THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SGT. ALEJANDRO MAGNO AND SGT. BRIGIDO RINGOR, ACCUSED-APPELLANTS.

G.R. No. 134535. January 19, 2000

Ponente: MELO, J.

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MELO, J.:

Sergeant Alejandro Magno and Sergeant Brigido Ringor, two long-time Army men, were charged with the crime of murder in an Information which reads:

> That on or about the 7th day of March, 1995, in the evening, at Brgy. Prado, municipality of Umingan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, armed with firearms, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one BARTOLOME P. LIZARDO, causing his death as a consequence, to the damage and prejudice of the heirs of the said BARTOLOME P. LIZARDO.
>
> CONTRARY to Article 248 of the Revised Penal Code. (Rollo, p. 15)

Both accused pleaded not guilty upon arraignment and trial thereafter ensued, with the prosecution presenting six witnesses, namely, Sionita Lizardo, Cristita Lizardo, Dr. Alex Trinidad, Chief of Police Rogelio Danoli, firearm examiner Pascual Mangalip, and Police Chief Inspector Teresa Ann Cid. The defense, on the other hand, presented, aside from the two accused, Captain Rolando Reyes, Corporal Danilo Dagang, and barangay counselor Julio Galvan.

On June 17, 1998, the trial court rendered a decision, disposing as follows:

> WHEREFORE, judgment is hereby rendered finding the accused SGT. ALEJANDRO MAGNO and SGT. BRIGIDO RINGOR equally guilty of and liable for the crime of MURDER, qualified by treachery and aggravated by evident premeditation.
>
> Pursuant to Article 248 and Article 63, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty of DEATH is hereby imposed on both.
>
> The accused are likewise hereby sentenced to solidarily indemnify the heirs of the deceased BARTOLOME LIZARDO for actual damages in the amount of P50,000.00, and for moral damages in the amount of P30,000.00, and to pay the costs.
>
> SO ORDERED. (Rollo, p. 130)

The supreme penalty of death having been imposed, the aforesaid decision is now before this Court on automatic review.

The facts, as established by the evidence, may be synthesized as follows:

At around 9:30 o'clock on the evening of March 7, 1995, two men in camouflage uniforms went to Bartolome Lizardo's bungalow at Barangay Prado, Umingan, Pangasinan and asked for a ride, allegedly because their vehicle was out of order. Sionita Lizardo, the wife of Bartolome, who was then sleeping at the store beside their bungalow, was roused by her husband's calls from the window of his room. This window, overlooking the left side of the store, was higher than the store by about 1½ meters. He asked her to go and wake up their son, Agustin, who lived in another house 25 meters away. Sionita went out, walked quickly to Agustin's house, and woke up the latter. She then returned to the store. At this point, one of the men bought cigarettes. The other asked for water and Bartolome, who was still at the window of his room, asked Sionita to do as requested. As Sionita stepped out to comply, her skirt got caught on the barrel of the M-16 rifle carried by one of the two men, and the latter apologized, saying, "Sorry." Suddenly feeling nervous, she walked backwards from the duo. Thus, she was able to see the two as they continued to converse with her husband, who was still by his window looking down. When she was about 5 meters away, one of the two pointed a flashlight at her husband while the other then raised his M-16 rifle and fired a burst at Bartolome, causing his death. Thereafter, the two hastily fled.

Cristita Lizardo's testimony corroborated Sionita's story. Cristita, a daughter of Bartolome and Sionita, narrated that on the night of March 7, 1995, she was in her room at their house in Barangay Prado when she heard someone calling from outside. From her room she went to the kitchen and peeped out of the window. She saw two men wearing camouflage uniforms talking to her father and asking for a ride. After her mother went to and from Agustin's house, the two bought cigarettes, one of them asked for water, and then they shot her father.

After the shooting, she rushed to her father's room and found him sprawled on the floor already dead. Thereafter, she went to her mother and told her what had happened. When Agustin arrived, he told her to get assistance from her future in-laws, which she did. For her part, Sionita went to Barangay Casilan, also in Umingan, then to the Umingan Police Station to ask for help.

