

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE MADRIAGA IV, ALIAS GERRY, AND JOHN DOE, ACCUSED. JOSE MADRIAGA IV, ACCUSED-APPELLANT.

G.R. No. 73057. March 08, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

On a plea of not guilty to an indictment charging the crime of murder committed as follows:

"That on or about August 1, 1982, in the Municipality of Rosario, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms, conspiring, confederating and mutually helping one another, with evident premeditation, and treachery, did then and there feloniously, with intent to kill, attack, assault and shot (sic) the victim Antonio G. Tabora, a lawyer and member of the Sangguniang Panglunsod (sic) ng Baguio City, Philippines, causing the instantaneous death of the said victim Atty. Antonio G. Tabora."[1]

the accused was tried and convicted in a decision[2] promulgated on October 31, 1985, the judgment wherein reads:

"WHEREFORE, the Court finds the accused Jose Madriaga IV alias Gerry guilty beyond reasonable doubt of the offense of murder and hereby sentences him to reclusion perpetua; indemnify the heirs of the victim Antonio Tabora in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency, to pay the further amount of P100,000.00 to the aforesaid heirs as moral damages also without subsidiary imprisonment in case of insolvency and to pay the costs.

"Under Article 29 of the Revised Penal Code, as amended, the accused is entitled to be credited in the service of his sentence with the whole period of his preventive imprisonment, subject to the conditions prescribed therein."

The factual findings of the lower court establish that at around 7:00 o'clock in the evening of August 1, 1982 the victim was conversing with some persons inside the cockpit located at Camp 1, also known as Saytan, Rosario, La Union, when gunshots were suddenly heard; that the victim turned around and fell wounded and was brought to the Doña Gregoria Hospital where he died at around 11:00 o'clock that same evening; that the cause of death was hemorrhage, intracranial, severe, secondary to gunshot wound, head left side, at the temporal region.[3]

After the shooting, three men were seen emerging from the bougainvilla shrub which was about one meter from the corner of the fence on the northern portion of the Rosario cockpit; that one of them proceeded to the west while the other two, who were recognized and identified as the accused Jose Madriaga IV and Patrolman Emilio Milana proceeded to the north and later to the east; that immediately after the shooting, the accused Madriaga was seen standing on the corner at the right side of the cockpit before he crossed the street and went northward.[4]

The ballistics examination on the .38 caliber revolver issued to Patrolman Emilio Milana and the jacketed bullet recovered from one of the posts in the cockpit, after the incident and in the vicinity where the victim was shot,

showed that said bullet was fired from the aforementioned firearm. However, the deformity of the lead bullet and the two metallic fragments extracted from the head of the victim could not yield sufficient characteristics or markings which could be used as a basis for identification of the firearm from which the bullet was fired.[5]

On the other hand, the diphenylamine test conducted on the paraffin casts of the right and left hand of said accused Madriaga gave positive results for the presence of nitrates on both of his hands, and that the seven (7) specks of nitrates coming from gunpowder found on each of his hands showed that he had recently fired a firearm.[6]

From the testimonial and documentary evidence, the court a quo also established that before the shooting incident, there had been frequent altercations between the family of the deceased and the family of the late mayor Jose Madriaga, father of herein appellant, stemming from their controversy over the Rosario cockpit; and that there were threats, confrontations, quarrels and unpleasant incidents which created animosities and resentments between the members of said families even on the day of the incident.[7] As succinctly expressed by the prosecution, and the same is not seriously disputed by the defense -

"For sometime prior to the date of the commission of the crime, the relationship between the family of the victim Atty. Antonio Tabora and the family of the late mayor Jose Madriaga (father of accused) had been strained by the question of ownership and management of the Rosario cockpit, the former claiming full payment on the purchase price of the cockpit and the land where it stood, while the latter claiming otherwise (pp. 232-250, TSN, Sept. 19, 1983). This, in addition to the incident on the afternoon of August 1, 1982 wherein Atty. Tabora admonished Conchita Madriaga, sister of the accused to get down from the railing of the cockpit causing the latter's embarrassment (p. 97, TSN, May 2, 1983); the quarrel between Conchita Madriaga and the daughter of the deceased, Rose Ann Tabora (pp. 32-34, TSN, Jan. 7, 1983); and the threat of Napoleon Madriaga, brother of the accused that 'If you are fighting us, you cannot come out from this cockpit alive' (p. 46, TSN, April 4, 1983); all culminated in the fatal shooting of Atty. Antonio Tabora." [8]

As a general proposition, the findings of the trial court are not to be disturbed on appeal unless there are substantial facts which it overlooked and which, if duly considered, might affect the result of the case.[9] Where the issue is on the credibility of witnesses, generally the findings of the trial court will not be disturbed on appeal since it was in a better position to determine that question, it having heard and observed the demeanor of the witnesses,[10] unless certain facts of substance and value were demonstrably overlooked and which, if considered, might affect the results of the case.[11]

Admittedly, however, the case for the People and the conviction handed down by the court a quo are based on circumstantial evidence, no eyewitness to the actual shooting by an identified assailant having been presented. As correctly stressed by the defense, such circumstantial evidence suffices to convict but only if there is more than one circumstance, that the facts from which the inferences are derived are proven, and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[12] Our review has necessarily been geared to a scrupulous assessment of whether the concatenation of the facts proven in this case lead to the reasonable conclusion that the guilt of herein appellant has been sustained by the requisite quantum of evidence excluding all and every, reasonable hypothesis consistent with his innocence.[13]

The Court has been felicitously assisted in that quest by the anticipatory action of the trial judge who, in his decision, commendably summarized the relevant testimonies of the principal witnesses and on which, together with the documentary evidence presented and admitted, he anchored his findings and conclusions. We have assayed the correctness of each precis of testimony through a review of the 958 textual pages of transcripts of the proceedings in the trial court and We find the same accurate and sufficient for purposes of appellate review.

With some modifications, therefore, the testimonial bases adduced by the prosecution[14] for the facts found by

the lower court, with the corresponding referential indications, are hereunder set out at length especially because, as already stressed, this case rests on the weight to be accorded to circumstantial evidence.

