

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER BELGA Y OPINION, DEFENDANT-APPELLANT.

G.R. Nos. 94376-77. July 11, 1996

Ponente: HERMOSISIMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-94376-77/>

HERMOSISIMA, JR., J.:

Two separate Informations, one for Murder and the other for Frustrated Murder, were filed against appellant Elmer Belga y Opinion with the Regional Trial Court, National Capital Judicial Region, Branch XLIX, Manila, on July 14, 1987, docketed as Criminal Cases Nos. 87-55982 and 87-55983, respectively.

The Information in Criminal Case No. 87-55982 (Murder) reads:

"That on or about May 21, 1984, in the City of Manila, Philippines, the said accused conspiring and confederating with ROBERTO OLAZO y FAJARDO, also charged with the same offense before RTC, Manila docketed as Criminal Case No. 84-27552 and with Pat. Noel Palada y Santos, charged with the same offense before the JAGO, together with the others whose true names, identities and present whereabouts are still unknown and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of ARLENE ROSE LORENZANA DE ALBERTO, by then and there shooting her with a firearm, hitting her at the left chest, thereby inflicting upon her mortal and fatal gunshot wound which was the direct and immediate cause of her death.

Contrary to law."[1]

On the other hand, the following Information in Criminal Case No. 87-55983 (Frustrated Murder) was also filed against him:

"That on or about May 21, 1984, in the City of Manila, Philippines, the said accused, conspiring and confederating with Roberto Olazo y Fajardo, already charged with the same offense under Criminal Case No. 84-27753, RTC, Manila, Pat. Noel Palada y Santos, also charged with the same offense before the JAGO, together with others whose true names identities and present whereabouts are still unknown and helping one another, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Raymundo Roque y Lubigan, by then and there shooting him with a firearm hitting him at the left side of his back and boxing him on the face thereby inflicting upon the latter physical injuries which are necessarily fatal and mortal thus performing all the acts of execution which should have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to said Raymundo Roque Lubigan which saved his life.

Contrary to law."[2]

Upon arraignment, appellant, with the assistance of counsel, pleaded not guilty. These two related criminal cases were consolidated and tried jointly. After trial, the court a quo rendered judgment of conviction on November 11, 1987, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the accused Elmer Belga y Opinion guilty beyond reasonable doubt as principal for the crimes of Murder and Frustrated Murder and hereby sentences him to the following penalties:

(a) In Criminal Case No. 55982-SCC (for Murder), the Accused is hereby sentenced to reclusion perpetua, with all the accessory penalties of the law, and to pay the heirs of Arlene Rose Alberto, the amount of P30,035.00 as actual damages and P30,000.00 as moral and exemplary damages, without subsidiary imprisonment in case of insolvency;

(b) In Criminal Case No. 55983-SCC (for Frustrated Murder), the accused is hereby sentenced to suffer imprisonment for a period of twelve (12) years, five (5) months and eleven (11) days as minimum to fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal as maximum, and to pay to Raymundo Roque the amount of P20,000.00 as damages, without subsidiary imprisonment in case of insolvency.

The accused is hereby declared credited to the full period of his detention provided that the agreed in writing to abide by and comply strictly with the rules and requisitions of the City Jail and of detention center in Camp Crame, Quezon City.

The accused is hereby ordered to pay the costs in both cases."[3]

Hence, this appeal assigning the following errors:

I

THE TRIAL COURT ERRED IN CONCLUDING THAT, ALL. TOLD, THE EVIDENCE PRESENTED BY THE PROSECUTION IN THE CASE HAD PROVED THE GUILT OF THE ACCUSED-APPELLANT BE - (SIC).

II

THE TRIAL COURT ERRED IN FINDING THAT, ASSUMING THE PARTICIPATION OF THE ACCUSED-APPELLANT IN SAID CRIMINAL ACTS, HE WAS GUILTY OF MURDER AND OF FRUSTRATED MURDER THEREFOR.[4]

As culled from the records, the following facts appears to have been established by the prosecution:

After their marriage sometime in 1982, Glicerio Alberto, one of the private complainants, and the deceased Arlene Rose Lorenzana Alberto settled down in a two-storey house, situated in a compound with address at No. 903-B Apacible Street, Paco, Manila. The ground floor of the house has three (3) rooms, all rented out and occupied. It has a common sala and a kitchen with one main door leading to the common sala. Each of the three rooms has its own door.

