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[G.R. No. L-27973. October 23, 1978]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERASMO CUADRA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WITNESSES; FACTORS OTHER THAN CHARACTER WHICH DETERMINE CREDIBILITY OF TESTIMONY. — The character of a witness may be considered by the trier or finder of facts, such as the trial judge, for purposes of determining the credibility of the witness. However, the determination of the character of a witness is not a prerequisite to belief in his testimony, and equally valid is the statement that the alleged bad character of a witness even if true should not sway the court in the evaluation of the witness' veracity, for there are other important factors to be considered such as his manner and behaviour on the witness stand, the general characteristics, tone, tenor and inherent probability of his statements.

2. ID.; ID.; ID.; RECEIPTS OF MEAGER SUMS OF MONEY NOT SUFFICIENT TO DESTROY WITNESS' CREDIBILITY. — An admission from the witnesses that they received some amount of money from a brother of the deceased in an *indicia* of the sincerity and truthfulness of these persons for while they could not have denied having received money they nevertheless admitted that fact with frankness. Whatever amounts were received by these witnesses were, as explained by them, meager sums for cigarettes and food. It has not been shown by the defense that without that meager assistance from a brother of the deceased said witnesses would not gave testified. In *People vs. Rafael Lacson, et al.*, 1961, where it was charged by the appellants that the prosecution witnesses were being supported during the trial by political enemies of the accused, this Court held that assuming that to be true, it is no evidence that for such trifling sums the witnesses would agree to perjure themselves and falsely charge the appellants with a capital offense.

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3. ID.; ID.; ID.; A WITNESS' RELATIONSHIP WITH THE VICTIM DOES NOT NECESSARILY CONVERT HIM INTO A BIASED WITNESS. — Mere relationship to or intimacy with the victim is no justification for throwing aside the testimony of a witness. There must be a showing that the testimony is false or incredible in itself independent of the fact of relationship between the victim and the witness. In *People vs. Corpus*, 1961, this Court had occasion to state that the mere fact that a prosecution witness is related to the victim should not necessarily convert him into a biased witness for it cannot be assumed that in seeking justice and the punishment of the assassins, he would indiscriminately point to the wrong parties, and therefore, in the absence of evidence of an improper motive, his testimony is worthy of full faith and credit.

4. ID.; ID.; ID.; MINOR CONTRADICTIONS DO NOT DESTROY VERACITY OF A WITNESS' TESTIMONY. — Whatever contradiction between the contents of the affidavits of a witness his testimony in court when satisfactorily explained by him are not sufficient to destroy the veracity of his testimony on the material points of the case for "Omissions in the pretrial affidavits of matters testified to in court by the affiants do not necessarily impair their credibility where the witnesses were illiterate, ignorant or untrained." (*People vs. Rafael Lacson, et al.*, SCRA pp. 414, 415.)

5. ID.; ID.; ID.; PROTECTION OR INTERVENTION BY CONSTABULARY AUTHORITIES SHOULD NOT AFFECT CREDIBILITY OF WITNESS. — The protection given to witnesses is not to be construed as an exertion of undue pressure and influence upon them but merely as a precaution to insure their personal safety and forestall the possibility of any untoward incident happening to them, especially since the persons accused of killing the victim were reputed to be members of a "gang" operating illegal activities in the city. In *People vs. Rafael Lacson, et al.*, 1961, this Court held, *inter alia*, that protection given by the Armed Forces for the prosecutors and their witnesses is no indication of subornation of perjury by the military as that was a precaution plainly called for under the circumstances of the case.

6. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES. — There is legitimate self-defense if

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the person acted under the following circumstances, to wit: (1) he was the object of an unlawful aggression; (2) there was reasonable necessity of the means employed to prevent or repel that aggression; and (3) there was lack of sufficient provocation on his part. If all the foregoing are present, the accused is entitled to an acquittal, the rationale being that his act is justified. "That which anyone should do for the safety of his own person, is to be adjudged as having been done justly in his favor." However, one who admits having caused the injury has the burden to prove the presence of the three circumstances mentioned above and failure to carry out that burden to the satisfaction of the court renders him criminally liable for his act and all its consequences.

7. **ID.; ID.; ID.; CIRCUMSTANCES IN INSTANT CASE WHICH BELIE THE CLAIM OF SELF-DEFENSE.** — The presence of an unlicensed firearm in the car of appellant giving credence to the testimony of the prosecution witness that he was set out to kill or liquidate the victim on that particular evening; the vague and uncertain narration of appellant as to how he shot the victim; the nature, number and location of the wounds inflicted; and appellant's conduct in speeding away from the scene of the crime, hiding the pickup in a repair shop, and throwing away the gun used instead of reporting the matter to the police authorities, are *indicia* of a guilty conscience, inconsistent with a claim of innocence or justification of the shooting.

