



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 187731

Present:

- versus -

CARPIO,<sup>+</sup> *Acting Chief Justice,*  
DEL CASTILLO,  
ABAD,<sup>\*\*</sup>  
PEREZ, *and*  
PERLAS-BERNABE, *JJ.*

SPO1 ALFREDO ALAWIG,  
*Accused-Appellant.*

Promulgated:

SEP 18 2013

X ----- X

DECISION

DEL CASTILLO, J.:

For final review is the November 3, 2008 Decision<sup>1</sup> of the Court of Appeals (CA), affirming with modification the May 17, 2005 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 11, Manila, finding SPO1 Alfredo Alawig (appellant) and SPO2 Enrique M. Dabu (SPO2 Dabu) guilty beyond reasonable doubt of the crime of murder.

*Factual Antecedents*

Appellant, along with PO3 Romeo Ventinilla (PO3 Ventinilla), was initially charged with homicide for the killing of PO3 Miel de Ocampo Café (victim). Upon motion of Percelita Café (Percelita), the victim's mother,<sup>3</sup> a reinvestigation of the case was conducted. Subsequently, the Deputy Ombudsman for the Military approved the filing of an Amended Information<sup>4</sup> against appellant.

<sup>1</sup> Per Special Order No. 1548 dated September 16, 2013.

<sup>\*\*</sup> Per Raffle dated September 2, 2013.

<sup>1</sup> CA *rollo*, pp: 256-268; penned by Associate Justice Isaias P. Dicedian and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

<sup>2</sup> Records, Vol. 3, pp. 1844-1849; penned by Judge Luis J. Arranz.

<sup>3</sup> See Urgent Motion for Reinvestigation, Records, Vol. 1, pp. 43-45.

<sup>4</sup> *Id.* at 169-170.

PO3 Ventinilla together with SPO4 Ponciano Miraples (SPO4 Miraples), PO2 Armando de Vera (PO2 De Vera), SPO2 Dabu and PO2 Vivencio Corpuz (PO2 Corpuz). The Department of Justice accordingly moved for the admission of said Amended Information,<sup>5</sup> which the RTC Manila, Branch 18 granted.<sup>6</sup> The accusatory portion of the Amended Information reads as follows:

The undersigned Ombudsman Investigator, Office of the Deputy Ombudsman for the Military, hereby accuses SPO4 PONCIANO MIRAPLES, SPO1 ALFREDO ALAWIG, PO3 ROMEO VENTINILLA, PO2 ARMANDO DE VERA, SPO2 ENRIQUE DABU and PO2 VIVENCIO CORPUZ of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

That on or about November 30, 1996, or for sometime subsequent thereto, in Marulas, Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused (SPO1 ALAWIG and PO3 VENTINILLA), both public officers, being then members of the Philippine National Police (PNP) Force assigned at the Valenzuela Police Station, armed with various firearms, with evident premeditation, treachery and with deliberate intent to kill, conspiring and confederating with their co-accused (SPO4 MIRAPLES, PO2 DE VERA, SPO2 DABU and PO2 CORPUZ), committing the offense in relation to their Office, did then and there willfully, unlawfully and feloniously shoot PO3 MIEL DE OCAMPO CAFE, causing multiple gunshot wounds on the vital parts of his body which were the direct and immediate cause of his death, to the damage and prejudice of the latter's heirs.

CONTRARY TO LAW.<sup>7</sup>

SPO2 Dabu pleaded not guilty when arraigned on July 1, 1999 as did appellant when arraigned on July 29, 1999. SPO4 Miraples, PO2 De Vera and PO2 Corpuz were never apprehended and remain at large while PO3 Ventinilla met his violent death on February 27, 2001.<sup>8</sup> Per letter<sup>9</sup> of Police Chief Inspector Isidro C. Suyo, Jr. dated March 5, 2001, PO3 Ventinilla "who was tagged as member of the dreaded 'GAPOS GANG' was killed during the encounter with the [police] elements x x x at Rodriguez, Rizal." Accordingly, the case against PO3 Ventinilla was dismissed per Order<sup>10</sup> dated January 31, 2005.

The prosecution presented as witnesses Dr. Fernando Mandapat (Dr. Mandapat), Dr. Valentin Bernales (Dr. Bernales), Aida Pascual (Pascual), MacGregor Reyes (Reyes), Percelita, Sr. Insp. Edison Lopez (Lopez), Joel Lester

<sup>5</sup> See Motion for Leave to Admit Amended Information with Manifestation, id. at 161-165.

<sup>6</sup> See Order dated May 21, 1999, Records, Vol. 2, pp. 441-442. In A.M. No. 99-1-42-RTC, the Court *en banc* issued a Minute Resolution dated February 2, 1999 granting the request of the Department of Justice for the transfer of venue of the trial of the case from the Regional Trial Court of Valenzuela to Regional Trial Court of Manila. Id. at 433.

<sup>7</sup> Records, Vol. 1, p. 169.

<sup>8</sup> See Certificate of Death, records, Vol. 3, p. 1359.

<sup>9</sup> Id. at 1242.

<sup>10</sup> Id. at 1787.

Valdez (Valdez) and Dr. Olga Bausa (Dr. Bausa), whose collective testimonies established the facts of this case as hereunder summarized.

