PER CURIAM:

The shooting of Benito Gotanci near his office-store in Binondo, Manila, sent herein three accused-appellants to the increasing number of death row convicts in the national penitentiary. The sentence was pronounced by the Regional Trial Court ("RTC") of Manila, Branch 35, in its consolidated decision in Criminal Case No. 95-146207 and Criminal Case No. 96-147374.[1]

The Court now reviews the convictions.

In Criminal Case No. 95-146207, appellants Alberto Nullan and Vicente Alagaban were indicted, on 13 November 1995, for the murder of Benito Gotanci; the Information read:

"The undersigned accuses ALBERTO NULLAN Y BINLAIO and VICENTE ALAGABAN Y LAGUNUY of the crime of Murder, committed as follows:

"That on or about the 26[th] day of July 1995, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, said accused ALBERTO NULLAN Y BINLAIO and VICENTE ALAGABAN Y LAGUNUY conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown, and with accused ALBERTO NULLAN Y BINLAIO then being armed with a firearm of a still unidentified make and caliber, did then and there wilfully, unlawfully and feloniously, attack, shoot, and wound therewith twice BENITO GOTANCI at the back inflicting upon him two gun-shot wounds at the back, with treachery and known premeditation, said accused ALBERTO NULLAN Y BINLAIO having inflicted said two gunshot wounds and fired upon BENITO GOTANCI while the other accused, VICENTE ALAGABAN Y LAGUNUY acted as back-up and look-out; and as a result thereof, said BENITO GOTANCI died instantly in accordance with the predetermined plan of both accused and their still unidentified co-conspirators.

"All contrary to law, and with the qualifying circumstance of alevosia, and the generic aggravating circumstance of known premeditation.

"Contrary to law."[2]

In Criminal Case No. 96-147374, filed on 09 January 1996, appellant Edgar Maligaya was himself charged for the same murder; thus:

"The undersigned accuses EDGAR MALIGAYA Y NULLAN of the crime of Murder, committed as follows:

"That on or about July 26, 1995 in the City of Manila, Philippines, the said accused conspiring and confederating with Alberto Nullan Y Binlaio and Vicente Alagaban Y Lagunuy who were already charged in a separate information with the same offense before Branch 35 Regional Trial Court of Manila docketed under

CC No. 95-146207 and with one whose true name, identity and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill, with evident premeditation and treachery, attack, assault and use personal violence upon one BENITO GOTANGI by then and there shooting him with a gun and hitting him twice at the left posterior lumbar region and at the left inner, upper quadrantal gluteal region, thereby inflicting upon the said BENITO GOTANGI mortal gunshot wounds which were the direct and immediate cause of his death thereafter.

"Contrary to law."[3]

The three accused pleaded "not guilty" when arraigned individually and separately; thereafter, the trial ensued.

The prosecution presented an eyewitness account, that of Alden Adona, who was at the time of the incident manning his barbecue stand in front of his and his grandmother's store located at No. 618 Madrid Street in Binondo, Manila, just adjacent to the office-store of the victim, Benito Gotanci, at No. 622 Madrid Street. His version of the incident was summarized by the trial court, viz:

"Stripped of incidental details, the evidence of the People discloses that Alden Adona, actual eyewitness to the commission of the crime in question, is the partner-helper of his grandmother in the day-to-day operation of their store located at No. 618 Madrid Street in Binondo, Manila. In addition to the goods sold in their store, Alden also had a barbecue stand in front of their store. Immediately beside the store of Alden and his grandmother was the office-store of Benito Gotanci with postal address No. 622 Madrid Street. (See Exhibits 'PP', 'QQ' and 'RR'.)

"On July 25, 1995, at around 5:00 o'clock in the afternoon, the three accused in these cases, together with an unidentified male companion, arrived at the store of Alden. Because the four men were new faces in that place, he closely observed them and became familiar with their faces. Three of them ordered beer while the fourth asked for a soft drink. After staying for two hours the three accused and their unnamed companion left the store of Alden Adona.

"On the following day, July 26, 1995, also at about 5:00 o'clock in the afternoon, the three accused and their unidentified companion again arrived at the store of Alden. Alberto Nullan took a seat on the bench beside the store (Exhibit 'QQ-1'); Edgar Maligaya and their unidentified companion positioned themselves at the opposite ends of Alden's barbecue stand (Exhibit 'QQ-2'); while Vicente Alagaban walked to and stayed at the corner of Madrid and Lavezares Streets (Exhibit 'QQ-3'). Incidentally, Exhibit 'QQ' and its submarkings is the sketch drawn in open court by Alden Adona in the course of his testimony on April 26, 1996 relative to the positions taken by the three accused and their unnamed companion following their arrival at the store of Alden in the afternoon on July 26, 1995.

"At around 6:00 o'clock of the same afternoon, the Hi-Ace van which would fetch Benito Gotanci from his office-store arrived and parked in front of No. 622 Madrid Street. Minutes later Benito Gotanci emerged from his office-store. Edgar Maligaya went over to the bench where Alberto Nullan was seated, while their unidentified companion crossed over to the other side of Madrid Street. Alberto Nullan stood up and walked towards Benito Gotanci, with Edgar Maligaya closely following behind Alberto. As Benito Gotanci was about to board his vehicle Alberto Nullan and Edgar Maligaya surreptitiously approached Benito from behind, and at practically point blank Nullan pumped two bullets from his handgun into Benito Gotanci. Both bullets found their marks and felled the victim.

"After gunning down Benito Gotanci, Alberto Nullan and Edgar Maligaya ran towards San Nicolas Street, passing by the barbecue stand of Alden Adona. Vicente Alagaban and their unnamed companion, also running, followed them.

