

I

Even while Sen. Benigno Aquino, Jr. was in exile in the United States, B/Gen. Luther Custodio, then a Colonel and assigned as Intelligence Officer of the Presidential Security Command in Malacañang, been exerting efforts to liquidate Sen. Benigno Aquino, Jr. outside of the United States. Jose Fronda Santos, Jr. of O'Donnell, Capas, Tarlac, a former Security Officer of Senator Aquino was hired by then Col. Luther Custodio as an agent with pay, for the purpose of infiltrating the ranks of such opposition stalwarts as Don. Salvador Laurel, Sen. Eva Estrada Kalaw, and Sen. Benigno Aquino, Jr. He was able to infiltrate the group of Sen. Eva Estrada Kalaw by posting a relative as driver of the Senator. Col. Luther Custodio gave him the code name, Rafael Bernardo, early in 1981. In respect to Sen. Benigno Aquino, Jr., the idea at first was for him to contact the Senator and find out from the latter as to when he was going to Hongkong. As soon as the Senator would be reported to be in Hongkong, he was supposed to make an overseas call to Col. Luther Custodio in order that Col. Luther Custodio can arrange the killing of Senator Aquino in Hongkong. Col. Ochoso, a close associate of Col. Luther Custodio, made the remark that, if he can do it all by himself, he alone should perpetrate the killing. This suggestion he imparted to his uncle, Dr. Bartolome Lapuz, and the latter advised him against it. Dr. Lapuz told him that it was his understanding that Jose Fronda Santos, Jr.'s job was only to infiltrate the ranks of the opposition, never to kill.

Before this trip to Hong Kong on January 5, 1983, however, the instruction of Col. Luther Custodio him was more definite and it was that, if he had the opportunity to kill Sen. Aquino anywhere outside the United States, he should do it himself, but he should make it appear as an accident in order not to embarrass President Ferdinand E, Marcos. De told Col. Luther Custodio that as a soldier, he had no follow the orders of his superior. He assured Col. Luther Custodio, however, that he was going to do what he was ordered to perform. The problem was he had no opportunity to do what he was ordered to do.

II

The activities and movements of Senator Benigno Aquino, Jr. while in the U. S. and during his trip back to the Philippines were largely known to, because they were closely monitored by; the Ministry of Foreign Affairs. Thus, Gen. Fabian Ver and Brig. Gen. Luther Custodio definitely knew the plane the Senator was going to take and the time of his arrival in Manila. This is precisely the reason why the nine International flights that morning merited a mere cursory inspection by the AVSECOM, while more elaborate preparations had been in store for CAL Flight CI-811.

III

Of great significance is the fact that, as early as 6:00 o'clock in the morning of August 21, 1983, B/Gen. Luther Custodio, the Commanding General of the Aviation Security Command, which was tasked with the implementation of OPLAN BALIKBAYAN, was summoned to Malacañang by Gen. Fabian Ver. The purpose ostensibly was to change a. previous order to let Senator Aquino return to his point of origin. The change was that Sen. Benigno Aquino, Jr., upon, his arrival shall be detained. The fact that B/Gen. Custodio was required to go personally to Malacañang, (a telephone call from General Fabian Ver informing B/Gen. Custodio of matters which Gen. Ver would wish to convey would have been sufficient), the matter which Malacañang had wanted B/Gen. Custodio to do was confidential in nature and needed more elaborate instructional details. This instruction became obvious when, upon the arrival of B/Gen. Custodio at his headquarters, he, summoned 2Lt Jesus Castro and told his said aide, the chosen head of the Boarding Party, that there was a change of plans. Instead of Plan Alpha; Plan Bravo was to be implemented. Plan Alpha was supposedly to let the Boarding Party escort Sen. Aquino to exit through the tube, to the remote holding room; and then to the SWAT van; while Plan Bravo was to let the Boarding Party escort Sen. Aquino to exit through the bridge stairs and then to the SWAT van.

IV

As soon as the Boarding Party became positive that Senator Aquino was on board CAL Flight CI-811, Lt. Jesus Castro communicated this fact to Brig. Gen. Luther Custodio by handheld radio by saying, "Balikbayan positive, China Airlines, Bay 8." Brig. Gen. Luther Custodio answered, "Copy. To all units implement Plan Bravo.

