

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN VILLENA, ARNALDO CLEMENTE, PO3 EDWIN TINIO (ACQUITTED) AND PETER DOE, ACCUSED-APPELLANTS.

G.R. No. 140066. October 14, 2002

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PER CURIAM:

Crucial to a successful prosecution of a criminal case is proof beyond reasonable doubt, not only that a crime was committed, but also that the accused who were brought to trial are truly responsible for its perpetration. Judges have the obligation to ferret out the real authors of the crime and convict them. In the case at bar, the identification of the appellants as the malefactors is squarely put in issue.

On December 2, 1996, the four (4) accused were charged with robbery with homicide under the following Information:[1]

“That on or about the 28th day of September, 1996, at about 2:00 o’clock in the afternoon, at Barangay Estanza, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with Peter Doe, whose correct name and identity has not yet been established and still at large, conspiring, confederating with and mutually helping one another, with intent to gain, with violence and/or intimidation of person(s), did then and there, wilfully, unlawfully and feloniously rob, steal and carry away assorted jewelries (sic) of the spouses Herminio Orjalo, Sr. and Josefina Orjalo worth P50,000.00, Philippine Currency, to the damage of the owner thereof in the aforesaid sum; that by reason of and on the occasion of the said robbery, the said accused, conspiring together, confederating with and mutually helping one another, with intent to kill, did then and there, wilfully, unlawfully and criminally attack, assault and shoot Herminio Orjalo, Sr. with their guns, hitting him in the hip and thigh, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Herminio Orjalo, Sr.

CONTRARY TO LAW.”

The crime occurred inside the Orjalo residence in barangay Estanza, Lingayen, Pangasinan. The prosecution witnesses testified that on September 28, 1996 at about 1:30 p.m., the spouses Josefina and Herminio Orjalo, Sr. were having lunch in their kitchen together with their housemaid Jocelyn Sinaypan, their laundrywoman Teodorica Soriano and their one and a half year old grandson Gerry. Shortly, they heard someone call out from the store, beside their house: “Tao po. Tao po.” When they peeped through the kitchen window, they saw the four (4) accused inside the store.

Josefina immediately proceeded to the store. When she entered, accused Peter Doe left and posted himself outside the gate. Only the accused Villena, Tinio and Clemente remained in the store and all were armed. Accused Clemente was carrying a long gun while the two had a gun tucked in their waistline. They introduced themselves as CIS agents. Accused Clemente was thin, tall, with fair complexion, sported a long and curly hair and had a long face and legs. He handed to Josefina a photocopy of a warrant of arrest.[2] He explained that the Orjalos were charged with keeping a gun in their house and a huge amount of money that they lent to people at usurious

interest. She denied the allegations but the accused insisted on the charges. Failing to settle the matter, Josefina returned to the kitchen, showed the warrant to her husband Herminio and asked him to talk to the accused.

The talk proved to be futile. Josefina then suggested that they would go to the police station to clear the matter but the accused refused. Josefina and Herminio returned to the house to change clothes, followed closely by the accused.

Josefina left Herminio and the accused in the living room and proceeded to their bedroom to change clothes. Upon her return to the living room, she was surprised to see Herminio lying face down on the floor. She was immediately ordered to do the same.[3]

Accused Clemente, carrying a long firearm, went to the kitchen where Jocelyn was washing the dishes. He told Jocelyn: ‘Ning, tawag ka ng amo mo. Pumasok ka sa loob (referring to the living room).’ When Jocelyn reached the living room, she found the Orjalos lying on the floor. She was ordered by accused Clemente to join them.[4] Accused Clemente then saw caretaker Alfonso Soriano and laundrywoman Teodorica near the pigpen and beckoned them to go inside the house. Once inside the living room, they were directed by accused Clemente to join the Orjalos and Jocelyn on the floor. They did out of fright.[5]

