

SALVADOR YAPYUCO Y ENRIQUEZ, PETITIONER, VS. HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. Nos. 120744-46. June 25, 2012*

Ponente: PERALTA, J.

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Law enforcers thrust their lives in unimaginable zones of peril. Yet resort to wanton violence is never justified when their duty could be performed otherwise. A “shoot first, think later” disposition occupies no decent place in a civilized society. Never has homicide or murder been a function of law enforcement. The public peace is never predicated on the cost of human life.

These are petitions for review on certiorari under Rule 45 of the Rules of Court assailing the June 30, 1995 Decision[1] of the Sandiganbayan in Criminal Case Nos. 16612, 16613 and 16614 – cases for murder, frustrated murder and multiple counts of attempted murder, respectively. The cases are predicated on a shooting incident on April 5, 1988 in Barangay Quebiawan, San Fernando, Pampanga which caused the death of Leodevince Licup (Licup) and injured Noel Villanueva (Villanueva). Accused were petitioners Salvador Yapyuco, Jr. (Yapyuco) and Generoso Cunanan, Jr. (Cunanan) and Ernesto Puno (Puno) who were members of the Integrated National Police (INP)[2] stationed at the Sindalan Substation in San Fernando, Pampanga; Jose Pamintuan (Pamintuan) and Mario Reyes, who were barangay captains of Quebiawan and Del Carmen, respectively; Ernesto Puno, Andres Reyes and Virgilio Manguerra (Manguerra), Carlos David, Ruben Lugtu, Moises Lacson (Lacson), Renato Yu, Jaime Pabalan (Pabalan) and Carlos David (David), who were either members of the Civil Home Defense Force (CHDF) or civilian volunteer officers in Barangays Quebiawan, Del Carmen and Telebastagan. They were all charged with murder, multiple attempted murder and frustrated murder in three Informations, the inculpatory portions of which read:

Criminal Case No. 16612:

That on or about the 5[th] day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said barangay and conducting surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with deliberate intent to take the life of Leodevince S. Licup, attack the latter with automatic weapons by firing directly at the green Toyota Tamaraw jitney ridden by Leodevince S. Licup and inflicting multiple gunshot wounds which are necessarily mortal on the different parts of the body, thereby causing the direct and immediate death of the latter.

CONTRARY TO LAW.[3]

Criminal Case No. 16613:

That on or about the 5[th] day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said barangay and conducting surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with intent to kill, attack Eduardo S. Flores, Alejandro R. de Vera, Restituto G. Calma and Raul V. Panlican with automatic weapons by firing directly at the green Toyota Tamaraw jitney ridden by said Eduardo S. Flores, Alejandro R. de Vera, Restituto G. Calma and Raul V. Panlican, having commenced the commission of murder directly by overt acts of execution which should produce the murder by reason of some cause or accident other than their own spontaneous desistance.

CONTRARY TO LAW.[4]

Criminal Case No. 16614:

That on or about the 5[th] day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said barangay and conducting surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with intent of taking the life of Noel C. Villanueva, attack the latter with automatic weapons by firing directly at the green Toyota Tamaraw jitney driven by said Noel C. Villanueva and inflicting multiple gunshot wounds which are necessarily mortal and having performed all the acts which would have produced the crime of murder, but which did not, by reason of causes independent of the defendants' will, namely, the able and timely medical assistance given to said Noel C. Villanueva, which prevented his death.

CONTRARY TO LAW.[5]

Hailed to court on April 30, 1991 after having voluntarily surrendered to the authorities,[6] the accused – except Pabalan who died earlier on June 12, 1990,[7] and Yapyuco who was then allegedly indisposed[8] – entered individual pleas of not guilty.[9] A month later, Yapyuco voluntarily surrendered to the authorities, and at his arraignment likewise entered a negative plea.[10] In the meantime, Mario Reyes, Andres Reyes, David, Lugtu, Lacson, Yu and Manguerra jointly filed a Motion for Bail relative to Criminal Case No. 16612.[11] Said motion was heard on the premise, as previously agreed upon by both the prosecution and the defense, that these cases would be jointly tried and that the evidence adduced at said hearing would automatically constitute evidence at the trial on the merits.[12] On May 10, 1991, the Sandiganbayan granted bail in Criminal Case No. 16612.[13] Yapyuco likewise applied for bail on May 15, 1991 and the same was also granted on May 21, 1991.[14] Pamintuan died on November 21, 1992,[15] and accordingly, the charges against him were dismissed.

At the July 4, 1991 pre-trial conference, the remaining accused waived the pre-trial inquest. [16] Hence, joint trial on the merits ensued and picked up from where the presentation of evidence left off at the hearing on the bail applications.

The prosecution established that in the evening of April 5, 1988, Villanueva, Flores, Calma, De Vera, Panlican and Licup were at the residence of Salangsang as guests at the barrio fiesta celebrations between 5:00 and 7:30 p.m.. The company decided to leave at around 7:30 p.m., shortly after the religious procession had passed. As they were all inebriated, Salangsang reminded Villanueva, who was on the wheel, to drive carefully and watch out

for potholes and open canals on the road. With Licup in the passenger seat and the rest of his companions at the back of his Tamaraw jeepney, Villanueva allegedly proceeded at 5-10 kph with headlights dimmed. Suddenly, as they were approaching a curve on the road, they met a burst of gunfire and instantly, Villanueva and Licup were both wounded and bleeding profusely.[17]

Both Flores and Villanueva, contrary to what the defense would claim, allegedly did not see any one on the road flag them down.[18] In open court, Flores executed a sketch[19] depicting the relative location of the Tamaraw jeepney on the road, the residence of Salangsang where they had come from and the house situated on the right side of the road right after the curve where the jeepney had taken a left turn; he identified said house to be that of a certain Lenlen Naron where the gunmen allegedly took post and opened fire at him and his companions. He could not tell how many firearms were used. He recounted that after the shooting, he, unaware that Licup and Villanueva were wounded, jumped out of the jeepney when he saw from behind them Pamintuan emerging from the yard of Naron's house. Frantic and shaken, he instantaneously introduced himself and his companions to be employees of San Miguel Corporation but instead, Pamintuan reproved them for not stopping when flagged. At this point, he was distracted when Villanueva cried out and told him to summon Salangsang for help as he (Villanueva) and Licup were wounded. He dashed back to Salangsang's house as instructed and, returning to the scene, he observed that petitioner Yu was also there, and Villanueva and Licup were being loaded into a Sarao jeepney to be taken to the hospital.[20] This was corroborated by Villanueva who stated that as soon as the firing had ceased, two armed men, together with Pamintuan, approached them and transferred him and Licup to another jeepney and taken to the nearby St. Francis Hospital.[21]

Flores remembered that there were two sudden bursts of gunfire which very rapidly succeeded each other, and that they were given no warning shot at all contrary to what the defense would say.[22] He professed that he, together with his co-passengers, were also aboard the Sarao jeepney on its way to the hospital and inside it he observed two men, each holding long firearms, seated beside the driver. He continued that as soon as he and his companions had been dropped off at the hospital, the driver of the Sarao jeepney immediately drove off together with his two armed companions.[23] He further narrated that the day after the shooting, he brought Licup to the Makati Medical Center where the latter expired on April 7, 1988.[24] He claimed that all the accused in the case had not been known to him prior to the incident, except for Pamintuan whom he identified to be his wife's uncle and with whom he denied having had any rift nor with the other accused for that matter, which would have otherwise inspired ill motives. [25] He claimed the bullet holes on the Tamaraw jeepney were on the passenger side and that there were no other bullet holes at the back or in any other portion of the vehicle.[26]

Salangsang, also an electrician at the San Miguel Corporation plant, affirmed the presence of his companions at his residence on the subject date and time, and corroborated Villanueva's and Flores' narration of the events immediately preceding the shooting. He recounted that after seeing off his guests shortly after the procession had passed his house and reminding them to proceed carefully on the pothole-studded roads, he was alarmed when moments later, he heard a volley of gunfire from a distance which was shortly followed by Flores' frantic call for help. He immediately proceeded to the scene on his bicycle and saw Pamintuan by the lamppost just outside the gate of Naron's house where, inside, he noticed a congregation of more or less six people whom he could not recognize. [27] At this point, he witnessed Licup and Villanueva being loaded into another jeepney occupied by three men who appeared to be in uniform. He then retrieved the keys of the Tamaraw jeepney from Villanueva and decided to deliver it to his mother's house, but before driving off, he allegedly caught a glance of Mario Reyes on the wheel of an owner-type jeepney idling in front of the ill-fated Tamaraw; it was the same jeepney which he remembered to be that frequently used by Yapyuco in patrolling the barangay. He claimed he spent the night at his mother's house and in the morning, a policeman came looking for him with whom, however, he was not able to talk.[28]

Salangsang observed that the scene of the incident was dark because the electric post in front of Naron's house was strangely not lit when he arrived, and that none of the neighboring houses was illuminated. He admitted his uncertainty as to whether it was Yapyuco's group or the group of Pamintuan that brought his injured companions to the hospital, but he could tell with certainty that it was the Sarao jeepney previously identified by Villanueva and Flores that brought his injured companions to the hospital.[29]