In the early morning of November 30, 1996, the victim and Reyes went to a nearby market. Upon their return, Reyes left the victim at the latter's residence and came back at noon. He did not immediately enter the house as he noticed several policemen strategically positioned on the premises. He saw appellant and PO3 Ventinilla standing by the door shortly before entering the victim's house. He also saw SPO2 Dabu standing at the front gate while PO2 De Vera was on top of the septic tank. Standing at the main door was PO2 Corpuz. To avoid being noticed, Reyes used the alternative road and went inside the house through the back gate. From his position, he could hear the conversation among appellant, PO3 Ventinilla and the victim. The latter who just woke up was told to dress up and bring his firearm as he was summoned by SPO4 Miraples to join a police team in an operation regarding illegal drugs. After the group left the victim's residence, Reyes entered the house. While inside, he received a telephone call from the victim telling him, "*Pare wala pala kaming tatrabahuhin, ako pala ang tatrabahuhin, tulungan mo ako, sumundo ka ng tao na tutulong sa akin.*" But before Reyes could say anything, the telephone conversation was cut. Not long after, Reyes learned that the victim died from gunshot wounds in different parts of his body while inside the premises of Police Kababayan Center I in Doña Ata Subdivision, Marulas, Valenzuela City.

Dr. Mandapat, the physician on duty at the time the victim was brought to the Fatima Hospital (now Fatima Medical Center), conducted the initial post mortem examination. He noticed that the victim had no upper clothing and shoes when he was brought to the hospital by PO2 Corpuz. He identified the Medico-Legal Record<sup>11</sup> and Medico-Legal Report<sup>12</sup> that he prepared.

Dr. Bernales, a medico-legal officer from the National Bureau of Investigation (NBI), corroborated the initial medical findings of Dr. Mandapat. His autopsy report<sup>13</sup> indicates that the victim sustained three gunshot wounds, contusions on the chest, subclavicular area and the forearm, lacerated wounds on the ear and posterior axillary line, and abrasions in post aurical and anterolateral.

Lopez was the Team Leader of the Scene of the Crime Operatives which investigated the shooting incident. The team took photographs and other physical evidence at the crime scene some of which were disturbed and tampered with. Lopez noticed a pool of blood leading to the door of the police station. Six spent shells taken from the office of SPO4 Miraples were placed on the floor by the members of the police station contingent when the team was about to take

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<sup>11</sup> Exhibit "A," Folder of Exhibits.

<sup>12</sup> Exhibit "B," id.

<sup>13</sup> Exhibit "C," id.

pictures. He also noticed that the holes on the wall were not caused by gunshots but by a concrete nail. He invited all the members of the police station contingent to undergo paraffin examination but only appellant and PO3 Ventinilla acquiesced to be paraffin tested. Both of them were positive for gunpowder nitrates.

Dr. Bausa, a medico-legal officer of the PNP Crime Laboratory, conducted a forensic examination on the blood-stained hat, face towel and T-shirt worn by the victim and submitted by the Valenzuela police. According to her, the T-shirt had no bullet holes on the areas where the victim was apparently shot and had no trace of blood.

Percelita testified that sometime in September 1996, the victim confided to her that he earned the ire of his superior and fellow police officers after he apprehended a drug pusher in Valenzuela. She likewise recalled that on November 28, 1996, the victim told her, "*Inay[,] ang Valenzuela ay bulok*" as some high-ranking officials were involved in a drug syndicate. The victim even told her that some unknown persons were following him from time to time. As a result of her son's death, she testified that she suffered moral damages and actual damages amounting to ₱104,000.00. She also spent ₱221,000.00 as attorney's fees.

On the other hand, the version of appellant and SPO2 Dabu as summarized by the CA is quoted hereunder:

On November 30, 1996, at around 1:00 o'clock in the afternoon, accused-appellant Alawig, accused PO3 Ventinilla and PO2 De Vera were dispatched by their Precinct Commander SPO4 Miraples to ARTY Subdivision to respond to a report involving illegal drugs. However, they were not able to proceed to the assigned operation because SPO4 Miraples directed them to go to Gumamela Street to investigate on a reported trouble in the area. When they arrived at the area, the reported trouble was already over, thus, they proceeded to the house of the victim which was also within the vicinity and also to inquire on the trouble which occurred there. They reached the house of the victim while the latter was playing dart with a certain Tomas Beroy. The victim invited the police officers to get inside the house but only the accused-appellant Alawig and Ventinilla entered. The victim admitted to them that he had a quarrel with his wife which caused him to shoot the thermos bottle. Thereafter, the victim joined them in reporting back to the police station in order to explain the alleged trouble that took place in the area where he also resided. The victim brought his armalite rifle and .45 pistol and boarded the owner-type jeep of Ventinilla. When they were about to leave, Ventinilla noticed that the victim was holding a plastic sachet containing "shabu". There, Ventinilla said to the victim, "*Matagal ka nang tinatrabaho ng DILG Parak.*" Upon arrival at the police station, the accused-appellant Alawig went to a store to buy cigarette and, when he returned, he saw the victim and the accused Ventinilla having a heated argument. During the occurrence, Dabu and De Vera left the station to respond to a reported illegal gambling while the victim and Ventinilla went inside the station.