One of the rooms was occupied by the spouses Glicerio and Arlene Rose. The second room was rented by the other private complainant Raymundo Roque, together with another couple, Lamberto Ariza and Cristina Ariza. Raymundo Roque was, at that time, a fourth year student of Civil Engineering. The third room was then being leased by Elisa Dungca Nava, mother of Lorenzo "Boy" Nava and Allan Nava, close friends of herein appellant, Elmer Belga.

Relations between Eliza Nava and the spouses Alberto and Arlene Rose soured when the latter filed a complaint[5] against Mrs. Nava with the now defunct City Court of Manila. The complaint was brought about when, on one occasion, Arlene Rose discovered that one of her utensils which she used to place in the kitchen was found in the possession of Eliza Nava. A quarrel ensued and this led to the filing of said complaint against Mrs.

Nava. Thereafter, Mrs. Nava vacated her room and, in her stead, her two children, Boy Nava and Allan Nava, occupied it. The Nava brothers seldom used the room because they could not pay the rent. Often, they stayed in Sta. Mesa.

Sometime in March, 1994, while on their way home from the trial of their case against Mrs. Nava, the Alberto spouses were confronted by Eliza Nava. She ominously warned Arlene Rose: "Kung hindi mo iuulong ang demanda mo sa akin ipapapatay kita sa anak kong killer na si Boy (Nava) bago dumating ang susunod na hearing." [6] Continuation of the trial of their case was set on May 25, 1984, at 2:00 o'clock in the afternoon.

Apparently unperturbed, the Alberto spouses simply ignored her.

On May 21, 1984, or four (4) days before the next scheduled trial, at about 8:30 in the evening, while Glicerio and Arlene Rose were watching television in their room, together with their two young children, aged one (1) year and two (2) years respectively, Glicerio noticed four (4) or five (5) persons entering the compound, the gate having been open at that time. In the group were Boy Nava and the appellant.

The group entered the door leading to the sala. Thereafter, Glicerio noticed that the lights in the sala which were on at that time were switched off. Glicerio went out of their room and proceeded to the sala to find out who turned off the lights and, once in the sala, he switched on the lights again. Suddenly, Glicerio was hit by someone. As instinct would dictate, Glicerio hit back. An exchange of blows ensued. At this moment, Arlene Rose went out of their room and pulled her husband out of the fracas and brought him inside their room. In the process, Arlene Rose must have closed violently the door to their room.

Disturbed by the commotion in the sala, Raymundo Roque, occupant of the second room, went out to see for himself what it was all about. As he came out of his room, he was boxed on the left eye by Boy Nava. Raymundo Roque fell. The accused pointed his gun at Roque, but before he could fire a shot, Roque stood up and hit back at Boy Nava. An exchange of blows once again ensued, this time between Raymundo Roque and the companions of the accused. Realizing that he was outnumbered, Roque ran to the kitchen to look for some weapons to defend himself with. He took hold of a chair and an empty bottle. Roque hit Boy Nava with the chair. He hit another companion of Boy Nava with the bottle. As Raymundo Roque stepped back and lifted the chair to defend himself from a renewed onslaught of Boy Nava, appellant Elmer Belga, who was to the left of Roque, shot the latter who was hit at the back, left side of his body. The bullet exited from the left portion of his chest, just above the nipple but near the armpit. Appellant Elmer Belga shot him the second time, but missed.

Incidentally, Raymundo Roque was likewise not in good terms with the Navas, since Roque and his cousin had a previous quarrel with Allan Nava, the brother of Boy. On the face of it, there was no love lost between Raymundo Roque and his attackers.

While this altercation was going on, Glicerio Alberto had been trying to go into the sala again but Arlene Rose refused to let him go. She placed herself behind the door to their room in order to block the way of her husband. They grappled for the doorknob, but Glicerio Alberto was able to put his hand on the edge of the door, as a consequence of which, the door was opened about a foot wide. This gave Glicerio a clear view of a portion of the sala from their room.

