

EN BANC

[G.R. No. 182555, February 08, 2011]

**LENIDO LUMANOG AND AUGUSTO SANTOS, PETITIONERS, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

[G.R.NO. 185123]

**CESAR FORTUNA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R.NO. 187745]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO2
CESAR FORTUNA Y ABUDO, RAMESES DE JESUS Y CALMA,
LENIDO LUMANOG Y LUISTRO, JOEL DE JESUS Y VALDEZ AND
AUGUSTO SANTOS Y GALANG, ACCUSED, RAMESES DE JESUS Y
CALMA AND JOEL DE JESUS Y VALDEZ, ACCUSED-APPELLANTS.**

R E S O L U T I O N

VILLARAMA, JR., J.:

This resolves the motions for reconsideration separately filed by Lenido Lumanog and Augusto Santos, Cesar Fortuna and Rameses de Jesus assailing our Decision dated September 7, 2010 convicting them of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the consolidated petitions and appeal are hereby DISMISSED. The Decision dated April 1, 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00667 is hereby AFFIRMED with MODIFICATIONS in that the civil indemnity for the death of Col. Rolando N. Abadilla is hereby increased to P75,000.00, and the amounts of moral and exemplary damages awarded to his heirs are reduced to P75,000.00 and P30,000.00, respectively.

With costs against the accused-appellants. SO ORDERED.^[1]

Lumanog and Augusto Santos seek the reversal of their conviction on the following grounds:

The Honorable Supreme Court erred in:

- I. Setting out in the facts of the case and the contents of inadmissible extrajudicial confessions;
- II. Not including the extrajudicial confession of Lorenzo delos Santos as excluded evidence;
- III. Applying the ruling in *People v. Rivera* "that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court";
- IV. According finality to the evaluation made by the lower court of the testimony of Freddie Alejo;
- V. Ruling that there was positive identification;
- VI. Finding "none of the danger signals enumerated by Patrick M. Wall" when 3, 7, 10, 11, 12 in said enumeration are present;
- VII. Dismissing the mismatch between the prior description given by the witness and the actual appearances of the accused;
- VIII. Relying on the ocular inspection conducted at a time when a material condition is significantly altered;
- IX. Ruling that the inconsistencies in Alejo's earlier statement and his in-court testimony have been explained;
- X. Not discrediting Alejo's testimony despite acceptance of benefits from the Abadilla family;
- XI. Holding that the acquittal of Lorenzo delos Santos does not necessarily benefit the appellants;
- XII. Ruling that the ballistic and fingerprint examination results are inconclusive and not indispensable;
- XIII. Not considering the totality of evidence presented by the defense as against the alleged "positive identification" of the accused.
- XIV. Allowing Justice Jose Catral Mendoza to take part in the deliberation and the voting;
- XV. Dismissing the evidence presented by Augusto Santos;
- XVI. Ruling that the silence of accused Lumanog amounts to a quasi-confession;
- XVII. Holding that the delay of (4) four years during which the case remained pending with the CA and this Court was not unreasonable, arbitrary or oppressive.^[2]

Rameses de Jesus raised the following grounds in his motion:

I.

THE HONORABLE SUPREME COURT GRAVELY ERRED IN HEAVILY RELYING ON THE LONE ALLEGED EYEWITNESS SECURITY GUARD (SG) FREDDIE ALEJO'S TESTIMONY, WHICH WAS CHARACTERIZED BY MATERIAL OMISSIONS, PATENT INCREDIBILITY, CONTRADICTIONS AND DISCREPANCIES.

II.

THE HONORABLE SUPREME COURT GROSSLY MISAPPRECIATED THE FIRST SWORN STATEMENT GIVEN BY SG FREDDIE ALEJO, WHEREIN HE STATED THAT THERE WERE FOUR (4) SUSPECTS WHO PERPETRATED THE CRIME CONTRARY TO HIS SUBSEQUENT TESTIMONY IN OPEN COURT.

III.

THE HONORABLE SUPREME COURT FAILED TO APPRECIATE THE PERSONAL CIRCUMSTANCES OF THE ACCUSED-APPELLANTS, WHICH WOULD SHOW AS HIGHLY UNLIKELY THEIR ALLEGED COLLECTIVE GUILT AND CONSPIRACY.

IV.

THE HONORABLE SUPREME COURT FAILED TO GIVE WEIGHT TO PHYSICAL EVIDENCE, PARTICULARLY THE EXCULPATORY BALLISTICS AND DACTYLOSCOPY EVIDENCE, AND EXPERT TESTIMONY PRESENTED BY THE DEFENSE.^[3]

On his part, Cesar Fortuna argues that:

THE LONE, CONTRADICTED AND INCREDIBLE TESTIMONY OF S/G ALEJO IS NOT SUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT^[4]

At the inception, let it be emphasized that the filing of a motion for reconsideration does not impose on us the obligation to discuss and rule again on the grounds relied upon by the movant which are mere reiteration of the issues previously raised and thoroughly determined and evaluated in our Decision being questioned.^[5] In particular, the Court need not dwell again on the extrajudicial confessions of Joel de Jesus and Lorenzo delos Santos which we have held inadmissible, the delay in the resolution of the appeals before the CA and this Court which under the circumstances cannot be deemed unreasonable or arbitrary, the inconclusive ballistic and fingerprint examination results, and the effect of Lorenzo delos Santos' acquittal to the rest of appellants. These matters have been passed upon and adequately

discussed in our Decision.