Inside the station, the victim made a telephone call and thereafter the heated argument between the victim and Ventinilla resumed. Alawig could see the events from outside the station where he was seated. He saw the victim [kick] his armalite rifle and [point] it at Ventinilla which the latter tried to impede by holding the end part of the weapon and pointed it upward. At the same time, Ventinilla kicked the table towards the victim which caused the latter to fall down to his knees. At that moment, the victim fired his armalite rifle and, in retaliation thereto, Ventinilla shot the victim x x x several times. Thereafter, Alawig told Ventinilla to stop[,] after which the latter left the scene.<sup>14</sup>

x x x x

For his part, Dabu testified that he was not among those who fetched the victim at his house. He remained at the police station to wait for De Vera before they would respond to a reported illegal gambling somewhere in Pasong Balete Hills. Immediately after De Vera arrived, Dabu left the station with De Vera. They apprehended three (3) persons in their operation and brought them to their station. Upon their arrival at the station, Dabu learned that a shooting incident transpired between the victim and Ventinilla while they were away. Due to the incident, Dabu released the persons he apprehended in an illegal gambling pursuant to an order of his superior, SPO4 Miraples.

### ***Ruling of the Regional Trial Court***

On May 17, 2005, the RTC convicted appellant and SPO2 Dabu of murder qualified by treachery. The RTC also considered the killing of the victim as attended by the aggravating circumstance of evident premeditation. Accordingly, they were sentenced to suffer the penalty of death.

The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered in this case, finding accused Alfredo Alawig and Enrique M. Dabu guilty beyond reasonable doubt of the crime of Murder qualified by treachery. There being attendant in the commission of the offense the aggravating circumstance of evident premeditation without any mitigating circumstance present, the greater penalty shall be applied (Art. 63, par. 1, RPC). Under Art. 48 of the Revised Penal Code as amended by R.A. 7659, the maximum penalty of the crime of Murder is death. Accordingly, both accused Alawig and Dabu, who stand trial, are hereby sentenced to suffer the penalty of death.

Accused Dabu and Alawig are likewise ordered to pay jointly and severally the heirs of the victim, Miel Cafe, compensatory damage in the amount of ₱50,000.00, actual damages in the amount of ₱325,000.00, moral damages in the amount of ₱50,000.00 and exemplary damages in the amount of ₱25,000.00

SO ORDERED.<sup>15</sup>

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<sup>14</sup> CA rollo, pp. 261-262.

<sup>15</sup> Records, Vol. 3, p. 1889.

Considering, however, the failure of SPO2 Dabu to appear during the promulgation of the Decision, the RTC issued an Order<sup>16</sup> directing the issuance of a warrant of arrest. Thereafter, SPO2 Dabu filed a Motion for Reconsideration<sup>17</sup> of the RTC Decision but the same was denied in an Order<sup>18</sup> dated October 25, 2005.

### ***Ruling of the Court of Appeals***

SPO2 Dabu then filed with the CA a Compliance (With Omnibus Motion to (a) Give Due Course to the Appeal, (b) Lift and Set Aside Warrant of Arrest and (c) Allow Accused to Post Bail.<sup>19</sup> However, in a Resolution<sup>20</sup> dated March 22, 2006, the CA denied due course to SPO2 Dabu's appeal. Hence, the CA's disposition was limited to the appeal interposed by appellant.

The CA agreed with the factual presentation of the prosecution and discredited the version of the defense. On November 3, 2008, the CA promulgated its Decision affirming the RTC Decision but reduced the penalty from death to *reclusion perpetua*, viz:

WHEREFORE, in view of the foregoing premises, the assailed decision of the Regional Trial Court, Branch 11, in Manila rendered on May 17, 2005 in Criminal Case No. 99-170722 finding the accused-appellant guilty of the crime of murder is hereby **AFFIRMED** by us with the **MODIFICATION** that the penalty of death imposed is reduced to *reclusion perpetua*.

**SO ORDERED.**<sup>21</sup>

Hence, this appeal

### **Issues**

In his Brief,<sup>22</sup> appellant contends that in affirming his conviction, the CA -

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<sup>16</sup> Id. at 1890.

<sup>17</sup> Id. at 1904-1928.

<sup>18</sup> Id. at 1993-1999; penned by Executive Judge Antonio M. Eugenio, Jr..

<sup>19</sup> CA *rollo*, pp. 33-41.

<sup>20</sup> Id. at 107-113; penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court) and concurred in by Associate Justices Arturo D. Brion (now a Member of this Court) and Mariflor Punzalan Castillo.

<sup>21</sup> Id. at 267.

<sup>22</sup> *Rollo*, pp. 30-60.