Daisy Dabor, forensic chemist at the Philippine National Police Crime Laboratory in Camp Olivas, affirmed that she had previously examined the firearms suspected to have been used by petitioners in the shooting and found them positive for gunpowder residue. She could not, however, determine exactly when the firearms were discharged; neither could she tell how many firearms were discharged that night nor the relative positions of the gunmen. She admitted having declined to administer paraffin test on petitioners and on the other accused because the opportunity therefor came only 72 hours after the incident. She affirmed having also examined the Tamaraw jeepney and found eleven (11) bullet holes on it, most of which had punctured the door at the passenger side of the vehicle at oblique and perpendicular directions. She explained, rather inconclusively, that the bullets that hit at an angle might have been fired while the jeepney was either at a standstill or moving forward in a straight line, or gradually making a turn at the curve on the road.[30] Additionally, Silvestre Lapitan, administrative and supply officer of the INP-Pampanga Provincial Command tasked with the issuance of firearms and ammunitions to members of the local police force and CHDF and CVO members, identified in court the memorandum receipts for the firearms he had issued to Mario Reyes, Andres Reyes, Manguerra, Pabalan and Yapyuco.[31]

Dr. Pedro Solis, Jr., medico-legal consultant at the Makati Medical Center, examined the injuries of Villanueva and Licup on April 6, 1988. He recovered multiple metal shrapnel from the occipital region of Villanueva's head as well as from the posterior aspect of his chest; he noted nothing serious in these wounds in that the incapacity would last between 10 and 30 days only. He also located a bullet wound on the front lateral portion of the right thigh, and he theorized that this wound would be caused by a firearm discharged in front of the victim, assuming the assailant and the victim were both standing upright on the ground and the firearm was fired from the level of the assailant's waist; but if the victim was seated, the position of his thigh must be horizontal so that with the shot coming from his front, the trajectory of the bullet would be upward. He hypothesized that if the shot would come behind Villanueva, the bullet would enter the thigh of the seated victim and exit at a lower level.[32]

With respect to Licup, Dr. Solis declared he was still alive when examined. On the patient, he noted a lacerated wound at the right temporal region of the head – one consistent with being hit by a hard and blunt object and not a bullet. He noted three (3) gunshot wounds the locations of which suggested that Licup was upright when fired upon from the front: one is a through-and-through wound in the middle lateral aspect of the middle portion of the right leg; another, through-and-through wound at the middle portion of the right forearm; and third one, a wound in the abdomen which critically and fatally involved the stomach and the intestines. He hypothesized that if Licup was seated in the passenger seat as claimed, his right leg must have been exposed and the assailant must have been in front of him holding the gun slightly higher than the level of the bullet entry in the leg. He found that the wound in the abdomen had entered from the left side and crossed over to and exited at the right, which suggested that the gunman must have been positioned at Licup's left side. He explained that if this wound had been inflicted ahead of that in the forearm, then the former must have been fired after Licup had changed his position as a reaction to the first bullet that hit him. He said that the wound on the leg must have been caused by a bullet fired at the victim's back and hit the jeepney at a downward angle without hitting any hard surface prior.[33]

Dr. Solis believed that the wound on Licup's right forearm must have been caused by a bullet fired from the front but slightly obliquely to the right of the victim. Hypothesizing, he held the improbability of Licup being hit on the abdomen, considering that he might have changed position following the infliction of the other wounds, unless

there was more than one assailant who fired multiple shots from either side of the Tamaraw jeepney; however, he proceeded to rule out the possibility of Licup having changed position especially if the gunfire was delivered very rapidly. He could not tell which of Licup's three wounds was first inflicted, yet it could be that the bullet to the abdomen was delivered ahead of the others because it would have caused Licup to lean forward and stoop down with his head lying low and steady.[34]

Finally, Atty. Victor Bartolome, hearing officer at the National Police Commission (NAPOLCOM) affirmed that the accused police officers Yapyuco, Cunanan and Puno had been administratively charged with and tried for gross misconduct as a consequence of the subject shooting incident and that he had in fact conducted investigations thereon sometime in 1989 and 1990 which culminated in their dismissal from service.[35] Dolly Porqueriño, stenographer at the NAPOLCOM, testified that at the hearing of the administrative case, Yapyuco authenticated the report on the shooting incident dated April 5, 1988 which he had previously prepared at his office. This, according to her, together with the sketch showing the relative position of the responding law enforcers and the Tamaraw jeepney at the scene of the incident, had been forwarded to the NAPOLCOM Central Office for consideration.[36] The Sandiganbayan, in fact, subpoenaed these documents together with the joint counter-affidavits which had been submitted in that case by Yapyuco, Cunanan and Puno.

Of all the accused, only Yapyuco took the stand for the defense. He identified himself as the commander of the Sindalan Police Substation in San Fernando, Pampanga and the superior officer of petitioners Cunanan and Puno and of the accused Yu whose jurisdiction included Barangays Quebiawan and Telebastagan. He narrated that in the afternoon of April 5, 1988, he and his men were investigating a physical injuries case when Yu suddenly received a summon for police assistance from David, who supposedly was instructed by Pamintuan, concerning a reported presence of armed NPA members in Quebiawan. Yapyuco allegedly called on their main station in San Fernando for reinforcement but at the time no additional men could be dispatched. Hence, he decided to respond and instructed his men to put on their uniforms and bring their M-16 rifles with them.[37]

Yapyuco continued that at the place appointed, he and his group met with Pamintuan who told him that he had earlier spotted four (4) men carrying long firearms. As if sizing up their collective strength, Pamintuan allegedly intimated that he and barangay captain Mario Reyes of nearby Del Carmen had also brought in a number of armed men and that there were likewise Cafgu members convened at the residence of Naron. Moments later, Pamintuan announced the approach of his suspects, hence Yapyuco, Cunanan and Puno took post in the middle of the road at the curve where the Tamaraw jeepney conveying the victims would make an inevitable turn. As the jeepney came much closer, Pamintuan announced that it was the target vehicle, so he, with Cunanan and Puno behind him, allegedly flagged it down and signaled for it to stop. He claimed that instead of stopping, the jeepney accelerated and swerved to its left. This allegedly inspired him, and his fellow police officers Cunanan and Puno,[38] to fire warning shots but the jeepney continued pacing forward, hence they were impelled to fire at the tires thereof and instantaneously, gunshots allegedly came bursting from the direction of Naron's house directly at the subject jeepney.[39]

Yapyuco recalled that one of the occupants of the jeepney then alighted and exclaimed at Pamintuan that they were San Miguel Corporation employees. Holding their fire, Yapyuco and his men then immediately searched the vehicle but found no firearms but instead, two injured passengers whom they loaded into his jeepney and delivered to nearby St. Francis Hospital. From there he and his men returned to the scene supposedly to investigate and look for the people who fired directly at the jeepney. They found no one; the Tamaraw jeepney was likewise gone.[40]

Yapyuco explained that the peace and order situation in Barangay Quebiawan at the time was in bad shape, as in fact there were several law enforcement officers in the area who had been ambushed supposedly by rebel

elements,[41] and that he frequently patrolled the barangay on account of reported sightings of unidentified armed men therein.[42] That night, he said, his group which responded to the scene were twelve (12) in all, comprised of Cunanan and Puno from the Sindalan Police Substation, [43] the team composed of Pamintuan and his men, as well as the team headed by Captain Mario Reyes. He admitted that all of them, including himself, were armed.[44] He denied that they had committed an ambush because otherwise, all the occupants of the Tamaraw jeepney would have been killed. [45] He said that the shots which directly hit the passenger door of the jeepney did not come from him or from his fellow police officers but rather from Cafgu members assembled in the residence of Naron, inasmuch as said shots were fired only when the jeepney had gone past the spot on the road where they were assembled.[46]

Furthermore, Yapyuco professed that he had not communicated with any one of the accused after the incident because he was at the time very confused; yet he did know that his co-accused had already been investigated by the main police station in San Fernando, but the inquiries did not include himself, Cunanan and Puno.[47] He admitted an administrative case against him, Cunanan and Puno at the close of which they had been ordered dismissed from service; yet on appeal, the decision was reversed and they were exonerated. He likewise alluded to an investigation independently conducted by their station commander, S/Supt. Rolando Cinco. [48]

S/Supt Rolando Cinco, then Station Commander of the INP in San Fernando, Pampanga acknowledged the volatility of the peace and order situation in his jurisdiction, where members of the police force had fallen victims of ambush by lawless elements. He said that he himself has actually conducted investigations on the Pamintuan report that rebel elements had been trying to infiltrate the employment force of San Miguel Corporation plant, and that he has accordingly conducted “clearing operations” in sugarcane plantations in the barangay. He intimated that days prior to the incident, Yapyuco’s team had already been alerted of the presence of NPA members in the area. Corroborating Yapyuco’s declaration, he confessed having investigated the shooting incident and making a report on it in which, curiously, was supposedly attached Pamintuan’s statement referring to Flores as being “married to a resident of Barangay Quebiawan” and found after surveillance to be “frequently visited by NPA members.” He affirmed having found that guns were indeed fired that night and that the chief investigator was able to gather bullet shells from the scene. [49]

Cunanan and Puno did not take the witness stand but adopted the testimony of Yapyuco as well as the latter’s documentary evidence.[50] Mario Reyes, Andres Reyes, Lugtu, Lacson, Yu and Manguera, waived their right to present evidence and submitted their memorandum as told.[51]