While the couple were struggling for the door, and after the appellant had shot Raymundo Roque twice, the assailants scampered towards the main door. It was the appellant who ran to the door last. As he was running towards the main door, he saw the door to the room of Glicerio and Arlene Rose open and moving. He instinctively pointed his gun at the open door and fired. The bullet pierced the door and hit Arlene Rose on the left side of her chest just below the armpit. Glicerio Alberto looked out to the sala from where the gunshot emanated

and saw the appellant holding a gun running towards the main door. Of the five persons who entered the house, only appellant Elmer Belga had carried a gun.

Immediately thereafter, Glicerio Alberto, with the help of some relatives, secured a motor vehicle to bring the bloodied and unconscious Arlene Rose to the hospital. At about the same time, Raymundo Roque ran out of the house to look for a vehicle he could use in going to a hospital. When he saw Glicerio Alberto and Arlene Rose with some relatives inside a vehicle, he boarded the same and went with the couple to the Philippine General Hospital (PGH) in Manila.

At the PGH, Arlene Rose died at about 9:25 that same evening. Raymundo Roque was given medical treatment and operated on. Luckily, he survived.

The Autopsy Report with respect to the body of the deceased Arlene Rose Alberto reveals the following:

"POSTMORTEM FINDINGS

Pallor, marked, generalized.

Contusions: thigh, left, middle third, antero-lateral aspect, 10.0 x 7.0 cm; leg, left, upper third, anterior aspect, 2.0 x 1.5 cm.

Wound, gun shot, entrance, oval, edges inverted, 0.9 x 1.0 cm. in size including a contusion collar widest (0.1 cm) at its infero-lateral border, located at the chest, left side, 20.0 cm from the anterior median line, 107.0 cm above the left heel, directed slightly forward, slightly upward and from left to right, involving the skin and underlying soft tissues, penetrating the 7th left interspace and grazing the lower border of the 7th rib, perforating the lower lobe of the left lung, the left and right ventricles of the heart and the lower lobe of the right lung, fracturing the 6th right rib, making an exit, roughly oval in shape, edges everted, 1.4 x 1.8 cm in size, located at the chest, right side, 16.5 cm from the anterior median line, 108.5 cm. above the right heel.

Hemothorax, left, about 500 c.c., and right, about 400 c.c.

Heart chambers contain a small amount of dark fluid blood.

Other visceral organs, pale.

Stomach, almost full of partially digested rice and other food particles.

CAUSE OF DEATH: Hemorrhage, severe, secondary to gunshot wound of the chest.[7]

The Medico-Legal Certificate with regard to the injuries sustained by Raymundo Roque stated:

"Gunshot wound through and through,

Entry: (L) lateral scapular area;

Exit: (L) antero-lateral chest wall."[8]

Were it not for the timely and adequate medical treatment administered to Raymundo Roque by Dr. Felixberto Pelayo, he would have died from the gunshot wound he sustained.[9]

Appellant relies on denial for his defense. As patiently summarized by the court a quo, appellant avers that:

"On May 21, 1984, in the afternoon, the Accused was in the store of his girlfriend. Pat. Noel Palada arrived and invited the Accused to celebrate the birthday of the former and have a drinking spree. The accused agreed. The two policemen thereupon proceeded to the Native Restaurant at Otis Street, Mendiola Extension, Paco, Manila, and arrived thereat at about 5:00 o'clock that afternoon. Aside from the Accused and Pat. Noel Palada, the Nava brothers, Roberto Olazo and William Payumo and other friends of the Nava brothers were in attendance. Pat. Noel Palada brought along with him his revolver with Serial Number 769675. The group