"After the assassins had fled, Alden Adona, with some others, carried the fallen man to his vehicle to be rushed to the hospital. But he was dead on arrival (DOA) at the Medical Center of Manila (Exhibit 'UU')."[4]

The post mortem examination, conducted on the cadaver of the victim by Dr. Manuel Lagonera, Medico-Legal of the Western Police District ("WPD"), revealed these findings:

"1. Gunshot wound, with the point of entry at the left posterior lumbar region, 50 inches from heel, 10 1/2 cms. from posterior midline, measuring 0.5 x 0.6 cm. and contusion collar measures 1 x 1 cm. The bullet course was directed slightly upwards, forwards crossing midline, severely lacerating the left psoas muscle, left kidney, mesentery and small intestine and abdominal aorta. A markedly deformed copper fragment with black lead granules were recovered in the right abdominal cavity.

"2. Gunshot wound, with the point of entry at the left inner, upper quadrant, gluteal region, 41 1/2 inches from heel, 7 1/2 cms. from posterior midline, measuring 0.8 x 1 cm. and contusion collar measures 1.2 x 1.1 cms. The bullet course was directed downwards, forwards towards midline, lacerating the gluteal muscle, fracturing the coccygeal bone, lacerating the retro-peritoneal muscle and fracturing the symphysis pubis. A markedly deformed copper fragment, blue plastic pellet and black lead granules were recovered in the fractured ends.

INTERNAL FINDINGS:

"1. Injuries to organs and tissues as indicated in the internal extensions of the gunshot wounds, with massive bleeding in the peritoneal cavity.

"2. The rest of the internal organs were pale.

CAUSE OF DEATH:

TWO (2) GUNSHOT WOUNDS."[5]Adona could distinctly remember the identity of the culprits since they were in their store on the day before the incident and also because they appeared to him to be new customers. His familiarity with their looks and appearances was sealed when he saw them again the next day, i.e., the day Gotanci was shot. He testified:

"Q

On July 25, 1995 at about 5:00 more or less in the afternoon, would you be able to recall if you were at 618 Madrid St., Binondo, Manila?

"A yes, sir

"THE COURT

"What do you mean by yes, sir?

"A that I was at No. 618 Madrid St., Binondo, Manila, Your Honor on July 25, 1995

"THE COURT

"Continue.

"ATTY PADUA JR

"Now, during the time when you were at 618, would you be able to recall if there is anything unusual that you observed?

"WITNESS

"there was, sir

"ATTY PADUA JR

"And what is that, Mr. witness?

"A four male persons arrived, sir

"Q And when you saw these four persons arrived at 618, what else did you Observed?

"A

I noticed that one of them separated himself from the three who were together drinking beer, sir

"Q Mr. witness with respect to the three persons who were then drinking beer, how far were you from them?

"A about two arms length away, sir

"Q And what were you doing then at that time when these four persons arrived at 618?

"A I was selling barbeque at that time, sir

"x x x x x x x x

"ATTY PADUA JR

"Yes, Your Honor. What was the condition of the light when you saw these four persons arrived at 618 Madrid St., Binondo, Manila?

"A it was very bright at that time, sir

"Q

Mr. witness, if I will ask you to make a sketch of the position of the three persons who were drinking beer in relation to your barbeque stand where you were then, were you able to draw that for the benefit of the Honorable Court?

"A yes, sir.

"x x x x x x x x

"ATTY PADUA JR

"What is the relation of these three figures of sketches of persons with those who arrived on July 25, 1995 at the store of your grandmother?

"A they are the three of those who arrived on July 25, 1995 at that place, sir

"Q What does this figure represent?

"A This represent me while I was selling barbeque, sir

"(witness pointing to another figure)

"Q And what is that mark X represent?

"A the box with marked X is my barbeque stand, sir

"Q Besides 618, is there any building next to it or beside to it?

"A yes, sir there is

"Q and what is that, Mr. witness?

"A building no. 622, sir

"ATTY PADUA JR

"Will you please also indicate in that sketch in the same manner that you indicated 618 store to that building which is now no. 622?

"(at this juncture the witness drawing the same)

"Q Do you know who occupies that building?

"A yes, sir

"Q Who?

"A Mr. Benito Gotanci, sir and his personnel, sir

"Q

Mr. witness, would you kindly inform the Honorable Court more or less what time these four persons who arrived at 618 positioned themselves at that place, at what time did they positioned themselves?

"A at around 5:00 when they arrived they positioned themselves as such, sir

"Q

Mr. witness, from where you are standing at that time when you were beside of your barbeque stand, how far were you from the first man sitting on the bench?

"WITNESS

"two arms leng[th], sir

"ATTY PADUA JR

"What about the second person?

"A more or less two arms leng[th] also, sir

"Q What about the third person?

"A the same, sir

"Q

You said that there were four persons who arrived together at 618, where is the fourth person positioned himself?

"(witness drawing another figure)

"Q How far were you from this person?

"A more or less five arms leng[th], sir

"Q Now, Mr. witness, how long did they stay in that place after their arrival?

"WITNESS

"More or less two hours, sir

"ATTY PADUA JR

"And during that time did you have occasion to observe them?

"A yes, sir

"Q What did you observe? What are they doing?

"A the three were drinking beer while the other one was drinking softdrink, sir

"Q Will you please state the reason why this attracted your attention?

"A

because in our place I'm familiar with the neighbors and client who purchase in the store and it was only the first time I saw these new faces, sir

"Q Now, after that what these people do?

"WITNESS

"they went off together, sir

"ATTY PADUA JR

"Would you kindly affixed your signature and put the date on this sketch?

"(at this juncture the witness affixing his signature and put the date on the sketch he made)

"ATTY PADUA JR

"May we request that this sketch be marked in evidence as Exhibit 'PP' and may we request that the four figures representing the four persons on the bench inside 618 store be encircled Your Honor and marked as

'PP-1 collectively, Your Honor

"THE COURT

"Make the markings as requested.

"ATTY PADUA JR

"May we request that the signature of the witness including the barbeque stand be marked as our Exhibit 'PP-2'

"THE COURT

"Mark it.

"ATTY PADUA JR

"If you will see these people once again would you be able to identify them?

"A yes, sir

"Q Are they inside the courtroom?

"A yes, sir"[6] (Underscoring supplied.)

Against the above testimony, the three accused testified to deny the accusation and to present their respective alibis.