1. X X X ERRED IN ITS FACTUAL FINDING THAT [APPELLANT] CLAIMED SELF-DEFENSE DESPITE EVIDENCE SHOWING THAT HIS DEFENSE WAS TOTAL DENIAL.
2. X X X ERRED IN NOT RESOLVING THE FOLLOWING ISSUES RAISED TO IT ON APPEAL FROM THE TRIAL COURT, TO WIT:
  - A. WHETHER X X X THE TRIAL COURT ERRED IN HOLDING THAT THE GUILT OF THE [APPELLANT] WAS PROVEN BEYOND REASONABLE DOUBT BASED ON CIRCUMSTANTIAL EVIDENCE
    - i. WHETHER X X X THE TRIAL COURT ERRED IN RULING THAT THERE EXISTS SUFFICIENT CIRCUMSTANTIAL EVIDENCE TO PROVE THAT THE [APPELLANT] CONSPIRED IN KILLING THE VICTIM
    - ii. WHETHER X X X THE TRIAL COURT ERRED IN RULING THAT THERE WAS MOTIVE ON THE PART OF THE [APPELLANT]
3. X X X ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.
4. X X X ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION.
5. X X X ERRED IN NOT RESOLVING THE ISSUE AS TO WHETHER X X X THE TRIAL COURT ERRED IN APPRECIATING FLIGHT ON THE PART OF [APPELLANT].<sup>23</sup>

### *Self-defense*

Appellant faults the CA when it imposed on him the burden of proving the elements of self-defense. He claims it was PO3 Ventinilla who acted in self-defense and, therefore, it was incumbent upon the latter to establish such fact. He avers that his defense is denial as found by the trial court.

Obviously, appellant was confused. It must be noted that he was the only witness who testified on the circumstances surrounding the tragic death of the victim. It was he who supplied the necessary evidence showing that there was unlawful aggression on the part of the victim. Contrary to the undisputed finding of Dr. Bernales that there are more than one assailant in view of the multiple bullet wounds on the body of the victim, appellant insists it was only PO3 Ventinilla who killed the victim. However, neither PO3 Ventinilla nor the victim could be resurrected from their graves to controvert appellant's version of the story.

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<sup>23</sup> Id. at 37.

Besides, it has not escaped our attention that in the Counter-Affidavit<sup>24</sup> of SPO4 Miraples, appellant's co-accused, he stated therein that appellant acted in self-defense when the victim allegedly went berserk.<sup>25</sup> More important, in his Answer<sup>26</sup> to the administrative complaint filed by the victim's widow, appellant interposed self-defense by alleging that it was the victim who initiated the attack through unlawful aggression.

Hence, the CA committed no error in imposing upon him the burden of proving the elements of self-defense.

At any rate, appellant's claim of self-defense deserves no credence at all. Aside from the fact that the defense presented absolutely no credible evidence to establish self-defense, this was belied by appellant's assertion that he was outside the police station premises when the victim was killed. But even the appellant's denial equally deserves scant consideration. The physical evidence presented by the prosecution put appellant in the crime scene. He tested positive for gunpowder nitrates which proved that he fired his firearm. Dr. Bernales also testified that the victim was killed by more than one assailant. Clearly, appellant was with PO3 Ventinilla when the victim was killed.

### *Circumstantial evidence*

Appellant also claims that the circumstantial evidence presented by the prosecution was not sufficient to convict him. He argues that the prosecution failed to establish an unbroken chain of events that showed his guilt beyond reasonable doubt. Thus, he is entitled to enjoy the constitutional presumption of innocence.

We find the contention unconvincing.

Indeed, no prosecution witness has actually seen the commission of the crime. But jurisprudence tells us that direct evidence of the crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The rules on evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt.<sup>27</sup> Circumstantial evidence is that evidence "which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established."<sup>28</sup>

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<sup>24</sup> Records, Vol. 1, pp. 258-261.

<sup>25</sup> Id. at 259.

<sup>26</sup> Records, Vol. 3, p. 960.

<sup>27</sup> *People v. Manchu*, G.R. No. 181901, November 29, 2008, 572 SCRA 752, 759.

<sup>28</sup> *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 329.



In this case, the Office of the Solicitor General (OSG) correctly synthesized the circumstances constituting circumstantial evidence as culled from the entire testimony of Reyes, the prosecution's key witness, to wit:

1. Around x x x noon of November 30, 1996, Reyes saw appellant and the late PO3 x x x Ventinilla enter the house of [the victim] after the latter's friend Tomas Beroy, opened the door upon the instruction of [the victim];
2. Reyes saw appellant and [PO3] Ventinilla carrying [an] armalite [rifle] and [a] .38 caliber [pistol];
3. Reyes heard appellant and [PO3] Ventinilla tell [the victim] that he was being instructed by SPO4 x x x Miraples, the Chief of Police of Police Kababayan Center I, Doña Ata Subdivision Station, Marulas, Valenzuela, [to join a team of police which will apprehend] a big person x x x involved in illegal drugs in Malanday, Valenzuela;
4. Because of the alleged instruction of [the victim's] superior, Reyes saw [the victim] leave his house together with appellant and PO3 Ventinilla around 1:00 [p.m.] of November 30, 1996;
5. [A f]ew minutes thereafter, Reyes received a telephone call from [the victim who] nervously told him, "*Pare wala pala kaming tatrabahunin, ako pala ang tatrabahunin. Tulungan mo ako sumundo ka ng tao na tutulong sa akin.*" But before Reyes could respond, the line at the other end of the telephone was suddenly cut x x x; and
6. Later in the afternoon, Reyes learned from his friend that [the victim] was already dead.<sup>29</sup>

The prosecution likewise presented corroborating evidence which constitute an unbroken chain leading to the inevitable conclusion that appellant is guilty of killing the victim. For instance, the presence of gunpowder nitrates on appellant after a paraffin test;<sup>30</sup> the firearm used in the killing which could either be a .38 caliber or 9 mm pistol<sup>31</sup> dovetails with the testimony of Reyes that he saw appellant carrying a .38 caliber short firearm which was later found to have been recently fired; and the absence of gunpowder nitrates on the hands of the victim after a paraffin test<sup>32</sup> which belies appellant's claim that he was shot by the victim or that the latter exchanged fire with PO3 Ventinilla.