"The succeeding events sufficiently revealed what the VER instructions were.

V

Troop assignments were put in place in accordance with the tenor of OPLAN BALIKBAYAN, but efforts appeared geared more towards preventing media, the press, and the people in general from witnessing what they had in store for Senator Aquino.

According to Sandra Jean Burton, even as the plane berthed at Gate 8, men in white polo barong, obviously military operatives in civilian clothes, had already positioned themselves inside the folding passenger tube. The moment the stewardess opened the door of the plane, these men in white polo barong had moved deftly to prevent passengers and journalists alike from following Senator Aquino and witnessing the crime what was about to be committed.

The SWAT van of the AVSECOM, instead of waiting for Senator Aquino and the Boarding at the Remote Holding Area, where ordinarily it was supposed to proceed to, was already parked near the bridge stairs, an indication that Sen. Aquino was surely to be taken down via the side door and onto the bridge stairs.

There was a concerted effort of the Boarding Party and the men of Captain Romeo Bautista, the leader who was supposed to undertake the operations of IMPLAN MASID, to prevent the passengers and the journalists from joining the Boarding Party in going down the stairs and to look out of the side door in order to have a good view of what was happening to the Senator.

Inside the plane, when the Boarding Party fetched Senator Aquino, Ken Kashiwahara, the Senator's brother-in-law, stood up to join Senator Aquino. He was brusquely ordered to sit down. "Just take seat", Sgt. Arnulfo de Mesa uttered. If the Boarding Party had not intended to do some harm to the Senator they would have welcomed the efforts of the journalists to join the Boarding Party and at least take pictures of the Senator when descending the bridge stairs.

VI

Jessie Barcelona saw that, before Senator Aquino went down the stairs where he was shot, the man in blue PAL uniform, 'Later identified as Rolando Galman, had chatted with some soldiers who were supposed to serve as security men assigned to protect the Senator, exchanged pleasantries with them, and laughed with them. This acute observation does lead one to believe that, either Rolando Galman was made to believe that he was to be the assassin or that he was supposed to kill the assassin, Before Rolando Galman could act either way, and, just after Senator Aquino was shot by Sgt. Rogelio Moreno, he was, on a cue, shot and riddled with bullets from the powerful guns of the very soldiers he rubbed elbows with. Rolando Galman was left untended for some time, if only to serve, as planned, as the scapegoat for the Senator's assassination.

VII

The shooting of Rolando Galman by the soldiers herein named, notwithstanding the fact they saw that, not Galman, but ClC Moreno was the soldier who had shot Senator Aquino, is evidence to show that these soldiers were in all the conspiracy to assassinate the Senator, as were the other soldiers in their separate roles.

VIII

The proposition that Rolando Galman on his own, was able to enter the airport premises and go as far as the place where the SWAT van was parked is insulting to our intelligence and greater experience. To say that Rolando Galman, without; the aid of the military brass, did breach security is indeed preposterous, to say the least.

Take the case of Mario Laher, Jr., just as an example. Being then a legitimate Aircraft Technician of PAL, he was provided with a proper ID and was in the list of PAL employees who were to work for the day. Proof of his identity notwithstanding, he was subjected to intense interrogation at the entrance gate and the guards made sure that his face matched his picture on his ID. Since the picture in the ID Rolando Galman was carrying was not that of the latter, the ID picture surely bore no resemblance at all to Rolando Galman. How could Rolando Galman have gotten in if the military did not smuggle him in and if there were no plans to make him a patsy?

Jessie Barcelona had the same difficulty in entering MIA. Airport Manager Luis Tabuena himself was also subjected to the same security measures.

Rolando Galman, for this reason must have come with the van.

More than nine hundred (900) troops, according to Maj. Gen. Olivas, were actually employed by Brig. Gen. Luther Custodio, Commanding General of the AVSECOM, to secure the MIA, ostensibly to protect but one man - Sen. Benigno Aquino, Jr. In the Oplan, Implan Alalay was supposed to employ 5 men; Implan Alpha, 10 men; Implan Bravo, 7 men; Implan Charlie and Delta, 14 men; Implan Salubong, 275 officers and men; Implan Sawata, 821 officers and men; and Implan Masid, 9 men - 1,136 all in all.

