

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUSTOM BERMAS Y BETITO AND GALMA ARCILLA, ACCUSED-APPELLANTS.

G.R. Nos. 76416 and 94312. July 05, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On April 20, 1985 at around 8:30 in the evening, Catalino Bellen, Arturo Abion, Teodoro Cas, Antonio Abion, Renato Abion, Jesus Lotera and Expedito Bonaobra were aboard their fishing boat Sagrada Familia tending to their fishing nets when bursts of gunfire from a high-powered automatic rifle shattered the air killing Catalino Bellen and Teodoro Cas while mortally wounding Arturo Abion. Renato Abion, Jesus Lotera and Expedito Bonaobra sustained serious gunshot wounds which too would have caused the deaths of Lotera and Bonaobra had it not been for the intervention of timely medical assistance.

For the crime, accused Rustom Bermas y Betito and one John Doe were indicted for Multiple Murder with Multiple Frustrated Murder in an Information[1] alleging -

"That on or about the 20th day of April 1985 at 8:30 o'clock in the evening, more or less, at the sea of Barangay Namanday, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation, conspiring, confederating and helping one another, with treachery, taking advantage of nighttime, employing means to afford impunity, with the use of high powered firearms and with intent to kill, did then and there wilfully, unlawfully, feloniously, suddenly and unexpectedly attack, fire and shoot with automatic firearms CATALINO BELLEN, ARTURO ABION, TEODORO CAS, ANTONIO ABION, RENATO ABION, JESUS LOTERA and EXPEDITO BONAOBRA while all the latter were on board their fishing boat, "Sagrada Familia", and tending their fishing net, thereby causing the instantaneous death of CATALINO BELLEN, ARTURO ABION, and TEODORO CAS, and serious wounds to ANTONIO ABION, RENATO ABION, JESUS LOTERA and EXPEDITO BONAOBRA, which injuries could have caused the subsequent death of the aforementioned four victims thereby accused performing all the direct acts of execution which could have produced the crime of consummated murder insofar as the latter named persons are concerned, but, nevertheless, did not produce it by reasons of timely and able medical assistance rendered to them.

CONTRARY TO LAW."

Upon arraignment, accused Rustom Bermas, assisted by counsel de parte, entered a plea of "Not guilty" to the crime charged.[2] During the pre-trial scheduled on June 5, 1985, the prosecution and the defense stipulated -

- "1. That the defense admits the identity of the accused;
2. That the defense admits the death of Catalino Bellen, Arturo Abion and Teodoro Cas at Namanday, Bacacay, Albay; and that the cause of their deaths are gunshot wounds (only for the fact of death);
3. That the other names of the victims appearing in the information were also present during the incident who also sustained injuries as a result thereof;

4. That the accused has a brother by the name of Sgt. Bonifacio Bermas;

The prosecution admitted: 1.) That the affidavits which are all contained in the records will be the basis of the testimonies, except for some details;

2. That the middle name of Jose Abion and the other Abions in the information is Barrameda;

3. That it was a certain P.C. Constable enlisted personnel Arcilla who had an altercation with Santiago Abion, Jr. which was in October 10;

4. That the accused is a Barangay Councilman of Barangay Liwan, Rapu-rapu, Province of Albay; and finally;

5. The prosecution admits that the accused is an employee of the Asian for Generation Resources."[3]

During the course of the proceedings, the Assistant Provincial Fiscal moved to amend the Information claiming that the John Doe described therein strongly shows that said person was CIC Galma Arcilla of the 255th PC Company stationed at Cale, Tiwi, Albay.[4] The motion was granted by the trial court[5] which, however, stressed that it would be without jurisdiction to try Arcilla unless the quondam Minister of National Defense or the President of the Philippines waives jurisdiction to have the accused tried by a Military Tribunal and that they agree to let the civil courts try him.[6] A copy of the order together with the records was sent to the Judge Advocate General's Office (JAGO) for appropriate action.[7]

Trial, meanwhile, proceeded with regard to accused Bermas. On September 25, 1986[8] the court a quo rendered judgment, the dispositive portion of which reads:

"WHEREFORE, and finding the accused RUSTOM BERMAS of Barangay Ligan, Rapu-Rapu, Albay GUILTY beyond reasonable doubt of the crime of MURDER WITH MULTIPLE FRUSTRATED MURDER and ATTEMPTED MURDER, as charged and as found during the trial, after a painstaking scrutiny of all the evidences presented, and considering all the attendant circumstances, this court hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA, with all the accessories of the law.

Said accused is further ordered to pay jointly and severally with whoever is found guilty as his co-principal in the commission of the crime, the following:

To the heirs of the late CATALINO BELLEN, namely Lydia Bellen, widow, and children Mary Rose, Rey, Zenaida and Queenie:

- The sum of THIRTY THOUSAND (P30,000.00) PESOS for the death of Catalino Bellen;
- The sum of ONE HUNDRED EIGHTY TWO THOUSAND SEVEN HUNDRED FIFTY (P182,750.00) PESOS consisting of the future earnings which the heirs mentioned were deprived of had the victim lived up to the age of sixty (60) years;
- The sum of SEVEN THOUSAND (P7,000.00) PESOS for funeral wake and burial expenses;
- The sum of TWENTY FIVE THOUSAND (P25,000.00) PESOS for and as moral damages.

To the heirs of the late TEODORO CAS, namely: Antonia Cas, widow and children: Maria Veronica, Weldy and Honey Bee:

- The sum of THIRTY THOUSAND (P30,000.00) PESOS for and as indemnity for the death of the victim;
- The sum of ONE HUNDRED THIRTY NINE THOUSAND EIGHT HUNDRED THIRTY SIX PESOS AND SEVENTY FIVE CENTAVOS (P139,836.75) consisting of the future earnings which the heirs mentioned were deprived of had the victim lived up to the age of sixty (60) years;

- The sum of TWENTY FIVE THOUSAND (P25,000.00) PESOS for and as moral damages;
- The sum of SIXTEEN THOUSAND SEVEN HUNDRED (P16,700.00) for and as funeral wake and burial expenses;

To the heirs of the late ARTURO ABION, namely Arsenia Abion, widow and the children: Renato, Armando, Antonio, Nestor and Rebecca:

- The sum of THIRTY THOUSAND (P30,000.00) PESOS for and as civil indemnity for the death of Arturo Abion;
- The sum of TWENTY FIVE THOUSAND (P25,000.00) PESOS for and as moral damages;
- The sum of NINETY ONE THOUSAND TWO HUNDRED FIFTY (P91,250.00) PESOS consisting of the future earnings which the heirs mentioned were deprived of had the victim lived up to the age of sixty (60) years;
- The sum of NINE THOUSAND (P9,000.00) PESOS for and as wake, funeral and burial expenses;

To EXPEDITO BONA OBRA, the following:

- The sum of TWO THOUSAND (P2,000.00) PESOS for and as medical and hospitalization expenses;
- The sum of FIVE THOUSAND (P5,000.00) PESOS for and as moral damages;
- The sum of FOUR THOUSAND FIVE HUNDRED (P4,500.00) PESOS for and as unrealized earnings during the period of his incapacity;

To JESUS LOTERA, the following:

- The sum of TWO THOUSAND (P2,000.00) PESOS for medical and hospitalization expenses;
- The sum of FIVE THOUSAND (P5,000.00) PESOS for and as moral damages;
- The sum of FOUR THOUSAND FIVE HUNDRED (P4,500.00) PESOS for unrealized earnings during the period of his incapacity;

To ANTONIO ABION, the following:

- The sum of ONE THOUSAND FIVE HUNDRED (P1,500.00) PESOS for and as medical and hospital expenses;
- The sum of THREE THOUSAND (P3,000.00) PESOS for and as moral damages;
- The sum of THREE THOUSAND (P3,000.00) PESOS for and as unrealized earnings during the period of his incapacity.

Proportionate cost against accused Rustom Bermas.

SO ORDERED."[9]

Meanwhile, the JAGO sent a letter to the trial court dated September 2, 1986[10] informing the latter that the waiver of military jurisdiction over the person and the case of accused Galma Arcilla as required under P.D. No. 1850, as amended, was no longer necessary as said accused had been discharged from military service effective August 15, 1986 per Special Order No. 150 dated August 28, 1986 issued by the General Headquarters of the New Armed Forces of the Philippines.[11]

Considering that Arcilla was indicted together with Bermas with the amendment of the information identifying

him as Bermas' co-accused and that custody over him was turned over to the trial court by the Philippine Constabulary, Region V Command,[12] he was thereafter arraigned and with the assistance of counsel entered a plea of "Not guilty." [13]

During the pre-trial on October 3, 1986, the accused and the prosecution stipulated -

- That Galma Arcilla was once a member of the 255th Philippine Constabulary Company of the Armed Forces of the Philippines stationed at Cale, Tiwi, Albay;
- That on April 20, 1985 he was still a member of the 255th PC Company;
- That he knows Sgt. Rody Madrilejos, the Supply Officer of 255th PC Company stationed at Cale, Tiwi, Albay; and
- That he knows his co-accused Rustom Bermas and a certain Expedito Bonaobra, Barangay Captain of Cawayan, Bacacay, Albay." [14]

The case thereafter proceeded to trial. On November 20, 1989, the court a quo rendered judgment[15] against accused Arcilla, the dispositive portion of which reads:

"WHEREFORE, and finding the accused GALMA ARCILLA GUILTY beyond reasonable doubt of the crime of MULTIPLE MURDER WITH MULTIPLE FRUSTRATED MURDER, as charged and as found during the trial, after a painstaking scrutiny of all evidences presented, and considering all the attendant circumstances, this Court hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA, with all the accessories of the law."

