

Republic of the Philippines
SANDIGANBAYAN
Maynila

SPECIAL DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

CRIM. CASE NO. 10010

and 10011

B/GEN. LUTHER A. CUSTODIO,

et al.,

Accused.

x-----x

D E C I S I O N

HERMOSISIMA, J.:

Senator Benigno Aquino Jr., fondly called "Ninoy" by those closest and dearest to him, arrived at the Manila International Airport from Taipei on board CAL Flight CI-811, at 1:04 o'clock in the afternoon of August 21, 1983. While he ought to have been met with flowers, laded with leis, and carried over the shoulders of his admirers and friends as a returning patriot, he was, instead, treacherously and brutally shot at the back of the head after being fetched by military men from inside the plane and led out surreptitiously through an aerobridge door and down into a bridge stairs. The foremost opposition leader, the most malignant thorn at the side of the then ailing strongman, President Ferdinand e. Marcos, fell dead, his face kissing at last the soil of his native land. And, as he was flung downwards,

"O, what a fall was there, my countrymen! Then you, and I, and all of us fell down, Whilst bloody treason flourish'd over us." (Mark Anthony in Shakespeares' 'Julius Caesar.'")

How true! since then, and even up to this day, the nation suffered as a result of this barbarity and inhumanity. For, in the eyes of the world, then, the Filipino had committed political '*hara kiri*.'

Golden thread of reason ran through former Sen. Benigno Aquino Jr.'s intense desire to return to the Philippines after he underwent a successful heart surgery in the United States, for he had intended: - to promote reconciliation, as he alone could have breached the gap between President Ferdinand E. Marcos and the Filipino people already restive from oppression, hunger and loss of basic freedoms; to give relief to a sagging national economy, as to him was given the assurance of aid, assistance and cooperation from countries which had heretofore not been counted as allies; and, to offer a solution to the growing insurgency, for he had the genius for rapprochement, appeasement, and better understanding with the different groups of rebels in the country.

By way of a backdrop, it is a fact of judicial knowledge that, when Ayatollah Khomeini, Imam and most influential opposition spiritual leader of Iran, was allowed to return to his country from exile on January 2, 1979, he caused to be overpowered shortly thereafter, through people power, the corrupt and repressive monarchy headed by the Shah of Iran, the equally corrupt and repressive authoritarian government in the Philippines was shaken and had visibly quivered, under the shadow of what was then the world's prevailing milieu.

While a Military Tribunal, after hearing charges of murder, rebellion, and other heinous crimes against Sen. Benigno Aquino Jr , had sentenced the senator to the penalty of death by firing squad, the sentence could not be executed on account of the adverse opinion of most countries of the democratic world, United States of America included. The government was placed in a quandary. It had finally decided to allow the senator to go to the United States for medical treatment. In effect, the senator was sent out in virtual exile. But, after a successful heart operation, Sen. Benigno Aquino Jr expressed the desire to return to his country. This, after the lessons learned from the Ayatollah Khomeini experience, the Marcos government could ill afford.

Consequently, efforts were exerted to dissuade Sen. Benigno Aquino Jr from returning home. President Ferdinand E. Marcos and his First Lady, Madam Imelda Romualdez-Marcos, had caused a message to be delivered to him to convince him not to return. On May 21, 1983, the First Lady personally met him in the Philippine Center in New York and asked him not to return to the Philippines or, at least, to postpone his return, because of the rumored threats against his life.

It had seemed that Sen. Benigno Aquino Jr was adamant in his resolve to come home; and he said so in more resolute terms, notwithstanding knowledge that a judgment of death handed down by a Military Tribunal awaited him. "I would rather die a meaningful death than live a meaningless life," he said.

Interviewed by print and broadcast media, the First Lady, madam Imelda Romualdez-Marcos, was heard to say in apparent exasperation, "If Aquino gets home, he's dead."

Ironically, the Military Tribunal's verdict of death had somehow been perversely executed. By whom, the evidence presented during the trial had shown. The heinousness of his assassination Sen. Benigno Aquino Jr foresaw, Christianlike as the ghastly reality of a foredoomed sacrifice.

The people then, perceiving the circumstances of Sen. Aquino's death, cried out for blood through print and broadcast media and condemned the Sandiganbayan in the process in, this wise: "The fifty-two million Filipinos know who killed, or caused the killing of Sen. Benigno Aquino Jr. Why is this not known by the Sandiganbayan?" Condemned by the people through sheer logic were: President Ferdinand E. Marcos, the former First Lady, and Gen. Fabian Ver - and they wanted this court to try them forthwith, sentence them and thereby relegate them to perdition, instead of prosecuting only their subalterns. Certainly, in a democratic society such as ours, conviction without due process and proper trial is not within the concept of justice according to law. The former First Couple had never been indicted with the persons accused in these cases, obviously because no witness has come forward to accuse them; and there has been no evidence to prove a prima facie case against them. This court acts only on charges filed, and convicts on valid evidence after trial, only those impleaded as defendants in the Information. If the former President and his First Lady were not so impleaded, they cannot be convicted, even if they have been condemned before the bar of public opinion.

Gen. Fabian Ver was acquitted by the so-called Pamaran court in the first trial. While is he presently impleaded as a defendant, this court has not as yet acquired jurisdiction over him.

News of the murder most foul had spread throughout the land, and all over the world, even before nightfall. Fear had beset those who had perpetrated and conspired to perform the deed. But, there could only be wailing and gnashing of teeth on the part of those who grieved the death of the fallen hero.

Feeling that he was pressured into causing an investigation of the assassination, President Ferdinand E. Marcos, prone to flatulence and pomposity, made a show of creating a fact-finding commission ostensibly "with plenary powers to investigate the circumstances surrounding the assassination of former Sen. Benigno s. Aquino jr and allow a free and unlimited and exhaustive investigation in all aspects of the tragedy," notwithstanding his announcements through print and broadcast media that the killer of the late senator was no other than Rolando Galman. The commission was composed of then Chief Justice Enrique Fernando, as chairman, former Chief Justice Roberto Concepcion (who declined the appointment), and retired Justices Ruperto Martin, Guillermo Santos and Felix Antonio, as members.

The commission was created on Aug. 24, 1983 by virtue of Administrative Order No. 469. This commission did not meet with public approval and was consequently dissolved.

President Ferdinand E. Marcos was for this reason constrained to substitute the so-called Fernando commission with a Multi-Sectoral Fact-Finding Board, Composed of Justice Corazon G. Agrava, representing the judiciary and the women sector; Hon. Amado C. Dizon, representing education; Hon. Ernesto Herrera, representing labor; Hon, Dante Santos, representing business; and Hon, Luciano Salazar, representing the bar, as well as the professional sector. It took this board, later known as the Agrava Board, more than one year to make a report of its findings. Justice Corazon Agrava, chairman, came out with a separate report on Oct. 24, 1984 which concluded that the

murder was the result of a military conspiracy plotted by B/Gen. Luther A. Custodio, Sgt. Claro M. Lat, Sgt. Arnulfo de Mesa. Sgt. Felomino Miranda, CIC Rogelio Moreno, CIC Mario Lazaga and Sgt. Armando dela Cruz. The day following, however, the four other members of the Agrava Board made a separate report and disputed the findings of chairman Agrava in the sense that a greater number of military officers and men participated or were involved in the conspiracy and that Chief of Staff Fabian C. Ver and Metrocom Chief b/Gen. Prospero Olivas, were in on the conspiracy.