The Sandiganbayan reduced the basic issue to whether the accused had acted in the regular and lawful performance of their duties in the maintenance of peace and order either as barangay officials and as members of the police and the CHDF, and hence, could take shelter in the justifying circumstance provided in Article 11 (5) of the Revised Penal Code; or whether they had deliberately ambushed the victims with the intent of killing them.[52] With the evidence in hand, it found Yapyuco, Cunanan, Puno, Manguera and Mario and Andres Reyes guilty as co-principals in the separate offense of homicide for the eventual death of Licup (instead of murder as charged in Criminal Case No. 16612) and of attempted homicide for the injury sustained by Villanueva (instead of frustrated murder as charged in Criminal Case No. 16614), and acquitted the rest in those cases. It acquitted all of them of attempted murder charged in Criminal Case No. 16613 in respect of Flores, Panlican, De Vera and Calma. The dispositive portion of the June 30, 1995 Joint Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

- In Crim. Case No. 16612, accused Salvador Yapyuco y Enriquez, Generoso Cunanan, Jr. y Basco, Ernesto Puno y Tungol, Mario Reyes y David, Andres Reyes y Salangsang and Virgilio Manguerra y Adona are hereby found GUILTY beyond reasonable doubt as co-principals in the offense of Homicide, as defined and penalized

under Article 249 of the Revised Penal Code, and crediting all of them with the mitigating circumstance of voluntary surrender, without any aggravating circumstance present or proven, each of said accused is hereby sentenced to suffer an indeterminate penalty ranging from SIX (6) YEARS and ONE (1) DAY of prision correccional, as the minimum, to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as the maximum; to indemnify, jointly and severally, the heirs of the deceased victim Leodevince Licup in the amounts of P77,000.00 as actual damages and P600,000.00 as moral/exemplary damages, and to pay their proportionate shares of the costs of said action.

- In Crim. Case No. 16613, for insufficiency of evidence, all the accused charged in the information, namely, Salvador Yapyuco y Enriquez, Generoso Cunanan, Jr. y Basco, Ernesto Puno y Tungol, Mario Reyes y David, Carlos David y Bañez, Ruben Lugtu y Lacson, Moises Lacson y Adona, Renato Yu y Barrera, Andres Reyes y Salangsang and Virgilio Manguerra y Adona are hereby acquitted of the offense of Multiple Attempted Murder charged therein, with costs de oficio.

- In Crim. Case No. 16614, accused Salvador Yapyuco y Enriquez, Generoso Cunanan, Jr. y Basco, Ernesto Puno y Tungol, Mario Reyes y David, Andres Reyes y Salangsang and Virgilio Manguerra y Adona are hereby found GUILTY beyond reasonable doubt as co-principals in the offense Attempted Homicide, as defined and penalized under Article 249, in relation to Article 6, paragraph 3, both of the Revised Penal Code, and crediting them with the mitigating circumstance of voluntary surrender, without any aggravating circumstance present or proven, each of said accused is hereby sentenced to suffer an indeterminate penalty ranging from SIX (6) MONTHS and ONE (1) DAY of prision correccional as the minimum, to SIX (6) YEARS and ONE (1) DAY of prision mayor as the maximum; to indemnify, jointly and severally, the offended party Noel Villanueva in the amount of P51,700.00 as actual and compensatory damages, plus P120,000.00 as moral/exemplary damages, and to pay their proportionate share of the costs of said action.

SO ORDERED.[53]

The Sandiganbayan declared that the shootout which caused injuries to Villanueva and which brought the eventual death of Licup has been committed by petitioners herein willfully under the guise of maintaining peace and order;[54] that the acts performed by them preparatory to the shooting, which ensured the execution of their evil plan without risk to themselves, demonstrate a clear intent to kill the occupants of the subject vehicle; that the fact they had by collective action deliberately and consciously intended to inflict harm and injury and had voluntarily performed those acts negates their defense of lawful performance of official duty;[55] that the theory of mistaken belief could not likewise benefit petitioners because there was supposedly no showing that they had sufficient basis or probable cause to rely fully on Pamintuan's report that the victims were armed NPA members, and they have not been able by evidence to preclude ulterior motives or gross inexcusable negligence when they acted as they did;[56] that there was insufficient or total absence of factual basis to assume that the occupants of the jeepney were members of the NPA or criminals for that matter; and that the shooting incident could not have been the product of a well-planned and well-coordinated police operation but was the result of either a hidden agenda concocted by Barangay Captains Mario Reyes and Pamintuan, or a hasty and amateurish attempt to gain commendation.[57]

These findings obtain context principally from the open court statements of prosecution witnesses Villanueva, Flores and Salangsang, particularly on the circumstances prior to the subject incident. The Sandiganbayan pointed out that the Tamaraw jeepney would have indeed stopped if it had truly been flagged down as claimed by Yapyuco especially since – as it turned out after the search of the vehicle – they had no firearms with them, and hence, they had nothing to be scared of.[58] It observed that while Salangsang and Flores had been bona fide residents of Barangay Quebiawan, then it would be impossible for Pamintuan, barangay captain no less, not to have known them and the location of their houses which were not far from the scene of the incident; so much so that the presence of the victims and of the Tamaraw jeepney in Salangsang's house that evening could not have

possibly escaped his notice. In this regard, it noted that Pamintuan's Sworn Statement dated April 11, 1988 did not sufficiently explain his suspicions as to the identities of the victims as well as his apparent certainty on the identity and whereabouts of the subject Tamaraw jeepney. [59] It surmised how the defense, especially Yapyuco in his testimony, could have failed to explain why a large group of armed men – which allegedly included Cafgu members from neighboring barangays – were assembled at the house of Naron that night, and how petitioners were able to identify the Tamaraw jeepney to be the target vehicle. From this, it inferred that petitioners had already known that their suspect vehicle would be coming from the direction of Salangsang's house – such knowledge is supposedly evident first, in the manner by which they advantageously positioned themselves at the scene to afford a direct line of fire at the target vehicle, and second, in the fact that the house of Naron, the neighboring houses and the electric post referred to by prosecution witnesses were deliberately not lit that night.[60]

The Sandiganbayan also drew information from Flores' sketch depicting the position of the Tamaraw jeepney and the assailants on the road, and concluded that judging by the bullet holes on the right side of the jeepney and by the declarations of Dr. Solis respecting the trajectory of the bullets that hit Villanueva and Licup, the assailants were inside the yard of Naron's residence and the shots were fired at the jeepney while it was slowly moving past them. It also gave weight to the testimony and the report of Dabor telling that the service firearms of petitioners had been tested and found to be positive of gunpowder residue, therefore indicating that they had indeed been discharged.[61]

The Sandiganbayan summed up what it found to be overwhelming circumstantial evidence pointing to the culpability of petitioners: the nature and location of the bullet holes on the jeepney and the gunshot wounds on the victims, as well as the trajectory of the bullets that caused such damage and injuries; particularly, the number, location and trajectory of the bullets that hit the front passenger side of the jeepney; the strategic placement of the accused on the right side of the street and inside the front yard of Naron's house; the deliberate shutting off of the lights in the nearby houses and the lamp post; and the positive ballistic findings on the firearms of petitioners. [62]

This evidentiary resumé, according to the Sandiganbayan, not only fortified petitioners' admission that they did discharge their firearms, but also provided a predicate to its conclusion that petitioners conspired with one another to achieve a common purpose, design and objective to harm the unarmed and innocent victims. Thus, since there was no conclusive proof of who among the several accused had actually fired the gunshots that injured Villanueva and fatally wounded Licup, the Sandiganbayan imposed collective responsibility on all those who were shown to have discharged their firearms that night – petitioners herein.[63] Interestingly, it was speculated that the manner by which the accused collectively and individually acted prior or subsequent to or contemporaneously with the shooting indicated that they were either drunk or that some, if not all of them, had a grudge against the employees of San Miguel Corporation;[64] and that on the basis of the self-serving evidence adduced by the defense, there could possibly have been a massive cover-up of the incident by Philippine Constabulary and INP authorities in Pampanga as well as by the NAPOLCOM.[65] It likewise found very consequential the fact that the other accused had chosen not to take the witness stand; this, supposedly because it was incumbent upon them to individually explain their participation in the shooting in view of the weight of the prosecution evidence, their invocation of the justifying circumstance of lawful performance of official duty and the declaration of some of them in their affidavits to the effect that they had been deployed that evening in the front yard of Naron's residence from which the volley of gunfire was discharged as admitted by Yapyuco himself.[66]

As to the nature of the offenses committed, the Sandiganbayan found that the qualifying circumstance of treachery has not been proved because first, it was supposedly not shown how the aggression commenced and how the acts causing injury to Villanueva and fatally injuring Licup began and developed, and second, this

circumstance must be supported by proof of a deliberate and conscious adoption of the mode of attack and cannot be drawn from mere suppositions or from circumstances immediately preceding the aggression. The same finding holds true for evident premeditation because between the time Yapyuco received the summons for assistance from Pamintuan through David and the time he and his men responded at the scene, there was found to be no sufficient time to allow for the materialization of all the elements of that circumstance.[67]

Finally as to damages, Villanueva had testified that his injury required leave from work for 60 days which were all charged against his accumulated leave credits;[68] that he was earning P8,350.00 monthly;[69] and that he had spent P35,000.00 for the repair of his Tamaraw jeepney.[70] Also, Teodoro Licup had stated that his family had spent P18,000.00 for the funeral of his son, P28,000.00 during the wake, P11,000.00 for the funeral plot and P20,000.00 in attorney's fees for the prosecution of these cases.[71] He also submitted a certification from San Miguel Corporation reflecting the income of his deceased son.[72] On these bases, the Sandiganbayan ordered petitioners, jointly and severally, to indemnify (a) Villanueva P51,700.00 as actual and compensatory damages and P120,000.00 as moral/exemplary damages, plus the proportionate costs of the action, and (b) the heirs of deceased Licup in the amount of P77,000.00 as actual damages and P600,000.00 as moral/exemplary damages, plus the proportionate costs of the action.

