

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODRIGO ALMAZAN, APPELLANT.***G.R. No. 133442. March 23, 2004*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133442/>**CALLEJO, SR., J.:**

This is an appeal from the Decision[1] of the Regional Trial Court of Bangued, Abra, Branch 2, convicting the appellant Rodrigo Almazan of murder and sentencing him to suffer an indeterminate penalty of fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal, as minimum, to eighteen (18) years of reclusion temporal, as maximum. On appeal, the Court of Appeals (CA) rendered its Decision[2] on February 27, 1998 affirming the decision of the trial court but increasing the penalty to reclusion perpetua.[3] The CA certified the case to this Court pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure. The Court accepted the case.

The appellant was charged with murder in an Information, the accusatory portion of which reads as follows:

That on or about the 14[th] day of May 1989, at around 9:00 o'clock in the morning, at Barangay Calaba, in the municipality of Bangued, province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, and while armed with a firearm (unrecovered), did then and there, willfully, unlawfully and feloniously shoot one LORETO APOLINAR several times, hitting him on the head and other parts of his body, which caused his death shortly thereafter, to the damage and prejudice of the heirs of the victim.[4]

The appellant was duly arraigned, assisted by counsel, and entered a plea of not guilty.[5]

**The Case for the Prosecution**

The first witness of the prosecution was Felimar Apolinar who testified that her husband Loreto Apolinar worked as a weaver.[6] In the morning of May 14, 1989, she and Loreto were taking a bath at the Abra River, Barangay Calaba, about 45 meters away from their house. She also washed clothes. By 9:00 a.m., they decided to go home. From the river, they trekked by a narrow trail. She carried a basin by her side full of washed clothes. Loreto, who was naked from waist up, was ahead of her by 9 meters.[7] Suddenly, Rodrigo (Odit) Almazan, who was armed with a foot-long firearm,[8] jumped from the hill at Loreto's right side and landed slightly at a distance of about a meter from him. Almazan then aimed his gun at Loreto and shot him. The muzzle of the gun was about 2 feet from Loreto. Although already mortally wounded and bloodied, Loreto instinctively fled towards the house of spouses Eriberto and Francisca Sequerra, which was 45 meters away from the place where the appellant first shot Loreto.[9] Almazan, still armed with his gun, pursued Loreto.[10] Felimar followed the two, shouting and pleading in the Ilocano dialect to Almazan, "Odit, Odit, Odit, don't shoot my husband!"[11] Almazan ignored her. Loreto managed to enter the house of the Sequerras.[12] Almazan barged inside the house and saw Loreto crawling toward the sawali wall. Felimar managed to reach the first step of the stairs to the said house but was shocked when Almazan shot Loreto for the second time. Almazan then went out of the house and, upon seeing

Felimar at the foot of the stairs, told her, “You are also one (sic), you want that I will kill you!”[13] Before Felimar could reply, Almazan fled from the scene. Felimar ran to the house of their neighbor, Patrolman Juanito Blanes of the Bangued Police Station.[14] She reported the shooting to him and sought help. She then lost consciousness and came to her senses only after about 30 minutes.[15] The next day, May 15, 1989, she gave her sworn statement to Pat. Antonio Carpio.[16]

Patrolman Juanito Blanes testified that on May 14, 1989, between 8:00 a.m. and 9:00 a.m., he was on board a tricycle on his way to his house at Barangay Calaba when he met Almazan.[17] When he arrived home, he heard two gunshots. After a couple of minutes, Francisca Sequerra arrived in his house, pleading, “Brother, help us because Loreto Apolinar entered our house and he was shot by Rodrigo Almazan.”[18] Blanes took his pistol and left his house to go to the house of the Sequerras.[19] On his way, he met Felimar who also pleaded to him saying, “Please brother, help us because Rodrigo Almazan killed my husband.”[20] When he arrived at the Sequerras’ house, Loreto was already dead.[21] He sent someone to report the matter to the Bangued Police Station. Momentarily, Corporal Catalino Buenafe and Lt. Esteban Pangda arrived and conducted an on-the-spot investigation.[22] They also took pictures of the crime scene.[23] One of the pictures showed Loreto’s head protruding through the sawali wall of the house.[24]

Francisca Sequerra testified that on May 14, 1989 at 9:00 a.m., she was washing clothes in the Abra River.[25] She was with Monching Bayle, Rening Sequerra and some children.[26] She also saw Loreto and even joked with him.[27] However, she did not see Felimar in the river on that occasion.[28] As she was climbing up to the trail on her way home, Loreto, who was then behind her, pleaded for her help. She saw Loreto bloodied all over. Afraid for her life, she did not help Loreto.[29] The latter passed by her and ran towards their (Sequerras’) house. Instead of going home, Francisca opted to proceed to the place where there were several people.[30] Thereafter, she no longer knew what happened to Loreto.