On the basis of these two reports, then then Tanodbayan conducted a preliminary investigation and filed two Informations, charging as principals in the murder of Benigno S. Aquino Jr. the following:

- (1) Brig. Gen. Luther A. Custodio
PAF, and assigned as chief,
Aviation Security Command
- (2) Col. Arturo G. Custodio
AFP, Philippine Air Force
- (3) Col. Vicente B. Tigas Jr.
Philippine Army, AFP,
assigned with the Presidential Security Command
- (4) Capt. Felipe Valeriano
PAF, assigned with AVSECOM
- (5) Capt. Llewelyn Kavinta
PAF, assigned with the AVSECOM

(6) Capt. Romeo M. Bautista
PAF, assigned with the AVSECOM

(7) 2Lt. Jesus Castro
PAF, assigned with the AVSECOM

(8) Sgt. Arnulfo de Mesa
PAF, assigned with the AVSECOM

(9) Sgt. Claro Lat
PAF, assigned with the AVSECOM

(10) Sgt. Filomeno Miranda
PAF, assigned with the AVSECOM

(11) Sgt. Armando de la Cruz
PAF, assigned with the AVSECOM

(12) Sgt. Rolando C. de Guzman
PAF, assigned with the AVSECOM

(13) Sgt. Ernesto M. Mateo
PAF, assigned with the AVSECOM

(14) Sgt. Rodolfo M. Desolong
PAF, assigned with the AVSECOM

(15) CIC Rogelio Moreno
Philippine Constabulary

(16) CIC Mario Lazaga
Philippine Constabulary

(17)AIC Cordova Estelo
PAF, assigned with the AVSECOM

And as accessories thereof:

(1)Gen. Fabian C. Ver,
Chief of Staff, Armed Forces of the Philippines, and
Director General, National Intelligence and Security
Authority (NISA);

(2)Maj. Gen. Prospero A. Olivas,
AFP, Chief, Metropolitan Command,
Philippine Constabulary

(3)Sgt. Pablo Martinez,
PAF, assigned with the AVSECOM

(4)Sgt. Tomas Fernandez,
PAF, assigned with the AVSECOM

(5)Sgt. Leonardo Mojica,
PAF, assigned with the AVSECOM;

(6)Sgt. Pepito Torio,
PAF, assigned with the AVSECOM;

(7)Sgt. Prospero Bona,
PAF, assigned with the AVSECOM;

(8)AIC Aniceto Acupido,
PAF, assigned with the AVSECOM.

And as accomplice:

(1) Hermilo Gosuico.

For taking the life of Rolando Galman, the same persons were respectively charged as principals, accessories, and accomplice as in the killing of Senator Benigno S. Aquino Jr.

After trial on the merits, the First Division of the Sandiganbayan, composed of Hon. Manuel R. Pamaran, Presiding Justice; Hon. Augusto M. Amores and Hon. Bienvenido Vera Cruz, Associate Justices, rendered judgment, on December 2, 1985, nearly two-and-a-half years after the assassination in question, acquitting all of the aforementioned accused.

A petition to review this judgment was filed by the prosecution with the Supreme Court. Taking cognizance of the petition, the Supreme Court gave due course thereto, by commissioning retired Supreme Court Justice Conrado M. and retired Court of Appeals Justices Milagros German and Eduardo Caguioa to gather and ascertain facts pertinent to the petition. A report thereon was made by the commission indicating that the judgment of acquittal rendered in the case by the Sandiganbayan was rendered with grave and serious infirmities, foremost among which is that the judgment of acquittal was rendered by reason of undue pressure from Malacanang. Whereupon the Supreme Court rendered judgment ordering the Sandiganbayan to retry the aforementioned murder cases (Galman, et al. vs. Sandiganbayan, 144 SCRA, 43).

The then Tanodbayan, Hon. Raul Gonzalez, promptly filed the following Information, not only against the 26 accused impleaded in the original informations, but also against 15 others.

Crim. Case No. 10010

AMENDED INFORMATION

The undersigned accused -

- (1) Brig. Gen. Luther A. Custodio
- (2) Col. Arturo Y. Custodio
- (3) Capt. Llewellyn Kavinta
- (4) Capt. Romeo Bautista
- (5) 2nd Lt. Jesus Castro
- (6) Sgt. Arnulfo de Mesa
- (7) Sgt. Claro Lat
- (8) Sgt. Filomeno Miranda
- (9) Sgt. Armando de la Cruz
- (10) Sgt. Rolando de Guzman
- (11) Sgt. Ernesto Mateo
- (12) Sgt. Rodolfo Desolong
- (13) AIC Cordova Estelo
- (14) Sgt. Pablo Martinez
- (15) Sgt. Tomas Fernandez
- (16) Sgt. Leonardo Mojica
- (17) Sgt. Pepito Torio
- (18) Sgt. Prospero Bona
- (19) AIC Aniceto Acupido
- (20) Col. Vicente Tigas Jr
- (21) CIC Rogelio Moreno
- (22) CIC Mario Lazaga
- (23) Maj. Gen. Prospero Olivas
- (24) Gen. Fabian Ver

- (25) Capt. Felipe Valerio
- (26) Hermilo Gosuico
- (27) Sgt. Clemente Casta
- (28) Sgt. Ruben Aquino
- (29) Sgt. Arnulfo Artates
- (30) AIC Felizardo Taran
- (31) Sgt. Oscar Fabiana
- (32) AM Joseph Opillas
- (33) Sgt. Juan C. Catador
- (34) Sgt. Reynaldo Pelias
- (35) Sgt. Onofre Danao
- (36) AM Alejandro Febrero
- (37) Sgt. Eugenio Caliboso
- (38) Jose D. Aspiras
- (39) Jesus Z. Singson
- (40) Gregorio Cendana
- (41) John Does.

of the crime of MURDER, defined and penalized under Article 248, in relation to Articles 17, 18, and 19 of the Revised Penal Code of the Philippines, as amended, committed as follows:

That on or about August 21, 1983, at the Manila International Airport, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused -

- (1) Brig. Gen. Luther A. Custodio
PAF, and formerly assigned as Chief,
Aviation Security Command

- (2) Col. Arturo G. Custodio
AFP, Philippine Air Force

- (3) Col. Vicente B. Tigas Jr.
Philippine Army, AFP,
formerly assigned with the Presidential Security Command
- (4) Capt. Felipe Valerio
PAF, formerly assigned with AVSECOM
- (5) Capt. Llewelyn Kavinta
PAF, formerly assigned with the AVSECOM
- (6) Capt. Romeo M. Bautista
PAF, formerly assigned with the AVSECOM
- (7) 2Lt. Jesus Castro
PAF, formerly assigned with the AVSECOM
- (8) Sgt. Arnulfo de Mesa
PAF, formerly assigned with the AVSECOM
- (9) Sgt. Claro Lat
PAF, formerly assigned with the AVSECOM
- (10) Sgt. Filomeno Miranda
PAF, formerly assigned with the AVSECOM
- (11) Sgt. Armando de la Cruz
PAF, formerly assigned with the AVSECOM
- (12) Sgt. Rolando C. de Guzman
PAF, formerly assigned with the AVSECOM

(13) Sgt. Ernesto M. Mateo

PAF, assigned with the AVSECOM

(14) Sgt. Rodolfo M. Desolong

PAF, formerly assigned with the AVSECOM

(15) CIC Rogelio Moreno

Philippine Constabulary

(16) CIC Mario Lazaga

Philippine Constabulary

(17) AIC Cordova Estelo

PAF, formerly assigned with the AVSECOM

(18)) Sgt. Pablo Martinez,

PAF, formerly assigned with the AVSECOM

(19) Sgt. Tomas Fernandez,

PAF, formerly assigned with the AVSECOM

(20) Sgt. Leonardo Mojica,

PAF, formerly assigned with the AVSECOM;

(21) Sgt. Pepito Torio,

PAF, formerly assigned with the AVSECOM;

(22) Sgt. Prospero Bona,

PAF, formerly assigned with the AVSECOM;

(23) AIC Aniceto Acupido,

PAF, assigned with the AVSECOM.