One of the accused announced a holdup. Accused Tinio tapped Josefina on the leg, made her stand up and pointed towards the master’s bedroom.[6] Josefina led the way to the bedroom, with accused Tinio and Villena following her. Accused took the pieces of jewelry they found inside the bedroom. Accused Villena then immediately returned to the living room.[7]

In the living room, accused Villena warned the household to be quiet. Herminio paid no heed to the warning, stood up and headed for the main door. Accused Villena asked where he was going. Herminio replied: “Sarge, we have no fault. We have not sinned against you.” Accused Villena hollered: “Balik! Dapa!” but Herminio continued to open the door. Accused Villena shot him. As Herminio continued to step out of the house, accused Clemente fired another shot at him. Hit on the thigh and the hip, Herminio slumped on the ground.

Upon hearing the gunshot, accused Tinio and Josefina rushed outside the bedroom. Jocelyn, Teodorica, Josefina and Alfonso scurried out of the house through the kitchen door. The three accused likewise scampered away. Jocelyn and Teodorica headed to their neighbor’s house while Josefina remained in the yard, shouting to their neighbors for help.[8]

When Josefina returned to the sala, she saw Herminio gasping for breath. Two neighbors responded to her call for succor. They offered to bring Herminio to the hospital in their tricycle.[9] En route, they chanced upon barangay captain Mario Navarro who was then driving his jeepney. Josefina flagged down his jeepney and requested Mario if they could transfer Herminio to his vehicle and bring him to the hospital. Mario acceded but they failed to reach the hospital on time. The doctors pronounced Herminio dead on arrival. The cause of death was heart attack, precipitated by the gunshot wounds he sustained on the hip and left thigh. The autopsy revealed that the trajectory of the bullets was downward and the victim was shot while running.[10]

When Josefina returned to her house, her housemaids were no longer in sight. She learned that the Lingayen police investigators had arrived earlier and invited her househelp to the station to give their statements. Later that night, Josefina was also fetched by the policemen for investigation.[11]

On October 1, 1996, the PNP provincial command of Lingayen invited Josefina and Jocelyn for a follow-up investigation. Josefina and Jocelyn were shown three (3) pictures and were asked whether they recognized any of the men. They pointed to the pictures of Villena and Tinio and identified them as the culprits. In the picture, Villena was shown in white shirt, holding a white board with the following inscription: “EFREN VILLENA,

ROBBERY HOLDUP, LINGAYEN, PANGASINAN.[12]

After the photo-identification, Josefina and Jocelyn executed a supplemental sworn statement[13] before the Pangasinan PNP provincial command, identifying accused Tinio and Villena as the malefactors. Jocelyn deposed that it was Tinio who called for her while she was washing the dishes in the kitchen and it was Villena who fired the first shot at Orjalo, Sr. She, however, declared that she did not see who fired the second shot.

On the same date, a criminal complaint[14] was filed by Mrs. Josefina Orjalo against accused Villena, Tinio and two (2) other unidentified men, John and Peter Doe. Preliminary examination of Josefina Orjalo was conducted by Judge Hermogenes Fernandez on October 2, 1996 to determine probable cause.[15]

The next day, October 3, 1996, Jocelyn, Teodorica and Alfonso were brought before Judge Fernandez for preliminary examination. Upon the judge's inquiry, Teodorica and Alfonso both declared they could not recognize the malefactors if they see them again.[16]

On October 23, 1996, the PNP Crime Investigation Group (CIG), Provincial Field Office, Dagupan City, invited Josefina, Jocelyn and Teodorica to their office for a show-up identification of suspect ARNALDO CLEMENTE. All three identified Clemente as one of the malefactors. Jocelyn claimed Clemente was the one who called her from the kitchen and ordered her to lie prone on the living room floor. She, however, declared that it was not accused Clemente who shot Orjalo, Sr. but a stout man carrying a small handgun who fired the first shot.[17] Josefina identified Clemente as one of the culprits who carried a long firearm during the heist.[18] Teodorica claimed Clemente was one of the malefactors but she could not say whether he was one of the gunmen.[19]

On October 24, 1996, upon motion of the prosecutor, the name of ARNALDO CLEMENTE was included as accused in the criminal complaint filed by Mrs. Josefina Orjalo.[20] On October 29, 1996, a second preliminary examination of Josefina and Jocelyn was conducted by Judge Fernandez relative to their identification of Clemente. On the same day, a warrant was issued for the arrest of accused Clemente who immediately surrendered to the CIG.