Said accused was further ordered to pay jointly and severally with Rustom Bermas, who was earlier found guilty of the charges and sentenced accordingly, the monetary awards set forth in the earlier Decision dated September 25, 1986.[16]

Bermas and Arcilla thereafter interposed separate appeals seeking the reversal of the trial court's judgment. Bermas' appeal was docketed as G.R. No. 76414 while Arcilla's was docketed as G.R. No. 94312. Upon motion of the Solicitor General[17] the Court resolved to consolidate the appeals per its Resolution dated January 28, 1991.[18]

Insisting on his innocence, accused-appellant Galma Arcilla alleges that-

I

THE TRIAL COURT GRAVELY ERRED IN DECLARING THAT THE MASKED COMPANION OF RUSTOM BERMAS WHO FIRED THE ARMALITE RIFLE TO THE VICTIMS (sic) WHO WERE THEN AT SEA IN A BANCA (BASNIGAN) AT NAMANDAY, BACACAY, ALBAY WAS NO OTHER THAN ACCUSED GALMA ARCILLA, DESPITE THE FAILURE OF THE PROSECUTION WITNESSES TO IDENTIFY THAT GALMA ARCILLA IS THE SAME MAN.

II

THE TRIAL COURT GRAVELY ERRED IN DECLARING THAT THE ARMALITE RIFLE M-16 CAL. 5.56 OF THE ACCUSED WAS USED IN THE COMMISSION OF THE CRIME ON APRIL 20, 1985.

III

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE DEATH THREAT MADE BY RUSTOM BERMAS, JAIME VIBAL AND ANGEL DAYTO ON APRIL 4, 1985 TO THE ABION FAMILY
x x x

IV

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT TO THE BALLISTIC REPORT B-146-85, EXHIBIT K, [WHICH IS] FAVORABLE TO THE PROSECUTION, AND WITH DISFAVOR TO THE ACCUSED WHICH IS MARKED AS EXHIBIT 2 AND 2-A.

V

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING WEIGHT TO THE OPEN COURT TESTIMONY OF PROSECUTION WITNESS SGT. RUDY MADRILEJOS THAT HE SEIZED AND GOT THE ARMALITE RIFLE M-16 CAL. 5.56 OF THE ACCUSED FROM THE POSSESSION OF SGT. NONITO LODOR.

VI

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE TESTIMONY OF [THE] PROSECUTION REBUTTAL WITNESS THAT RUSTOM BERMAS HAS A BROTHER WHO IS A MILITARY MAN WITH AN ARMALITE AND RUBEN URSABIA WHO IS ALSO A MILITARY MAN, [AND IS] A CONSTANT COMPANION OF RUSTOM BERMAS.

VII

THE TRIAL COURT GRAVELY ERRED IN STATING THAT `IT IS ON RECORD THAT CERTAIN INCIDENTS HAPPENED LEADING TO THE FAMILY OF THE ABIONS THE SUBJECT OF AN EXISTING BAD BLOOD WITH THE ACCUSED, GALMA ARCILLA x x x

VIII

THE TRIAL COURT GRAVELY ERRED IN STATING THAT `IT WAS CLEARLY SHOWN DURING AND IMMEDIATELY BEFORE THE COMMISSION OF THE CRIME WHEN THE ACCUSED HIMSELF ASKED THE INMATES OF THE BOAT, BASNIGAN, THAT THEY WERE LOOKING FOR SOMEBODY ELSE AND INQUIRING AS TO WHO OWNS THE BASNIGAN IN QUESTION: THAT WHEN HE WAS INFORMED THAT IT WAS OWNED BY JOSE ABION, THE OUTBURST OF BULLETS FROM THE ARMALITE OF THE ACCUSED COMMENCED INFLECTING DEATHS (sic) AND INJURIES UPON THE INMATES WHOSE NAMES WERE MENTIONED EARLIES (sic) IN THIS DECISION.

IX

THE TRIAL COURT ERRED IN STATING THAT THE THRUST OF THE DEFENSE OF THE ACCUSED IS AN ALIBI."[19]

For his part, accused-appellant Rustom Bermas avers that-

"I - WITHOUT THE EVIDENCE AS AGAINST THE APPELLANT AND COMPANY TO THE EVIDENCE ON RECORD, THE TRIAL COURT FOUND REVENGE OR ILL-FEELINGS AT THE ABION FAMILY AS THE MOTIVE BEHIND THE COMMISSION OF THE CRIME CHARGED.

II - THE TRIAL COURT ERRED IN ITS FINDING THAT THE APPELLANT WAS `A CONSPIRATOR, A PRINCIPAL BY INDISPENSABLE COOPERATION OR EVEN BY DIRECT PARTICIPATION.'"[20]

On the other hand, the Solicitor General recommends that, save for the modifications that: a.] the accused-appellants be meted penalties of reclusion perpetua for each crime of murder and ten (10) years of prision mayor, as minimum to seventeen (17) years and four (4) months of reclusion temporal, as maximum, for each crime of frustrated murder and two (2) years, four (4) months and one (1) day of prision correccional, as minimum to eight (8) years of prision mayor, as maximum for attempted murder; and b.] the civil indemnity should be increased to fifty thousand (P50,000.00) pesos, the decisions dated September 25, 1986 and November 20, 1989 be affirmed in all other respects.[21]

The prosecution's version of the incident with regard to accused Rustom Bermas's participation therein is summed

thus by the Solicitor General in the People's brief [22] dated April 30, 1997:

On April 20, 1985, around 8:30 p.m., at the sea of Namanday, Bacacay, Albay, Expedito Bonaobra, barangay captain of Cawayan, Bacacay, Albay,[23] together with Arturo Abion, Catalino Bellen, Renato Abion, Antonio Abion, Jesus Lotera and Teodoro Cas were on board a fishing boat (basnigan) named "Sagrada Familia" owned by Jose Abion[24] They intended to catch fish that night and brought with them two (2) pressure gas lamps, a fishing net, rope and a pole used for the net.[25]

Subsequently, a small paddled boat (sibiran or sibilid-sibilid) with two (2) men on board approached the fishing boat. The sibiran proceeded to the prow of the fishing boat and went around it four (4) times.[26] As the sibiran circled the fishing boat the second time, Bonaobra and Renato recognized appellant (Bermas) as the one paddling the sibiran.[27] he was wearing a denim (maong) jacket and denim pants.[28] Thereupon, Bonaobra ordered Arturo Abion to remove the shade of the gas lamp so that they could recognize appellant's companion (sic).[29] After Arturo removed the shade (pantalla), the sibiran went around the fishing boat two (2) more times.[30] Those notwithstanding, appellant's (Bermas) companion could not be recognized because his face was covered with a mask and only his eyes could be seen. Appellant's (Bermas) companion was then wearing a blue long-sleeved jacket and maong pants.[31]

Bonaobra asked appellant if he and his companion were going to catch fish (magpadarao man kamo). Appellant answered in the affirmative and told Bonaobra that they were looking for somebody. Appellant then asked Bonaobra who owned the fishing boat and Bonaobra informed him that Jose Abion owned it. Thereafter, appellant and his companion pretended to paddle away. When the sibiran was about seven (7) meters away from the fishing boat, appellant's companion fired his Armalite rifle at Bonaobra and his companions. They heard two (20) volleys fired at them.[32] They lay down but they could not avoid the attack. The fishing boat was hit and so was one of the pressure gas lamps.[33]

After five (5) minutes, Arturo Abion, Renato's father, said that one of them must find a way to enable them to leave that place. Renato crawled towards the prow of the fishing boat and turned off the remaining pressure gas lamp. He then loosened the rope tied to the boat's anchor. After that Renato lost consciousness.[34] The fishing boat was carried away by the currents of the sea towards the shore of Galicia, Rapu-Rapu. Jose, Rudy and Santiago Abion found them the following morning.[35] Arturo Abion and Catalino Bellen were already dead while Antonio Abion, Renato Abion, Jesus Lotera and Bonaobra were seriously wounded.[36] The body of Teodoro Cas was missing.

Rudy and Jose transferred those injured to a kumpit, a small basnigan or fishing boat run by motor while Santiago was left with the dead bodies of Arturo and Bellen. Rudy and Jose maneuvered the kumpit to Bacacay, Albay where they brought those injured to [the] Albay Provincial Hospital.[37] On their way to Bacacay, Albay, Jose asked Bonaobra who shot them and he answered that it was appellant (Bermas) and a companion. Upon their arrival at the shore of Bacacay, Albay, Rudy also asked Bonaobra who shot them. Bonaobra told him that they had been shot by appellant (Bermas) and a companion.[38]

Santiago Abion brought the fishing boat to Sitio Cagbulacao where Station Commander Saliao took the bodies of Arturo and Bellen for autopsy. When Station Commander Saliao left, Santiago emptied the fishing boat of sea water. In the process, he found two (2) slugs inside the fishing boat, one already deformed and the other still round in shape. He took the slugs and gave it to his brother Jose five (5) days later. Jose in turn brought the two (2) slugs to the police station. The body of Teodoro Cas was found on April 23, 1985 (sic) in Guinangayan, Albay.[39]

The autopsy conducted by Dr. Evelyn A. Amador, Municipal Health Officer, Bacacay, Albay, on the bodies of Arturo Abion, Catalino Bellen and Teodoro Cas revealed the following:

Arturo Abion

Date, time and place of autopsy:

April 22, 1985; 10:30 A.M., INP Compound, Bacacay, Albay.

Findings:

External: 1. Body with signs of decomposition

Internal: 2. Wound, avulsed, macerated 21 x 10 cm. left lower lateral thigh shattering and fragmenting muscles nerves other tissues and bones in the area.

Cause of death:

Shock due to hemorrhage of wound, left lower lateral thigh.

(Record, p. 8)

Catalino Bellen

Date, time and place of autopsy:

April 22, 1985, 10:30 A.M., INP Compound, Bacacay, Albay

Findings:

External: 1. Body with signs of decomposition

Internal: 2. Wound, gunshot mid forehead 1 x 1 cm., with contusion collar and brain tissues protruding, this wound also pierce[d] the frontal bone underneath the wound and bone, lacerated.

3. Wound, stabbed, approximately 6 cm. left lower back, with intestines protruding

Cause of death:

Brain injury/Hemorrhage secondary to stab wound

(Record, p. 1)

Teodoro Cas

Date, time and place of autopsy:

April 24, 1985, 6:00 A.M., INP, Bacacay Compound

Findings:

External and Internal: Body bloated in decomposing stage, emitting a very foul smell. Right lateral and back of the head, scalp and skull avulsed. The brain tissues are absent.

Cause of death: Severe brain injuries.