(24) Sgt. Clemente Casta

Member of the former Presidential Security Command

(25) Sgt. Ruben Aquino

PAF, formerly assigned with the AVSECOM

(26) Sgt. Arnulfo M. Artates

PAF, formerly assigned with the AVSECOM

(27) AIC Felizardo Taran

PAF, formerly assigned with the AVSECOM

(28) Sgt. Oscar Fabiana

PAF, formerly assigned with the AVSECOM

(29) AM Joseph Opilas

PAF, formerly assigned with the AVSECOM

(30) Sgt. Juan C. Catador

PAF, formerly assigned with the AVSECOM

(31) Sgt. Reynaldo Pelias

PAF, formerly assigned with the AVSECOM

(32) Sgt. Onofre Danao

PAF, formerly assigned with the AVSECOM

(33) AM Alejandro Febrero

PAF, formerly assigned with the AVSECOM

(34) Sgt. Eugenio Caliboso

PAF, formerly assigned with the AVSECOM

(35) John Does

who are hereby charged as PRINCIPALS, all public officers, having been duly appointed and discharging their respective duties as such, and committing the offense in relation to their public positions, conspiring and confabulating with one another, did then and there, with malice aforethought and deliberate intent to take the life of BENIGNO S. AQUINO JR, willfully, unlawfully, feloniously and with evident premeditation and treachery, suddenly and unexpectedly attack the latter by firing and shooting said victim with a gun, from behind, thus fatally wounding him at the back of his head, which wound being necessarily mortal, caused the direct and immediate death of said BENIGNO S. AQUINO JR.;

Accused -

(1) Gen Fabian C. Ver,

Formerly Chief of Staff, Armed Forces of the Philippines,
and Director General, National Intelligence and Security
Authority (NISA);

(2) Maj. Gen. Prospero A. Olivas,

AFP, former Chief, Metropolitan Command,
Philippine Constabulary;

(3) John Does

who are hereby charged as ACCESSORIES, in the same offense, MURDER; all public officers, having been duly appointed and discharging their respective duties as such, and committing the offense in relation to their public position, and having knowledge of the commission of the crime, and without having participated therein either as principals or accomplices, take part subsequent to its commission by concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery;

and accused -

- (1) Herminio Gosuico
- (2) Jose D. Aspiras
- (3) Jesus Z. Singson
- (4) Gregorio Cendana
- (5) JOHN DOES

a private individual, former Minister of Tourism, former Director, Bureau of Air Transport and former Minister of Information, respectively, cooperated in the execution of the offense by previous acts, and, therefore, charged as ACCOMPLICE in the same offense;

The following other aggravating circumstances are hereby invoked: (1) that the accused took advantage of their public positions; (2) that advantage was taken of offenders' superior strength; and, (3) that craft or fraud was employed by the offenders.

CONTRARY TO LAW."

Crim. Case No. 10011

"AMENDED INFORMATION

The undersigned accused -

- (1) Brig. Gen. Luther A. Custodio
- (2) Col. Arturo Y. Custodio
- (3) Capt. Llewelyn Kavinta
- (4) Capt. Romeo Bautista
- (5) 2nd Lt. Jesus Castro
- (6) Sgt. Arnulfo de Mesa
- (7) Sgt. Claro Lat
- (8) Sgt. Filomeno Miranda
- (9) Sgt. Armando de la Cruz
- (10) Sgt. Rolando de Guzman
- (11) Sgt. Ernesto Mateo
- (12) Sgt. Rodolfo Desolong
- (13) AIC Cordova Estelo
- (14) Sgt. Pablo Martinez
- (15) Sgt. Tomas Fernandez
- (16) Sgt. Leonardo Mojica
- (17) Sgt. Pepito Torio
- (18) Sgt. Prospero Bona
- (19) AIC Aniceto Acupido
- (20) Col. Vicente Tigas Jr
- (21) CIC Rogelio Moreno
- (22) CIC Mario Lazaga
- (23) Maj. Gen. Prospero Olivas
- (24) Gen. Fabian Ver
- (25) Capt. Felipe Valerio
- (26) Hermilo Gosuico
- (27) Sgt. Clemente Casta

- (28) Sgt. Ruben Aquino
- (29) Sgt. Arnulfo Artates
- (30) AIC Felizardo Taran
- (31) Sgt. Oscar Fabiana
- (32) AM Joseph Opilas
- (33) Sgt. Juan C. Catador
- (34) Sgt. Reynaldo Pelias
- (35) Sgt. Onofre Danao
- (36) AM Alejandro Febrero
- (37) Sgt. Eugenio Caliboso
- (38) Jose D. Aspiras
- (39) Jesus Z. Singson
- (40) Gregorio Cendana
- (41) John Does

of the crime of MURDER, defined and penalized under Article 248, in relation to Article 17, 18 and 19 of the Revised Penal Code of the Philippines, as amended, committed as follows:

That on or about August 21, 1983, at the Manila International Airport, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused -

- (1) Brig. Gen. Luther A. Custodio
PAF, and formerly assigned as Chief,
Aviation Security Command
- (2) Col. Arturo G. Custodio
AFP, Philippine Air Force
- (3) Col. Vicente B. Tigas Jr.
Philippine Army, AFP,
formerly assigned with the Presidential Security Command

- (4) Capt. Felipe Valerio
PAF, formerly assigned with AVSECOM
- (5) Capt. Llewelyn Kavinta
PAF, formerly assigned with the AVSECOM
- (6) Capt. Romeo M. Bautista
PAF, formerly assigned with the AVSECOM
- (7) 2Lt. Jesus Castro
PAF, formerly assigned with the AVSECOM
- (8) Sgt. Arnulfo de Mesa
PAF, formerly assigned with the AVSECOM
- (9) Sgt. Claro Lat
PAF, formerly assigned with the AVSECOM
- (10) Sgt. Filomeno Miranda
PAF, formerly assigned with the AVSECOM
- (11) Sgt. Armando de la Cruz
PAF, formerly assigned with the AVSECOM
- (12) Sgt. Rolando C. de Guzman
PAF, formerly assigned with the AVSECOM
- (13) Sgt. Ernesto M. Mateo
PAF, assigned with the AVSECOM
- (14) Sgt. Rodolfo M. Desolong
PAF, formerly assigned with the AVSECOM

(15)CIC Rogelio Moreno
Philippine Constabulary

(16)CIC Mario Lazaga
Philippine Constabulary

(17)AIC Cordova Estelo
PAF, formerly assigned with the AVSECOM

(18)) Sgt. Pablo Martinez,
PAF, formerly assigned with the AVSECOM

(19) Sgt. Tomas Fernandez,
PAF, formerly assigned with the AVSECOM

(20)Sgt. Leonardo Mojica,
PAF, formerly assigned with the AVSECOM;

(21)Sgt. Pepito Torio,
PAF, formerly assigned with the AVSECOM;

(22)Sgt. Prospero Bona,
PAF, formerly assigned with the AVSECOM;

(23)AIC Aniceto Acupido,
PAF, assigned with the AVSECOM.

(24)Sgt. Clemente Casta
Member of the former Presidential Security Command

(25)Sgt. Ruben Aquino
PAF, formerly assigned with the AVSECOM

(26) Sgt. Arnulfo M. Artates

PAF, formerly assigned with the AVSECOM

(27) AIC Felizardo Taran

PAF, formerly assigned with the AVSECOM

(28) Sgt. Oscar Fabiana

PAF, formerly assigned with the AVSECOM

(29) AM Joseph Opilas

PAF, formerly assigned with the AVSECOM

(30) Sgt. Juan C. Catador

PAF, formerly assigned with the AVSECOM

(31) Sgt. Reynaldo Pelias

PAF, formerly assigned with the AVSECOM

(32) Sgt. Onofre Danao

PAF, formerly assigned with the AVSECOM

(33) AM Alejandro Febrero

PAF, formerly assigned with the AVSECOM

(34) Sgt. Eugenio Caliboso

PAF, formerly assigned with the AVSECOM

(35) John Does

who are hereby charged as PRINCIPALS, all public officers, having been duly appointed and discharging their respective duties as such, and committing the offense in relation to their public positions,

conspiring and confabulating with one another, did then and there, with malice aforethought and deliberate intent to take the life of ROLANDO GALMAN, willfully, unlawfully, feloniously and with evidence premeditation and treachery, suddenly and unexpectedly attack the latter by repeated firing and shooting said victim with different firearms, thus fatally inflicting eighteen (18) gunshot wounds in different parts of his body, which wounds were necessarily mortal, thereby causing the direct and immediate death of said ROLANDO GALMAN.

