

EN BANC

[G.R. No. 126303, April 14, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO NULLAN Y BINLAIO, VICENTE ALAGABAN Y LAGUNUY
AND EDGAR MALIGAYA Y NULLAN, ACCUSED-APPELLANTS.**

DECISION

PER CURIAM:

The shooting of Benito Gotanci near his office-store in Binondo, Manila, sent herein three accused-appellants to the increasing number of death row convicts in the national penitentiary. The sentence was pronounced by the Regional Trial Court ("RTC") of Manila, Branch 35, in its consolidated decision in Criminal Case No. 95-146207 and Criminal Case No. 96-147374.^[1]

The Court now reviews the convictions.

In Criminal Case No. 95-146207, appellants Alberto Nullan and Vicente Alagaban were indicted, on 13 November 1995, for the murder of Benito Gotanci; the Information read:

"The undersigned accuses ALBERTO NULLAN Y BINLAIO and VICENTE ALAGABAN Y LAGUNUY of the crime of Murder, committed as follows:

"That on or about the 26th day of July 1995, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, said accused ALBERTO NULLAN Y BINLAIO and VICENTE ALAGABAN Y LAGUNUY conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown, and with accused ALBERTO NULLAN Y BINLAIO then being armed with a firearm of a still unidentified make and caliber, did then and there wilfully, unlawfully and feloniously, attack, shoot, and wound therewith twice BENITO GOTANCI at the back inflicting upon him two gun-shot wounds at the back, with treachery and known premeditation, said accused ALBERTO NULLAN Y BINLAIO having inflicted said two gunshot wounds and fired upon BENITO GOTANCI while the other accused, VICENTE ALAGABAN Y LAGUNUY acted as back-up and look-out; and as a result thereof, said BENITO GOTANCI died instantly in accordance with the predetermined plan of both accused and their still unidentified co-conspirators.

"All contrary to law, and with the qualifying circumstance of alevosia, and the generic aggravating circumstance of known premeditation.

"Contrary to law."^[2]

In Criminal Case No. 96-147374, filed on 09 January 1996, appellant Edgar Maligaya was himself charged for the same murder; thus:

"The undersigned accuses EDGAR MALIGAYA Y NULLAN of the crime of Murder, committed as follows:

"That on or about July 26, 1995 in the City of Manila, Philippines, the said accused conspiring and confederating with Alberto Nullan Y Binlaio and Vicente Alagaban Y Lagunuy who were already charged in a separate information with the same offense before Branch 35 Regional Trial Court of Manila docketed under CC No. 95-146207 and with one whose true name, identity and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill, with evident premeditation and treachery, attack, assault and use personal violence upon one BENITO GOTANGI by then and there shooting him with a gun and hitting him twice at the left posterior lumbar region and at the left inner, upper quadrantal gluteal region, thereby inflicting upon the said BENITO GOTANGI mortal gunshot wounds which were the direct and immediate cause of his death thereafter.

"Contrary to law."^[3]

The three accused pleaded "not guilty" when arraigned individually and separately; thereafter, the trial ensued.

The prosecution presented an eyewitness account, that of Alden Adona, who was at the time of the incident manning his barbecue stand in front of his and his grandmother's store located at No. 618 Madrid Street in Binondo, Manila, just adjacent to the office-store of the victim, Benito Gotanci, at No. 622 Madrid Street. His version of the incident was summarized by the trial court, *viz*:

"Stripped of incidental details, the evidence of the People discloses that Alden Adona, actual eyewitness to the commission of the crime in question, is the partner-helper of his grandmother in the day-to-day operation of their store located at No. 618 Madrid Street in Binondo, Manila. In addition to the goods sold in their store, Alden also had a barbeque stand in front of their store. Immediately beside the store of Alden and his grandmother was the office-store of Benito Gotanci with postal address No. 622 Madrid Street. (See Exhibits 'PP', 'QQ' and 'RR'.)

"On July 25, 1995, at around 5:00 o'clock in the afternoon, the three accused in these cases, together with an unidentified male companion, arrived at the store of Alden. Because the four men were new faces in that place, he closely observed them and became familiar with their faces. Three of them ordered beer while the fourth asked for a soft drink. After staying for two hours the three accused and their unnamed companion left the store of Alden Adona.

"On the following day, July 26, 1995, also at about 5:00 o'clock in the afternoon, the three accused and their unidentified companion again arrived at the store of Alden. **Alberto Nullan** took a seat on the bench beside the store (Exhibit 'QQ-1'); **Edgar Maligaya** and their unidentified

companion positioned themselves at the opposite ends of Alden's barbeque stand (Exhibit 'QQ-2'); while **Vicente Alagaban** walked to and stayed at the corner of Madrid and Lavezares Streets (Exhibit 'QQ-3'). Incidentally, Exhibit 'QQ' and its submarkings is the sketch drawn in open court by Alden Adona in the course of his testimony on April 26, 1996 relative to the positions taken by the three accused and their unnamed companion following their arrival at the store of Alden in the afternoon on July 26, 1995.