Accused Alberto Nullan, engaged in the "business of ice delivery," testified that on 26 July 1995 he spent the whole day at home in 1644 A. Mabini Street, Malate, Manila, with his wife and two sons, waiting for telephone calls from customers for ice delivery orders. At about 6:30 p.m., after receiving a phone call from one of his customers, he instructed Allan Mancera, an employee (who testified to corroborate the testimony of Nullan), to deliver ice ordered by the client. At around 10:00 p.m. Nullan went to sleep. He denied having left the house on that day. Nullan said that on 08 November 1995 at about 6:00 p.m., he and his co-accused Vicente Alagaban were apprehended by CIS agent Ismael Fajardo. The duo were brought to a safehouse blindfolded. Later, they were brought to the Western Police District Headquarters in United Nations, Manila, where they were locked up in a room. Nullan claimed having been tortured and asked to admit the killing of a foreigner named Gotanci. After two

(2) days, the two accused were detained at Camp Crame for three (3) months and then brought to the Manila City Jail.

Vicente Alagaban denied any participation in the offense charged. He testified that he was in Barrio Juan in Solsona, Ilocos Norte, from 22 January 1995 to 27 October 1995 spending his vacation in the house of Honesto Biñas, a friend for many years, and helping the latter in his farm and piggery. He only left the place on 27 October 1995 when he returned to his former job at 1644 A. Mabini Street, Malate, Manila.

Accused Edgar Maligaya testified that he was a photographer and musician plying his trade inside the Manila City Jail. He joined the Bisig ni Kristo Community of the Manila City Jail to serve the spiritual needs of the jail's inmates. In the morning of 25 July 1995 (a day before the killing of Benito Gotanci), he was at the Saint Dismas Chapel inside the Manila City Jail, to await the arrival of Mr. Wally Ponce of the Episcopal Commission on Prisoners' Welfare ("ECOPRI"). From approximately eight o'clock in the morning to around four or five o'clock in the afternoon, Mr. Ponce coordinated with him in the interview of youthful offenders confined in the jail. After the interview, he, together with Arnel Ensinares, Ed Miranda, and Bro. Mauro de Jesus and some volunteer inmates helped in the preparation for the recitation of the rosary, which was to be held at six o'clock in the evening. After the rosary, he ate dinner and retired for the day at the Manila City Jail together with Bro. Al de Ocampo, Michael Bartolome, Arnel Ensinares and Raymond Lacheca. The following morning, on 26 July 1995, he woke up at seven o'clock. He left Manila City Jail for SM Megamall to attend his music classes at Yamaha School of Music. The class started at one o'clock in the afternoon, and continued for an hour. He stayed for another hour to practice his lessons, after which he went back to Manila City Jail, arriving there at around five o'clock. In the jail, he helped in the preparation for the novena prayer and recitation of the rosary. From six o'clock to 7:30 in the evening, the group said the rosary following which he had dinner with Bro. Al de Ocampo, Michael Bartolome, and a certain Bro. Gerry, whose full name he could not remember. After dinner, he prepared the things that were to be used for the celebration of the mass at the Lady of Fatima Chapel situated just outside the Manila City Jail. He then proceeded to deliver the things to the chapel, and stayed there until nine o'clock for the mass. By 9:15 he was back at the Manila City Jail, where he returned the things used during the mass to the sacristy and retired for the day.

The trial court gave more credence to the testimony of the eyewitness, Alden Adona, than that presented by the defense. Sustaining the existence of conspiracy among the accused, it convicted all three of them for murder and sentenced each to the supreme penalty of death. In its decision, dated 23 August 1996, the court *a quo* adjudged:

"WHEREFORE, judgment is rendered in these cases pronouncing accused ALBERTO NULLAN y BINLAIO, accused VICENTE ALAGABAN y LAGUNUY, and accused EDGAR MALIGAYA y NULLAN guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentencing each of the three accused to the supreme penalty of DEATH, and to pay the costs.

"The three accused are further ordered to pay, jointly and severally:

"1. To Julie Gotanci the sum of P92,851.96 for actual damages;

"2. To the heirs of Benito Gotanci the amount of P50,000.00 as death indemnity;

"3. To the heirs of Benito Gotanci the amount of P1,000,000.00 for loss of earning capacity; and

"4. To Julie Gotanci and her son the amount of P100,000.00 for moral damages.

"SO ORDERED."[7]

In this appeal, appellants Nullan and Alagaban raised the following assignment of errors; to wit:

"I. THE TRIAL COURT GROSSLY ERRED IN CONVICTING THE ACCUSED BASED SOLELY ON THE TESTIMONY OF THE WITNESS ALDEN ADONA.

"II. THE TRIAL COURT SERIOUSLY ERRED IN NOT DISMISSING THE CASE ON THE GROUND THAT THE ARREST WITHOUT WARRANT OF THE ACCUSED WAS ILLEGAL."[8]

Appellant Edgar Maligaya, in his case, put up the following; thus:

"First Assignment

"The lower court erred in basing the conviction solely on the fatally flawed testimony of Alden Adona.

"Second Assignment

"The lower court erred in admitting the accused's extrajudicial confession, which was extracted from him in violation of his Constitutional rights.

"Third Assignment

"The lower court erred in not declaring that accused was arrested without a valid warrant. Hence, his arrest was illegal.

"Fourth Assignment

"The lower court erred in ruling that a conspiracy existed between the three accused when the evidence does not show this."[9]

Appellants would thus belittle the testimony of Adona as being a rehearsed version simply made up to dovetail and suit the theory of the police investigators. Appellants would invite attention to the fact that the witness executed four (4) different sworn statements[10] in which he committed inconsistencies heightening supposedly the fact that the so-called eyewitness account was really scripted. Appellants would also impute improper motives on the witness who, being an engineering graduate at that time, was out of job, raising a family by merely selling "barbeque" for his livelihood. Finally, appellants would stress that Adona himself admitted that there was heavy rain ("kalakasan ng ulan")[11] on 26 July 1995 when the two accused arrived and during the time of the killing, making it too incredulous for him to be able to see, observe and monitor the positions, movements, demeanor and distances of the four participants during the incident.