A few hours later, the police, informed of the incident, arrived at the Lizardo residence to investigate. Moreover, they set up checkpoints on the national highway. At around 4:30 o'clock on the morning of March 8, 1995, Chief of Police Rogelio Danoli went to the checkpoint at Barangay San Leon. From there, he went to the San Andres checkpoint, but along the way, his attention was drawn to a 6 x 6 army truck parked at the highway. Arriving at the San Andres checkpoint, he learned that the truck had passed through at around 2:30 A.M. Having been informed earlier that the killers were in camouflage uniform, Danoli went back to Barangay Prado to get Sionita and Cristita. He asked the two whether they could identify the killers on sight. Assured that the witnesses can do so, he told them that an army truck had been sighted in Barangay San Andres. They then went to the aforesaid barangay where they found the truck parked in front of the house of a certain Lito Seriosa. Danoli entered the house and saw four soldiers inside. He informed them that a shooting incident had occurred in Barangay Prado, located 10 kilometers away. He asked them if they were amenable to being presented to the witnesses, to which the soldiers assented. Upon entering the Seriosa residence, Sionita and Cristita forthwith pointed to two of the soldiers, later identified as accused-appellants Alejandro Magno and Brigido Ringor, as Bartolome's assailants. Both Sionita and Cristita pointed to Alejandro Magno as the one who shot Bartolome. Magno and Ringor were thus taken into police custody. The police also confiscated three M-16 rifles which they found in the possession of the soldiers. Further investigation at the Lizardo residence revealed combat boot prints at the scene of the crime. Moreover, the police recovered eight spent M-16 shells in front of the Lizardo store. Paraffin testing of the two-accused appellants would, however, yield negative results. Similarly, the result of the ballistic examination conducted by Pascual Mangalip on the confiscated M-16 rifles indicated that the M-16 shells recovered from the scene of the crime were not fired from the confiscated firearms.

On March 8, 1995, the Rural Health Physician of Umingan, Pangasinan, Dr. Alex Trinidad, performed an autopsy

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on the cadaver of Bartolome Lizardo following which, an Autopsy Report was prepared with the following findings:

(1) Gunshot wound, point of entry left shoulder muscle depth;

(2) Gunshot wound, point of entry left chest fracturing the 2nd rib, slightly going upward, penetrating the left lobe of the lungs;

(3) Gunshot wound, point of entry left chest, 2½ inches in length fracturing the 3rd rib, slightly going upward penetrating the left lobe of the lungs;

(4) Gunshot wound, point of entry left chest 2½ inches in length at the 3rd intercostal space, slightly going upward, perforating the aorta;

(5) Gunshot wound, point of entry, right chest 2½ inches in length, fracturing the 4th rib, slightly going upward, penetrating the right lobe of the lungs;

(6) Fractured bone of the right forefinger due to gunshot wound.

- Presence of powder burns over the chest.

CAUSE OF DEATH

- Severe internal hemorrhage due to multiple gunshot wounds. (Original Records, p. 16)

On the other hand, the defense, interposing denial and alibi, presented three other witnesses aside from the testimony of accused-appellants.

Captain Rolando Reyes, the superior officer of accused-appellant Alejandro Magno, testified that a week before March 7, 1995, while stationed at Camp Upi, Gamu, Isabela, he received a mission order to haul supplies from Camp Aquino in Tarlac to Camp Upi in Isabela. Consequently, he organized a team of non-commissioned officers, including accused-appellants Magno and Ringor, to transport the aforesaid supplies.

While accused-appellant Ringor was not a complement of the Camp Upi personnel, he instead being part of the 2nd Forward Supply Support Unit based at Camp de la Cruz, Echague, Isabela, he became part of the team because Captain Reyes requested for a truck from Camp de la Cruz as Camp Upi had only two 6 x 6 trucks, while three trucks were needed to transport the supplies.