"[C]ircumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce

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<sup>29</sup> CA *rollo*, p. 236, Citations omitted.

<sup>30</sup> Exhibit "I," Folder of Exhibits.

<sup>31</sup> Exhibit "F," *id.*

<sup>32</sup> Exhibit "H," *id.*

conviction beyond reasonable doubt.”<sup>33</sup> All the foregoing elements were sufficiently established in this case.

### *Conspiracy*

“Under Article 8 of the Revised Penal Code [RPC], there is conspiracy if two or more persons agree to commit a felony and decide to commit it. [It] must be proven during trial with the same quantum of evidence as the felony subject of the agreement of the parties [either] by direct or circumstantial evidence [of the conspirators’ conduct] before, during and after the commission of the felony to achieve a common design or purpose.”<sup>34</sup>

We affirm the findings of the RTC that all of the accused conspired to commit the crime, *viz:*

x x x In the case at bar, the record of the case is enmeshed with various acts of the accused, before, during, and after the killing of Cafe that are indicative of a joint purpose, concerted action, and concurrence of sentiments. Before the victim was fetched by Alawig, Ventinilla, Dabu, de Vera and Corpuz, as witnessed by Reyes, accused made it appear in Exh. “KK-1” that on November 30, 1996 at 2:45 p.m., accused Alawig, Vent[i]nilla, de Vera, Corpuz and a certain Cariño who is not a member of PKC-1 and without including accused Dabu, they were dispatched to an unnamed place to conduct surveillance on a suspect involved in drugs. A cursory reading of said entry presupposes that said accused were already dispatched at the place at 2:45 p.m. Although it appears strange that the subject area and the subject person are not specified in the entry contrary to the standard practices in making entry in a Dispatch Log Book, accused Alawig, however, when confronted with the said entry during the trial, had a different tale to tell. He claims that another instruction was made by their Police Precinct Commander, co-accused Ponciano Miraples, to proceed instead to Gumamela Street where there was a reported trouble. Thus, his group according to him proceeded to Gumamela St. at 1:00 o’clock p.m. on the said date but said [change] of dispatch was not recorded in the Dispatch Log Book of the PKC-1. Interestingly, the court finds the version of Alawig incredible. For how can a later dispatch instruction (2:45 p.m. dispatch) be changed by another instruction that occurred earlier (1:00 p.m. dispatch to Gumamela St. per accused Alawig) than the first? The Court likewise notes the entry on Exh. “LL-1”. The same is a clear indication of orchestrating the purported activities of the accused on the day of the killing of the victim. Accused entered in the police blotter at 3:00 p.m. about a call regarding a trouble

<sup>33</sup> *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 85.

<sup>34</sup> *Asetre v. Asetre*, G.R. No. 171536, April 7, 2009, 584 SCRA 471, 486-487.

in Gumamela St. to which the group of Alawig according to him responded. If indeed they were dispatched to the said place at 1:00 p.m., how then could it be possible, when the call about the reported incident happened at 3:00 p.m.? To the Court's mind, the latter entry (Exh. "LL-1") further strengthen the theory of the prosecution that the police operation before and after the killing of the victim, which the accused want to dramatize are nothing but falsehood and are part of the grand design where each of the accused are made to appear doing acts that are independent of each other in order to muddle the events that actually transpired when Cafe was killed.

Moreover, the Court also observes that the alleged call claimed by Dabu to have been received by accused Miraples on the same day at 3:20 p.m. about people playing tong-its was not recorded in the PKC-1 Police Blotter (Exh. "LL"). Strangely, it was the dispatch for the purpose that was recorded in the Dispatch Log Book (Exh. "8-A", Dabu) at a very precise time at 3:28 p.m., November 30, 1996 by accused de Vera. How then can accused de Vera record such dispatch when according to Alawig upon their arrival at the PKC-1 from Gumamela St., accused Dabu and de Vera immediately left without the latter entering the police precinct? It is also noted that such entry (Exh. "8-A") has signs of peculiarity from the rest of the entries in the Dispatch Log Book. The time written was precise up to the last minute (3:28 p.m.) unlike the other entries the time is rounded-off to 3:25 or 3:30. Also, the time is written in bold stroke. Compared with the other entries, the same bears signs of alterations. Such entry therefore supports the view that there was actually no dispatch made to Pasong Balete Hills. The alleged arrest of three (3) people playing tong-its in the area never happened there being [no] such entry in the PKC-1 Police Blotter. Gleaned from the foregoing, every entry made in the record books could not be accomplished by just one or two accused without the concurrence of the rest of the accused assigned at the PKC-1 and the imprimatur of the Police Precinct Commander, accused Ponciano Miraples.