"At around 6:00 o' clock of the same afternoon, the Hi-Ace van which would fetch Benito Gotanci from his office-store arrived and parked in front of No. 622 Madrid Street. Minutes later Benito Gotanci emerged from his office-store. **Edgar Maligaya went over to the bench where Alberto Nullan was seated, while their unidentified companion crossed over to the other side of Madrid Street. Alberto Nullan stood up and walked towards Benito Gotanci, with Edgar Maligaya closely following behind Alberto. As Benito Gotanci was about to board his vehicle Alberto Nullan and Edgar Maligaya surreptitiously approached Benito from behind, and at practically point blank Nullan pumped two bullets from his handgun into Benito Gotanci.** Both bullets found their marks and felled the victim.

"After gunning down Benito Gotanci, Alberto Nullan and Edgar Maligaya ran towards San Nicolas Street, passing by the barbeque stand of Alden Adona. Vicente Alagaban and their unnamed companion, also running, followed them.

"After the assassins had fled, Alden Adona, with some others, carried the fallen man to his vehicle to be rushed to the hospital. But he was dead on arrival (DOA) at the Medical Center of Manila (Exhibit 'UU')."^[4]

The post mortem examination, conducted on the cadaver of the victim by Dr. Manuel Lagonera, Medico-Legal of the Western Police District ("WPD"), revealed these findings:

"1. Gunshot wound, with the point of entry at the left posterior lumbar region, 50 inches from heel, 10 1/2 cms. from posterior midline, measuring 0.5 x 0.6 cm. and contusion collar measures 1 x 1 cm. The bullet course was directed slightly upwards, forwards crossing midline, severely lacerating the left psoas muscle, left kidney, mesentery and small intestine and abdominal aorta. A markedly deformed copper fragment with black lead granules were recovered in the right abdominal cavity.

"2. Gunshot wound, with the point of entry at the left inner, upper quadrant, gluteal region, 41 1/2 inches from heel, 7 1/2 cms. from posterior midline, measuring 0.8 x 1 cm. and contusion collar measures 1.2 x 1.1 cms. The bullet course was directed downwards, forwards towards midline, lacerating the gluteal muscle, fracturing the coccygeal bone, lacerating the retro-peritoneal muscle and fracturing the symphysis pubis. A markedly deformed copper fragment, blue plastic pellet and

black lead granules were recovered in the fractured ends.

INTERNAL FINDINGS:

"1. Injuries to organs and tissues as indicated in the internal extensions of the gunshot wounds, with massive bleeding in the peritoneal cavity.

"2. The rest of the internal organs were pale.

CAUSE OF DEATH:

TWO (2) GUNSHOT WOUNDS."^[5]

Adona could distinctly remember the identity of the culprits since they were in their store on the day before the incident and also because they appeared to him to be new customers. His familiarity with their looks and appearances was sealed when he saw them again the next day, i.e., the day Gotanci was shot. He testified:

"Q On July 25, 1995 at about 5:00 more or less in the afternoon, would you be able to recall if you were at 618 Madrid St., Binondo, Manila?

"A yes, sir

"THE COURT

"What do you mean by yes, sir?

"A that I was at No. 618 Madrid St., Binondo, Manila, Your Honor on July 25, 1995

"THE COURT

"Continue.

"ATTY PADUA JR

"Now, during the time when you were at 618, would you be able to recall if there is anything unusual that you observed?

"WITNESS

"there was, sir

"ATTY PADUA JR

"And what is that, Mr. witness?

"A four male persons arrived, sir

"Q And when you saw these four persons arrived at 618, what else did you Observed?

"A I noticed that one of them separated himself from the three

who were together drinking beer, sir

"Q Mr. witness with respect to the three persons who were then drinking beer, how far were you from them?

"A about two arms length away, sir

"Q And what were you doing then at that time when these four persons arrived at 618?

"A I was selling barbeque at that time, sir

"x x x x x x x x x

"ATTY PADUA JR

"Yes, Your Honor. What was the condition of the light when you saw these four persons arrived at 618 Madrid St., Binondo, Manila?

"A it was very bright at that time, sir

"Q Mr. witness, if I will ask you to make a sketch of the position of the three persons who were drinking beer in relation to your barbeque stand where you were then, were you able to draw that for the benefit of the Honorable Court?

"A yes, sir.

"x x x x x x x x x

"ATTY PADUA JR

"What is the relation of these three figures of sketches of persons with those who arrived on July 25, 1995 at the store of your grandmother?

"A they are the three of those who arrived on July 25, 1995 at that place, sir

"Q What does this figure represent?

"A This represent me while I was selling barbeque, sir

"(witness pointing to another figure)

"Q And what is that mark X represent?

"A the box with marked X is my barbeque stand, sir

"Q Besides 618, is there any building next to it or beside to it?

"A yes, sir there is

"Q and what is that, Mr. witness?