(1) Accused - Gen Fabian C. Ver,
Formerly Chief of Staff, Armed Forces of the Philippines,
and Director General, National Intelligence and Security
Authority (NISA);

(2) Maj. Gen. Prospero A. Olivas,
AFP, former Chief, Metropolitan Command,
Philippine Constabulary;

(3) John Does

who are hereby charged as ACCESSORIES, in the same offense, MURDER; all public officers, having been duly appointed and discharging their respective duties as such, and committing the offense in relation to their public positions, and having knowledge of the commission of the crime, and without having participated therein either as principals or accomplices, take part subsequent to its commission by concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery;

and accused -

- (1) Hermilo Gosuico
- (2) Jose D. Aspiras
- (3) Jesus Z. Singson
- (4) Gregorio Cendana
- (5) John Does

a private individual, former Minister of Tourism, former Director, Bureau of Air Transport, and former Minister of Information, respectively, cooperated in the execution of the offense by previous acts, and, therefore, charged as ACCOMPLICE in the same offense;

The following other aggravating circumstances are hereby invoked: (1) that the accused took advantage of their positions; (2) that advantage was taken of offenders' superior strength; and (3) that craft or fraud was employed by the offenders.

CONTRARY TO LAW."

While the decision of the Supreme Court in Galman vs. Sandiganbayan, supra, was received by this Court on February 24, 1987, the accused in the above-titled cases were arraigned only on April 6, 1987, the delay having been caused by dilatory tactics attributable both to the prosecution and the defense.

All of the accused were accounted for, except for Maj. Gen. Fabian C. Ver, the latter having left for the United States with President Ferdinand E. Marcos and his family; Minister Gregorio Cendana; and Capt. Felipe Valero, the latter two having remained at large.

When called for arraignment, the accused refused to plead, ostensibly for the reason that they were not ready, but a good number of the accused made it clear that they refused to be arraigned because they had been previously acquitted, after trial, by a court of competent jurisdiction. By reason of their refusal to plead, the Court caused to be entered in their behalf separate plea of "not guilty."

The parties having agreed on a joint trial of the above-entitled cases the prosecution started presenting evidence on April 28, 1987 and, after presenting seventy-nine (79) witnesses and voluminous exhibits, the prosecution rested its case on September 28, 1989.

Grant of due process
As cause for the law's
inordinate delay."

This is not an attempt to sanitize the much-publicized allegation of delay in the disposition of these cases; rather, it is to state with reasons why the present composition of this Court need not have been grossly and unfairly objurgated for misplaced apprehensions and misgivings and the desire for precipitate action, for dark inroads upon this Court's prerogative to afford due process do lend color to the accused's presentations that pressure has been subtly exerted on this Court.

First. It should be noted that, indeed, while the assassination of Senator Benigno Aquino Jr took place on August 21, 1983, the accused could not immediately be prosecuted. Witnesses were yet to be found and gathered. This was supposed to have been the function of the Fernando Commission, but this Commission was dissolved because it met with public disfavor.

Second. The function of the Fernando Commission devolved upon the Agrava Fact-Finding Board. It took this Board around one (1) year to gather evidence, and to file these cases with the Sandiganbayan.

Third. These cases were tried by the Sandiganbayan, by the so-called Pamaran Court, and it took the Pamaran Court only a period of one (1) year to terminate proceedings and render a judgment of acquittal.

Fourth. The prosecution brought the cases up for review and the Supreme Court handed down a decision ordering a retrial on September 12, 1986, nearly one year after the promulgation of the judgment of the Pamaran Court.

Fifth. This decision was served on the Sandiganbayan only on February 24, 1987, because the accused's motion for reconsideration delayed the judgment's finality.

Sixth. Trial was actually started before the present Court only on April 28, 1987.

Seventh. The prosecution had to present seventy-nine (79) witnesses and voluminous exhibits in the present trial.

Eighth. The presentation of further evidence by the prosecution was held at a standstill on October 7, 1988, because of the untimely suspension of Tanodbayan Raul Gonzalez from the practice of law on that date. The replacement of the latter by Acting Special Prosecutor Jesus Guerrero had been made only after several months therefrom, and Justice Jesus Guerrero perforce had to acquaint himself with the voluminous evidence presented by Justice Raul Gonzalez for quite a period of time.

Ninth. The trial had bogged down much too often because the parties had at every turn brought up to the Supreme Court, for review on certiorari, mandamus or prohibition, matters interlocutory in character, simply to cause delay.

Tenth. Trial proceeded thereafter, yes, but only on March 5, 1990, because of defense dilatory tactics. The defense presented fifty-eight (58) witnesses and quite a number of exhibits and rested its case on July 12, 1990.

Eleventh. The prosecution presented documentary evidence on rebuttal and finally rested its case on July 25, 1990.

Twelfth. While oral argument was set for August 13, 1990, the parties opted to waive it, and so were allowed to file memoranda on or before August 17, 1990.

Only then were these cases deemed submitted for decision.

EVIDENCE FOR THE PROSECUTION

The tragic demise of Senator Benigno Aquino Jr. has been proven by the Certificate of Death, Exhibit NNNN-2-V-24, issued by Dr. Mamerto P. Santos. The fact of death is thus a matter beyond cavil.

Dr. Bienvenido Munoz, medico-legal officer of the National Bureau of Investigation, conducted the autopsy of the deceased body of the senator at the Loyola Memorial Chapel, Guadalupe, Makati, Metro Manila, at 10 o'clock in the evening of August 21, 1983, upon the order of NBI Director Jolly Bugarin. Three (3) doctors, namely, Dr. Juanito Billote, Dr. Benjamin Canlas, and Dr. Francisco Narciso, in representation of the family of the deceased, were in attendance.

Dr. Bienvenido Munoz made known his autopsy findings in writing and submitted to his superiors at the NBI the following Autopsy Report No. N-83-2236, dated August 22, 1983:

AUTOPSY REPORT NO. N-83-2236

Decedent	<u>BENIGNO S. AQUINO JR,</u>	<u>50yrs</u>	<u>Male</u>	<u>Malay</u>
	Name	Age	Sex	Race
	<u>Filipino</u>	<u>Married</u>	<u>Former senator</u>	<u>25 Times St, Quezon City</u>
	Nationality	Civil Status	Occupation	Address
Identified by	<u>Lupita Aquino-Kashiwahara</u>			<u>Sister</u>
				Relation to deceased

Dead on arrival at Station Hospital, Fort Bonifacio, August 21, 1983
Makati, Metro Manila Date and Time

Place

Allegedly Resulting from Shooting

Manila

International Airport, Manila

Means

Place

August 21, 1983

Date and Place

Autopsied at Loyola Memorial Chapel Morgue August 21, 1983 at 10P.M.

Place

Date and Time

169.0 cm

Length

Weight

Requesting Officer or Party

Gen. Prospero Olivas,

Commanding Officer, Metrocom

POSTMORTEM FINDINGS

Pallor, conjunctivae and integument, marked and generalized.

Abrasion, reddish brown, lower eyelid, right, 1.5 x 2.0 cm.

Contusions, dark blue: upper eyelid, right, 1.5 x 1.7 cm.; upper eyelid, left, 2.0 x 2.8 cm.; upper lip, across midline, 1.9 x 7.0 cm.; lip, lower mucosa, left side; shoulder, left, anterior, 0.2 x 0.3 cm.; arm, left, upper 3rd, anterior, two in number, each measuring 0.2 x 0.3 cm.

Pinpoint hemorrhages, multiple: forehead, left side, anterior aspect, dispersed over an area 7.5 x 8.0 cm.; cheek, left, dispersed over an area 2.5 x 6.5 cm.

Hematoma, scalp, parietal region, left, 6.0 x 7.5 cm.

Contused abrasion, forehead, right side, 1.5 x 5.6 cm.

