

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONRADO DE LA CRUZ, CRISOSTOMO GALAW-EY Y CARPIO, AND
CRESENCIA GALAW-EY, ACCUSED-APPELLANTS. EDUARDO
CASTILLO Y FERNANDEZ...**

G.R. Nos. 90907-12. August 07, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an automatic review of the Decision[1] of the Regional Trial Court of Baguio and Benguet, First Judicial Region, Branch 8, La Trinidad Benguet, rendered in six criminal cases Nos. 84-CR-0105 to 84-CR-0110, inclusive, imposing the penalties of four reclusion perpetuas for four murders, and two prision mayors to reclusion temporals for two frustrated murders upon the appellants Conrado de la Cruz and the spouses Crisostomo Galaw-ey y Carpio and Cresencia Galaw-ey.

The facts are not in dispute.

On August 10, 1984, at around 8:00 o'clock p.m., six (6) persons inside the Western Valley Restaurant, Km. 12, Shilan, La Trinidad, Benguet Province, were suddenly fired upon from outside of the restaurant. Four persons died as a result thereof, namely, Mayor Johnny Ebes of Kapangan, Benguet; Paulino Lubos, the District Supervisor of Tublay, School District, Tublay, Benguet; Pfc. Walsie Bulasao of the La Trinidad Police Station, La Trinidad, Benguet; and Rufino Salbino, a school janitor at Balakbak Elementary School, Kapangan, Benguet. Two others, namely, Pfc. Robert Bakidol, a policeman assigned with the office of the Deputy Regional Director for Administration, Camp Bado Dangwa, La Trinidad, Benguet, and Andres Pil-o, a cook at the Western Valley Restaurant, were seriously injured.

For the death of the four and the wounding of the two others, SPOUSES CRISOSTOMO GALAW-EY and CRESENCIA GALAW-EY, of Tomay, La Trinidad, Benguet, and CPL. CONRADO DE LA CRUZ, CPL. EDUARDO CASTILLO y FERNANDEZ, CPL. TITO SEGUIN y SORIANO, CPL. ZOSIMO POQUIZ y DALIGDIG, and CPL. FIDEL BRAVO y TORIO, all members of the Special Action Company, Philippine Constabulary, were charged in separate Informations for four counts of Murder, as defined and penalized under Article 248 of the Revised Penal Code, and for Frustrated Murder on two counts, as defined and penalized under Article 248 in relation to Articles 6 and 250 of the Revised Penal Code.[2]

The identical informations for the four murder cases filed on October 11, 1984, and docketed as Criminal Cases Nos. 84-CR-0105 to 0108, read as follows:

That on or about the 10th day of August 1984, at Km. 12, Shilan, Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shoot x x x with the use of a firearm thereby inflicting gunshot wounds on the vital parts of the body of the offended party,

which directly caused his death immediately thereafter.

That in the commission of this offense, the aggravating circumstance of nocturnity was present, the accused having purposely sought the same to insure the commission thereof.[3]

The identical informations for the two frustrated murder cases, filed on October 12, 1984 and docketed as Criminal Cases Nos. 84-CR-0109 to 0110, allege the following:

That on or about the 10th day of August 1984, at Km. 12, Shilan, Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shoot x x x with a firearm, thereby inflicting gunshot wounds on vital parts of the body of the offended party which would ordinarily cause his death, thus performing all the acts of execution which would produce Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely medical attention given to the offended party which prevented his death.

That in the commission of this offense, the aggravating circumstance of nocturnity was present, the accused having purposely sought the same to insure the commission thereof.[4]

Of all the seven accused, only CPL. CONRADO DE LA CRUZ and SPOUSES CRISOSTOMO GALAW-EY and CRESENCIA GALAW-EY were arraigned and tried; all three pleaded "not guilty." The four co-accused soldiers, namely, Eduardo Castillo, Zosimo Poquiz, Tito Seguin, and Fidel Bravo were, and still are, at large after having been discharged from the military service because of their alleged involvement in the massacre of August 10, 1984. Thereafter the six cases were tried jointly against the three accused abovenamed.

In proving the guilt of the three accused-appellants, the prosecution relied solely on circumstantial evidence, as it did not present anybody who actually saw the shooting. In other words, there was no eyewitness to the crime who testified at the trial.

The prosecution theorizes that a pistol-whipping incident that happened on April 10, 1984, involving Crisostomo Galaw-ey, one of the accused, and Roberto Bakidol, one of the victims, who, however, survived, provided the motive for the despicable massacre.

