

G.R. NO. 182555 – LENIDO LUMANOG and AUGUSTO SANTOS V. PEOPLE OF THE PHILIPPINES;

G.R. NO. 185123 – CESAR FORTUNA V. PEOPLE OF THE PHILIPPINES;
and

G.R. NO. 187745 – PEOPLE OF THE PHILIPPINES V. SPO2 CESAR FORTUNA y ABUDO, RAMESES DE JESUS y CALMA, LENIDO LUMANOG y LUISTRO, JOEL DE JESUS y VALDEZ and AUGUSTO SANTOS y GALANG

X-----X

CONCURRING OPINION

BERSAMIN, J.:

I concur with the thorough ponencia of Mr. Justice Villarama. Indeed, the People established beyond reasonable doubt the guilt of the appellants for the murder charged herein.

Through this humble concurrence, I only desire to spotlight some aspects of the case to banish the unfounded misgivings my two illustrious colleagues, Mr. Justice Carpio and Mr. Justice Abad, so eloquently expressed about the affirmance of the two lower courts' judgments. I would have unhesitatingly joined them in disagreeing with the ponencia had their misgivings been well founded. Alas, I cannot do so, for the records firmly established that the accused were guilty beyond reasonable doubt of the treacherous killing of the victim.

A

In his separate opinion, Mr. Justice Carpio urges the acquittal of all the accused due to the inadmissibility of the positive out-of-court identification of appellant Joel De Jesus (De Jesus) by the eyewitness security guard Freddie Alejo (Alejo) for being tainted with impermissible suggestiveness that cast grave doubt on the reliability of the identification. Mr. Justice Carpio observes that the police had first shown a photograph of De Jesus to Alejo prior to their face-to-face confrontation, and contends that the police thereby implanted in the mind of Alejo the identity of De Jesus as one of the perpetrators of the crime. He concludes that De Jesus was not reliably identified, and insists that the illegally-taken extrajudicial confession (by which he had implicated the other perpetrators) rendered De Jesus' identification of the other accused also baseless and inadmissible.

B

Citing *People v. Rodrigo*,^[1] Mr. Justice Carpio advocates the acquittal of all the accused.

I do not disagree that the Court properly dismissed as unreliable the positive out-of-court and in-court identifications made in *People v. Rodrigo*. The established facts and circumstances in that case fully warranted the ultimate acquittal of Rodrigo, for the presumption of innocence in his favor was not overcome without his reliable identification as one of the robbers.

Yet, I cannot join Mr. Justice Carpio's reliance on *People v. Rodrigo*, because the established facts and circumstances there were not similar to those herein.

People v. Rodrigo was a prosecution for robbery with homicide. There, the Court acquitted Lee Rodrigo, one of the three alleged robbers, because his out-of-court identification by the victim's wife, the lone eyewitness for the State, was held to be defective based on the "totality of the circumstances" and did not come

up to the standard for reliable photographic identification set in *People v. Pineda*.^[2] The Court particularly took into account that Rodrigo had been a stranger to the eyewitness, who had not known him prior to the identification; that the eyewitness had had only a very brief encounter with the robbers (there being no direct evidence on the time the actual robbery and the accompanying homicide had taken); that she (eyewitness) had already known the name of Rodrigo long before she positively identified him, due to a neighbor of hers having told her that one of the malefactors had been Lee Rodrigo; that she could not have focused solely on the robber, because she had actually been closer in proximity to another malefactor; that she had made the out-of-court identification based on Rodrigo's photograph more than a month after the commission of the crime; and that she had been inconsistent on the precise role that Rodrigo had played in the commission of the of the crime.^[3]

The Court noted in *People v. Rodrigo* that the eyewitness, being the wife of the victim and thus an aggrieved party, had hardly been a disinterested witness whose testimony should be equated to or treated as that from a detached party; and concluded that “based on the above considerations, that Rosita's (eyewitness) photographic identification was attended by an impermissible suggestion that tainted her in-court identification of Rodrigo (accused) as one of the three robbers xxx [and] based on the other indicators of unreliability we discussed above, Rosita's identification cannot be considered as proof beyond reasonable doubt of the identity of Rodrigo as one of the perpetrators of the crime.”

In contrast, the records of the present case show that impermissible suggestion did not precede Alejo's out-of-court positive identification of De Jesus as one of the perpetrators of the crime. Alejo's testimony on September 3, 1996 reveals, on the contrary, that Alejo even categorically declined to identify any suspect by mere looking at a photograph, to wit:

ATTY. BAGATSING:

Q Prior to 3:00 o'clock PM of June 19, 1996 on or about 2:00 o'clock PM where were you?