(Record, p. 9)

Dr. Cesar Ong Chua, resident physician at the Albay Provincial Hospital, Legaspi City treated the injuries of Bonaobra, Renato, Jesus and Antonio. The medical certificates he issued to these persons stated the following findings:

Antonio Abion

Gunshot wound

- macerated around 5 x 6 cm., P3rd Right leg, posterior aspect.
- multiple abrasion ranging from 2-4 cm., P3rd, right thigh, posterior aspect.

Operations:

- Debridement and ligation of bleeder

(Record, p. 218)

Expedito Bonaobra

Gunshot wound

- macerated wound, 4 x 6 cm. right shoulder
- fracture, acromias, right shoulder
- A-C separation, right shoulder.

(Record, p. 214)

Renato Abion

Gunshot wound

- lacerated wound, 2 cm., 2 cm., lateral to the sternal border, 5[th] ICS, with skin blasting ranging from 0.5 to 1 cm. anterior chest.
- P.O. entry - 2 cm., P3rd, left forearm, anterior aspect.
- P.O. exit - 4 x 4 cm., P3rd, posterior-lateral aspect, left forearm.
- macerated wound 4 x 5 cm. bone deep and massive tissue injury, right hand dorsum.
- lacerated wound, 2 x 1 cm.

(Record, p. 219)

Jesus Lotera

Gunshot wound

- point of entry - 1cm. D3rd, lateral aspect, left thigh.
- point of exit 7 x 4 cm., D3rd, posterior aspect, left thigh
- lacerated wound 8 x 4 cm., P3d, left thigh, posterior aspect.

Operations:

Debridement and ligation of bleeders.

(Record, p. 219)

Dr. Chua testified that the injuries inflicted on Bonaobra, Antonio and Jesus would have caused their death without timely medical attention, while those inflicted on Renato would not have killed him even without timely medical intervention.[40]

Vicente R. De Vera, a ballisticsian of the Philippine Constabulary Crime Laboratory Service, Camp Crame, Quezon City, declared that an examination of [the] Armalite rifle M16 with serial number 3265859[41] and

two (2) fired bullets, recovered from the fishing boat marked as T and T-1, shows that the bullets were fired from said rifle.[42] Sgt. Rudy Madrilejos, a supply sergeant of 255 PC Company Station at Calo, Tiwi, Albay, testified that a rifle caliber 5.56 mm m16 with serial number 3265859 had been issued to Galma Arcilla.[43]

Santiago Abion testified that on October 13, 1984, he and his wife Nelly went to a public dance at Namanday, Bacacay, Albay. He saw appellant (Bermas), Arcilla and Ruben Ursabin drinking gin about five arms length away.[44] He and his wife went home at about 9:30 o'clock p.m. the following day, at apimd (sic) 2:00 o'clock in the afternoon, Daniel Abion went to Santiago's house Daniel warned Santiago that he was being suspected by Arcilla as the person who had mauled him. However, Daniel admitted that he was the one who mauled Arcilla after the latter had beaten up Leopoldo.[45]

On October 15, 1984, Santiago went to the house of his brother Rudy.[46] Rudy was not there as he was selling fish.[47] Suddenly, six (6) armed men barged into Santiago's house and asked Nelly, who was then pregnant, the whereabouts of her husband. According to Santiago, he saw the armed men, because he peeped through the window of Rudy's house. He also recognized one of the armed as Ruben Ursabin. Santiago's wife, Nelly was so scared that she suffered a miscarriage.[48]

On April 4, 1985, at around 8:30 o'clock p.m., Santiago bought cigarettes from the store of Asterio Bellen. On his way home, he saw appellant (Bermas), Angel Daybo and Jaime Sibal. He passed by his cousin's house. Salvador Abion called him and asked for a cigarette. Later appellant (Bermas), Daybo and Sibal entered the house of Salvador. Appellant pounded his palm on the table, hit the wall, pointed his finger at Santiago and uttered "babalonan co an mga baraca pag oli co" (I will bring the baraca when I go home). "Baraca" is the appellation of the Abion family.[49]

The People's account with regard to accused Galma Arcilla's participation in the incident, which was dubbed as the "Namanday Massacre,"[50] is identical with the above-quoted factual narrative.

Additionally, in the appellee's brief dated September 3, 1993,[51] the prosecution narrated -

". . . that sometime in October 1984, while appellant was drinking with Rustom Bermas, Ruben Ursabia and Angel Dayto inside the dance hall of Namanday, Bacacay, Albay, appellant was involved in a fistfight, where he boxed Leopoldo Abion on the chest.[52] When Leopoldo Abion's brother Daniel Abion, arrived, appellant went out of the dance hall.[53] Daniel Abion, however, was able to hit appellant on the face with a piece of wood.[54]

Santiago Abion corroborated the testimony of Renato Abion that on October 13, 1984, at about 8:30 p.m., appellant, Rustom Bermas and Ruben Ursabia were drinking inside the dance hall of Namanday, Bacacay, Albay.[55] Santiago Abion further testified that: a) on October 14, 1984, at about 2:00 p.m., Ruben Ursabia and five other armed persons who were looking for him (Santiago Abion) went to his house, but they did not find him there because he was at the nearby house of his brother; b) on April 4, 1985, at about 8:30 p.m., when Santiago Abion was at the door of the house of his cousin, Salvador Abion, Rustom Bermas pounded on a table and said to Santiago Abion "Balunon co an mga baraka sa pag-uli co" (I will bring home the baraka), the baraka being the death threat to the Abion family;[56] and c) a day after the "Namanday Massacre", or on April 21, 1985, Santiago Abion found two (2) slugs inside the fishing boat, "Sagrada Familia", which were submitted to the police authorities for examination.[57]

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Sgt. Rudy Madrilejos testified that on February 14, 1985, he issued to appellant an Armalite rifle, which is particularly described as rifle caliber 5.56 MM M16 with Serial Number 3265859.[58] Sgt. Rudy Madrilejos further testified that when he was ordered by the Provincial headquarters of the Philippine Constabulary (PC) to bring back said Armalite rifle for ballistic examination, he got it from Sgt. Nonito Lodor on April 2, 22 or 23, 1985.[59]

Cpl. Teodoro Berango testified that the investigation conducted by the military on the "Namanday Massacre" found appellant as the principal suspect of the crime.[60] Cpl. Berango then requested the Provincial Commander to recall the Armalite rifle issued to appellant.[61] In the course of the investigation, Cpl. Berango was informed that appellant and Rustom Bermas had a drinking spree on April 20, 1985 at Liguán, Rapu-Rapu, Albay, which is only two (2) kilometers away from Namanday, Bacacay, Albay.[62]

Gracia Dagcel testified that sometime in April 1989, one Capt. Mapalo and other persons went to her house at Liguán, Rapu-Rapu, Albay to apprehend her for illegal possession of firearms; on that occasion appellant, then a constable in the Philippine Constabulary, wore a mask."[63]

The accused-appellants, on the other hand, presented a contrasting picture.

Accused-appellant Galma Arcilla insists, in sum, that he was some place else at the time of the commission of the crime.

He testified that he is a resident of Malilipot, Albay and was a member of the 255th PC Company stationed at Cale, Tiwi, Albay where he held the position of Assistant Detachment Commander of the Pamal Checkpoint at Tiwi.[64] As a member of the Armed Forces of the Philippines (AFP), he was issued an Armalite M-16, Cal. 5.56 automatic rifle[65] by the Philippine Constabulary (PC) through Sgt. Rudy Madrilejos.[66] At the time of the incident, his rifle was in the possession of Sgt. Nonito Lodor, Commander of the Intelligence Operations Post (IOP) Detachment at Capantagan, Tiwi, Albay[67] to whom he usually entrusts it whenever he goes home to see his family.[68] It was in the possession of Lodor on the said date because on April 17, 1985, he went home upon being informed by the uncle of his wife that his wife was sick[69] and stayed there up to April 24, 1985.[70]

At the time of the commission of the felony on April 20, 1985 and at about 8:00 p.m., he was at his house in Santicon, San Antonio, Malilipot, Albay, drinking with his friends Benito Bobiles, Filoteo Bobiles, and Florencio Berchez who came to his house bringing with them three (3) round bottles of gin and chicken[71] to commemorate the death anniversary of Benito Bobiles' father. They celebrated the occasion at Arcilla's house instead of the Bobiles residence because Arcilla's wife was sick with flu and fever at that time and Arcilla could not leave because he had to tend to her as well as the household chores.[72]

They started drinking at 6:00 p.m. and ended at 11:00 p.m.[73] Arcilla subsequently sent his brother-in-law to buy two (2) more bottles of gin after they consumed the three (3) brought by Benito, Filoteo and Florencio.[74] During the drinking session, the only times Arcilla and his companions went out were those times when they had to attend to their personal needs.[75] After the drinking session ended at 11:00 p.m., Arcilla's visitors went home while Arcilla himself never went out after they finished drinking because he went to bed.[76]

Rustom Bermas, who is employed as a 'spotter' working eight-hour shifts at a local mining firm and a councilman of Barangay Liguán[77] had a similar story to tell.

As gleaned from his testimony and that of his co-witnesses Manuel Balbastro, Vicente Bonaobra and Jose Belir, on April 20, 1984, he was already working at 7:00 a.m. having reported for work at 6:00 a.m.[78] At the end of his work shift, he and his co-workers dispersed.[79] Outside the workplace, he met with Manuel Balbastro, Vicente Bonaobra, Nestor Semeniano and Jose Belir.[80]

Upon meeting, the group decided to drink[81] with each of them initially pitching in to buy liquor.[82] They started drinking at past 5:00 p.m.[83] at Bermas' house.[84] They left Bermas' house at past 7:00 p.m. after consuming two (2) bottles of gin[85] and proceeded to the store of Solano Mecaller where they stayed up to 9:00 p.m.[86] At the Mecaller store, they consumed one (1) flat bottle (lapad) of Andy Player whisky.[87] From the Mecaller store, they proceeded to a boat or sampan which was docked at the pantalan or pier[88] where they consumed one (1) 'long neck' of Andy Player whisky.[89] While they were at the sampan nobody went out to buy

liquor because they bought what they consumed at the Mecaller store.[90] They stayed there up to past 1:00 a.m. after which they parted ways.[91]

In fine, accused-appellant Galma Arcilla insists he is innocent because: 1.] none of the twelve (12) prosecution witnesses identified him as the masked man who fired at the victims; 2.] the automatic rifle used in the felony is not the firearm issued to him; 3.] he was not in possession of the rifle at the time of the commission of the crime; 4.] Rustom Bermas together with Jaime Vibal and Angel Dayto threatened the Abion Family with death before the commission of the crime; 5.] Rustom Bermas has a brother who is a member of the PC as well as a constant companion who are both PC soldiers similarly armed with automatic Armalite rifles and such firearms could have been the ones used by Bermas and his masked companion in the perpetration of the felony.