On July 11, 1989, or almost two weeks from the killing, Francisca gave a statement to Staff Sergeant (S/Sgt.) Edgardo C. Dacquel of the 123rd PC Company/Police District I, Camp Juan Villamor, Bangued, Abra. In her statement, she stated that when she was about to reach her house from the river, he heard gunfire and heard Loreto pleading to her, “I am shot, please help me, sister!” Loreto repeated his plea to her as he passed by her and fled to her house. She noticed that Loreto was bloodied all over. When she arrived home, her mother-in-law, Maxima Sequerra, instructed her to report the matter and seek help from the police. She left the house to report the matter to Patrolman Juanito Blanes. Aside from her mother-in-law, Francisca’s daughter, Maria Sequerra, and her children were also in the house. She did not know who shot Loreto.[31] She testified, on cross examination, that when she reported the matter to Blanes, she did not tell the policeman that it was Almazan who shot Loreto.[32]

The prosecution presented S/Sgt. Dacquel who identified his Report dated August 31, 1989 on the killing of Loreto by Almazan which S/Sgt. Dacquel submitted to the Provincial Commander/Police Superintendent, Abra PC/INP Command. S/Sgt. Dacquel recommended that:

10. ... Criminal Complaint for MURDER be filed against C2C Rodrigo Almazan PC before the competent military court.

11. ... C2C Rodrigo Almazan PC be summarily discharged from the military service, effective upon approval so that his case will be tried in the merits of the civil court. [33]

The Provincial Commander concurred with the foregoing recommendation. The order discharging Almazan from the service was approved by the appropriate officer of the military on November 23, 1989.[34]

Dr. Herminio B. Venus, Medical Specialist I of the Abra Provincial Hospital, testified that he conducted an autopsy on Loreto’s cadaver. He, thereafter, prepared an Autopsy Report containing the following findings:

## **DIAGNOSIS: MULTIPLE GUNSHOT WOUND**

### **HEAD AND CHEST THRU**

### **AND THRU**

### **CADAVER**

-

Lividity and Rigidity

Length – 160 centimeter

Weight – 60 kilos

#### **EXTERNAL FINDINGS:**

- Gunshot wound. Chest lateral thru and thru POE 8 holes measuring in centimeters in diameter 5 centimeters apart 8 centimeters from the right axilla, oval in shape, inverted edges with contusion collar around the wounds directed obliquely penetrating the thoracic cavity existing POEX at the right chest anterior 4 holes measuring 1.5 centimeters in diameter everted edges 3 centimeters apart below the right nipple.

- Presence of powder burn at the right shoulder, right thumb and index finger.

- Gunshot wound head 5 centimeters above the right ear POE measuring 4 centimeters in diameter, oval in shape, inverted edges with contusion collar around the wound, directed slight downward penetrating cranial cavity exiting POEX at left neck with 4 holes 3 centimeters apart everted edges.

#### **INTERNAL FINDINGS:**

- Presence of 1000 cc. of soft clotted blood inside the thoracic cavity.

- Presence of cylindrical tunnel at the right lung middle, upper and lower lobe with blood contents and echymotic border.

- Laceration of the liver

- Laceration of the arch of aorta

- Laceration of the brain substance soft clotted blood inside the brain.
- Pillars and core were extracted.

**CAUSE OF DEATH: CARDIAC TAMPONADE**

**BRAIN INJURY, INTRA**

**CRANIAL, INTERNAL**

**AND EXTERNAL**

**HEMORRHAGE MASSIVE,**

**SECONDARY TO MULTIPLE**

**GUNSHOT WOUND HEAD**

**AND CHEST THRU AND THRU[35]**

He testified that Wound No. 1 was “thru and thru” and fatal. Powder burns were present on the victim’s right shoulder. He managed to hold the gun as indicated by the presence of powder burns on his right thumb and index finger. Wounds Nos. 1 and 2 could have been caused by a shotgun or a buckshot.

The Case for the Appellant

In his Brief submitted to the CA, the appellant summarized his testimony and those of his witnesses, thus:

**- CAPTAIN RODOLFO RIVERA**

Commanding Officer of the 135th PC Co, stationed in the Municipality of La Paz, Abra, he testified that he personally supervised and check[ed] the physical attendance and disposition of all members of his command; that accused herein, Rodrigo Almazan was a member of his command with the rank of Constable 2d Class; his physical presence and performance of duty had been duly accounted for like any other individual member of his unit; and based on official documents, duly and daily prepared, and thereafter, officially submitted to higher headquarters, i.e., Morning Reports (Exhibit “3;” Daily Disposition and location of Troops (Exhibit “4,” “5,” “6,” and “7”); and Guard Detail (Exhibit “9”), accused Almazan was physically present inside camp, and actually performed his duty as guard from 13 May 1989 to 14 May 1989.

He executed an affidavit (Exhibit “8”), confirming the fact that accused performed his normal garrison duties, e.g., attending daily formation, camp guarding, and had participated in combat operations against dissidents in the Cordillera mountain towns of Daguioman and Malibcong from May 14, 1989, up to the time he was placed under arrest on November 07, 1989.

**- T/SGT WILFREDO CACHO**

The Company First Sergeant of the 135th PC Co, he testified that he conducted daily physical check-up of the men personally, supervised the performance of duty of each and every member thereof; that their physical presence were reflected in official documents submitted to higher headquarters which he, himself, or his clerk, prepares such as the Morning Reports, Daily Disposition and Location of Troops, Guard Details, etc; that based on these documents, accused Almazan, as a bona fide member of the command, was duly accounted for as physically present inside the camp at La Paz, Abra for the period: May 11, 12, 13, 14, 1989 (Exhibits “4,” “5,” “6,” and “7,” respectively).