There were just too many men securing such a small area as the distance between the foot of the bridge stairs and the SWAT van that it was virtually impossible for any unwanted and unauthorized person to break through the cordon.

The Boarding Party formed themselves into a "V" formation, with Senator Aquino in the middle. In other words, Senator Aquino was - then protected from all angles and there was nothing an assassin could do to penetrate the formation without being detected and stopped in his tracks.

The tarmac was such an open space that the slightest movement of any would-be assassin to breach the formation would have been fatal to the attacker.

IX

We perceive with grave importance and significance the testimony of Jose Fronda the effect that, one (1) week before Santos Jr. to the assassination of Sen. Aquino, he saw the General's aide, Lt. Jesus Castro, holding and toying with a .357 magnum revolver that had grip was colored yellowish White. Lt. Castro was displaying this gun to the soldiers around him. This goes to show that preparations for the charade on August 21, 1983 had been undertaken some time before the assassination.

X

A most damning evidence against the defense is the testimony of Col. Octavio Alvarez to the effect that the .357 magnum revolver, Exhibit "F3", alleged by Sgt. de Mesa and Martinez to be the gun used by Rolando Galman, had actually been the gun of Col. Octavio Alvarez which was stolen from his car. This derails the defense contention that this was the fatal gun and that Rolando Galman used it in killing Senator Aquino. The fact that this gun was found in the possession of the military, gives credence to the suspicion of Col. Octavio Alvarez that men of Col. Rolando Abadilla were the ones who stole it from his car. The presence of Col. Rolando Abadilla at the

tarmac of the MIA just before the assassination of Senator Aquino and has long suspicious conference with Rolando Galman at the time shows the tie up between the military and this gun.

We recall evidence showing that this gun was in fact fondled and shown off to soldiers in the office of B/Gen. Custodio and 2lt Jesus Castro a wee k before the assassination.

Brig. Gen. Luther Custodio immediately before his assumption of the Office of Commanding General of the AVSECOM, had for sometime been the Intelligence Officer of the Presidential Security Command and the trusted personal pilot of President Ferdinand E. Marcos. Without doubt President Marcos had moral and physical ascendancy over him.

XII

Just as soon as the plane docked, or immediately before that, G/Gen. Luther Custodio gave the order that all passengers should remain seated until the Boarding Party, headed by his aide, Lt. Jesus Castro, shall have taken custody of Senator Aquino. The order was intended to stop the journalists and the passengers from joining Senator Aquino and to prevent them from witnessing what the military

had all the while, been conspiring to do - to assassinate Senator Benigno Aquino, Jr. The military, all in polo barong, members of Captain Romeo Bautista's OPLAN MASID, were immediately on hand to stop the passengers and the journalists from getting out of the plane before Senator Aquino could be done away with.

As to the origin of the order which required the passengers of the CAL Flight Cr-811 to remain seated until the Boarding Party shall have aboard, Florante Magdamo, Chief of the Airport Traffic and Ramp Control of the Manila International Airport, recalled that, shortly after the CAL plane had berthed at Gate B on August 21, 1983, a certain Sgt. David Argarin Jr., a member of the AVSECOM then posted at the control tower, requested him to relay that message to the CAL plane. The message, while passing through channels, came from the big boss of AVSECOM himself, Brig. Gen. Luther Custodio.

XIII

Another proof of conspiracy is the manner by which Galman was shot. He was riddled with bullets to make sure he was dead and unable to tell the truth, for truly, dead men tell no tales. If he was truly

an assassin sent by the communists, or whoever, would it not have been enough to disable him and thereby be able to extract from him valuable information on who in particular had ordered the Senator's assassination? And the further fact that for several hours his body was left unattended, and exposed for all to see and for media to take pictures of, reinforces the belief that the perpetrators wanted the public to see and to believe that a hired assassin was responsible, for that, too, was part of the conspiracy.

XIV

When Senator Aquino was brought on board the SWAT van ostensibly for the purpose of bringing him to the hospital for emergency treatment, it is the finding of this Court that the Senator "was struck on top of the head with a blunt instrument, possibly the butt of a gun, by a member of Team Alpha, perhaps for the reason that the members of the 'team had thought that then was still alive and might survive.