For their defense, the three (3) accused insisted that they were not at the scene of the crime at the time of its commission.

Accused Villena testified that on September 8, 1996, while waiting for his placement abroad and upon his wife's prodding, he applied as driver of a taxi owned by Mr. Rodrigo Yarisantos in San Mateo, Rizal. His wife Juliet learned about the vacancy as she was also an employee in the shoe manufacturing business of Yarisantos in San Mateo.

On September 9, 1996, he started driving the taxi of Yarisantos that was authorized to ply any route in Luzon. Yarisantos allowed accused Villena and his wife to reside in one of the rooms at the ground floor of his house in San Mateo.

Mr. Yarisantos maintained a logbook that he left on top of his office table at the ground floor of his house. He instructed accused Villena to make a daily entry of the date and time he took out the taxi and the time of his arrival. Accused Villena followed this routine. When he arrived at night, he would log in the time of his arrival and return the ignition key to Yarisantos who would then affix his signature on the last column, after accused's "time in."

On September 28, 1996, a Saturday, he drove the taxi from 9:00 a.m. until 11:30 a.m. when he returned to San Mateo for lunch. After resting for a while, he again took out the taxi at 1:30 p.m. He turned in for the night at 8:30 p.m. and returned the ignition key to Yarisantos. His time "in" and "out" for the day were all duly recorded in the

logbook.

On October 9, 1996, accused Villena returned the taxi to San Mateo at 8:30 p.m. He and his wife requested Mr. Yarisantos to lend them his taxi as they would go to San Carlos City, Pangasinan, to visit their kids and give their allowance. Mr. Yarisantos acceded.

The Villenas left that night and arrived in Pangasinan at 3:00 a.m. the next day. Minutes later, a group of policemen arrived at their house and invited accused Villena for questioning for allegedly running over a man in Marikina. He denied the charge but the policemen poked a gun at him and handcuffed him. He was detained at the provincial jail of Lingayen. Juliet Villena immediately informed Yarisantos about the whereabouts of her husband. Later that night, Mr. Yarisantos came over to Pangasinan to retrieve his taxi from accused Villena.

Days after, accused Villena was transferred to the municipal jail. On October 14, 1996, at about 9:00 a.m., jail guard Arthur Cruz called out his name and ordered him to step out of the jail bar. He complied. Cruz then pointed him out to Josefina Orjalo and Jocelyn Sinaypan and told them his name. After the women left, Cruz informed accused Villena that the women were the complainants in the case against him.

Accused Villena swore that he did not know his co-accused Clemente and Tinio as it was only days after his arrest that he met them at the municipal jail. Contrary to the description given by the prosecution eyewitnesses, he has not sported curly hair. His distinguishing marks are his big moles on the right side and middle portion of his nose, a brace on his upper teeth and scar on his forehead which were never mentioned by any of the prosecution witnesses.[21]

Accused Clemente recounted that on September 26, 1996, her ailing mother Violeta requested him to borrow P500.00 from their neighbor Norma Garcia so they could go to Manila for her medical treatment. Norma accommodated their request for a loan. The next day, September 27, 1996, while accused Clemente and Violeta were packing their clothes and preparing to leave, Norma came over their house and wished them well. Mother and son then boarded a tricycle, alighted at the bus station and took a bus bound for Pasay. From Pasay, they proceeded to the house of accused Clemente's uncle in Las Piñas.

