



Republic of the Philippines
Court of Appeals
 Manila

Sixteenth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

CA-G.R. CR-HC No. 00667

- versus -

Members:

**SP02 CESAR FORTUNA Y
 ABUDO, RAMESES DE JESUS Y
 CALMA, LEONARDO LUMANOG
 Y LUISTRO, JOEL DE JESUS Y
 VALDEZ, AND AUGUSTO
 SANTOS Y GALANG,**
Accused-Appellants.

**MAAMBONG, Chairman
 LIBREA-LEAGOGO, and
 DIZON, JJ.**

Promulgated
APR 01 2008
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 MARIA RAMONA E. LEDESMA
 DIVISION CLERK OF COURT
 COURT OF APPEALS

DECISION

DIZON, J.:

Before Us for intermediate review is the Joint Decision dated July 30, 1999 of the Regional Trial Court of Quezon City, Branch 103, convicting SP02 Cesar A. Fortuna, Rameses C. de Jesus, Leonardo L. Lumanog, Joel V. de Jesus and Augusto G. Santos of the crime of Murder and sentencing each to suffer Death Penalty.

The Solicitor General narrated the People's version of the facts as follows:

"On June 13, 1996, Freddie Alejo was posted as a security guard of the premises located at No. 211 Katipunan Avenue, Blue Ridge, Quezon City. His tour of duty was for twelve (12) hours from 7:00 o'clock in the morning to 7:00 o'clock in the evening T.S.N. (August 20, 1996, pp. 13-14).

Between 7:30 and past 8:00 o'clock in the morning of the same day, Freddie Alejo noticed two (2) men walking to and from alongside Katipunan Avenue near his post (id., pp. 15-16). Around 8:40 in the morning, Alejo heard gunshots and saw four (4) armed men shooting at the driver of a black car. One of the two (2) persons who were walking to and from along Katipunan Avenue pointed a gun at him (id., p. 39). Alejo then saw one of the gunwielders grab the victim's clutch bag. Said gunwielder also grabbed the victim by the neck, pulled him out of the car and dumped him on the road (id., p. 44). Soon thereafter, Alejo heard another gunshot (id., p. 45). One of the gunmen ordered him: "dapa, walang makikialam". In compliance, he sat down and bowed his head (id., p. 49). When he later stood up, all the gunmen were gone (id., p. 68).

Freddie Alejo identified Joel de Jesus as the one who ordered him 'dapa, walang makikialam' (id., p. 54); Leonido Lumanog, the gunman who shot, grabbed, dragged and dumped the victim on the road and stole the victim's clutch bag (id., p. 58); Cesar Fortuna, the gunman on the right in front side (opposite the driver's seat) who also shot the victim (id., p. 62); Augusto Santos, the gunman behind Cesar Fortuna (id., p. 66); Rameses de Jesus, the gunman stationed behind Leonido Lumanog; and Lorenzo delos Santos, the man who pointed a gun at Alejo and ordered him to step down ('baba') from the guardhouse (id., p. 59).

The victim turned out to be Col. Rolando N. Abadilla, a well-known personality during the Marcos regime. He sustained a total of twenty-nine (29) wounds, twenty-three (23) of which were gunshot wounds (T.S.N., September 10, 1996, pp. 13 and 19).¹

Accused-appellants were charged with Murder in five (5) separate Informations which identically reads as follows:

"That on or about the 13th day of June, 1996, in Quezon City, Philippines, the above-named accused, conspiring, confederating with several other persons whose true names, identities, whereabouts and other personal circumstances of which have not as yet been ascertained, and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill by means of treachery, and with evident premeditation in consideration of a price, reward or promise, and taking advantage

¹ Appellee's Brief, pp. 1491-1493

of superior strength, attack, assault and employ personal violence upon the person of COL. ROLANDO ABADILLA Y NOLASCO by then and there shooting the latter with the use of different kinds of firearms, hitting him on the different parts of his body, thereby causing the instant and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said COL. ROLANDO ABADILLA Y NOLASCO.

CONTRARY TO LAW.²

On arraignment, appellants pleaded not guilty.