**- T/SGT EDMUNDO LORENZO**

Designated as Sergeant of the Guard for the period – May 13-14, 1989, he personally prepared the Guard Detail (Exhibit “9”), as follows:

1st Shift (2-hour guarding or a total of 6 hours-May 13)

5:00 P.M. – 7:00 P.M. – 1[st] relief – Carmelo Trinidad

7:00 P.M. – 9:00 P.M. – 2d relief – Rodrigo Almazan

9:00 P.M. –11:00 P.M. – 3d relief – Carlos Layug

2d Shift (2-hour guarding or a total of 6 hours-May 13/14)

11:00 P.M. – 01:00 A.M. – 1[st] relief – Carmelo Trinidad;

01:00 A.M. – 03:00 A.M. – 2d relief – Rodrigo Almazan;

03:00 A.M. – 05:00 A.M. – 3d relief – Carlos Layug

3d Shift (4-hour guarding daytime total-12 hours – May 14)

05:00 A.M. – 9:00 A.M. – 1[st] relief – Carmelo Trinidad;

09:00 A.M. – 01:00 P.M. – 2d relief – Rodrigo Almazan;

01:00 P.M. - 05:00 P.M. – 3d relief – Carlos Layug.

That as Sergeant of the Guard, he personally checked the performance of duty of each guard, and in particular, accused was always physically present in his post, never asked permission to be relieved nor abandoned his

post during his tour of duty as guard.

### **- CONSTABLES CARMELO TRINIDAD AND CARLOS LAYUG**

The testimonies of above defense witnesses being corroborative in nature, prosecution initiated the stipulation of their testimonies as follows:

That during their tour of duty as guards, their assumption of and relief from their duties as guards were performed accordingly;

That during their individual tour of duty as guards, none of them ever leave their posts physically or go outside of camp, with or without permission.

### **- RODRIGO ALMAZAN**

Accused-appellant herein, testified as follows:

As a member of the 135th PC Co, then stationed at the poblacion, Municipality of La Paz, Abra, he performed normal garrison duties, e.g., guarding, patrolling, etc;

That he was designated as a member of the daily company guard detail for the whole period, from 5:00 o'clock P.M. May 13, 1989 to 5:00 o'clock P.M. May 14, 1989, as the 2d-relief guard;

That the members of the guard detail for said period were: T/Sgt Edmundo Lorenzo, Sergeant of the Guard, Constable Carmelo Trinidad, 1<sup>st</sup> Relief; Constable Rodrigo Almazan (accused), 2d relief, and Constable Carlos Layug as 3<sup>rd</sup> relief;

As 2d relief he performed personally guard duty designated as follows:

First Shift [Two (2)-hour guarding]

7:00 o'clock P.M. to 9:00 o'clock P.M. May 13, 1989;

Second Shift [Two (2)-hour guarding]

1:00 o'clock A.M. to 3:00 o'clock A.M. May 14, 1989;

Third Shift [Four (4)-hour guarding]

9:00 o'clock A.M. to 1:00 o'clock P.M. May 14, 1989

That during his entire tour of duty, he never went outside of camp physically; neither did he ever ask permission to leave his post, or, without permission (abandonment of post), left camp.

That in the early morning of May 15, 1989, his unit, 135th PC Co (to include himself), moved out from its station at La Paz to the mountainous towns of Malibcong and Daguioman where it launched combat operations against dissidents;

That he personally participated in the operations from that time (May 15, 1989) up to November 07, 1989, when he was placed under arrest as an accused for the death of Loreto Apolinar; he was escorted to the Provl. Headquarters at the capital town of Bangued and thereby detained for twenty-five (25) days until he was released on bail on December 02, 1989;[36]

The trial court convicted the appellant as charged but sentenced him to an indeterminate penalty. The decretal portion of trial court's decision reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of murder without any mitigating or aggravating circumstances and sentences him an indeterminate penalty of Fourteen (14) Years, Ten (10) Months and Twenty (20) Days as minimum to Eighteen (18) Years of reclusion temporal as maximum; to indemnify the heirs of the late Loreto Apolinar in the amount of Fifty Thousand Pesos (P50,000.00) and to pay the cost of this suit.[37]

The Court of Appeals affirmed the appealed decision but increased the penalty to reclusion perpetua.[38]

The appellant filed a Supplemental Brief with this Court, contending that:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT IN LIGHT OF EVIDENCE ON RECORD WHICH RAISES REASONABLE DOUBT AS TO HIS GUILT.[39]

The appellant harps on the fact that prosecution witness Francisca testified that she did not see Felimar taking a bath nor washing clothes in the Abra River with her husband Loreto. Besides, Felimar's testimony is incredible and barren of probative weight because it is frontally contradicted by the testimony and sworn statement of Francisca.[40] Felimar could not have run after Loreto and the appellant and reach the house of the Sequerras in time for her to hear the second gunfire from the appellant's firearm because she was then around eight months pregnant. The house of the Sequerras was about 247 meters from the Abra River. Felimar could not have negotiated the distance of 200 meters from the Sequerras' house to the house of Blanes in her physical condition. If she saw the appellant shoot and kill Loreto, certainly, the appellant would have also killed her to eliminate any witness against him. Hence, Felimar's testimony that the appellant even threatened to shoot her is implausible. The testimony of Felimar is even contradicted by the physical evidence. For, if as claimed by her, Loreto was first shot at around a distance of 2 feet between the gun muzzle and skin, a shotgun blast would have produced a single entry wound although there may be isolated shots causing independent entry. In this case, the first gunshot wound on the chest of the victim produced eight separate and independent entry wounds on the victim's chest. Such number of entry wounds could only have been caused or produced by a buckshot fired at a muzzle to skin distance of at least ten feet. When police investigators arrived at the scene, they did not even investigate Felimar and did not take her statement thereat. They merely asked her the assailant's name. The appellant could not have killed Loreto because he was a guard on duty at the PC Camp La Paz, Abra, on May 14, 1989 from 9:00 a.m. to 1:00 p.m. It was only in November 1989 when he learned, for the first time, that he was a suspect in the killing of Loreto.