1. "Federico Laroya testified that on August 1, 1982 at around 7:00 o'clock in the evening, he was in Sto. Tomas, La Union. He went to the house of one Joe Reyes because he learned that Joe was going to Manila and he wanted to share a ride with Joe but the latter told him that he was not going to Manila but to Baguio. He (witness) told Reyes that if he was going to Baguio he will ride with him up to Saytan, Rosario, La Union. Upon reaching Saytan at past seven o'clock, he alighted at the northwestern junction of the road at Saytan and started to walk to the southern junction so that he could wait for a ride coming from the north or from Baguio going to Manila. When he was about twelve meters away from the northern fence of the cockpit, he heard gunshots so he sat down on the northwestern side of the road. He saw three persons coming out from the bougainvillea plants which were one meter from the fence at the northern corner of the cockpit in Saytan. When the three persons emerged from the bougainvillea shrubs, one of them proceeded to the west, while the other two persons proceeded north and then went towards the east. He did not recognize the person going towards the west but he recognized the two persons who proceeded northward and then eastward as he was only around three meters from the two persons when they passed him. They were 'Gerry' Madriaga whom he identified in open Court and Patrolman Milana; that he recognized them because there was a light coming from the Tourism Complex; there were many lights in the cockpit and there was a house nearby that was closed but with a light. He had known Gerry Madriaga for more than three years, having seen him either in the cockpit or at the crossing in Saytan. After the two persons passed by, he proceeded to the south and while passing the cockpit he noticed that somebody was being helped inside the cockpit; that he continued going southward where he was able to ride on his way to Manila." [15]

2. "Rose Ann Tabora declared that the victim Antonio Tabora was her father. On August 1, 1982 at around 4:00 o'clock in the afternoon she was in her mother's restaurant located inside the cockpit at Saytan, Rosario, La Union. After taking her merienda she was on her way to the ticket booth when she was confronted by Chita Madriaga, older sister of accused Gerry Madriaga. Chita was hysterical and she was cursing her (witness) family; that Chita got a spoon and fork which she pointed to her face but because she turned her head sidewise to the right, she was not hit; that she told Chita how dare she did (sic) that to her; that Chita replied that she would kill her (witness). Around 5:00 o'clock that same afternoon, her father instructed her to go inside the ticket booth. At that moment, Gerry Madriaga was on the verge of attacking her, hitting the ticket booth but his friend controlled him. It was about 5:30 to 6:30 o'clock when she went to the Tourism Complex with one Manang Coring; that at approximately 7:00 o'clock p.m. she and her companion heard shots coming from the direction of the cockpit. She began to run towards the cockpit but Manang Coring stopped her before she could cross the street by pulling her arm. She then stayed at the Tourism Complex where after a while, Atty. Peralta and her cousin informed her that her father was shot. When she was stopped from going to the cockpit as she was about to cross the street, she saw Gerry Madriaga standing at the right side corner of the cockpit before crossing the street, walking briskly towards the north. When Gerry crossed the street, she was three to four meters away from the said accused whom she had known one month before this incident and that she was able to recognize him although it was already past seven o'clock in the evening because there was sufficient light coming from the cockpit, the porch light of a house beside the cockpit and the light from the electric post at the Tourism Complex." [16]

3. "Edna Magat testified that at around 4:00 o'clock in the afternoon of August 1, 1982 which was a Sunday afternoon, she was at the cockpit arena in Rosario, La Union; that while she was there, an altercation occurred between Rose Ann Tabora, daughter of the late Atty. Antonio Tabora and Chita Madriaga, daughter of the former Mayor of Rosario, La Union and sister of the accused Gerry Madriaga whom she (witness) identified in Court; that Chita Madriaga had just come from the gallery of the cockpit at around four o'clock in the afternoon while Rose Ann Tabora had just taken her merienda in the canteen; that Rose was laughing and Chita thought that she was the one being laughed at by Rose; that Chita said 'Why are you laughing at me' and Rose replied that she was not doing anything against her; that Chita Madriaga took two table forks and

pointing the forks at the face of Rose Ann Tabora, she said 'I will kill you'; that after arguing with Rose Ann, she went infront (sic) of her (witness) and approached her mother saying 'tell that woman that she should not appear here anymore'; that she (witness) was just standing infront (sic) of her mother but Chita pointed to her and said 'You are also one of them'; that after answering Chita that she should not blame them because they were not minding her, Chita tried to throw a bottle at her; that when Chita failed to hit her, Napoleon, a brother of the accused Gerry Madriaga pointed at her and said 'If you are fighting us you cannot come out of this cockpit alive'. During the altercation between Rose Ann Tabora and Chita Madriaga, Gerry and Napoleon Madriaga were present."[17]

4. "Socorro Villanueva declared that since December, 1980 she was a gatekeeper or porter at the cockpit in Rosario, La Union. On August 1, 1982 at 8:00 o'clock in the morning, she was in the cockpit. At around four o'clock the customers were already going home and at six o'clock, she went out with Rose Ann Tabora because they were sent by Atty. Tabora to go aboard their car which was parked infront (sic) of the stairs of the Tourism Complex. At around 7:00 to 7:30 o'clock, she heard firing and shots. During the shooting, Rose Ann Tabora tried to run towards the cockpit but she (witness) held Rose Ann's hand so that she was not able to cross the road. After the shooting, one Atty. Peralta went to them and told them not to worry about Atty. Tabora but that the latter was placed on a pick-up vehicle. She saw accused Gerry Madriaga whom she had known since December, 1980, running away from the northeast corner of the cockpit. Although it was already 7:30 o'clock she was able to identify and recognize Gerry Madriaga because of the light of the Tourism Complex and all of the lights in the cockpit."[18]

5. "Dr. Arturo Llavore, the NBI medico-legal officer in San Fernando, La Union, was presented by the prosecution to establish the fact of death and cause of death of the victim, Atty. Antonio Tabora. Dr. Llavore declared that he conducted an autopsy on the body of the deceased Atty. Antonio Tabora y Gonzales in a funeral parlor in Agoo, La Union upon the request of Capt. Juan Refe II, commanding officer of the 146th PC Company at Agoo, La Union. The cause of death was hemorrhage, intracranial, severe, secondary to gunshot wound, head, left side. The witness confirmed his findings appearing in Exhibit 'B', the Autopsy report which he identified, together with his signature (Exhibit 'B-1') and the signature of NBI Regional Director Oscar de Leon (Exhibit 'B-2'). He further stated that he found one gunshot wound at the left temporal region. The bullet that caused the wound was recovered in the back portion of the head, left side. There was no gunshot wound of exit. Per his findings, there was no evidence of close firing due to the absence of gun powder and the distance between the muzzle of the gun and the victim was beyond 2 1/2 meters and it is possible that the assailant was 20 meters away from the victim or even farther. The bullet that was recovered at the back of the head of the deceased was composed of three fragments; two small ones and one big fragment which was lodged at the exterior portion of the left side of the head. The fragments were irregularly shaped and even the bigger one was badly deformed. The possible cause of the fragmentation of the bullet into three pieces was the fact that the bullet came in contact with the bone and during the contact or impact of the bullet with the hard surface of the bone, it had (the) tendency to split and some of the smaller fragments were imbedded in the area near the entrance while the bigger one which had bigger force was imbedded inside the occipital region."[19]