XV

The Leader and members of the Boarding Party, together with the actual killer, Moreno, fled from the scene in every direction. Were it the fact that they stuck to their commitment; to promote the safety of the Senator, they would have stayed with the Senator, called for a doctor or an ambulance, or, at least, remained with their supposed ward in order to administer first aid or cater to his needs, whatever.

XVI

It will be recalled that it was the conclusion of Dr. Matsumi Suzuki that, when the following words were heard to have been uttered in the Wakamiya tape:

"Ako na Ako na op Ito na Ito na op pusila pusila," it was:

Sgt. Claro M. Lat who uttered the first phrase, *"Ako na "*,

Sgt. Arnulfo de Mesa uttered phrase, *"Ako na";*

Sgt. Claro M. Lat uttered the expression *"OP"*

Lt. Jesus Castro uttered the phrase, *"Ito na";*

CIC Mario Lazaga was the one who uttered the word, *"Ya";*

Sgt. Claro M. Lat again uttered the express again, *"OP";*

Lt. Jesus Castro next uttered the word, "*Pusila*"; and, CIC Mario Lazaga uttered the second "*Pusila*."

The words uttered and the persons uttering them suggest the scenario that, while Sen. Aquino and, the Boarding Party were still descending the bridge stairs, the Boarding Party saw that Rolando Galman had prematurely appeared the members of the Boarding Party consequently panicked because the sudden appearance of Rolando Galman disrupted their planned synchronized actuations. Obviously, the plan was to make Rolando Galman appear suddenly after the Senator shall have reached the van. It was then that ClC Moreno was ordered to shoot the Senator. The point is that, at the brink of extreme urgency, the command to shoot was made.

The circumstances herein adduced and proven support a finding of conspiracy among the accused who are shown by the evidence to have been involved. It is true that, as a general rule, the same degree of proof required for establishing the crime is required to support a finding of conspiracy. In other words, conspiracy must be shown to exist as clearly and convincingly as the commission of the offense itself in order to uphold the fundamental principle that no one shall be found guilty of crime except upon proof beyond reasonable doubt. For, conspiracy in the statutory language exists when two or more persons come to an agreement, concerning the commission of a felony

and decide to commit it. The object then on the part of the conspirators is to perform an act or omission punishable by law.

The Highest Tribunal, coming to grips with reality, however, ruled that conspiracy may be proved not necessarily directly, but even only by a number of indefinite acts, conditions and circumstances which vary according to the purpose to be accomplished and from which it can logically be inferred that there was a common design, understanding and agreement among the accused to commit the offense charged. (Galang & De Guzman, 73 Phil, 184; 199, MATaram, 52 Phil. 761). Thus, Justice Gancayco, speaking for the Supreme Court in *People vs. Basilan*, 174 SCRA 115-116, June 20, 1989, ruled that while there was no direct evidence of conspiracy, conspiracy was proven by the following circumstances: (1) That there were three accused involved in the case, but that the victim would be killed if he did not comply with their demand; (2) Her two (2) unidentified companions held the victim on both sides ; (3) The accused while present was not shown to have inflicted any stab wound on the victim; and (4) The three (3) accused fled from the scene of the crime together.

In a case identical to the scene at the bar, it was held that "where all the 77 constabulary men" were imbued with the same purpose, which was to avenge themselves on the Manila policemen, and common feeling of resentment animated all and a common plan evolved from their military training was followed, it is incontestable that

there was a conspiracy among them to commit murder and sedition. The existence of joint assent may be reasonably inferred from the facts proved. Not alone are the men who admit firing their carbines responsible, but all, having united to further a common design of hate and vengeance, are responsible for the legal consequences thereof." (Graciano Cabrera, 43 Phil.

Thus when each of the accused performed specific acts in the commission of the crime with such closeness and coordination that would indicate a common purpose or design, conspiracy has been established beyond reasonable doubt. (People vs. Penia, 143 SCRA 3611).

Over acts in furtherance of the conspiracy may consist in actively participating in the actual commission of the crime, or in lending moral assistance to his co-conspirators by being present at the scene of the crime; in exerting moral ascendancy over the rest of the co-conspirators as to move to executing the conspiracy. (People vs. Casey, 103 SCRA 21, citing the People vs. Peralta, 25 SCRA 759).