According to Capt. Reyes, Ringor left Camp de la Cruz, Echague, driving the aforesaid camp's truck, at 3:30 P.M. of March 7, 1995, arriving at Camp Upi at around 5 o'clock in the afternoon. Once there, Sergeants Magno and Jacinto and Corporal Dagang were assigned as his escorts. At 5:35 P.M., Ringor's truck, part of a three-truck convoy, left Camp Upi for Tarlac. One truck was loaded with bamboo and cogon, which they dropped off at 7 p.m. at the residence of a certain Lt. Arnel Acosta in Echague, Isabela. The convoy left Lt. Acosta's residence at 7:30 P.M. The going was slow since portions of the highway were undergoing repair and were single-lane only. They arrived in Santiago City, Isabela at 8 o'clock in the evening, and at 9 o'clock, the convoy had only reached Diadi, Nueva Vizcaya. At 9:30 P.M., at the time of Bartolome's killing, the convoy stopped at the Aries Restaurant located in Barangay Baretbet, Bagabag, Nueva Ecija, where the group had their supper. They left at 10 o'clock that evening, reaching San Jose City, Nueva Ecija only at 12:30 in the morning of March 8, 1995. Captain Reyes stressed that from Gamu, Isabela to San Jose City, the truck driven by Ringor never separated from the convoy.

When they stopped to have coffee at a carenderia in San Jose City, Sgt. Ringor asked permission to deviate from their route, allegedly because in addition to delivering several pieces of lumber at Sgt. Seriosa's residence in

Umingan, he (Ringor) had to give his salary to his family also in Umingan, Pangasinan. Captain Reyes approved the request, on the condition that they meet in Camp Aquino, Tarlac at 8:30 o'clock that morning. It was only at this point that the truck driven by Ringor, with Magno, Jacinto, and Dagang, separated from the convoy. The two remaining trucks proceeded to Camp Aquino, arriving there at 3:30 o'clock in the morning of March 8, 1995.

At 8:00 o'clock that same morning, Jacinto and Dagang arrived at Camp Aquino with the 6 x 6 truck and informed Captain Reyes that Magno and Ringor had been arrested.

For his part, accused-appellant Magno flatly denied shooting Bartolome Lizardo. On the witness stand, he affirmed Captain Reyes' statement that they were at the Aries Restaurant at the time of the alleged shooting. He averred that they left the convoy at San Jose City at around 12:30 A.M., March 8, 1995, taking the San Jose-Carmen route to get to Umingan. They passed a PNP checkpoint in Lupao, Nueva Ecija at around 12:45 A.M., arriving at Seriosa's residence in Umingan at 1:30 A.M. They unloaded several pieces of lumber owned by Sgt. Seriosa, then proceeded to Ringor's residence at Barangay San Juan, Umingan, to drop off the latter's salary, as well as the remaining lumber on board the truck. They returned to Seriosa's residence that same morning, arriving there at around 3 o'clock in the morning. At 5:45 a.m., policemen entered the Seriosa residence. Two women later entered and pointed to him (Magno) and Ringor as the killers of Bartolome Lizardo, paving the way to their arrest that same day.

Accused-appellant Magno further explained that they were identified only because the killers wore camouflage T-shirts identical to what they had on at the time of their alleged identification. Accused-appellant Ringor's testimony, as well as that of Corporal Dagang, are substantially similar to Magno's narrative.

Upon the above circumstances, the trial court found accused-appellants guilty of murder, qualified by treachery and aggravated by evident premeditation, and thereupon, sentenced them to suffer the supreme penalty of death.

In their brief, accused-appellants contend that Sionita and Cristita Lizardo did not witness the shooting, and assuming that they had, they could not have positively identified the assailants of Bartolome Lizardo. Accused-appellants likewise fault the trial court for not finding that they were not at the scene of the crime at the time of shooting. They claim that based on the above antecedents, they should have been acquitted.

We have carefully reviewed the record and we find the above contentions devoid of merit.

Accused-appellants point to the following excerpt of Cristita's testimony as allegedly proving that she was asleep at the time of the incident:

> Q: Did you not say that your father was sleeping and you were in fact sleeping in your room also.
>
> A: Yes, sir.
>
> (tsn, February 9, 1996, p. 35)

As correctly observed by the Solicitor General, the above-quoted excerpt should not be considered in isolation of the rest of Cristita's testimony. While the above statement was made during the ocular inspection of the crime scene held on February 9, 1996, Cristita's statements during her direct examination are as follows:

> Q: Do you recall, Madam Witness, where were you on the night of March 7, 1995?
>
> A: Yes, sir.
>
> Q: Where were you then?
>
> A: I was in our house, sir.