6. "Gumersindo Perez, declared that he is the incumbent barangay captain of Poblacion, Rosario, La Union. On August 1, 1982 between 3:00 o'clock and 3:30 o'clock p.m. he was at the 'pintakasi' or cockfights at Saytan, Rosario, La Union. He bet twice but lost and so he went to eat at the "carinderia" belonging to the wife of Barangay Captain Vincing Madriaga. x x x While they were in the "carinderia" he saw Chita Madriaga talking with Napoleon who are the sister and brother, respectively, of the accused Gerry Madriaga. Both Chita and Napoleon proceeded to the cockpit arena. While the witness and his companions were still eating, Chita and Napoleon came back expressing their disappointment over an announcement made by Atty. Tabora. Chita said in Ilocano: 'Why are they putting us to shame we the Madriaga family?' Atty. Tabora had addressed her and said 'Miss Madriaga you get down.' Chita further said: 'This is ours (referring to the cockpit), not theirs.' While the daughter of Atty. Tabora was at an open space adjacent to the restaurant, Chita Madriaga approached her in an angry manner and said, 'Why, are you the owner of this arena?' Then they quarreled but they were later on

pacified. When the cockfights were over, the witness was about to go home when he saw the pickup vehicle of his brother. When he found his brother in the arena, the witness told him that he wanted to ride home with his brother. However, his brother Ricardo Perez wanted to talk to Atty. Tabora and while his brother was waiting for his turn to talk to Atty. Tabora, the witness sat on a bench with his brother, the carpenter, councilman Peralta and others, while Atty. Tabora was standing in front (sic) conversing with them. All of a sudden, the witness heard a gunshot. This was followed by a second and a third shot. After the third shot, he saw Atty. Tabora turning around and later saw him with blood oozing from his face. Only then did the witness realize that Atty. Tabora was hit. The gunshots came from the north. When the witness saw Atty. Tabora with blood on his face, his reaction was to duck but he saw Atty. Tabora being held by their carpenter companion. The witness then told his brother to bring Atty. Tabora to the hospital and so they carried Atty. Tabora to the pickup of his brother. Among the children of the late Mayor Madriaga whom he saw in the cockpit were Nap, Chita and the accused whom he identified in court." [20]

7. "Jose Jaravata declared that he is a production technician of the Ministry of Agriculture. On August 1, 1982 at around 3:00 o'clock in the afternoon, he was inside the cockpit located in Camp I, Rosario, La Union, where after betting five times he went to a table east of the 'carinderia' to drink beer x x x. They drank beer at the 'carinderia' of Mrs. Madriaga, wife of former Mayor Jose Madriaga, for about one hour. Afterwards, he heard Mrs. Madriaga tell her daughter Conchita whose nickname is Chita that Vincent was already there. Chita went out while he (witness) also went out to answer the call of nature. Chita went out first and he followed one meter behind Chita who proceeded to where her elder brother Vincent was. Vincent was in front (sic) of the steering wheel inside a car which was parked about four meters from the gate of the cockpit, facing south. When the witness went to urinate on the right rear wheel of the vehicle, he overheard Chita saying to her brother 'How is this brother, we now act (garawen)'; that he heard Vincent say to his sister 'It's up to you now don't involve me because I am already tired with troubles'. x x x [21]

8. "Osmundo Bundang declared that at around 3:00 o'clock in the afternoon of August 1, 1982 he was in the Rosario Cockpit arena because he brought his cock there to participate in the cockfighting. He placed a bet on his cock which was accepted by bettors for the other cock. When the fight was about to start, he (witness) was about to unsheath (sic) the gaff of his cock but Atty. Antonio Tabora suddenly stopped the fight and took a microphone and he said: 'Miss Madriaga please go down from the fence and if possible please come here and I will give you a seat'. Atty. Tabora addressed this to Miss Madriaga who was seated at the railings of the arena and so Miss Madriaga went down from the railings. Subsequently the witness' cock lost. When he went down to count his money, many people were running at the ticket booth because there was some trouble." [22]

9. "Atty. Clarence Villanueva testified that on August 1, 1982 he was at the cockpit in Rosario, La Union, arriving at around 1:00 o'clock in the afternoon to bet in the cockfight. He stayed there until 7:00 o'clock. x x x Atty. Tabora told him to stay for a while so that he can witness his (Atty. Tabora's) conference with Mrs. Madriaga. The subject of their conference was about his prohibiting Mrs. Madriaga from further selling beer inside the cockpit. Atty. Tabora then proceeded to the place where Mrs. Madriaga was but when he returned he told him (witness) that Mrs. Madriaga was not amenable to discontinue selling inside the cockpit so Atty. Tabora told him that he is going to file a case of trespass against Mrs. Madriaga. x x x" [23]

10. "Capt. Juan Refe declared that he is the Asst. Provincial Commander of La Union; that on August 1, 1982 he was the commanding officer of the 146th PC Company stationed in Agoo, La Union. At around 8:00 o'clock in the evening, he received a report from policemen of Rosario, La Union, that there was a shooting incident that happened in the cockpit of Rosario. Upon receipt of the report, he proceeded to Rosario with three men namely Sgt. Guarin and two enlisted personnel. He first went to the police station to verify the report. From there, he went to the Rosario cockpit near the Tourism Complex. Upon arriving at the cockpit, he made inquiries from people around the gate of the cockpit who mentioned to him some names of persons involved in the shooting incident one of whom is Sonny Gerry Madriaga. He then went inside the cockpit to pinpoint the spot where the victim fell which he was able to determine due to the presence of blood stains. He and his men