A Perhaps I was on my way I was fetched by the policeman from out agency in Monumento, sir.

x x x

Q After you were fetched from your post or agency in Monumento, where did you go?

A The police officers told me we were going to Fairview, sir.

Q While you were with these police officers on the way to Fairview, did you have any conversation with them?

A This is what happened. On the 18th of June in the afternoon of June 18, 1996, they showed me a picture of a man wearing eyeglasses but I told them I will not point a man in photographs I would like to see him in person.

Verily, the procedure outlined in *People v. Pineda*[4] and *People v. Teehankee*[5] for a proper out-of-court identification was neither disregarded nor violated.

C

The reliability of Alejo's in-court identification of all the accused is being assailed on the ground that the identification of the other accused had supposedly resulted from the illegally taken extrajudicial confession of De Jesus, and that such identification had suffered from flaws, specifically: (a) the discrepancies about the descriptions of two of the accused and their features in Alejo's sworn statement

given a few hours after the commission of the crime; (b) Alejo's having seen the killers only very briefly; (c) the lapse of a considerable length of time between the commission of the crime and Alejo's in-court identification of all the accused sufficed to cast doubt on Alejo's ability to still recall with clarity the details of the crime; and (d) the crime was committed by six perpetrators.

I now address the aforecited misgivings.

The challenge to the reliability of the in-court identification of De Jesus and Lenido Lumanog (Lumanog) was predicated on a report contained in a newspaper article (which was extracted from the internet)[6] to the effect that the “police sketch of [the] killer bore no resemblance to any of the Abadilla 5 (referring to the five accused).”[7] Allegedly, the physical descriptions of De Jesus and Lumanog given in Alejo's sworn statement – that the lookout (De Jesus) was “edad 30-35, 5'5”-5'6” ang taas, maikli ang buhok, kayumanggi” while the other suspect (Lumanog) looked like “25-30 ang edad, payat, mahaba ang buhok na nakatali, maitim, may taas na 5'5”-5'6” – did not match reality, considering that De Jesus actually stood at 5'9” and was only 22 years of age at the time of the commission of the crime, and Lumanog was 40 years old and fair complexioned (kayumanggi), not dark skinned (maitim) at the time of the in-court identification.

With all due respect, the inconsistencies are more apparent than real, and did not discredit the positive in-court identification of all the accused.

To state that a police sketch of the killer bore no resemblance to any of the accused is to make a very subjective assessment. It is worth nothing in forensic determination. At any rate, a discrepancy between a police artist's sketch of a perpetrator of a crime based on descriptions of witnesses at the scene of the crime, on one hand, and an actual identification of the perpetrator by an eyewitness given in court, on the other hand, is a very minimal factor of doubt on the reliability of the identification. In any criminal prosecution there are more and better circumstances to consider other than the initial sketch of a police artist for determining the reliability of an identification. We have to remember that a police

artist's sketch of a perpetrator of a crime is initially for purposes of pursuing an investigation, and has seldom any impact on the case after that.

That there might be a discrepancy between the alleged actual height of De Jesus and eyewitness Alejo's estimate of it did not negate the reliability of the latter's in-court identification of the former as the lookout who had pointed a gun at the latter. The records show that Alejo was standing inside his elevated guardhouse at the time of the commission of the crime, from where he had a clear view of the incident and of the persons involved. His good vantage point was confirmed during the ocular inspection conducted by the trial judge,[8] who observed for the record the high visibility of the events from such vantage point. Moreover, Alejo definitely had a good look at De Jesus, considering that the latter himself twice shouted at and even poked his gun at Alejo. Lastly, any discrepancy between Alejo's estimate and the alleged actual height of De Jesus was easily accounted for by the higher location of Alejo in relation to De Jesus. This explanation is made plausible by the fact that Alejo's estimation was off by only three to four inches.

Alejo's description of Lumanog's pony-tailed long hair at the time of the commission of the crime did not also detract from Alejo's reliability by reason of Lumanog's hair at the time of his arrest being shorter. There is no question that Lumanog could have meanwhile cut his hair to look different (which he had a good motive to do). I might doubt the identification had Alejo described Lumanog's hair as very short at the time of the commission of the crime, due to the physical impossibility for hair to grow beyond a couple of inches within the span of the two months between the commission of the crime and his arrest.

The discrepancy between Alejo's recollection of Lumanog's dark skin tone at the time of the commission of the crime (maitim) and the latter's lighter one at the in-court identification (kayumanggi) did not diminish the reliability of Alejo as an eyewitness. For one, Alejo declared when asked that he had described Lumanog as maitim instead of kayumanggi because, to him, maitim and kayumanggi meant the same thing.[9] Also, as Mr. Justice Villarama rightly indicates in his ponencia, the variance in Lumanog's skin tone depended on the degree of his exposure to sunlight. Consequently, Lumanog's lighter skin tone at the time of his in-court identification as compared to his skin tone when arrested was really attributable to the lessened exposure to the sun during the period of over two months of his incarceration.