We disagree.

That indeed the prosecution witnesses may not have identified the masked man who fired the automatic rifle at the victims is of no moment. Well-settled is the rule that direct evidence of the commission of the crime is not the only matrix whence a trial court may draw its conclusions and findings of guilt.[92]

The evidence is replete with enough proven details to sustain the guilt of accused-appellant Galma Arcilla at the very least on the basis of circumstantial evidence. The totality of such evidence would be sufficient if: a.] there is more than one circumstance; b.] the facts from which the inferences are derived have been established; and c.] the combination of all these circumstances is such as to warrant a finding of guilt beyond reasonable doubt.[93] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proven form an unbroken chain which leads to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the malefactor. These circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilt.[94]

Assaying the facts against the foregoing legal yardsticks, We defer to exhaustive findings of the trial court which pointedly observed that:

"It is on record that certain incidents happened leading to the family of the Abions the subject of an existing bad blood with the accused, Galma Arcilla, viz:

a)

A fist fight during a dance at Namanday on October 13, 1985 where accused Galma Arcilla was the aggressor and Leopoldo Abion was subjected to fist blows by him hitting the latter on his chest, this writhing in pain and sitting on a corner of the dance hall at Namanday when moments later, the brother of Leopoldo, Daniel Abion, arrived and hit Galma Arcilla with a piece of wood; thus, an even situation transpired that accused Galma Arcilla kept on looking for an opportunity of revenge against the Abions. After Daniel left, Rustom Bermas, the usual confederate and companion of the accused, arrived for the purpose of getting even with the Abions, but luckily nothing happened because Daniel had left already;

b)

The apparent show of bad blood with the Abions when on October 14, 1985, Galma Arcilla was with a group of men forced open the window of the house of Santiago Abion with the use of the tip of a gun, looking for the latter, thus his wife got scared and was hospitalized. This incident was reported to the PC-INP of Bacacay, Albay, showing the abuses of these men in uniform including the accused in this case;

c)

The accused, being a PC enlisted man and with authority to possess firearm, a healthy and well-built fellow in the prime of his life, will never allow himself to be outdone and controlled by anybody, such as this simple family of fishermen of the same barangay as the accused;

d)

At the precise moment of the multiple killing and frustrated murder with the use of an Armalite rifle, the accused availing of the mantle of darkness, masking himself beyond recognition and looking for his prey, the family with whom he entertained rancor and grudge for the purpose of revenge, thus accused himself, before firing, asserted for himself that indeed the subject of his prey the Abions were there, thus the moment of truth happened.

The accused made manifest that they were looking for someone else and asked for the owner of the 'basnigan'; that when informed that the same is owned by Jose Abion, the family they were looking for, without delay, the burst of fire was made upon the helpless fishermen consisting mostly of the persons coming from the said Abion clan, leading to the multiple killing of three men, namely Catalino Bellen, Arturo Abion and Teodoro Cas as shown by their respective autopsy reports, Exhibits 'F,' 'G,' and 'H,' and injuries to four persons, namely Antonio Abion, Jesus Lotera, Renato Abion and Expedito Bonaobra where all were medically attended to as shown by their respective medical certificates, Exhibits 'Q,' 'R,' 'P' and 'O'.

The treacherous killing of the three victims and four who were seriously injured are indeed the physical evidence constituting this case.

'Physical evidence is the highest order which speaks more eloquently than all witnesses put together, Pp. v. Bardaje, 99 SCRA 3881; Pp. v. Caudillo, GR 45266, Nov. 24, 1988.'

In all these incidents, the two accused were always seen together.

No iota of doubt prevails that the same masked man during the night of April 20, 1984, the person who fired the armalite rifle was no other than Galma Arcilla, the owner of the armalite ballistically examined, a trained sharpshooter being a member of the PC Command, responsible for the commission of the crime of murder charged.

The Court noted that the maximum efficiency of the result when the volley of fire coming from accused's armalite rifle when fired was no doubt due to his efficiency in handling guns, being properly oriented in the use of his rifle as a PC enlisted man, which accused himself admitted in his testimonies. This is proven by the fact that for his volley of fire made during the commission of the crime, it resulted to three deaths and four seriously injured.

The ballisticsian, Vicente de Vera, Chief Ballisticsian of the PC-INP, clearly testified that the two bullet slugs subjected for ballistic examination were indeed fired from no other armalite rifle, except the M-16 rifle, Caliber .223 with serial number 3265859, the very weapon issued to Galma Arcilla, as shown by the records of the PC and specifically testified to by Sgt. Rodolfo Madrilejos.

The gun was issued to Galma Arcilla as testified to by Sgt. Despabiladeras and Sgt. Madrilejos as supported by the records of the office. From the time the gun in question was placed in his custody for purposes of the ballistic examination, the same was well handled, kept and taken care of until the result was released. He took the gun and kept it without anybody having access to it until it was delivered to Col. Averilla.

Moreover, Sgt. Despabiladeras, custodian of the rifle, testified that replacement of the parts of the gun could not have been made while the same was in his custody. Furthermore, he testified clearly that the specimens in

question were taken care of carefully until it was delivered to Col. Averilla for ballistic examination.

It should be noted that there was no other suspect to the supposed killing, thus there was no evidence shown by the accused that other persons were interested in the suppression of evidence or passing the buck to him as a scapegoat to the perpetration of the heinous offense charged.

Sgt. Rodolfo Madrilejos emphatically declared that Armalite rifle M-16, Serial No. 3265859 is the very rifle as a whole issued to the accused and the same parts are all intact; that the gun was never fired after retrieved and taken from Sgt. Lodor. And furthermore, the ammunitions which the accused alleged to have been kept in a locker were never produced when demanded; the pretext of an alleged encounter that happened in Bantayan, Tabaco, where these ammunitions were used appears a hoax for said encounter never existed as a fact for there were no dissident harassments in the area in the year 1984. All these facts weakened the defense of the accused more specifically as to its credibility.

On the date in question, April 20, 1984, the accused Galma Arcilla, then a PC enlisted man, was on leave as admitted by him. An alibi was presented that he was in his barangay, San Antonio, Santicon, Malilipot, Albay, instead of Namanday, Bacacay, Albay where the crime was committed. No impossibility for him to go to Namanday was shown on the records and more so because alibi is a weak offense.

Emphatic denial of accused Galma Arcilla on his being at the place of the commission of the offense at Namanday was made and putting as alibi that he was at San Antonio, Santicon, Malilipot, Albay, attending to his sick wife. This fact was vouched and testified to by his neighbor friends, Benito Bobiles and Florentino Berchez, likewise residents of San Antonio, Santicon, Malilipot, Albay. The accused denied the charge, claiming that on the 20[th] day of April 1985, he was at his headquarters and that specifically from 6:00 o'clock to 11:00 o'clock in the evening of said date, he was hosting a drinking party at his house with several friends, such that it would be impossible for him to be at Namanday, Bacacay, Albay. In fine, the defense is alibi, not being at the place of the commission of the offense but at such other place. He has not shown proofs that it would be physically impossible for him to be at the place of Namanday where the offense was committed. Namanday, Bacacay, Albay and San Antonio, Santicon, Malilipot, Albay could be traveled by a motorboat easily within a few hours, if need be. His claim to be at the headquarters on that date is belied by the record for he left the camp on April 17, 1985 and only to return to his place of work at Cale, Tiwi, Albay, so that on April 20, 1985, he was then set free to go to any place of his own accord.

He alleged that he could not have inflicted such heinous crime as charged because there was no motive nor existing misunderstanding between him and the victims. The records as shown above abound on the fact that an existing bad blood harbored by the accused Galma Arcilla against the family of the Abions were clearly shown and proven by the evidence. It was clearly shown during and immediately before the commission of the crime when the accused himself asked the inmates on the boat, a 'basnigan,' that they were looking for somebody else and inquiring further as to who owns the 'basnigan' in question; that when he was informed that it was owned by Jose Abion, the outburst of bullets from the armalite of the accused commenced inflicting deaths (sic) and injuries upon the inmates whose names were mentioned earlier in this decision.

As to the firearm in question, he denied that Armalite rifle M-16, Caliber .223 is not the gun issued to him. He alleged that Armalite Caliber 5.56 with a different serial number was the very rifle under his custody. This fact was belied by the testimony of the issuing officer and by the records that what was indeed issued to the accused Galma Arcilla, in this respect, is the former described gun, rather than Caliber 5.56.

It is amazing to note that the accused, before leaving the camp on April 17, 1985, entrusted the gun in question to Sgt. Nonito Lodor, at the latter's house at Capantagan, Cale, Tiwi, Albay, rather than at the headquarters which is

but a distance of about a few meters, more or less, to his place of work. The headquarters of the 255[th] PC Company where said rifle could have been kept and/or entrusted would be a safer place aside from it being secured and in consonance with military requirement. This was not well explained by the accused why instead of leaving said rifle at the proper office, the headquarters of the 255[th] PC Company, the same was entrusted to Sgt. Nonito Lodor, in the latter's house.

Again, his leaving his armalite rifle to Sgt. Nonito Lodor in the latter's house with a distance of over five (5) kilometers from his detachment office in Capantagan, compared to the distance of the 255[th] PC Command Headquarters in Cale, Tiwi, Albay, of only over 100 meters is a matter which the accused failed to explain to the satisfaction of the Court. Military regulations dictate that firearms as the gun in this instance should be placed more safely with the duly authorized enlisted men of the command in taking custody of the rifles in the headquarters, rather than entrusting it to anyone to be kept in a private house, as what the accused had done in this instance when he allegedly left the gun in the house of Sgt. Lodor.