8. **REMEDIAL LAW; CRIMINAL PROCEDURES; PRELIMINARY INVESTIGATION; PRESUMPTION OF REGULARITY.** — The appellant cannot claim that he was deprived of his constitutional right to a preliminary investigation where the investigating fiscal who filed the information and the amended information certified on his oath of office that he had conducted the required preliminary investigation which is presumed to have been regularly done in the course of performance of a duty and where this particular point was never raised below and consequently deemed to have been waived.

9. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCE; TREACHERY; PRESENT ALTHOUGH SHOOTING WAS FRONTAL.** — Treachery is present although the shooting was frontal where the attack was so sudden and unexpected that the victim was not in a position to offer an effective defense.

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10. ID.; AGGRAVATING CIRCUMSTANCES; USE OF MOTOR VEHICLE. — The use of motor vehicle as means of committing the crime and facilitating the escape of the killer is a circumstance aggravating the crime of murder.

11. ID.; MURDER; PENALTY. — Where the killing is qualified by evident premeditation and attended with treachery and the use of a motor vehicle, the extreme penalty of DEATH is imposable.

APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Dominador L. Quiroz and *Solicotor Rosalio A. de Leon* for plaintiff-appellee.

Pedro A. Delfin for accused-appellant.

D E C I S I O N

PER CURIAM:

In the year 1966, in Bacolod City, the Sampaguita Broadcasting System, SBS for short, was located at Rodriguez Avenue and maintained two radio stations identified as DYRL and DYWX. Celso Tan was a sales manager of the SBS and at the same time its newscaster and commentator. At around 8:30 o'clock in the evening of May 1, 1966, Celso Tan and his common-law-wife Edna Javelona, went to the Globe Theatre to see a movie. After the show, the couple rode in their Opel car with Celso Tan at the wheel, stopped by DYRL radio station for around fifteen minutes, and then proceeded home to Barrio Sum-ag at the outskirts of the city. Celso Tan did not however reach his home alive because on the way he met with a violent death from gunshot wounds which caused severe intra-abdominal hemorrhage. Not long after the shooting of Celso Tan, Erasmo Cuadra was arrested that same evening by the local police as the suspected triggerman.

On the 11th day of May, 1966, the Office of the City Fiscal of Bacolod City in collaboration with State Prosecutor Dominador T. de Guzman who was assigned to assist in the prosecution

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of the case, filed an Information for Murder against Erasmo Cuadra and eight others, namely: Rodolfo Memoria *alias* Rudy, Florentino Casas *alias* Bodoy, Alex Garcia, Romeo Nessia *alias* Mimi, Ernesto Blancaflor *alias* Erning, Oliva Abong, Milagros Reston and William Doe. On October 13, 1966, the Information was amended so as to identify the accused named William Doe as Salvador Macainan, an assistant fiscal of the city. The amended Information reads:

"The undersigned City Fiscal and State Prosecutor accuse Erasmo Cuadra, Rodolfo Memoria alias 'Rudy', Florentino Casas *alias* 'Bodoy,' Alex Garcia, Romeo Nessia *alias* 'Mimi,' Ernesto Blancaflor *alias* Ernesto Tugaff *alias* 'Erning,' Oliva Abong, Milagros Reston and *Salvador Macainan*, of the crime of MURDER, committed as follows:

"That on or about the 1st day of May, 1966, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who are members and/or sympathizers of an aggrupation of persons known as the 'MANONG GANG,' conspiring and confederating together and mutually aiding and helping one another, with evident premeditation and treachery, and abuse of superior strength, with the use of a motor vehicle and during nighttime which was purposely sought to facilitate commission and afford impunity and with Erasmo Cuadra one of the predetermined gunmen being armed with a .45 caliber pistol, did, then and there, willfully, unlawfully and feloniously and with intent to kill suddenly, treacherously and without warning or provocation, attack, assault and shoot with the said firearm one Celso Tan, thereby inflicting upon the latter the following wounds and injuries to wit:

1. — Wound gunshot, 1.5. cm. in diameter with contusion collar circular in outline level 8th costal cartilage 6 cm. from midline left fracturing the same cartilage directed anteroposteriorly and slightly downward, penetrating subcutaneous tissue with point of exit measuring .5 by 1.0 cm. in diameter lateral lumbar region, left.

2. — Wound gunshot, 1.5 cm. in diameter with contusion collar circular in outline, level light hypochondrium just below costal margin, 6 cm. from midline, directed anteroposteriorly and slightly downward, penetrating abdominal cavity, penetrating and rupturing liver and penetrating posterior

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abdominal wall with point of exit 1.5 by 1.0 cm. level of 2nd lumbar vertebra 3 inches from the midspinal line, left.

3. — Hemorrhage, intra-abdominal, severe, sec.