I have no doubt in my mind that whatever were the perceived discrepancies in Alejo's recollection of the event and the persons involved in it related only to minor and collateral matters, and did not diminish the veracity and weight of his positive identification of the accused as the heartless assailants of the victim.[10] That the laws of physics and our daily human experience easily explained the perceived discrepancies affirms that such discrepancies were not factors of doubt that depreciated, but rather increased, Alejo's value as an eyewitness. For, as all courts ought to know, no person who may be a witness in court possesses perfect faculties of observation or unerring senses of perception. Thus, the courts are often reminded to disregard discrepancies in testimony when the essential integrity of the State's evidence in its material whole is not damaged by such discrepancies. The courts are instructed instead to regard the discrepancies as erasing the suspicion that the testimony was rehearsed or contrived. Verily, honest inconsistencies usually serve to strengthen rather than destroy the witness' credibility.[11]

D

Alejo testified in court for the first time on August 20, 1996, or only over two months following the commission of the crime. Yet, Mr. Justice Carpio regards the interval as "a considerable length of time" that rendered unreliable Alejo's recollection of the significant circumstances of the crime, particularly the identities of the malefactors.

I concede that what is "considerable length of time" that can affect the integrity of testimony solely based on recollection cannot be defined with any consistency. In my long experience as a trial judge for over 16 years,[12] however, I never regarded the short period of only slightly over two months between the commission of the crime and the court testimony of an eyewitness as "a considerable length of time" sufficient to warp and distort testimonial recollection. In this particular instance, that the eyewitness was a trained security guard is even a better reason to hold that the lapse of over two months from the commission of

the crime to the time of his giving testimony did not weaken his recollection.

In fact, I find that Alejo remained consistent and unshaken in his recollection of the circumstances of people, acts and place, despite his standing as a witness in court for nine days (that is, August 20, 21, 22, 28 and 29, and September 3, 4, 5 and 17, all in 1996). My finding is based on his not wavering or not varying from his earlier eyewitness account of the crime despite his exhaustive cross examination on eight of those nine days.

E

The integrity and reliability of Alejo's identification of the accused were even fortified in the course of the trial.

To insulate Alejo's in-court identification of the accused from the prejudicial effects of prior improper suggestion made by the police, if any, the Defense deliberately subjected to a severe test the trustworthiness of his recollection when the time came for Alejo to make the identification in court by resorting to moves that would confuse him and would make the identification difficult. Specifically, the several accused donned regular clothing, instead of the regulation orange prison shirts; and commingled with the public inside the courtroom, with some putting on eyeglasses.

As the following excerpts from the records of the proceedings reveal, Alejo creditably hurdled the test, viz:

PROS. CHUA CHENG:

Q: Mr. Witness, you said that if you will be able to see those six (6) persons

again you will be able to identify them?

A: Yes, mam.

x x x

Q: The person who first pointed the gun at you and told you to 'bumabaka' (sic), if he is inside the courtroom will you please step down from your place and tap the shoulder of that person or point at him if that person is inside the courtroom...

ATTY. AZARCON:

I object to the pointing, your Honor, no basis to the identity of the suspects mentioned from 1 to 6, your Honor.

PROS. CHUA CHENG:

That is the reason why we requested the witness to point to the suspect, your Honor. Before the witness comply with the request, may we request that whoever pointed by the witness be (sic) refrained from any comment, your Honor.

Q: Inside the courtroom ... will you please look around the court room and tell us if these suspects #1, 2, 3, 4, 5, & 6 are inside the court room. (sic)

INTERPRETER:

Witness looking around the courtroom.

ATTY. CORPUZ:

May we request, your Honor, that all those persons wearing glasses including lawyers removed (sic) their eyeglasses.

ATTY. AZARCON:

Your Honor, that is uncalled for. That is not necessary.

PROS. CHUA CHENG:

May we move, your Honor, that all persons inside the courtroom to sit down.

COURT:

All persons inside the courtroom please sit down.

PROS. CHUA CHENG:

Q: Are all these six (6) persons inside the court room?

A: Yes, mam.

Q: This number 5 the person who first pointed a gun at you and told you 'babaka' (sic), will you please pointed (sic) to us?

