

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO CORDOVA @ “REY” CORDOVA, EDUARDO CORDOVA @ “SULI” CORDOVA, ISIDRO CORDOVA, JR. @ “DROBAT,” FREDDIE BUENCONSEJO @ “ODO...

G.R. Nos. 83373-74. July 05, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Marcelo Barruela and Segundo Maguad were killed in Barangay Bantigue, Pontevedra, Capiz in the evening of 29 May 1986. Upon the complaint of the former's widow, Teresita Barruela, Criminal Case No. 705 for Double Murder was filed against the accused and Clarita Cordova with the 2nd Municipal Circuit Trial Court (MCTC) of Pontevedra-Panay in the Province of Capiz by the Station Commander of Pontevedra on 16 June 1986.[1] After conducting a preliminary examination, the MCTC ruled that a probable cause existed against all the respondents with the exception of Clarita Cordova.[2] Thus, on 25 June 1986, the Station Commander filed an Amended Criminal Complaint against the accused.[3] In due course, a warrant for the arrest of the accused was issued.[4] Upon their arrest, the accused moved for the immediate transmittal of the records of the case to the Office of the Provincial Fiscal for the purpose of filing the appropriate information if a prima facie case warranted the same.[5] After undertaking a reinvestigation of the case, Acting Provincial Fiscal Claro A. Arches of Capiz recommended the filing of two separate and distinct informations for murder;[6] consequently, two cases were filed on 29 January 1987 with the Regional Trial Court (RTC) of Roxas City which were docketed as Criminal Case No. C-2422 and Criminal Case No. C-2423. Both cases were raffled off to Branch 16 of the said court.

The accusatory portion of the Information in Criminal Case No. C-2422 states:

"That on or about the 29th day of May, 1986, at Barangay Bantigue, Municipality of Pontevedra, Province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, armed with long and short high-powered firearms and with deliberate intent to kill one Marcelo Barruela, did then and there willfully, unlawfully, and feloniously, with treachery and evident premeditation, attack, shoot, and wound with such weapons said Marcelo Barruela in different vital parts of his body, thus inflicting upon him the following gunshot wounds, to wit:

1. Gunshot wound with entrance at level of 3rd rib anterior chest wall left side 1 cm. x 1 cm., 3 cms. from sternum laterally;
2. Probable wound of exit at level of mid-clavicle 5 cms. x 2.5 cms.;
3. Gunshot wound, entrance 1.5 cm. at level arm fracturing mid-humerus with wound of exit 9.5 cms. x 7 cms. at opposite side;
4. Probable wound of entrance 4.5 cms. x 2.5 cms. located 5 cms. below the left axilla;

which wounds directly caused the instantaneous death of said Marcelo Barruela."[7]

On the other hand, the accusatory portion of the Information in Criminal Case No. C-2423 reads as follows:

"That on or about the 29th day of May, 1986, at Brgy. Bantigue, Municipality of Pontevedra, Province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, mutually helping one another, and armed with long and short high-powered firearms, with deliberate intent to kill one Segundo Maguad, did then and there willfully, unlawfully and feloniously, with treachery and evident premeditation attack, shoot, and wound said Segundo Maguad with such weapons in the vital parts of his body, thus inflicting upon him a gunshot wound with entrance below the left side of the neck 1 cm. x 11 cm. at the right scapular area and shattering the scapular bone, which wound caused his instantaneous death."[8].

At their arraignment on 11 March 1987, each of the accused pleaded not guilty to the charges.[9]

During trial, the prosecution presented as its evidence in chief six witnesses, viz., Rodolfo Maguad, son of Segundo Maguad; Teresita Barruela, the spouse of Marcelo Barruela; Norberto Javier; Dr. Salvador Billones, the doctor who autopsied the victims; Pat. Rafael Dipon; and Pfc. Allan Contreras. Its rebuttal witnesses were Nemia Besana, Allan Contreras and Angel Belalo. For its part, the defense presented as its witnesses all of the accused and thirteen other persons.[10]

Prosecution witness Rodolfo Maguad testified that at around 7:00 o'clock on the night of the killing, he was at the fishpond dikes near the house of the Barruelas at Barangay Bantigue, Pontevedra, Capiz inspecting the fishpond gates. While there, he suddenly heard the voice of Marcelo Barruela who was at the second floor of the said house; Barruela was conversing with some men who were outside the house. Rodolfo proceeded towards the house but hid from the men because in the many years that he has stayed with the Barruelas, no one has visited the latter at that time of the night. Rodolfo recounted that when Marcelo Barruela asked who these men were, one of them -- a person whom he (Rodolfo) recognized as Eduardo or Suli Cordova -- introduced himself as Richard de la Torre. Rodolfo observes Eduardo Cordova request Marcelo to bring them to Pontevedra in Marcelo's motorboat; Marcelo, however, replied that he did not have enough gasoline for the trip. Eduardo Cordova thereupon insisted that they be brought instead to Barangay Quiawa, also in Pontevedra. When Marcelo asked Eduardo how many they were, the latter replied that they were four. Marcelo then instructed his farm help, Segundo (Godo) Maguad -- Rodolfo's father -- to prepare a torch ("moron"). After so instructing Segundo, Marcelo beamed a flashlight at the group and asked Eduardo where his companions were. When Eduardo replied, "They are here," two persons appeared, one of whom Rodolfo recognized as Reynaldo Cordova. The latter, who had a long firearm with him, immediately fired six shots in rapid succession at Marcelo. Thereafter, Reynaldo fired two more shots at Marcelo's house. Rodolfo then ran for safety and proceeded to the house of one Alex Acolentaba where he related to Alex what had happened. After sometime, both of them went to the Barruelas' house where Rodolfo saw his father lying dead on the first floor with a gunshot wound in his neck; on the second floor, both discovered the lifeless body of Marcelo Barruela. The latter's wife, Teresita Barruela, who was also there, told Rodolfo to report the incident to the police authorities in Pontevedra, Capiz. Instead of doing so, Rodolfo and Alex proceeded to the house of Marcelo's nephew, Jessie Sevilla, and narrated the tragedy to the latter. Jessie then told them to promptly head for Roxas City to inform Marcelo Barruela, Jr. (Toto) about the incident. Upon being so informed, Toto Barruela, Rodolfo and Alex returned to Jessie Sevilla's house where they met three policemen, namely, Pfc. Allan Contreras, Rolando Alcazaren and John Dipon. Upon being questioned by the policemen, Rodolfo disclosed that his father's and Marcelo's killers were the accused Eduardo Cordova, Reynaldo Cordova and two other men whom he did not recognize. After this preliminary inquiry, the entire group proceeded to the scene of the crime in Barangay Bantigue.[11]