The appeal is dismissed.

First. Felimar positively identified the appellant as her husband's assailant. When she testified, Felimar declared that the appellant mercilessly shot her husband twice and narrated in great detail how the appellant committed the crime with impunity:

**Q**

Do you know also a person by the name Loreto Apolinar?

**A**

He is my husband.

**Q**

Where is your husband now?

**A**

He died already, sir.

**Q**

And when did he die?

**A**

May 14, 1989, sir.

**COURT**

**Q**

What did he die of?

**A**

He was shot by Rodrigo Almazan (witness pointing to the accused).

**FISCAL FLORES**

**Q**

On May 14, 1989 at around 9:00 in the morning do you know where were you (sic)?

**A**

It was when we went to take a bath at the river.

**Q**

You said we, who was your companion?

**A**

My late husband Loreto Apolinar.

**Q**

How long did it take you to take [a] bath in the river?

**A**

Maybe thirty (30) minutes, sir.

**Q**

And after taking your bath, what did you do next, if any?

**A**

We went home.

**Q**

Do you recall if there was anything that transpired while you were on your way home?

**A**

There was, sir.

**Q**

Will you relate what was that? Start from the beginning.

**A**

After having taken a bath, we were going home and when we were ascending the river bank, it was then when somebody jumped from the bushes.

**Q**

Do you know that person who jumped from the bushes?

**A**

Yes, sir.

**Q**

Who?

**A**

(Witness pointing to Rodrigo Almazan).

**Q**

You stated that since your husband walked faster than you, you were somewhat left behind, how far were you from your husband who was walking ahead of you?

**A**

Ten (10) meters, more or less.

**Q**

You said that the person who jumped was the accused, my question is, how did he appear to you when he jumped in front of you?

**ATTY. ASTUDILLO**

No basis, he did not jump in front of her.

**COURT**

**Q**

Did you see that person whom you identified as Rodrigo Almazan?

**A**

Yes, sir.

**COURT**

Now answer the Fiscal.

**WITNESS**

**A**

He jumped and he was holding a gun.

**FISCAL FLORES**

**Q**

More or less, will you describe that gun he was holding according to you?

**A**

(Witness indicating a length of one foot.)

**Q**

And after he jumped in front of you, what transpired next?

**A**

He shot my husband and my husband ran away but then he followed him.

**COURT**

**Q**

Who ran away, your husband?

**A**

My husband ran away it (sic) was followed by Rodrigo Almazan.

**FISCAL FLORES****Q**

How many times did the accused shot your husband, if you know?

**A**

Once, sir.

**Q**

Do you know if your husband was hit at that time?

**A**

I know that he was hit because blood was oozing from his body.

**Q**

Alright, when you saw your husband hit already because according to you blood was already oozing from his body, what did you see or do if any?

**A**

I ran after them shouting: “Odit, Odit, don’t shoot my husband.”

**Q**

Who was that Odit you are addressing your pleas?

**A**

Rodrigo Almazan (witness pointing to the accused).

**COURT****Q**

So this Odit is the nickname of Rodrigo Almazan?

**A**

Yes, sir.

**FISCAL FLORES****Q**

Your husband when he was shot ran away and he was followed by the accused, where did they go, if you know?

**A**

My husband went to the nearest house.

**Q**

And what about you, what did you do when you followed them?

**A**

I followed them, sir, because Rodrigo Almazan was also following my husband.

**Q**

Where did Rodrigo Almazan follow your husband will you tell the court?

**A**

Inside the house.

**Q**

And what happened next inside the house if you know?

**A**

The[n] he shot my husband.

**Q**

How many times did Rodrigo Almazan shot your husband inside the house where your husband sought refuge?

**A**

Once, sir.

**COURT****Q**

Your husband was shot twice, once on the way going up the riverbank and the other one is in the house?

**A**

Yes, sir. Once when he was ascending and once in the house where he sought refuge.

**FISCAL FLORES****Q**

You said that your husband was shot for the second time inside the hut where he sought refuge, how far from you when Rodrigo Almazan shot your husband for the second time, if you know?

**A**

Maybe less than ten (10) meters.

**Q**

And the first time that your husband was shot when you were ascending that river bank, how far were you, if you still remember?

**ATTY. ASTUDILLO**

Already answered, ten meters more or less.

**COURT**

Ten (10) meters.[41]

x x x

x x x

x x x

**ATTY. ASTUDILLO**

**Q**

A while ago, when we were asking you how far was your husband to (sic) the accused at the time he jumped, you first said less than three meters and then you corrected it, is it not?

**A**

Yes, sir.

**Q**

So at that distance of less than one meter while the accused was on the right side of your husband, that was the time he shot your husband?

**A**

Yes, sir.

**Q**

Madam Witness, you saw actually how your husband was shot according to you on that first burst? Would you please personify yourself as your husband and place the Interpreter as the assailant in the way you saw him when he allegedly shot your husband? With the permission of the Court.