INTERPRETER:

Witness went down from the witness stand and approaching to the group of persons and witness pointing to a man seated in the courtroom wearing stripe polo and when asked to identify himself he gave his name as JOEL DE JESUS.

x x x x

PROS. CHUA CHENG:

Q: This person referred by you as #1 the person who got the clutch bag, grabbed the neck and pulled the victim outside the car, is he inside the courtroom?

A: Yes, maam.

Q: Please step down and pointed (sic) to us that person?

INTERPRETER:

Witness went down from the witness stand and approaching to the group of persons and witness pointing to a man wearing maroon T-shirt and when asked to identify himself he gave his name as LENIDO LUMANOG.

x x x x

PROS. CHUA CHENG:

Q: This #2 which you referred to in the picture if he is inside the courtroom, will you please point him to us?

INTERPRETER:

Witness stepping down from the witness stand and approaching the group of people and pointed at a man wearing printed polo shirt and when asked to identify himself he gave his name as RAMESES DE JESUS.

ATTY. CORPUZ:

May we make it of record that the person pointed to by the witness who answered the name as RAMESES DE JESUS even transferred his position from the group of the suspects to the right side of the audience and that is also true with accused LENIDO LUMANOG that before the identification was made he

transferred his sitting position and even used eye glasses, your Honor.

X X X

INTERPRETER:

Witness stepping down from the witness stand approaching the group of people and pointed at a man and when asked to identify himself he gave his name as LORENZO DELOS SANTOS.

X X X

INTERPRETER:

Witness stepping down from the witness stand approaching the group of people and pointed at a man and when asked to identify himself he gave his name as AUGUSTO SANTOS.

X X X

INTERPRETER:

Witness stepping down from the witness stand approaching the group of people and pointed at a man and when asked to identify himself he gave his name as CESAR FORTUNA.[13]

F

Neither did the fact that Alejo's initial sworn statement had described only two suspects dent his credibility, considering that he did not at all state or declare therein that he could not describe the other suspects. On the other hand, he asserted that he could do so when required.

G

That Alejo had the full opportunity to take in the circumstances of the killing of the victim and should be accorded the highest reliance is beyond question. He had a close proximity to the vehicle of the victim and to the accused. His vantage point from his elevated position inside the guardhouse gave him a frontal view of the commission of the crime. The circumstances played out like a scene from an action-packed movie right before his very eyes, as confirmed by the trial court's ocular inspection of the scene of the crime. His boldness in looking at what was happening in his presence until finally forced at gunpoint to look away was made plausible by his being a security guard then on duty in that area.

The insinuation that Alejo could not have observed enough and thus could not reliably recall the persons and events in view of the fleeting character of the encounter was at best speculative. We should not ignore that Alejo was a security guard who had undergone some professional training that included how to respond to a crime committed within his area of responsibility. With his training investing him an appreciation of the crucial importance of identification and discernment, he was not likely affected by the excitement of the startling situation, unlike an untrained observer.

H

For his part, Mr. Justice Abad similarly assails the credibility of Alejo as an eyewitness able to reliably identify the perpetrators of the crime. He rejects an outright reliance on the factual findings of the trial court mainly because the trial judge who penned the decision had not been the same judge who had heard the testimony of Alejo and had thus observed his demeanor. He urges, instead, that the place to start is Alejo's lack of ill motive in testifying against the accused, which, if true, would render him trustworthy enough. He states that Alejo did not lack ill motive, in light of the revelation that the family of the victim had sheltered him and had extended financial benefits to him, thereby tainting his testimony.

I take a contrary view.

That the judge who wrote the decision had not heard all the testimonies of the prosecution witnesses did not taint or disturb the decision,[14] or did not necessarily render it assailable,[15] for, after all, he had before him the records of the trial, including the transcripts of the stenographic notes (TSNs). This, among others, explains why all trial courts are required to be courts of record.[16]

The validity of a decision is not impaired when its writer only took over from another judge who had earlier presided at the trial, unless there is a clear showing of grave abuse of discretion in the appreciation of the

facts.[17] No such grave abuse of discretion was shown herein. The trial records demonstrate, on the contrary, that the factual findings of the trial court and the assessment of the credibility of Alejo as an eyewitness rested on a most careful and thorough study of the evidence adduced by both parties. Indeed, although he did not observe the demeanor of Alejo as a witness, the writing judge (Judge Jaime N. Salazar) was not entirely deprived of a proper sense of Alejo's demeanor considering that the TSNs were replete with the detailed manifestations on Alejo's appearance, behavior, deportment, disposition, and mien during the many days of his testimony that the various counsel of both parties zealously put on record for memorialization.[18]

Indeed, a decision rendered by a judge who has not himself received the evidence during the trial and has relied on the TSNs of the trial is as good and binding as one rendered by a judge who has seen and heard the witnesses as they testified in court. It is up to the party disagreeing with the dispositions contained in the former's decision to establish that the rendering judge ignored some facts or misappreciated material evidence. A mere generalized attack against such decision should not diminish its value as a judicial adjudication. Otherwise, we would frequently have the undesirable situation of the accused forcing the trial judge receiving the evidence and observing the demeanor of the witnesses to self-inhibit from the case once the State completed the presentation of its evidence in order to prevent another judge from rendering the proper judgment against the accused.