Petitioners' motion for reconsideration was denied; hence, the present recourse.

In G.R. Nos. 120744-46, Yapyuco disputes the Sandiganbayan's finding of conspiracy and labels the same to be conjectural. He points out that the court a quo has not clearly established that he had by positive acts intended to participate in any criminal object in common with the other accused, and that his participation in a supposed common criminal object has not been proved beyond reasonable doubt. He believes the finding is belied by Flores and Villanueva, who saw him at the scene only after the shooting incident when the wounded passengers were taken to the hospital on his jeepney.[73] He also points out the uncertainty in the Sandiganbayan's declaration that the incident could not have been the product of a well-planned police operation, but rather was the result of either a hidden agenda concocted against the victims by the barangay officials involved or an amateurish attempt on their part to earn commendation. He theorizes that, if it were the latter alternative, then he could hardly be found guilty of homicide or frustrated homicide but rather of reckless imprudence resulting in homicide and frustrated homicide. [74] He laments that, assuming *arguendo* that the injuries sustained by the victims were caused by his warning shots, he must nevertheless be exonerated because he responded to the scene of the incident as a bona fide member of the police force and, hence, his presence at the scene of the incident was in line with the fulfillment of his duty as he was in fact in the lawful performance thereof – a fact which has been affirmed by the NAPOLCOM en banc when it dismissed on appeal the complaint for gross misconduct against him, Cunanan and Puno.[75] He also invokes the concept of mistake of fact and attributes to Pamintuan the responsibility why he, as well as the other accused in these cases, had entertained the belief that the suspects were armed rebel elements.[76]

In G.R. No. 122677, petitioners Manguerra, Mario Reyes and Andres Reyes claim that the Sandiganbayan has not proved their guilt beyond reasonable doubt, and the assailed decision was based on acts the evidence for which has been adduced at a separate trial but erroneously attributed to them. They explain that there were two sets of accused, in the case: one, the police officers comprised of Yapyuco, Cunanan and Puno and, two, the barangay officials and CHDFs comprised of David, Lugtu, Lacson, Yu and themselves who had waived the presentation of evidence. They question their conviction of the charges vis-a-vis the acquittal of David, Lugtu, Lacson and Yu who, like them, were barangay officials and had waived their right to present evidence in their behalf. They emphasize in this regard that all accused barangay officials and CHDFs did not participate in the presentation of the evidence by the accused police officers and, hence, the finding that they too had fired upon the Tamaraw

jeepney is hardly based on an established fact.[77] Also, they believe that the findings of fact by the Sandiganbayan were based on inadmissible evidence, specifically on evidence rejected by the court itself and those presented in a separate trial. They label the assailed decision to be speculative, conjectural and suspicious and, hence, antithetical to the quantum of evidence required in a criminal prosecution.[78] Finally, they lament that the finding of conspiracy has no basis in evidence and that the prosecution has not even shown that they were with the other accused at the scene of the incident or that they were among those who fired at the victims, and neither were they identified as among the perpetrators of the crime.[79]

In G.R. No. 122776, Cunanan and Puno likewise dispute the finding of conspiracy. They claim that judging by the uncertainty in the conclusion of the Sandiganbayan as to whether the incident was the result of a legitimate police operation or a careless plot designed by the accused to obtain commendation, conspiracy has not been proved beyond reasonable doubt. This, because they believe the prosecution has not, as far as both of them are concerned, shown that they had ever been part of such malicious design to commit an ambush as that alluded to in the assailed decision. They advance that as police officers, they merely followed orders from their commander, Yapyuco, but were not privy to the conversation among the latter, David and Pamintuan, moments before the shooting. They posit they could hardly be assumed to have had community of criminal design with the rest of the accused.[80] They affirm Yapyuco's statement that they fired warning shots at the subject jeepney,[81] but only after it had passed the place where they were posted and only after it failed to stop when flagged down as it then became apparent that it was going to speed away – as supposedly shown by bullet holes on the chassis and not on the rear portion of the jeepney. They also harp on the absence of proof of ill motives that would have otherwise urged them to commit the crimes charged, especially since none of the victims had been personally or even remotely known to either of them. That they were not intending to commit a crime is, they believe, shown by the fact that they did not directly aim their rifles at the passengers of the jeepney and that in fact, they immediately held their fire when Flores identified themselves as employees of San Miguel Corporation. They conceded that if killing was their intent, then they could have easily fired at the victims directly.[82]

Commenting on these petitions, the Office of the Special Prosecutor stands by the finding of conspiracy as established by the fact that all accused, some of them armed, had assembled themselves and awaited the suspect vehicle as though having previously known that it would be coming from Salangsang's residence. It posits that the manner by which the jeepney was fired upon demonstrates a community of purpose and design to commit the crimes charged.[83] It believes that criminal intent is discernible from the posts the accused had chosen to take on the road that would give them a direct line of fire at the target – as shown by the trajectories of the bullets that hit the Tamaraw jeepney.[84] This intent was supposedly realized when after the volley of gunfire, both Flores and Licup were wounded and the latter died as a supervening consequence.[85] It refutes the invocation of lawful performance of duty, mainly because there was no factual basis to support the belief of the accused that the occupants were members of the NPA, as indeed they have not shown that they had previously verified the whereabouts of the suspect vehicle. But while it recognizes that the accused had merely responded to the call of duty when summoned by Pamintuan through David, it is convinced that they had exceeded the performance thereof when they fired upon the Tamaraw jeepney occupied, as it turned out, by innocent individuals instead.[86]

As to the contention of Mario Reyes, Andres Reyes and Manguerra that the evidence adduced before the Sandiganbayan as well the findings based thereon should not be binding on them, the OSP explains that said petitioners, together with Pamintuan, David, Lugtu, Lacson and Yu, had previously withdrawn their motion for separate trial and as directed later on submitted the case for decision as to them with the filing of their memorandum. It asserts there was no denial of due process to said petitioners in view of their agreement for the reproduction of the evidence on the motion for bail at the trial proper as well as by their manifestation to forego with the presentation of their own evidence. The right to present witnesses is waivable. Also, where an accused is

jointly tried and testifies in court, the testimony binds the other accused, especially where the latter has failed to register his objection thereto.[87]

The decision on review apparently is laden with conclusions and inferences that seem to rest on loose predicates. Yet we have pored over the records of the case and found that evidence nonetheless exists to support the penultimate finding of guilt beyond reasonable doubt.

I.

It is as much undisputed as it is borne by the records that petitioners were at the situs of the incident on the date and time alleged in the Informations. Yapyuco, in his testimony – which was adopted by Cunanan and Puno – as well as Manguerra, Mario Reyes and Andres Reyes in their affidavits which had been offered in evidence by the prosecution,[88] explained that their presence at the scene was in response to the information relayed by Pamintuan through David that armed rebel elements on board a vehicle described to be that occupied by the victims were reportedly spotted in Barangay Quebiawan. It is on the basis of this suspicion that petitioners now appeal to justification under Article 11 (5) of the Revised Penal Code and under the concept of mistake of fact. Petitioners admit that it was not by accident or mistake but by deliberation that the shooting transpired when it became apparent that the suspect vehicle was attempting to flee, yet contention arises as to whether or not there was intention to harm or even kill the passengers aboard, and who among them had discharged the bullets that caused the eventual death of Licup and injured Villanueva.

The first duty of the prosecution is not to present the crime but to identify the criminal.[89] To this end, the prosecution in these cases offered in evidence the joint counter-affidavit[90] of Andres Reyes and Manguerra; the counter-affidavit[91] of Mario Reyes; the joint counter-affidavit[92] of Cunanan and Puno; the counter-affidavit[93] of Yapyuco; and the joint counter-affidavit[94] of Yapyuco, Cunanan and Puno executed immediately after the incident in question. In brief, Cunanan and Puno stated therein that “[their] team was forced to fire at the said vehicle” when it accelerated after warning shots were fired in air and when it ignored Yapyuco’s signal for it to stop;[95] in their earlier affidavit they, together with Yapyuco, declared that they were “constrained x x x to fire directly to (sic) the said fleeing vehicle.”[96] Yapyuco’s open court declaration, which was adopted by Cunanan and Puno, is that he twice discharged his firearm: first, to give warning to the subject jeepney after it allegedly failed to stop when flagged down and second, at the tires thereof when it came clear that it was trying to escape.[97] He suggested – substantiating the implication in his affidavit that it was “the whole team [which fired] at the fleeing vehicle” [98]– that the bullets which hit the passenger side of the ill-fated jeepney could have come only from the CHDFs posted inside the yard of Naron where Manguerra, Mario Reyes and Andres Reyes admitted having taken post while awaiting the arrival of the suspect vehicle.[99]