On September 28, 1996, at about 11:00 a.m., accused Clemente accompanied Violeta to the Manila Doctor's Hospital for check-up. They returned to Las Piñas about an hour later.

The next time Norma saw accused Clemente was on October 2, 1996 when the latter returned to their house in Barangay Capandanan, Lingayen, Pangasinan. Accused Clemente paid up their loan to Norma Garcia. Violeta remained in Las Piñas for further consultation.

On October 16, 1996, Amado Garcia, the husband of Norma and a member of the CIG in Dagupan, requested accused Clemente to accompany him to the CIG office. When they reached the office, accused Clemente saw in the lobby Mrs. Josefina Orjalo and her sister Evelyn, Teodorica Soriano and two (2) Lingayen policemen. They stayed in the lobby for about 20 minutes before they were all brought in into the office of CIG Major Nerez. Mrs. Orjalo then pointed to accused Clemente as one of those who robbed their house and killed her husband. Teodorica, who refused to identify him, was kicked and coerced by Mrs. Orjalo to point to accused Clemente as one of the malefactors.[22]

Accused Tinio, for his part, testified that he was a police officer assigned at the 31st company of the Regional Mobile Force detailed in Quezon. In the early morning of September 28, 1996, he and his company arrived in Camp Ravina, Baler, Aurora, Quezon, for combat operations. At about 8:00 a.m. that day, a shooting competition sponsored by provincial commander Col. Madella started. Accused Tinio was assigned to pick up the empty shells that would be discharged from Madella's firearm during the competition. The competition ended at 6:00 p.m.

Accused Tinio's presence in the camp on said day was attested to by police superintendent Orlando Madella, Jr.,[23] company commander police inspector Eufemio Espino,[24] SPO1 Rolando Yugto Ver,[25] P02 Dionilito Balino,[26] team leader Deodencio Mila,[27] SPO1 Eduardo Gonzales,[28] SPO1 Rogelio Jose[29] and SPO3 Loreto Viernes.[30]

After trial on the merits, the court a quo found the accused guilty of robbery with homicide and meted out the death penalty. The trial judge, however, recommended the grant of executive clemency to the accused in view of their lack of intent to kill the victim. The dispositive portion of the decision[31] reads:

"WHEREFORE, in the light of the foregoing considerations the Court finds the three (3) accused EFREN VILLENA, EDWIN TINIO and ARNALDO CLEMENTE, guilty beyond reasonable doubt, of the offense of Robbery with Homicide, with which they are charged and pursuant to the provisions of Article 294 of the Revised Penal Code as amended by Sections 9 and 23 of Republic Act No. 7659, this Court imposes upon the said accused the Death Penalty. Furthermore, they are hereby ordered to pay solidarily the following amounts:

- Indemnity to the heirs of the deceased in the amount of P50,000.00;
- The amount of P50,000.00 representing the value of the jewelries (sic) which they stole from the offended parties;
- The amount of P45, 000.00 as actual damages incurred as expenses during the wake and the 45[th] day novena prayer;
- The amount of P23,000.00 as Funeral Expenses including the cost of the cemetery lot;
- Moral damages in the amount of P100,000.00;
- Attorney's fees in the amount of P20,000.00 plus appearance fees in the total amount of P15,000.00, without subsidiary imprisonment in case of insolvency.

The accused are also ordered to pay the costs of this suit.

SO ORDERED.

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RECOMMENDATION

In the light of the circumstances surrounding this case, it is our considered opinion that the degree of malice behind the felonious acts of the three accused does not warrant the imposition of the stiff penalty of Death which we are constrained to mete out under the law. We therefore recommend executive clemency to His Excellency, the President of the Republic of the Philippines to the end that justice may be tempered with mercy. x x x[32]

After learning about the case, one Joey Cabagnet, shocked at the sentence imposed on accused Tinio, came out in the open and informed Tinio's relatives that he has videotapes of the shooting competition where accused Tinio was present. Consequently, accused Tinio filed a motion for new trial on the ground of newly discovered evidence. He adduced in court two (2) videotapes covering the shooting competition in Baler, Quezon, on September 28, 1996.