I

Mr. Justice Abad imputes to Alejo the ill-motive to fabricate his testimony in order to favor the Prosecution and the family of the victim due to the latter's sheltering him and extending to him some financial or economic benefits. He implies that Alejo not only disregarded his earlier physical descriptions of the two armed men involved in the commission of the crime, but actually enhanced his impression of the actual shooting in consideration of his intervening affinity with the victim's family.

The mere imputation of ill-motive without proof was speculative at best. To start with, that the family of the victim might have extended economic or financial support to Alejo did not necessarily warrant the presumption of bias on the part of Alejo as a witness. There was no evidence showing that any such support was for the purpose of unduly influencing his testimony. Likelier than not, the support was only an expression of the family's appreciation for his cooperation in the public prosecution of the culprits, or for his resolve to ensure the successful prosecution of the perpetrators.

J

Mr. Justice Abad contends that Alejo's eyewitness account was further suspect in light of the following observations: (a) Alejo did not take any steps to anticipate and prevent trouble despite having observed two strangers walking to and fro in front of the establishment he was then guarding; (b) Alejo did not see what was happening on the street because he was seated inside the guardhouse with his back slightly turned towards the street; (c) Alejo did not see which of the four strangers stood at which side of the car of the victim, because his attention was already focused on De Jesus and the latter's gun poked at his face; (d) Lumanog could not possibly hold a gun in one hand and grab the victim's neck with the other, and still manage to reach for the clutch bag of the victim inside the car; (e) Alejo could not focus his attention on De Jesus and still simultaneously examine the faces of the other four perpetrators who were standing by the car of the victim in a short span of time; (f) Alejo identified all the accused as the perpetrators of the crime through photographs and while the accused were already in custody; and (g) the accused could not have turned to face Alejo in unison as if posing for a class picture.

I disagree.

On the failure to make any preemptive move upon noticing the two strangers walking to and fro in front of the establishment he was then guarding, Alejo clarified during his cross examination that he became more alert after noticing the two strangers,[19] but he explained why he did not confront the two strangers, to wit:

ATTY. BUTED (to the witness)

Q Did you confront these 2 men?

A No sir.

Q And since you consider it unusual and you are a security guard, why did you not confront these 2 men?

x x x

A I can't do that sir because according to the law of security guards you cannot ask passersby or any person for that matter who haven't done anything unlawful.

x x x

Q Were you not apprehensive that these 2 men would do something to you or to the establishment?

ATTY. CORPUZ

Already answered your Honor please, because the security guard answered he became alert when he noticed these 2 men walking to and fro.[20]

On the implausibility of Alejo actually seeing what was happening on the street due to his back being then slightly turned towards the street while he was seated inside the guardhouse, I submit that this attempt to discredit emanates from a wrong interpretation of tagilid ang upo, Alejo's description of his position inside the guardhouse.

How good a vantage point did Alejo have when he witnessed the crime was ascertained during the ocular inspection of the scene of the crime conducted by the trial judge on September 26, 1996. The ocular inspection confirmed that the car of

the victim was not directly in front of the guard house, but a few meters further down the road to the right; and that Alejo's stool, relative to the front portion of the store facing Katipunan Avenue, positioned him at an angle towards the car of the victim and the southbound direction, i.e., White Plains/Blue Ridge area. With himself taking the position of Alejo inside the guardhouse, the trial judge then observed for the record that he "can see the car very clearly even if the car would be moved back by another segment also xxx and the Court observes that from the guard post the faces of the persons beside the car are very clear." [21] The trial judge also recorded that even if Alejo had been tagilid ang upo, [22] the means to observe the goings-on for anyone in that position of Alejo were still unhampered, thus:

COURT:

The Court observed that from where witness Alejo was he can still see the whole car as it has been moved back per the directive of Major Villena. [23]

x x x

INTERPRETER:

Witness demonstrating how suspect No. 1 took the clutch bag from the front passenger seat by leaning his body forward into the car over the body of the victim slumped on the steering wheel, and after the taking of the clutch bag, the witness puts his right arm around the victim's neck while standing on the left side of the victim as both face the front of the car.