also searched the area for bullets or shells but they did not find any. He decided to check the reports about the persons involved and proceeded to the residence of the Madriagas. It was around 9:00 o'clock in the evening that he was able to talk to Barangay Captain Madriaga, the mother of Gerry and Gerry Madriaga himself. He invited Gerry to the headquarters of the 146th PC Company and accompanied by Barangay Captain Vivencio Madriaga, a brother of Gerry Madriaga and his mother, Gerry Madriaga was brought to the headquarters of the 146th PC Company where they were interviewed by the Provincial Commander. Gerry Madriaga was informed that he was a suspect in the shooting incident and requested to give his statement but he refused so he was allowed to return to his house. Altho Gerry was being called back to headquarters the following day, he (witness) and his men returned to the cockpit and continued their search. They found a refrigerator (Exhibit 'C-1') inside the cockpit which was hit by a bullet and that they were able to recover a slug imbedded in a post in the cockpit and it was removed and was taken by an NBI technician who was with him (witness). The extracted bullet was referred to the NBI for examination. As they continued their investigation, there was information that some members of the INP were involved so the witness required the Station Commander of Rosario, La Union to submit all Smith and Wesson caliber .38 revolvers for ballistic examination. Two Smith and Wesson revolvers were the issued arms in the Rosario Police Station. The gun with Serial No. C-88721 was issued to Patrolman Milana while the other Smith and Wesson gun with Serial No. C-8837 was issued to Patrolman Boado. These were the firearms submitted to the NBI for ballistic examination. The result of the ballistic examination is embodied in a Report No. B-269-3-982 dated September 13, 1982 (Exh. 'E'); and that two Smith and Wesson revolvers were also submitted to the NBI for examination together with the recovered bullet.

"On cross-examination, the witness stated that the residence of the accused Jose Madriaga IV alias Gerry in Saytan, Rosario, La Union, is only 400 meters from the cockpit and that only the Tourism Complex is between the residence of the Madriagas and the cockpit." [24]

11. "Primitivo Arciaga declared that on the morning of August 1, 1982 he was in the cockpit at Saytan, Rosario, La Union, because he is employed as a bet taker in the cockpit. At around 3:00 o'clock in the afternoon he saw Chita Madriaga, sister of the accused Gerry Madriaga, seated on the railings which served as divider of the ring side and the gallery; that Atty. Antonio Tabora told Chita if possible that she should go down from the railing because she might fall but Chita did not answer and so Atty. Tabora repeated his request saying 'Miss Madriaga you should go down, there is an available seat for you here' referring to a seat in the ring side but she did not make any reply. He just went out of the arena but returned to the gallery and took hold of the microphone and made several announcements to the effect that he would not have bought the cockpit had it not been for the request of the father of the Madriagas, he bought it because he wanted to help the former, referring to the Madriaga family. When the cockfights ended at around 15 minutes to 6:00 o'clock there were still about 10 to 12 people who were in the restaurant inside the cockpit. While he was in the restaurant, the witness heard two gunshots and then saw Atty. Tabora turning around. A few seconds later, he heard three more successive shots. Atty. Tabora fell at the end of a table and that after three to five minutes later, Atty. Tabora was loaded in the pickup of Carlito Perez. [25]

12. "Rogelio G. Munar declared that he is a senior ballisticsian of the National Bureau of Investigation since 1970; that 2 firearms were submitted for examination, one Smith and Wesson revolver caliber .38 with Serial Number 88721 (Exhibit 'J') and another Smith and Wesson revolver Serial Number 8837 (Exhibit 'J-1'). After comparing the evidence bullet (Exhibit 'G') and the test bullet fired from Exhibit 'J', it was found out that they possess similar individual characteristic markings; that in Exhibit 'J-1', the bullet submitted was not fired from this particular firearm due to congruencies (sic) of individual markings found on both evidence bullet (Exhibit 'G') and those found in the test bullet. He concludes that Exhibit 'G' was fired from Exhibit 'J'. [26]

"The findings/conclusions contained in Ballistics Report No. B-269-3-982 dated September 13, 1982 (Exhibit 'E') are 'as' follows:

'Comparative examinations made between evidence bullets, marked 'AT-1', AT-2' and test bullets fired from the

submitted SMITH AND WESSON revolvers, Caliber .38, Serial Nos. 088721 and 08837 reveal the following results:

- a. Evidence bullet marked 'AT-2' test bullet fired from SMITH & WESSON revolver, caliber .38 with Serial Number 088721 possess similar individual characteristic markings; said evidence bullet was fired through the barrel of this particular firearm;
- b. Evidence bullet marked 'AT-1' does not possess sufficient individual characteristic markings to be used as basis for identification as to whether or not said bullet was fired through the barrel of any of the submitted SMITH & WESSON revolvers."[27]

13. "Camilo Tabora declared that he knows the late Mayor Madriaga and his wife Mrs. Marcela Madriaga; that the deceased Antonio Tabora was his brother. He is the Manager of the Agoo Rural Bank which had a transaction with the Madriaga couple whereby the latter borrowed from the bank and mortgaged 3 parcels of land sometime in 1977 and subsequently 2 parcels of land in 1979, which lands were all located in Rosario, La Union. The lands were agricultural lands one of which was where the cockpit is located. On March 5, 1982 Mrs. Madriaga came to the bank to redeem the parcels of land including the property on which the cockpit was built. The bank cashier received payment in the form of check and cash but since he (witness) was informed that his late brother had bought one of the properties he called up his brother who told him that the property on which the cockpit was located was bought by him. x x x Mrs. Madriaga was not able to redeem the land because Atty. Tabora paid the obligation; that Mrs. Madriaga came on two occasions to ask for the release of the properties to her but he told her that the case will be referred to the bank's legal counsel. A petition for Mandamus was filed by Atty. Tabora which was granted by the Court and so the title to the property was released to Atty. Tabora. A case was also filed by Mrs. Madriaga against the Rural Bank pending trial in Court docketed as Civil Case No. 834 and which case was already filed in Court as of August 1, 1982."[28]

14. "Major Rufino Boadilla was recalled to the witness stand and testified that Memorandum Receipt dated May 10, 1981 of a firearm with Serial No. 88721 (Exhibit 'L') was issued to Pat. Emilio Milana; that another memorandum receipt dated June 10, 1982 (Exhibit 'L-1') showed the same firearm was re-issued to Pat. Emilio Milana because the previous memorandum receipt was cancelled on February 10, 1982. On August 13, 1982 a turn-in receipt was signed by Pat. Pedro Japson, Jr. on recommendation of the Provincial Commander (Exhibit 'L--2').[29]

15. "Rolando M. Tubal testified that he is an NBI Fingerprint Technician assigned with the NBI Regional Office in San Fernando, La Union. On August 3, 1982 upon request of Capt. Juan Refe II and by order of the NBI Regional Director Oscar de Leon he conducted paraffin casts on the persons of Jose Madriaga alias Napoleon and Jose Madriaga IV alias Gerry; that he performed the paraffin cast at about 10:00 o'clock in the morning of August 3, 1982 at the NBI Office at San Fernando. After removing the paraffin wax from both hands of the defendant, he labelled the same and placed them in a box and forwarded them to the Forensic Section, NBI Central Office, Manila. He personally submitted the specimen to the Central Office for examination; that he brought the specimen and request for technical service in the Forensic Section x x x".[30]