It is perplexing to note that per accused testimony, it was Sgt. Nonito Lodor himself who informed him for the first time that accused was a suspect in this crime and that the armalite rifle issued to him was the one involved during the shooting. If it is true, as alleged by Galma Arcilla, that same gun was deposited and was in the custody of Sgt. Lodor, the latter would not confront him as now testified to by accused.

On the 375 ammunitions borne out by the records to have been issued to the accused, the latter was only able to return 191 of said ammunitions; thus, 184 were missing. He attributed the missing 184 ammunitions to an alleged encounter with dissidents at Bantayan, Tabaco, Albay, which was not borne out by the records of his command, nor supported by witnesses coming from the 255[th] PC Company as to the existence of said encounter with the dissidents. The accused at first, claimed that the 184 missing ammunitions were said to be left in a house and promised to return the same, but he failed to do so.

The records also show that the said ammunitions were left in a locker, supposed to be returned to the issuing officer when required, but said accused failed to account for the same. Again, the version of the use of the ammunitions with an encounter with the dissidents is mysteriously put up. There is thus, therefore, a suspicion logical enough that the missing ammunitions were indeed used in the commission of the crime adverted to.

The accused further maintained that some parts of the armalite rifle issued to him, such as the stock group and the handguard were replaced by other parts coming from a different armalite for the purpose of tampering the evidence leading to his involvement in the crime at issue. But he failed to show or present any person interested for that matter. Moreover, the same had been disproved by the officer entrusted with the custody of the armalite rifle, as well as its ammunitions when the same were recalled for ballistic examination.

The claim that the barrel receiver group of the gun in question is replaced on the pretext of an alleged hole on his gun issued to him and a detachable red cloth attached to the tip of said firearm are matters hard to believe. Accused Galma could not pinpoint to anyone else responsible for the insertions and/or replacement of the stock group of his gun to the barrel receiver of another, if only to implicate him of the crime.

'This defense is elaborate, well orchestrated scheme and designed to exculpate an accused which is deserving of no credence, Pp. v. Magdaraog, GR-40988, April 15, 1988.'

Accused claimed that he could not commit such crime of which he is being charged because he is receiving sufficient salary as a PC enlisted man of P2,000.00 or even more per month, is beside the issue in this case. The Court cannot agree with this reasoning that because he is financially well-off, he could not have committed the crime of which he is present charged.

He was evasive to mention the fact having gone to the place where the incident in question happened, such as in Namanday, Bacacay, Albay or Liguán, Rapu-Rapu, Albay, thus, testifying in his defense that his residence is in Sabang, Legazpi City, which, upon his marriage, he transferred to San Antonio Santicon, Malilipot, Albay; that he had never gone to Liguán, Rapu-Rapu, Albay, except once in 1982. This pretention was disproved by abundant evidence on the part of the prosecution that the accused had been seen before, during and after the incident in question at Liguán, Rapu-Rapu, Albay with his co-accused and other companions drinking liquor at the same place. He even led a raiding party for the purpose of serving a search warrant to the family of Gracia Estevez Dagcel. In all these pretentions, the Court ultimately found that the accused had committed abundant falsities in his claim to exculpate himself as shown by his perjured testimonies in Court under oath. It should be relevant to note that the person who actually was responsible in the firing was one of the same build, height and physis as Rustom Bermas, a man who was in 'maong' pants but with a vest and a mask purposely made so as not to have himself identified. The same incident was repeated when the accused guided a raiding party for the purpose of serving a search warrant when he was again using the same mask and vest for himself, but later on unveiled himself to be identified as the present Galma Arcilla in this case. The saying goes that crime does not pay which, in this instance, may be relevant and worthwhile repeating with respect to the actuations of the accused hereof.

He alleged that despite the party held in San Antonio Santicon, Malilipot, Albay in the afternoon of April 20, 1985 in memory of the death anniversary of Benito Bobiles' father who died many years ago and which was being held at the latter's house, accused transferred the venue of said party from Benito's residence to his house, if only to accommodate him. This is far from the accepted norm prevailing in this locality as the Court may judicially notice.

His pretentions not having gone to Liguán, Rapu-Rapu for a long, long time, except once in 1982 and no longer thereafter, his denial of having any relative in said place, his having not known the family of Rustom Bermas, his co-accused, were all belied by witnesses who testified to have seen him in Liguán many times, as well as Solomon Arcilla being a close relative of his in Liguán and that most of the time, he was with Rustom Bermas, his co-accused, before, during and after the commission of the crime in question.

Gracia Estevez Dagcel belied most of the allegations of the accused as follows: On the denial of Galma Arcilla having not gone to Liguán, Rapu-Rapu, Albay, this witness categorically declared that accused was seen many times in 1989 in Liguán and that he even went to her house where he was served and entertained by this witness to drink liquor together with his friends and companions.

The accused denied having gone to Liguán during the service of the search warrant. However, this witness, Gracia Dagcel testified that accused indeed was there that the search warrant was served by him on a Friday and again the following day, a Saturday, a confrontation with accused was made when she blamed him for the search in this instance.

The accused was seen in Liguán on several occasions with Ruben Ursabia conducting the search of a gun allegedly owned by the husband of Gracia. That on such occasion, the accused was with other military men, including Capt. Romeo Mapalo, conducting the search, and Galma Arcilla was again wearing his mask with a hood for purposes of avoiding recognition for himself, but he was recognized on that occasion.

Accused disclaiming any participation in the search application and its issuance are belied by abundant evidence, such as exhibits 'X' and 'Y-1', his application for the search warrant, Exhibit 'Z', his affidavit supporting the application, Exhibits 'BB' and 'BB-1', the search warrant itself where the accused was a witness, Exhibits 'CC' and 'CC-1' to 'CC-19', reflecting the accused telling lies to the Court of his alleged non-participation to the proceedings, and Exhibits 'DD', 'DD-1' to 'DD-3', a group picture depicting accused, Galma Arcilla, with other

men in Liguan, Rapu-Rapu, Albay.

Accused's pretensions in the sur-rebuttal by presenting his witness in the person of the Provincial Warden with whom he was supposed to be in custody as a detention prisoner were shown that Galma was indeed allowed to leave his detention upon the request of Capt. Mapalo for this particular incident. Instances when detention prisoners, as the accused herein, were allowed to leave detention, aside from the orders of the Court, were on requests of lawyers or military personnel for that matter.

Moreover, accused's denial to be present in that dance at Namanday, Bacacay, Albay on October 13, 1985, was belied by the fact when he inflicted fistic blows upon Leopoldo Abion, and consequently that incident led to his being hit also by a piece of wood by Daniel Abion, brother of Leopoldo.

In fine, all if not most of accused's pretensions in his defense were shattered by the foregoing elucidated facts as borne out by the records either directly or circumstantially the evidence abounds in support of a proof beyond reasonable doubt that the crime charged against Galma Arcilla, has certainly been proven as above discussed and shown." (Italics supplied)

In addition to the foregoing, it is interesting to note that for all Arcilla's protestations that an M-16 Cal. 5.56 Armalite is different from an M-16 Cal. .223, the records disclose that there is, in fact, no difference between the two firearms. Particularly illuminating on this point is the following testimony of Vicente De Vera, Chief Ballistician of the PC Crime Laboratory at Camp Crame, Quezon City who declared that both .223 and 5.56 calibers refer to the same rifle despite repeated attempts of defense counsel to throw him off track:

"ATTY. REOLO:

Q-

According to the evidence of the prosecution which is a memorandum receipt marked in evidence as Exhibit "A" the firearm issued to accused is 5.56 M-16 Armalite rifle with serial no. 3265859. My question is you have not performed microscopic examination and comparison on the 5.56 caliber M-16 Armalite with serial no. 3265859 because what you have examined thru (sic) your microscopic examination for comparison is .223 caliber M-16 Armalite rifle with serial no. 3265859 as shown in your ballistic report, is that correct?

A- That is not correct because 5.56 M-16 is in military parlance while .223 caliber is in commercial parlance. In other words they are the same.

Q- I am asking you whether you performed microscopic examination and comparison on 5.56 M-16 Armalite rifle and .223 caliber in your ballistic report.

A- Anyway 5.56 is not the subject matter in the case. I need not make the necessary microscopic examination.

Q-

What I am objecting to was the coming (sic) from 5.56 M-16 with Serial No. 3265859. But you have not mentioned in ballistic report marked as Exhibit "K" that you have performed [a microscopic examination on

an] 5.56 caliber M-16 Armalite rifle, is that correct?

A- That is not correct to mention, that is [a] redundancy.

Q-

By the way, .223 caliber is the same as that of 5.56 caliber M-16 and the .223 is the commercial parlance. Will you not agree with me [that] there are several calibers like 5.56, 7.52 and .223 calibers?

A- I will not agree with you ma'am.

Q- You will not agree. But there are different calibers of an Armalite M-16 those which I have mentioned, is it not?

A- 7.62 is a different caliber.

Q- Is it not that in a firearm or sidearm there are different calibers?

A- Yes, ma'am.

Q- We have the caliber .45, .38, .22 so that on the said firearm there is a difference in the caliber?

A-

Insofar as the caliber in the firearm is concerned. M-16 has only one caliber either designated 5.56 caliber MM is the European version. In other words, .223 caliber and 5.56 MM are one and the same."[95]

All these circumstances, evident from the recital of facts heretofore given, clearly yield a fair and reasonable conclusion pointing to herein accused-appellant Galma Arcilla as the malefactor who fired the high-powered automatic rifle at the victims.[96]

Rustom Bermas, in professing his innocence, claims that: 1.] He has no motive to kill the victims because he has no quarrel with the Abion Family; and 2.] Conspiracy was not proven.

These claims are, likewise, bereft of merit.

Rustom Bermas' pretext that he has no ill motive to kill the victims pales into insignificance vis-à-vis his positive identification by prosecution witnesses Expedito Bonaobra and Renato Abion. The trial court which had the opportunity to directly hear the testimony of these two (2) prosecution witnesses, gave credence to their assertion that they saw Bermas paddling the sibid-sibid which approached the prow of their basnigan.[97]

Time and again, this Court has stated that "[t]he credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted." [98] Appellants have shown no cogent reason to depart from this well-settled doctrine and this Court finds none.