Witness Teresita Barruela narrated that at about 7:00 o'clock in the evening of 29 May 1986, she was praying in their house in Bantigue, Pontevedra, Capiz. With her at that time were her husband Marcelo, Segundo Maguad, Gloria Maguad and Rodolfo Maguad. She said that she then heard someone calling for her husband thus: "Tay Selyo, Tay Selyo, Tay Selyo." When Marcelo asked the caller who he was and where he was going, the latter identified himself as Richard de la Torre and requested Marcelo to conduct them to Pontevedra in his motorboat because they were benighted. Marcelo replied that he did not have enough gasoline for the trip. Thereupon, the man insisted that they be brought instead to Barangay Quiawa, which is also in Bantigue. Marcelo then told Segundo Maguad, their farm help who was at the first floor of the house, to prepare a torch for their use during the trip. At this point, Teresita said that she stopped praying and whispered to her husband that the intentions of the men outside were not good. Marcelo merely replied, "It seems," and forthwith got a flashlight. Teresita then peeped through the window and saw two men -- Suli (Eduardo Cordova) and his younger brother, Isidro Cordova. According to her, she was able to recognize both of them because of the light emanating from the petromax on the ground floor of the house. When her husband approached the window, beamed the flashlight at the man who called on him and asked the latter how many they were, the man replied that they were four. Suddenly, Reynaldo Cordova emerged with another person from the dark and fired about six "rapid shots" at her husband with the long firearm he was carrying. Teresita lay down on the floor and her husband fell beside her.

While still in the same position, she heard two more shots fired in the direction of their house. She then remained prostrate on the floor with her fallen husband until Rodolfo Maguad and Alex Acolentaba arrived. Rodolfo told her that his father, who was downstairs, was dead. She then asked Rodolfo to report the incident to the police station at the poblacion. At about 2:00 to 3:00 o'clock in the morning of the following day, policemen arrived to investigate the killing. Although they interviewed Rodolfo Maguad, they could not get Teresita's statement because she was crying profusely. It was only on 11 June 1986 that she gave her sworn statement.[12]

Teresita further testified that her family and the Cordovas had not been in good terms because her husband "was against their fish trap near our fishpond." Moreover, Marcelo had told her that when he was still single, he had killed the uncle of Clarita Cordova -- mother of accused Reynaldo, Eduardo and Isidro Cordova, Jr., mother-in-law of accused Freddie Buenconsejo and grandmother of accused Ernesto Estorque, Jr.[13]

Prosecution witness Norberto Javier declared that at about 7:00 o'clock on the night of the incident, he was fishing with his son along the Pontevedra river when he noticed a motorboat carrying five men approach them. He identified the men as Eduardo Cordova, Reynaldo Cordova, Isidro Cordova, Jr., Freddie Buenconsejo and Ernesto Estorque, Jr., the "driver" of the boat. With a gun pointed at him, Eduardo asked him to put out his torch while Reynaldo asked for his gasoline. Norberto got the container of gasoline in his banca and handed it over to Isidro. The group then proceeded in the direction of Pontevedra. Later, while he was across that same place where he had encountered the group, he saw the motorboat return, this time with only three men on board. He no longer recognized these men.[14]

Pfc. Allan Contreras of the Integrated National Police (INP) in Pontevedra testified that at around 1:30 o'clock in the morning of 30 May 1986, Jessie Sevilla appeared in the police station and reported that Marcelo Barruela and Segundo Maguad had been shot by four persons in Barangay Bantigue. Together with Pat. Rafael Dipon and Rolando Alcazaren, he proceeded to Sevilla's house where they waited for Rodolfo Maguad who had gone to Roxas City to inform Toto Barruela of his (Toto's) father's death. When Rodolfo arrived, Contreras asked him if he knew who shot the victims; the former answered that the killers were "Drobat" (Isidro Cordova, Jr.) and "Suli" (Eduardo Cordova). Thereafter, they headed for Barangay Bantigue and conducted an investigation at the scene of the crime. Pat. Dipon made two sketches of the crime scene, marking the spots where the assailants allegedly fired at the victims, the place where Rodolfo Maguad hid and other important points at the crime scene. Contreras also

asked Teresita Barruela if she knew the identities of the assailants but the latter could not answer his questions as she kept on crying. After concluding the investigation, they brought the bodies of the victims to Pontevedra. At Pontevedra, somebody whispered to him that Ernesto Estorque, Jr. had ferried some NPAs on his grandmother's motorboat on the night of 29 May 1986. Contreras thus sought, and eventually found, Estorque. The latter revealed that the group which commandeered his grandmother's motorboat was led by a Commander Jojo. Estorque then voluntarily agreed to give a written statement, which was accomplished on 30 May 1986 (Exhibit "M"). A second informer told Contreras that the same men got some gasoline from someone who was fishing by the river that same night. The latter turned out to be Norberto Javier. Contreras likewise questioned Norberto Javier who revealed that the persons who procured gasoline from him were Reynaldo and Eduardo Cordova. Norberto, however, refused to give a statement at that time because he was afraid; he nevertheless promised to prepare one upon the arrival of his brother "from the army." [15]

With the exception of Ernesto Estorque, Jr. who admitted having seen Norberto Javier in the evening of 29 May 1986, all of the accused denied having been in Barangay Bantigue on the night of the murder. All, however, disclaimed having killed the victims.

Accused Reynaldo Cordova declared that he was in the house of Vice-Mayor Ildefonso Bernales in Punta, Tabuc, Roxas City on the night of the incident. Claiming that he and his family were residing in the said house, he further recounted that between 7:00 and 7:30 o'clock that night, Roberto Makato and Ildefonso Bediones, Jr. arrived to fetch the vice-mayor and take him to a meeting of the Kiwanis Club. After having been served some beer, the duo left with the vice-mayor at about 8:00 o'clock. Reynaldo claims that he never left the vice-mayor's house that night. In fact, when the vice-mayor arrived at around 12:00 o'clock midnight, he was there to open the door for the latter. [16] Reynaldo Cordova's testimony was corroborated by Vice-Mayor Bernales who added that the distance between Punta, Tabuc and Bantigue is about twenty-one kilometers; Bernales claims that it takes him forty minutes by car to get to Pontevedra. From Pontevedra, one had to take a one-hour motorboat ride to finally reach Bantigue. [17]

On the other hand, accused Eduardo Cordova stated that he was at his mother's house at Barangay Agbalo, Pontevedra, Capiz, on the night of the killing. He likewise claimed that he never left the said house that evening. [18] His testimony was corroborated by his sister, Lydia Buenconsejo, who happens to be the wife of accused Freddie Buenconsejo. [19]