COURT:

After the demonstration while witness Alejo was demonstrating how he got the clutch bag and how he grabbed the neck of the driver of the black car, the Judge was at the guard post [house] and saw for himself that he clearly saw the taking of the clutch bag even if the untinted windows were closed and the pulling of the driver of the black car.[24]

Next, to insist that Alejo could not have noticed where the four assailants had stood in relation to the car of the victim due to his (Alejo) attention being already focused on De Jesus and the gun that De Jesus had poked at Alejo's face was, again, to speculate. The records do not contain any factual foundation for such insistence. Instead, the sequence of events indicated that Alejo had the ample opportunity to commit to memory the facial descriptions of the perpetrators. Moreover, it is noted that Alejo had first noticed the presence of the two strangers walking to and fro nearly an hour prior to the shooting of the victim, which means that his observation of them was ample enough. This belied the unsupported claim that he had only a mere fleeting glance of De Jesus and his cohorts.

It is also clear that Alejo continued to watch the unfolding scene and the various persons involved. He had ignored the first shouted command for him to get down (dapa) and had continued to observe until the second command for him to get down, with the gun poked directly in his face, was harshly shouted at him.

On the impossibility of Alejo's claim that Lumanog held a gun with one hand and grabbed the victim by the neck with the other, while also reaching for the victim's clutch bag, inside the car, it seems that Lumanog was being simplistically projected to have simultaneously done all such actions.

I cannot accept such simplistic projection. It is evident that Lumanog executed his acts in sequence. His sequential execution was easy for him to do, for the victim's upper torso, including the neck and face, had by then been riddled with bullets, leaving the already lifeless victim slumped over the steering wheel of his own car. Obviously, Lumanog became confident enough to open the car door in order to reach for the clutch bag of the victim with his right hand, having transferred his gun to his left hand. His reaching right hand had to curve around the slumped body of the victim.

Describing the situation during his cross examination, Alejo recalled not anymore seeing the gun in Lumanog's right hand at the point when Lumanog reached in for the clutch bag of the victim.[25] Understandably, Lumanog was holding the gun with his left hand because there was no more need for him at that point to hold the gun with his right hand.

In the course of the ocular inspection conducted on September 26, 1996, Alejo demonstrated how Lumanog had stood at the left side of the victim (with both Lumanog and the victim facing the front of the car) and how in that position Lumanog had curved his right arm around the victim's neck in order to pull the victim's body partly out of the car and onto the pavement, when he had then delivered a final shot to the head.[26] Without any resistance from the lifeless victim, Lumanog had then easily reached for the clutch bag with his right hand.

The thing about all the accused improbably turning in unison towards Alejo as if posing for a class photograph did not reflect what is in the trial records.

The records proved that Alejo's ample personal observation of what each of the attackers backstopped the reliability of his identification of the attackers. It was definitely not as if his observation occurred in an "infinitesimal second," as Mr. Justice Abad has put it. We note that the others turned towards Alejo's direction by reflex upon hearing the loudly shouted command of De Jesus for Alejo to lie low in his guardhouse. The following excerpt from Alejo's testimony bears it out:

ATTY. BUTED (to the witness)

Q Because you were not nervous and you were not scared?

A Yes sir.

Q When for the second time when he said “dapa”, what did you do?

A When he shouted at me “dapa” his companions faced me because of his loud voice.

Q Whom do you mean companions?

A The one that was at the right rear side, another one at the left rear side and another one was at the right front side.

Q So that’s all?

A No sir there was another one, one of the 2 men who were earlier walking to and fro who was at the corner also faced me and pointed the gun at me.[27]

Indeed, the loudly shouted command of De Jesus made his cohorts instantaneously turn towards Alejo’s direction, because it was there where the shout had come from. Their facing towards that direction was reflexive, because De Jesus had been the lookout designated to ensure their safety. Their common reaction of looking in his direction further enabled Alejo to have a good look at their faces, which were not concealed by masks or other disguises, as the trial judge noted in the order dated January 25, 2000, thus:

13. Indeed, the court is impressed with the brazenness that the shooters/gunmen and the look-out had displayed during the actual ambush incident as they did not even cover their faces with masks or bonnets so as to conceal their identities considering the time and place. It is not surprising, therefore, that they were not also smart enough but had the audacity to go on their daily routine as if nothing petrifying had happened.[28]

I

Mr. Justice Abad contends that the presence of any of the accused at the scene of the crime was not established because “none of the fingerprint marks on [the hijacked] vehicle (KIA Pride) matched any of those of the accused.”[29]

The contention has no basis.