In fine, the accused-movants strongly assail the weight and credence accorded to the identification of the accused by the lone eyewitness presented by the prosecution, security guard Freddie Alejo. It was pointed out, among others, that: (1) in his statement given to the police investigators immediately after the incident, Alejo mentioned only four suspects, contrary to his subsequent testimony in court; it was impossible for him not to mention the two men he had seen walking back and forth before the shooting; (2) Alejo accepted financial support and benefits from the Abadilla family which could have colored his testimony against the accused; (3) his in-court identification of the six accused is questionable and unreliable considering that it referred to them only by numbers and he had given prior description of only two suspects; and (4) the ocular inspection conducted by the trial court to confirm Alejo's observations was likewise unreliable because it was made at a time when a material condition is significantly altered, *i.e.*, it was held from 10:00 a.m. onwards whereas the incident occurred between 8:30 and 9:00 a.m. when the glare of the morning sun directly hits the guard post where Alejo was stationed.

Fortuna submitted an Affidavit dated November 12, 2009 executed by a certain Orencio G. Jurado, Jr. who claims to be one of the police officers initially assigned to investigate the case. Fortuna contends that said belated statement would certainly cast doubt on the procedures undertaken by the police authorities in the apprehension of the likely perpetrators.

We find the motions bereft of merit.

While it is true that Alejo mentioned only four and not six suspects in his June 13, 1996 sworn statement, this did not impair his testimony as an eyewitness. Alejo was simply responding to specific questions as to what he had witnessed during the shooting incident. Herein quoted is an excerpt from the questioning by SPO1 Edilberto S. Nicanor of the Criminal Investigation Division (CID) at Camp Karingal (PNP-NCR) and Alejo's answers thereto:

08. T - Habang ikaw ay naka-duty bilang guwardiya sa 211 Katipunan Road, Quezon City, itong araw na ito, may napansin ka bang hindi pangkaraniwang pangyayari?
S - Mayroon, Sir.
09. T- Anoiyon?
S - May binaril na sakay ng kotse sa harap ng puwesto ko sir.
10. T - Anong oras ito nangyari?
S - 8:40 ng umaga kanina sir, more or less (13 June 1996)
11. TanongSino ba itong binaril na tinutukoy mo, kung kilala mo?
:
Sagot Isang hindi ko kilala na lalaki sir.
:
12. T - **Sino naman ang bumaril sa biktima na ito, kung kilala mo?**

x x x x ^[6] (Emphasis supplied.)

The foregoing shows that Alejo merely gave the responsive answer to the question as to those persons whom he saw *actually shoot* the victim who was in his car. As the question was phrased, Alejo was not being asked about the persons who had participation or involvement in the crime, but only those who actually fired at the victim. Hence, he replied that there were four (4) armed men who suddenly fired shots at the victim. What followed was Alejo's narration of what the gunmen further did to the already wounded victim, to those people within the vicinity — including himself who was ordered at gunpoint to lie down and not interfere — and until the firing stopped as the suspects ran away. Clearly, it was not a fatal omission on the part of Alejo not to include in his first affidavit the two other suspects who were acting as lookouts. During his testimony in court, Alejo was able to fully recount the details and state that there were two men walking back and forth before the shooting. It is settled that contradictions between the contents of an affiant's affidavit and his testimony in the witness stand do not always militate against the witness' credibility. This is so because affidavits, which are usually taken *ex parte*, are often incomplete and inaccurate.^[7]

There is likewise nothing irregular in Alejo's manner of testifying in court, initially referring to the accused by numbers, to indicate their relative positions as he remembered them, and the individual participation of each in the violent ambush of Abadilla. As already explained in our decision, Alejo's elevated position from the guardhouse gave him such a clear and unobstructed view of the incident that he was able to recognize the faces and physical features of the accused at the time. When two of the accused actually poked a gun at him, it gave him more opportunity to see the faces of the accused who had briefly turned their eyes on him. Furthermore, experience dictates, precisely because of the unusual acts of violence committed right before witnesses' eyes, that they remember with a high degree of reliability the identity of criminals.^[8] Indeed, Alejos' recollection is not of "superhuman" level as accused now make it appear, considering that he was a trained security guard, whose job demands extra perceptiveness and vigilance at all times especially during emergency or critical situations. Keen scrutiny of the physical appearance and behavior of persons is a routine part of a security guard's work duties.

Movants likewise fault this Court for giving considerable weight to the observations made by the trial judge during the ocular inspection, arguing that the timing of said ocular inspection did not coincide with the precise hour in the morning when the shooting incident happened. Because the shooting took place between 8:30 to 9:00 when the glare of the morning sun directly hits the guard post of Alejo, the latter supposedly cannot be said to have had such clear vantage point as found by the trial judge when he positioned himself at the said guard post at a later time, which is already past 10:00 in the morning.

We are not persuaded.

Movants are raising the issue for the first time before this Court and long after trial and rendition of judgment. We have perused the transcript of stenographic notes taken during the ocular inspection conducted by the trial court on September 26, 1996, and found no objection or comment made by the defense counsel regarding the timing of the inspection and its relevance to the evaluation of Alejo's testimony.