After joint trial, the lower court rendered the assailed decision, the dispositive portion of which reads:

"Accordingly, judgment is hereby rendered as follows:

I. In Criminal Case No. Q-96-66679, for Theft, the charge against the herein accused SP02 Cesar Fortuna y Abudo, Rameses de Jesus y Calma, Lorenzo delos Santos y dela Cruz, Leonardo Lumanog y Luistro (a.k.a. Lenido or Leonido Lumanog), Joel de Jesus y Valdez and Arturo Napolitano y Caburnay is hereby DISMISSED.

II. In Criminal Case No. Q-96-66680, for Violation of PD 1866, as amended, the charge against accused Lorenzo delos Santos y dela Cruz, is hereby DISMISSED.

III. In Criminal Case No. Q-96-66682, for Violation of PD 1866, as amended, the charge against accused SP02 Cesar Fortuna y Abudo, is hereby DISMISSED.

IV. In Criminal Case No. Q-96-66683, for Violation of PD 1866, as amended, the charge against accused Rameses de Jesus y Calma, is hereby DISMISSED.

V. In Criminal Case No. Q-96-66684, for Murder:

1. Accused Arturo Napolitano y Caburnay is hereby ACQUITTED.

2. Accused SP02 Cesar Fortuna y Abudo,

Rameses de Jesus y Calma, Leonardo Lumanog y Luistro (a.k.a. Leonido or Lenido Lumanog), Joel de Jesus y Valdez and Augusto Santos y Galang are hereby found GUILTY beyond reasonable doubt as co-principals of the crime of MURDER as defined and penalized in the Revised Penal Code for the death of ex-Col. Rolando Abadilla y Nolasco with the aggravating circumstances of treachery (absorbing abuse of superior strength) and evident premeditation and they are hereby each sentenced to suffer the penalty of DEATH:

3. Accused Lorenzo delos Santos y dela Cruz is hereby ACQUITTED.

On the civil aspect, accused SP02 Cesar Fortuna y Abudo, Rameses de Jesus y Calma, Leonardo Lumanog y Luistro (a.k.a. Lenido or Leonido Lumanog), Joel de Jesus y Valdez and Augusto Santos y Galang are hereby ordered jointly and solidarily to pay the heirs of the deceased ex-Col. Rolando Abadilla y Nolasco the following:

1. As actual damages, the sum of P294,058.86;
2. As indemnity damages, the sum of P50,000.00;
3. As moral damages, the sum of P500,000.00;
4. As exemplary damages, the sum of P500,000.00

The firearm, one (1) Smith & Wesson .38 caliber revolver with Serial No. 980974, subject of Case No. Q-96-66680 is hereby returned to Lorenzo delos Santos y dela Cruz.

The firearm, one (1) Armscor .38 caliber revolver with Serial No. 21907, subject of Case No. Q-96-66683 is hereby ordered forwarded to the PNP Firearms and Explosives Division, Camp Crame, Quezon City for safekeeping in accordance with law as said firearm belongs and is licensed to accused Leonardo Lumanog y Luistro (a.k.a. Leonido or Lenido) who has been sentenced in Case No. Q-96-66684 for Murder; until further orders from this court.

Costs against the accused.

Let the entire records of these cases be transmitted forthwith to the Honorable Supreme Court for automatic review, in

accordance with law and the Rules of Court.

SO ORDERED.³

On August 25, 1999, Lenido Lumanog filed a motion for reconsideration. Pending resolution thereof, he also filed a motion for new trial. Joel de Jesus followed suit and filed a similar motion. The People of the Philippines opposed all their motions.

On November 25, 1999, Lenido Lumanog through his new counsel, Atty. Soliman Santos, filed a Supplement to his Motion for Reconsideration advancing for the first time the theory that the killing of the Col. Rolando N. Abadilla was perpetrated by the Alex Buncayao Brigade (ABB). He subsequently filed several other pleadings that were all intended to support the ABB theory, such as an Addendum to Supplement, Manifestation and Submission, Manifestation and Motion, Memorandum to Clarify Pending Incidents/Motions, Memorandum on Nature of Proposed Additional Evidence, and Manifestation on the Posture and Attitude of the Prosecution.