**A**

(The witness demonstrating a firing position towards the left side of the Interpreter with a long firearm.)

**ATTY. ASTUDILLO**

**Q**

Could you please be more accurate, Madam Witness. Could you please rise again. You are the accused. Now, you said that the accused jumped on the right side of your husband. Please place the Interpreter as your husband, so you must be on his right side.

**A**

(Witness raising her two hands in a firing position, aimed towards the right side of the Interpreter; and the victim and the assailant as placed by the witness, they are directly opposite each other.)

**Q**

So that is now the correct position of your husband and the assailant at the time the assailant first show (sic) the victim?

**A**

Yes, sir.

Q Now, you raised your two hands and protruded it about a meter away from the body, is it not?

A No, sir. The left hand is slightly bent at the elbow.

Q And you said that your husband and the assailant were less than a meter apart on the right side of your husband, is it not?

A Yes, sir.

Q So with your protruding left hand, although slightly bent left elbow, you have consumed about half a meter from your body, is it not?

A Yes, sir.

Q Considering likewise that your husband is only about less than a meter away from the assailant, the muzzle of the gun, therefore, was already very close to the side of your husband, is it not?

A It is not so near, sir.

**COURT**

Q How far was the muzzle of the gun from your husband?

A (Witness demonstrating about one and one-half to two feet.)[42]

x x x

x x x

x x x

**ATTY. ASTUDILLO**

**Q**

So, Madam Witness, how long after the first burst of gunfire at the trail up to the second burst of gunfire inside the house? How long after?

**A**

I cannot estimate, sir.

**COURT**

**Q**

Before the first shot was fired, did you hear any conversation between your husband and the assailant?

**A**

None, sir.

**Q**

You did not hear any?

**A**

I did not hear any, sir.

**Q**

Is it not a fact, Madam Witness, that immediately after the accused and the assailant reached the house of Francina Sequerra, there was an immediate burst of gunfire?

**A**

After they had gone inside the house, that was the second shot, sir.

**Q**

Yes, immediately after they had gone inside the house, there was a burst of gunfire?

**A**

Yes, sir.

**ATTY. ASTUDILLO**

Q Who was ahead in running, Madam Witness, towards the house of Francng Sequerra, your husband, is it not?

A Yes, sir.

Q And according to your testimony, the accused followed suit?

A Yes, sir.

Q And they were very close [to] each other running towards the house of Francng Sequerra?

A Maybe less than ten meters distance, sir.

Q How about you, you said you followed suit. How far were you? How close were you from the back of the accused, also going to the house of Francng Sequerra?

A Maybe less than ten meters also, sir.

Q That house of Francng Sequerra is a one-bedroom house, is it not?

A Two, sir.

Q One living room and two bedrooms?

A That is what they said because I have not gone on (sic) that house.

Q You were still on the ground, according to you, when the second shot was fired inside the house?

A I was holding the upper portion of the stairs. I was about to step on the first step when I heard the second shot.

Q How many steps up to the second floor of the house of Francng Sequerra where the second burst of gunfire occurred?

A Three steps only, sir.

Q But in the place where you were at the time the second shot was fired, you cannot see your husband, nor the

accused, correct?

A Yes, sir.

### **COURT**

Q But did you hear the gunfire?

A Yes, sir.[43]

It must be emphasized that on May 15, 1989, or barely a day after the killing of her husband, Felimar gave her sworn statement[44] to Pfc. Antonio Carpio of the Bangued Police Station and gave a detailed narration of how the appellant shot Loreto with a long firearm. The gory killing of her husband was still fresh in her mind. She subscribed and swore to the truth of her statement before Notary Public Ricarte B. Valera. Felimar was a 31-year-old housewife. She finished only Grade VI in the elementary grade. Her testimony and sworn statements are clear, positive and full of details, including the identity of the appellant. Felimar could not have contrived the details of the killing. Indeed, it is most unlikely that Felimar could have narrated all the details of the crime with clarity and lucidity unless she herself was present at the situs criminis before and during the killing.[45] The testimony of a witness, giving details of a startling incident that cannot easily be fabricated, deserves credence and full probative weight for it indicates sincerity and truthfulness in the narration of events.[46]

Second. Felimar testified that she was with her husband at the Abra River and described how the appellant first shot her husband when the latter was on his way home and again, when he was inside the Sequerras' house. On the other hand, Francisca, a prosecution witness, testified that she did not see Felimar at the river when she washed clothes,[47] and that she did not reach her house and did not seek help from Pat. Juanito Blanes. Significantly, Blanes corroborated Felimar's testimony when he testified that Francisca arrived at his house asking for his help because the appellant had shot Loreto in her house:

### **FISCAL FLORES**

**Q**

What happened while you were on your way home?

**A**

I rode on a tricycle and the driver was Marlon Barroga and we met Rodrigo Almazan.

**Q**

This Rodrigo Almazan whom you claim to have met while you were on your way to your barangay on that particular day, is he the same accused who is now seated there?

**A**

The same, sir.

**Q**

Alright, what happened next after you met the accused?

**A**

When I reached home at around thirty (30) minutes after, I heard a gunshot.

**Q**

How many gunshots or reports did you hear?

**A**

Two (2) times (sic), sir.

**Q**

After you heard the two gun reports, what did you do if any?