The evidence for the prosecution shows that sometime in March 1984, Bakidol had an altercation with Crisostomo Galaw-ey's uncle in the Western Valley Restaurant where Bakidol was moonlighting as a security guard. At that altercation, Crisostomo punched Bakidol on the face. Afterwards, or in the evening of April 10, 1984, Bakidol and Crisostomo decided to patch up their differences inside the same restaurant. However, before they could talk, a stranger suddenly appeared, pulled out a gun and pistol-whipped Crisostomo on the face, causing him injuries. This incident, the prosecution proffers, is the reason why Crisostomo Galaw-ey nursed a grudge against Bakidol and wanted to get even with the latter that night of August 10, 1984. That is the motive of this ghastly killing rampage accepted by the trial court.

The prosecution would also have us believe that there was conspiracy among all the seven accused ostensibly based on the following facts as testified to by the prosecution's witnesses:

1) All five co-accused soldiers, namely: Conrado dela Cruz, Tito Seguin, Fidel Bravo, Eduardo Castillo and Zosimo Poquiz arrived together in Baguio City from Bontoc, Mt. Province carrying with them their respective Armalite Rifles. Before they could arrive in Baguio City, three of them, namely: Conrado de la Cruz, Tito Seguin and Zosimo Poquiz alighted at Tomay, La Trinidad, Benguet and met with spouses Crisostomo and Cresencia Galaw-ey at their residence at Tomay, La Trinidad. (One of the soldiers, Conrado de la Cruz, is the brother-in-law of Crisostomo Galaw-ey; he being the brother of the latter's wife, Cresencia)

- 2) Immediately before the shooting incident on August 10, 1984, Spouses Crisostomo Galaw-ey and Cresencia Galaw-ey were in the vicinity of the Western Valley Restaurant, the scene of the crime. They were seen with their Ford Fiera jitney with Plate No. AVC 778;
- 3) Near the Western Valley Restaurant and shortly before the sound of gunfire was heard, Armalite Rifles were seen inside the Ford Fiera jitney of accused Spouses Crisostomo Galaw-ey and Cresencia Galaw-ey. These Armalite rifles were later taken by three men from said Ford Fiera jitney;
- 4) Three men with Armalite rifles were seen near the door of the Western Valley Restaurant immediately before and after gunshots rang out in said restaurant. One of the three men was identified as accused Conrado de la Cruz;
- 5) Twenty one (21) of the thirty empty shells recovered from the crime scene were fired from one of the five Armalite rifles of the five co-accused soldiers, particularly Armalite Rifle SN-RP-163677, which was issued to Eduardo Castillo. Likewise, two of the slugs recovered from the body of Pfc. Walsie Bulasao and one of the slugs recovered from the body of Pfc. Roberto Bakidol were fired from the same Armalite Rifle;
- 6) Spouses Crisostomo Galaw-ey and Cresencia Galaw-ey arrived at the wake of Comising Bogatan, their neighbor, at 9:00 P.M., August 10, 1984;
- 7) Accused Crisostomo Galaw-ey was intercepted at the Camp Dangwa Checkpoint, La Trinidad, Benguet on board his Ford Fiera jitney at 4:00 A.M., August 11, 1984 with three armed soldiers aboard;
- 8) The five co-accused soldiers were discharged from military service on October 5, 1984. None of them protested nor contested the order for their dishonorable discharge from military service;
- 9) All of the accused were nowhere to be found shortly after the shooting incident on August 10, 1984.[5]

On the other hand, the accused put up the defenses of denial and alibi, which may be summarized as follows:

The accused Crisostomo Galaw-ey denies that there is "bad blood" between him and Robert Bakidol because whatever misunderstanding they had was settled amicably on the night of April 10, 1984, four months before the killings. As a matter of fact, they even drank together up to 1:00 o'clock a.m. with Crisostomo paying for the drinks. After that, they greeted each other whenever they met in the streets.

The defense does not deny the arrival of the five accused PC soldiers in La Trinidad, Benguet at about 3:00 o'clock p.m. on August 10, 1984. It, however, avows that the three of the five soldiers went to the house of the Galaw-eyes to borrow fare money from Cresencia Galaw-ey, the older sister of one of the soldiers, Conrado de la Cruz. Afterwards, Crisostomo, upon request of Conrado, his brother-in-law, brought him and his companions to Baguio City. (The municipality of Trinidad is contiguous to Baguio City). They parted ways at the Dangwa Terminal in Baguio City, with Conrado riding in Crisostomo's jitney back to the Galaw-ey's house in Tomay, La Trinidad, to meet his wife there.