On January 19, 2000, UP Parish Priest Fr. Roberto P. Reyes, assisted by counsel, although not a party nor a defense witnesses in the case, filed a so-called Urgent Independent Motion for Leave of Court to Present Vital Evidence intended also to bolster the ABB theory.

By Order dated January 25, 2000, the trial court denied Lenido Lumanog's motion for reconsideration and all his subsequent submissions; and considered as abandoned or withdrawn his motion for new trial. The trial court also denied the motion for new trial filed by Joel de Jesus. It likewise ordered the immediate transmittal of the record and the Joint Decision dated July 30, 1999 for this Honorable Court's automatic review.

In two (2) separate orders dated January 26 and 28, 2000, the trial court further denied the Urgent Independent Motion for Leave of

³ Decision, pp. 31-32; Records pp. 1027-1028

Court to present vital evidence filed by Fr. Reyes.

On February 9, 2000, prior to the transmittal of the case record to the Honorable Supreme Court, Lenido Lumanog filed two (2) more pleadings maintaining the ABB theory, viz: "Final Submission to this Court appending a letter of Gen. Jose M. Calimlim of the AFP Intelligence Service relation to an alleged unsuccessful operation of the ABB to kill Col. Abadilla" and "Final Manifestation to the Court."

Dissatisfied with the trial court's Orders rejecting the aforesaid motions for new trial, all the five (5) appellants elevated the matter to this Honorable Court via a petition for certiorari docketed as G.R. No. 142065.

³In its Decision dated September 7, 2001 the Supreme Court dismissed the petition.⁴

The Supreme Court denied appellants' motion for reconsideration with finality in its Resolution dated November 20, 2001 and directed that entry of judgment be made thereon.

In a subsequent Resolution dated September 17, 2002, the Supreme Court also denied of lack of merit the motion for new trial and related relief dated April 26, 2002 filed by Lenido Lumanog.

The trial court, thereupon, elevated the entire case record to the Supreme Court for automatic review.

Accused-appellant's Lenido Lumanog and Augusto Santos in their brief ascribed to the trial court the following alleged errors, to wit:

91. THE TRIAL COURT ERRED IN IMPOSING AN UNCONSTITUTIONAL PENALTY, THE DEATH PENALTY, AT LEAST FOR MURDER UNDER R.A. 7659.

II. THE TRIAL COURT ERRED IN THIS CASE OF MURDER AND

⁴ Records, pp. 1488-1490

FIVE DEATH SENTENCES WITH ITS OVER-RELIANCE ON AND GIVING CREDENCE TO THE TESTIMONY OF THE LONE ALLEGED EYEWITNESS PRESENTED IN COURT, SECURITY GUARD FREDDIE ALEJO, FOR THE PROSECUTION WHICH IS CHARACTERIZED BY MATERIAL OMISSIONS, CONTRADICTIONS, UNRELIABILITY, INCREDIBILITY, AND DISCREPANCIES.