Q: At around 9:30 in the evening of March 7, 1995 , where were you?

A: I was in my room and when there was somebody calling, I rose up.

Q: Where did you go when you rose up?

A: At the window of our kitchen.

Q: Why did you go to the window?

A: To be able to see the persons who were calling.

Q: Did you see these people call?

A: Yes, sir.

Q: To who did they calling?

A: To my father.

(tsn, November 23, 1995, pp. 3-4)

Likewise, on cross-examination, Cristita declared:

Q: It was the call of people from the outside which rose you up from your seat, is that right?

A: Yes, sir.

Q: You went to the window at the kitchen in order to see who where those calling to your father in the kitchen?

A: Yes, sir.

x x x
x x x
x x x

Q: You claimed that you were inside your own room when you said your father was shot, do you remember that?

A: No, sir. I was in the window that is why I saw them.

(tsn, January 8, 1996, p. 2, 11)

It is clear from the above that Cristita was awake and at the window of the kitchen when the shooting incident happened. Plainly, when Cristita, during the ocular inspection, said that she was sleeping, she was referring to the time just prior to hearing someone calling, after which she got up and went to the window, in time to witness the killing of her father.

Similarly, accused-appellants rely on the following testimony of Cristita, given during the ocular inspection, to prove that Sionita was sleeping at the time of the incident:

Q: Nobody occupied this store at the time of the incident?

A: My mother was inside sleeping.

Q: Where in that store was your mother allegedly sleeping?

A: (Witness pointing to the wooden bed earlier noted inside the store and situated about 4 meters southeast of where she stood to indicate the exact location of the alleged gunman)

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(tsn, February 9, 1996, p. 35)

Juxtaposed against Cristita's testimony during direct and cross-examination, as well as Sionita's own testimony also on direct and cross-examination, the above pronouncement merely proves that Sionita was inside the store at the time of the incident, not that she was asleep at the exact time of the incident. That Sionita was awake during the incident can be gleaned from the following excerpts of her cross-examination:

Q: At about 9:00 o'clock in the evening of March 7, 1995 , you said that you were awaken by your husband the late Bartolome Lizardo, is that right?

A: Yes, sir.

Q: You were then sleeping in a store attached to your house, is that right?

A: Yes, sir.

Q: That is on the ground floor, correct?

A: Yes, sir.

Q: And you said your husband who was sleeping in the upper floor awakened you, is that correct?

A: Yes, sir.

Q: He was telling you to wake your son up named Agustin who was sleeping in his house about 25 meters away from your house, is that right?

A: Yes, sir.

(tsn, June 22, 1995, p. 2-3)

Accused-appellants' claim that Sionita and Cristita were sleeping at the time of the incident is thus unfounded and unsupported by the evidence.

Likewise, accused-appellants make much capital out of the fact that powder burns were found on the chest of the victim. They allege that the presence of powder burns, coupled with the fact that the gunshot wounds suffered by the deceased were rounded in shape, with inward clean-cut edges, prove that Bartolome was shot at close range, contrary to the witnesses' assertion that the former was shot at a distance of four meters.

The contention holds no water. The examining physician, who had been handling medico-legal cases for more than twenty years, testified that it is possible to have powder burns at a distance of three to four meters, viz:

Q: Now, when you say close range there can only be nitrate on the cadaver or gunpowder burns when the muzzle of the gun the point of the muzzle if the gun is one foot from the body, is that right?

A: About a few meters more or less 3 to 4 meters more or less.

x x x
x x x
x x x

Q: Is it not a fact that gunpowder burns on the body can only be present when the point of the muzzle of the gun is one foot or nearer to the body?

A: I do not believe that because there are several times that I saw powder burns usually more than one foot, the distance from the body.