4. — Wound gunshot, 1.5 cm. in diameter circular in outline with contusion collar, thigh, left lateral aspect middle 3rd, directed to the right and downward with point of exit, measuring 1.5 cm. and bullet penetrated the right thigh junction distal and middle 3rd measuring 1.0 in diameter, fracturing comminuted distal 3rd of the femur and bullet lodged with the fragments of the bone.

which primarily and directly caused the instantaneous death of the said victim."

(pp. 278-279, CFI record)

All the accused, except for Salvador Macainan who was at large and remained so till the end of the trial, pleaded "not guilty."

After a lengthy trial of the case during which thirteen witnesses testified for the prosecution and eleven for the defense, and numerous documents were submitted consisting of Exhibits "A" to "S-3", inclusive, for the People and Exhibits "1" to "12" for the accused, the Court of First Instance in Bacolod City presided then by Judge Jose F. Fernandez, rendered on July 24, 1967, a decision finding accused Erasmo Cuadra guilty of murder qualified by evident premeditation and sentencing him "to suffer the extreme penalty of death" in view of the presence of two aggravating circumstances, to wit: treachery and use of motor vehicle. All the other accused were acquitted for inefficiency of evidence.[1]

The case is now before Us on automatic review.

The trial court's findings of fact based on the testimony of prosecution witness, Edna Javelona, follow:

"In the evening of May 1, 1966, shortly before midnight, Celso Tan, a radiocaster, left the DYRL Station, otherwise known as the

[1] pp. 656-671. CFI record.

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Sampaguita Broadcasting System, located at Rodriguez Avenue, Bacolod City, in his Opal Cadet Car with his girl friend, Edna Javelona, bound for home in Sum-ag, Bacolod City. On the National Highway somewhere in Barrio Pahanocoy, Bacolod City, Edna noticed a green pickup cruising leisurely in front of their car, so Celso sounded his horn and overtook the vehicle, which, in turn, overtook its former position, and thereafter Celso was to trail behind the pickup. Whenever Celso's car was within overtaking distance the driver of the pickup stepped on the gas and dashed ahead only to slacken its pace until Celso caught up close to its rear. Once the pickup stopped abruptly without warning and Celso almost crushed against its rear if he missed his brakes on time thereby causing his wheels to screech noisily to a sudden stop. Annoyed, Celso switched on the siren of his car until the approaches of Su-mag bridge, but after crossing the bridge Celso stepped on his brakes and opened his front door to silence his siren, to avoid unnecessary questions from a policeman in a nearby outpost.

"Edna Javelona stated that the green pickup that was about five meters ahead made a full stop, so Celso approached the driver and demanded an explanation, but instead of an answer Edna who was standing behind Celso, heard a sudden gunfire and Celso exclaimed: '*Dios ko*!' Two other shots sounded successively, after which Edna impulsively moved towards the driver of the pickup whereupon two men dropped from the rear of the pickup and pulled her aside; after which the pickup speeded ahead leaving Edna alone in the middle of the road with Celso wounded and lifeless.

"An automobile passed by but hurried off for fear of getting involved, and then the green pickup reappeared speeding for Bacolod City. Edna asked a policeman to rush Celso to a hospital but he refused to move the body. Instead, the policeman took Edna in Celso's car to inform his brothers, Rene and Salvador Tan, of the occurrence.

"A prowl car of the Bacolod Police Department was soon to take the body of Celso to Negros Occidental Provincial Hospital where he was pronounced dead on arrival."

(pp. 657-659, CFI record)

On the other hand, appellant Cuadra gives another version of the incident, thus:

At about 6:00 o'clock of that evening of May 1, he, Cuadra, was at the BBB Refreshment Parlor at the corner of Justicia

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Street and BBB Avenue, Bacolod City, with his co-accused Ernesto Blancaflor, Florentino Casas, Rodolfo Memoria, Alex Garcia and Oliva Abong, where they stayed till about 9:30 in the evening. From there, they proceeded to Salem Restaurant to get some food, and the group was joined by another co-accused, Milagros Reston. Beer was ordered while the girls had sandwiches and soft drinks; later in the evening, the other accused, Romeo Nessia, joined them, leaving Salem Restaurant, Cuadra and his companions rode in a green 6-cylinder Ford motor vehicle described as a "pickup," and proceeded to Barrio Sum-ag to conduct Romeo Nessia who lived in that locality. Cuadra drove the vehicle and next to him were seated Oliva and Milagros while the rest were at the back. On the way to Sum-ag as they passed the bridge at Pahanocoy a car which was directly behind Cuadra blew its horn. As Cuadra was on his proper lane and there was enough space for the other vehicle to pass, he did not give way but rather he increased his speed so that for some time he lost sight of the car. Upon reaching the bridge of Sum-ag, Cuadra slowed down because of the rough condition of the road. After passing the bridge, Romeo Nessia told Cuadra to stop in front of the public market as he would buy cigarettes, and so after passing a police outpost Cuadra stopped the car by the roadside. While the pickup was at a stop and Cuadra was conversing with Nessia, the same car which was behind them earlier and which was now blowing its siren also stopped, and the driver of the car got out, and went to the pickup and opened the door. At first Cuadra thought that the man was a PC soldier who was going to arrest him. The man in question, pointed his finger at Cuadra and, with his hand on the handle of a firearm tucked in his waist, said "What kind of men are you, you seem to be kings of the road when you drive your vehicle." Cuadra answered that he had not committed anything wrong. The man kept on repeating that Cuadra and his companions seemed to be "kings of the road" and when Cuadra tried to explain that he and his companions were in a hurry as they were conducting a friend to Sum-ag and they had to go back to Bacolod, the man angrily said "so what, so what," and at the same time stepped backward and when the man was about to shoot Cuadra the latter shot him