partook of the many bottles of beer and food offered by the celebrant. The Accused first ate and consumed about three (3) bottles of beer. In the process, however, Pat. Noel Palada became drunk, tipsy and groggy. In his condition, Pat. Noel Palada asked the Accused to keep his gun, which the Accused did. At about 8:00 o'clock that evening, while the party was going on, the Nava brothers suggested to and invited the group that they continue their drinking spree in their room at No. 903-B Apacible Street, Paco, Manila. The Accused, Roberto Olazo, the Nava brothers and two other friends of the Nava brothers agreed. The others opted to remain in the restaurant. They then boarded a taxicab and proceeded to No. 903-B Apacible Street, Paco, Manila. The Accused was seated in front of the taxicab, beside the driver. The Accused brought with him the revolver of Pat. Noel Palada. The group of the Accused arrived in Apacible Street at about 8:50 o'clock that evening. The companions of the Accused alighted from the taxicab and proceeded to said address. The Accused, on the other hand, was left behind because he was paying their taxi fare. However, when the Accused was about to enter the sala of the house, he already saw that there was a melee going on inside the sala. He saw Glicerio Alberto running to their room, being chased by Boy Nava. However, Glicerio Alberto was able to enter their room. Boy Nava tried to push the door to the room of Glicerio Alberto. The Accused also saw Allan Nava going out of the sala, and saw his head injured. The lights inside the sala were off but the Accused could see the events in the sala because of the light which emanated from outside the sala. The Accused approached Boy Nava and said: 'Pare, ano ito?'

Nevertheless, the Accused went inside the sala, and when he was about two and one-half meters away from the main door, he was met by Raymundo Roque and another person whom the Accused did not know, holding broken bottles and threatened to hit him with the said bottles. The Accused pulled out his gun from his waist and fired his gun to the floor of the sala to scare off and warn Raymundo Roque and his companion. Momentarily, the Accused heard another gunshot in the sala. Afraid that another person who was not with their group might also have a gun, the Accused, with his companions, scampered towards the main door of the house. Outside the house, the Accused heard another gunshot from inside the sala of the house. The Accused saw Roberto Olazo and Allan Nava inside a taxicab. He boarded the taxi and, together with Roberto Olazo and Allan Nava, proceeded to the store of his girlfriend in the Sta. Mesa Rotonda. The Accused was blaming Allan Nava for the incident. However, Allan Nava said nothing and appeared sorry for what happened."^[10]

In *People vs Amaguin*,^[11] we held that as in an alibi, a denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters. In the case at bar, witness for the prosecution Raymundo Roque positively identified in open court appellant Elmer Belga as the person who shot him, viz:

"Q: You said that you filed this case of Frustrated Murder against the Accused Elmer Belga, is it not?

A: Yes, sir.

Q: If you will see him again, will you be able to identify him?

A: Yes, sir.

Q: Please look around the Courtroom and if he is here please point to him?

Q: There, sir. (At this juncture, the witness pointed to a person and when asked of his name, he answered the name of Elmer Belga).^[12]

Likewise, Glicerio Alberto, husband of the deceased Arlene Rose, on direct examination pointed to Elmer Belga as the one who killed his wife, to wit:

"Q: Now, can you tell us if you know who is responsible for the killing of your wife, if you know?

A: I can point to him now.

Q: Now, will you kindly look around and tell the court if that person whom you know the accused who kill (sic) your wife, is he in court?

A: Yes, sir.

Q: Will you kindly point to him if he is in this court?

A: He is the one. (Witness pointing the person whom who (sic) asked his name Elmer Belga, the killer)."[13]

Prior to their respective testimonies in court, both Glicerio Alberto and Raymundo Roque, in like manner, positively identified the appellant as the person who shot Arlene Rose and Raymundo Roque when the appellant was placed in a police line-up together with Roberto Olazo, Pat. Noel Palada, William Payumo and Eugenio Javar after he was apprehended on June 13, 1984.[14]

Thus, as between a mere denial of the accused and the positive identification and detailed declarations of the prosecution witnesses, the trial court committed no error in according heavier weight to the latter. For indeed, it is a truism that the assessment of the credibility of witnesses is left largely to the trial court because of its opportunity, not available to the appellate court, to see the witnesses on the stand and determine by their demeanor whether they are testifying truthfully or lying through their teeth.[15] Hence, the evaluation by the trial judge on the credibility of witnesses is well-nigh conclusive on this Court, barring arbitrariness in arriving at his conclusions.[16]

Furthermore, there appears to be no motive on the part of Glicerio Alberto and Raymundo Roque to testify falsely against herein appellant apart from their legitimate desire to see that justice is done in their cases. The absence of evidence as to improper motives actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motives existed, and that their testimonies are worthy of full faith and credit.[17] Interestingly, appellant himself testified to this effect on cross-examination:

"Q: Did you have any misunderstanding with Glicerio Alberto and Arlene Alberto before the incident?