(tsn, July 5, 1995, p. 23-24)

Moreover, the appearance of the wounds themselves negate accused-appellants' theory that the victim was shot at close range, for had it been at close range, the wounds would have shown tearing of tissue in a cruciate or stellate manner. (Forensic Medicine, Vol. I, pp. 520-521) Instead, the wounds were rounded with regular margins, indicating that the victim was shot at an intermediate range, rather than point blank.

Again, accused-appellants claim that Sionita and Cristita were false witnesses coached and planted by the Umingan police. They point to the complaint filed by Ringor with the Human Rights Commission against Police Sgt. Olivar as the motive behind their being implicated as the authors of the crime. They claim that Sgt. Olivar coached the two witnesses to point to accused-appellant Ringor as one of the perpetrators of the crime.

This claim is patently without merit, this Court having held it unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit thereof (People v. Sion, 277 SCRA 127). Moreover, Sgt. Olivar denied having a hand in the identification of accused-appellants by the Lizardos, saying that he was not at the Seriosa residence at the time accused-appellants were identified by Sionita and Cristita Lizardo. In like manner, the latter two also denied having been coached by Olivar. In any case, the determination of credibility of witnesses is a matter best left to the assessment and evaluation of the trial court, it having had the advantage of observing the demeanor of witnesses as they testify. In the instant case, the trial court found Sionita and Cristita to be credible witnesses, a finding which this Court will not disturb, absent any showing that the trial court committed palpable error in its assessment of their testimony.

Under their second assignment of error, accused-appellants claim that Cristita Lizardo could not have witnessed the incident because her line of sight from the kitchen window was obstructed by the store's roof, again drawing on isolated portions of the transcript of records to support their contention, to wit:

> The presiding judge is only five feet, two inches tall. And peeping through the portion of the easternmost portion of the window through which the witness Cristita Lizardo earlier peeped, the Presiding Judge views the following as visible from the focal point namely: the door, practically in full view, that's situated on the eastern wall between the camarin and the house, the wooden storage that's earlier fond today to be situated somewhere west of the room described as the store. The Court can also see the concrete flooring of the space in front of the store towards the west but the Court does not see at all any sl[a]t of the bamboo grills that are in front of the store but which was observed earlier.
>
> (tsn, February 9, 1996, p. 22)
> [Emphasis accused-appelants']

They also claim that it was dark at the time, there being no light or other source of illumination. Lastly, they argue that granting arguendo that there were kerosene lamps inside the store at the time, the lamplight could not have been of any help, as the store was closed at the time, hence the light from inside could not have lit up the area outside of the store. They quote the following testimony of Cristita to support their contention:

> Q: That night and on that particular hour and moment when stranger allegedly stood in front of your store that was already a time when there were no customers expected to patronize your store, was it not?
>
> A: Yes, sir, because usually at five o'clock we were already closed.
>
> Court: Alright.
>
> Q: According to you at the time your store was closed how did you usually close your store, did you put some kind of cloth or maybe a board in front of your store by the grills in order that standing from the outside and looking to it nobody could see anybody inside the store?

A: We used a plywood to close the store, sir.

Q: And the grills were completely blocked by the covering, was it not?

A: Yes, sir.

(Rollo, p. 164; Accused-appellants' emphasis)

Contrary to accused-appellants' claim, there was no physical obstruction to Cristita's line of view which could have prevented her from seeing the assailants commit the crime. As observed by the judge, he could "see the concrete flooring of the space in front of the store," the very same space occupied by the assailants at the time of the shooting. What could not be seen were the slats of the bamboo grills in front of the store. Hence, it was not impossible for Cristita to have seen the assailants. Anent the claim that there was no illumination, Cristita testified that there was sufficient moonlight by which to recognize the assailants. She also said that the kerosene lamps inside the store were lit at the time of the incident and that the plywood cover of the store had been removed prior to the shooting. It must, likewise, be noted that the assailants had bought cigarettes from Sionita. Thus, the latter would have seen up close the features of the two men who shot her husband.

Grasping at straws, accused-appellants' concoct the bizarre theory that Bartolome Lizardo's killing was an "inside job", with the deceased allegedly shot at close range by someone inside his room. In explanation, they speculate that Bartolome and Sionita had "raging and irreconcilable differences which converted them as mortal enemies", allegedly shown by the fact that Bartolome, instead of having his wife sleep beside him, allowed the latter to sleep inside a derelict store used as a dumping space for scrap or unused belongings. In the alternative, they point to the Makiling family, neighbors of the Lizardos with whom the latter had differences, as possible perpetrators of the crime.