The Court has closely evaluated the asseverations and deductions made by appellants and regrets its inability to appreciate the case in the way appellant would want it pictured. The assessment of the trial court on the issue of the probity and credibility of witnesses enjoys a badge of respect that this Court finds no cogent reasons to cavalierly discard. The attempt to derail the integrity of eyewitness Alden Adona as a mere barbecue vendor or as a man of simple livelihood hardly can invite sympathy. The heavy rains at the time of the incident did not preclude Adona from witnessing the unfolding episode before his very eyes. The failure of Alton Guarda (driver of Gotanci) to himself identify the gunman could be explained by the fact that Guarda was seated at the driver's seat on board the Hi-Ace van. In his affidavit, he declared:

"T -

5. Maari mo bang isalaysay ang buong pangyayari bago naganap ang pagkakabari sa iyong amo na si Benito Gotanchi?

"S -

Umalis po ako bahay ng 6:00 ng hapon sa bahay ni Benito Gotanchi at dumating ako sa kanilang opisina sa No 622 Madrid St., Binondo, Manila at dumating ako sa kanilang opisina ng alas 6:05 ng hapon at pinarada ko ang

aking sasakyan sa harap ng opisina ni Mr Benito Gotanchi at ako ay hindi na bumaba sa kadahilanan ay malakas ang ulan hindi nagtagal nakarinig ako ng putok ng dalawang beses at hindi ko naman pinansin kasi sa aking pagkakaalam ay labing tador lamang ang pumutok nang ilang sigundomay narinig akong kalabog sa pinyuan ng Hi-Ace at ng lingonin ko ay si Benito na pala na dugoan, at dali-dali akong bumaba sa Hi-Ace at binuhat ko siya papasuk sa Hi-Ace at hindi kayang buhatin si Benito kaya humingi ako ng tulong sa mga kapit bahay naroon at ako ay tinulungan nila ako maisakay sa sa Hi-Ace, at dinala ko sa Manila Medical Center sa UN Ave., Manila at pagdating doon dinala sa operating room, wala pa limang minuto lumabas ang doctor at sinabi sa akin na patay na si Benito.

"T - 6. Noong malaman mong patay na si Benito Gotanchi, ano ang iyong ginawa?

"S - Tumawag ako sa bahay ng kanyang nanay at sinabi ko patay na si Benito.

"T - 7. Sabi mo nagpatulong ka nakikilala mo ba ang taong tumulong sa iyo?

"S - Hindi na po sa dahilan ako ay nataranta na.

"T- 8. Mayroon ka bang makikilala o matandan sa bumaril kay Mr Gotanchi?

"S - Wala po." [12] (Underscoring ours.)

Adona, upon the other hand, was merely two arms length away from the Hi-Ace van parked near his barbecue stand, directly facing the crime scene. He testified:

"ATTY PADUA JR

"I'm giving you another sheet of paper Mr. witness and please draw for the benefit of the Honorable Court the relative position of the person who did the shooting of the victim?

"A

including their names, sir?

"Q

Yes, please. In reference to the one you draw likewise in reference to the bldg. 622 and 618 and from where your Barbeque stand

"(at this juncture the witness is drawing a sketch)

"Q

Mr. witness, you were asked earlier how the shooting was done. Can you now describe to the Honorable Court the actual on how the shooting was done?

"WITNESS

When the vehicle that will fetch Mr. Benito Gotanci arrived it park infront of his office

"ATTY PADUA JR

Witness drawing representing a car infront of 622 Madrid St., Binondo, Manila. How far were you from this car?

"A more or less two arms length, sir

"Q After that car was parked, what happened next?

"A Mr. Benito Gotanci came out and closed his store, sir

"Q And after closed his store what happened next?

"A I noticed Edgar Maligaya came over near the bench where Alberto Nullan is seated

"ATTY PADUA JR

"Witness pointing from Edgar Maligaya going towards the bench where Alberto Nullan was seated

"After that what happened next?

"A again I noticed that Alberto Nullan went beside my barbeque stand.

"Q Witness making a sketch of an arrow pointing to the direction where Alberto Nullan went from his original position.

"And then after that, what happened next?

"A

and when he noticed that Benito Gotanci was about to board his car and his back turned, he suddenly approach him, sir

"Q What happened next?

"A he shot him twice at his back, sir

"THE COURT

Who shot who?

"A it was Alberto Nullan who fired the shot

"Q And who was being fired?

"A Mr. Benito Gotanci, Your Honor

ATTY PADUA JR

"At the time when this Alberto Nullan was shooting Benito Gotanci, where was Edgar Maligaya?

"A I just noticed that he was at the back of Alberto Nullan, sir

"Q What about Alagaban where was his position during the shooting of Benito Gotanci?

"A he was standing at his original position, sir

"Q What about the unnamed person, where was he positioned himself when that thing happened?

"A

he was on the other side of the street, sir

"Q How many shots did you hear, if you heard any?

"A I heard two shots, sir

"Q And after that what happened next?

"WITNESS

"When they noticed that Benito Gotanci fell down they hurriedly run towards San Nicolas?

"ATTY PADUA JR

"Who run there?

"A it was Edgar Maligaya and Alberto Nullan, sir who run to San Nicolas.

"Q What about Vicente Alagaban and unnamed individual, what happened to them?

"A

when they noticed that Alberto Nullan and Edgar Maligaya hurriedly run towards San Nicolas they hurriedly also followed them, sir

"xxx xxx xxx

"ATTY PADUA JR

"How far were you from Mr. Alberto Nullan when he was shooting Benito Gotanci?

"A

more or less one arms length away, sir

"Q

What about Edgar Maligaya, how far were you from him at that time when he was at the back of Alberto Nullan when Alberto Nullan was shooting Benito Gotanci?

"A more or less also one arms length sir

"Q And what was the condition of the light at the time when the shooting was made?

"A it was bright, sir

"ATTY PADUA JR

"Mr. witness, would you be able to recall if you have executed some document or affidavit in relation to your testimony for today?