Accused Isidro Cordova maintained that on 29 May 1986, he was in Banica, Roxas City attending the last day of the novena for the barangay fiesta. He averred that he spent the night in the house of a certain Eduarda Doloso and that he did not leave the said house that night. [20] Isidro's testimony was corroborated by Eduarda Doloso. [21]

Presenting a similar defense, accused Freddie Buenconsejo testified that he was in his parents' house in Sangkal, President Roxas, Capiz on the night of the shooting. He admitted, however, that his wife resides in his mother-in-law's house in Barangay Agbalo, Pontevedra, Capiz. [22] Buenconsejo's testimony was corroborated by Lydia, his wife, and Edwin Bergancia, a resident of Sangkal. [23]

For his part, accused Ernesto Estorque, Jr., who was thirteen years old at the time of the killing, did not deny his presence in Bantigue in the evening of 29 May 1986. Nor did he contradict Norberto Javier's statement that he (Estorque, Jr.) piloted his grandmother's motorboat that night. Estorque, however, narrated that on the said night, while both he and his grandmother, Clarita Cordova, were harvesting the fish in their fishtraps adjoining the Barruelas' fishpond, they heard gunshots coming from the direction of the latter's house -- a mere twenty meters from their fishtraps. After about fifteen minutes, a group of men headed by a certain Commander Jojo "commandeered" his grandmother's motorboat and ordered him, at gunpoint, to ferry them to Binangig. After

reaching Binangig, he returned to Bantigue to fetch his grandmother.[24]

Rebuttal witness Angel Belalo testified that Lucio Babela, Clarita Cordova's uncle, was shot to death by Marcelo Barruela in 1953.[25]

On 11 March 1988, the trial court promulgated its decision[26] finding accused Reynaldo Cordova, Eduardo Cordova and Ernesto Estorque, Jr. guilty beyond reasonable doubt of murder. The two Cordovas were held liable as principals while Estorque was found to be an accessory after the fact. Accused Isidro Cordova and Freddie Buenconsejo, on the other hand, were acquitted on the ground of reasonable doubt. The dispositive portion of the decision reads:

"WHEREFORE, finding the killings to have been committed with the use of a motorized banca and illegally possessed firearms at nighttime at the dwelling of the victims where there was no provocation from the latter, qualified by the circumstances of evident premeditation and treachery, this Court pronounces guilty beyond reasonable doubt as principals of the crime of Murder in both the above cases accused Reynaldo Cordova, alias Rey Cordova, and accused Eduardo Cordova, alias Suli Cordova, and only as accessory after the fact accused Ernesto Estorque, Jr., accordingly sentencing them, to wit:

1. Reynaldo Cordova and Eduardo Cordova in Criminal Case No. C? 2422, for the death of Marcelo Barruela, in contemplation of Art. 111, Section 19(1), 1987 Constitution of the Philippines, there not being any mitigating circumstance, each to imprisonment of thirty (30) years of reclusion perpetua (Arts. 27, 248 -- Revised Penal Code) and the payment by each jointly and severally of indemnity in the sum of P25,000.00, and Ernesto Estorque, Jr., with discernment having committed the crime as an accessory, appreciating the special mitigating circumstance of minority, with no aggravating circumstance offsetting this, to the straight penalty of imprisonment of four (4) months (Art. 68 No. 2, RPC, in relation to Presidential Decree No. 603, as amended by PD 1179, Art. 192, last paragraph) and the payment of P2,000.00 as indemnity to the deceased's heirs;
2. Reynaldo Cordova and Eduardo Cordova in Criminal Case No. C--2423, for the death of Segundo Maguad, in contemplation of Art. 111, Section 19(1), 1987 Constitution of the Philippines, there not being any mitigating circumstance, each to an imprisonment of thirty (30) years of reclusion perpetua (Arts. 27, 248, Revised Penal Code) and the payment jointly and severally by each in the sum of P15,000.00, and Ernesto Estorque, Jr., with discernment having committed the crime as accessory, appreciating the special mitigating circumstance of minority without any aggravating circumstance offsetting this, to a straight penalty of four (4) months imprisonment and the payment of P1,000.00 as indemnity -- in both cases to the deceased's heirs, and with all the accessory penalties of the law. Accused Reynaldo Cordova and Eduardo Cordova are given the benefit of Article 29, as amended, of the Revised Penal Code, being in detention.

Accused Isidro Cordova, alias Drobat, and accused Freddie Buenconsejo, alias Odong, their guilt in both cases not having been proved beyond reasonable doubt are hereby acquitted of the crimes charged in the two informations.”[27]

The judgment of conviction is based primarily on the testimonies of prosecution witnesses Rodolfo Maguad, Teresita Barruela and Norberto Javier. The trial court rejected the defense of alibi because it was satisfied that the accused were positively identified by the said witnesses and that the latter had no motive to falsely implicate the former. Taking into account treachery and evident premeditation, the court said:

"x x x What more pretensions and treachery than the calling of Marcelo Barruela as 'Tay Seloy', meaning Father Seloy, and variously as Richard de la Torre and Commander Jojo. Taking revenge for the death of an uncle at the hands of Marcelo Barruela in 1953, among others, the accused could only have planned their strategy much, much before physically executing the killing, including the procurement of their lethal firearms.”[28]

From the judgment of conviction, accused Reynaldo Cordova, Eduardo Cordova and Ernesto Estorque, Jr., hereinafter referred to as the Appellants, filed a notice of appeal manifesting their intention to appeal to the Court of Appeals.[29] Thereupon, the trial court ordered the transmittal of the records of both cases to the Court of Appeals on 28 April 1988.[30] However, in view of the penalties imposed, the appellate court forwarded the records to this Court on 16 May 1988.[31]

The appellants filed their Brief on 27 October 1988 while the People filed the Appellee's Brief on 14 February 1989.

On 26 April 1989, the law firm of BELO, ABIERA and ASSOCIATES filed a notice of appearance as counsel for appellant Reynaldo Cordova. On 7 July 1989, said new counsel filed a separate brief for Reynaldo Cordova with a manifestation that the same was being submitted in support and/or amplification of the brief submitted by Atty. Roger Patricio, counsel of record for all the appellants. Consequently, on 19 July 1989, Atty. Patricio filed a motion to withdraw as counsel in view of his appointment as Presiding Judge of Branch 38 of the RTC of Iloilo City. On 4 October 1989, Atty. Fredicindo A. Talabucon entered his appearance as counsel for the appellants in substitution of Atty. Patricio.

In their common brief, the appellants assign the following errors:

"I. THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF TERESITA BARRUELA, RODOLFO MAGUAD, AND NORBERTO JAVIER.

II. THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE CERTIFICATION OF THE POLICE BLOTTER REPORT (EXHS. "4", "4-A", "4-B", "4-C,") AND THE SPOT REPORT OF THE INP STATION COMMANDER OF PONTEVEDRA, CAPIZ TO THE PC DISTRICT COMMANDER OF CAPIZ. (EXHS. "5", "5-A", "5-C") AS WELL AS THE SWORN STATEMENTS OF CLARITA CORDOVA AND ERNESTO ESTORQUE, JR. (EXHS. "1", "1-A", "1-B", "1-C", "1-C"); EXHS. "N", "N-1"), AND EXHS. "2", "2-A", "2-B", "2-C", "2-D", (EXHS. "M", "M-1") RESPECTIVELY.

III. THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF LEOPOLDO BARRIOS, RADIO ANNOUNCER OF RADIO STATION DYVR IN ROXAS CITY, AND OF ENRICO GALAPAN.

IV. THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE TESTIMONIES OF ALFONSO BEDIONES, JR. AND VICE-MAYOR ILDEFONSO BERNALES, WITH RESPECT TO THE WHEREABOUTS OF ACCUSED-APPELLANT REYNALDO CORDOVA DURING THE TIME WHEN THE INCIDENT IN QUESTION OCCURRED.

V. THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE TESTIMONIES OF BARANGAY CAPTAIN JUAN BESANA AND DOMINADOR BUENAVISTA.

VI. THE TRIAL COURT GRAVELY ERRED IN NOT FINDING ACCUSED EDUARDO CORDOVA AS A MENTALLY DERANGED PERSON.

VII. THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS REYNALDO CORDOVA AND EDUARDO CORDOVA AS CO-PRINCIPALS AND ACCUSED-APPELLANT ERNESTO ESTORQUE, JR. AS ACCESSORY NOTWITHSTANDING THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE AGAINST THEM.”[32]

In the separate brief filed by the law firm of BELO, ABIERA and ASSOCIATES for appellant Reynaldo Cordova, the following errors are imputed to the trial court:

"I

THE TRIAL COURT ERRED IN CONCLUDING THAT REY CORDOVA WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN DISREGARDING THE DEFENSE OF ALIBI OF REY CORDOVA.

III

THE TRIAL COURT ERRED IN DISREGARDING THE UNCONTRADICTED TESTIMONY (sic) OF ERNESTO ESTORQUE, JR. AND CLARITA CORDOVA AS TO WHAT TRANSPIRED ON THE NIGHT OF MAY 29, 1986."^[33]

The foregoing errors merely supplement those set forth in the common brief.

Under the first assigned error in the common brief, the appellants brand the principal prosecution witnesses as "unreliable, as they are untruthful," and consider their testimonies as "highly improbable and incredible."^[34] Claiming that the same should have been rejected by the trial court, they then attack Teresita Barruela's declaration -- which they find unbelievable -- that Marcelo Barruela had still asked Eduardo Cordova to identify himself when the Cordova brothers were personally known to the Barruelas, and point out inconsistencies in her testimony regarding the sequence of events after one of the Cordovas had introduced himself as Richard de la Torre. While she had testified on direct examination that the men outside their house and her husband had a running conversation before the latter directed Segundo Maguad to prepare a torch for the trip, she later contradicted herself by stating that Segundo Maguad was given the said instruction as her husband was fetching a flashlight. Appellants likewise challenged Teresita's claim that she had recognized her husband's assailants; appellants cite her failure or refusal to reveal their identities when the police conducted an investigation after the killing. When Pfc. Contreras repeatedly questioned her about the identities of the assailants in the course of his six-hour investigation at the scene of the crime, she did not offer any answer.

The appellants similarly assail the credibility of Rodolfo Maguad. As in Teresita Barruela's case, they claim that Rodolfo allegedly failed to immediately reveal to the authorities the identities of the assailants. Even during his interview over radio station DYVR the day after the killing, he asserted that he did not recognize the assailants.

On the other hand, witness Norberto Javier is described by the appellants as a "perjured witness" presented by the prosecution "in its frantic desire to corroborate by circumstantial evidence the highly incredible, improbable and concocted testimonies of Teresita Barruela and Rodolfo Maguad."^[35]

Amplifying on their second assigned error, the appellants fault the trial court for refusing to appreciate in their favor (a) the police blotter of the Pontevedra police station which very clearly records the fact that four "unidentified" persons killed Marcelo Barruela and Segundo Maguad; (b) the spot report which discloses that "5 unidentified persons" were the perpetrators; and (c) the sworn statements of Ernesto Estorque, Jr. and Clarita Cordova which declare that the appellants were not responsible for the killing.

For the third assigned error, the appellants insist that the trial court should have appreciated in their favor the testimony of Leopoldo Barrios, a radio announcer at station DYVR, to the effect that in the evening of 30 May 1986, Rodolfo Maguad went on the air to inform his brothers and sisters in Mindoro about their father's death. When asked by Barrios about the details of the incident, Maguad categorically stated that a group of men, the members of which he could not recognize, shot his father. Enrico Galapan, a resident of Sitio Kalipayan, Punta

Tabuc, confirmed that he had heard Maguad's statements over the radio.[36]

In the fourth and fifth assigned errors, the appellants take to task the trial court for not according full faith and credit to the testimonies of Alfonso Bediones, Jr., Vice-Mayor Bernales, Barangay Captain Besana and Dominador Buenavista.

In support of the sixth assigned error, the appellants question the trial court's refusal to acquit Eduardo Cordova on the ground that as testified to by his mother, he is "mentally defective." As a matter of fact, in his cross-examination of Eduardo, Fiscal Claro Arches asked only one question because he (Arches) knew that he could get nothing from a "mentally-deranged" person.[37]

In the last assigned error, appellant Reynaldo Cordova claims that if he were indeed guilty, he would have escaped. On the contrary, however, he even visited the Barruela family to pay his last respects to the deceased Marcelo Barruela whom he and his family fondly called "Tay Seloy."

Appellants then end their arguments by insisting that although alibi is a weak defense, it must be believed in this case since the testimonies of the principal prosecution witnesses are unreliable, uncorroborated and inconclusive.

At the center of these assigned errors is the issue of the credibility of the opposing witnesses. A rule of long standing in this jurisdiction, the respect for which remains undiminished, is that this Court will not interfere with the judgment of the trial court in passing upon the credibility of opposing witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[38] This is due to the fact that the trial court is in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying. Such deference, however, may be withdrawn if it is shown that the trial court has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.[39]

We have, in the course of the resolution of this case, meticulously pored over the voluminous transcripts of the stenographic notes of the testimonies of the witnesses for both parties. After a careful and painstaking evaluation thereof, we have reached the inevitable conclusion that the exception to the foregoing rule must be applied for, as hereinafter expounded on, facts and circumstances of great weight and value have been overlooked and misinterpreted by the trial court. At the outset, we find the prosecution's evidence insufficient to establish the guilt of the appellants with moral certainty or rebut the presumption of innocence accruing in their favor. In short, proof beyond reasonable doubt is wanting in this case.