A: None, sir.

Q: Did you have any misunderstanding with Raymundo Roque before the incident?

A: None, sir."[18]

The only reason appellant could give as to why of all the six persons implicated in the crime he was the one pointed to by the prosecution witnesses, is that he was the only one arrested. He maintains that had all of them been apprehended, the real culprit would have been properly identified.

We are not impressed. The facts on record reveal that appellant is telling a falsehood. On cross-examination, appellant contradicted himself when he admitted that he was not the only person among the group who was taken into custody by the police authorities and placed in the line-up. Thus:

"Q: You told the Court that the reason why Glicerio Alberto and Raymundo Roque pointed to you is that, you were the only one arrested, did I get you right?

A: Yes, sir.

Q: But then the records show that, aside from you, Pat. Palada, Olazo were also arrested, do you confirm that?

A: Palada was arrested first but they did not go to the complainant, Your Honor.

Q: Yes, but Olazo was arrested later, is it not?

A: Yes, Your Honor.

Q: And yet, neither Glicerio and Raymundo point (sic) to Olazo as the person who shot Arlene and Raymundo, did they?

A: They did no point them, Your Honor."^[19]

Finally, appellant's guilty conscience is shown by the fact that, immediately after the shooting, appellant did not surrender to the police authorities with his firearm. Instead, he returned the gun to Pat. Noel Palada and proceeded to the house of his girlfriend in Manila. After staying in Manila for two (2) days, he fled to Iloilo City and stayed there for more than three (3) weeks, allegedly because he had to consult his brother, who is also a policeman, about the incident. The appellant could have surrendered to the police authorities in Iloilo City but he did not. When he came back to Manila, he did not again surrender to the authorities, but was instead arrested by the police.

Flight of the accused after the incident removes any remaining shred of doubt on his guilt.^[20] His flight is uncontroverted and his claim that he had to go to Iloilo to consult his brother who is a policeman about the incident is nothing but a sham excuse to cover up the naked fact of his flight. Undeniably, his flight evidenced guilt.^[21] As keenly observed by the court a quo:

"x x x There was no genuine need for the Accused to still consult his brother. After all the Accused was a policeman himself. More, the Accused knew of a relative - a lawyer from the NBI no less, Atty. Federico Opinion whom he could have called and consulted about the incident. More, Col. Romeo Odi^[22] was already in the Philippines and the Accused could have talked to him and consulted him about the incident. Assuming, *gratia arguendi*, that the Accused need to consult his brother, and his relatives, there was no reason for him to stay in Iloilo for more than three weeks for said purposes. The Accused could have come back to Manila immediately and contacted Col. Romeo Odi. As aforesaid, the Accused tarried in Iloilo for three weeks."^[23]

While we affirm the judgment of conviction of the trial court, we however find that the qualifying circumstance of treachery cannot be appreciated against appellant Belga for the shooting of Roque and Arlene Rose.

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.^[24] To constitute treachery, therefore, two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.^[25]

The killing of Arlene Rose could not have been attended by treachery contrary to the finding of the court a quo, notwithstanding the fact that she was shot at the back. In *People v. Tiozon*,^[26] we stressed that treachery cannot be presumed; it must be proved by clear and convincing evidence, or as conclusively as the killing, if such be the crime, itself. The fact that the fatal wounds at the back of the deceased does not, by itself, compel a finding of treachery.^[27] It is not enough that the means employed by the malefactor gave the victim no opportunity to defend himself to retaliate as when the attack came from behind. To sustain a finding of treachery, an equally important requirement is that the means, method or form of attack must be shown to have been deliberately adopted by the appellant^[28] with a special view to the accomplishment of the act without risk to the assailant from any defense that the party assailed might have made. A review of how exactly Arlene Rose Alberto was shot fails to provide a clear and convincing evidence that the treachery was present. The trial court narrates:

"As the couple were grappling for the door, and after the accused had shot Raymundo Roque twice, the accused and Boy Nava and their companions scampered towards the main door. It was the accused who ran to

the door last. But as he was running towards the main door, the accused saw the door to the room of Glicerio Alberto and Arlene Rose open and moving because the couple were still grappling for it. The accused aimed his gun at the door and fired his gun. The door, was hit but the bullet pierced the door and hit Arlene Rose on the left side of her chest, the bullet from her right chest, piercing her lungs and hitting her heart.

x x x x x x x x"[29]

Clearly, the manner by which Arlene Rose was shot cannot be said to be consciously or deliberately adopted by the appellant in order to facilitate the perpetration of the killing without risk to himself. The shooting was made upon the impulse of the moment as a sequence of the unexpected turn of events when the group was scurrying towards the main door on their way out. To reiterate, the mere location of the bullet wound at the back - as is the case here - by itself, does not prove treachery. Even if the purpose was to kill, so long as the decision was sudden and the victim's position accidental, no treachery attaches to the killing.[30]

The same is true with the shooting of Raymundo Roque, which was recounted by the court *quo in* rather vivid detail, viz.:

"Arlene Rose must have violently closed their room because Raymundo Roque, who was then studying inside their room, heard a loud bang of the door, went out of his room to find out what the noise was all about and as he went out of his room, he was boxed by Boy Nava on the left eye. Raymundo Roque fell. Again, an exchange of blows ensued between Raymundo Roque on the other hand, and Boy Nava and his companions on the other. All the time, the Accused was holding his gun and pointing the same to Raymundo Roque. The latter must have realized that he was outnumbered by the group of the Accused and Boy Nava that he ran to the kitchen adjacent to the bathroom and took hold of a chair and broken empty bottle. Raymundo Roque hit Boy Nava with the chair and hit another with the empty broken bottle. The person whom Raymundo Roque hit with the bottle must have been Allan Nava because the latter was seen by the Accused going out of the sala with injuries on his head. Raymundo Roque wanted to hit Boy Nava again with the chair and, as he lifted the chair and slanted his body to the left, as he did so, the Accused, who was then at the left of Raymundo Roque, shot the latter, hitting Raymundo Roque on the left chest, at the back. The bullet pierced the chest of Raymundo Roque and exited from his left front chest. Raymundo Roque again fell. As he attempted to stand up, covering his face with the chair, the Accused again shot him, but missed this time. At this point of time, the Accused, seeing Raymundo Roque injured, scampered away, together with his companions."[31]

From the foregoing chronicle of facts, it is evident that prior to the shooting in the kitchen, Roque was not caught completely unaware and was not deprived of the chance to ward off the assault, but, in fact, was able to defend himself as shown by the initial encounter in the sala. There could thus be no treachery since, prior to the first gunshot that hit him, the victim had been forewarned of the danger to his life and had even attempted, albeit unsuccessfully, to overcome his attackers. Moreover, there was absolutely no evidence to show that appellant consciously and deliberately employed a particular method or manner of killing the victim that would eliminate any risk to himself, for it was not until Roque stepped back and lifted the chair he was holding to strike anew at his attackers that appellant was accorded the instant opportunity to shoot Roque with facility.

In any case, while treachery may be absent in both cases, the aggravating circumstance of evident premeditation, likewise alleged in the information, has been duly proved by the prosecution, enough to qualify the wounding of Roque to frustrated murder and the killing of Arlene Rose to murder.

The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment.[32] The following requisites must concur before evident premeditation may be appreciated: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow

him to reflect upon the consequences of his act.[33]

All the foregoing requisites obtain in the case at bar. As aptly stated by the court a quo:

"The shooting was also attended by evident premeditation. The evidence shows that, as early as March, 1994, the mother of the Nava brothers threatened Arlene Rose with liquidation before the next scheduled trial of their case on May 25, 1984. The Accused and the Nava brothers met at the Native Restaurant at 5:00 o'clock that afternoon of May 21, 1984. At about 8:50 or 8:40 o'clock that evening, the Accused, the Nava brothers, Roberto Olazo and their companions proceeded to Apacible Street. The Accused had, therefore, about four (4) hours to reflect on the consequences of their plan to do away with Raymundo Roque and Arlene Rose Alberto, notwithstanding which the Accused proceeded to Apacible Street. "[34]