"A yes, sir

"Q

I have here in my possession a document entitled Malaya at Kusang Loob na Salaysay ni Alden Adona na ibinigay kay SPO1 Gregorio B. Rojas dito sa tanggapan ng CIC, WPDC ngayong ika 26 ng Hulyo, 1995 sa ganap na 10:10 p.m. consisting of two pages, will you kindly look at this document and informed the Honorable Court what relation has that to the document you executed in relation to your testimony today?

"A this document pertains to what I have observed on July 26, 1995, sir

"(witness pointing to Exhibit C)"[13]

Contrary to the claim of appellants, there appears to be no serious and inexplicable discrepancies in his sworn declarations. In his statement, dated 26 July 1995, given the day after the incident he stated:

"08. T : Maari bang sabihin mo sa akin muli ang iyong nakita ugnay sa pangyayaring ito?

S :

Gani to po iyon, Kahapon po, petsa 25 ng Hulyo, 1995 bandang alas-5:00 ng hapon habang ako ay nagtitinda ng BBQ ay mayroon akong naging kustomer na apat na lalaki na pawang bago sa aking paningin at iyong dalawa dito ay umorder ng San Miguel beer at iyong dalaw naman ay softdrinks lang ang inorder at napansin ko sa kanilang apat na palinga-linga sila na parang may hinahanap o parang may hinihintay at tapos niyon mga

bandang alas-7:00 ng gabi ay umalis na rin sila ng sabay sabay. Kinabukasan nga po petsa 26 ng Hulyo 1995, bandang alas 6:00 uli ng hapon habang kalakasan ng ulan ay muli kong nakita iyong dalawang lalaki na nakita ko kahapon at pumuwesto uli sila sa aking pinagtitindahan at iyong isa sa kanila ay umorder ng beer at umupo doon sa may loob ng tindahan at iyon namang isa ay pumuwesto sa aking tabi at umorder ng BBQ mga ilang sandali lang ay nakita ko na lumabas na itong sinasabi kong napatay sa kanyang puwesto o upisina dahil sa dumating na ang kanyang sundero. Habang nagsasara NG kanayng upisina itong napatay ay napansin ko na tumayo itong lalaki na umiinom ng beer sa loob ng tindahan at pumunta doon sa aking katabi samantala ito namang kanyang kasama na katabi ko ay lumipat ng ibang puwesto pero malapit pa rin sa akin at tapos niyon ay nakita ko na lumapit itong lalaki na tumabi sa akin doon sa lalaki na napatay at habang ito ay pasakay sa kanyang sasakyan ay bigla na lamang bumunot ng baril itong lalaki na tumabi sa akin at binaril niya ng dalawang sunod itong lalaki na napatay at tapos niyon ay nagtatakbo ng papalayo itong dalawang lalaki na pumatay doon sa intsik. Nang inaakala namaing wala na ang bumaril doon sa intsik ay binuhat namin siya sa kanyang sasakyan para maisugod sa ospital.

"09. T : Maari bang sabihin mo sa aking kung ano-ano ang itsura nitong mga lalaki na nakita mong bumaril doon sa intsik na napatay?

S :

Iyon pong umiinom ng beer sa loob ng tindahan na siyang bumaril doon sa intsik ay nakasuot ng itim na leather jacket, blue maong pants, may taas ng 5'5, medyo maskulado ang katawan, katam-taman ang kulay, brush-up ang buhok, bilugan ang mukha, medyo matangos ang ilong samantala iyon namang isa niyang kasama na kanyang alalay ay nakasuot ng Polo na kulay abuhin, kupas na maong pants, itim na rubber shoes, unat ang buhok, may taas na 5'4 at medyo may katawan.

"xxx

"12. T : Kahapon mo lang ba nakita itong mga tao na pumatay sa intsik na si Benito?

S :

Kahapon lang po at ngayon kaya madali ko silang nakilala dahil sa halos lahat ng kumakain o pumupunta doon sa aming tindahan ay pawang mga pahinente ng mga trak na medyo madumi ang suot samantalang sila ay mga nakabihis."[14] (Underscoring ours.)

In his sworn statement, executed on 08 August 1995, he narrated:

"06 T- Maari mo bang isalaysay sa aking kung paano pinatay itong si Mr. Benito Gotanci?

S-

Noong pong humigit kumulang alas 5:00 ng hapon, Julyo 26, 1995 samantalang ako ay nagtitinda ng Bar-B-Q sa katabi ng Bldg kung saan pinatay si Mr. Benito Gotanci ay dumating ang dalawang lalaki na ang isa ay nakasuot ng BALAT NA JACKET NA KULAY ITIM AT MAONG NA PANTALON at ito ay pumasok sa

loob ng tindahan ng aking lola sa No. 618 at ang isa naman ay nakasuot ng POLO SHIRT NA KULAY ABUHIN (GRAY) AT FADED NA MAONG AT ITO AY TUMABI SA AKING BAR-B-Q stand at ito ay bumili ng beer samantalang ang pumasok sa loob ay bumili ng softdrink at pareho silang bumili ng Bar-B-Q sa akin. Noong humigit kumulang alas sais trenta ng gabi, ang biktimgang si Mr. Benito Gotanci ay kasalukuyang nagsasarado na ng kanyang opisina na biglang lumabas ng tindahan ang taong nakasuot ng BALAT NA JACKET NA KULAY ITIM at ng matapos na magsarado ng kanyang opisina itong si Mr. Benito Gotanci at ng ito ay pasakay na sa kanyang HI-ACE na kulay puti na nakaparada mismo sa harapan ng kanyang opisina ng biglang lapitan ng nakasuot ng BALAT NA JACKET NA KULAY ITIM at sa pagkakataong iyon ay nakita ko mismo na pinaputukan ng dalawang ulit si Mr. Benito Gotanci sa kanyang likuran.

"x x x

"09 T-

Noong barilin ng taong nakasuot ng Balat na Jacket na Kulay Itim si Mr. Gotanci, ano naman ang ginagawa ng taong nakasuot ng Polong Kulay Abuhin?