The Galaw-ey spouses admitted that they were sitting in their Ford Fiera jitney which was parked in front of the Morris Restaurant, which is near the Western Valley Restaurant, more or less an hour before the shooting incident. But they explained their presence at that place as part of their daily routine as vegetable merchants. Cresencia explained, however, that in the afternoon of August 10, 1984, they were to meet vegetable suppliers in Acop, Tublay, Benguet. While passing by Morris Restaurant, Crisostomo realized that he did not have enough gasoline, so, he decided to go back to the family residence. In the process of making a U-turn, a front wheel of the jitney got stuck in a canal near the Morris Restaurant. Two male teen-agers, one of them the prosecution witness Johnson Milo, helped push the jitney out of the canal. Then, Crisostomo and his wife proceeded homeward to join the wake of a deceased neighbor.

Crisostomo Galaw-ey denied that the two teen-agers, Johnson Milo and his companion, Marcos Recana, rode with them in his Ford Fiera jitney that late afternoon of August 10, 1984; not having gotten inside the jitney at all, they could not have stepped on what Milo testified as "scrap irons" that turned out to be armalite rifles. He also denied carrying soldier-passengers, emphasizing that it was only he and his wife inside the jitney contrary to the version of Milo and Recana.

Crisostomo also testified that he and his wife were in the market of Baguio City at 4:30 o'clock a.m. on August 11, 1984, thereby refuting the testimony of Pat. Joseph Basquial that he (Crisostomo) was seen at the Camp Dangwa checkpoint with his Ford Fiera jitney with uniformed soldiers as passengers that early morning of the said date. Crisostomo denied on the witness stand seeing again the soldier-companions of Conrado de la Cruz after he had taken them to Baguio City on August 10, 1984.

On the issue of flight, the three appellants explained their absence from Baguio and La Trinidad more or less a month after the massacre of August 10, 1984 as due to fear for their lives and safety in the wake of rumors and threats of their being "salvaged." On January 12, 1985, however, Crisostomo Galaw-ey and his wife decided to surrender to the authorities to clear their names once and for all.

On his part, accused Conrado de la Cruz testified that in October 1984, he learned that he and his four soldier-companions had been discharged from the military service on account of their being suspects in the shooting incident at the Western Valley Restaurant. While he was in Sultan Kudarat in Mindanao, de la Cruz met Pat. Benjamin Untalan, a member of the Baguio City Police Force who was supposed to arrest him, and he went with him.[6]

On September 15, 1989, the trial court rendered its Decision[7] convicting all the three accused-appellants as charged, all as co-principals in four (4) counts of Murder and two (2) cases of Frustrated Murder, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered in--

1. Criminal Case No. 84-CR-0105, finding each of the accused Conrado de la Cruz, Crisostomo Galaw-ey and Cresencia Galaw-ey guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248, Revised Penal Code, and hereby sentencing each of said accused to suffer the penalty of imprisonment of Reclusion Perpetua and to indemnify the heirs of the late District Supervisor Paulino Lubos the amounts of P30,000.00 for his death; P73,734.00 for loss of earning capacity; P100,000.00 moral damages; P50,000.00 exemplary damages; P50,000.00 attorney's fee; and to pay costs;

2. Criminal Case No. 84-CR-0106, finding each of the accused Conrado de la Cruz, Crisostomo Galaw-ey and Cresencia Galaw-ey guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248, Revised Penal Code, and hereby sentencing each of them to suffer the penalty of imprisonment of Reclusion Perpetua and to indemnify the heirs of the late Mayor Johnny Ebes in the amounts of P30,000.00 for his death; P108,480.00 for loss of earning capacity; P100,000.00 for moral damages; P50,000.00 for exemplary damages and P50,000.00 attorney's fees; and to pay costs;

3) Criminal Case No. 84-CR-0107, finding each of the accused Conrado de la Cruz, Crisostomo Galaw-ey and Cresencia Galaw-ey guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248, Revised Penal Code, and hereby sentencing each of them to suffer the penalty of imprisonment of Reclusion Perpetua and to indemnify the heirs of the late Pfc. Walsie Bulasao in the amounts of P30,000.00 for his death; P46,512.00 for loss of earning capacity; P80,000.00 for moral damages; P50,000.00 for exemplary damages; P10,000.00 attorney's fees; and to pay costs;