After the victim was brought to the PKC-1, accused Alawig tried to make the Court [believe] that his co-accused Ventinilla, who is already deceased, was the sole perpetrator in killing Cafe, exculpating himself and the rest of the accused. The version of Alawig, however, is [diametrically at odds with the conclusion of] Dr. Bernales of the NBI that there were more than one assailant in slaying Cafe. From the evidence adduced by the defense, there is no iota of credible evidence to show that one or two accused at least attempted to prevent the slaying of Cafe. To the Court's mind, there was indeed a concurrence of sentiments among the accused for the attainment of evil purpose.

The joint purpose and concurrence of sentiments among the accused is further demonstrated when accused Alawig again tried to mislead the Court in claiming that it was [he] who brought the victim to the hospital after being shot when in truth

and in fact as shown in Exh. “A”, it was his co-accused Vivencio Corpuz who brought the victim to the hospital. The most outrageous act done by the accused, as police officers, was when they tampered with the evidence to cover-up the crime while the team of P/Insp. Lopez was still conducting investigation in the PKC-1 premises. The accused placed six (6) spent ammunition cartridges coming from the office of accused Miraples that were not initially found lying on the floor. Likewise, they submitted a T-shirt (Exh. “OO”) allegedly worn by the victim at the time of the shooting for forensic examination. It was found out, however, by Dr. Bausa that despite the gunshot wounds sustained by the victim, the submitted T-shirt does not bear a single bullet hole that would match the location of any of the gunshot wounds in the body of Cafe. To top it all, the accused failed to record the killing of Cafe in the PKC-1 police blotter, which should have been done as a matter of standard operating procedure.

In light of the foregoing, it is inescapable to conclude that conspiracy is attendant in the commission of the offense. Thus, the guilt of one is the guilt of all and the accused are equally liable for the offense committed.<sup>35</sup>

Thus, by manipulating the entries in the logbook, the accused conspired to make it appear that they were in some place other than where the killing took place and that they were performing acts independent of each other. The entries were recorded with the concurrence of all the accused. With PO3 Ventinilla dead, appellant painted him as the sole perpetrator and tried to exculpate himself and the rest of the accused. Records also show that none of the accused attempted to prevent the killing of the victim. More telling is their act of placing six empty cartridges at the crime scene to make it appear that the victim fired his firearm and was the unlawful aggressor. As borne out by the Firearms Identification Report No. FAID-212-96:<sup>36</sup> the two cartridges were fired from an M16 rifle with Serial No. RP154135; two other cartridges were fired using an M16 rifle with Serial No. RP144440; while the last two cartridges were fired from an M16 rifle with Serial No. RP138254. Per the Initial Investigation Report<sup>37</sup> of SPO1 Angeles I. Miranda, the M16 rifle with Serial No. RP144440 belonged to appellant as well as a 0.38 caliber revolver with Serial No. BBW4740; the M16 rifle with Serial No. RP154135 and the 0.38 caliber revolver with Serial No. AUS1926 belonged to PO3 Ventinilla; while the M16 rifle with Serial No. RP138254 and 0.45 caliber pistol with Serial No. 162457 belonged to the victim. Significantly, the Physical Sciences Report No. 0-552-96<sup>38</sup> indicated that all the aforementioned firearms were fired. However, as already mentioned, the victim tested negative for gunpowder nitrates hence the possibility that he fired his weapons is remote. Besides, as already testified to by Dr. Bernales, the possible firearm used could be

<sup>35</sup> Records, Vol. 3, pp. 1880-1883.

<sup>36</sup> Records, Vol. 1, p. 254.

<sup>37</sup> Id. at 320-321.

<sup>38</sup> Records, Vol. 3, p. 926.

caliber 0.38 of which both the appellant and PO3 Ventinilla were equipped at the time the victim was killed.

Finally, the accused presented a T-shirt allegedly worn by the victim which, however, did not bear any holes compatible to the gunshot wounds sustained by the victim. In fact, Dr. Bausa testified that the T-shirt did not even contain traces of human blood.

All these taken together suffice to show that appellant conspired with the other accused in the killing of the victim. There is evidence that the accused performed specific acts in the furtherance of the conspiracy to kill the victim as well as to cover-up the same. The evidence is adequate to establish unity of purpose at the time of the commission of the offense and unity in its execution.

### ***Treachery***

Appellant disputes the CA's finding affirming that of the RTC that treachery attended the commission of the crime as shown by the medical evidence submitted by the NBI. The CA found that the location of the wounds and the victim's stooping or kneeling position coincide with the concept of treachery regarding the means or modes of execution tending to insure their execution without risk to the perpetrators. The latter reflected on the means they adopted in killing the victim while he was not given sufficient time to defend himself from the attack.

"For [treachery] to qualify the crime to murder, it must be shown that: a) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and b) the said means, method and manner of execution were deliberately adopted."<sup>39</sup> "The circumstances surrounding the [killing] must be proved as indubitably as the crime itself."<sup>40</sup> Treachery cannot be presumed.

We agree with the RTC finding as affirmed by the CA that treachery attended the killing. The Medico-Legal Record<sup>41</sup> showed that the victim sustained two puncture wounds at his lower neck and three gunshot wounds. The Autopsy Report<sup>42</sup> also showed that the victim had contusion on his chest, upper quadrant and contused-abrasion on his left forearm. As regards the gunshot wounds, the prosecution was able to establish that the same were inflicted by more than one assailant using three different firearms in view of their size and location. On

<sup>39</sup> *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCRA 555, 568.