At the hearing on the motion, Joey Cabagnet, a participant in the shooting competition in Camp Ravina, Quezon, testified that he requested his friend Nelianto Bihasa, to cover on videotape the shooting competition. Cabagnet ultimately won first place in the shooting competition that was attended, as shown in the first videotape, by the governor of Quezon, a provincial prosecutor, a municipal councilor, Col. Orlando Madella, Judge Armando

Yangga and the parish priest of Aurora, Baler, among others. Likewise shown in the tape were the banner and trophies for the winning participants where the name of the shooting competition and the date it was held were printed and engraved. Crucial to accused Tinio's motion were several portions of the second videotape capturing his image and establishing his presence in the shooting competition. When the second videotape, which was shot in the afternoon, was played, it registered the date September 28, 1996 and the time. From 2:13 p.m. until 5:58 p.m., the image of accused Tinio appeared in the videotape at various stages of the competition.[33]

NBI expert Engineer Viannie Liban was ordered by the trial court to check and determine the authenticity of the videotapes. He examined the videotapes frame by frame and found that they were not tampered or spliced and the events were recorded continuously on the same day. The second videotape showing the face of accused Tinio bore the date September 28, 1996 and the time of coverage in the afternoon was likewise reflected from the beginning until the end of the tape. Engr. Liban also examined the video camera used and found that the setting of the time and date may be done only before an actual recording is made. He emphasized that the date and time could no longer be inserted or superimposed on a videotape that already contained a recording.[34]

On the basis of the new evidence presented, the trial court acquitted accused Tinio.[35]

In the automatic review before this Court, appellants Villena and Clemente likewise pray for their acquittal, raising and arguing the following issues in support of their appeal:

I

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME CHARGED IN THE INFORMATION DESPITE THE FAILURE OF THE PROSECUTION WITNESSES TO IDENTIFY THEM POSITIVELY, CATEGORICALLY AND CONSISTENTLY MAKING THEIR TESTIMONIES INCREDIBLE, THUS, INSUFFICIENT TO CONVICT.

II

THE COURT A QUO ERRED IN CONCLUDING THAT ACCUSED-APPELLANTS' DEFENSE OF ALIBI CANNOT PREVAIL OVER THE SAID IDENTIFICATION MADE BY THE PROSECUTION WITNESSES.

After a painstaking review of the records, we affirm the conviction of appellant Clemente but acquit appellant Villena.

Eyewitness identification is often decisive of the conviction or acquittal of an accused. Identification of an accused through mug shots is one of the established procedures in pinning down criminals.[36] However, to avoid charges of impermissible suggestion, there should be nothing in the photograph that would focus attention on a single person.[37] In the case at bar, when prosecution witnesses Josephine and Jocelyn were shown three (3) pictures during the October 1, 1996 investigation, they pointed to the picture of appellant Villena as one of the malefactors. However, his mug shot conspicuously showed him holding up a board with the following markings: "EFREN VILLENA, ROBBERY HOLDUP, LINGAYEN, PANGASINAN." Clearly, the picture is conducive to mistaken identification as it was unduly suggestive of a similar crime committed in the same place for which the witnesses were undergoing investigation. Appellant Villena, among others, was charged with robbery with homicide. The prosecution also established that the malefactors announced a hold-up before the actual robbery in the Orjalos' residence in Lingayen, Pangasinan. The identification of appellant Villena is fraught with a high degree of suggestive influence and is impermissible.

In the case of appellant Clemente, however, we find that his complicity in the crime was established by the prosecution beyond moral certainty. Appellants zeroed in on some inconsistencies in the statement and court

testimonies of prosecution witnesses Jocelyn and Teodorica relative to appellant Clemente's participation in the heist. They likewise argue that as the prosecution witnesses erred in unanimously pointing to appellant Tinio as one of the malefactors, the latter having been subsequently acquitted by the trial court on new trial, their "misidentification" of Tinio eroded their credibility as eyewitnesses.