**A**

I tried to determine where the shot came from and in two minutes after, a person by the name of Francine Sequerra came to me and asked for help by saying: “Manong, arayatenna kami ta simrek diay balaymi ni Loreto Apolinar ta pinaltoogan ni Rodrigo Almazan.” (Translated as follows: “Brother, help us because Loreto Apolinar entered our house and he was shot by Rodrigo Almazan”).

**Q**

Do you know this person Loreto Apolinar whom Francine Sequerra was referring to you when she came to seek your help?

**A**

Yes, sir.

## **COURT**

**Q** Why do you know Loreto Apolinar?

**A** We are neighbors because he is also from Calaba, Your Honor.

Q How about this Francina Sequerra, why do you know her?

A Because we are neighbors at Calaba, sir.

Q Is this Francina Sequerra a boy or girl?

A A woman, Your Honor.

### **COURT**

Proceed.

### **FISCAL FLORES**

Q What is the relation of this Loreto Apolinar to the victim in this case, if you know?

A The same person, sir.

Q Alright, upon receipt of the information from Francina Sequerra, what did you do next, Mr. Witness, if any?

A I went to get my service pistol then I went out then I met outside Felimar Apolinar, the wife of the victim who sought my help by saying: “Manong arayatenna kami ta pinaltoogan ni Rodrigo Almazan ni lakayko” translated into English as follows: “Please Brother, help us because Rodrigo Almazan killed my husband.”

### **ATTY. PURUGGANAN**

We object to the presentation of that statement because it is hearsay, Your Honor.

### **COURT**

Let it stay on record. We will rule on that but see to it that the objection is put on record. Go ahead.

### **FISCAL FLORES**

Q Upon being informed by the wife of the victim Felimar Apolinar, what did you do next, if any?

A I went to the crime scene.

Q And what did you find out to (sic) the place where the incident transpired?

A I found out that Loreto Apolinar....I saw Loreto Apolinar with his head hanging (nabalintungog) down from the

house of Francning Sequerra.

## COURT

Q Is this Francisca Sequerra the same as Francning Sequerra?

A Yes, sir.[48]

Francisca herself stated in her sworn statement to S/Sgt. Dacquel on July 11, 1989 that from the river she was able to reach her house and, upon the instructions of her mother-in-law, she sped to the house of Blanes and sought his help.[49] The second statement of Francisca belies her testimony that instead of proceeding to her house, she went to another house where there were several people. The trial court disbelieved parts and believed the other portions of Francisca's testimony. The trial court cannot be faulted for so doing. It was its duty to determine which portions of the testimony are credible and which portions are not. In *People v. Quilang*,[50] this Court held that courts may believe one part of the testimony of a witness and disbelieve other parts depending on its inherent credibility or the corroborative evidence in the record. In contrast, Felimar had not committed any material inconsistency in her sworn statement and her testimony before the trial court. The appellant failed to present any witness to corroborate Francisca's testimony that Felimar was not in the river when Loreto was taking a bath and she (Francisca) was washing clothes in the river. Likewise, the trial court cannot be faulted for giving full probative weight to the testimony of Felimar.

Parenthetically, S/Sgt. Dacquel, who conducted the investigation on the appellant's involvement in the killing of Loreto, on orders of the Acting Commanding Officer/District Commander and to whom Francisca gave her sworn statement on July 11, 1989, in his report, noted that:

... Francning Sequerra, on the other hand, might have also seen or witnessed the tragedy but for fear of being involved or be implicated by the Almazan's, (sic) she have (sic) turned blind and deaf, so as to save her life and limb. (Autopsy Report of the late Loreto Apolinar hereto attached and marked as Tab-"D") [51]

Third. Admittedly, when the appellant shot the victim on May 14, 1989, Felimar was eight months on the family way. The distance from the place where the appellant first shot Loreto to the house of the Sequerras was only 45 meters. Completely unmindful of her physical condition and determined to help her husband at all costs, she followed the appellant and Loreto to the house of the Sequerras. There is no evidence that right after the appellant caught up with Loreto at the Sequerras' house, the appellant shot Loreto immediately. It is possible that a struggle ensued between Loreto and the appellant even as the former crawled to the sawali wall of the house and managed to insert his head through the said wall. By the time Felimar reached the first step of the stairs of the house, the appellant gave Loreto the coup de grace and shot him for the second time, this time on the head.

Fourth. That the appellant ensured the death of Loreto by shooting him twice with a long firearm but did not shoot Felimar is not difficult to believe. The evidence on record shows that the appellant intended and was bent on killing Loreto only. The appellant had no motive to kill Felimar, Francisca, or any of the other people present, for that matter. Indeed, there was no reason for him to kill Felimar. Besides, she was eight months on the family way. The appellant must have thought that although Felimar witnessed the killing of her husband, she would be too petrified to divulge the assailant's identity, just like Francisca. However, Felimar proved to be of sterner stuff. She was determined to put the appellant behind bars for his dastardly crime.

Despite her condition, it was not physically impossible for Felimar to have trekked the 250-meter distance between the house of the Sequerras and that of Blanes and sought the latter's help. There is no evidence on how

Felimar was able to cover said distance. She could have reached the house of Blanes via a tricycle or other mode of transportation. It is not quite far-fetched that despite her pregnancy, Felimar was able to run from the place where the appellant first shot her husband to the house of the Sequerras, which was only 45 meters, and from there, still managed to go to Blanes' house, which was only 250 meters away.