16. "Luz A. Emecilla declared that she is the Supervising Forensic Chemist of the NBI since 1979 continuously to the present. On August 4, 1982 a letter referral (Exhibit 'N') signed by the Regional Director, First Regional Office, NBI was submitted to her office requesting for a laboratory examination of a pair of paraffin cast allegedly belonging to Jose Madriaga IV y Rulloda for the presence of gun powder. The Chief of the Forensic Chemist Section referred the case to her (Exhibit 'N-2'). She proceeded to the examination of the paraffin cast which consisted of one pair of paraffin cast to chemical test, known as the DIPHENYLAMINE TEST; that the paraffin cast was taken from Jose Madriaga IV y Rulloda as described in the latter referral and label. In conducting the examination, she removed the label of the paraffin cast and placed the paraffin cast in a clean container, one for the left and the other for the right; that she prepared the reagent, and after preparing the reagent, she applied the reagent, drop by drop, to the surface of the paraffin cast; that the result of the

laboratory examination on the paraffin cast of the right hand showed that the same was positive for the presence of nitrates (Exhibit 'O'); that on the right hand there were seven specks specified in the Chemistry Report C-82689 (Exhibit 'O') and shown in diagram (Exhibit 'O-1'); that the left hand was likewise positive for nitrates with seven specks on the thumb and fingers (Exhibit 'O-1'); that from the examination she concludes that the subject from which the specks of nitrates were taken could have recently fired a firearm that is why the result of the examination is positive for nitrates. It is possible that both the left and right hands are positive for nitrates because there are persons who use both hands in firing firearms.

"On cross examination, she stated that it is possible that nitrate could be contaminated with (sic) the hand even with the striking of a match but the appearance would not be the same; that contamination of nitrate with the hand could be acquired by handling fertilizers but the appearance of gun powder is different from nitrates coming from fertilizers, matches and other sources." [31]

17. "Rosemarie Tabora declared that she is the widow of the deceased Atty. Antonio Tabora. She knows the accused Gerry Madriaga whose parents are the spouses Jose Madriaga and Marcela Madriaga; that the real name of the accused is Jose Madriaga IV. In the later part of November, 1980, she and her husband were offered by the spouses Mayor Jose Madriaga and Marcela Madriaga the sale of the cockpit in Rosario, La Union and the lot where it stands; that the price agreed upon was P160,000.00 with a down payment of P31,500.00 and the balance payable by monthly installments of P10,000.00 that the entire installment was paid on October 2, 1981; that aside from these, she and her husband paid P3,000.00 for the renewal of the license of the cockpit for 1981. Upon paying the down payment and the license, they (witness and her husband), took over the operation of the cockpit in the month of February, 1981. They spend (sic) P200,000.00 for the expansion and renovation of the cockpit. The distribution of beer and operation of the restaurant located inside the cockpit was continued by Mrs. Marcela Madriaga. After the death of Mayor Madriaga in January, 1981, the monthly installment of the cockpit was paid to Mrs. Madriaga; that Mrs. Madriaga was allowed to continue operating the restaurant and the distribution of beer up to the town fiesta of Rosario as sort of assistance because Mrs. Madriaga needed funds during the examination of her children, for hospitalization and surgery for Gerry Madriaga who figured in a tricycle accident and to settle the case of lawyer Jose Madriaga who shot somebody; that she allowed the operation of the, restaurant after the town fiesta upon the pleading of Mrs. Madriaga for several extensions. However, on March 4, 1982, she asked Mrs. Madriaga to turn over the selling of beer to her in order that she could recover the expenses incurred in renovating the cockpit but Mrs. Madriaga got hysterical and started cursing and saying bad words in Ilocano to the effect that she (witness) did not yet own the cockpit yet and that she is greedy and wants to take over the management of the restaurant; that Conchita Madriaga and barangay captain Vincing Madriaga, one of the sons of Mrs. Madriaga intervened during the discussion in defense of their mother. xxx On March 15, 1982 her husband consulted Atty. Aquitania, a lawyer in Baguio City regarding the trouble in the cockpit and so Atty. Aquitania wrote a letter addressed to Chita Madriaga (Exhibit 'P') because of incidents regarding stoning of the cockpit and that the children of Mrs. Madriaga especially Chita Madriaga used to provoke the employees of the cockpit. As a result of these incidents, her husband employed security guards from a security agency in Baguio City (Exhibit 'Q'); that four days before her husband was killed, Atty. Aquitania made another letter (Exhibit 'P-1') addressed to Mrs. Marcela Madriaga; that reports were made by the security guards (Exhibits 'Q-1', 'Q-2' & 'Q-3') to the effect that Mrs. Marcela Madriaga and Chita Madriaga insisted to bring (sic) beer inside the cockpit. Sometime in July, 1982, when she came from Manila with her children and when they reached Rosario they noticed lights of the cockpit were on. Upon inquiring from the caretaker, she learned that her husband summoned a policeman for assistance earlier because of some problems with the Madriagas and which her husband caused to be entered in the police blotter (Exhibit 'R'). When the witness and her companions were about to alight from her car, several stones fell on the roof of the gate and so they sought shelter in their car; that they noticed Mrs. Madriaga in front (sic) of the police outpost which was 20 to 30 meters from the place where their car was parked near the gate of the cockpit. x x x After ten minutes her husband arrived telling her, that he just came from Rosario because he had to accompany back the policeman whom he summoned for assistance, as earlier, Conchita Madriaga tried to do bodily harm to him. After a few minutes, Mrs. Madriaga, Vincing Madriaga and

his wife arrived, and came over to where she was conversing with her husband. She notice that Conchita Madriaga and Gerry Madriaga were across the street. Mrs. Madriaga, Vincing Madriaga and his wife came because her husband had earlier informed them that the operation of the restaurant and the distribution of beer in the cockpit was to be decided by her (witness) but when she was about to answer them her husband told her not to make any commitment because of the incidents going which made him change his mind. After that, Vincing Madriaga said that they wanted the cockpit to be returned to them and that they have a reason to get back the cockpit because they have consulted several lawyers and that they will give back the money they had taken in the amount of P160,000.00 but her husband countered that he had spent much for the renovation. x x x Atty. Tabora then said it was getting late and suggested that they have another conference on July 20 and although they appeared in that conference at the Tourism Complex, the Madriagas did not appear. Her late husband Atty. Tabora was 54 years old on July 24, 1982. They have seven children, four girls and three boys. Her husband had served two terms as Councilor of Baguio City, owned an iceplant and a cockpit in Tuba, Benguet." [32]