Wound, gunshot, entrance, ovaloid, 0.7 x 0.8 cm., edges inverted surrounded by a contusion collar widest at its superior border, with an area of tattooing, 3.0 x 6.0 cm., more at its anterior border; located at the mastoid region, left, 5.1 cm. behind and 2.5 cm. below external auditory meatus, 157.0 cm. above left heel; directed forward, downward and medially, fracturing comminutely the occipital bone, left side, with linear extensions into the left temporal bone, left parietal bone, occipital bone, right side, into the cranial cavity, lacerating the occipital lobe, left, and

cerebellum, fracturing the right temporal bone, where a metallic fragment was embedded and extracted, then fracturing the petrous portion of left temporal bone, mandible and finally making an exit wound, irregular in shape, anterior portion, mandible, 1.5 x 0.8 cm., 149.5 cm. above right heel, surrounded by an area of contused abrasion 3.0 x 3.5 cm. two metallic fragments recovered at the wound of exit.

Hemorrhage intracranial, massive, generalized.

Laceration, brain, extensive.

Heart, covered with adipose tissue, apex adherent to dome of diaphragm;

presence of triple coronary bypass involving anterior descending branch of left

coronary artery, left circumflex and right coronary.

Other visceral organs pale.

Stomach, empty.

CAUSE OF DEATH: Brain laceration and intracranial hemorrhage secondary to gunshot wound of the head.

REMARKS: Three (3) pieces of metallic fragments recovered; submitted to

Firearms Investigation Section, NBI for ballistics examination.

Linear scar, running along midsternal like, anterior aspect, chest.

Submitted by:

Bienvenido O. Munoz, M.D.
Medico-Legal Officer

APPROVED & NOTED:

Pedro O. Solis
Deputy Director, Technical Services"

Significant in Dr. Munoz' Post-Mortem Findings is that the gunshot wound of entrance, Exhibit "GG-1-H" was located at the left side of the head, about 5.1 cms. behind the left external auditory meatus and about 2.5 cms. below the level of the external meatus. There was tattooing at the wound of entrances, more at its anterior border, indicating that the fatal bullet which hit the senator was fired at close range.

The wound of exit, measuring 1.5 cm. by 0.8 cm., was found at the mandible.

Upon his exploration of the senator's skull, Dr. Munoz alleged that he discovered three (3) metal fragments; one was found by him at the right temporal bone and two were found by him at the wound of exit. He submitted these fragments to the Ballistics Section of the NBI for examination.

The main slug, of which he believed the three (3) metal fragments were a part, could not be retrieved or recovered because it had passed through the skull and had made an exit at the mandible.

According to the autopsy report, the fatal bullet was directed "forward, downward and medially..."

Death of Sen. Benigno Aquino Jr. was attributed to: "brain laceration and intracranial hemorrhage, secondary to gunshot wound at the head."

Upon cross-examination by Atty. Rodolfo U. Jimenez, counsel for the defense, Dr. Munoz made a significant turn about, however, by stating that, since there was a fracture of the petrous bone and a metal fragmenting was recovered at the right temporal bone at a level higher than the point of entry, there has been an indication of an upward trajectory of the fatal bullet. He explained that, while he made a finding in the autopsy report that the fatal bullet was directed forward, downward, medially, he intended the term "forward medially" to mean towards the front portion of the body and towards the middle; and, while he mentioned in the autopsy that the bullet was directed downward medially, he had referred to the trajectory of the main bullet which, upon hitting the petrous bone, deflected downwards.

Autopsy Report N-83-2236 was duly approved by Dr. Pedro Solis, Deputy Director of Technical Services of the National Bureau of Investigation.

Along the lines indicated by the theory of the prosecution in respect to the physical evidence, dr. Juanito Billote y Burguillos, the foremost expert in Pathology in the Philippines and in the United States, testified to the effect that he had a lot of training in performing autopsies of deceased persons, he having performed about 600 to 700 autopsies when he was the Chief Resident of the Philippine General Hospital and about 200 when he practices in the U.S. Up to this day, he had performed around 2,000 autopsies, all in all.

Late in the afternoon of August 21, 1983, after it was broadcast over the radio and announced on TV that Senator Benigno Aquino Jr., was shot at the airport, Dr. Francisco Narciso, head of the Philippine Heart Center for Asia, called him up by telephone and asked him if he would be willing that Dr. Francisco Narciso and he represent the Aquino family at the autopsy of the deceased senator. After consulting his wife about it, he agreed, notwithstanding knowledge that the job would constitute a grave responsibility. Finally brought to the embalming room of the Loyola Memorial Chapel, Dr. Billote saw a large crowd composed of doctors, friends and relatives of the late senator. Foremost among them were Sen. Salvador H. Laurel, former Speaker Jose Laurel Jr., and Dr. Bienvenido Munoz of the National Bureau of Investigation. Dr. Munoz had an assistant, Medical Technologist Alejandrino Javier.

He found out that the Aquino family had employed a third Pathologist, the noted Dr. Benjamin Canlas, when Dr. Canlas whispered to him that a fragment of metal was allegedly removed by Dr. Munoz from the wound in the chin of the late senator. It had been sticking out of the surface of the wound and so was picked by hand, he was told.

Dr. Bienvenido Munoz, being the government doctor, was appointed as the Prosecutor, a term employed to indicate the Pathologist who was to actually perform the autopsy and the one who was to call the shots, so to speak. The Pathologists representing the Aquino family turned out to be mere observers.

Out of curiosity, however, Dr. Billote participated in the autopsy on two (2) aspects: First, he dissected the coronary arteries of the late senator in order to verify whether Senator Aquino had really undergone a coronary bypass and, second, he tried to prove the wound in the chin of Senator Aquino which was labeled as wound of exit by means of a metallic rod. With the eight-inch metallic rod, he probed in the direction of what Dr. Bienvenido Munoz assumed was the downward pathway of the bullet after it was deflected from the petrous bone. He found that the probe hit bone and that it was a blind wound, meaning that there was, from the way he perceived it, no penetration towards or from the petrous bone. If, as assumed by Dr. Bienvenido Munoz, the fatal bullet had hit the petrous bone and had been deflected towards the chin where it exited, there should have been a hole connecting the wound of exit to the petrous bone. Dr. Billoted tried to probe in the direction of the petrous bone five (5) times without success. Definitely there was no pathway from the chin where the point of exit was to the petrous bone.

Significant in the testimony of Dr. Billote is the finding that there was a collection of blood or hemorrhage at the fronto-parietal area of the skull (top of the head, more on the left side) which indicated a depressed fracture. This, according to Dr. Billote, may have been caused by a severe blow from a blunt instrument.

In sum, Dr. Billote disagreed with the findings of Dr. Bienvenido Munoz as to the trajectory of the bullet that hit Senator Aquino. Thus. Dr. Juanito Billote declared:

"Q: Did you agree with the findings of Dr. Munoz insofar as the trajectory of the bullet is concerned?

A: There were some points of difference insofar as the physical aspect is concerned, Your Honor.

Q: Can you tell us then, Doctor?

A: The first time that Dr. Munoz described a trajectory was before we opened the skull.

He was referring to two references. The first was that the measurement between the wound behind the ear was longer than the measurement, ah, from the wound behind the ear to the heel of the foot was longer than the distance from the wound in the chin to the heel of the feet, and therefore, presumably, that would describe a downward trajectory. After we opened the skull, then a third reference, a third point of reference appeared, which was the petrous bone. Now, the petrous bone now was higher than the wound here, and therefore, the logic was that, the initial trajectory was upward from behind the ear to the petrous bone then down. However, our point of agreement are the following: The first, the fact that I

would not insert a probe thru the bone of the chin, that is one, the second is that, from the point of deflection in the petrous bone to the chin, the bullet was described, its path, if it was straight, it would lacerate and injure the tongue and nasopharynx and of course that would result in bleeding, and unfortunately, we would not open the mouth of the late senator. We did not see anything that come out of the mouth and if there was bleeding then it would direct to the stomach but there was no blood in the stomach, and the third point of reference was that, I mean, the third reason is that, the injury, the bone defect in the petrous bone, to me , was not actually a hole, it was more of a crack, and unfortunately, this, we cannot measure this with the ruler, if it is in the left then it goes below the petrous bone and it would duly palpate that area, in the middle of the forehead which to me was a crack. Now, the reason why I disagree, first, I thought I could not exactly follow what was described by Dr. Ben Munoz is that, in a conference in the Agrava Board, we were shown a piece of metal that was called a copper jacket. Apparently, that was a part of the bullet, it was the outside of the bullet and we measured it at the same time. I was then with Dr. Nunez and the measurement was about 2.6 meters wide in diameter, and of course from a simple logic that I was trying to think, I could not imagine a jacket coming out and being deflected in the petrous bone with was only a crack, that was the other reason, and the third is that, I have been reading a lot about the findings of pathologists among the desaperidos in Argentina and this group of pathologists described that when there is a billet wound in the head, one of the mysterious and invariable finding that they saw was a fracture in the petrous bone even if there is no bullet injuries but that is of course, and beyond my competence to judge, so that was the first area that, from the mastoid bone to the petrous bone level it describes the pathway really going up if the head is in a normal and anatomical position, meaning, it is straight. Now, the skull, when we make, assuming it in pathology, is that it would draw a line from the opening of the ear