1. There was absolutely no direct evidence presented to show how the killing of Segundo Maguad was consummated and who were responsible therefor since soon after the firing of the initial six shots at Marcelo Barruela -- who was standing by the window of the second storey of his house -- Teresita Barruela fell face down on the floor while Rodolfo Maguad ran away to hide. Neither of them saw Segundo Maguad's exact position at the time these shots were fired. As to the next two successive shots, neither of them saw where these shots were aimed at. There is as well no showing that the gunshot wounds sustained by Segundo were caused by bullets fired from the firearm used in the killing of Marcelo.

2. None of the prosecution witnesses saw appellant Estorque at the scene of the crime. It was only Norberto Javier who declared that he saw the latter at 7:00 o'clock in the evening of 29 May 1986 "driving" Clarita Cordova's motorboat with Eduardo and Reynaldo Cordova, Isidro Cordova, Jr. and Freddie Buenconsejo as passengers. The trial court convicted Estorque as an accessory. By so doing, therefore, it assumed that at the time he was seen by Norberto Javier, the crimes in question had already been committed. No proof was offered to support this assumption. Nevertheless, even if we are to concede to such a hypothesis, it will likewise be observed that the

prosecution presented no proof to show that Estorque had known of the commission of the crimes. For one to be held liable as an accessory, it is essential that he must have knowledge of the commission of the crime. Article 19 of the Revised Penal Code defines accessories as:

"x x x those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime;
2. By concealing or destroying the body of the crime or the effects or instruments thereof, in order to prevent its discovery;
3. By harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an, attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime."

Nor could it be assumed that even if a conspiracy had existed among the assailants, Estorque could be considered a part thereof for at most, his having been seen together with the other accused in the motorboat is purely circumstantial evidence which, standing alone -- for there is no evidence of any other circumstance -- does not sufficiently link him to such a conspiracy. For circumstantial evidence to be sufficient for conviction, the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[40]

There is a further obstacle that stands in the way of Estorque's conviction. While it has been proven that he was only thirteen years old at the time of the incident, there are no allegations in both informations that Estorque had acted with discernment. And even if we are to consider the allegations that he had committed the imputed acts "with intent to kill" as sufficient compliance -- as we have in the past[41] -- he would still not be held liable as no proof was offered during trial that he had so acted with discernment. Accordingly, even if he was indeed a co-conspirator or an accessory, he would still be exempt from criminal liability.[42]

3. The evidence for the prosecution clearly shows that appellant Eduardo Cordova was not the person who fired the shots. Hence, his liability would depend entirely on the existence of a conspiracy among the assailants. The trial court ruled that conspiracy existed between Eduardo and Reynaldo Cordova who, as prosecution witnesses Rodolfo Maguad and Teresita Barruela claimed, both fired the shots. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[43] Direct evidence is not necessary to prove the same for such schemes are usually hatched in secrecy, with witnesses other than the conspirators themselves proving to be extremely difficult to find. Moreover, it is settled that conspiracy need not be shown by direct proof; it may be shown by acts and circumstances from which may logically be inferred the existence of a common design or may be deduced from the mode and manner in which the offense was perpetrated.[44] As regards the act or declaration of a conspirator relating to the conspiracy and during its existence, the law on evidence provides that such acts and declaration may only be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.[45] Of course, it would be an entirely different matter if any of the conspirators who are charged with the commission of an offense are utilized as state witnesses.[46]

In the instant case, if we are to believe the testimonies of Teresita Barruela and Rodolfo Maguad, we would not hesitate to rule that conspiracy was duly established. It was Eduardo who, introducing himself as Richard de la Torre, called Marcelo Barruela to request that he (Eduardo) and his companions be ferried in the latter's motorboat to Pontevedra. It was also Eduardo who, upon being informed by Marcelo that the motorboat did not have enough

gasoline, insisted that they be brought to barangay Quiawa instead. Thereupon, one of Eduardo's companions, whom the said witnesses identified as Reynaldo Cordova, immediately fired six shots at Marcelo.

Considering the testimonies of Teresita and Rodolfo in conjunction with the declaration of Norberto Javier that at about 7:00 o'clock that same evening, he saw Eduardo and Reynaldo together with their co-accused Isidro Cordova, Jr. and Freddie Buenconsejo at the Pontevedra river aboard Clarita Cordova's motorboat then being "driven" by appellant Estorque, it would appear logical to conclude that Eduardo and Reynaldo were together either before the shooting, if Norberto saw them before such shooting, or after the incident, if he saw them after the killing. As earlier observed, there is no evidence to show that Norberto saw the appellants and the other accused either before or after the shooting.

Since the foregoing disquisitions are based on the assumption that the statements of witnesses Rodolfo Maguad and Teresita Barruela are true, it behooves us to determine whether such testimonies, particularly with respect to the presence of appellants Eduardo and Reynaldo Cordova at the scene of the crime, are indeed credible. On direct examination, Rodolfo maintained that he was not inside Barruela's house when he saw Eduardo and Reynaldo. He claimed to be at the fishpond dikes near the said house when he heard Marcelo Barruela conversing with Eduardo.[47] Yet, during Teresita Barruela's direct examination, it was categorically stated that when someone -- identifying himself as Richard de la Torre -- called for her husband, she was praying inside their home and her companions at that time were Segundo Maguad, Gloria Maguad, Rodolfo Maguad and Marcelo Barruela. Thus:

"ATTY. ALOVERA:

x x x

Q Mrs. Barruela, where were you on the night of May 29, 1986?

A I was at barangay Bantigue, Pontevedra, Capiz.

Q Why were you there?

A Because we have a fishpond there.

Q At around 7:00 that night of May 29, 1986, what were you doing?

A I was praying.

Q At the time you were praying will you please tell the court if you have any companion?

A Yes, sir, I have companions.

Q Who?