Furthermore, it equally bears stressing that proof of ill-motive to commit the crime becomes irrelevant with the positive identification of the accused. Therefore, attributing to accused Bermas the motive of vengeance is unnecessary where he was positively identified as one of the malefactors. [99] Motive assumes significance only where there is no showing of who the perpetrators of the crime were. [100] Verily -

"Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters." [101]

Even, however, were this Court to delve into the motive which may have actuated the accused-appellants to commit such crimes, a circumspect scrutiny of the record will readily disclose abundant proof that accused-appellants had an axe to grind against the Abions despite Bermas' pretensions to the contrary. The existence of such a feud between the accused-appellants and the Abions is underscored by the fact that Bermas together with Jaime Vibal and Angel Dayto barged into Santiago Abion's house where he pounded the table, hit the wall and pointed his finger at Santiago uttering the threat "Babalonan co an mga baraca pag oli co." [102] The threat came to fruition several days later on that fateful night when the victims were mercilessly strafed with an Armalite rifle by Arcilla while they were on board their basnigan.

In an attempt to undermine the cause of the prosecution and to exculpate himself, accused Bermas further insists that "his paddling of the banca to and from the scene of the incident is insufficient proof of conspiracy." [103]

The paucity of the argument is at once evident. In conspiracy, direct proof of a previous agreement to commit a crime is not necessary. [104] It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest. [105] The records clearly bear out that with the armed and hooded Arcilla on board, Bermas maneuvered their sibid-sibid up close to the victims' basnigan. He watched in stolid silence, nary raising a whimper of protest even when Arcilla commenced firing at the victims. After the carnage, he calmly paddled the banca away from the crime scene. Given such peculiar facts obtaining in this case, Bermas' paddling of the sibiran to and from the scene of the crime, on the contrary, underscores his community of design, interest and purpose in the perpetration of the felonies.

Apparent then from the foregoing facts is the unity of purpose and design in the execution of the unlawful act. [106] Where, as in this case, conspiracy is shown, the precise modality or extent of participation of each accused becomes secondary and the act of one may be imputed to all the conspirators. [107] In other words, a person found in conspiracy with the actual perpetrator of the crime by performing specific acts with such closeness and coordination as the one who executed the criminal act is equally guilty as the latter [108] because in the eyes of the law, each conspirator is a co-principal and is equally guilty with the other members of the plot. [109]

In their defense, both accused-appellants interposed alibi. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove and for which reason it is

generally rejected.[110] Viewed against the factual backdrop of the case, accused-appellants' defense of alibi easily crumbles under the weight of the evidence arrayed against them.

With regard to the offenses committed, accused-appellants have been convicted of multiple murder with multiple frustrated murder. As alleged in the Information, the perpetration of the felonies was qualified by treachery and evident premeditation.

For alevosia to qualify the crime to murder, it must be shown that: a] the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and b] the said means, method and manner of execution was deliberately adopted.[111] Treachery exists when any of the crimes against persons is committed with the employment of means, methods or forms that tend directly and especially to insure its execution, such that the offender faces no risk that may arise from the defense which the offended party might make.[112] The essence of treachery is the swift and unexpected attack on an unsuspecting and unarmed victim who does not give the slightest provocation.[113]

In the case at bench, the concurrence of the foregoing conditions are firmly anchored on the testimonial declarations of prosecution witnesses Expedito Bonaobra and Renato Abion which are consistent with the autopsy findings of Dr. Evelyn A. Amador on the bodies of the Arturo Abion, Catalino Bellen and Teodoro Cas as well as the medical certificates issued by Dr. Cesar Ong Chua who treated the injuries sustained by Jesus Lotera, Antonio Abion, Expedito Bonaobra and Renato Abion.

It need not be overemphasized that the sudden and unanticipated volley of gunfire from a high-powered automatic rifle at the unsuspecting and unarmed victims coupled with other means resorted to which tended directly and especially to insure the success of the assault[114] underscores the existence of treachery. To reiterate, a deliberate, unexpected and sudden attack under circumstances which render the hapless victim unable and unprepared to defend himself or to afford him any chance to escape by reason of the suddenness and severity of the assault constitutes alevosia.[115]

With regard to nighttime, it needs be stressed that the mere fact that the offense was committed at night will not suffice to sustain a finding of nocturnity.[116] By and of itself, nighttime is not an aggravating circumstance; it becomes so only when: 1.] it is specially sought by the offender; or 2.] it was taken advantage of by him; or 3.] it facilitates the commission of the crime by insuring the offender's immunity from capture.[117] In the case at bench, other than the time of the occurrence of the felony, nothing else suggests that it was consciously resorted to by accused-appellants to facilitate the commission of the crime or that it was availed of for the purpose of impunity.[118]

Indeed, the records show that the scene of the crime was well illuminated by two (2) pressure gas lamps which were on board the basnigan[119] and that Expedito Bonaobra, in fact, even ordered Arturo Abion to remove the shade (pantalla) of the gas lamp so that they could recognize accused Bermas' companion.[120] Be that as it may, nocturnity is absorbed in treachery and can not be appreciated as a generic aggravating circumstance.[121] Likewise, abuse of superior strength is absorbed in treachery, hence, it can not be appreciated as an independent aggravating circumstance when treachery is already present.[122]

The generic aggravating circumstance of disguise (disfraz) must, however, be appreciated in the case at bench. There is disguise when one uses some device to prevent recognition.[123] Where a malefactor wore a mask to conceal his identity during the commission of the crime, as is what happened in this case where accused Arcilla wore a hood at the time he strafed the victims with his Armalite rifle, disguise is present and considered a generic aggravating circumstance.[124]

While this Court is convinced that treachery attended the commission of the felonies, evident premeditation has not been proven. It has been stated time and again in a litany of cases that for this circumstance to be appreciated, the following elements must be clearly proved as the commission of the crime itself, namely: a.] the time when the offender decided to commit the crime; b.] an act manifestly indicating that he clung to his determination to commit it; and c.] a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and for his conscience to overcome the resolution of his will had he desired to hearken to its warnings.[125] In the case at bench, there has been no showing that prior to the commission of the offenses, the accused-appellants resolved to kill the victims nor was there proof that their acts were the result of a cold and dispassionate calculation on their part. Absent such a showing, evident premeditation can not be appreciated against them.[126]

With regard to the number of crimes committed, the Solicitor General contends that the trial court erred in convicting the accused-appellants of the complex crime of multiple murder and multiple frustrated murder and asserts that the killing of Catalino Bellen, Arturo Abion and Teodoro Cas as well as the shooting of Antonio Abion, Renato Abion, Jesus Lotera and Expedito Bonaobra are distinct and several acts. Thus, accused-appellants committed three (3) crimes of murder, three (3) crimes of frustrated murder and one (1) attempted murder in the case of Renato Abion.

We agree.

Dr. Cesar Ong Chua who treated the survivors of the massacre declared that the nature and seriousness of the injuries sustained by Renato Abion would not have caused his death even without medical attention.[127]

The concept of a complex crime is defined in Article 48 of the Revised Penal Code which states that -

ART. 48. Penalty for complex crimes - When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)

The cases at bench clearly do not fall under any of the two instances of complex crimes. The evidence on record, in fact, discloses that two (2) volleys were fired at the victims.[128] It can not be said, therefore, that there was a single act of firing a firearm although it is not disputed that one high-powered automatic rifle was used in the crime. The recovery of two (2) slugs inside the fishing boat[129] further confirms the fact that several shots were fired. In *People v. Vargas, Jr.*[130] this Court held that:

"Evidently, this is a case where several persons were killed and others injured by successive shots. In the case of *People vs. Mones*,[131] the Supreme Court found the accused guilty of three distinct and separate murders, each qualified by treachery, when said accused fired a series of shots killing three persons attending a school commencement exercise. Similarly, in the case of *People vs. Desierto*, C.A. 45 O.G. 4542, it was ruled that several shots from a Thompson sub-machinegun causing several deaths, although caused by a single act of pressing the trigger, are considered several acts. Although each burst of shots was caused by one single act of pressing the trigger of the sub-machinegun, in view of its special mechanism the person firing it only has to keep pressing the trigger of the sub-machinegun, with his finger and it would fire continually. Hence, it is not the act of pressing the trigger which should be considered as producing several felonies, but the number of bullets which actually produced them (L.B. Reyes, *The Revised Penal Code*, pp. 559-560, Book I, 1971 Revised Ed.)... Consequently, the accused should be held responsible for each of the resultant crimes instead of the complex crime of double murder under Article 48 of the Revised Penal Code."

At the time of commission of the offenses in question, the penalty for murder under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death. No mitigating circumstance was proven, and insofar as accused-appellant Galma Arcilla is concerned, the aggravating circumstance of disguise shall have to be

appreciated against him. Accordingly, the medium period of the penalty prescribed by law may be imposed on accused-appellant Rustom Bermas, while the maximum period thereof may be imposed on accused-appellant Galma Arcilla pursuant to Article 64 of the Revised Penal Code. Therefore, for the killing of Catalino Bellen, Arturo Abion and Teodoro Cas, the penalty of reclusion perpetua --- the medium of the prescribed penalty --- shall be imposed on Rustom Bermas. The penalty of death would have been the proper penalty for Galma Arcilla, but fortunately for him, Section 19(1) of Article III of the Constitution prohibited its imposition. Hence, only reclusion perpetua may be imposed.