<sup>40</sup> *People v. Nueva*, G.R. No. 173248, November 3, 2008, 570 SCRA 449, 465-466.

<sup>41</sup> Exhibit "A", Folder of Exhibits.

<sup>42</sup> Exhibit "C", *id.*

September 10, 1997, SA Danielito Q. Lalusis of the NBI requested Dr. Bernales to enlighten them on the following: “(1) What was the relative position of the [v]ictim when he was fired upon by the assailants?; (2) What was the relative position of the assailants when they fired at the [v]ictim?; (3) What could have been the distance of the firearms of the assailants to the [v]ictim?; (4) How many firearms could have been used in killing [the v]ictim?; and (5) What was the trajectory of the bullets that hit the body of the [v]ictim?”<sup>43</sup>

In compliance with the directive, Dr. Bernales opined that:

THE APPROXIMATE RELATIVE POSITION OF THE  
VICTIM AND THE ASSAILANT.

In determining the relative positions, we assumed that both are standing, in anatomical position and that, the assailant is a right-handed person.

In gunshot wound No. (1), based on the trajectory of the projectile from the entrance wound to the exit wound, which was BACKWARD, DOWNWARD AND LATERALLY; the assailant and the victim are both facing each other, with the assailant positioned more to the left side of the victim and that, he could be on a stooping position or the assailant is taller and/or positioned in a higher level.

In gunshot wound No. (2), based on the trajectory of the projectiles, from the entrance wound to exit wound, which was MEDIALY, SLIGHTLY FORWARD AND DOWNWARD; the assailant is at the left side and more to the back of the victim, with the victim leaning to the left or the assailant is positioned on a higher level.

In gunshot wound No. (3), based on the trajectory of the projectile, from the entrance wound to exit wound, which was MEDIALY, DOWNWARD AND SLIGHTLY BACKWARD; the assailant is at the right side of the victim with the assailant positioned on a higher level.

THE APPROXIMATE DISTANCE BETWEEN THE  
VICTIM AND THE MUZZLE OF THE GUN.

Based on negative findings of any products of explosion of a bullet, with exception of the projectile, the approximate distance could be more than one (1) foot, to a small firearm and more than two (2) to three (3) feet, to a high powered firearm.

THE POSSIBLE CALIBER OF FIREARM USED IN  
KILLING THE VICTIM,

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<sup>43</sup> Records, Vol. 1, p. 242.

Based on the sizes of the entrance wounds, the possible caliber used could be caliber 32 to 38, including 9 mm. caliber pistol.

The trajectory of the bullet that hit the body of the victim was already mentioned in the above paragraph relative to the positions of the victims and the assailant.<sup>44</sup>

Considering the contusions, abrasions, and puncture wounds sustained by the victim, it is clear that he was first manhandled prior to the shooting. The location of the gunshot wounds likewise is indicative of the relative positions of the assailants vis-à-vis the victim. As noted by Dr. Bernales, the first assailant was facing the victim but more to his left; the second assailant was at the left side but more at the back of the victim; while the third assailant was at the right side of the victim. More importantly, the assailants were positioned on a higher level than the victim which could mean that the victim was in a kneeling or stooping position. Thus, as correctly pointed out by the RTC, “[b]ased on the nature and location of the wounds sustained, the victim definitely would not be able to put up any defense even if he was armed with armalite rifle and caliber .45 at the time. This explains why he was found negative of gunpowder nitrate in both hands x x x when he was killed. He was not able to fire his gun to defend himself. The conclusion, therefore, is inescapable that the attack on the victim was perpetrated with alevosia, hence, qualifying the killing to murder.”<sup>45</sup>

### ***Evident Premeditation***

In order “for evident premeditation to be appreciated, the following [requisites must concur]: (1) the time when accused [decided] to commit the crime; (2) an overt act manifestly indicating that [he] has clung to his determination; and, (3) sufficient lapse of time between [such a determination and the actual] execution to allow the accused time to reflect upon the consequences of his act.”<sup>46</sup>

In this case, the courts below based their finding of evident premeditation on the entries in the Dispatch Logbook, the alleged pretense made by the appellant and cohorts that they were going to conduct a police operation regarding illegal drugs, as well as the telephone call made by the victim to his friend Reyes before the incident. To our mind, however, these circumstances do not constitute clear and positive evidence of outward acts showing a premeditation to kill. At most, these circumstances are indicative only of conspiracy among the accused. Settled is the rule that when it is not shown how and when the plan to kill was hatched or how much time had elapsed before it was carried out, evident premeditation

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<sup>44</sup> Records, Vol. 1, pp. 243-244.

<sup>45</sup> Records, Vol. 3, pp. 1886-1887.

<sup>46</sup> *People v. Nueva*, supra note 40 at 468.

cannot be considered.<sup>47</sup> “[I]t must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection or persistent attempt.”<sup>48</sup> Notably, even the OSG admitted that the lapse of time from the moment the victim was fetched until the shooting cannot be considered sufficient for appellant to reflect upon the consequences of his act.