S-

Noong nakahandusay na si Mr. Benito Gotanci sa may bangketa ay nakita ko na lang na sabay silang dalawa na tumakbo patungong San Nicolas Street.

"x x x

"12. T- Maaari mo bang ilarawan sa akin ang hitsura noong taong nakasuot ng Jacket na Balat na Kulay Itim?

S-

Siya po ay humigit kumulang na mga 33-35 taong gulang, may taas na 5'5" to 5'6", may pagkamaskulado ang pangangatawan, dark brown ang balat, bilogin ang mukha, matangos ng kaunti ang ilong, kulutan ang buhok, at brush-up ang suklay.

"13. T-

Ito namang nakasuot ng Polo na kulay abuhin, ano ang kanyang hitsura?

S-

Humigit kumulang sa 27-29 taong gulang, may taas na 5'5" to 5'6", katamtaman ang katawan, medyo dark brown ang kulay, may pagka-kulot ang buhok na brush-up ang suklay at medyo maliit ang ilong.

"14. T- Kung iyong makikitang muli sila ba ay iyong matatandaan o makikilala?

S- Opo."[15]

Adona affirmed that there were four men he saw on the day before the killing and that the same men came back the next day. He was sure of the identity of the gunman, Alberto Nullan, and his back-up, Edgar Maligaya. Nullan was the one wearing "balat na jacket na kulay itim at maong na pantalon,"[16] described in his affidavit while the "alalay" was sporting a "polo shirt na kulay abuhin at faded na maong."[17] The detailed description of the man who acted as the back-up was indicated in the affidavit, dated 02 January 1996, as referring to Edgar Maligaya whom he identified before the police investigators upon seeing him (Maligaya) at the Manila City Jail on 18 December 1995. Although the witness described Maligaya first as with "unat ang buhok, may taas na 5'4 at medyo may katawan,"[18] then later on as "may taas na 5'5 to 5'6", katamtaman ang katawan, medyo dark brown ang kulay, may pagkakulot ang buhok na brush up ang suklay,"[19] the discrepancies, however, were not so consequential as to discredit him altogether.

Appellant Maligaya's insistence that there were only two (2) men involved in the shooting of Gotanci, namely Nullan, the triggerman, and Alagaban, the look-out, had not been borne out at all. Adona executed a sworn statement particularly describing and identifying the back-up of Nullan, namely Edgar Maligaya, the third conspirator in the crime. The witness stated that there were four participants in the crime conspiracy although he was able to only identify and pinpoint to the police investigators three (3) of them, namely: (1) Alberto Nullan - the gunman, (2) Vicente Alagaban - the look-out and (3) Edgar Maligaya - the back-up of Nullan. At all events, Adona's testimony in court should carry more weight than the ex-parte narrations in his affidavit. Sworn statements are generally incomplete[20] and rightly subordinated in importance to open court declarations.[21]

The Court has carefully scrutinized the testimony of Alden Adona and sees no reversible error on the part of the trial court in these findings:

"Not only this. Alden Adona has been subjected to searching cross-examination by two competent and well motivated defense counsels, such that any fabrication in his narration could have been detected and exposed. However, he withstood the ordeal and maintained his testimony. More than this, in view of the gravity of the crime charged and the penalty which may be imposed on the accused if they were pronounced guilty, the Court closely monitored and observed the demeanor of the principal witness of the People from the moment he swore to tell the truth until he was discharged from the witness chair, ever watchful for any sign and earmark which may betray falsehood in his declaration. The Court perceived none of such sign or earmark of fabrication. On the contrary, it was impressed by the candid, frank, forthright and straightforward manner Alden Adona answered every question propounded on him by the counsels, and narrated his version. Being reasonable, reliable and ringing with truth, the Court finds the testimony of prosecution eyewitness Alden Adona worthy of belief."[22]

As regards the issue on the alleged warrantless arrest of appellants, this Court has constantly held that any objection attending an arrest must be made before the accused enters his plea;[23] otherwise, it would tantamount to foregoing the right to question said matter.[24] Anent the extra-judicial confession allegedly executed by appellant Maligaya, it should be stressed that the confession was not the incriminating evidence held against appellants; instead, their convictions were based on the eyewitness account of Alden Adona.

Conspiracy among appellants has been established. More than once, this Court has held that proof of the previous agreement to commit the crime is not essential to establish a conspiracy since the same may be deduced from the series of acts of the accused.[25] Neither is direct proof of conspiracy essential, and the existence of the assent of

minds could well be, considering its inherent secrecy, inferred by the court from proof of facts and circumstances which, taken together, would show their being part of a complete whole.[26] As so correctly observed by the trial court:

"In these cases, the records are replete with circumstances duly established with moral certainty by indubitable evidence demonstrating the pre-conceived plan, joint purpose and concerted action of the three accused and their fourth unidentified male companion to liquidate the victim. First, on July 25, 1995, the three accused and their unnamed companion arrived together at the store of Alden Adona located at No. 618 Madrid Street at about 5:00 o'clock in the afternoon, ordered and drank beer and soft drink, and stayed there for two hours, or approximately up to 7:00 o'clock in the evening (TSN, Apr. 29, 1995, pp. 12-19). The office-store of Benito Gotanci, located at No. 622 Madrid Street, is immediately adjacent or just next door of Alden Adona's store (see Exhibit 'QQ'). It is improbable and illogical to believe that the three accused and their unnamed companion, who were all total strangers in that place (Ibid., p. 19), went to the store of Alden Adona and stayed there for two hours just to drink beer and softdrink. They could have easily done this within the vicinity of their respective homes. What is more plausible and reasonable to believe is that they went to and stayed in the store of Alden for two hours to accomplish something else, more conceivably to furtively case or survey the circumstances of place and persons in those hours of the day, specifically the movements of their intended victim.