A Segundo Maguad, Gloria Maguad, Rodolfo (sic) Maguad and my husband, Marcelo Barruela."[48]

It is clear that Rodolfo Maguad's declaration that he was out of the house is unreliable as it has been shown that, on the contrary, he was inside the house when the assailants allegedly arrived and Marcelo Barruela was shot. While we have arrived at such a conclusion, however, we cannot help but observe that Rodolfo was quite categorical in asserting that upon seeing Teresita Barruela in the second floor of the house with the body of Marcelo, the latter told him "to report to the police authorities at the poblacion of Pontevedra, Capiz"; thus, he and Alex Acolentaba immediately left. They, however, proceeded to the house of Jessie Sevilla, Marcelo's nephew, where they related what had happened to Marcelo and Segundo Maguad. It is logical to presume that if he had truly seen and recognized the assailants, Rodolfo would have forthwith revealed their identities to Jessie Sevilla. And since it was Jessie Sevilla who proceeded to the Pontevedra police station to report the incident, it is likewise

logical to presume that the basis of his report would be what was narrated to him by Rodolfo. Jessie's report was entered by Pfc. Allan Contreras[49] in the police blotter as entry no. 1000002 at 1:30 o'clock in the morning of 30 May 1986. It reads:

"Jessie Sevilla (sic) of legal age, married, res., of Brgy Tabuc, this mply., reported that on or about 292000 May 86, Mr. Marcelo Barruela, fishpond optr and res of Roxas City, and his fishpond caretaker, Godo Maguad were shot by 4 unidentified persons while at his fishpond at Brgy Bantigue, this mply. Immediately, INP Team led by Pfc Contreras, AC, with Pat Alcazarin RB, and Dipon, RR, Jr., were dispatched to investigate the reported case."[50]

Now, if Rodolfo had indeed told Jessie Sevilla who the assailants of Marcelo and Segundo were, it would have been unlikely for Jessie not to have revealed the same to the police authorities as he (Jessie) immediately proceeded to the station. Nor would Jessie have been merely satisfied by informing the police that the authors of the crime were four "unidentified persons" considering that his own uncle, Marcelo, was a victim. Thus, the only plausible reason why Jessie described the assailants as "unidentified" is because his source -- Rodolfo, whose own father was killed -- was not in fact able to identify them.

Upon his team's return, Pfc. Contreras himself[51] made the following entry in the same police blotter. Entry number 1000003, recorded at 7:00 o'clock in the morning of 30 May 1986, reads:

"Team led by Pfc. Contreras, AC, return Station with info that the victims were Marcelo Barruela y Diva, 58 yrs old, married, fishpond optr/Radio Announcer, and res of Dorado Sub-division, Roxas City, and Segundo Maguad y Macabiling, 70 yrs old, res of Brgy Bantigue, this mply, which (sic) were shot by unidentified persons at Brgy Bantigue, this mply, victims sustained gunshot wounds in the deff (sic) parts of the body which caused their instantanous (sic) death (sic). Five (5) empty shells and five (5) live ammos of 5.56 caliver (sic) were recovered at the crime scene. Case under investigation."[52]

It bears stressing that Contreras made this entry upon meeting Rodolfo at Jessie Sevilla's house -- after the latter had made the report summarized in the first entry (Exhibit "4-B") -- and after having verbally investigated him and completed the inspection of the crime scene in his and Teresita and Toto Barruela's presence. Upon being questioned by the trial court, Contreras admitted that this entry was based "on my investigation from Brgy. Bantigue,"[53] i.e., the investigation he conducted in the barangay where the killings took place. It is thus obvious that despite all these, Pfc. Contreras and the members of his team were unable to ascertain the assailants' identities as their names were not entered in the police blotter.

It is true that entries in police blotters should not be given undue significance or probative value, for they are usually incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestion or inquiries. However, in the instant case, considering that the first entry (Exhibit "4--B") was made on the basis of the report given by Sevilla immediately after being informed by Rodolfo Maguad about the killings and, considering further that Jessie Sevilla was not even called to the witness stand by the prosecution to testify on what he had reported, the said entry cannot just be disregarded. On the matter of the second entry (Exhibit "4-C"), it is to be noted that no less than the team leader himself, Pfc. Contreras, prepared the same at a time when the occurrences he had just investigated -- even if preliminarily -- were still very fresh in his mind. Being an experienced investigator, he certainly knew what to enter in the police blotter. He would therefore not have written that the assailants were unidentified if such was not the fact.

Teresita Barruela's courtroom testimony is likewise unreliable. Our evaluation of it strongly indicates that she was unable to see the assailants, much less identify them. She claims that she peeped through the window and saw Eduardo Cordova and his younger brother Isidro because of the light emanating from the petromax which was under their house.[54] If there was indeed a petromax illuminating the place where the persons who called

Marcelo Barruela were positioned, we find it difficult to understand why the latter still had to look for his flashlight and beam it towards the former. Moreover, the team of Pfc. Allan Contreras conducted thorough investigation of the crime scene and meticulously prepared sketches which indicate the relative locations of the victims, the empty shells and the other objects which the members saw there, such as the bed, tables, chairs, jars, a box, a dirty kitchen stove and the sink.[55] It is to be observed that no petromax appears in the said sketches. So vital a piece of evidence could not have entirely escaped these investigators' attention. Both Pfc. Allan Contreras and Pat. Rafael Dipon, Jr., the person who prepared the said sketches, never mentioned, while testifying, that there was a petromax in the house of the Barruelas or at any other place at the scene of the crime. Finally, from the testimony of Teresita Barruela, it may also be gathered that her husband did not recognize the person who addressed him as "Tay Seloy" and requested to be brought, together with his companions, to Pontevedra. Thus, Marcelo was only able to answer "It seems" when Teresita whispered to him that the intention of such men were not good. If indeed Marcelo knew the identity of the person who called for him, he would not have just said "It seems."

What is more unusual about Teresita's actuation was her failure to disclose the identities of the assailants to Pfc. Contreras or any other member of his team during the entire time they were in her house. The said policemen stayed with her from early dawn to 7:00 o'clock in the morning of 30 May 1986 or, according to her, for six hours.[56] We find her explanation -- that she was unable to furnish such information because she was crying -- to be unacceptable. Her answers during cross-examination do not at all suggest that it was impossible for her to have answered the questions intended to elicit the identities of the assailants. Thus:

"ATTY. PATRICIO:

x x x

A They investigated Rudy Maguad.

Q How about you?

A They asked questions from me but I could not answer those questions because I was crying heavily at that time.

Q You did not tell them that the one (sic) who shot your husband and Segundo Maguad were Suli Cordova and his companions?

A No, because they could not talk to me.

Q Why, what happened to you?

A Because I felt bad and I was crying.

Q How long did those policemen stayed (sic) in your house?

A In my estimate maybe about 6 hours, up to the morning.

Q During that period of six (6) hours, you kept on crying so much so that you did not tell the policemen who were the perpetrators of the crime?

A Because they were talking also with Rudolfo (sic) Maguad.

Q But there was an occasion that Pat. Allan Contreras attempted to ask you who shot your husband?

A He asked questions from me on the 11th already.

Q During the time that the policemen were there they did not ask you who were the persons who were with

your husband at the time he was shot?

A They were also talking with Rudy Maguad.