Accused-appellants' theory hardly deserves consideration. Not only have they not produced a single shred of evidence to support their fantastic theory, but the same is negated by the physical evidence on record. First, the windows of the Lizardo house have glass jalousies. At the ocular inspection, it was noted that seven jalousie blades where missing from the window where the victim was allegedly standing at the time of the incident. As Cristita explained, the missing blades had shattered as the assailants fired upon her father. Second, there were two puncture marks high on the wall of the victim's room, the location of which are consistent with the trajectory of a bullet shot at an upward angle from outside the window. Lastly, eight empty M-16 shells were recovered by the police below the window where the victim was shot. These circumstances all point to the deceased having been shot from outside, rather than inside his room.

In their last assigned error, accused-appellants claim that they were kilometers away when the incident occurred, hence, they could not have committed the crime charged. In support of their alibi, accused-appellants presented a mission order; a trip ticket; travel slips; a certification executed by a certain Lorena Villados that three military trucks had parked at the Aries Restaurant in Bagabag, Nueva Ecija at 9:30 P.M. of March 7, 1995 and that she had served the passengers thereof their supper; and a certification made by one PNP Inspector Expedito Delgado that a military truck coming from San Jose City had passed through their checkpoint in Lupao, Nueva Ecija at 12:45 A.M. of March 8, 1995.

In passing upon the evidentiary value of the above exhibits of the defense, the following observations may be made:

The mission order dated March 6, 1995 directing Captain Reyes, accused-appellants Magno and Ringor, Corporal Dagang, Sergeant Jacinto and six others to haul supplies from Camp Aquino in Tarlac is merely an unauthenticated copy. Furthermore, it reads "corrected copy destroy all others" which, as Captain Reyes admitted

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on cross-examination, meant that prior to the arrival of the truck from the 2nd FSSU, they already had a mission order dated March 6, 1995 that did not mention personnel coming from the 2nd FSSU. Likewise, Capt. Reyes claimed that an additional truck from the 2nd FSSU was requested, yet no copy of such request was ever presented.

In connection with their alibi, the defense likewise submitted i) a trip ticket issued to Sgt. Torrado showing that the truck he was driving left Camp Upi at 5:35 P.M. of March 7, 1995; ii) a travel slip issued to Cpl. Magaoay showing that the truck he was driving left Camp Upi at 5:35 P.M. of March 7, 1995; and iii) a travel slip issued to accused-appellant Ringor showing that the truck he was driving left Camp dela Cruz, Echague, Isabela at 3:30 P.M. of March 7, 1995. The trip ticket issued to Torrado and the travel slip issued to Cpl. Magaoay prove that, indeed, the trucks driven by them left Camp Upi at 5:35 P.M. of March 7, 1995. On the other hand, the travel slip issued to Ringor only shows that he left Camp dela Cruz at 3:30 P.M. of March 7, 1995. It cannot be inferred therefrom that he went to Camp Upi nor that he left the same at 5:35 P.M. of March 7, 1995 as part of a three-truck convoy.

To prove that Ringor went to Camp Upi, the defense presented an equipment utilization record showing that Ringor gassed up at Camp Upi at 5:30 P.M. However, not only is said record an unauthorized copy, it is also undated, hence it does not really prove that Ringor was at Camp Upi on March 7, 1995.