Mario Reyes and Andres Reyes, relying on their affidavits, declared that it was only Manguerra from their group who discharged a firearm but only into the air to give warning shots,[100] and that it was the “policemen [who] directly fired upon” the jeepney.[101] Manguerra himself shared this statement.[102] Yet these accounts do not sit well with the physical evidence found in the bullet holes on the passenger door of the jeepney which Dabor, in both her report and testimony, described to have come from bullets sprayed from perpendicular and oblique directions. This evidence in fact supports Yapyuco’s claim that he, Cunanan and Puno did fire directly at the jeepney after it had made a right turn and had already moved past them such that the line of fire to the passengers thereof would be at an oblique angle from behind. It also bolsters his claim that, almost simultaneously, gunshots came bursting after the jeepney has passed the spot where he, Cunanan and Puno had taken post, and when the vehicle was already right in front of the yard of Naron’s house sitting on the right side of the road after the curve and where Manguerra, Mario Reyes and Andres Reyes were positioned, such that the line of fire would be direct and perpendicular to it.[103]

While Dabor's ballistics findings are open to challenge for being inconclusive as to who among the accused actually discharged their firearms that night, her report pertaining to the examination of the ill-fated Tamaraw jeepney affirms the irreducible fact that the CHDFs posted within the yard of Naron's house had indeed sprayed bullets at the said vehicle. Manguerra, Mario Reyes and Andres Reyes seek to insulate themselves by arguing that such finding cannot be applied to them as it is evidence adduced in a separate trial. But as the OSP noted, they may not evade the effect of their having withdrawn their motion for separate trial, their agreement to a joint trial of the cases, and the binding effect on them of the testimony of their co-accused, Yapyuco.[104]

Indeed, the extrajudicial confession or admission of one accused is admissible only against said accused, but is inadmissible against the other accused. But if the declarant or admitter repeats in court his extrajudicial admission, as Yapyuco did in this case, during the trial and the other accused is accorded the opportunity to cross-examine the admitter, the admission is admissible against both accused because then, it is transposed into a judicial admission.[105] It is thus perplexing why, despite the extrajudicial statements of Cunanan, Puno and Yapyuco, as well as the latter's testimony implicating them in the incident, they still had chosen to waive their right to present evidence when, in fact, they could have shown detailed proof of their participation or non-participation in the offenses charged. We, therefore, reject their claim that they had been denied due process in this regard, as they opted not to testify and be cross-examined by the prosecution as to the truthfulness in their affidavits and, accordingly, disprove the inculpatory admissions of their co-accused.

II.

The availability of the justifying circumstance of fulfillment of duty or lawful exercise of a right or office under Article 11 (5) of the Revised Penal Code rests on proof that (a) the accused acted in the performance of his duty or in the lawful exercise of his right or office, and (b) the injury caused or the offense committed is the necessary consequence of the due performance of such duty or the lawful exercise of such right or office.[106] The justification is based on the complete absence of intent and negligence on the part of the accused, inasmuch as guilt of a felony connotes that it was committed with criminal intent or with fault or negligence.[107] Where invoked, this ground for non-liability amounts to an acknowledgment that the accused has caused the injury or has committed the offense charged for which, however, he may not be penalized because the resulting injury or offense is a necessary consequence of the due performance of his duty or the lawful exercise of his right or office. Thus, it must be shown that the acts of the accused relative to the crime charged were indeed lawfully or duly performed; the burden necessarily shifts on him to prove such hypothesis.

We find that the requisites for justification under Article 11 (5) of the Revised Penal Code do not obtain in this case.

The undisputed presence of all the accused at the situs of the incident is a legitimate law enforcement operation. No objection is strong enough to defeat the claim that all of them – who were either police and barangay officers or CHDF members tasked with the maintenance of peace and order – were bound to, as they did, respond to information of a suspected rebel infiltration in the locality. Theirs, therefore, is the specific duty to identify the occupants of their suspect vehicle and search for firearms inside it to validate the information they had received; they may even effect a bloodless arrest should they find cause to believe that their suspects had just committed, were committing or were bound to commit a crime. While, it may certainly be argued that rebellion is a continuing offense, it is interesting that nothing in the evidence suggests that the accused were acting under an official order to open fire at or kill the suspects under any and all circumstances. Even more telling is the absence of reference to the victims having launched such aggression as would threaten the safety of any one of the accused, or having exhibited such defiance of authority that would have instigated the accused, particularly those armed, to embark on a violent attack with their firearms in self-defense. In fact, no material evidence was

presented at the trial to show that the accused were placed in real mortal danger in the presence of the victims, except maybe their bare suspicion that the suspects were armed and were probably prepared to conduct hostilities.

But whether or not the passengers of the subject jeepney were NPA members and whether or not they were at the time armed, are immaterial in the present inquiry inasmuch as they do not stand as accused in the prosecution at hand. Besides, even assuming that they were as the accused believed them to be, the actuations of these responding law enforcers must inevitably be ranged against reasonable expectations that arise in the legitimate course of performance of policing duties. The rules of engagement, of which every law enforcer must be thoroughly knowledgeable and for which he must always exercise the highest caution, do not require that he should immediately draw or fire his weapon if the person to be accosted does not heed his call. Pursuit without danger should be his next move, and not vengeance for personal feelings or a damaged pride. Police work requires nothing more than the lawful apprehension of suspects, since the completion of the process pertains to other government officers or agencies.[108]

A law enforcer in the performance of duty is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm.[109] *United States v. Campo*[110] has laid down the rule that in the performance of his duty, an agent of the authorities is not authorized to use force, except in an extreme case when he is attacked or is the subject of resistance, and finds no other means to comply with his duty or cause himself to be respected and obeyed by the offender. In case injury or death results from the exercise of such force, the same could be justified in inflicting the injury or causing the death of the offender if the officer had used necessary force.[111] He is, however, never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be effected otherwise.[112] *People v. Ulep*[113] teaches that –

The right to kill an offender is not absolute, and may be used only as a last resort, and under circumstances indicating that the offender cannot otherwise be taken without bloodshed. The law does not clothe police officers with authority to arbitrarily judge the necessity to kill. It may be true that police officers sometimes find themselves in a dilemma when pressured by a situation where an immediate and decisive, but legal, action is needed. However, it must be stressed that the judgment and discretion of police officers in the performance of their duties must be exercised neither capriciously nor oppressively, but within reasonable limits. In the absence of a clear and legal provision to the contrary, they must act in conformity with the dictates of a sound discretion, and within the spirit and purpose of the law. We cannot countenance trigger-happy law enforcement officers who indiscriminately employ force and violence upon the persons they are apprehending. They must always bear in mind that although they are dealing with criminal elements against whom society must be protected, these criminals are also human beings with human rights.[114]

Thus, in *People v. Tabag*,[115] where members of the Davao CHDF had killed four members of a family in their home because of suspicions that they were NPA members, and the accused sought exoneration by invoking among others the justifying circumstance in Article 11 (5) of the Revised Penal Code, the Court in dismissing the claim and holding them liable for murder said, thus:

In no way can Sarenas claim the privileges under paragraphs 5 and 6, Article 11 of the Revised Penal Code, for the massacre of the Magdasals can by no means be considered as done in the fulfillment of a duty or in the lawful exercise of an office or in obedience to an order issued by a superior for some lawful purpose. Other than “suspicion,” there is no evidence that Welbino Magdasal, Sr., his wife Wendelyn, and their children were members of the NPA. And even if they were members of the NPA, they were entitled to due process of law. On that fateful night, they were peacefully resting in their humble home expecting for the dawn of another uncertain day. Clearly, therefore, nothing justified the sudden and unprovoked attack, at nighttime, on the Magdasals. The massacre was nothing but a merciless vigilante-style execution.[116]

Petitioners rationalize their election to aim their fire directly at the jeepney by claiming that it failed to heed the first round of warning shots as well as the signal for it to stop and instead tried to flee. While it is possible that the jeepney had been flagged down but because it was pacing the dark road with its headlights dimmed missed petitioners' signal to stop, and compound to it the admitted fact that the passengers thereof were drunk from the party they had just been to,[117] still, we find incomprehensible petitioners' quick resolve to use their firearms when in fact there was at least one other vehicle at the scene – the Sarao jeepney owned by Yapyuco – which they could actually have used to pursue their suspects whom they supposedly perceived to be in flight.

Lawlessness is to be dealt with according to the law. Only absolute necessity justifies the use of force, and it is incumbent on herein petitioners to prove such necessity. We find, however, that petitioners failed in that respect. Although the employment of powerful firearms does not necessarily connote unnecessary force, petitioners in this case do not seem to have been confronted with the rational necessity to open fire at the moving jeepney occupied by the victims. No explanation is offered why they, in that instant, were inclined for a violent attack at their suspects except perhaps their over-anxiety or impatience or simply their careless disposition to take no chances. Clearly, they exceeded the fulfillment of police duties the moment they actualized such resolve, thereby inflicting Licup with a mortal bullet wound, causing injury to Villanueva and exposing the rest of the passengers of the jeepney to grave danger to life and limb – all of which could not have been the necessary consequence of the fulfillment of their duties.

III.