Worth clarifying is that the Defense did not present in this case any credible evidence, exculpatory or otherwise, on the fingerprints. Although the Defense presented Mrs. Remedios Dedicatoria, a fingerprints expert, to testify on the fingerprints lifted from the vehicles involved in this case, her testimony on the matter turned out to be untrustworthy in view of her admission on cross examination that she had not been present or involved in the lifting of the fingerprints from either the hijacked KIA Pride or the victim’s Honda Accord. In fact, she had had no contact with the vehicles, as the following excerpt of her testimony indicated:[30]

ATTY. CORPUZ:

Are you sure, Madam witness you were present when all those fingerprints were lifted Madam witness?

X X X

ATTY. CORPUZ:

Are you sure you were present when the fingerprints were lifted, allegedly taken from the two (2) cars, Honda Accord car and KIA pride (sic) Madam witness?

WITNESS:

I was not the one who lifted the latent prints. I was not present sir.

ATTY. CORPUZ:

In short, you were not present when all those fingerprints were taken from these cars, Honda Accord and Kia Pride Madam witness?

WITNESS:

Yes sir.

Moreover, Mrs. Dedicatoria was exposed as a lying witness. In a clear attempt to conceal from the trial court her failure to personally lift the fingerprint marks off the hijacked KIA Pride, she professed to know the whereabouts of the

vehicle. On cross examination, however, her prevarication was exposed, viz:

ATTY. CORPUZ:

Is it not a fact that Madam witness, that car KIA Pride car was found at the Police station near 10th Avenue or another street, not in Katipunan Avenue, is it not Madam witness?

WITNESS:

It was at Katipunan Road, sir.

ATTY. CORPUZ:

Where in Katipunan Madam witness?

WITNESS:

At Project 4 sir.

ATTY. CORPUZ:

Which place in Project 4, in relation to this Honda Accord car Madam

witness?

WITNESS:

Bayanihan Street sir.

x x x

ATTY. CORPUZ:

How far was that KIA Pride to the Honda Accord when you lifted latent prints, how many meters away when you lifted that latent prints Madam witness?

WITNESS:

About fifteen (15) to twenty (20) meters away sir.[31]

As the records reveal, the perpetrators had abandoned the hijacked KIA Pride on Aguinaldo Street in Project 4, Quezon City, near its intersection with J.P. Rizal Street. The vehicle was, therefore, nowhere on Katipunan Avenue; neither was it anywhere near the Honda Accord of the victim, least of all a mere 15-20 meters away from the latter vehicle.[32]

Nonetheless, even assuming that Mrs. Dedicatoria was a competent witness, certain factors might still render her testimony on the absence of fingerprints inconclusive, namely:

(a) Fingerprints made on smooth surfaces (like the exterior of the vehicles) could easily be wiped off, or erased;

(b) If the fingerprints of the victim and of Lumanog were not found on the door handle of the victim's car,[33] the simple explanation was that the victim and Lumanog possibly lifted the handle from its underside. It is notable that, as Mrs. Dedicatoria admitted, no examination was made on the underside of said handle; and

(c) No thorough examination for fingerprints was done on the cars, considering that even the victim was said not to have left any fingerprints on the Honda Accord despite his having owned and driven it on the fatal day.[34]

In fine, the Dactyloscopy Report and the expert testimony of Mrs. Dedicatoria were inconclusive, and should not be relied upon to disprove the actual presence of the accused in the place and scene of the crime at the time of its commission.

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Mr. Justice Abad states that the slug recovered from the body of the victim matched the slug taken from a "known victim of the Alex Boncayao Brigade (ABB) of the New People's Army." He then concludes that those responsible for the murder of the victim were also from the ABB. Hence, he deduces that because "none of the accused had been identified with the ABB, they could not have been involved in that killing."

The concern about the slug extracted from the victim being ballistically similar to the slug extracted from a known victim of the ABB is devoid of factual

justification and deserves no consideration.

In his order dated January 25, 2000 denying the motion for reconsideration and/or new trial filed by the accused grounded on the same concern, the trial judge explained very well why the concern was unfounded, thus:

9. The transference of responsibility to the ABB for the ambush-slay of the victim is based on alleged news reports. Said news reports are hearsay and not admissible in evidence. The requisites on the applicability of the rule on declaration against interest, as an exception to the hearsay rule, were not convincingly shown before this court as being present in such alleged press statements by the ABB;

10. While the records do not indicate that accused were ABB operatives, the same records do not bear that they are not. Anyone can simply claim that he is not the one who he is or who he is not xxx.[35]

It is relevant to remind that the Court itself has already affirmed the propriety of the aforesaid order dated January 25, 2000 in *Lumanog, et al. v. Hon. Salazar, Jr.*[36]

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The urging to take judicial notice of the fact that the victim was a natural target of the ABB for being the former head of the Metropolitan Command Intelligence and Security Group (MISG) of the Philippine Constabulary during the Marcos regime is unwarranted.