to a form of suture. There is a suture on top of the border of the skull. Now, if that describes a straight line then there is a curve, so if the head were in that position then the line defined by these two points would be going out because of this is lower than the petrous bone, however, if you bend the head to an anatomous 4 degrees as would happen if a person is descending the stairs then that changes in two points, it becomes more straight and/or even downward if you are on the bending of the body, bending like that then that would describe within different lines. (Witness demonstrating by bending the head and the body). So that was the point, the points where we differ based on those physical changes." (Dr. Billote, TSN, pp. 39-42, September 9, 1987)

More concise was the statement he made on the matter on cross-examination:

"A: Aside from the fact that the wound of entrance was higher than the chin wound, he also sort of told us that there was a crescentic burn on the wound of entrance, that is on the superior aspect of the entry wound, and that also was consistent with a downward trajectory.

Q: With a downward...

A: Downward trajectory.

Q: That is what he was saying?

A: That is what he was saying.

Q: Because of that crescentic...

A: The two. The first one is that the point of entry was higher than the point of exit.

Couple with that was a crescentic burn on the skin or of the collar. It was wider on the superior aspect, so that appeared at the time to be consistent with the downward trajectory." (Dr. Billote, TSN, pp. 28- 29, September 15, 1987).

In this connection, Dr. Billote expressed in writing, his dissent in respect to certain portions of the autopsy report made by Dr. Bienvenido Munoz in his "Dissenting Report," Exhibit B6 and sub-markings.

Dr. Ceferino Cunana, the chief Medico-Legal Officer of the National Bureau of Investigation on dates relevant to this case, particularly on August 21, 1983, testifying for the prosecution, gave certain comments on, and an interpretation of, the Autopsy Report submitted by Dr. Bienvenido Munoz. Since he was out of his office, because he was not on duty on Sunday, August 21, 1983, the Autopsy Report of Dr. Bienvenido Munoz in respect to the autopsy of the deceased body of Sen. Benigno Aquino Jr was not signed and approved by him as Chief Medico-Legal Officer. It was Dr. Pedro Solis, Deputy Director for Technical Services, who approved it.

Respecting the trajectory of the bullet which penetrated the skull of the late senator, it is his view that, considering that the point of entry of the bullet was located at the base of the skull just below the left ear and the exit wound was located at the mandible, the trajectory of the bullet was, as appearing in the Autopsy Report, "forward, downward and medially."

The downward trajectory of the bullet is evident from the fact that the wound of entrance was surrounded by a contusion collar which was widest at its superior border.

Explaining further, Dr. Cunanan declared:

"A When a firearm is fired and it is not directly horizontal nor directly vertical, it has three points of direction. From above going downward is one' from behind going forward is another; and from the lateral to the medial is another. Three points, Sir. Now, as stated here, it is directed downward because of the contusion collar which is widest at the superior border. Medial because of the tattooing which is more at the Anterior surface. Now, it is from behind, going forward, that is the direction, Sir, fracturing comminutely the occipital bone or the rear position of the head."
(TSN, Sept. 16, 1987, p.26)

Dr. Cunanan commented on one other aspect of the Autopsy Report, the cause of which has not been explained by evidence whether of the prosecution or of the defense and, it is, the finding of a depressed fracture on the top of the head of Sen. Aquino Jr., more specifically the calvarium. This, Dr. Cunanan surmised, may have been caused by a blow by means of a hard, blunt instrument. As a result of the infliction of a hard blow on top of the head, causing a depressed fracture, the senator could not have stood up normally and ought to have fallen down if not propped up, inasmuch as he must have suffered a temporary loss of consciousness.

Explaining the absence of blood at the back of the senator's head, Dr. Ceferino Cunanan theorized that, since it takes several seconds for blood to ooze out of the wound of entrance because it is sealed by the inverted edges of the wound of entrance and the matted hair, blood did not have the occasion to flow out of wound of entrance because the senator had been flung downwards with his face to the ground.

Consistent with the position of the prosecution as to the physical evidence, Dr. Pedro Solis, Deputy Director for Technical Services of the National Bureau of Investigation on August 21, 1983, eminently qualified to testify on such subjects as forensic of legal medicine, pathology and ballistics, by reason of his 43-year service with the NBI as a medico-legal officer and on account of the fact that he had taken up post graduate courses at Cambridge University in England; Sophia University in Tokyo, Japan; at McGill University in Montreal, Canada; at the University of Oslo in Norway; and in the University of Stockholm, Sweden, testified to the effect that, from his point of view, considering the autopsy report made by Dr. Bienvenido Munoz, the trajectory of the bullet that fatally hit the head of Sen. Benigno Aquino Jr. was "forward, downward, medially." Expanding on this finding, Dr. Pedro Solis declared:

"Q: For purposes of determining the trajectory, what would be the trajectory of the bullet which entered the entrance wound?

A: To explain this properly, I think I better discuss the whole descriptions of gunshot wounds.

Q: Will you please do it?

A: Now, as I said, it is a part of our standard procedure to describe injuries in the following steps: (1) this type of injuries. Here it was mentioned to be gunshot. After describing what type of injury, the second step is the shape dimension. It was mentioned here to be ovaloid and it is measured 7.10 x 8.19. Then, after describing it, we describe the wound itself to be with edges inverted. Meaning, the edges of the wound is pushed inward. Then, surrounded, the border of the wound is surrounded by what is known as contusion collar, sometimes, contuse abraided collar or sometimes called abrasion collar. This is the area around the border of the wound that seemingly the outer surface is removed or somewhat contused on account of the impel of the bullet in the area. And we describe all other surrounding areas around the wound like tattooing here which was mentioned and where it is located more, where is it located less. It was after that, we locate the area of the body where such gunshot wound is located. According to the report, it is located in the mastoid region, left. That is that bony prominence at the back of the ear. Then we try to make measurements, measurement of that point of entry in relation to permanent parts of the body. He utilized here the external auditory meatus and according to the report, such wound of entrance is 5 cm. behind the canal of the ear and 2.5 cm below that canal. Now, after having specified the area, we try to correlate it with the feet. How much centimeters will it be with one of the feet. Then, that would be the description of the wound itself. Secondly, after discussing the type, nature of the wound, description nature of the surroundings, location, we now follow the wound as it enters the body. The report says that the wound is now directed. After describing the wound itself, now the direction

of the trajectory of the wound. According to the report, it is moving forwards, downwards and medially." (TSN, pp. 39-40, Sept. 22, 1987)

The downward trajectory of the bullet which hit the senator is further emphasized by the fact that, while the wound of entrance appeared ovaloid, there is also what is known as a contusion collar which was widest at the superior portion, indicating an acute angle of approach. This ovaloid shape at the wound of entrance plus the fact that the contusion collar was widest at the superior portion shows that that the bullet went downwards. Furthermore, it indicated that the muzzle of the fatal gun was at a higher level than that of the point of entry of the fatal bullet.

The muzzle of the fatal gun was between three (3) nches and five (5) inches from the wound of entrance considering that there was no burning at the point of entry (burning can take place only if the muzzle of the gun is fired at a distance of less than three (3) inches and the area of the tattooing was limited.