- III. THE TRIAL COURT ERRED IN APPRECIATING ALEJO'S EARLY SWORN STATEMENT TO MEAN THAT THERE WERE FIVE, NOT FOUR, SUSPECTS HE SAW PERPETRATE THE CRIME.
- IV. THE TRIAL COURT ERRED WHEN IT RULED THAT IT DOES APPEAR FROM THE RECORD THAT BOTH SECURITY GUARDS, WHOSE PRESENCE IN THE VICINITY OF THE CRIME SCENE CANNOT BE DOUBTED, CONFIRMED THAT JOEL DE JESUS WAS ONE OF THE PERPETRATORS OF THE KILLING OF ROLANDO ABADILLA, AND FAILED TO PROPERLY APPRECIATE THE TESTIMONY OF THE OTHER SECURITY GUARD EYEWITNESS, MERLITO HERBAS, WHICH BELIES THAT OF ALEJO.
- V. THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE TORTURED AND COERCED EXTRA-JUDICIAL CONFESSIONS OF ACCUSED JOEL DE JESUS AND LORENZO DELOS SANTOS WHICH SHOULD HAVE BEEN EXCLUDED.
- VI. THE TRIAL COURT ERRED IN GIVING SCANT ATTENTION TO THE GROSS VIOLATIONS OF CONSTITUTIONAL AND HUMAN RIGHTS OF THE ACCUSED PERTAINING TO THEIR ARREST, DETENTION AND CUSTODIAL INVESTIGATION, AND CONSEQUENTLY IN FAILING TO GRANT THEM 'RADICAL RELIEF' FOR SUCH GROSS VIOLATIONS.
- VII. THE TRIAL COURT ERRED WHEN IT LEFT ACCUSED LENIDO LUMANOG OUT IN THE DECISION'S RECOUNTING OF THE RESPECTIVE INDIVIDUAL DEFENSES OF THE SIX REMAINING ACCUSED, AND RULED THAT LUMANOG'S NOT TESTIFYING BEFORE THE COURT JUSTIFIES AN INFERENCE THAT HE IS NOT INNOCENT AND MAY BE REGARDED AS A QUASI-CONFESSION.
- VIII. THE TRIAL COURT ERRED WHEN IT DISREGARDED, BASED ON MERE CONJECTURES, THE ALIBI DEFENSES OF ACCUSED AUGUSTO SANTOS AND LENIDO LUMANOG.
- IX. THE TRIAL COURT ERRED IN FAILING TO APPRECIATE AND CO-RELATE TO PERSONAL CIRCUMSTANCES OF THE

SEVERAL ACCUSED AND THE CIRCUMSTANCES OF THEIR ARREST WHICH SHOW AS UNLIKELY BOTH GUILT AND CONSPIRACY, BELYING THE TRIAL COURT'S FINDINGS TO THAT EFFECT.

- X. THE TRIAL COURT ERRED WHEN IT OVERLOOKED GIVE MORE WEIGHT TO PHYSICAL EVIDENCE, PARTICULARLY THE EXCULPATORY BALLISTICS AND DACTYLOSCOPY EVIDENCE, WITH ACCOMPANYING EXPERT TESTIMONY PRESENTED BY THE DEFENSE.
- XI. THE TRIAL COURT ERRED IN DENYING LENIDO LUMANOG AND OTHER ACCUSED LAST CHANGE, WHILE THE JUDGMENT OF CONVICTION WITH DEATH SENTENCES WAS STILL UNDER RECONSIDERATION, TO INTRODUCE ADDITIONAL EVIDENCE ON THE HITHERTO UNDEVELOPED ALEX BONGAYAO BRIGADE (A.B.B.) ANGLE OF TRUE RESPONSIBILITY FOR THE ABADILLA AMBUSH-KILLING, CONTRARY TO THE SUPREME COURT'S GUIDANCE IN DEATH PENALTY CASES.
- XII. THE TRIAL COURT ERRED IN DENYING FR. ROBERTO REYES' 'URGENT INDEPENDENT MOTION FOR LEAVE OF COURT TO PRESENT VITAL EVIDENCE' ALSO ON THE A.B.B. ANGLE, AN ANGLE WHICH PROVES THE INNOCENCE OF ALL THE ACCUSED BEYOND REASONABLE DOUBT.⁵

All the contentions and arguments of the other accused-appellants are incorporated and interrelated with the contentions of appellants Lenido Lumanog and Augusto Santos, hence, we will discuss the alleged errors of the trial court jointly so as to present an orderly disposition of the issues involved.

The main contention of appellants is anchored on the credibility of the sole eyewitness of the prosecution Freddie Alejo.

In convicting appellants of murder, the trial court gave credence to the testimony and identification made by the prosecution eyewitness. The eyewitness was able to witness closely how the crime was committed by appellants every step of the way. He vividly described their individual participation and how each cooperated in ensuring Col. Abadilla's killing. He, thus, testified.

⁵ Records, pp. 945-946

Q. After, you saw this incident that 4 persons shot at the driver of the black car, what happened next, if any?

A. One of the 2 persons earlier walking back and forth in front of me pointed a gun at me, sir [sic].

Q. Where was that person who pointed a gun at you positioned at that time? Put number 5.

INTERPRETER:

Witness marking #5 on the photograph.