At this juncture, we find that the invocation of the concept of mistake of fact faces certain failure. In the context of criminal law, a "mistake of fact" is a misapprehension of a fact which, if true, would have justified the act or omission which is the subject of the prosecution.[118] Generally, a reasonable mistake of fact is a defense to a charge of crime where it negates the intent component of the crime.[119] It may be a defense even if the offense charged requires proof of only general intent.[120] The inquiry is into the mistaken belief of the defendant,[121] and it does not look at all to the belief or state of mind of any other person.[122] A proper invocation of this defense requires (a) that the mistake be honest and reasonable;[123] (b) that it be a matter of fact;[124] and (c) that it negate the culpability required to commit the crime[125] or the existence of the mental state which the statute prescribes with respect to an element of the offense.[126]

The leading authority in mistake of fact as ground for non-liability is found in *United States v. Ah Chong*,[127] but in that setting, the principle was treated as a function of self-defense where the physical circumstances of the case had mentally manifested to the accused an aggression which it was his instinct to repel. There, the accused, fearful of bad elements, was woken by the sound of his bedroom door being broken open and, receiving no response from the intruder after having demanded identification, believed that a robber had broken in. He threatened to kill the intruder but at that moment he was struck by a chair which he had placed against the door and, perceiving that he was under attack, seized a knife and fatally stabbed the intruder who turned out to be his roommate. Charged with homicide, he was acquitted because of his honest mistake of fact. Finding that the accused had no evil intent to commit the charge, the Court explained:

x x x The maxim here is *Ignorantia facti excusat* ("Ignorance or mistake in point of fact is, in all cases of supposed offense, a sufficient excuse").

Since evil intent is in general an inseparable element in every crime, any such mistake of fact as shows the act committed to have proceeded from no sort of evil in the mind necessarily relieves the actor from criminal liability, provided always there is no fault or negligence on his part and as laid down by Baron Parke, "The guilt of the accused must depend on the circumstances as they appear to him." x x x

If, in language not uncommon in the cases, one has reasonable cause to believe the existence of facts which will justify a killing — or, in terms more nicely in accord with the principles on which the rule is founded, if without fault or carelessness he does not believe them — he is legally guiltless of homicide; though he mistook the facts, and so the life of an innocent person is unfortunately extinguished. In other words, and with reference to the right of self-defense and the not quite harmonious authorities, it is the doctrine of reason, and sufficiently sustained in adjudication, that notwithstanding some decisions apparently adverse, whenever a man undertakes self-defense, he is justified in acting on the facts as they appear to him. If, without fault or carelessness, he is misled concerning them, and defends himself correctly according to what he thus supposes the facts to be, the law will not punish him though they are in truth otherwise, and he has really no occasion for the extreme measure. x x x [128]

Besides, as held in *People v. Oanis*[129] and *Baxinela v. People*,[130] the justification of an act, which is otherwise criminal on the basis of a mistake of fact, must preclude negligence or bad faith on the part of the accused.[131] Thus, Ah Chong further explained that –

The question then squarely presents itself, whether in this jurisdiction one can be held criminally responsible who, by reason of a mistake as to the facts, does an act for which he would be exempt from criminal liability if the facts were as he supposed them to be, but which would constitute the crime of homicide or assassination if the actor had known the true state of the facts at the time when he committed the act. To this question we think there can be but one answer, and we hold that under such circumstances there is no criminal liability, provided always that the alleged ignorance or mistake of fact was not due to negligence or bad faith.[132]

IV.

This brings us to whether the guilt of petitioners for homicide and frustrated homicide has been established beyond cavil of doubt. The precept in all criminal cases is that the prosecution is bound by the invariable requisite of establishing the guilt of the accused beyond reasonable doubt. The prosecution must rely on the strength of its own evidence and not on the evidence of the accused. The weakness of the defense of the accused does not relieve the prosecution of its responsibility of proving guilt beyond reasonable doubt.[133] By reasonable doubt is meant that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt.[134] The overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains reasonable doubt as to his guilt.[135]

The prosecution is burdened to prove *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence.[136] *Corpus delicti* consists of two things: first, the criminal act and second, defendant's agency in the commission of the act.[137] In homicide (by *dolo*) as well as in murder cases, the prosecution must prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident, natural cause or suicide; and (c) that defendant committed the criminal act or was in some way criminally responsible for the act which produced the death. In other words, proof of homicide or murder requires incontrovertible evidence, direct or circumstantial, that the victim was deliberately killed (with malice), that is, with intent to kill. Such evidence may consist in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim. If the victim dies because of a deliberate act of the malefactors, intent to kill is conclusively presumed.[138] In such case, even if there is no intent to kill, the crime is homicide because with respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof. [139] Evidence of intent to kill is crucial only to a finding of frustrated and attempted homicide, as the same is an essential element of these offenses, and thus must be proved with the same degree of certainty as that required of the other elements of said offenses.[140]

The records disclose no ill motives attributed to petitioners by the prosecution. It is interesting that, in negating the allegation that they had by their acts intended to kill the occupants of the jeepney, petitioners turn to their co-accused Pamintuan, whose picture depicted in the defense evidence is certainly an ugly one: petitioners' affidavits as well as Yapyuco's testimony are replete with suggestions that it was Pamintuan alone who harbored the motive to ambush the suspects as it was he who their (petitioners') minds that which they later on conceded to be a mistaken belief as to the identity of the suspects. Cinco, for one, stated in court that Pamintuan had once reported to him that Flores, a relative of his (Pamintuan), was frequently meeting with NPA members and that the San Miguel Corporation plant where the victims were employed was being penetrated by NPA members. He also affirmed Yapyuco's claim that there had been a number of ambushes launched against members of law enforcement in Quebiawan and in the neighboring areas supposedly by NPA members at around the time of the incident. But as the Sandiganbayan pointed out, it is unfortunate that Pamintuan had died during the pendency of these cases even before his opportunity to testify in court emerged.[141]

Yet whether such claims suffice to demonstrate ill motives evades relevance and materiality. Motive is generally held to be immaterial inasmuch as it is not an element of a crime. It gains significance when the commission of a crime is established by evidence purely circumstantial or otherwise inconclusive.[142] The question of motive is important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but when there is no doubt that the defendant was the one who caused the death of the deceased, it is not so important to know the reason for the deed.[143]

In the instant case, petitioners, without abandoning their claim that they did not intend to kill anyone of the victims, admit having willfully discharged their service firearms; and the manner by which the bullets concentrated on the passenger side of the jeepney permits no other conclusion than that the shots were intended for the persons lying along the line of fire. We do not doubt that instances abound where the discharge of a firearm at another is not in itself sufficient to sustain a finding of intention to kill, and that there are instances where the attendant circumstances conclusively establish that the discharge was not in fact animated by intent to kill. Yet the rule is that in ascertaining the intention with which a specific act is committed, it is always proper and necessary to look not merely to the act itself but to all the attendant circumstances so far as they develop in the evidence.[144]

The firearms used by petitioners were either M16 rifle, .30 caliber garand rifle and .30 caliber carbine.[145] While the use of these weapons does not always amount to unnecessary force, they are nevertheless inherently lethal in nature. At the level the bullets were fired and hit the jeepney, it is not difficult to imagine the possibility of the passengers thereof being hit and even killed. It must be stressed that the subject jeepney was fired upon while it was pacing the road and at that moment, it is not as much too difficult to aim and target the tires thereof as it is to imagine the peril to which its passengers would be exposed even assuming that the gunfire was aimed at the tires – especially considering that petitioners do not appear to be mere rookie law enforcers or unskilled neophytes in encounters with lawless elements in the streets.

Thus, judging by the location of the bullet holes on the subject jeepney and the firearms employed, the likelihood of the passenger next to the driver – and in fact even the driver himself – of being hit and injured or even killed is great to say the least, certain to be precise. This, we find to be consistent with the uniform claim of petitioners that the impulse to fire directly at the jeepney came when it occurred to them that it was proceeding to evade their authority. And in instances like this, their natural and logical impulse was to debilitate the vehicle by firing upon the tires thereof, or to debilitate the driver and hence put the vehicle to a halt. The evidence we found on the jeepney suggests that petitioners' actuations leaned towards the latter.

This demonstrates the clear intent of petitioners to bring forth death on Licup who was seated on the passenger

side and to Villanueva who was occupying the wheel, together with all the consequences arising from their deed. The circumstances of the shooting breed no other inference than that the firing was deliberate and not attributable to sheer accident or mere lack of skill. Thus, *Cupps v. State*[146] tells that:

This rule that every person is presumed to contemplate the ordinary and natural consequences of his own acts, is applied even in capital cases. Because men generally act deliberately and by the determination of their own will, and not from the impulse of blind passion, the law presumes that every man always thus acts, until the contrary appears. Therefore, when one man is found to have killed another, if the circumstances of the homicide do not of themselves show that it was not intended, but was accidental, it is presumed that the death of the deceased was designed by the slayer; and the burden of proof is on him to show that it was otherwise.

V.

Verily, the shooting incident subject of these petitions was actualized with the deliberate intent of killing Licup and Villanueva, hence we dismiss Yapyuco's alternative claim in G.R. No. 120744 that he and his co-petitioners must be found guilty merely of reckless imprudence resulting in homicide and frustrated homicide. Here is why:

First, the crimes committed in these cases are not merely criminal negligence, the killing being intentional and not accidental. In criminal negligence, the injury caused to another should be unintentional, it being the incident of another act performed without malice.[147] *People v. Guillen*[148] and *People v. Nanquil* [149] declare that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. And in *People v. Castillo*,[150] we held that that there can be no frustrated homicide through reckless negligence inasmuch as reckless negligence implies lack of intent to kill, and without intent to kill the crime of frustrated homicide cannot exist.

Second, that petitioners by their acts exhibited conspiracy, as correctly found by the Sandiganbayan, likewise militates against their claim of reckless imprudence.