The victim's heading the MISG was not material to the question of whether or not the State established beyond reasonable doubt the guilt of all the accused herein for the crime charged. Taking judicial notice that the victim was a natural target of

the ABB is even improper, considering that such fact could not be reasonably inferred from his having headed the MISG during the Marcos regime. For sure, that the victim was a natural target of the ABB was neither a matter of public knowledge, nor capable of unquestionable demonstration, nor ought to be known to judges by reason of their judicial functions.[37] Lastly, the Court no less, albeit on another occasion,[38] already declared that “appellations or opprobriums” would not sway it against the victim, Col. Rolando N. Abadilla, observing:

The Court is not unaware that accused-respondent Abadilla, rightly or wrongly, is identified with the violent arm of the past regime. To many, he is regarded with unusual ease and facility as the “hit man” of that regime. The Court, however, is not swayed by appellations or opprobriums. Its duty, as a temple of justice, is to accord to every man who comes before it in appropriate proceedings the right to due process and the equal protection of the laws.

CONCLUSION

In our resolution of this appeal, we should be guided only by the weighty and competent evidence on record. We should resolve with objectivity and detachment. We should eschew speculation and passion. We should not allow angles or theories not supported by the evidence on record to distract us.

Convinced that the presumption of innocence in favor of the accused was sufficiently overcome by the State, I vote to dismiss the consolidated petitions of the accused, and to affirm their conviction for the felony of murder.

LUCAS P. BERSAMIN

Associate Justice

[1] G.R. No. 176159, September 11, 2008, 564 SCRA 584.

[2] G.R. No. 141644, May 17, 2004, 429 SCRA 478, 497; citing *People v. Teehanke, Jr.*, G.R. No. 111206-08, October 6, 1995, 249 SCRA 54, 95.

[3] The actual confrontation between the eyewitness and the accused occurred five and a half months after the commission of the crime; and the in-court identification was conducted 15 months after the commission of the crime.

[4] Note 2, *supra*, viz:

The procedure on proper identification requires that, firstly, a series of photographs, not merely that of the suspects, must be shown and; secondly, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.

[5] G.R. No. 111206-08, October 6, 1995, 249 SCRA 54, 95, to wit:

In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, to wit: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.

[6] See note 5, *Separate Opinion*, p. 6.

[7] *Id.*

[8] The trial judge was then RTC Judge Jose C. Mendoza, now a member of the Court.

[9] TSN, August 22, 1996, p. 100.

[10] *People v. Mercado*, G.R. No. 116239, November 29, 2000, 346 SCRA 256, 280-281.

[11] *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 282; citing *People v. Pateo*, G.R. No. 156786, June 3, 2004, 430 SCRA 609, 615.

[12] From November 6, 1986 until March 10, 2003.

[13] TSN, August 20, 1995, pp. 49-63.

[14] *People v. Ulzoron*, G.R. No. 121979, March 2, 1998, 286 SCRA 740, 748.

[15] *People v. Sorrel*, G.R. No. 119332, August 29, 1997, 278 SCRA 368, 377; citing *People v. Hatani*, G.R. No. 78813-14, November 8, 1993, 227 SCRA 497, 508.

[16] *People v. Tamayo, et al.*, G.R. No. 138608, September 24, 2002, 389 SCRA 540, 551-552.

[17] See note 15; citing *People v. Sadiangabay*, G.R. No. 87214, March 30, 1993, 220 SCRA 551.

[18] At one point, more than ten lawyers were collectively involved in the prosecution/defense of this case.

[19] TSN, August 21, 1996, p. 22.

[20] *Id.* at pp. 23-24.

[21] TSN, September 26, 1996, pp. 21-22.

[22] *Id.* at p. 23.

[23] *Id.* at p. 38.

[24] *Id.* at p. 69.

[25] Id. at p. 69.

[26] See note 19.

[27] Id. at p. 76.

[28] Order dated January 25, 2000 (Criminal Case Nos. 96-66679-84, p. 7).

[29] Additional Reflection, p. 6.

[30] TSN, January 9, 1998, pp. 140-141.

[31] Id. at pp. 135-139.

[32] See note 11 of the Decision, p. 5.

[33] Id. at pp. 124-125.

[34] Id. at p. 128.

[35] Order dated January 25, 2000, p. 6.

[36] G.R. No. 142065, September 7, 2001, 364 SCRA 719.

[37] Section 2, Rule 129, Rules of Court.

[38] *People v. Asuncion*, G.R. No. L-80066, May 24, 1988, 161 SCRA 490, 499.