We do not agree. To be sure, the trial court correctly ruled that the alleged inconsistencies in the statements of prosecution witnesses Jocelyn and Teodorica during the police investigation and at the trial refer only to minor points. Whether or not it was appellant Clemente who fetched Jocelyn from the kitchen at the time of the heist and whether or not he was one of those who fired at the victim are inconsequential. These statements do not go into the elements of the crime or the identification of appellant Clemente as one of the perpetrators of the crime. The fact remains that his very presence in the crime scene was positively established by the eyeball account of these prosecution witnesses. It bears stress that in case of conflict between an affidavit and a testimony of a witness in court, the latter commands greater weight.^[38] Courts take judicial notice of the fact that an affidavit does not purport to contain a complete narration of facts. Court testimonies, on the other hand, are generally viewed as more reliable as they are subjected to extensive cross-examination from the opposing counsel and incisive queries from the trial judge. Moreover, granting *arguendo* that the inconsistencies in the declarations of Jocelyn and Teodorica are material as to affect their credibility, the declarations of the widow, Josefina Orjalo, at the police investigation and during the trial implicating appellant Clemente remain unshaken and consistent. She identified appellant Clemente as the one who handed to her the warrant of arrest and detailed his participation in the heist.

The fact that accused Tinio was subsequently acquitted by the trial court on the basis of newly discovered evidence cannot be invoked by appellant Clemente in his favor. The videotapes presented by accused Tinio are personal to him as they support his alibi. Appellant Clemente, on the other hand, failed to offer additional evidence to bolster his self-serving defense. His exact whereabouts on said date and time was confirmed only by his mother. Her testimony must be taken with a grain of salt.

Be that as it may, we find it apropos to reiterate the observation of the trial court that the actions of the malefactors in perpetrating the crime at bar do not appear to involve a high degree of malice as to warrant the imposition of the death penalty. It may be deduced from the records that the malefactors, including appellant Clemente, intended only to rob the victims. Herminio Orjalo, Sr. was shot as he attempted to run away. The gunshot wounds he sustained were on his hip and thigh and the trajectory of the bullets were downward. His wounds are clearly non-fatal as his immediate cause of death was cardiac arrest. Moreover, as the trial court observed, there was nothing that could have prevented the malefactors from killing all the eyewitnesses present in the house ensure their ultimate escape and freedom. Instead, after the shots were fired, the malefactors scampered away and decided to just leave the scene of the crime.

IN VIEW WHEREOF, the appealed Decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 39, convicting appellant EFREN VILLENA in Criminal Case No. L-5561 is REVERSED and SET ASIDE and a new one entered ACQUITTING him of the crime charged. The Director of the Bureau of Prisons is ordered to immediately release appellant Villena from custody unless he is being held for some other lawful cause. On the other hand, the same Decision convicting appellant ARNALDO CLEMENTE is AFFIRMED.^[39] No costs.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Sandoval-Gutierrez, Corona, Carpio-Morales, and Callejo, Sr., JJ., concur.

Bellosillo, Mendoza, Quisumbing, Ynares-Santiago, Carpio, and Austria-Martinez, JJ., on official leave.

[1] Rollo, pp. 12-13.

[2] The arrest warrant, purportedly issued by Judge Panis, RTC of Pasig, was later on confirmed to be spurious.

[3] TSN, Josefina Orjalo, March 24, 1997, pp. 65-78; TSN, Jocelyn Sinaypan, February 4, 1997, pp. 3-11; TSN, Teodorica Soriano, March 18, 1997, pp. 15-19.

[4] TSN, Jocelyn Sinaypan, February 4, 1997, pp. 12-13.

[5] TSN, Teodorica Soriano, March 18, 1997, pp. 20-22.