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first. After Cuadra had fired several shots, he switched on the engine of his vehicle, made a turn and drove back to Bacolod City. Cuadra left the pickup in the repair shop of Alex Garcia and went home but upon reaching his house he saw a police patrol car waiting for him and he was brought to the Police Station.[2]

The trial judge did not give credence to the foregoing testimony of appellant.

We agree with His Honor, the trial judge, that there is strong evidence to show that the shooting of Celso Tan was apart of a preconceived plan to silence him in view of his persistent radio broadcasts and commentaries concerning the activities of certain gangs in Bacolod City one of which was the so-called "Manong Gang."

Col. Arcadio Lozada, Chief of Police of Bacolod City, testified that as early as July, 1964, the Secret Service Division of the Bacolod Police Department was in possession of confidential reports on the existence of certain "gangs" operating in Bacolod City, one of which was the "Manong Gang" and that it was generally known that accused-appellant Erasmo Cuadra and another accused Rodolfo Memoria were among the members of the "Manong Gang" whose activities were for some time the object of the radio commentaries of Celso Tan.[3]

Two witnesses, Edmundo Javelona and Rogelio Pancho who were both within the inner circle of the "Manong Gang," declared on the plot to kill Celso Tan because of the latter's radio broadcasts.

Edmundo Javelona testified *inter alia* as follows: about four days after the Holy Week of that year 1966 at the Carling's Carinderia he heard Fiscal Salvador Macainan (the accused who remained at large during the trial of the case) tell his companions among whom were Cuadra, Alex Garcia, Junior Buricat, and Calvo, the following: "Linti Celso, it seems he is

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[2] tsn, Vol. 1, pp. 204-230.

[3] see Exhibits A and A-1; tsn. Vol. III, Sept. 12, 1966, pp. 3 to 15; Vol. 1; Sept. 13, 1966, pp. 2 to 39.

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running after me, someday he will have his day"; on another occasion, he saw Fiscal Macainan at the parking space of Bascon Hotel talking with Erasmo Cuadra, Rudy Memoria, Alex Garcia, and Ernesto Blancaflor, and he heard Fiscal Macainan say "We will kill Celso Tan because it seems that I will be convicted in my case."[4]

Rogelio Pancho in turn declared: Erasmo Cuadra and Rodolfo Memoria were the leaders of the "Manong Gang," while he was a member since 1963 when he started residing in Bacolod City. Sometime in the months of March and April, 1966, Celso Tan lambasted in his radio broadcasts the activities of the "Manong Gang" especially after Fiscal Salvador Macainan bailed out one of the members of the gang. In the month of April Cuadra told Pancho of a plan to liquidate Celso Tan and asked him to be the triggerman. Pancho was assured of protection inasmuch as the gang had powerful connections as shown by the fact that none of the gang was ever arrested or imprisoned because the case was always "quashed" right at the city hall. Although Pancho agreed to cooperate in carrying out the plan he was not able to do anything about it. In the evening of May 1, 1966, Pancho was called by Cuadra to proceed to Salem Restaurant as they were going to proceed with the plan to liquidate Celso Tan, but Pancho did not leave his house as he had some visitors. Later in the evening Pancho came to know that Celso Tan was shot in Sum-ag.[5]

A witness by the name of Teresa Tahotay who worked as a waitress at the Salem Restaurant testified that in the evening of May 1, 1966, Cuadra and his co-accused, except for Romeo Nessia, drank beer with "*pulutan*" in the restaurant and she was the one who served them; the men did not stay long and it was Cuadra who paid the bill.[6]

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[4] tsn. Vol. III, Sept. 30, 1966, pp. 78-87.

[5] Vol. II, pp. 2-43.

[6] tsn. Vol. III, pp. 150-158.