The penalty for frustrated murder was prision mayor maximum to reclusion temporal medium pursuant to Article 50 of the Revised Penal Code, while the penalty for attempted murder was prision correccional maximum to prision mayor medium per Article 51. The Indeterminate Sentence Law applies to both the frustrated and attempted murder cases. Counting one degree lower from the penalties prescribed by the Revised Penal Code for frustrated murder, the minimum term for the indeterminate sentence shall be within the range of prision correccional in its maximum period to prision mayor in its medium period which has a period ranging from four (4) years, two (2) months and one (1) day to ten (10) years^[132] while for attempted murder, the minimum term under the Indeterminate Sentence Law is arresto mayor in its maximum period to prision correccional in its medium period which ranges from four (4) months and one (1) day to four (4) years and two (2) months.^[133]

Considering the wide latitude of discretion given the courts to fix the minimum term of the indeterminate sentence anywhere within the range provided by law^[134] vis-à-vis the peculiar facts prevailing in the case at bench, the penalty for each frustrated murder is set at four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum; and for the attempted murder, four (4) months and one (1) day of arresto mayor, as minimum, to six (6) years and one (1) day of prision correccional, as maximum.

We find the lower court's award of moral damages reasonable under the circumstances bearing in mind that such damages, which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in physical injuries or the victim's death, as in this case.^[135] We, likewise, see no reason to disturb the trial court's award of damages for the loss of earning capacity by the victims. The fact that the prosecution did not present documentary evidence to support the claim for damages for loss of earning capacity of the victims does not preclude recovery of said damages.^[136] The testimonies of the deceased's wives as well as the surviving victims themselves sufficiently establishes the bases for making such an award. The life expectancies of each deceased victim was, however, not correctly computed as they were arbitrarily based on sixty (60) years. The records show that at the time of his death, Catalino Bellen was thirty (30) years old,^[137] Teodoro Cas was thirty-seven (37)^[138] while Arturo Abion was forty-five (45).^[139] In the absence of any clear showing as to how much they were actually earning, the trial court pegged their earning capacities at Fifty Pesos (P50.00) a day which would amount to Eighteen Thousand Pesos (P18,000.00) per annum. Hence, in accordance with the American Expectancy Table of Mortality adopted in several cases,^[140] the loss of their earning capacities should be computed using the following formula:

Gross

less living

Net earning capacity (x)

= life expectancy x

annual

- expenses

income

(50% of gross annual income)

Catalino Bellen

- $x = 2(80-30)$

$x [18,000.00-9,000.00]$

3

= $33.33 \times 9,000.00$

= P 299,970.00

Teodoro Cas

- $x = 2(80-37)$

$x [18,000.00-9,000.00]$

3

= $28.67 \times 9,000.00$

= P 258,030.00

Arturo Abion

- $x = 2(80-45)$

$x [18,000.00-9,000.00]$

3

= 23.33 x 9,000.00

= P 209,970.00

The awards made to the surviving victims namely, Expedito Bonaobra who was forty-two (42) years old,[141] Antonio Abion, who was thirteen (13),[142] Jesus Lotera, twenty-four (24)[143] and Renato Abion, eighteen (18),[144] are reasonable given the prevailing facts of the case and will not be disturbed.

However, the civil indemnity awarded for the death of the three victims should be increased to P50,000.00 consistent with controlling case law.[145]

WHEREFORE, with the modifications that -

1.] The civil indemnity awarded to the heirs of the victims be increased to P50,000.00 consistent with current jurisprudence;

2.] The accused-appellants are hereby sentenced to suffer: (a) the penalty of Reclusion Perpetua for each of the three (3) crimes of murder for the killing of Catalino Bellen, Arturo Abion and Teodoro Cas; (b) Four (4) years, Two (2) Months and One (1) Day of Prision Correccional, as minimum, to Twelve (12) Years and One (1) day of Reclusion Temporal, as maximum, for each of the three (3) crimes of frustrated murder for the shooting of Antonio Abion, Jesus Lotera and Expedito Bonaobra; and (c) Four (4) months and One (1) day of Arresto Mayor, as minimum, to Six (6) years and One (1) day of Prision Mayor, as maximum, for attempted murder for the shooting of Renato Abion;

3.] The award for loss of earning capacity of the three deceased victims be reduced to (a) P299,970.00 for Catalino Bellen; (b) 258,030.00 for Teodoro Cas; and, (c) P209,970.00 for Arturo Abion;

the challenged judgments are hereby **AFFIRMED** in all other respects.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Kapunan, and Pardo, JJ., concur.

[1] Record, G.R. No. 76416, p. 23.

[2] Record, G.R. No. 76416, p. 34; G.R. No. 94312, p. 118.

[3] Record, G.R. No. 76416, pp. 36-37.

[4] Ibid., pp. 184-185; 189-190.

[5] Id., pp. 189-190; see also Record, G.R. No. 94312, pp. 74-75.

[6] Id., pp. 187-188.

[7] Id.

[8] Id., pp. 365-424; see also Record, G.R. No. 94312, pp. 76-77.

[9] Record, G.R. No. 76416, pp. 421-424.

[10] Ibid., p. 340.

[11] Id., p. 342.

- [12] Record, G.R. No. 94312, p. 112.
- [13] Ibid., p. 120.
- [14] Id., p. 213.
- [15] Id., pp. 731-786.
- [16] Record, G.R. No. 94312, pp. 783-786.
- [17] Ibid., pp. 795-797.
- [18] Id., p. 799.
- [19] Rollo, G.R. No. 76416, p. 132, pp. 5, 7, 9-14, Appellant's brief.
- [20] Record, G.R. No. 76416, p. 361.
- [21] Record, G.R. No. 76416, p. 419; G.R. No. 94312, pp. 876-877.
- [22] Rollo, G.R. No. 76416, pp. 393-406.
- [23] TSN, 15 June 1985, p. 35.
- [24] Ibid., pp. 8-9.
- [25] TSN, 10 July 1985, p. 8.
- [26] TSN, 15 June 1985, p. 34.
- [27] Ibid., p. 34.
- [28] TSN, 10 July 1985, p. 69
- [29] Ibid.
- [30] TSN, 15 June 1985, p. 13.
- [31] TSN, 10 July 1985, pp. 70-71.
- [32] TSN, 15 June 1985, pp. 14-17; 10 July 1985, pp. 13-14.
- [33] TSN, 15 June 1985, p. 19.
- [34] TSN, 10 July 1985, p. 10.
- [35] TSN, 15 June 1985, p. 23.
- [36] Ibid., p. 18.
- [37] TSN, 15 June 1985, pp. 25-26; 11 November 1985, p. 18.
- [38] TSN, 15 June 1985, p. 27.
- [39] TSN, 11 November 1985, pp. 20-23.
- [40] TSN, 8 October 1986, pp. 41, 48, 53, 57.
- [41] Exhibit W.
- [42] TSN, 10 February 1986, pp. 5, 8, 14.

- [43]TSN, 10 January 1986, pp. 5-9.
- [44] TSN, 4 November 1985, pp. 7, 28.
- [45] Ibid., pp. 8, 33.
- [46]Id., p. 9.
- [47]Id., p. 10.
- [48]Id., p. 11.
- [49]Id., pp. 15-16.
- [50] TSN, 13 December 1985, p. 23.
- [51] Rollo, G.R. No. 94312, pp. 832-877.
- [52]TSN, 16 January 1987, pp. 19-23.
- [53] Ibid., p. 23.
- [54] Id.
- [55] TSN, 7 October 1987, pp. 2-3.
- [56] RTC Decision dated 20 November 1989, p. 7.
- [57] TSN, 7 October 1987, pp. 5-10.
- [58] TSN, 10 January 1986, p. 8.
- [59] Ibid., pp. 13-14.
- [60] TSN, 13 December 1985, p. 23.
- [61] Ibid., p. 12.
- [62] Id., pp. 24-25.
- [63]TSN, 5 September 1989, p. 3.
- [64] TSN, 21 July 1989, pp. 4-5, 19.
- [65]Ibid., p. 5.
- [66] Id., p. 9.
- [67] Id., pp. 9-10.
- [68] Id., pp. 30-31, 34, 38.
- [69]Id., pp. 10, 42.
- [70]Id., pp. 10, 38.
- [71]Id., pp. 18-19, 40, 43.
- [72] Id., pp. 41-46.
- [73] Id., pp. 19, 39, 45, 47-48.

- [74] Id., p. 47.
- [75] Id., p. 48.
- [76] Id., pp. 48-50.
- [77] TSN, 11 July 1985, pp. 3-5, 37; 31 March 1986, pp. 10, 46; 18 July 1986, p. 7; 19 August 1986, p. 3.
- [78] TSN, 11 July 1985, pp. 36-37.
- [79] Ibid., pp. 38-39.
- [80] Id., p. 39; 19 August 1986, pp. 11-13.
- [81] TSN, 18 July 1986, pp. 25-26; 19 August 1986, pp. 11-13.
- [82] TSN, 11 July 1986, pp. 16-18, 20-21, 28; 18 July 1986, p. 18.
- [83] TSN, 19 August 1986, p. 3; 31 March 1986, p. 19.
- [84] TSN, 31 March 1986, p. 18.
- [85] TSN, 18 July 1986, p. 20; 31 March 1986, p. 10.
- [86] TSN, 31 March 1986, p. 21; 18 July 1986, pp. 5-6.
- [87] TSN, 31 March 1986, p. 22; 18 July 1986, pp. 5, 17.
- [88] TSN, 31 March 1986, p. 32; 18 July 1986, p. 6.
- [89] TSN, 18 July 1986, p. 30A.
- [90] Ibid., p. 32.
- [91] TSN, 19 August 1986, pp. 3-4; 18 July 1986, p. 36.
- [92] *People v. Silveriano Botona, et al.*, G.R. No. 115693, 17 March 1999, citing *People v. Danao*, 253 SCRA 146 [1996]; *People v. Delisa*, 229 SCRA 352 [1994]; *People v. Merza*, 238 SCRA 283 [1994].
- [93] *People v. Panaga, et al.*, G.R. Nos. 125967-70, 5 May 1999, pp. 10-11, citing *People v. Prado*, 254 SCRA 531 [1996]; *People v. Porras*, 255 SCRA 514 [1996] and *People v. Magana*, 259 SCRA 380 [1996]; *People v. Malvenda*, G.R. No. 115351, 27 March 1998, 288 SCRA 225, citing Sec. 4, Rule 133, Rules of Court; *People v. Ragon*, 282 SCRA 90 [1997]; *People v. Verano*, 264 SCRA 546 [1996] and *People v. Malimit*, 264 SCRA 167 [1996]; *People v. Ferras*, G.R. No. 119495, 15 April 1998, 289 SCRA 94.
- [94] *People v. Bionat*, 278 SCRA 454 [1994], citing *People v. Alvero, Jr.*, 224 SCRA 16 [1993]; *People v. De la Cruz*, 229 SCRA 754 [1994]; *People v. Tabao*, 240 SCRA 758 [1995]; *People v. Lagao*, 271 SCRA 51 [1997].
- [95] TSN, 18 February 1988, pp. 11-13; italics and emphasis supplied.
- [96] *People v. Freddie Balisoro*, G.R. No. 124980, 12 May 1999, p. 14, citing *People v. Caparas, Jr.*, G.R. Nos. 121811-12, 14 May 1998, 290 SCRA 78, citing *People v. Malimit*, *supra*.
- [97] TSN, 15 June 1985, pp. 34, 50-51, 63; 10 July 1985, pp. 10-11, 41-44, 69.
- [98] *People v. Eduardo Tabones @ 'Yape'*, G.R. No. 129695, 17 March 1999, pp. 10-11, citing *People v. Oliano*, G.R. No. 119013, 6 March 1998, 287 SCRA 158; *People v. Gaurana*, G.R. Nos. 109138-39, 27 April 1998, 289 SCRA 652; *People v. Bahatan*, 285 SCRA 282 [1998]; *People v. Bersabe*, G.R. No. 1227668, 27 April 1998, 289