Q. How did he point his gun at you?

A. 'Iniharap niya sa akir ang dulo ng baril niya', ma'am.

Q. Please demonstrate how the gun was at you.

INTERPRETER:

Witness demonstrating how the gun was pointed at him by stretching his two arms holding the gun pointing at him.

Q. What kind of gun was he holding if you know?

A. It was a short gun, ma'am.

Q. While this person pointed at you his gun, what did he tell, if any?

A. He told me to come down (baba).

Q. Did you come down?

A. No, ma'am, I did not.

Q. What else did you notice, if any, after this person marked as #5 (identified as Joel de Jesus) told you to come down?

A. I saw one of the suspect(s) standing to the left grabbed the clutch bag of the victim, ma'am.

Q. From these 4 persons, will you please point to us who among those 4 persons got the clutch bad of the victim by saying the number 1.

A. The number 1 (identified as Leonido Lumanog), ma'am.

May we make it of record that the witness pointed to the person positioned on the driver side front door of the car.

Q. After you saw #1 got the clutch bag of the victim, what

happened next, if any?

A. I saw him grabbed the victim by the neck, ma'am.

Q. To whom are you referring to as the person who grabbed the victim by the neck?

A. Number 1, ma'am.

Q. The same person who got the clutch bag of the victim.

A. Yes, ma'am.

Q. After this number 1 grabbed the victim by the neck, what else he do if, any?

A. He pulled the victim out of the car ma'am.

Q. After that, what happened next, if any, after Number 1 pulled out the victim from the car, what happened next?

A. He dropped the body of the victim on the ground (road) ma'am.

Q. After he dropped the body of the victim on the road, what else did he do next, if any?

A. I heard another shot, ma'am.

Q. Where did the shot come from?

A. It came from number 1, ma'am.

Q. After you heard the shot, what happened next, if any?

A. The person marked #5 (identified as accused Joel de Jesus) shouted 'dapa walang makikialam.'

Q. When this #5 shouted 'dapa walang makikialam,' what happened next, if any?

A. The suspects faced me, ma'am.

Q. To whom are you referring to among these 4 persons?

INTERPRETER

Witness pointing to numbers 2, 3 and 4 (identified as Rameses de Jesus, Cesar Fortuna & Augusto Santos).

Q. When these numbers 2, 3, and 4 faced you, what happened, if any?

A. The companion of number 5 who were (sic) earlier walking to and from in front of me faced me and pointed his gun at me, ma'am.

Q. Where was this person whom you are referring to positioned at that time in relation to this picture marked as Exhibit H?

INTERPRETER

Witness marking the photograph as #6 show the position of that person. x x x

Q. After this #6 (identified as Lorenzo delos Santos) faced you and pointed his gun at you, what did you do, if any.

A. I come down (sic), ma'am.

Q. How did you come down?

A. I sat down with my head bow (sic), ma'am.

Q. Where were you when you sat down and bow(ed) your head?

A. I was inside the guardhouse, ma'am.⁶

Despite a lengthy and exhaustive cross-examination by the defense counsel, eyewitness Alejo stuck to the essentials of his story, including the identification of the persons who killed Col. Abadilla. He was only ten (10) meters away from the *locus crimini*. Standing on an elevated guardhouse, he had a close and unobstructed view of the whole incident. He was in a vantage position to clearly recognize Col. Abadilla's assailants, more so because the crime happened in clear and broad daylight.

Even standing alone, Alejo's positive and unequivocal declaration is sufficient to support a conviction for murder against appellants. Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even for murder.⁷ For there is no law requiring that the testimony of a simple witness should be corroborated for it to be accorded full faith and credit. The credible testimony of a lone witnesses assumes more weight when there is no showing that he was actuated by improper motive to testify falsely against the accused, as in the case of Freddie Alejo.