4) Criminal Case No. 84-CR-0108, finding each of the accused Conrado de la Cruz, Crisostomo Galaw-ey and Cresencia Galaw-ey guilty beyond reasonable doubt of the crime of Murder, defined and penalized under

Article 248, Revised Penal Code, and hereby sentencing each of them to suffer the penalty of imprisonment of Reclusion Perpetua and to indemnify the heirs of the late Rufino Salbino in the amounts of P30,000.00 for his death; P36,632.00 for loss of earning capacity; P50,000.00 for moral damages; P50,000.00 for exemplary damages; P5,000.00 attorney's fees; and to pay costs;

5) Criminal Case No. 84-CR-0109, finding each of the accused Conrado de la Cruz, Crisostomo Galaw-ey and Cresencia Galaw-ey guilty beyond reasonable doubt of the crime of Frustrated Murder, defined and penalized under Revised Penal Code, and hereby sentencing each of them under the Indeterminate Sentence law to suffer the penalty of imprisonment of from Ten (10) Years of Prison Mayor to Eighteen (18) Years of Reclusion Temporal, and to indemnify Andres Pil-o in the amount of P1,000.00 nominal damages, and to pay costs;

6) Criminal Case No. 84-CR-0110, finding each of the accused Conrado dela Cruz, Crisostomo Galaw-ey and Cresencia Galaw-ey guilty beyond reasonable doubt of the crime of Frustrated Murder, defined and penalized under Article 248 in connection with Article 6, Revised Penal Code, and hereby sentencing each of them under the Indeterminate Sentence Law to suffer the penalty of imprisonment of from Ten (10) Years of Prison Mayor to Eighteen (18) Years of Reclusion Temporal, and to indemnify Robert Bakidol in the amount of P1,000.00 nominal damages; and to pay costs;

SO ORDERED.[8]

Conrado de la Cruz appealed the Decision, assigning the following as the errors allegedly committed by the trial court:

(1) The lower court erred in not finding the evidence of the prosecution substantially insufficient to establish the guilt of accused-appellant Conrado dela Cruz beyond reasonable doubt in the cases at bar;

(2) The lower court erred in not giving weight to the evidence of the accused- appellant Conrado de la Cruz.[9]

The spouses Crisostomo and Cresencia Galaw-ey likewise appealed, submitting a separate Appellants' Brief the following assignment of errors:

(i) The trial court erred in finding that the accused-appellants Spouses Crisostomo and Cresencia Galaw-ey conspired with the perpetrators in committing the crime charged;

(ii) The trial court erred in finding that there was circumstantial evidence sufficient to establish the accused-appellants Spouses Galaw-ey's guilty beyond reasonable doubt;

(iii) The trial court erred in taking into consideration in its judgment the alleged "flight" of the accused-appellants Spouses Galaw-ey;

(iv) The trial court erred in not considering that the accused-appellants Spouses Galaw-ey had no possible motive in committing the acts charged against them;

(v) The trial court erred in not taking [into] consideration the voluntary surrender of the accused-appellants Spouses Galaw-ey;

(vi) The trial court erred in not applying the provisions of Article 48, Revised Penal Code.[10]

We find both appeals meritorious.

It is the avowed policy of the law that "before an accused is convicted of a crime, his guilt must be proved beyond reasonable doubt and until thus proven guilty, he is presumed innocent. The burden of proof rests upon the prosecution and unless the State succeeds in proving his guilt, the presumption of innocence in favor of the accused applies." [11] This policy is embodied in the Bill of Rights, Sec. 14 (2) of the 1987 Constitution, which states that "in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."