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy need not be proven by direct evidence. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. Conspiracy once found, continues until the object of it has been accomplished and unless abandoned or broken up. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[151]

Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence. From the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[152] The instant case requires no proof of any previous agreement among petitioners that they were really bent on a violent attack upon their suspects. While it is far-fetched to conclude that conspiracy arose from the moment petitioners, or all of the accused for that matter, had converged and strategically posted themselves at the place appointed by Pamintuan, we nevertheless find that petitioners had been ignited by the common impulse not to let their suspect jeepney flee and evade their authority when it suddenly occurred to them that the vehicle was attempting to escape as it supposedly accelerated despite the signal for it to stop and submit to them. As aforesaid, at that point, petitioners were confronted with the

convenient yet irrational option to take no chances by preventing the jeepney's supposed escape even if it meant killing the driver thereof. It appears that such was their common purpose. And by their concerted action of almost simultaneously opening fire at the jeepney from the posts they had deliberately taken around the immediate environment of the suspects, conveniently affording an opportunity to target the driver, they did achieve their object as shown by the concentration of bullet entries on the passenger side of the jeepney at angular and perpendicular trajectories. Indeed, there is no definitive proof that tells which of all the accused had discharged their weapons that night and which directly caused the injuries sustained by Villanueva and fatally wounded Licup, yet we adopt the Sandiganbayan's conclusion that since only herein petitioners were shown to have been in possession of their service firearms that night and had fired the same, they should be held collectively responsible for the consequences of the subject law enforcement operation which had gone terribly wrong.[153]

VI.

The Sandiganbayan correctly found that petitioners are guilty as co-principals in the crimes of homicide and attempted homicide only, respectively for the death of Licup and for the non-fatal injuries sustained by Villanueva, and that they deserve an acquittal together with the other accused, of the charge of attempted murder with respect to the unharmed victims.[154] The allegation of evident premeditation has not been proved beyond reasonable doubt because the evidence is consistent with the fact that the urge to kill had materialized in the minds of petitioners as instantaneously as they perceived their suspects to be attempting flight and evading arrest. The same is true with treachery, inasmuch as there is no clear and indubitable proof that the mode of attack was consciously and deliberately adopted by petitioners.

Homicide, under Article 249 of the Revised Penal Code, is punished by reclusion temporal whereas an attempt thereof, under Article 250 in relation to Article 51, warrants a penalty lower by two degrees than that prescribed for principals in a consummated homicide. Petitioners in these cases are entitled to the ordinary mitigating circumstance of voluntary surrender, and there being no aggravating circumstance proved and applying the Indeterminate Sentence Law, the Sandiganbayan has properly fixed in Criminal Case No. 16612 the range of the penalty from six (6) years and one (1) day, but should have denominated the same as prision mayor, not prision correccional, to twelve (12) years and one (1) day of reclusion temporal.

However, upon the finding that petitioners in Criminal Case No. 16614 had committed attempted homicide, a modification of the penalty is in order. The penalty of attempted homicide is two (2) degrees lower to that of a consummated homicide, which is prision correccional. Taking into account the mitigating circumstance of voluntary surrender, the maximum of the indeterminate sentence to be meted out on petitioners is within the minimum period of prision correccional, which is six (6) months and one (1) day to two (2) years and four (4) months of prision correccional, whereas the minimum of the sentence, which under the Indeterminate Sentence Law must be within the range of the penalty next lower to that prescribed for the offense, which is one (1) month and one (1) day to six (6) months of arresto mayor.

We likewise modify the award of damages in these cases, in accordance with prevailing jurisprudence, and order herein petitioners, jointly and severally, to indemnify the heirs of Leodevince Licup in the amount of P77,000.00 as actual damages and P50,000.00 in moral damages. With respect to Noel Villanueva, petitioners are likewise bound to pay, jointly and severally, the amount of P51,700.00 as actual and compensatory damages and P20,000.00 as moral damages. The award of exemplary damages should be deleted, there being no aggravating circumstance that attended the commission of the crimes.

WHEREFORE, the instant petitions are DENIED. The joint decision of the Sandiganbayan in Criminal Case Nos. 16612, 16613 and 16614, dated June 27, 1995, are hereby AFFIRMED with the following MODIFICATIONS:

(a) In Criminal Case No. 16612, petitioners are sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor, as the minimum, to twelve (12) years and one (1) day of reclusion temporal, as the maximum; in Criminal Case No. 16614, the indeterminate sentence is hereby modified to Two (2) years and four (4) months of prision correccional, as the maximum, and Six (6) months of arresto mayor, as the minimum.

(b) Petitioners are DIRECTED to indemnify, jointly and severally, the heirs of Leodevince Licup in the amount of P77,000.00 as actual damages, P50,000.00 in moral damages, as well as Noel Villanueva, in the amount of P51,700.00 as actual and compensatory damages, and P20,000.00 as moral damages.

SO ORDERED.

Bersamin, [**] Abad, Villarama, Jr., [***] and Perlas-Bernabe, JJ., concur.
Peralta, J., (Acting Chairperson).[*]

[*] Per Special Order No. 1228 dated June 6, 2012

[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

[1] Penned by Associate Justice Romeo M. Escareal (Chairman), with Associate Justices Minita V. Chico-Nazario and Roberto M. Lagman, concurring; rollo (G.R. Nos. 120744-46), pp. 7-80.

[2] Now known as the Philippine National Police.

[3] Records, Vol. 1, pp. 1-2.

[4] Records, Vol. 5, pp. 1-2.

[5] Records, Vol. 6, pp. 1-2

[6] Records, Vol. 1, p. 46.

[7] Accordingly, the charges against him were dismissed. See April 30, 1991 Order, id. at 108. TSN, April 30, 1991, pp. 3-5.

[8] April 30, 1991 Order, records, vol. 1, pp. 107-108; TSN, April 30, 1991, pp. 12-14. See also records, vol. 1, pp. 191-197.

[9] Records, Vol. 1, pp. 96-105.

[10] Id. at 307.

[11] Records, Vol. 1, pp. 52-55.

[12] Resolution dated May 10, 1991, records, vol. 1, pp. 198-205.

[13] Id. at 205.

[14] Id. at. 300-308.

[15] See certificate of Death, records, Vol. II, p. 707; see also Manifestation dated December 11, 1992, id. at 703-704.

- [16] Records, Vol. 1, p. 388.
- [17] TSN, April 30, 1991, pp. 27-30, 32-34, 37-40, 42-50, 52-53; TSN, July 5, 1991, pp. 20-22.
- [18] Id.; Id.; TSN, May 2, 1991, pp. 25-26
- [19] Exhibits “L,” “L-1” to “L-5.”
- [20] TSN, May 2, 1991, pp. 6-13, 15-17-19, 22-25, 26-29, 45-46, 52-53; TSN, July 5, 1991, pp. 38-46; 48-49;
- [21] TSN, April 30, 1991, pp. 27-30, 32-34, 37-40, 42-50, 52-53; TSN, July 5, 1991, pp. 20-22;
- [22] TSN, May 2, 1991, pp. 25-26.
- [23] Id. at 31-32, 44-45, 51.
- [24] Id. at 37 and 55.
- [25] Id. at 16.
- [26] Id. at 57-59.
- [27] TSN, July 23, 1991, pp. 38-41; TSN, May 3, 1991, pp. 4-10, 18, 27, 29.
- [28] Id. at 17-20, 24-26, 41-47; id. at 10-14, 18-23.
- [29] TSN, May 3, 1991, pp. 14-15.
- [30] TSN, July 24, 1991, pp. 38-40, 47-55; TSN, November 26, 1991, pp. 4-8, 10-14, 19-20. See Technical Report No. PI-032-88, Exhibit “J.”
- [31] TSN, April 30, 1991, pp. 17-19. See Memorandum Receipts, Exhibits D, E, F, G, H.
- [32] TSN, October 22, 1991, pp. 7, 10-11, 13-20, 42-43, 49-50. Dr. Pedro Solis appears to have authored a book on legal Medicine in 1964. See Medico-legal Report dated April 6, 1988, Exhibit I.
- [33] TSN, October 22, 1991, pp. 21-23, 26-28, 30-34, 37-42, 50-53.
- [34] Id. at 44-48.
- [35] TSN, October 7, 1991, pp. 12, 14-15.
- [36] TSN, October 25, 1991, pp. 17-44.
- [37] TSN, September 15, 1993, pp. 5-12; TSN, November 8, 1993, p. 10.
- [38] Memorandum of Cunanan and Puno filed with the Sandiganbayan, rollo (G.R. No. 122776), p. 126.
- [39] TSN, September 15, 1993, pp. 13-15, 18-21; TSN, November 8, 1993, pp. 3, 5, 12, 23-25, 31. See also Joint Counter Affidavit of Cunanan and Puno, dated July 20, 1988, in which they stated that their “team was forced to fire at the said vehicle” when it did not heed the supposed warning shots, Exhibit “A.” In their earlier Joint Affidavit dated April 5, 1988, Yapyuco, Cunanan and Puno stated that after firing warning shots in the air, the subject jeepney accelerated its speed which “constrained (them) to fire directly to (sic) the said fleeing vehicle, Exhibit “O.”
- [40] TSN, September 15, 1993, pp. 22-23; TSN, November 8, 1993, pp. 6-7, 10-11, 21-23.
- [41] Id. at 23-25; Id. at 4.

[42] TSN, November 8, 1993, p. 12, 15-16.

[43] Id. at 6-7

[44] TSN, September 15, 1993, p. 23; TSN, November 8, 1993, pp. 7-8, 10-11, 20

[45] TSN, November 8, 1993, p. 5.

[46] Id. at 8-9.

[47] Id. at 21-23.