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Accused-appellant, in his brief, assails the veracity of the testimonies of the prosecution witnesses principally Edna Javelona, Edmundo Javelona, and Rogelio Pancho. According to appellant, the declarations of these three witnesses are fabricated and come from a polluted source, because Rogelio Pancho is a "confirmed pimp and swindler," Edmundo Javelona, a "confessed liar," and Edna Javelona is a person "totally devoid of moral scruples." Appellant states further that said persons had ulterior motives and were "pressured" in testifying falsely against him.[7]

It is understandable why appellant's counsel lays stress on the alleged bad character of the above-named prosecution witnesses for as a rule, the character of a witness may be considered by the trier or finder of facts, such as the trial judge, for purposes of determining the credibility of the witness.[8] However, the determination of the character of a witness is not a prerequisite to belief in his testimony,[9] and equally valid is the statement that the alleged bad character of a witness even if true should not sway the court in the evaluation of the witness' veracity, for there are other important factors to be considered such as his manner and behaviour on the witness stand, the general characteristics, tone, tenor and inherent probability of his statements.[10]

Thus, even if it may be true that prosecution witness Rogelio Pancho was maintaining a house of prostitution or that Edmundo Javelona was a regular visitor in that place and was keeping a mistress, or that Edna Javelona was the "common-law-wife" of the victim Celso Tan, the fact is that all these circumstances were not considered by the trial judge sufficient to destroy the credibility of said witnesses on the facts or incidents testified to by them.

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[7] Third & Fourth Assignment of Errors, pp. 35 & 48, *et seq.* of brief.

[8] 58 Am. Jur. Sec. 870, 498.

[9] Re-Mayberry, 105 A.L.R. 976, 984.

[10] Opinion of Justice Tuazon in *People vs. Barcena, et al.*, L-1079, Nov. 28, 1947 — 45 O.G. 2068.

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The defense capitalizes on the admission during cross examination of Edmundo Javelona and Rogelio Pancho that they received some amount of money from a brother of Celso Tan. As We look at it, such an admission is an *indicia* of the sincerity and truthfulness of these persons for while they could have denied having received money they nevertheless admitted that fact with frankness. But what is important is that whatever amounts were received by these witnesses were, as explained by them, meager sums for cigarettes and food[11] and as reasoned out by the Solicitor General in his brief for the People, it has not been shown by the defense that without that meager assistance from a brother of the deceased said witnesses would not have testified.[12] In *People vs. Rafael Lacson, et al., 1961*, where it was charged by the appellants that the prosecution witnesses were being supported during the trial by political enemies of the accused, this Court held that assuming that to be true, it is no evidence that for such trifling sums the witnesses would agree to perjure themselves and falsely charge the appellants with a capital offense.[12-A]

It is also claimed by the defense that Edna Javelona is a biased witness because of her relationship with the deceased. Mere relationship to or intimacy with the victim is no justification however for throwing aside the testimony of a witness. There must be a showing that the testimony is false or incredible in itself independent of the fact of relationship between the victim and the witness.

Thus, in *People vs. Corpuz, 1961*,[13] this Court had occasion to state that the mere fact that a prosecution witness is related to the victim should not necessarily convert him into a biased witness for it cannot be assumed that in seeking justice and the punishment of the assassins, he would indiscriminately point to

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[11] tsn, Vol. III, p. 112, Oct. 11, 1966.

[12] p. 11, appellee's brief.

[12-A] I SCRA 414, 449.

[13] I SCRA 33.

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the wrong parties, and, therefore, in the absence of evidence of an improper motive, his testimony is worthy of full faith and credit.[14]

What is significant on that score is that certain material points in the testimony of Edna Javelona are confirmed by undisputed circumstances extant in the case, such as: (1) the description of the vehicle used by the killer which was given by Edna to the police led to its recovery from a repair shop that very same night of the incident, and (2) the identity of the person who shot Celso Tan as given by Edna was confirmed when appellant himself admitted that he was the one who shot Celso Tan although he claimed it was in self-defense.

Furthermore, whatever contradictions there were between the contents of the affidavits of Edna Javelona and her testimony in court were satisfactorily explained by her and are not sufficient to destroy the veracity of her testimony on the material points of the case.

"Omissions in the pretrial affidavits of matters testified to in court by the affiants do not necessarily impair their credibility where the witnesses were illiterate, ignorant or untrained." (1 SCRA pp. 414, 415, *People vs. Rafael Lacson, et al.*)

Another matter concerning the testimonies of the prosecution witnesses to which Our attention is being called by the defense is that Edmundo Javelona and Rogelio Pancho were not listed in the Information at the time the case was filed with the Court of First Instance on May 11, 1966.

It is true that when first questioned by the police investigators these two witnesses disclaimed any knowledge about the incident and did not volunteer any information concerning the plan of Erasmo Cuadra and his companions to liquidate Celso Tan. It was only several weeks later when both witnesses finally agreed

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[14] See also *People vs. Gonzalez*, 76 Phil. 473; *People vs. Macalindong*, 1946, 76 Phil. 719;; *People vs. Villalba*, 1966, 17 SCRA 948; *People vs. Constantino*, 1967, 20 SCRA 940; *People vs. Alcantara*, 1970, 33 SCRA 812, among others.