Q How about you, did not PFC Contreras ask you what exactly you were doing at the time he was shot?

A He also asked me but I did not answer because I kept on crying."[57]

It appears that Teresita revealed the assailants' identities only on 11 June 1986. It is of course settled that delay or vacillation in making a criminal accusation does not necessarily impair the credibility of a witness if such delay is satisfactorily explained.[58] In the instant case, we find Teresita's explanation to be insufficient and inadequate. There is no evidence to show that she was hysterical at the time the policemen were in her house; that she was so distraught as to preclude her from answering any question; or that she was afraid of revealing the names of the assailants for fear of reprisal. Considering the fact that it was no less than her husband who was killed, the most natural thing for her to have done was to have, despite the tears, identified the Cordovas as the authors of the heinous crime if indeed they were.

In the light of the foregoing exposition on the testimonies of Teresita Barruela and Rodolfo Maguad, it is obvious that the culpability of both appellants have been placed in serious doubt.

Even the testimony of Norberto Javier did not save the day for the prosecution as the same is inherently improbable. On direct examination, he testified that Reynaldo Cordova pointed an armalite at him. Thereupon, after transferring to his (Norberto's) boat, Reynaldo asked where the gasoline was kept; when Norberto told Reynaldo that the gasoline was at the rear of the engine room, the latter ordered him to get it. Norberto then complied with the command.[59] And yet, during cross-examination, Norberto declared that on 3 June 1987, when Reynaldo Cordova came to his house, asked him whether the gasoline obtained by Marcelo Barruela's killers was taken from him and told him that it was good that nothing happened to him (Norberto), the latter did not bother to confront Reynaldo about what he (Reynaldo) allegedly did in the evening of 29 May 1986 simply because Reynaldo "was in a hurry." [60] If indeed Reynaldo Cordova pointed an armalite at Norberto Javier and demanded gasoline, Norberto's natural reaction should have been to immediately confront Reynaldo about the episode.

4. Adding further doubt to the culpability of the appellants is the candid admission of Pfc. Contreras that the police authorities had in fact suspected two groups as being responsible for the deaths of Marcelo Barruela and Segundo Maguad, viz., that of Commander Jojo of the NPA and that of the Cordovas. Contreras' informer revealed that the victims were killed by the NPAs led by Commander Jojo. The former gave the following statements on rebuttal:

"COURT:

Q What were the report (sic) of the informer who have hinted you (sic)?

A The reports of my informer were different what (sic) Rudy Maguad told me because Rudy Maguad told me that the suspect he saw were (sic) Rey Cordova and alias 'Suli', and the reports of my informer was (sic) that the one (sic) who shot Marcelo Barruela were NPAs and was lead (sic) by Commander Jojo and the one that transported them from Brgy. Bantigue in a barrio of Panay was Ernesto Estorque Jr.

x x x

ATTY. ALOVERA:

Q Did you ask your informers where they based their informations?

x x x

A Yes, sir.

ATTY. ALOVERA:

Q And what did they tell you?

A They answered that they based their reports through informations that was disseminate (sic) inside the public market."^[61]

It is to be likewise noted that Pfc. Contreras had earlier declared that he investigated Estorque on 30 May 1986. Estorque supposedly averred that he was the one who "conducted" the banca used by the NPAs who were led by Commander Jojo. Estorque's sworn statement was immediately taken on that date and subsequently offered by the prosecution in evidence as Exhibit "M."^[62] Needless to say, the prosecution is bound by said Exhibit "M" which is also marked as Exhibit "2" for the defense.^[63]

5. Finally, we are not persuaded by the trial court's thesis that appellants Reynaldo and Eduardo Cordova killed Marcelo Barruela out of vengeance because the latter purportedly killed their mother's uncle, Lucio Barruela, in 1953. Evident premeditation is thus suggested.

Reynaldo Cordova was only twenty-nine years old when he testified on 17 September 1987^[64] while Eduardo Cordova was twenty-three years old when he testified on 23 September 1987.^[65] In other words, Reynaldo and Eduardo were born in 1958 and 1964, respectively -- long after Lucio Barruela's death. There is no evidence on record to show how Lucio was killed and whether Marcelo Barruela was convicted or acquitted for such an act. It was, as well, not established whether appellants Reynaldo and Eduardo Cordova had determined to kill Marcelo in retaliation for the death of Lucio and had clung to such a determination. For evident premeditation to exist, the following requisites must concur: (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that he has clung to his determination, and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.^[66] None of these requisites are present in this case.

We are not convinced that the prosecution was able to discharge its burden of overcoming, by proof beyond reasonable doubt -- or that degree of proof which produces a conviction in an unprejudiced mind^[67] -- the presumption of innocence which appellants Eduardo and Reynaldo Cordova are entitled to. Short of this, it is not only the appellants' right to be freed; it is, even more, the constitutional duty of the court to acquit them.^[68] It must always be remembered that an accusation is not synonymous with guilt and that an accused's freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. The proof presented against the accused must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.^[69]

The foregoing disquisitions render unnecessary further discussion regarding the other issues raised in the assignment of errors, save for the claimed insanity of Eduardo Cordova under the sixth assigned error. We shall now consider this ascribed error.

The law presumes all acts to be voluntary, and that it is improper to presume that acts were done unconsciously.^[70] The quantum of evidence required to overthrow the presumption of sanity is proof beyond reasonable doubt.^[71] Since insanity is in the nature of a confession and avoidance, it must be proven beyond reasonable doubt.^[72] Moreover, an accused is presumed to have been sane at the time of the commission of the crime in the absence of positive evidence to show that he had lost his reason or was demented prior to or during the perpetration of the crime.^[73] Eduardo's mother was already making a conclusion when she stated that Eduardo had no work because he was insane. More concrete acts showing the mental condition of the person

alleged to be insane need to be shown in order that insanity may be appreciated in his favor. In *People vs. Dungo*,^[74] we held:

"Thus, insanity must be shown by surrounding circumstances fairly throwing light on the subject, such as evidence of the alleged deranged person's general conduct and appearance, his acts and conduct inconsistent with his previous character and habits, his irrational acts and beliefs, and his improvident bargains."

The neuro-psychiatric evaluation report for appellant Eduardo Cordova dated 4 September 1987 and which states the following:

"Impression-Neuro-psychiatric and psychological evaluation shows that the subject is suffering from a mental disorder called schizophrenia Paranoid Type."^[75]

is not relevant at all as it concerns his mental condition at the time of trial. The inquiry into his mental condition should relate to the period immediately before or at the very moment the crime was committed.^[76]

Moreover, appellant Eduardo Cordova did not even ask for the suspension of his arraignment on the ground that he was suffering from insanity. Paragraph (a), Section 12, Rule 116 of the Revised Rules of Court provides that the arraignment of an accused who appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto, shall be suspended. In the case at bar, Eduardo Cordova even took the witness stand to testify.