While it would seem that the main target of the malefactors were Alberto and Arlene Rose, this does not negate the presence of evident premeditation on the physical assault on the person of Raymundo Roque. We have established jurisprudence to the effect that evident premeditation may be considered as present, even if a person other than the intended victim was killed (or wounded, as in this case), if it is shown that the conspirators were determined to kill not only the intended victim but also anyone who may help him put a violent resistance.[35] Here, Raymundo Roque provided such violent resistance against the conspirators, giving the latter no choice but to eliminate him from their path.

WHEREFORE, the Decision of the court a quo, dated November 11, 1987, is hereby **AFFIRMED** with the modification that the death indemnity in Criminal Case No. 87-55982 (Murder) in favor of the heirs of Arlene Rose Alberto be increased from P30,000.00 to P50,000.00. Likewise, the penalty imposed in Criminal Case No. 87-55983 (Frustrated Murder) is hereby modified in that, there being no mitigating nor other generic aggravating circumstances, the appellant Elmer Belga y Opinion is sentenced to suffer the indeterminate penalty of from eight (8) years of prision mayor as minimum to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal as maximum, with the accessory penalties of the law, and to indemnify the offended party or parties in the sum of P20,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, p. 7.

[2] Rollo, p. 8.

[3] Decision, pp. 33-34; Rollo, pp. 52-53.

[4] Rollo, pp. 83-84.

[5] The nature of the complaint was not disclosed in the record.

[6] Exhibit "A"; Records, p. 59.

[7] Exhibit "U"; Records, p. 85.

[8] Exhibit "T"; Records, p. 72

[9] Rollo, p. 27

[10] Decision, pp. 13-14; Rollo, pp. 32-33.

[11] 229 SCRA 166, 174-175 [1994].

[12] TSN, 7 September 1987, pp. 13-16.

[13] TSN, 30 Sept. 1987, pp. 24-25.

[14] Rollo, p. 38.

[15] *People vs. Rivera*, 242 SCRA 26, 35 [1995] citing *People vs. Aruta*, 222 SCRA 201 [1993].

[16] *Ibid.*

[17] *People vs. Villanueva*, 242 SCRA 47, 54 [1995] citing *People vs. Blas*, 209 SCRA 339 [1992].

[18] TSN, 28 October 1987, p. 29.

[19] TSN, 28 October 1987, pp. 34-35.

[20] *People v. Deunida*, 231 SCRA 520, 534 [1994].

[21] *Ibid.*

[22] With whom appellant served as an orderly and valet doing personal chores. Colonel Odi had just then arrived from a trip abroad.

[23] Decision, p. 25; Rollo, p. 44.

[24] Article 14(16), Revised Penal Code; *People v. Lacao, Sr.*, 201 SCRA 317, 330 [1991]; *People v. Velaga, Jr.*, 199 SCRA 518, 523 [1991].

[25] *People v. Mabubay*, 185 SCRA 675, 680 [1990].

[26] 198 SCRA 368 [1991].

[27] *People v. Caldito*, 182 SCRA 66, 76-77 [1990] citing *People vs. Manalo*, 148 SCRA 98 [1987].

[28] *Ibid.*, citing *People v. Bongo*, 55 SCRA 547 [1974].

[29] Decision, pp. 5-6; Rollo, pp. 24-25.

[30] *People vs. Macalisang*, 22 SCRA 699, 703 [1968] citing *People v. Cadag*, 2 SCRA 388 [1961].

[31] Decision, pp. 17-18; Rollo, pp. 36-37

[32] *People v. Durante*, 53 Phil. 363, 369 [1929].

[33] *People vs. Maturgo, Sr.*, 248 SCRA 519, 529 [1995] citing *People vs. Iligan*, 191 SCRA 643 [1990].

[34] Decision, p. 32; Rollo, p. 51.

[35] *People vs. Timbol*, 47 OG 1862 [August 4, 1944]; *People vs. Ubiña*, 97 Phil. 515.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.