Debunking the testimony of Dr. Bienvenido Munoz to the effect that the trajectory of the fatal bullet was upward and then downward after it hit the petrous bone, only because he found that the petrous bone at the temporal region was fractured, Dr. Pedro Solis, maintaining the conclusion that the trajectory of the fatal bullet was downwards, gave the following reasons for the fracture of the petrous bone: First, the petrous bone must have been hit by a splinter of the main bullet, particularly that which was allegedly found at the temporal region; and, second, the fracture must have been caused by the kinetic force applied to the point of entrance at the mastoid which had the tendency of being radiated towards the petrous bone. Thus, it is indicated in the report that there was a fracture in the occipital bone of the temporal bone, and of the

parietal bone. When a force is applied to the mastoid region of the head, a radiation of forces is distributed all over the cranial back, including, although not limited to, the parietal bone.

Dr. Pedro Solis amplified:

"A From the point of entry, left ear, it is moving towards the front, towards the medial line and going downwards, considering the position of the person to be in its anatomical position. After making that description of the direction, the report must concern what are those injured as a consequence of that point of entry. The report mentions of some other injuries other than the point of entry. He mentions lineal fracture of the occipital bone, the bone at the back of the head, the temporal bone, the bone at the side of the head, and even the parietal bone, the bone also that form principally the cranial backs, on the left and also on the right. So there is that radiation of forces to several areas of the skull. The skull is a box-like structure, whereby the moment you apply pressures to one, it will cause a distortion, tension, or some other mechanical effects on some others and it was described here vividly that on account of the impact, there is that radiation of forces and is producing what is known as the spider web linear fracture going to the different parts of the body. And it has been included here as a part of that consequence, the so-called fracturing the petrous portion of the left temporal bone. So this fracture of the petrous portion of the left temporal bone is a consequence of that impact already. Then after describing this, we either place a separate paragraph to whatever injury that may be inside the skull as a consequence of the passage of the bullet and it was mentioned here laceration of the brain. Then lastly, we describe the point of exit which was described here vividly to be somewhere at the front portion of the mandible describing the

size of the injury and its distance from the feet. That is how we describe it for the sake of uniformity and to make it vivid to the reader as if though he was at the tip of the bullet as it passed through the body of the victim." (TSN, pp. 40-41, Sept. 22, 1987)

The fact that there was found a fracture of the petrous bone is not necessarily indicative of the theory that the main bullet passed through the petrous bone and went downward towards the mandible.

Alejandro Javier, the assistant of Dr. Bienvenido Munoz, had told Dr. Solis that, during the autopsy, Javier that inserted a probe into the wound of entrance and was successful in inserting the probe direct to the wound of exit.

Besides, if one were to draw a straight line from the petrous bone direct to the exit wound at the mandible, the tongue must necessarily be hit. Dr. Pedro Solis observed that, in actuality, the tongue of the victim was not pierced.

Another significant observation made by Dr. Pedro Solis is that, while the metal fragments allegedly found by Dr., Bienvenido Munoz at the chin, being long and elongated pieces, could not have gone out of the wound of exit because they were larger in size and the shapes of the fragments are definitely different from the shape of the wound.

On another point, Dr. Pedro Solis explained why, notwithstanding the fact that the wound of entrance was at the back of the head, blood did not drench or even stain the clothing at the back of the senator but had smeared instead the front portion of his clothing. We quote his explanation:

"Q Does that explain why the back for example is not stained with blood?

A Yes, there is no chance for the back to be stained with blood because when you flex your head forward, the blood will not be going at the back but it will go normally vertically and try to smear the front portion of the clothings. Now, considering the presence of blood that has been smeared on the front portion of the clothings and considering further that there are no big major blood vessels that is involved because the blood vessels are somewhere in the mandible and that area in the brain is not so big, there would be oozing of the blood. It is not like when you try to stab a pig on its heart. There would be a big flow of blood. There is sufficient amount of blood that would be coming out. After the shot, the head of the late senator was still in erect position for sometime before he fell." (TSN., pp. 31-32, September 22, 1987)

Professional photographer Alexander Loinaz, commissioned by then Senator Salvador Laurel, now Vice President of the Philippines, and Dona Aurora Aquino, mother of the victim, to take photographs of the autopsy, gave in evidence positive prints for photographs on the occasion of the autopsy, marked as Exhibits XXXXX-1-A to XXXXX-39-A; XXXX-41-A to XXXXX-50-A.

Significant is his testimony to the effect that he saw Dr. Bienvenido Munoz trying to insert a probe from the wound of entrance to the wound of exit at the mandible. Even after several attempts, Dr. Munoz was unsuccessful. And yet, when Dr. Munoz' assistant, a certain Alejandrino Javier, tried to insert the probe, he had successfully inserted the probe from the wound of entrance at the occipital bone at the base of the skull, right below the left ear, straight to the wound of exit at the chin or mandible. Only after a few attempts, Alejandro Javier succeeded and excitedly shouted, "*Nakuha ko rin, nakuha ko rin.*"

It appeared to Loinaz that Dr. Bienvenido Munoz deliberately did not probe correctly.

Alexander Loinaz took a picture of the successful probe conducted by Alejandrino Javier and this is marked by the prosecution as its Exhibit XXXXX-39-A. This picture was taken by Loinaz right after Alejandrino Javier exclaimed, "*Nakuha ko rin, nakuha ko rin.*" Loinaz had in fact asked, "*Iharap mo ditto; kukunan ko ng litrato.*" Javier obligingly moved the senator's head so that a clearer picture of it could be taken by Loinaz. The hand of Alejandrino Javier in this picture may be seen holding the end of the probe at the wound of exit.

Loinaz took note of Dr. Munoz' animosity towards Loinaz. It seemed to the latter that Dr. Munoz resented the fact that Loinaz was taking pictures during the performance of the autopsy. In several instances, Dr. Munoz would cover the lens of Loinaz's camera with his hand and body whenever Loinaz would take a picture of an important aspect of the autopsy. Also noted by Loinaz was Dr. Munoz's sarcasm, indicating bias, when Dr. Munoz said, immediately after Sen. Aquino's brain was exposed: "*Hindi ba sa Harvard nag-aral ito?*" Among the

doctors present during the autopsy, he knew beforehand only Dr. Juanito Billota. The latter had sidled up to him and, showing a depressed fracture on the top of the head of the senator, told Loinaz: "*Kunan mo ito ng litrato. Mukhang pinukpok ito ng baril sa ulo.*" (Exhibit XXXXX-24-A, Exhibit XXXXX-25-A.)

Evidence produced by, and gathered from, prosecution witnessed named below (Colonel Ager Ontog, Col. Avelino Abiol, Atty. Albino Arriero, Ruben Fondevilla, Brig. Gen. Hermogenes Peralta, Capt. Ibar Pado, 1st Lt. Marcos Marasigan, Hon. Pacifico Castro) indicate that, on September 21, 1972, when Martial Law was declared by President Ferdinand E. Marcos, Senator Benigno Aquino Jr stood charged with the crimes of subversion, murder and illegal possession of firearms and explosives before Military Commission No. 2, was convicted therefore, and then sentenced to suffer the penalty of death by firing squad. The sentence of death was automatically brought up to the Supreme Court for review. While the aforesaid cases were pending review, Senator Benigno Aquino Jr was granted permission to leave for the United States for medical treatment. After having undergone a triple heart bypass operation at the Baylor Medical Center in Texas, Senator Benigno Aquino Jr made known his intention to return to the Philippines. The Marcos administration had thought it best not to allow him to return to the Philippines and, for this reason, Senator Aquino's Petition for Renewal of Passport was denied. The First Lady, Mrs. Imelda Romualdez-Marcos, tried to dissuade him from returning to the Philippines. Senator Benigno Aquino Jr insisted on coming back to his native land and claimed that it is the right of every citizen to go home to the country of his origin. He left the United States for Singapore and arrived in Singapore on August 17, 1983. There, he applied for a tourist visa from the embassy of the Republic of China under the name of Marcial Bonifacio. On August 18, 1983, he purchased a plane ticket from the China Airlines in Singapore for the flight from Hong Kong to Taipei. On August 21, 1983, he left Taipei for

Manila and arrived Manila via CAL Flight CI-811 at 1:04 in the afternoon. His passport and plane ticket were all in the name of Marcial Bonifacio.