"Second, on July 26, 1995, also at around 5:00 o'clock in the afternoon, the three accused and their unknown companion again arrived together at the store of Alden Adona (Ibid., p. 26). Alberto Nullan entered the store and sat on a bench (Exhibit 'QQ-1'), Edgar Maligaya and their unnamed companion positioned themselves at the opposite ends of the barbeque stand of Alden Adona (Exhibit 'QQ-2'), and Vicente Alagaban walked to the corner of Madrid and Lavezares Streets (Exhibit 'QQ-3'; TSN, April 29, 1996, pp. 26-33).

"Third, when Edgar Maligaya saw Benito Gotanci coming out and closing his office-store at past 6:00 o'clock, he went over to the bench where Alberto Nullan was seated, and the two, passing by the barbeque stand of Alden Adona, together approached surreptitiously the victim, Alberto Nullan walking a few steps ahead of Edgar Maligaya, who was closely following behind (TSN, Apr. 29, 1996, pp. 34-35).

"Fourth, at the time Alberto Nullan fired the two fatal shots almost point blank at the back of Benito Gotanci, Edgar Maligaya was behind the triggerman (Ibid., pp. 35-36), evidently acting as a back-up of Nullan.

"Fifth, when Benito Gotanci fell down, mortally wounded, Alberto Nullan and Edgar Maligaya hurriedly ran towards San Nicolas Street, followed by Vicente Alagaban and their unidentified companion (TSN, Apr. 29, 1996, p. 37).

"The collective weight of these acts of the three accused and their unnamed companion before, during and after the fatal incident eloquently demonstrates beyond reasonable doubt their pre-conceived plan, community of design and unified purpose to liquidate the victim. Together they surveyed the crime scene and its vicinity prior to its commission. On the date of the crime they also arrived together at the place. At the precise time Alberto Nullan pulled the trigger on the victim, Edgar Maligaya was standing behind Nullan as back-up; Vicente Alagaban and the unnamed man served as look-outs. Following the commission of the crime they fled together from the scene. Conspiracy among the three accused having been conclusively established, all of them are criminally culpable as co-principals, regardless of the extent and character of their participation in the killing of the victim, for when conspiracy has been duly proved, the act of one is the act of all (People vs. Salison, G.R. No. 115690, Feb. 20, 1996, REGALADO, J.)"[27]

Treachery qualified the crime to murder as so alleged in the information. The elements of treachery, to wit: (1) the means of execution employed gave the person no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted,[28] clearly attended the killing of the victim. When the van fetching the victim arrived in front of the store, appellants prepared themselves for the designated plan of

action. After Gotanci closed his store and approached the van, unarmed and unaware of the plot against him, appellant Maligaya went over to the bench where Nullan was seated. The latter surreptitiously, without warning and without risk to himself approached Gotanci from behind and shot the victim twice. The unprovoked, sudden and surprised assault made by appellants was undoubtedly a treacherous mode of finishing off the victim.[29]

The information against appellants likewise alleged the presence of evident premeditation. Its requisites were clearly established, i.e., (1) the time that the offenders appeared resolute to commit the crime; (2) the act showing that the offenders clung to their determination to commit the crime; and (3) the lapse of sufficient time between the determination and the execution of the plot allowing the offenders to reflect upon the consequences of their act.[30] Here, again, the trial court correctly point out:

"x x x (The) plan and determination to kill the victim clearly appears to have been hatched up prior to 5:00 o'clock in the afternoon of July 25, 1995, as may be reasonably deduced from the fact that on the said time and date, they arrived and stayed for about two hours at the scene where they set to commit the felony, undoubtedly to survey and monitor the circumstances of persons in that place and at that time. That they stuck and clung to their plan, determination and decision to proceed with the execution of the crime is best manifested by the fact that they actually killed the victim on July 26, 1995, at past 6:00 o'clock in the evening. The manner in which they executed their resolution to commit the crime revealed a well laid out plan of action. Before hand, they surveyed the vicinity where they would carry out their scheme. They designated Alberto Nullan as triggerman, Edgar Maligaya as back-up, and Vicente Alagaban and their unidentified companion as lookouts.

"Between 5:00 o'clock in the afternoon of July 25, 1995 or prior thereto, and 6:30 o'clock in the evening on July 26, 1995, more than twenty-four hours had elapsed, from the time the commission of the crime was conceived to the time of its actual execution, which was sufficiently long enough to allow the three accused to deliberate and reflect calmly and coolly upon the consequences of their act and to allow their conscience and better judgment to overcome the resolution of their will if they desired to hearken its warnings.

"In *People vs. Causi* (G.R. No. L-164968, June 29, 1963, 8 SCRA 358), the slaying was accomplished two and a half hours from the time the scheme to kill was plotted; in *People vs. Mostoles, et al.* (85 Phil. 883), the accused and his confederates planned the killing of the three victims at about 4:00 o'clock in the afternoon and commenced the execution three and a half hours afterwards at 7:30 o'clock in the evening on the same date; in *People vs. Diaz* (55 SCRA 178), the accused had more than one-half day for meditation and reflection to allow his conscience to overcome his evil design had he desired to hearken to its warnings. In all those cases, the Supreme Court held that the offenders had sufficient time to serenely pause, think and deliberate on the meaning and consequences of what they had planned to do, long enough for their conscience to overcome the resolution of their will and to desist if they desired to listen to its warnings."[31]

Evident premeditation has been correctly considered as a generic aggravating circumstance after appreciating treachery as the qualifying circumstance. Since there is no mitigating circumstance to offset it, applying Article 248 of the Revised Penal Code, as amended by Republic Act 7659,[32] the trial court had no other alternative than to impose the death penalty. Four Justices of the Court, however, have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

With respect to damages, the recovery of actual damages must be premised upon competent proof and best evidence obtainable by the injured party showing the actual expenses incurred in connection with the death, wake or burial of the victim. Courts cannot simply assume that damages are sustained by the injured party, nor can it rely on speculation or guesswork in determining the fact and amount of damages.[33] In the case at bench, the