The Court observes that the spouses Loreto and Felimar worked in the farm. It is established in the medical field that some pregnant women, even late in pregnancy, have run marathons of considerable distance without apparent harm to themselves or their fetuses:

In general, it is not necessary for the pregnant woman to limit exercise, provided she does not become excessively fatigued or risk injury to herself or her fetus. The current enthusiasm for jogging has also attracted a number of pregnant women to the endeavor. In fact, several women, even late in pregnancy, have run in marathons of considerable distance without apparent harm to themselves or their fetuses.[52]

Fifth. The appellant claims that Felimar's testimony that when he first shot Loreto, the muzzle of the gun was only 1-1/2 to 2 feet from the victim, is belied by physical evidence. He insists that if her testimony were true, then there should have been only a single entry wound. However, the autopsy report showed that Loreto had eight entry wounds on his chest. We do not agree with the appellant. The fact that the victim had been shot by a shotgun at 2 to 3 feet muzzle to skin distance does not preclude the possibility of independent entry. Dr. Pedro Solis notes that:

- Long Range Shot (more than 6 inches skin-muzzle distance):

- At 2 to 3 feet muzzle-skin distance, there is still a single wound of entry although there may be isolated shots causing independent entry.[53]

Sixth. As found by the trial court and the CA, which we find supported by the evidence, the prosecution proved that the appellant had an ill-motive to kill Loreto:

Lastly, the theory of the police that the motive for the killing of the victim is revenge because earlier, the victim, Loreto Apolinar was accused for killing P.C. S/Sgt. Rogelio Almazan, brother of the accused on January 18, 1988, and a criminal complaint for homicide was filed against Loreto Apolinar, the victim in the instant case or I.S. No. 178 of the Office of the Provincial Fiscal of Abra, but the resolution of the fiscal exonerated the then respondent Apolinar, (Exhibit "1"), and the accused in killing the victim was out to revenge his brother's death is not farfetched.[54]

S/Sgt. Dacquel, based on his report, concluded that the appellant killed Loreto to avenge the death of his brother Rogelio Almazan:

... This is the true fact, but all these facts cannot be admitted by the Almazan's (sic), who have conceived hatred and taken revenge and killing the brother of Loreto Apolinar, who was hacked and stabbed to death by the Almazan's (sic). But not yet satisfied with what they have done to the brother of Loreto Apolinar, the Almazan's (sic) have not stopped, not until C2C Rodrigo Almazan succeeded in killing his prime target. With all these facts and circumstances, clearly manifest that C2C Rodrigo Almazan PC of the 135[th] PC Company, is the killer of the late Loreto Apolinar, as being properly identified/pinpointed by the widow of Loreto Apolinar and who was likewise threatened to be killed by C2C Rodrigo Almazan. ...[55]

The Provincial Commander of Abra and the Acting Commanding Officer/District Commander of the Philippine Constabulary agreed with the findings of S/Sgt. Dacquel.

In rejecting the appellant's defense of alibi, we agree with the encompassing disquisitions of the trial court:

To fortify his defense of alibi, the accused submitted the following documentary evidence, to wit: Exhibits 3,

Morning Report, 4, 5, 6 and 7, disposition and location of troops from May 12 to 14, 1989; Exhibit 9, guard detail and the testimony of witnesses. The time honored albeit weather beaten but still is the prevailing doctrine in this jurisdiction is that alibi is the weakest defense for the reason that it can easily be concocted and fabricated and for this defense to hold water the physical impossibility for the accused to be at the scene of the crime at the particular hour and day of its commission must be established. The place where the accused claim he was at the time of the commission of the crime is only a scant 10 kilometers away which can be negotiated by land transportation means in 30 minutes. The estimation of witnesses of the approximate time of commission of the crime is around 9:00 o'clock in the morning, the end of the guard duty of the accused in the morning of May 14, 1989. He is to go on guard again at 1:00 o'clock in the afternoon of that day, his last duty. So that between 9:00 o'clock A.M. to 1:00 o'clock P.M. May 14, 1989, he is off duty and the crime was committed at around 9:00 o'clock in the morning of May 14, 1989. It is not really impossible for the accused to be in the vicinity of the scene of the crime at around 9:00 o'clock in the morning of May 14, 1989. But the most damaging evidence against the accused viz-a-viz his defense of alibi, is his positive identification by the wife of the victim, Mrs. Felimar Apolinar, a neighbor in Calaba, Bangued, Abra, who has known the accused since childhood as the assailant of her husband Loreto Apolinar and the identification by another resident of Calaba, Police Officer Juanito Blanes of the Bangued Police Station, Bangued, Abra, who testified that on his way home to Calaba, Bangued, Abra, he saw between the hours of 8:00 o'clock and 9:00 o'clock in the morning of May 14, 1989, the accused riding on a tricycle driven by one Marlon Barroga. After some 30 minutes from the time he arrived home, Blanes heard the 2 gunshots. He took his service firearm proceeded to the place where he heard the shots to investigate and on the way he met Felimar, wife of the victim who immediately sought his help about the shooting of her husband.