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to testify upon being interviewed by Lt. Ernesto Nava of the Philippine Constabulary and were then brought to Manila and investigated at the NBI headquarters. These two witnesses however explained that they were reluctant to give the facts known to them immediately after the incident because they were afraid of being killed by the members of the "Manong Gang" and that it was only after they were assured by the Philippine Constabulary authorities of protection for their personal safety that they decided to come out in the open and testify for the prosecution.[15]

This is not the first time that individuals who witnessed the commission of a crime have either desisted from volunteering information or disclaimed knowledge of the incident for fear of reprisal from the culprits, and this is true not only of ignorant or unlettered persons but of those with education. In *People vs. Villamin, 1937,* the accused Dionisio Villamin was charged with murder and from a judgment of conviction rendered by the Court of First Instance of Laguna, he appealed to this Court and invoked among others the fact that two prosecution witnesses did not give the true happenings when first investigated by the authorities. The Court through then Justice Antonio Villareal found the explanation of the witnesses concerned satisfactory and said:

"Taking into consideration the ignorance of the witnesses for the prosecution Cecilio Flores and Felicidad Socorro, and the psychological and social phenomenon observed not only among the ignorant people but also among the educated ones, of refusing to testify on a criminal incident witnessed by them or of which they have knowledge, for tear of being implicated or, at least, of being molested with inquisitorial investigations, besides being the object of vengeance on the part of the criminal or of his relatives, it is not strange that, upon being investigated in the midst of the excitement caused by the shot and by the news of Victor Titan's death, said witnesses have not given the names of the persons they had seen going down the stairs of the house of the deceased, particularly since

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[15] tsn Vol. III. Sept. 30. 1966. pp. 78-130; tsn Vol. II. Dec. 7. 1966. pp. 2-43; tsn Vol. III. Jan. 17. 1967. pp. 134-149.

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the accused-appellant is among the prominent persons as well as a councilor of the municipality of Cavinti." (64 Phil. pp. 880, 885. See also *People vs. Delfin, et al.*, 1961, 2 SCRA 911)

Moreover, the fact that Edmundo Javelona and Rogelio Pancho were placed under the protection of the Philippine Constabulary authorities or that General Raval intervened in one way or another in the investigation of the case should not likewise affect the credibility of said witnesses. The protection given to them is not to be construed as an exertion of undue pressure and influence upon them but merely as a precaution to insure their personal safety and forestall the possibility of any untoward incident happening to them, especially since the persons accused of killing Celso Tan were reputed to be members of a "gang" operating illegal activities in the city. In *People vs. Rafael Lacson, et al., 1961*, this Court held, *inter alia*, that protection given by the Armed Forces for the prosecutors and their witnesses is no indication of subornation of perjury by the military as that was a precaution plainly called for under the circumstances of the case.[16]

The only issue left to be discussed is the appellant's plea of self-defense.[16-A] As earlier indicated the trial court did not find appellant's testimony credible.

The defense of one's person or rights has from very old times been considered as a cause for exemption from liability under conditions provided for in the domestic law.[17] In this jurisdiction, there is legitimate self-defense if the person acted under the following circumstances, to wit: (1) he was the object of an unlawful aggression; (2) there was reasonable necessity of the means employed to prevent or repel that aggression; and (3) there was lack of sufficient provocation on his part.[18]

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[16] *Supra* at p. 449.

[16-A] Fifth and Sixth Assignment of Errors, pp. 87-112 of brief.

[17] G.B. Guevara, *Penal Sciences and Criminal Law*, 1974 Ed., p. 82.

[18] Article II, par. I, Revised Penal Code.

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If all the foregoing are present, the accused is entitled to an acquittal, the rationale being that his act is justified. "That which anyone should do for the safety of his own person is to be adjudged as having been done justly in his own favor."[19] However, one who admits having caused the injury has the burden to prove the presence of the three circumstances mentioned above and failure to carry out that burden to the satisfaction of the court renders him criminally liable for his act and all its consequences.[20]

Coming now to the case before Us, We agree with His Honor, Judge Fernandez, that the narration of the appellant manifests certain weak points which render it incredible.

First of all, the presence of an unlicensed firearm in the car of appellant gives credence to the testimony of the prosecution witnesses that Erasmo Cuadra was set out to kill or liquidate Celso Tan on that particular evening of May 1, 1966. According to appellant, the gun was usually kept inside a compartment of his vehicle but on that night he brought out the firearm and placed it on his seat to give way to some canned goods he had bought earlier that evening. The idea appears to Us preposterous for it is hard to believe that appellant would choose to safely store away a handful of canned goods in place of a dangerous object like a gun. If appellant Cuadra had the gun "under his buttocks" as he claimed it was because he was prepared to use it pursuant to his plan to kill Celso Tan.[21]

Secondly, the narration of appellant as to how he shot Celso Tan is vague and uncertain and it fails to convince Us. In his direct testimony, he testified as follows:

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[19] *People vs. Boholst-Caballero*, November 26, 1974, 61 SCRA 180, per Muñoz Palma, *J.*, 1 Viada p. 172, 5th Ed. cited.