Only by proof beyond reasonable doubt which requires moral certainty--a "certainty that convinces and satisfies the reason and conscience of those who are to act upon it," – may the presumption of innocence be overcome.[12]

The prosecution relied solely, in all these six cases, on circumstantial evidence to prove the guilt of the accused-appellants. There is nothing wrong with that. In order, however, to sustain a conviction by bare circumstantial evidence, three requisites explicitly provided by law must concur, to wit:

- (1) There is more than one circumstance;
- (2) The facts from which the inferences are derived are proven; and
- (3) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.[13]

All these requisites must be complied with if circumstantial evidence is to be the basis for proof beyond reasonable doubt. Every circumstance in favor of innocence must be considered in a criminal case; the strongest suspicion must not be allowed to sway judgment against the accused.[14] For the hard and fast rule in evidence is that "before conviction can be had upon circumstantial evidence, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the defendant, to the exclusion of all others, as the author of the crime." [15]

In the case at bar, only one witness, Meriam Agbuya, identified Conrado de la Cruz as one of the three persons -with "long guns" at the scene of the shooting. While it is true that the testimony of only one witness, if credible and positive, and satisfies the court beyond reasonable doubt, is sufficient to convict,[16] this is not so in the instant case.

The narration of Meriam does not meet the requirements of the testimony of a true eyewitness as the trial court ruled, finding only as it did a circumstantial case against the appellants. But whatever it is, be that of an eyewitness or that of a mere vital witness, on the circumstances of the shooting leading to the identification of the "soldier" who held the "smoking gun," so to speak, Meriam's testimony at the trial loses weight and importance when we consider the other evidence on record.

First, Meriam Agbuya did not mention that she recognized one of the accused when the police took her statement[17] barely three days after the incident, her reason being that "I (she) was not asked." It was only during the trial, or on April 23, 1985, that she implicated appellant Conrado in the killing of August 10, 1984. This suppression for more than eight months of her obligation to speak out to the police authorities the whole truth renders her subsequent identification of Conrado dubious, to say the least. We have held that the silence of an alleged eyewitness for several weeks renders his credibility doubtful x x x. The long delay in reporting a crime or its author to the authorities not caused by threat, intimidation, or coercion, renders the testimony untruthful.[18] Meriam was never threatened, intimidated, nor coerced not to divulge the identity of accused de la Cruz as one of the three soldiers at the scene of the massacre immediately before and after it happened. She simply was not asked. But this is not a valid reason to withhold the identity of a probable perpetrator of such slaughter. It behooves an eyewitness to the crime to report to the authorities not only its commission but more importantly, the identity of all the criminals, so that the ends of justice may be served. This is especially so when said "eyewitness" is being investigated by the police authorities regarding the same. Failure to make such a full disclosure renders the later revelation or sworn statement doubtful, at best, and can not, of course, serve as a basis of guilt beyond reasonable doubt.

Second, during the hearing on April 23, 1985, Meriam Agbuya testified on matters that happened immediately before and immediately after the shooting in the Western Valley Restaurant. Thus:

xxx xxx xxx

(Before the shooting incident)

Q: You said that you were standing at the door or [sic] your room, what can you see from the place you are standing, if any?

A: The three male persons holding guns.

xxx xxx xxx

Q: When you saw them, they were walking?

A: Yes, Your Honor.

Q: They were following one another or were they walking side by side with each other?

A: They were walking side by side, Your Honor.

xxx xxx xxx

Q: What did you see of them? Their right side, their left side, front side or their back?

A: Their front, Your Honor.

(After the shooting)

Q: Now, what did you do if you did anything when you heard the gunshots?

A: I went to our room, sir.

Q: Before you went to your room, will you tell this Court if you saw anything before you entered?

A: After the gunfire and before I entered our room, I saw one of them look back.

Q: Who is that one of them you are referring to?

A: The three male persons who were running, sir.

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Q: Now will you tell this Court if you know any of these three persons, if you know them personally?

A.: There was, sir.

Q: You know one of them, two of them or the three of them?

A: I only know one because they [sic] look [sic] back, I saw his face, Your Honor.

xxx xxx xxx

Q: Was that the first time you saw his face, or there were previous occasions that you saw his face?

A: None, Your Honor.

xxx xxx xxx

Q: If that person is in the courtroom, can you identify that person?

A: Yes, sir.

xxx xxx xxx

Mr. Bias: x x x Witness x x x pointed to the person of the accused Conrado de la Cruz.[19]

The foregoing is the nearest of an eyewitness account in the entire record of this case. At the same time, we find it incredulous that the witness Meriam Agbuya was able to recognize Conrado de la Cruz after the shooting because the latter allegedly looked back while running away from the restaurant. But she did not recognize him before the shooting while de la Cruz and two other soldiers were allegedly walking towards the restaurant facing her. We find this to be inconsistent with ordinary human experience wherein it would be easier to recognize a person when one is calm than when one is frightened and excited after hearing a fusillade of gunshots.