18. "Claribel Salinda testified that she had known the accused Jose Madriaga IV alias Gerry whom she identified in Court, for more than two years; that the deceased Atty. Antonio Tabora is her brother-in-law; that she used to be a ticket seller of the cockpit in Saytan, Rosario, for more than one year starting in December 1980. Sometime in the middle part of March, 1982, while she was inside the cubicle in the cockpit where she used to issue tickets the cubicle was stoned and that three to four stones were thrown successively. After the stoning, she saw the accused with three other persons infront (sic) of the cubicle going inside the cockpit coming from the same direction where the stones came from. x x x Sometime in the month of April, 1982, while she was still a ticket seller, she witnessed another incident where Gerry Madriaga mauled Leonardo Directo, a former caretaker in the eatery located inside the cockpit. She (witness) was talking to Leonardo Directo at the time regarding cases of beer missing in the cockpit; that Napo and Gerry used to get beer on occasions. As soon as Directo mentioned the name Gerry, the latter suddenly grabbed him on his collar, and pushed him and fell to the ground; when he fell, he (Gerry) started kicking him until his mouth bled; that Directo did not do anything and did not move while he was being mauled by Gerry. x x x During the first Sunday of June, 1982, she was in the eatery inside the cockpit when Mrs. Madriaga came and told her that she resented the operation of the eatery and distribution of beer which was then being operated by her sister, Atty. Tabora and herself. She told Mrs. Madriaga that she should talk to Atty. Tabora, owner of the cockpit; that when Mrs. Madriaga left the cockpit Vincing Madriaga came and asked his aunt Mrs. Molina what she (witness) had done to his mother but Mrs. Molina told him that she (witness) did not do anything to his mother and it was Mrs. Madriaga who came to the cockpit and shouted at her; that when Vincing left the cockpit, accused Gerry Madriaga arrived at around three o'clock in the afternoon; that after talking to a meat vendor at the back of the cubicle, he went to Mrs. Molina and took an ice pick from the ice box. The meat vendor told her (witness) that Gerry was looking for a bolo; x x x that Mrs. Molina who is a younger sister of Mrs. Marcela Madriaga talked to Gerry and told him not to do anything. In June, 1982 another incident took place wherein Gerry Madriaga poured beer on the head of one named Fernandez while he was inside the cockpit. Although Fernandez wanted to fight back, he was not able to do so." [33]

19. "Melchor Acosta testified, that he has been connected with the NBI since April, 1976 continuously up to the present. He was assigned to the NBI Regional Office in San Fernando, La Union in October, 1981; that his office investigated the killing of Atty. Tabora and their investigation consisted of summoning witnesses and suspects and then took sworn statements, paraffin examination on the hands of suspects and submitted firearm for ballistics examination; that paraffin casts of the hands of Jose Madriaga IV alias Gerry, Jose Madriaga II alias Napoleon, Vivencio Madriaga and a PC Sergeant were taken. When the paraffin casts of Jose Madriaga IV was taken on August 3, 1982 he was present and he noticed that Gerry was very reluctant to submit himself, he was nervous and perspiring and if possible he did not want to have his paraffin cast taken." [34]

20. "Camilo Refuerzo declared that in the morning of August 1, 1982 he was in the cockpit in Saytan, Rosario, La Union, owned by Atty. Antonio Tabora. He arrived in the cockpit at 9:00 o'clock in the morning and left at

6:00 o'clock in the evening. He acted as bet taker (cristo) during the cockfights and as such, he stayed inside the arena with Atty. Tabora and one Primo Arciaga. x x x At about 3:00 o'clock p.m., she saw Conchita Madriaga at the railings surrounding the arena at a height of five meters. When Atty. Tabora saw Conchita, he addressed her through the microphone telling her to come down as she might fall and he will give her a seat in the ringside. Conchita went out of the arena apparently frowning. After a while, a security guard called Atty. Tabora because Conchita Madriaga was quarreling with his daughter. Atty. Tabora went out but upon returning, he took the microphone and made an announcement to the effect that he had already settled in full his obligations in the cockpit including his indebtedness in the Agoo and Rosario Rural Banks. While delivering his announcement Atty. Tabora was angry as his face was reddening and his lips were trembling. Before the cockfights ended, Atty. Tabora told him (witness) to remain for a while and to tell their companions from Damortis and the employees to remain in the cockpit because he sensed that something was going to happen."[35]

The defense is basically alibi, judicially considered as one of the weakest defenses that an accused may invoke due to the facility of its contrivance. The Court has consistently held that to be given credence, it must not only appear that the accused interposing the same was at some other place but also that it was physically impossible for him to be at the scene of the crime at its commission.[36]

Nevertheless, We have not been unmindful of the caveat that when the accused puts up the defense of alibi, the court should not at once have a mental prejudice against him. The possibility exists that, taken in the light of all the evidence of record, it may suffice to acquit him, especially since every circumstance must be considered in favor of the presumption of innocence.[37] The evidence for the appellant has, therefore, been considered with the same objectivity and circumspection.

Taking up primarily the testimony of the appellant himself, which constitutes the hub around which the other witnesses posit their statements in corroboration, the trial court has adequately summarized the pertinent portions thereof, thus:

"Jose Madriaga IV testified that he is also called Gerry. In February, 1981 he was sideswiped by a motorized tricycle hitting his right foot. As a result of this, his right foot became short and thinner. He was hospitalized in the Baguio General Hospital where he was attended by Dr. Glorifino Juan. Until how his right foot has not returned to normal. On August 1, 1982 at about 1:00 o'clock in the afternoon he went to the cockpit at Camp I, Rosario, La Union With Romeo Galimba. He left the cockpit and proceeded to the crossing of the roads leading to Baguio and San Fernando from Manila to buy beer grande, together with Romeo Galimba. At the road crossing, he saw George Holmes. After buying beer grande, he and his companions proceeded to Gerry's house at Camp I, Rosario, La Union which was around 400 to 500 meters from the cockpit at Saytan, Rosario. They had their drinking session at the terrace of Gerry's, house which was open and lighted. After arriving at his house, he went to the house of his aunt Felisa Eugenio to borrow her radio cassette. He was able to borrow but Felisa Eugenio told him to return the radio cassette when it is already dark. Returning home, he and his companions George Holmes, Jimmy Legaspi and Romeo Galimba were still drinking beer grande when his aunt Felisa Eugenio came to his house at 7:00 o'clock to get back her cassette. From the time he borrowed the cassette from his aunt up to the time his aunt came to his house, he never left the premises of his house at all. After the drinking session, the group dispersed and he went upstairs. He could no longer remember what he did after that because he was drunk. He does not know Emilio Milana. In the afternoon of August 1, 1982 he never met Emilio Milana. He only met Emilio Milana on December 17, 1982 when he was detained at the 146th PC Command headquarters. While he was detained at the provincial jail in San Fernando, La Union he was examined by Dr. Juan and Dr. Gallardo in the presence of Atty. Pedro Ofiana. After his release from detention he was again examined by another doctor at Manila Orthopedic where he was x-rayed. During his lifetime he heard only the name of Atty. Antonio Tabora but did not know him personally."[38]

This narration of the appellant relies for its acceptance on substantially identical corroboration furnished by his

aunt, Felisa Eugenio;^[39] his alleged drinking companions on that occasion, viz., Francisco Gagahina,^[40] George Holmes,^[41] Jaime Legaspi;^[42] and, in part, by his mother, Marcela R. Madriaga.^[43]

What cannot escape attention, however, is the virtual dovetailing of the sequence of events of that alleged drinking spree and the congruence of details-- such as the liquor drunk on that occasion, the participants and their respective entries on the scene, the duration of the alcoholic session from around 4:00 o'clock in the afternoon to about 8:00 o'clock in the evening, and even the time when the musical cassettes were borrowed and returned-- all these being vividly recounted by the participants about two years after the event. It has been held that such identical features in the testimony of several witnesses cannot but generate the suspicion that the material circumstances testified to by them were integral parts of a well thought of and prefabricated story.^[44] It will also be readily noted that, unlike most of the witnesses for the prosecution who were of diverse origins and not relatives or associates of the victim, the aforesaid defense witnesses are related to or are close friends of the appellant.

As hereinabove observed, the prosecution and the defense are agreed that the house of the appellant where the drinking affair supposedly took place, on hours placed by the appellant's witnesses to be coeval with the time when the events culminating in the shooting incident took place, is only around 400 to 500 meters from the scene of the crime. Furthermore, the appellant was definitely identified and established as having been in the cockpit before and shortly after the incident after which he and his companions hurriedly left the scene. The doctrine has long been accepted that the defense of alibi cannot prevail over the positive identification of the accused by the prosecution witnesses.^[45]

Then, too, there is the matter of the positive results of the paraffin test which showed the right and left hands of the appellant to be positive for nitrates. Appellant's attempts to explain away the presence of the specks of nitrates on his hands, as having come from sources like matches and fertilizer, were readily refuted by the forensic chemist who conducted the diphenylamine test, Luz A. Emecilla. She explicitly explained in her testimony, *supra*, that the left and right, hands can be positive for nitrates where both hands are used in firing a gun; and that while it is possible that nitrates could lodge in the hands from striking a match or handling fertilizer, the appearance of nitrates from gunpowder is different from nitrates coming from matches, fertilizers or other sources.

Much emphasis is placed by the defense on the fact that, as a result of an accident in February, 1981, where a motorized tricycle sideswiped the right foot of appellant, said foot allegedly became shorter and thinner; that he underwent medical attention and surgery; and that he was still limping during the shooting incident on August 1, 1982.^[46] This was obviously intended to lay the premise that because of such physical defect and incapacity, with the corresponding diminution of his power of locomotion, the appellant could not have participated in the shooting incident.

The record shows, however, that appellant was actually confined in the hospital for only eight days after the accident.^[47] On rebuttal, Dr. Alvaro Orejano, Chief of the Orthopedic Section of the University of the East, testified that the X-ray film, which was presented in the trial court as Exhibit G of the prosecution and showed the patella of the right leg of the appellant, indicated that the injury was completely healed with a piece of wire imbedded at the periphery of the patella. As to the power of locomotion, he declared that the appellant could walk, walk fast and even run. He explained that the piece of wire imbedded in the knee does not affect the power of locomotion of the appellant; that the ordinary full healing period of the fracture of the patella is six to eight months; that the recovery involved full restoration of function so that the knee could be fully flexed, with the wire intact, hence the injured person could start walking in three months, and that such injury of the appellant would not shorten the leg since it does not involve a weight-bearing bone.^[48]

M/Sgt. Emiliano Bergonia, Jr. declared that while the appellant was detained at their station in Agoo, La Union, the latter was in good physical condition and could walk by himself. In fact, the witness saw the appellant again in November, 1984 running after a bus he intended to board.[49] This was not rebutted.

Maj. Juan Refe testified that when he went to the Madriaga residence after the shooting incident to invite the appellant to his office in connection with the investigation he was conducting, the appellant was walking alone when he went to board the car; and that the appellant also walked alone by himself to the third floor of the building where Maj. Refe had his office.[50]

It was not unexpected for the appellant and his original co-accused, Emilio Milana, to disclaim that they knew each other or that they were together at the time of the incident. However, Milana had to admit in his testimony that he was appointed policeman of Rosario, La Union by the then Mayor Jose B. Madriaga and that he was detailed once a month in the residence of the mayor. He further admitted that on the date of the incident, he was armed with the revolver which was later established to have fired the bullet recovered from the scene of the crime.[51] It is also to be recalled that he was positively identified and seen together with the appellant leaving the cockpit shortly after the shooting incident.

We have repeatedly held that -?

"Where the events constitute a compact mass of circumstantial evidence, the existence of every bit of which was satisfactorily proved, and the proof of each is confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion, the circumstantial evidence are sufficient to establish the culpability of the accused beyond reasonable doubt." [52]

"x x x In determining the sufficiency of circumstantial evidence to support a conviction, each case is to be determined on its own peculiar circumstances and all the facts and circumstances are to be considered together as a whole, and, when so considered, may be sufficient to support a conviction, although one or more of the facts taken separately would not be sufficient for this purpose (23 CJS, p. 555). No general rule has been formulated as to the quantity of circumstantial evidence which will suffice for any case but that matters not. For all that is required is that the circumstances proved must be consistent with each other, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. (People vs. Constante, 12 SCRA 653). [53]

Our review and ratiocination based on the entire records and proven facts of this case yield the inescapable conclusion that the prosecution's evidence, albeit circumstantial, is of a sufficient quantum to establish the guilt of the accused. The catena of circumstances proven by uncontradicted evidence -- that the appellant and his co-accused were seen hastily leaving the scene of the shooting incident shortly thereafter; that he was found positive for nitrates in the paraffin test conducted on him; that he was at the time in the company of the patrolman who had the gun subsequently identified to have fired a bullet recovered at the scene and which firearm, therefore, was not inaccessible to him; that the animosity and rancor existing between his family and that of the victim provided an adequate psychological compulsion and sufficient motive for the assault; and the inherent weakness of his defense, not only because it was one of alibi but also because of the partisan sources of the testimony therefor -- cannot but convince Us that, in justice to the victim, a conviction should be decreed.