The records, however, disclose that in April of 1988, when Eduardo showed signs of mental abnormality, the Provincial Warden of Capiz reported the matter to the trial court^[77] which in turn directed the latter's confinement at the National Center for Mental Health at Mandaluyong, Metro Manila.^[78] On 5 October 1989, his discharge from the center was recommended by a resident physician thereof because he had improved and was already competent to stand trial.^[79] It was only on 26 March 1992, however, that Eduardo was discharged from the center and transferred to the National Bilibid Prisons in Muntinlupa.^[80]

WHEREFORE, the challenged Decision in Criminal Case No. C-2422 and Criminal Case No. C-2423 of Branch 16 of the Regional Trial Court of Roxas City is hereby REVERSED. The accused-appellants REYNALDO CORDOVA @ Rey Cordova, EDUARDO CORDOVA @ Suli Cordova and ERNESTO ESTORQUE, JR. are ACQUITTED on ground of reasonable doubt. Their immediate release from detention is hereby ordered, unless any other lawful cause would warrant their further detention. Costs de oficio.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records (OR), Crim. Case No. C-2422, 1.

[2] OR, Crim. Case No. C-2422, 35.

[3] Id., 36.

[4] Id. 43.

[5] Id., 45.

[6] Id., 66-79; Id., Crim. Case No. C-2423, 4-17.

[7] OR, Crim. Case No. C-2422, 63-64.

[8] Id., Crim. Case No. C-2423, 1-2.

[9] OR, Crim. Case No. C--2422, 113; OR, Crim. Case No. C-2423, 36.

[10] Leopoldo Barrios, Enrico Galapin, Dominador Buenavista, Pat. Rafael Dipon, Alfonso Bediones, Ildefonso Bernales, Edwin Bergancia, Eduarda Doluso, Lydia Buenconsejo, Juan Besana, Clarita Cordova, T/Sgt. Frankie Andion and P/Lt. Romeo Hervias.

[11] TSN, 3 April 1987, 4-17.

[12] TSN, 19 May 1987, 3-28.

[13] Id., 31-33.

[14] TSN, 1 April 1987 34-41.

[15] TSN, 20 May 1987, 28-47.

[16] TSN, 17 September 1987, 4-10.

[17] TSN, 23 June 1987, 12-15.

[18] TSN, 23 September 1987, 2.

[19] TSN, 10 July 1987, 9.

[20] TSN, 13 August 1987, 16-19.

[21] TSN, 23 June 1987, 24-28.

[22] TSN, 13 August 1937, op. cit., 2-9.

[23] TSN, 10 July 1987, 5; TSN, 23 June 1987, op. cit., 20.

[24] TSN, 14 August 1987, 2-12.

[25] TSN, 13 October 1987, 30-31.

[26] OR, Crim. Case No. C-2422, 770-793; Rollo 34-57. The decision is dated February 1988.

[27] OR, Crim. Case No C-2422, 792-793; Rollo, 56-57.

[28] OR, Crim. Case No. C-2422, 792; Rollo, 56.

[29] Id., 803.

[30] Rollo, 3.

[31] Id., 2.

[32] Brief for Accused-Appellants. 1-2; Rollo, 63, et seq.

[33] Rollo, 92.

[34] Brief for Accused-Appellants, 9.

[35] Brief for Accused-Appellants, 36-37.

[36] Brief for Accused-Appelants, 48.

[37] Id., 53-54.

[38] U.S. vs. Ambrosio, 17 Phil. 295 [1910]; People vs. Cabilao, 210 SCRA 326 [1992].

[39] U.S. vs. Pico, 15 Phil. 549 [1910]; People vs. Tismo, 204 SCRA 535 [1991]; People vs. Lee, 204 SCRA 900 [1991]; People vs. Simon, 209 SCRA 148 [1992]; People vs. Garcia, 209 SCRA 164 [1992].

[40] Section 4, Rule 133, Revised Rules of Court.

[41] People vs. Nieto, 103 Phil. 1133 [1958].

[42] Article 12(3), Revised Penal Code.

[43] Article 8, Id.

[44] People vs. Tingson, 47 SCRA 243 [1972]; People vs. Alonzo, 73 SCRA 484 [1976]; People vs. Cabiling, 74 SCRA 285 [1976].

[45] Section 30, Rule 130, Revised Rules of Court.

[46] Section 9, Rule 119, Id.

[47] TSN, 3 April 1987, 4-6.

[48] TSN, 19 May 1987, 3-4. Underscoring supplied for emphasis.

[49] TSN, 13 October 1987, 2-3.

[50] Exhibit "4-B."

[51] TSN, 13 October 1987, op. cit., 13; 15.

[52] Exhibit "4-C."

[53] TSN, 13 October 1987, 13.

[54] TSN, 19 May 1987, 9-11.

[55] Exhibits "G" and "H".

[56] TSN, 19 May 1987, 17.

[57] TSN, 19 May 1987, 67-68.

[58] People vs. Obngayan, 55 SCRA 465 [1974]; People vs. Roxas, 73 SCRA 583 [1976]; People vs. Elizaga, 73 SCRA 524 [1976].

[59] TSN, 1 April 1987, 38-39.

[60] Id., 51-52.

[61] TSN, 13 October 1987, 11-12.

[62] TSN, 20 May 1987, 44-45; TSN, 22 May 1987, 46.

[63] TSN, 13 October 1987, op. cit., 35; Rollo, Crim. Case No. C?2422, 329.

[64] TSN, 17 September 1987, 5.

[65] TSN 23 September 1987, 2.

- [66] *People vs. Buka*, 205, SCRA 567 [1992].
- [67] Section 2, Rule 133, Revised Rules of Court.
- [68] *People vs. Pico*, 200 SCRA 45 [1991], citing *People vs. Maisug*, 27 SCRA 742 [1969].
- [69] *People vs. Dramayo*, 42 SCRA 59, 64 [1971].
- [70] *People vs. Dungo*, 199 SCRA 860 [1991].
- [71] *People vs. Dungo*, *supra.*; *People vs. Danao* G.R. No. 96832, 19 November 1992.
- [72] *People vs. Danao*, *supra.*
- [73] *People vs. Rafanan*, 204 SCRA 65 [1991].
- [74] *Supra.* at 867.
- [75] Exhibit "6"; OR, Crim. Case No. C-2422, 614.
- [76] *People vs. Aquino*, 186 SCRA 851 [1990].
- [77] OR, Crim. Case No. C-2422, 829.
- [78] *Id.* 838.
- [79] *Rollo*, 130.
- [80] *Id.*, 159.

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