Third, Meriam Agbuya testified that the three soldiers she saw walking to and running away from the Western Valley Restaurant where the shooting took place were wearing yellow T-shirts.[20] This was, however, contradicted by two other prosecution witnesses, Johnson Milo and Joseph Basquial, who testified that the soldiers were in fatigue uniform.[21]

Fourth, Ms. Agbuya also testified on direct examination that before the shooting occurred, she was at the door of her room in a building separate from, but near, the Western Valley Restaurant. It was there that she saw three male soldiers holding armalite rifles parallel to the ground walking towards the restaurant.[22] However, in her sworn statement,[23] she said that she was standing at the door of the girl's toilet which was in another building, when three male soldiers in yellow T-shirts carrying long guns slung on their shoulders walked past her towards the restaurant.

The lower court disregarded the above inconsistencies in the testimony of Meriam Agbuya on the ground of her being of tender age, i.e., 18 years old. But 18 years of age is not a tender age. In fact, 18 is now the age of majority. In any event, even if some of the above-mentioned inconsistencies may be considered minor, they nevertheless put in doubt not only the honesty and candor of the said witness, but her believability. As we said, such testimony fails to satisfy the criterion of moral certainty.

We can not also discount the fact that, according to Patrolman Joseph Basquial, a prosecution witness and a brother-in-arms of two of the victims, the deceased Pfc. Walsie Bulasao and the wounded Pfc. Robert Bakidol (who also testified for the prosecution), the appellant Conrado de la Cruz was not among the three soldiers inside the jitney of the other appellant Crisostomo Galaw-ey in the early morning of August 11, 1984 when he (Basquial) intercepted said jitney at the gate of Camp Dangwa. Only Fidel Bravo, Eduardo Castillo, and Tito Seguin were identified by him to be riding in the jitney with Crisostomo.

Thus, during the hearing on March 12, 1985, Patrolman Basquial testified as follows:

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A: At about past 4:30 o'clock in the morning, more or less, sir, I stopped a Ford Fiera vehicle driven by one Crisostomo Galaw-ey and I stopped it, sir.

Q: What did you see, if any, when you stopped that motor vehicle?

A: I approached it from the rear and using my flashlight I saw three men wearing fatigue uniform, sir.

xxx xxx xxx

Q: You said you saw three men in fatigue. Where in the vehicle did you see them, was it in front or at the back?

A: At the back, sir, two were sitted (sic) at my right side and the other one was sitted (sic) at my left with a rifle when I approached them from the rear, sir.

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Q: How about the front seat, was there anybody there?

A: I noticed only the driver, sir.

xxx xxx xxx

Q: Who was driving?

A: Crisostomo Galaw-ey.

xxx xxx xxx

Q: You mentioned three PC Soldiers that you saw that morning. Did you have opportunity to meet with them after that date again?

A: Yes, sir.

Q: Where was that?

A: At the La Trinidad Police Station. That was more or less one week later after the incident at the Western Valley Restaurant.

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Q: What did you do when Julius Binay-an was investigating these PC Soldiers?

A: I asked Sgt. Binay-an what were the names of these PC Soldiers because they were the ones whom I saw when I apprehended the vehicle of Crisostomo Galaw-ey at the gate of Camp Dangwa, sir.

Q: What did Julius Binay-an say?

A: He told me that they are Fidel Bravo, Eduardo Castillo and Tito Seguin.[24]

Without the positive identification of the accused-appellant Conrado de la Cruz as one of the perpetrators of the crime, the constitutional presumption of innocence in his favor, stands un rebutted. As we have earlier emphasized, a defendant in a criminal case must always be presumed innocent until the contrary is proven. When his culpability is not satisfactorily shown, or in case of reasonable doubt, he shall have the right to be acquitted, though his innocence be doubted.[25] It is better to acquit a dozen guilty criminals than let an innocent person suffer unjustly, so it has been said and rightly so. Of course, the ideal would be for everyone to get his or her just deserts.

On the criminal conspiracy found by the trial court, the paucity of evidence is glaring.