The court a quo correctly held that there are no modifying circumstances attendant to this case, hence the penalty should be imposed in its medium period. In line with the doctrinal change announced in *People vs. Millora, et al.*, [54] despite the reservations thereon but in deference to the view of the majority, the medium period of the penalty for murder is reclusion perpetua, which was the same penalty imposed by the trial court. The award for moral damages should, however, be, as it is hereby, reduced to fifty thousand pesos (P50,000.00).

WHEREFORE, as thus modified, the decision of the lower court is AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Original Record, 47. The information states that the case against a third accused involved in the same incident, Pat. Emilio Milana, was submitted to the military court pursuant to P.D. No. 1850.

[2] Criminal Case No. A-1270, Regional Trial Court, Branch XXXI, Agoo, La Union, penned by Judge Alfonso J. Llamas. Original Record, 612-668.

[3] Decision, 49-50; Rollo, 57-58; Exhs. B to B-4, Original Record, 679--681.

[4] Ibid., 50-51; *ibid.*, 58-59.

[5] Ibid., 51; *ibid.*, 59; Exhs. E to E-5, Original Record, 683- 685.

[6] Ibid.; *ibid.*, 59; Exhs. M, N to N-4, and O, Original Record, 689-699.

[7] Ibid., 51-53; Rollo, 59-61.

[8] Brief for the Plaintiff-Appellee, 2-3; Rollo, 217.

[9] *People vs. Dilao, et al.*, 100 SCRA 358 (1980); *People vs. Sibayan*, 116 SCRA 180 (1982); *People vs. Cielo, et al.*, 133 SCRA 117 (1984).

[10] *People vs. Mauro*, 117 SCRA 869 (1982); *People vs. Baao*, 142 SCRA 476 (1986).

[11] *People vs. Realon*, 99 SCRA 422 (1980); *People vs. Laganson*, 129 SCRA 333 (1984).

[12] Sec. 5, Rule 133, Rules of Court; *People vs. Modesto*, 25 SCRA 36 (1968); *People vs. Pajanustan*, 97 SCRA 699 (1980).

[13] *People vs. Jara, et al.* 144 SCRA 516 (1986).

[14] Decision, *vide ante*, 2-33; Rollo, 10-41.

[15] TSN, Jan. 7, 1983, 5-30.

[16] TSN, Mar. 21, 1983, 30-40.

[17] TSN, April 4, 1983, 42-59.

[18] TSN, April 4, 1983, 60-70.

[19] TSN, April 25, 1983, 72-91.

[20] TSN, May 2, 1983, 93-127.

[21] TSN, May 16, 1983, 23-29.

[22] TSN, May 23, 1983, 128-133.

[23] TSN, May 30, 1983, 35-46.

[24] TSN, June 8, 1983, 47-60; June 21, 1983, 134-147; July 5, 1983, 134-169.

- [25] TSN, July 11, 1983, 171-186.
- [26] TSN, July 25, 1983, 190-215.
- [27] Vide, Original Record, 683.
- [28] TSN, Aug. 8, 1983, 218-228.
- [29] TSN, Aug. 15, 1983, 61-67.
- [30] TSN, id., 68-77.
- [31] TSN, Aug. 22, 1983, 78-99.
- [32] TSN, Sept. 19, 1983, 231-273; Oct. 10, 1983, 273-302.
- [33] TSN, Oct. 19, 1983, 304-325.
- [34] TSN, Nov. 22, 1983, 100-128.
- [35] TSN, Nov. 22, 1983, 116-128.
- [36] *People vs. Baniaga, et al.*, 1 SCRA 283 (1961); *People vs. Aquino*, 133 SCRA 283 (1984); *People vs. Pacada, et al.*, 142 SCRA 427 (1986),
- [37] *People vs. Villacorte, et al.*, 55 SCRA 640 (1974); *People vs. Tabayoyong, et al.*, 104 SCRA 724 (1981); *People vs. Castelo*, 133 SCRA 667 (1984).
- [38] Decision, 45-46; Rollo, 53-54; TSN, Oct. 22, 1984, 189-198.
- [39] Ibid., 34-35; *ibid.*, 42-43; TSN, April 17, 1984, 1-24.
- [40] Ibid., 35-36; *ibid.*, 43-44; TSN, May 7, 1984, 443-465.
- [41] Ibid., 36-37; *ibid.*, 44-45; TSN, June 6, 1984, 466-491.
- [42] Ibid., 37-38; *ibid.*, 45-46; TSN, Aug. 20, 1984, 25-32.
- [43] Ibid., 38-40; *ibid.*, 46-48; TSN, Sept. 3, 1984, 55-102.
- [44] *People vs. Alviar*, 59 SCRA 136 (1974); *People vs. Agudo, et al.*, 137 SCRA 516 (1985).
- [45] *People vs. Dalusag, et al.*, 133 SCRA 15 (1984); *People vs. Rosario, et al.*, 134 SCRA 496 (1985); *People vs. Pacada, Jr., et al.*, 142 SCRA 427 (1986).
- [46] Decision, 38-41; Rollo, 46-49; TSN, Sept. 3, 1984, 55-58; Aug. 27, 1984, 492-494.
- [47] TSN, Oct. 4, 1984, 503-511.
- [48] TSN, Feb. 25, 1985, 255-261.
- [49] TSN, Feb. 11, 1985, 123-126.
- [50] TSN, Mar. 25, 1985, 552-555.
- [51] TSN, Sept. 24, 1984, 166-181.
- [52] Syllabus, *People vs. Elizaga, et al.*, 23 SCRA 449 (1968).
- [53] *People vs. Jara, et al.*, 144 SCRA 516 (1986).

[54] G.R. Nos. L-38968-70, Feb. 9, 1989.

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