"Absent any evidence showing any reason or motive for a

⁶ T.S.N, pp. 38-48, August 20, 1996

⁷ People vs. Obello, 284 SCRA 79 (1998)

prosecution witness to perjure, the logical conclusion is that no such improper motive exists and his testimony is thus worthy of full faith and credit."⁸

Accused-appellants in a bid to establish their innocence set forth the defense of alibi and denial of the commission of the offense charged.

"The case is that alibi is a weak defense, for it to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also, that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity."⁹

In the case at bench, appellants failed to prove that it was physically impossible for them to be at the *locus delicti* or within its immediate vicinity at the time the crime was committed.

In the case of Joel de Jesus, he maintains that he was driving his tricycle on a special chartered trip for a passenger going to Roosevelt, Novalichez, Quezon City. But, it was not impossible for him to have also gone to Katipunan Avenue, which is also part of Quezon City; not to mention the fact that with his tricycle, he could have easily moved from one place to another.

The testimonies of Rameses de Jesus and Leonido Lumanog that they were treasure hunting in Mabalacat, Pampanga on the day in question, lack credence as they are unsupported by the testimonies of independent witnesses. At any rate, Rameses de Jesus admitted that they were using the new car of Leonido Lumanog. Hence, it was not physically impossible for them to travel to Quezon City via the North Expressway at the time the crime took place.

Augusto Santos claims that he was at the Fabella Hospital in Sta. Cruz, Manila, and his alibi was corroborated by his brother-in-

⁸ People vs. Platilla, G.R. No. 126123, Manila, 1999, citing People vs. Aguilar, 279 SCRA 52 (1997) in turn citing People vs. Malazarte, 261 SCRA 482 (1996)

⁹ People vs. Ballesteros, 285 SCRA 438 (1998), citing People vs. De Roxas, 241 SCRA 695 (1995); People vs. Castaneda, 252 SCRA 247 (1996)

law, Jonas Padel Ayhon, who is not an impartial witness. Where nothing supports the alibi except the testimony of a relative, it deserves scant consideration.¹⁰

"Alibi becomes less plausible as a defense when it is merely established by the accused himself and his immediate relatives and not by credible persons."¹¹

Finally, Cesar Fortuna claims that he was in Camp Crame on the day the murder took place. But it was not impossible for him to have gone to Katipunan Road, Blue Ridge, which is relatively near Camp Crame when the shooting happened around 8:40 in the morning. After the shooting, he could have easily and quickly transferred to Camp Crame between 9:00 and 9:30 in the morning of the same day.

In any event, appellants' alibis were belied by the positive identification made by prosecution eyewitness Freddie Alejo.

"Positive identification of the accused, where categorical and consistent and without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing proof are negative and self-serving evidence undeserving of weight in law."¹²

So must it be in the case at bench.

Further, appellants' allegations that the police authorities maltreated them, and forcibly extracted their extra-judicial confessions do not exculpate them from criminal liability. For one, their conviction was not based on their extra-judicial confessions, but on their positive identification by Freddie Alejo as the authors of the crime. Such positive identification is totally independent of their extra-judicial confessions. For another, the Constitutional guarantees contained in the Bill of Rights¹³ cannot be used as a shield whereby a person guilty of a crime may escape punishment. Thus, the Supreme Court

¹⁰ People vs. Waggay, 218 SCRA 742 (1993)

¹¹ People vs. Joya, 227 SCRA 9 (1993)

¹² People vs. Villablanca, 316 SCRA 14 (1999)

¹³ Sections 12 (1) and (3), Article III, Philippine Constitution

in *Draculan vs. Donato*,¹⁴ held.

"x x x. Pangalawa, ang mga karapatan ng mga mamamayan na natatala sa Saligang Batas (sa Bill of Rights) ay hindi mga paraan upong ang isang tunay na may pagkakasala na labag sa batas ay makaligtas sa nararapat na pagdurusa. Ang tunay na layunin ng mga tadhanang iyon ng Saligang Batas ay walang iba kundi tiyakin na sinumang nililitis ay magkaroon ng sapat na pagkakataon at paraan na maipagtanggol ang sarili, bukod sa pagbabawal ng pagtanggap ng katibayan (evidence) laban sa kaniya na bunga ng pagpipilit, dahas at iba pang paraang labag sa kaniyang kalooban."¹⁵