To prove the alleged conspiracy by and among the Galaw-eyes and their co-accused five soldiers, the prosecution would rely so much on the fact that the former and their Ford Fiera jitney were "sighted" near the Western Valley Restaurant a few minutes before and after the shooting incident. However, the presence of the Galaw-eyes and their Ford Fiera jitney near the scene of the crime is not by itself sufficient to establish their criminal liability. In Saavedra,[26] we said that "presence at the scene of the crime, without more, does not imply conspiracy." Well?settled is the rule that conspiracy presupposes the existence of a pre-conceived plan or agreement and in order to establish the existence of such circumstance, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated. There must be a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design. x x x[27]

Neither the fact that one of the soldiers, Conrado, is the younger brother of Cresencia, nor that he and his soldier

companions went to her house that afternoon of August 10, 1984, would indicate his and the Galaw-eyes' participation in the criminal design. More is required to fully support the prosecution's theory that the three appellants were united in pursuing a common unlawful purpose and that they, or any one of them fired the fatal fusillade that killed four victims and seriously wounded two others. The foregoing indicia of an alleged conspiracy relied upon by the prosecution, even all together, do not constitute proof beyond reasonable doubt. Having fallen short of that quantum necessary to establish the accused- appellants' guilt, the prosecution's case must fall. Only if we could arrive at a conclusion that the crime had been committed precisely by the persons on trial under the exacting test of proof beyond reasonable doubt should the sentence be one of conviction. Every circumstance favoring their innocence must be duly taken into account. The proof against the appellants must survive the test of reason. The conscience must be satisfied that on the appellants could be laid the responsibility for the offense charged. Moral certainty is a must.[28]

The prosecution's case against the appellants is cracked by the actual ballistic examinations (Exhibits "C" and "D") of the firearms, slugs, and empty shells submitted to the National Bureau of Investigation (NBI). The findings of that government office known for its competence, reliability, and fairness indubitably showed that the armalite rifle belonging to Conrado de la Cruz did not fire any of the shells and slugs submitted in evidence. Instead, it was the firearm belonging to accused Eduardo Castillo (Exhibit "G") bearing Serial No. 163677 that was found to have been the gun used in the shooting where four (4) men died and two (2) others were seriously injured. The NBI so declared positively and definitely.

Thus, the NBI Ballistician, Rogelio G. Mumar, testified, on cross-examination:

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Q: You have examined 30 shells recovered from the scene of the crime, am I correct?

A: Yes, sir.

Q: And from the examination of the 30 shells, you have determined that at least some of those 30 shells were fired from Exhibit "G"?

A: Yes, sir, you are right.

Q: And you have also examined Exhibit "K" which are certain slugs, am I correct?

A: Those are fragments.

Q: And you have also determined that some of these fragments were fired from Exhibit "G"?

A: Yes, sir, you are right.

Q: But apart from Exhibit "G", which is firearm with Serial No. 163677 recovered from Castillo, you have not made any finding that any of the shells were fired from any other armalite rifle?

A: Yes, you are right.[29]

Assuming ex gratia argumenti that Eduardo Castillo fired the fatal shots, such fact would be of no moment and will not help the prosecution's case as it had not proved beyond reasonable doubt that there was a conspiracy among the seven accused. Absent the same, each of the accused can not be held liable for the act or acts of his co-accused.

The trial court has also declared that "a motive has indeed, been established by the prosecution." To this end, it sustained the conclusion of the prosecution that

x x x the accused were moved by vengeance in committing the criminal acts for which they stand charged. It was too hurting for the Galaw-ey couple, most especially to Crisostomo Galaw-ey to be pistol whipped and injured at a time when he was ready to settle an earlier incident as only a "small matter," the fire of vengeance was lit then and there.[30]

We do not agree. If it was, indeed, true that Crisostomo Galaw-ey wanted to exact vengeance from Robert Bakidol that fateful night of August 10, 1984, why the massacre of several people, including innocent bystanders, among them highly respected members of the community, one a town mayor and another a school district supervisor? Why was Bakidol not killed, but only wounded not even very seriously, if indeed, he was the apple of Crisostomo's vengeful eyes? Bakidol could have been an easy target by any of the soldiers-accused especially with the use of an armalite rifle which is an accurate firing weapon. And to think that there were three soldiers firing simultaneously at him (Bakidol) each with an armalite rifle, how could have they missed shattering Bakidol's body and "blowing him to Kingdom come" if he was really the target? "Moonlighting" as a security guard in the Western Valley Restaurant (where he even has his own quarters, he said he was a boarder), it would have been easy to isolate Bakidol outside the said restaurant where he is supposed to stand on guard. It puzzles the Court why two high government officials, innocent ones at that, were included in the carnage. Could either, or both, of them be the real targets for a variety of reasons? The prosecution has not provided the missing pieces that would successfully weave its theory of revenge against Bakidol. It was not even Bakidol who pistol-whipped Crisostomo Galaw-ey. So, why should the latter harbor rancor in his heart against the former? Although proof of motive is not indispensable to conviction, yet a void in the evidence in this respect discloses a weakness in the case for the prosecution.[31] As early as *People v. del Rosario Murray*, [32] we have said that where the identity of a person accused of having committed a crime is in dispute, the motive that may have compelled its commission is very relevant.