Court accepts as having been incurred the amount of P52,851.96 for doctor fees, hospital bills, funeral cremation, burial services and the cost of the tomb of the victim for which supporting receipts are on record. The alleged reasonable miscellaneous expenses of P40,000.00 are disallowed for not having been sufficiently proved.[34] The actual damages awarded by the trial court should be thus reduced to only P52,851.96.[35] Relative to the amount of damages for loss of earnings, the trial court has fixed the amount of P1,000,000.00 based on the victim's life expectancy of 65 years. This Court has consistently used the formula: $[2/3 \times (80 - \text{age of victim at time of death})]$ in determining life expectancy. The victim in this case therefore can be said to have had a life expectancy of $[2/3 \times (80 - 46)]$ 23 years.[36] The trial court has aptly estimated his annual income to be close to P120,000.00[37] from which amount should be deducted the necessary and incidental expenses which the victim would have incurred if he were alive, estimated at 50%, to about a balance of P60,000.00 net annual income.[38] In computing the loss of earning capacity of the victim, several factors are considered besides the mathematical computation of annual income times life expectancy. Allowances are also made for circumstances which could reduce the computed life expectancy of the victim[39] like the nature of his work,[40] his lifestyle, age and state of health prior to his death,[41] and the rate of loss sustained by the heirs of the victim.[42] All taken, the sum of P1,000,000.00 for loss of earning capacity of the deceased victim awarded by the trial court must be increased to P1,380,000.00.[43] The award of moral damages of P100,000.00 arising from the mental anguish suffered by the surviving spouse, Julie Gotanci,[44] and testified to by her, is reasonable.

The award of the civil indemnity ex-delicto of P50,000.00 to the heirs of the victim is consistent with prevailing jurisprudence.

WHEREFORE, except for the reduction of actual damages from P92,851.96 to P52,851.96, and the increase of the loss of earning capacity from P1,000,000.00 to P1,380,000.00, the decision of the trial court is **AFFIRMED** in all respects.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power. No pronouncement on costs.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

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- [1] Presided by Judge Ramon P. Makasiar.
 - [2] Rollo, p. 10.
 - [3] Rollo, p. 12.
 - [4] Rollo, p. 216-217.
 - [5] Exhibit SS, Folder of exhibits, p. 69.
 - [6] TSN, 29 April 1996, pp. 12-21.
 - [7] Rollo, pp. 51-52.
 - [8] Brief for the accused-appellants, pp. 9-10.
 - [9] Rollo, p. 257.

- [10] Folder of Exhibits, exhibits C (p.15), F (p. 19), L (p.27) and Y (p.47). Exhibits C, F, L and Y.
- [11] TSN, Alden Adona, 29 April 1996, p. 63.
- [12] Exhibit B, Folder of Exhibits, p. 14.
- [13] TSN, 29 April 1996, pp. 33-39.
- [14] Exhibit C, Folder of Exhibits, p. 15.
- [15] Exhibit F, Folder of Exhibits, pp. 19-20.
- [16] Exhibit F, Folder of Exhibits, p. 19.
- [17] Ibid.
- [18] Exhibit C, Folder of Exhibits, p.15.
- [19] Exhibit F-2, Folder of Exhibits, p. 20.
- [20] People vs. Sarellana, 233 SCRA 31; People vs. Matildo, 230 SCRA 635.
- [21] People vs. Padoa, 267 SCRA 64; People vs. Salazar, 277 SCRA 67; Sumalpang vs. Court of Appeals, 268 SCRA 764; People vs. Empleo, 226 SCRA 454.
- [22] Rollo, pp. 227-228.
- [23] Padilla vs. Court of Appeals, 269 SCRA 402.
- [24] People vs. Hernandez, 282 SCRA 387; People vs. Codilla, 224 SCRA 104; People vs. Hubilo, 220 SCRA 389.
- [25] People vs. Cabrera, 241 SCRA 28.
- [26] People vs. Miranday, 242 SCRA 620.
- [27] Rollo, pp. 233-234.
- [28] People vs. Landicho, 258 SCRA 1; People vs. Hubilla, Jr., 252 SCRA 471.
- [29] People vs. Magno, 260 SCRA 300; People vs. Guarin, 259 SCRA 34; Rosales vs. Court of Appeals, 255 SCRA 123.
- [30] People vs. Estanislao, 265 SCRA 810; People vs. Layno, 264 SCRA 558; People vs. Villanueva, 265 SCRA 216.
- [31] Rollo, pp. 235-236.
- [32] The penalty provided by law for murder is reclusion perpetua to death.
- [33] People vs. Degoma, 209 SCRA 266; People vs. Fabrigas, Jr., 261 SCRA 436.
- [34] People vs. Degoma, 209 SCRA 266; and People vs. Cordero, 263 SCRA 122.
- [35] People vs. Salcedo, 273 SCRA 473; People vs. Jamiro, 279 SCRA 290.
- [36] People vs. Daniel, 136 SCRA 92; People vs. Alvero, Jr., 224 SCRA 16.
- [37] According to Julie Gotanci her husband was earning P40,000.00, more or less, a month as president of a

certain corporation named Celabedas Marketing Corporation at the time of his death (TSN, Apr. 24, 1996, p.7). However, apart from her bare claim, she has not offered any other evidence to substantiate the same. She did not produce his income tax return nor any document from his corporation attesting that he was receiving that much. At any rate, as there is no indication in the record that Benito Gotanci has no earning capacity at the time of his death on account of permanent physical disability not caused by the accused, loss of earning capacity should be awarded to the heirs of the victim. Article 2206, No. 1, of the Civil Code, provides that in addition to the amount of damages for death caused by a crime, "(t)he defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death." (See also *People vs. Quilatan*, 205 SCRA 279.) Under the premises, the court believes that at the time of his death Benito Gotanci was earning not more than P10,000.00 monthly.

[38] *People vs. Balanag*, 263 SCRA 474.

[39] *Ibid*.

[40] *People vs. Daniel*, *supra*.

[41] *PAL vs. Court of Appeals*, 185 SCRA 110.

[42] *People vs. Quilatan*, 205 SCRA 279.

[43] Net Earning Capacity = 23 years x (120,000 - 60,000).

[44] Julie Gotanci was pregnant with the couples' second child when her husband was killed (TSN, 24 April 1996, pp. 4-10).

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