[20] *People vs. Bautista, et al.*, 1962, 6 SCRA 522; *People vs. Jamero, et al.*, 75 SCRA 137; per Concepcion Jr. *J.*; *People vs. Verzola, et al.*, 80 SCRA 601, per Antonio, *J.*; *People vs. Cagod, et al.*, 1978, 81 SCRA 110, per Aquino, *J.*

[21] tsn. Vol. I, July 7, 1967, pp. 229-230.

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"ATTY. DELFIN:

xxx xxx xxx

Q. At that moment what did that driver of the car do?

A. He got angry at me and said 'Nano, nano (So what, so what) and then he stepped backward and was about to shoot me, so I shot him ahead because I was scared.

Q. What were you scared about?

A. That he might kill me by shooting me.

Q. At that moment when that man stepped backward holding his firearm and was about to draw please inform the Court why you shot him?

A. Because I was getting scared for I have not committed any wrong.

Q. At that moment when that man stepped backward and tried to pull out his gun which was visible to you, were you fearing for your life?

PROSECUTOR DE GUZMAN:

The question is leading.

COURT:

Reform." (tsn Vol. I, July 7, 1967, p. 210)

On cross-examination he gave the following narration:

"PROSECUTOR DE GUZMAN:

xxx xxx xxx

Q. Will you demonstrate how you pulled your gun and shot Celso Tan?

A. I was sitting in the front and as I was explaining that we have not committed any wrong . . .

Q. How did you pull the gun and fire it at Celso Tan?

A. I was the one driving the pickup and I was sitting on my pistol and when I was facing him explaining that I have not committed any wrong he stepped back and said 'You fool!'

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and he said So what? and he was about to pull his gun from his waist so I shot him first.

COURT:

Q. So he has not pulled his gun when you shot him?

A. He was about to pull it out but I shot him first.

Q. In other words, he has not pulled his gun?

A. He has already raised it and about to shoot me.

Q. And you felt he was really going to shoot you so you shot him?

A. Because he was already in an angry mood.

Q. So you drew ahead of him?

A. Yes, sir."
(tsn Vol. 1, July 7, 1967, p. 228)

From the above, it is apparent that the accused was not clear as to the manner he shot Celso Tan. At first Cuadra declared that Tan was only holding the end of the gun that was tucked in his waist and was just about to draw when he shot him, while on cross-examination in answer to a question of the Judge he stated that Tan had already raised the gun and was about to shoot him.

Thirdly, the number of wounds inflicted by appellant belies the plea of self-defense. Not only did Cuadra shoot the victim once but twice directed towards the abdomen of the latter. All the shots travelled in a downward direction,[22] which indicated that appellant was on a higher plane than the victim. This was so, because Cuadra was in the driver's seat of the pickup when he suddenly fired on Celso Tan while the latter was standing on the road. In *People vs. Constantino, et al.*, this Court held *inter alia* that the nature, number, and location of the wounds inflicted by an assailant are important factors which disprove a plea of self-defense.[23]

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[22] Exhibit G-1, p. 43 CFI record.

[23] 20 SCRA 940.

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Fourthly, appellant's conduct in speeding away from the scene of the crime, hiding the pickup in a repair shop, and throwing away the gun used instead of reporting the matter to the police authorities, are *indicia* of a guilty conscience, inconsistent with a claim of innocence or justification of the shooting.

In *People vs. Pelago, 1968*, similar circumstance were present, *e.g.*, accused Pelago did not surrender to the authorities after the stabbing, but on the contrary he escaped to his house and threw away the weapon used in the commission of the crime. This Court through Fernando, *J.*, disbelieved Pelago's version and stated that such is not the behaviour of one who kills another in self-defense.[24]

Coming to another point raised by the defense it is claimed that the trial judge was prejudiced against the appellant and in fact played the role of a prosecutor.[25] Appellant's counsel made reference to the use of the word "murder" in questions propounded by His Honor to the prosecution witness, such as:

"COURT:

xxx xxx xxx

Q. Do you remember having investigated a CRIME OF MURDER that supposedly occurred within the jurisdiction of Bacolod City on the night of May 1, 1966?

A. Yes, Your Honor, with the cooperation of the PC and the NBI.

Q. Who was MURDERED on that occasion?

A. Celso Tan, a radiocaster.

Q. How did you come to know of the MURDER of Celso Tan?"

xxx xxx xxx

(p. 25, appellant's brief)

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[24] 24 SCRA 1027, 1033.