From the foregoing, it is clear that aside from the testimony of Capt. Reyes and Cpl. Dagang, the defense failed to present any other proof that the truck driven by Ringor was part of the convoy which left Camp Upi at 5:35 P.M. of March 7, 1995. In the words of the trial court:

> It is standard in military camps that before official equipment, such as vehicles, leave camp the equipment and covering travel papers are first checked by the military police at the camp gate. Then the MPs concerned enter into an official logbook the corresponding time and date of exit. It would have been ideal for the defense to have subpoenaed for such MP logbook to prove the alleged departure of Ringor's truck from Camp Upi at 5:30 in the afternoon of March 7, instead of offering in evidence unimpressive, inconclusive and suspiciously spurious mission orders and trip tickets. (Decision, p. 75)

In the same manner, the certification issued by Lorena Villados to prove that the accused-appellants were dining at the Aries Restaurant at 9:30 P.M. of March 7, 1995, is of doubtful evidentiary value. Villados, the certifying party, was never presented by the defense in court, hence, the question as to whether she really exists remains unanswered. If the existence of Villados as a real person is doubtful, with more reason would the veracity of her alleged certification be in doubt. Moreover, said certification does not even mention accused-appellants by name.

The same applies to the certification issued by PNP Inspector Expedito Delgado. The defense failed to present Delgado, making the certification issued by the latter a mere scrap of paper. Likewise, the certification makes mention only of a truck driven by a Sgt. Jacinto as having passed by Lupao at 12:45 A.M. of March 8, 1995. The same hardly is proof that accused-appellants were on board said truck when it passed by the Lupao PNP checkpoint.

It may not, thus, be concluded with certitude that accused-appellants were not at the scene of the crime at 9:30 P.M. of March 7, 1995.

Moreover, accused-appellants' denial and alibi cannot prevail over the positive identification made of them by the prosecution witnesses (People v. Lopez, G.R. No. 119380, August 19, 1999). Sionita Lizardo testified thus:

> Q: Madam Witness you said these two accused shot your husband Bartolome Lizardo on the night of March 7, 1995 , tell the Court who shot your husband Bartolome Lizardo?

Court: You mean who between the accused?

Atty. Ulep: Yes, your Honor.

A: Sgt. Magno, sir.

Court: Why are you saying a while ago that they referring to both accused shot?

A: Magno was the one who shot my husband and it was Ringor who focus the flashlight on my husband.

(tsn, May 9, 1995, p. 13-14)

and -

Q: Now but you recognize these people, you pointed to these people as the author of the killing of your husband because of the military uniform, is that right?

A: I saw them they came there.

Q: You want to tell the Court that it was in the store where you recognized them?

A: Yes they bought cigarette and they talked with my husband.

Q: When did you come to know that the very person who bought the cigarette is Magno?

A: At that time sir because they were the ones who came.

Q: Who among the two?

A: Magno and Ringor.

(tsn, July 5, 1995, p. 9)

Cristita also positively identified Magno and Ringor:

Q: Who shot your father?

A: The one who was wearing fatigue uniform but with yellow t-shirt inside.

x x x
x x x
x x x

Q: Can you tell the Court who is that person who is wearing yellow t-shirt?

A: Magno, sir.

x x x
x x x
x x x

Q: You said, Madam Witness, that there were two (2) persons who allegedly were talking with your father, at the time your father was shot. Where was the other?

A: They were side by side with each other, sir. They focus flashlight to my father.

Q: Who focused flashlight to your father?

A: The taller one with slimmer built.

Court: And who was that, if you can identify him?

A: Ringor, sir.

(tsn, November 23, 1995, p 9-10)

Parenthetically, it bears stressing that Sionita and Cristita Lizardo did not know who Ringor and Magno were, having seen them only that fateful night of March 7, 1995, yet they readily pointed to the two early the next day as the assailants of Bartolome Lizardo.

All told, we hold that the prosecution has fully discharged its duty of proving the guilt of the accused beyond reasonable doubt.

With that point settled, the only issues left to be determined are i) whether the crime committed was murder; and ii) what is the liability of accused-appellants therefor.

The trial court ruled that the crime committed was murder because of the presence of the qualifying circumstance of treachery. It, likewise, imposed the death penalty due to the presence of the aggravating circumstance of evident premeditation.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim (People v. Naguita, G.R. No. 130091, August 30, 1999).

We have no doubt that the act of accused-appellant Magno in suddenly shooting the victim while they were casually conversing qualifies the crime with alevosia. Although a frontal attack, the sudden, swift shooting gave Bartolome Lizardo no opportunity to defend himself. Hence, we agree with the trial court that the crime committed is murder.