[6] Ibid., p. 15.

[7] TSN, Josefina Orjalo, March 24, 1997, pp. 79-82; TSN, Teodorica Soriano, March 18, 1997, p. 38.

[8] TSN, Jocelyn Sinaypan, February 4, 1997, pp. 17-18; TSN, Teodorica Soriano, March 24, 1997, pp. 23-25; TSN, Josefina Orjalo, March 24, 1997, p. 83.

[9] TSN, Josefina Orjalo, March 24, 1997, p. 84.

[10] TSN, Dr. Jose Rosario, April 8, 1997, Pp. 3-13.

[11] TSN, SPO1 Francisco Baniqued, investigator at the Lingayen police station, March 24, 1997, pp. 5-9, 23 & 35.

[12] TSN, Josefina Orjalo, March 24, 1997, pp. 105-106, 110-112.

[13] Original Records, pp. 4 & 7, respectively.

[14] Ibid., p. 1.

[15] Transcript of the October 2, 1996 preliminary examination; Original Records, pp. 12-14.

[16] Transcript of the October 3, 1996 preliminary examination; Original Records, pp. 15-16.

[17] Sworn Statement, dated October 23, 1996, of Jocelyn Sinaypan before the CIG Office; Original Records, p. 29.

[18] Sworn Statement dated October 23, 1996 of Josefina Orjalo; Original Records, p. 31.

[19] Sworn Statement dated October 23, 1996 of Teodorica Soriano; Original Records, p. 33.

[20] Ibid., p. 34.

[21] TSN, Efren Villena, May 5, 1997, pp. 30-59, May 6, 1997 TSN, pp. 6-15; TSN, Juliet Villena, May 5, 1997, pp. 4-25; TSN, Rodrigo Yarisantos, April 21, 1997, pp. 5-20.

[22] July 22, 1997 TSN, pp. 2-59. His testimony was corroborated in relevant portions by Norma Garcia, July 10 and 15, 1997 TSN, pp. 3-15 and 3-21, respectively; accused's brother Ariel Clemente who obtained the medical certificate relative to their mother's medical consultation on said date, August 5, 1997 TSN, pp. 2-17, and by

Violeta Clemente, July 28, 1997 TSN, pp. 2-34.

[23] July 3, 1997 TSN, pp. 3-43.

[24] May 7, 1997 TSN, pp. 27-53.

[25] As administrative officer, his duty was to check the daily attendance of the company members. He submitted his daily attendance record showing that on September 28, 1996, accused Tinio was present in Camp Baler; May 6, 1997 TSN, pp. 19-41.

[26] He belonged to the same company as accused Tinio and was likewise present during the shooting competition; May 7, 1997 TSN, pp. 3-19.

[27] Team Leader of Team 4, Regional Mobile Group III, to which accused Tinio belonged; May 28, 1997 TSN, pp. 3-38.

[28] June 2, 1997 TSN, pp. 2-23.

[29] June 9, 1997 TSN, p. 3-23.

[30] June 16, 1997 TSN, pp. 3-23.

[31] Penned by Judge Eugenio G. Ramos, Regional Trial Court, First Judicial Region, Branch 39, Lingayen, Pangasinan; Rollo, pp. 61-114.

[32] Ibid., p. 110.

[33] TSN, Nelianto C. Bihasa, July 21, 1998, pp. 3-38.

[34] TSN, Viannie Liban, November 26, 1998, pp. 14-15 and December 10, 1998 TSN, pp. 16-17.

[35] Resolution, dated June 7, 1999; Rollo, pp. 115-136.

[36] The other usual non-scientific methods are by line-ups and show-ups; See Del Carmen, Criminal Procedure, Law and Practice, 3[rd] edition, pp. 340-344.

[37] Del Carmen, Law and Practice, 3[rd] edition, p. 346.

[38] People vs. Ponayo, 235 SCRA 226 (1994).

[39] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.

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