[25] First and Second Assignment of Errors, pp. 23-35 of brief.

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In addition, appellant's counsel charges the trial judge for having "browbeaten" the defense witnesses. We have gone over the transcript and although it appears that there were occasions when the trial judge propounded questions to the witnesses, it is clear to Us that his only purpose was to clarify or stress certain points in the testimony of the witness concerned. We agree with the Solicitor General that the absence of prejudice or bias of the trial judge is best attested to by the acquittal of all the accused (7 of them) except for the herein appellant, Erasmo Cuadra.

With respect to appellant's final assignment of error wherein he claims that he was deprived of his constitutional right to a preliminary investigation[26] We find the same to be without basis considering that the investigating fiscal who filed the Information and the amended Information certified on his oath of office that he had conducted the required preliminary investigation which is presumed to have been regularly done in the course of performance of a duty. Moreover, this particular point was never raised below and consequently, appellant is deemed to have waived the same.[27]

Having discarded appellant's defense, We find that the trial court correctly adjudged him guilty of MURDER qualified *by evident premeditation* with two aggravating circumstances attendant to the case, *viz*: treachery and the use of a motor vehicle.

Treachery is present although the shooting was frontal because the attack was so sudden and unexpected that the victim was not in a position to offer an effective defense. The witness Edna Javelona testified that when Celso Tan approached the driver of the pickup, Tan was met with gunfire and she heard him cry out "*Dios ko*" and this was followed by two more successive shots, after which the pickup speeded away. Under these circumstances Celso Tan was wholly unprepared for the

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[26] pp. 113-115, appellant's brief.

[27] Appellee's brief, p. 15.

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attack and had no opportunity or chance to defend himself. There is no truth to appellant's claim that Tan had raised his gun for although the latter had a gun at the time it was found by Sgt. Pablo Bacong who was among the first to arrive at the scene, that Tan's revolver was "tucked at the left side of his waistline."[27-A]

In the early case of *U.S. vs. Cornejo, 1914*, this Court through then Chief Justice Cayetano S. Arellano held that though the victim was face-to-face with his assailant, nevertheless, there was treachery for the attack was sudden and unexpected and was not preceded by a dispute and the deceased was unable to prepare himself for a defense.[28] So also in *People vs. Ventura, 1977*, this Court found that the killing of the victim was attended with treachery because Ventura made an unexpected assault on the victim which insured the killing without risk to himself since the victim had no chance to retaliate.[29]

The shooting of Celso Tan is also aggravated by the use of a motor vehicle as a means of committing the crime and facilitating the escape of the killer.[30]

The findings of the trial court show that in the evening of May 1, 1966, Cuadra was decided to realize his plan of liquidating Celso Tan. He drove his pickup with his companions, conducted a surveillance of the victim's whereabouts and trailed him on the road to Sum-ag where Tan was residing. Cuadra then gave Tan an on-and-off chase until Cuadra suddenly stopped. Sensing that the pickup driver was needling or goading him, Tan likewise stopped his car and approached the pickup presumably to ask for an explanation but no sooner had Tan reached the pickup when Cuadra without any warning suddenly fired upon the latter.

[27-A] tsn January 26, 1967, p. 208, Vol. III.

[28] 28 Phil. 457, 461.

[29] per Aquino, *J.*, 80 SCRA 515.

[30] Article 14, par. 20, Revised Penal Code; *People vs. Laxamana, et al.*, 70 Phil. 517; *People vs. de la Cruz*, 100 Phil. 624; *People vs. Tan*, 89 Phil. 647, 660.

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Under these circumstances the pickup played an important role in the accomplishment of Cuadra's plan. Not only that, appellant also made good his escape by speeding away in his vehicle, and to avoid discovery of his identity, he drove the vehicle to a repair shop, and then walked home only to find the police waiting for him. In *People vs. Espejo,* the use of a motor vehicle was considered by this Court as an aggravating circumstance because the jeep was used by the accused in going to the place of the crime, in carrying away the stolen articles and in facilitating the escape of the culprits.[31]

In view of the fact that the killing of Celso Tan is qualified by evident premeditation and attended with treachery and the use of a motor vehicle, the trial court correctly imposed the extreme penalty of DEATH.

WHEREFORE, finding no reversible error in the decision under review, We affirm the same with modification that appellant is directed to indemnify the heirs of Celso Tan in the amount of Twelve Thousand Pesos (₱12,000.00). With costs against appellant Cuadra in both instances.

SO ORDERED.

Teehankee, Barredo, Makasiar, Muñoz Palma, Concepcion Jr., Santos, Fernandez, and *Guerrero, JJ.*, concur.

Castro, C.J., and *Aquino, J.*, in the result.

Fernando and *Antonio, JJ.*, took no part.

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[31] 36 SCRA, 400, 418. See also *People vs. Jaranilla, et al.*, 55 SCRA 563.