However, the trial court ruled that the murder was aggravated by evident premeditation, a finding which we cannot sustain. Evident premeditation implies that the execution of the criminal act was preceded by cool thought and reflection on the resolution to carry out the criminal intent. The requisites of evident premeditation are:

- The time when the accused determined to commit the crime;

- An act manifestly indicating that the accused has clung to his determination;

- A sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of the act (People v. Sesbreño, G.R. No. 121764, September 9, 1999).

Here, these requisites were not met in the case at bar. No evidence was presented as to the date and time when accused-appellants planned to kill the victim. The evidence presented only shows that two strangers marched up to Bartolome Lizardo’s window, engaged him in conversation, then shot him to death. No proof exists as to when these two assailants planned the killing or even whether they planned the killing. Absent a showing as to when accused-appellants planned to kill the victim, there is no way of determining whether sufficient time had elapsed to allow them to reflect on their plan and to persist in carrying it out. We cannot, thus, sustain the trial court’s finding of evident premeditation.

Having determined that the crime committed is murder, what then is the criminal liability of accused-appellants?

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In treacherously shooting Bartolome Lizardo six times with an M-16 rifle, accused-appellant Alejandro Magno is, without a doubt, guilty of murder as a principal by direct participation.

With respect to accused-appellant Brigido Ringor, it must be pointed out that his participation in the crime was limited only to beaming his flashlight at the victim, Bartolome Lizardo. The trial court, however, declared that Ringor was a principal by conspiracy, presumably because, of the two, Ringor was a native of Umingan; he accompanied Magno on the night of the murder; and the two were total strangers to the victim and to the two witnesses to the killing. The trial court hinted that the two soldiers were probably hired killers out to liquidate Bartolome Lizardo for a "mound of silver."

While direct proof is not essential to prove conspiracy, as it may be shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged, the evidence to prove the same must be positive and convincing, considering that conspiracy is a facile device by which an accused may be ensnared and kept within the penal fold (People v. Tingson, 47 SCRA 243 [1972]). With this in mind, and on the principle that in criminal prosecution, doubts must be resolved in favor of the accused, the Court rules that the liability of Brigido Ringor, with respect to the shooting of Bartolome Lizardo, is only that of an accomplice.

Ringor’s participation in the shooting consisted only of beaming a flashlight at the victim. By such act, Ringor assisted Magno in taking a good aim. However, such assistance merely facilitated the commission of the felonious act of shooting, considering that, according to Sionita and Cristita, there was sufficient illumination provided by the moon and the kerosene lamps. Magno could have thus accomplished his criminal act without Ringor’s cooperation and assistance. Nor can we consider Ringor as the guide who led Magno to the Lizardo residence, there being no proof that he was the only one who knew where said residence was. In fact, both Magno and Ringor were persons unknown in Barangay Prado. Hence, we declare Ringor to be guilty only as an accomplice to the killing of Bartolome Lizardo.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. Having discounted the presence of evident premeditation, the crime was not aggravated, and there being no mitigating circumstance, in accordance with Article 61, the lesser penalty, or reclusion perpetua, should be imposed. Thus, for the murder of Bartolome Lizardo, we reduce the penalty of accused-appellant Alejandro Magno from death to reclusion perpetua.

As an accomplice, Brigido Ringor should be imposed a penalty next lower in degree to that imposed on the principal. He is also entitled to the benefits of the Indeterminate Sentence Law. For murder, the penalty next lower in degree is reclusion temporal, and there being no aggravating nor mitigating circumstances, the penalty should be reclusion temporal medium. Applying the Indeterminate Sentence Law, Brigido Ringor should, therefore, be meted out the penalty of 6 years and 1 day of prision mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum.

WHEREFORE, the decision under review is hereby AFFIRMED with modifications. As modified, accused-appellant Alejandro Magno is hereby found guilty beyond reasonable doubt, as principal, while accused-appellant Brigido Ringor is hereby found guilty beyond reasonable doubt, as accomplice, of the crime of murder as defined and penalized in Article 248 of the Revised Penal Code. Accused-appellant Magno is sentenced to suffer the penalty of reclusion perpetua, while accused-appellant Ringor is sentenced to an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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