[48] TSN, September 15, 1993, pp. 26-29.

[49] TSN, November 22, 1993, pp. 26-36, 40-43, 46-47.

[50] See Order dated April 6, 1994, records, Vol. II, p. 955.

[51] See Manifestation and Motion dated May 6, 1993, id. at 759-761, and Resolution dated June 1, 1993, id. at 763-764.

[52] Rollo (G.R. Nos. 120744-46), p. 55.

[53] Id. at 77-79.

[54] Id. at 56-57.

[55] Id. at 64-66.

[56] Id. at 69-70.

[57] Id. at 64-65.

[58] Id. at 61.

[59] Id. at 58.

[60] Id. at 60-61.

[61] Id. at 60-63.

[62] Id. at 73-74.

[63] Id. at 74-75.

[64] Id. at 64-65.

[65] Id. at 69.

[66] Id. at 68-69.

[67] Id. at 71-73.

[68] Exhibit "X."

[69] TSN, July 5, 1991, pp. 7-9, 27.

[70] Id. at 11-12, 17.

[71] TSN, January 9, 1991, pp. 4-12.

- [72] Exhibit “FF.”
- [73] Rollo (G.R. Nos. 120744-46), p. 96.
- [74] Id. at 93-95.
- [75] Id. at 108.
- [76] Id. at 103.
- [77] Rollo (G.R. No. 122677), pp. 57-65.
- [78] Id. at 75-81.
- [79] Id. at 82-89.
- [80] Rollo (G.R. No. 122776), pp. 101-103.
- [81] Id.
- [82] Id. at 104-106.
- [83] Id. at 223-225.
- [84] Id. at 226-227.
- [85] Id. at 227-228.
- [86] Id. at 228-230.
- [87] Rollo (G.R. No. 122677), pp. 230-232.
- [88] See note 50 and Exhibits “A,” “B,” “C,” “N” and “O.”
- [89] *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578, 592.
- [90] Co-executed by deceased Pabalan, dated September 28, 1988, Exhibit “N.”
- [91] Dated September 28, 1988, Exhibit “C.”
- [92] Dated July 20, 1988, Exhibit “A.”
- [93] Dated July 20, 1988, Exhibit “B.”
- [94] Dated April 5, 1988, Exhibit “O.”
- [95] Exhibits “A-1,” “O,” “B” and “B-1.”
- [96] Exhibit “O.”
- [97] See notes 38 and 39.
- [98] Exhibit “B-1.”
- [99] See notes 38 and 39. See also Exhibits “B” and “C.”
- [100] Exhibit “C.”
- [101] Exhibit “N.”
- [102] Id.

[103] See notes 30, 38 and 39. Refer also to the sketch of Yapyuco and Flores depicting the relative location of the Tamaraw jeepney at the scene of the incident.

[104] Rollo (G.R. No. 122677), pp. 230-232.

[105] *People v. Panida*, G.R. Nos. 127125 and 138952, July 6, 1999, 310 SCRA 66; *People v. Buntag*, 471 Phil. 82, 95 (2004). [106] See *People v. Oanis*, 74 Phil. 257, 262-263 (1943); *People v. Pajenado*, G.R. No. L-26458, January 30, 1976, 69 SCRA 172, 177; *Baxinela v. People*, 520 Phil. 202, 214-215; *People v. Belbes*, 389 Phil. 500, 508-509 (2000); *People v. Ulep*, G.R. No. 132547, September 20, 2000, 340 SCRA 688, 699; *Cabanlig v. Sandiganbayan*, G.R. No. 148431, July 28, 2005, 464 SCRA 324, 333.

[107] *People v. Fallorina*, G.R. No. 137347, March 4, 2004, 424 SCRA 655, 665, applying Article 3 of the Revised Penal Code.

[108] *People v. Tan*, G.R. Nos. 116200-02. June 21, 2001, 359 SCRA 283, 297-298.

[109] *People v. Oanis*, *supra* note 106, at 262.

[110] 10 Phil. 97, 99-100 (1908).

[111] *United States v. Mojica*, 42 Phil. 784, 787 (1922).

[112] *People v. Oanis*, *supra* note 106, at 262.

[113] *Supra* note 106.

[114] *People v. Ulep*, *supra* note 106, at 700.

[115] 335 Phil. 579 (1997).

[116] *Id.* at 597. (Emphasis has been supplied.)

[117] See note 17.

[118] 21 Am Jur 2d, §152, p. 232, citing *Turner v. State*, 210 Ga. App. 303, 436 S.E.2d 229.

[119] *Id.*, citing *U.S. v. Vasarajs*, 908 F.2d 443 and *People v. Nash*, 282 Ill. App. 3d 982, 218 Ill. Dec. 410, 669 N.E.2d 353.

[120] *Id.*, citing *Com. V. Simcock*, 31 Mass. App. Ct. 184, 575 N.E.2d 1137

[121] *Id.*, citing *Johnson v. State*, 734 S.W.2d 199

[122] *Id.*

[123] *Id.* at 233, citing *U.S. v. Buchannan*, 115 F.3d 445; *People v. Reed*, 53 Cal. App. 4th 389. Generally, ignorance or mistake of fact constitutes a defense to a criminal charge only if it is not superinduced by fault or negligence of party doing the charged act. (*Crawford v. State*, 267 Ga. 543, 480 S.E.2d 573). For a mistake of fact to negate a mental state required to establish a criminal offense, the mistake must be reasonable, and the act, to be justified, must be taken under a bona fide mistaken belief (*Cheser v. Com.*, 904 S.W.2d 239).

[124] *Id.* at 233, citing *Potter v. State*, 684 N.E.2d 1127. If a mistake arises not from ignorance of law, but from ignorance of an independently determined legal status or condition that is one of the operative facts of a crime, such a mistake is one of fact (*U.S. v. Lopez-Lima*, 738 F.Supp. 1404).

[125] *Id.* at 233, citing *Potter v. State*, 684 N.E.2d 1127; *Miller v. State*, 815 S.W.2d 582.

- [126] Id. at 233, citing *Jones v. State*, 263 Ga. 835, 439 S.E.2d 645.
- [127] 15 Phil. 488 (1910).
- [128] Id. at 500-501. (Emphasis supplied.)
- [129] Supra note 106.
- [130] Supra note 106.
- [131] *People v. Oanis*, supra note 106, at 264; *Baxinela v. People*, supra note 106, at 215.
- [132] *United States v. Ah Chong*, supra note 127, at 493.
- [133] *People v. Crispin*, G.R. No. 128360, March 2, 2000, 327 SCRA 167, 179; *People v. Calica*, G.R. No. 139178, April 14, 2004, 427 SCRA 336, 362.
- [134] *People v. Dramayo*, G.R. No. L-21325, October 29, 1971, 42 SCRA 59, 64; *People v. Calica*, supra, at 347.
- [135] *People v. Gamer*, G.R. No. 115984, February 29, 2000, 326 SCRA 660, 674.
- [136] *People v. Delim*, G.R. No. 142773, January 28, 2003, 396 SCRA 386, 400, citing *People v. Fulinara*, G.R. No. 88326, August 3, 1995, 247 SCRA 28.
- [137] *Gay v. State*, 60 Southwestern Reporter, 771 (1901)
- [138] *People v. Delim*, supra note 136, at 400.
- [139] *United States v. Gloria*, 3 Phil. 333 (1903-1904).
- [140] *Mondragon v. People*, G.R. No. L-17666, June 30, 1966, 17 SCRA 476, 480-481; See also Reyes, Luis B., *Revised Penal Code*, Book II, 15th ed (2001), p. 470.
- [141] Rollo (G.R. Nos. 120744-46), pp. 67-68
- [142] See *Crisostomo v. Sandiganbayan*, 495 Phil. 718, 745 (2005), citing *People v. Flores*, 389 Phil. 532 (2000).
- [143] *People v. Ramirez*, 104 Phil. 720, 726 (1958).
- [144] *United States v. Montenegro*, 15 Phil. 1, 6 (1910).
- [145] Exhibits “U,” “U-0,” “U-1,” “U-2,” “W,” “W-1” and “W-2.”
- [146] 97 Northwestern Reporter, 210 (1903). (Emphasis supplied.)
- [147] *People v. Oanis*, supra note 106, at 262.

[148] 47 O.G. 3433, 3440

- [149] 43 Phil. 232 (1922).

[150] 42 O.G. 1914, 1921.

- [151] *People v. Bisda*, G.R. No. 140895, July 17, 2003, 406 SCRA 454, 473.
- [152] *U.S. v. Ancheta*, 1 Phil. 165 (1901-1903); *U.S. v. Santos*, 2 Phil. 453, 456 (1903); *People v. Mandagay and Taquiawan*, 46 Phil. 838, 840 (1923); *People v. Agbuya*, 57 Phil. 238, 242 (1932); *People v. Ibañez*, 77 Phil. 664; *People v. Macabuhay*, 46 O.G. 5469; *People v. San Luis*, 86 Phil. 485, 497 (1950); *People v. Dima Binasing*, 98

Phil. 902, 908 (1956).

[153] Rollo (G.R. Nos. 120744-46), p. 75, citing *People v. Toling*, G.R. No. L-27097, January 17, 1975, 62 SCRA 17 and *People v. Tamani*, G.R. Nos. L-22160 and L-22161, January 21, 1974, 55 SCRA 153.

[154] Namely, Eduardo Flores, Raul Panlican, Alejandro De Vera and Restituto Calma.

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