### ***Flight***

The trial court properly disregarded appellant’s non-flight. While it has been ruled that an accused’s decision not to flee after the crime despite an opportunity to do so is not characteristic of a guilty person, the opposite has also been upheld in some cases. Appellant may not have indeed fled from the scene of the crime as he even allowed himself to be subjected to paraffin test, but the same are not necessarily indicative of a clear conscience. “Non-flight is not proof of innocence” as ruled in *People v. Del Castillo*.<sup>49</sup> Thus, the fact that appellant did not flee may be a badge of innocence, nevertheless, it is not a sufficient ground to exculpate him from his proven criminal liability.

### ***The Crime Committed and The Imposable Penalty***

In view of the qualifying circumstance of treachery, the crime committed is murder. In the absence of any attendant circumstance, appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* in accordance with Article 248 in relation to Article 63, paragraph 2, of the RPC. He is not eligible for parole pursuant to Republic Act No. 9346, Section 3.

### ***The Civil Liability***

In conformity with prevailing jurisprudence, we affirm the award of ₱50,000.00 as civil indemnity to the heirs of the victim. This is given without need of proof other than the fact of death as a result of the crime and proof of appellant’s responsibility for it.<sup>50</sup>

We also affirm the grant of ₱50,000.00 as moral damages. This is “mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim.”<sup>51</sup>

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<sup>47</sup> *People v. Iligan*, 369 Phil. 1005, 1041 (1999).

<sup>48</sup> *People v. Eribal*, 364 Phil. 829, 840 (1999).

<sup>49</sup> G.R. No. 180925, August 20, 2008, 562 SCRA 752, 760.

<sup>50</sup> *People v. Berondo, Jr.* G.R. No. 177827, March 30, 2009, 582 SCRA 547, 554-555.

<sup>51</sup> *People v. Casta*, G.R. No. 172871, September 16, 2008, 565 SCRA 341, 361.



In addition, we sustain the award of actual damages but only to the amount of ₱103,472.00 representing expenses incurred during the wake of the victim supported by uncontroverted receipts. “Credence can be given only to claims which are duly supported by receipts or other credible evidence.”<sup>52</sup>

We also sustain the award of exemplary damages but in the increased amount of ₱30,000.00 to conform to prevailing jurisprudence.<sup>53</sup>

We note, however, that no indemnity for loss of earning capacity was awarded to the heirs of the victim as a consequence of his untimely death. Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. The evidence<sup>54</sup> shows that the victim’s annual gross income as a police officer was ₱88,530.00 computed from his monthly rate of ₱7,377.50. There being no proof of his living expenses, the net income is deemed equivalent to 50% of the gross income, hence, his estimated annual net income is ₱44,265.00. As computed on the basis of the usual formula adopted by the Court in cases similarly awarding compensation for loss of earning to wit:

Net Earning  
Capacity

= Life expectancy x Gross Annual Income – Living Expenses  
= [2/3 (80-age of death)] x (GAI) – 50% of GAI<sup>55</sup>

the loss of earning capacity of the victim who died at the age of 31 would be ₱1,445,990.00 computed as: 2/3 x (80-31) x (₱88,530.00 – ₱44,265.00).

Finally, in conformity with current policy, we impose interest at the rate of 6% *per annum* on all damages awarded from date of finality of this Decision until fully paid.<sup>56</sup>

**WHEREFORE**, the Decision of the Court of Appeals dated November 3, 2008 which affirmed with modification the May 17, 2005 Decision of the Regional Trial Court, Manila, Branch 11, convicting appellant of the crime of Murder is further **MODIFIED** as follows: Appellant SPO1 Alfredo Alawig is found **GUILTY** beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; to pay the heirs of the victim PO3 Miel de Ocampo Cafe the amount of ₱103,472.00 as actual damages; ₱1,445,990.00 as indemnity for the victim’s loss of earning capacity and to pay the costs of suit. The award of exemplary damages is increased to ₱30,000.00 while the awards of ₱50,000.00 civil indemnity and

<sup>52</sup> *People v. Dulay*, 401 Phil. 400, 413 (2000).

<sup>53</sup> *People v. Pondivila*, G.R. No. 188969, February 27, 2013.

<sup>54</sup> Exhibit “Z,” Folder of Exhibits.

<sup>55</sup> *People v. Lopez*, G.R. No. 188902, February 16, 2011, 643 SCRA 524, 529.

<sup>56</sup> *People v. Rarugal*, G.R. No. 188603, January 16, 2013.

₱50,000.00 as moral damages stand. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

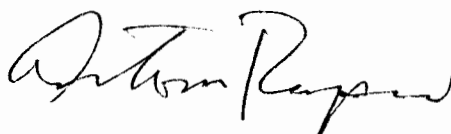
**SO ORDERED.**



**MARIANO C. DEL CASTILLO**

*Associate Justice*

WE CONCUR:



**ANTONIO T. CARPIO**

*Associate Justice*

*Chairperson*



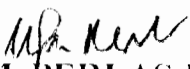
**ROBERTO A. ABAD**

*Associate Justice*



**JOSE PORTUGAL PEREZ**

*Associate Justice*



**ESTELA M. PERLAS-BERNABE**

*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**

*Associate Justice*  
*Acting Chief Justice*