This alibi defense and the documents presented in this trial, as official records of the 135 P.C. Company were the subject of investigation by authorities at the Constabulary Headquarters in Camp Crame, Quezon City, Exhibit "14", but apparently the constabulary authorities did not give any credence to his defense because he was discharged from the military service effective November 30, 1989, not even giving him the chance to present his evidence. In other words, it was a summary dismissal a procedure resorted to by the military when there is no more need to investigate the case further because of the notoriety of the occurrence giving rise to the controversy and that whatever defense may be proffered by the respondent cannot overcome the preponderance of evidence on record against him. This is what happened in this case and the regularity of the performance of duty and functions by government officials is presumed. No evidence was ever offered by the accused to overcome it.[56]

### The Crime Committed by the Appellant

We agree with the trial court and the CA that under Article 248 of the Revised Penal Code, the appellant is guilty of murder qualified by treachery. The crime was committed before the effectivity of Republic Act No. 7659; hence, the crime was punishable by reclusion temporal in its maximum period to death under Article 248 of the Revised Penal Code. Further, under Republic Act No. 8294 amending Presidential Decree No. 1866, the use of an unlicensed firearm to commit homicide or murder is a special aggravating circumstance in the commission of the crime. The Information merely alleged that the appellant used a firearm to kill the victim. It did not allege that the same was unlicensed. Neither was it proved by the prosecution that the appellant had no license to possess the firearm. The appellant's lack of license to possess the firearm is an essential element of the circumstance.[57] Unless it is alleged in the Information and proved by the prosecution, the use by the appellant of an unlicensed firearm to commit murder is not aggravating. Besides, the crime was committed before the effectivity of the Revised Rules of Court and Rep. Act No. 8294. Hence, the aggravating circumstance should not be appreciated against the appellant.[58]

There being no mitigating or aggravating circumstance attendant to the crime, the medium period of the penalty imposed by the law for the crime, namely, reclusion perpetua, shall be imposed on the appellant.[59] In this case,

the CA correctly imposed the penalty of reclusion perpetua.

On the civil liability of the appellant, he should be ordered to pay exemplary damages to the heirs of the victim conformably to current jurisprudence.[60]

IN LIGHT OF ALL THE FOREGOING, the appeal is DISMISSED. The Decision of the Court of Appeals, dated February 27, 1998, is AFFIRMED with MODIFICATION. The appellant is hereby ordered to pay P25,000.00 to the heirs of the victim Loreto Apolinar, as exemplary damages.

**SO ORDERED.**

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.

Puno, J., (Chairman), on leave.

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[1] Penned by Judge Benjamin A. Bongolan.

[2] Penned by Associate Justice Artemio G. Tuquero with Associate Justices Jorge S. Imperial and Eubulo G. Verzola concurring.

[3] CA Rollo, p. 212.

[4] Records, p. 1.

[5] Id. at 45.

[6] TSN, 27 September 1990, p. 12.

[7] TSN, 23 October 1990, p. 10.

[8] Id. at 5.

[9] TSN, 23 October 1990, p. 6.

[10] Ibid.

[11] TSN, 27 September 1990, p. 6.

[12] Id. at 7.

[13] Id. at 8.

[14] Id. at 9.

[15] Id.

[16] Exhibits “D” and “D-1.”

[17] TSN, 1 April 1991, pp. 4-5.

[18] Id. at 5.

[19] Id. at 6.

[20] Id. at 7.

- [21] Id. at 8.
- [22] Id.
- [23] Exhibits “H-3” & “H-4.”
- [24] Exhibits “H-1” & “H-2.”
- [25] TSN, 13 May 1991, p. 11.
- [26] Id. at 19; Exhibit “A.”
- [27] Id. at 12.
- [28] Id. at 16.
- [29] Id. at 11-12.
- [30] Id. at 13.
- [31] Exhibits “A” to “A-3.”
- [32] TSN, 13 May 1991, p. 16.
- [33] Exhibit “B.”
- [34] Records, pp. 5-6.
- [35] Exhibit “C,” Records, p. 11.
- [36] CA Rollo, pp. 77-81.
- [37] Records, p. 328.
- [38] CA Rollo, pp. 212-213.
- [39] Rollo, p. 29.
- [40] Exhibit “D.”
- [41] TSN, 27 September 1990, pp. 3-7.
- [42] TSN, 23 October 1990, pp. 13-15.
- [43] Id. at 17-19.
- [44] Exhibits “D” and “D-1.”
- [45] *People v. Francisco*, 315 SCRA 114 (1999).
- [46] *People v. Clariño*, 362 SCRA 85 (2001).
- [47] TSN, 13 May 1991, pp. 16-17.
- [48] TSN, 1 April 1991, pp. 5-7.
- [49] Exhibit “D-3.”

**[50] 312 SCRA 314 (1996).**

[51] Exhibit “B.”

[52] WILLIAMS, OBSTETRICS (17<sup>th</sup> ed.) Jack A. Pritchard, Paul C. MacDonald, Norman F. Grant Appleton – Century Crotts/Norwalk, Connecticut (1985), p. 256.

[53] SOLIS, LEGAL MEDICINE, 1987 ed., p. 377.

[54] Records, pp. 327-328.

[55] Exhibit “B,” Records, p. 9.

[56] Id. at 326-327.

[57] Sections 8 & 9, Rule 110 of the Revised Rules of Criminal Procedure.

[58] People v. Gano, 353 SCRA 126 (2001).

[59] ART. 64. Rules for the application of penalties which contain three periods.— In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

- When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

[60] People v. Mangompit, 353 SCRA 833 (2001).

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