To repeat, assuming that appellants' allegations of torture were true, the same do not exculpate them from liability for the crime which the People had adequately established by independent evidence, neither was their claim that the results of the ballistics test purportedly showing that the bullets and bullet shells found in the crime scene did not match with any of the firearms supposedly in their possession. But these ballistic results are inconclusive and can never prevail over appellants' positive identification by eyewitness Freddie Alejo as the persons who perpetrated the ambush-slay of Col. Abadilla. Besides, there is no showing that the firearms supposedly found in appellants' possession long after the incident were the same ones they used in the ambush-slay.

Lastly, on the claim of appellants that the lower court erred in appreciating the presence of treachery and evident premeditation, we find that the lower court was correct in its findings that there was treachery and evident premeditation.

It is not disputed that at the time of the attack, the victim was shot while he was driving. His attention was concentrated on the road. He was, therefore, completely taken by surprise and unable to defend himself when suddenly appellants approached and fired at him. Two (2) of them did the actual firing (Leonido Lumanog and Cesar Fortuna) while the others (Augusto Santos, Rameses de Jesus, and Joel de Jesus) all armed, acted as look-outs. The speed

¹⁴ 85 SCRA 267 [1978]

¹⁵ Records, p. 1507

and precision by which the ambush-slay was done left Col. Abadilla totally defenseless, thus, insuring the execution of the crime without risk to appellants. This is treachery. It is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly, and specifically to insure its execution, without risk to himself arising from the defense which the offended party might make (Article 14 [16], Revised Penal Code, as amended).

Evident premeditation also attended the killing of Col. Abadilla. Freddie Alejo stressed that as early as 7:30 in the morning of June 13, 1996, he already noticed something unusual going on, such as the pacing back and forth of appellants Joel de Jesus and Lorenzo Santos along Katipunan Road indicating that something was afoot. They were expecting Col. Abadilla to pass that way. This was an hour before the actual slay of Col. Abadilla. In *People vs. Dumdum*,¹⁶ there is evident premeditation if the accused conceived of the assault at least one (1) hour before its execution.

The mode of execution of the ambush-slay is indicative of conspiracy among the five (5) appellants. Every one of them had a specific role. Thus, Fortuna and Lumanog were the designated hitmen, while the rest were the look-outs. Consequently, their liability is that of co-principals to the crime of murder.

"It is firm rule that where conspiracy is shown to exist, all the conspirators are liable as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one conspirator is the act of all."¹⁷

Under Art. 248 of the Revised Penal Code, as amended by R.A. 7659 (which took effect on December 31, 1993), the penalty for murder is *reclusion perpetua* to death. Since treachery qualified the killing to murder, evident premeditation may be appreciated as a generic aggravating circumstance. Pursuant to Art. 63 (1) of the Revised Penal Code, in case of two (2) indivisible penalties where

¹⁶ 92 SCRA 198 [1978]

¹⁷ *People vs. Rodico*, *supra*, citing *People vs. Punzalan*, 203 SCRA 365 [1991]; *People vs. Villanueva*, 211 SCRA 403 [1992]; *People vs. Magalang*, 217 SCRA 571 [1993]

there is an aggravating circumstance, the greater penalty of death should be imposed.

In the instant case, since the law does not allow anymore the imposition of death penalty which had been abolished, the decision of the trial court has to be modified.

WHEREFORE, in the light of the foregoing, the impugned decision is **AFFIRMED** with the **MODIFICATION** that the accused-appellants are sentenced each to suffer *reclusion perpetua* without the benefit of parole.

In all other respects, the lower court's decision is **AFFIRMED**.

Costs against appellants.

SO ORDERED.

ORIGINAL SIGNED
AGUSTIN S. DIZON
Associate Justice

WE CONCUR:

ORIGINAL SIGNED
REGALADO E. MAAMBONG
Associate Justice

ORIGINAL SIGNED
CELIA C. LIBREA-LEAGOGO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ORIGINAL SIGNED
REGALADO E. MAAMBONG
Associate Justice
Chairman, Sixteenth Division