The accused-appellants' defense of alibi is weak, as is the general rule in the case of alibis. But it is well-settled that the prosecution must rely on the strength of its own evidence and not rest on the weakness of that of the defense.[33] Further, "where the identification of the accused as the author of the crime is unreliable, his defense of alibi assumes importance and may be given weight." [34]

In view of our foregoing disquisition, all other issues raised in this appeal have become academic.

WHEREFORE, the appealed decision of the Regional Trial Court is REVERSED and the accused-appellants are hereby ACQUITTED on reasonable doubt.

SO ORDERED.

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

[1] "*People v. de la Cruz, et al.*," Regional Trial Court of Baguio and Benguet, First Judicial Region, Branch 8, La Trinidad, Benguet, September 15, 1989; Nicodemo T. Ferrer, Presiding Judge.

[2] Appellants' Brief for Spouses Crisostomo and Cresencia Galaw-ey; Rollo, 298-299.

[3] Rollo, 41-48.

[4] Rollo, 49-52.

[5] Consolidated Brief for the Plaintiff-Appellee; Rollo, 414-416.

[6] Rollo, 69, 72-77.

- [7] "People v. de la Cruz, et al.," Supra, note 6, 6.
- [8] Rollo, 91-92.
- [9] Appellant's Brief for Conrado de la Cruz; Rollo, 108.
- [10] Appellants' Brief for Spouses Cresencia and Crisostomo Galaw-ey; Rollo, 294-295.
- [11] People v. de Leon, No. 82882, February 5, 1991.
- [12] People v. Tolentino, No. 70836, October 18, 1988.
- [13] Rule 133, Sec. 5, The Revised Rules of Court in the Philippines; People v. Rodriguez, G.R. No. 90255, January 23, 1991.
- [14] Perez de la Merced v. Sandiganbayan, G.R. Nos. 76203-04, December 6, 1989.
- [15] People v. Tolentino (citing People v. Subano, 73 Phil. 692 (1942)), supra, note 13.
- [16] People v. Salondro, Jr., 170 SCRA 763.
- [17] Exh. TT, Supra.
- [18] People v. Besa, G.R. No. 78899, March 22, 1990, 183 SCRA 533, 544.
- [19] TSN, hearing on April 23, 1985, 44 and 60.
- [20] TSN, hearing on April 23, 1985, 41-42.
- [21] TSN, hearing on March 7, 1985, 18; hearing on March 12, 1985, 37.
- [22] TSN, hearing on April 23, 1985, 39-41.
- [23] Exhibit TT and 14-A, Q and A No. 6, August 13, 1984.
- [24] TSN, hearing on March 12, 1985, 37, 39, 42, 43.
- [25] People v. Songcuan, G.R. No. 73070, August 11, 1989.
- [26] People v. Saavedra, G.R. No. L-48738, May 18, 1987.
- [27] Id., citing People v. Custodio No. L-30463, October 30, 1972, 47 SCRA 289 (1972).
- [28] People v. Torre, G.R. No. 44905, April 25, 1990 (citing People v. Ramos, No. 76744, June 28, 1988).
- [29] TSN, 40, hearing on March 4, 1985.
- [30] Decision, supra, notes 8 and 9.
- [31] People v. Lim, G.R. No. 86454, October 18, 1990, citing People v. Modesto, 25 SCRA 36, 46 (1968).
- [32] 105 Phil. 591 (1959), citing U.S. v. Mcmann, 4 Phil. 561; People v. Ragsac, 61 Phil. 146; People v. Batastas, 65 Phil. 654; People v. Tagasa, 68 Phil. 147; People vs. Cagguan, et al., 94 Phil. 118.
- [33] People v. Domingo, G.R. No. 68993, September 26, 1988.
- [34] People v. Cunanan, 19 SCRA 769.

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