SCRA 685; *People v. Castillo*, G.R. No. 120282, 20 April 1998, 289 SCRA 213; *People v. Sta. Ana*, G.R. Nos. 115657-59, 26 June 1998, 291 SCRA 188; *People v. Siguin*, G.R. No. 126517, 24 November 1998.

[99] *People v. Sumbillo*, 271 SCRA 428 [1997].

[100] *People v. Padlan*, G.R. No. 111263, 21 May 1998, 290 SCRA 388, citing *People v. Yip Wai Ming*, 264 SCRA 224 [1996]; *People v. Mallari*, 241 SCRA 113 [1995]; *People v. Gamiao*, 240 SCRA 254 [1995].

[101] *People v. Caisip*, G.R. No. 119757, 21 May 1998, 290 SCRA 451, citing *People v. Ondalok*, G.R. Nos. 95682-83, 27 May 1997 and *People v. Castillo*, 273 SCRA 22 [1997].

[102] TSN, 4 November 1985, pp. 15-16; RTC Decision dated 20 November 1989, p. 7; "I will bring home the baraca (referring to the Abion family)."

[103] Brief for Appellant Bermas, p. 7; Rollo, G.R. No. 76416, p. 365,

[104] *People v. Tabag*, 268 SCRA 115 [1997]; *People v. Gayon*, 269 SCRA 587 [1997]; *People v. Datun*, 272 SCRA 380 [1997]; *People v. Sion*, 277 SCRA 127 [1997]; *People v. Palomar*, 278 SCRA 114 [1997]; *People v. Salvador*, 279 SCRA 164 [1997].

[105] *People v. Pulusan*, G.R. No. 110037, 21 May 1998, 290 SCRA 353, citing *People v. Parica*, 243 SCRA 557 [1995]; *People v. Canillo*, 236 SCRA 22 [1994]; *People v. Cordova*, 224 SCRA 319 [1993]; *People v. Pama*, 216 SCRA 385 [1992].

[106] *People v. Ortaleza*, 258 SCRA 201 [1996].

[107] *People v. Mercado*, 275 SCRA 581 [1997]; *People v. Liquiran*, 228 SCRA 62 [1993]; *People v. Parica*, *supra*, *People v. Canillo*, *supra*.

[108] *People v. Matubis*, G.R. No. 109774, 27 March 1997, 288 SCRA 210, citing *People v. Azugue*, 268 SCRA 711 [1997].

[109] *People v. Mallari*, 241 SCRA 113 [1995]; *People v. Maranday*, 242 SCRA 620 [1995].

[110] *People v. Godofredo Marfil*, G.R. No. 122101, 30 April 1999, p. 5, citing *People v. Realin*, G.R. No. 126051, 21 January 1999 and *People v. Sumalpong*, 284 SCRA 464 [1998].

[111] *People v. Hilario Rebamontan @ 'Ayong'*, G.R. No. 125318, 13 April 1999, pp. 10-11, citing *De La Cruz*, G.R. Nos. 109619-23, 26 June 1998, 291 SCRA 164, citing *People v. Castillo*, 261 SCRA 493 [1996]; *People v. Sumalpong*, *supra*.

[112] *People v. Buenaventura Batidor @ 'Tora'*, G.R. No. 126027, 18 February 1999, citing *People v. Navarro*, G.R. No. 129566, 7 October 1998.

[113] *People v. Estanislav Jaberto y Teloy*, G.R. No. 128147, 12 May 1999, citing *People v. Andres*, G.R. No. 122735, 25 September 1998; *People v. Villamor*, 284 SCRA 184 [1998]; *People v. Sumalpong*, *supra*; *People v. Oliano*, *supra*; *People v. Navarro*, *supra*; *People v. Hilario Rebamontan*, *supra*,

[114] *People v. Agravante*, 236 SCRA 300 [1994]; *People v. Cruz*, 237 SCRA 410 [1994]; *People v. Maguikay*, 237 SCRA 587 [1994]; *People v. Gomez*, 235 SCRA 144 [1994].

[115] *People v. Virgilio Borreros*, G.R. No. 125185, 5 May 1999, p. 12, citing *People v. Dinglasan*, 267 SCRA 26 [1997]; *People v. De La Cruz*, *supra*.

[116] *People v. Fortich*, 281 SCRA 600 [1997].

- [117] *People v. Cayabyab*, 274 SCRA 387 [1997], citing *L.B. Reyes, Revised Penal Code, Book One*, 12th ed., 1981, citing *People v. Boyles*, 11 SCRA 88 [1964] and *People v. Marra*, 236 SCRA 565 [1994].
- [118] *L.B. Reyes, Revised Penal Code*, supra, p. 1981, citing *People v. Matbagon*, 60 Phil. 887 [1934].
- [119] TSN, 15 June 1985, p. 35.
- [120] TSN, 10 July 1985, p. 69.
- [121] *People v. Artiaga*, 274 SCRA 685 [1997], citing *People v. Abitona*, 240 SCRA 335 [1995].
- [122] *People v. De Leon*, 248 SCRA 609 [1995].
- [123] *Aquino R.C. Revised Penal Code, Vol. I*, 1987 ed., p. 371, citing *People v. Lor*, 132 SCRA 41 [1984] and *U.S. v. Rodriguez*, 19 Phil. 150 [1911].
- [124] *People v. Veloso*, 112 SCRA 173 [1982].
- [125] *People v. Gilbert Elijorde y De La Cruz and Reynaldo Punzalan y Zacarias @ "Kirat"*, 126531, 21 April 1999, p. 10, citing *People v. Ruelan*, 231 SCRA 650 [1994]; *People v. Timblor*, 285 SCRA 64 [1998]; *People v. Deopante*, 263 SCRA 691 [1996]; *People v. Cabodoc*, 263 SCRA 187 [1996]; *People v. Layno, et al*, 264 SCRA 558 [1996]; *Buenaventura Batidor*, supra; *People v. Sumalpong*, supra.
- [126] *People v. Cruz*, 262 SCRA 237 [1996]; *People v. Ilaoa*, 233 SCRA 231 [1994].
- [127] TSN, 8 October 1985, p. 48; Exhibit L and L-1.
- [128] TSN, 15 June 1985, pp. 14-17; 10 July 1985, pp. 13-14.
- [129] Exhibits T and T-1; TSN, 7 October 1987, pp. 5-10.
- [130] 184 SCRA 254 [1990]; see also *People v. Parojinog*, 203 SCRA 673 [1991].
- [131] No. L-2029, 6 May 1950; 47 O.G.No. 12 Suppl. 11; 86 Phil. 331 [1950].
- [132] *People v. Noay*, G.R. No. 122102, 25 September 1998, p. 17; *Padilla A., Criminal Law, Book Two, Eleventh Ed.* [1976], p. 762.
- [133] *People v. Noay*, supra.; *Padilla A. Criminal Law*, supra. p. 780.
- [134] *People v. Noay*, supra, p. 18.
- [135] *People v. Salcedo*, 273 SCRA 473 [1997], citing *People v. Aliviado*, 247 SCRA 658 [1995].
- [136] *People v. Verde*, G.R. No. 119077, 10 February 1999, p. 18, citing *Pantranco North Express, Inc. v. Baesa*, 179 SCRA 384 [1989].
- [137] Exhibit H; Record, G.R. No. 94312, p. 283.
- [138] Exhibit I; Record, G.R. No. 94312, p. 284.
- [139] Exhibit J; Record, G.R. No. 94312, p. 285
- [140] *People v. Verde*, supra, citing *Sanitary Steam Laundry, Inc. v. Court of Appeals*, G.R. No. 119092, 10 December 1998; *Metro Manila Transit Corporation v. Court of Appeals*, G.R. Nos. 116617 and 126395, 16 November 1998; *Negros Navigation Co., Inc. v. Court of Appeals*, 281 SCRA 534 [1997]; *Villarey Transit, Inc. v. Court of Appeals*, 31 SCRA 511 [1970].

[141] Exhibit A; Record, G.R. No. 94312, p. 279

[142] Exhibit M; Record, G.R. No. 94312, p. 290.

[143] Exhibit N; Record, G.R. No. 94312, p. 291.

[144] Exhibit G; Record, G.R. No. 94312, p. 282.

[145] *People v. Rodrigo Agsunod Jr. y Bibay*, G.R. No. 118331, 3 May 1999, citing *People v. Trilles*, 254 SCRA 633 [1996] and *People v. Dones*, 254 SCRA 696 [1996]; *People v. Buenaventura Batidor @ "Tora"*, *supra*, citing *People v. Quitlong*, G.R. No. 121562, 10 July 1998; *People v. Lagarteja*, G.R. No. 127095, 22 June 1998, 291 SCRA 142; *People v. Marollano*, 276 SCRA 84 [1997] and *People v. Caballes*, 274 SCRA 83 [1997].

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