On August 19, 1983, then Assemblyman Salvador Laurel wrote a letter to Gen. Fidel Ramos, Chief of the Philippine Constabulary, to the effect that Senator Benigno Aquino Jr might be arriving on August 21, 1983 at the Manila International Airport on board a Japan Airlines plane. Assemblyman Laurel had requested in this letter that all necessary security measures be undertaken to protect the Senator in view of reported plots against his life. The letter was referred to Gen. Prospero Olivas, then Commanding General, PC Metrocom, for appropriate action. Gen. Olivas referred the letter to Gen. Fabian C. Ver, Chief of Staff. Gen. Fabian C. Ver, in turn, issued instructions to Brig. Gen. Luther A. Custodio, AVSECOM Commander, to provide necessary security safeguards to protect Sen. Benigno Aquino Jr while the latter was at the MIA complex.

Gen. Custodio thereupon directed his Operations Officer, Col. Ager Ontog, to prepare an operation plan. For the purpose, Col. Ager Ontog came up with a plan which was codenamed, "OPLAN BALIKBAYAN) (Exhibit RRR), with the assistance of Lt. Calixto and Sgt. Momatong.

The following alternative routes were supposed to be followed in bringing Sen. Benigno Aquino Jr from his plane to the SWAT van which was designated to take the senator to Fort Bonifacio:

Plan ALPHA - Boarding party will escort former Sen. Benigno Aquino Jr to exit thru the tube, to the remote holding room to the SWAT van.

Plan BRAVO - Boarding party will escort former Sen. Benigno Aquino Jr to exit thru the bridge stairs to the SWAT van.

The OPLAN BALIKBAYAN concept of operation provided that:

- 1) The aircraft bearing former Senator Aquino will be secured upon arrival;
- 2) The security at the International Passenger Terminal to include the apron level, shall be intensified;
- 3) The welcoming crowd shall be contained at the landslide area and prevented from getting into the airside area.

OPLAN BALIKBAYAN had set down the following tasks of the group commanders of four (4) groups organized to carry out its objectives:

I. SC 805th SOS (Special Operation Squadron):

- (a) Provide a boarding party to identify and escort former Sen. Aquino upon arrival.
- (b) Provide security around the aircraft and said immediate vicinity.
- (c) Ferry former Sen. Aquino on board a SWAT van from the IPT to the Office of The CG, AVSECOM, and return to MSC, Fort Bonifacio thru VAB on order.
- (d) Perform other tasks as required.

II. SC 801st, ASS (Aviation Security Squadron)

- (a) Provide aircraft guard in support of 805th, SOS Personnel upon arrival of former Sen. Aquino at MIA.
- (b) To secure the area in the IPT where former Sen. Aquino may pass.

- (c) To secure sectors A, B and C of the MIA complex.
- (d) To perform other tasks as required.

III Commander Crowd Control Group:

- (a) Provide route security and traffic control along Imelda Avenue, MIA Avenue, and Airport Avenue.
- (b) Conduct crowd control at the MIA parking area, the roads leading to IPT and other designated areas.
- (c) Reserved Forces will be deployed to Commander Crowd Control Group, when requested.

IV ACCS (Acting Chief of Command Staff) for intelligence:

- (a) To conduct intelligence and cover security operations at MIA complex.
- (b) Perform other tasks as required.

OPLAN BALIKBAYAN had four (4) implementing plans, namely: IMPLAN ALALAY, IMPLAN SALUBONG, IMPLAN SAWATA and IMPLAN MASID.

IMPLAN ALALAY was made up of the "Boarding Party," composed of 2Lt Jesus Castro, Sgt. Arnulfo de Mesa, Sgt. Claro Lat, CIC Mario Lazaga and CIC Rogelio Moreno; and the following four (4) teams:

Team ALPHA, under Capt. Felipe Valerio, with nine (9) soldiers, was to fetch Sen. Aquino from the plane and ferry him to Fort Bonifacio.

Teams BRAVO and CHARLIE, under 1Lt Ibar Padoa, with seven (7)

soldiers each, were to provide security at the rear section of the aircraft, prevent unauthorized persons from entering the area, and extend tactical support to team ALPHA.

Team DELTA, Capt. Llewelyn Kavinta, with seven (7) soldiers, were to provide security of the Nose section of the aircraft, prevent unauthorized persons from entering the area, and extend tactical support to the other teams.

IMPLAN SALUBONG, under Lt. Col. Avelino Abiol, with the total of two hundred forty-five (245) officers and men, was to provide security in designated areas in the Manila International Airport complex.

IMPLAN SAWATA, under the command of Lt. Col. Nemesio Sigaya, with twenty-five (25) officers and eight hundred twenty-one (821) men, was to provide route security, maintain orderly vehicular traffic along the route, and conduct control operations to neutralize unruly crowds.

IMPLAN MASID, under the command of Captain Romeo Bautista, was to conduct intelligence and covert security operations at the MIA, and was composed of three (3) teams, namely: Team I, made up of Sgt. Leonardo Mojica, Sgt. Filomeno Miranda, Sgt. Reynaldo Pelias, Sgt. Onofre Danao, Sgt. Armando de la Cruz, AIC Daniel Albano, and AM Alejandro Febrero, which was tasked to cover the west satellite; Team II, included Sgt. Prospero Bona and AIC Aniceto Acupido, to cover CIQ areas at the departure and arrival level; and Team III, to cover the west satellite.

CAL Flight CI- 811 landed at exactly 1:04 P.M. and berthed at

Bay 8, West Satellite, MIA. As soon as the plane landed, the passengers of the plane were ordered to remain seated until the arrival of the boarding party. The Order in this regard came directly from Brig, Gen. Luther A. Custodio by radio.

When the plane had properly landed, 2Lt. Jesus Castro, Sgt. Arnulfo de Mesa, Sgt. Claro L. Lat, CIC Mario Lazaga, CIC Rogelio Moreno, of the boarding party, and Sgt. Felomeno Miranda, Sgt. Reynaldo Pelias, T/Sgt. Armando dela Cruz, AIC Aniceto Acupido, Sgt. Onofre Danao, AM Alejandro Febrero, of the covert security operations, and T/Sgt. Clemente Casta were already inside the movable tube of the airbridge.

Airport manager Luis Tabuena, Richard Kan Yu, Rosita Dimaya, Adormeo Baliwag, and Custom Boarding Officer Rafael Pura, all civilians were, by reason of their official duties, likewise inside the movable tube.

At the concrete tube of the airbridge were 14 accredited media people; and media affairs officials, namely: Col. Tigas, Mr. Riofrir and Mr. Sietereales.

Sgt. Arnulfo de Mesa, Sgt. Claro L. Lat, CIC Mario Lazaga and 2LT Jesus Castro went inside the plane in order to look for Sen. Benigno Aquino Jr., while CIC Rogelio Moreno and Filomeno Miranda were left at the doorway of the plane. T/SGT. Clemente Casta went inside the plane for some reason. Filomeno Miranda joined the boarding party upon the bidding of 2Lt Castro. After Sen. Benigno Aquino Jr was pinpointed from among the many passengers, the team invited the senator to go with them. Sen. Benigno Aquino Jr. stood up and the boarding team steered him towards the plane door.

The foreign journalists who were with the senator had tried to

follow the senator but were physically prevented from doing so.

Sen. Benigno Aquino Jr. was forcibly steered towards the exit door at the movable tube and led down the bridge stairs. Sgt. Claro Lat went slightly ahead of the senator but held on to the senator's right arm. Sgt. Arnulfo de Mesa walked slightly behind the senator but was holding on to the senator's left arm. CIC Rogelio Moreno was walking at the back right of de Mesa but was directly behind the senator. Sgt. Filomeno Miranda was following Moreno. CIC Mario Lazaga was two steps behind Sgt. Miranda. Way behind the group were 2Lt Jesus Castro and Capt. Romeo Bautista.

Several seconds after the movable tube door was closed, a shot was heard. Asfter an interval, three or more shots followed. Then, pandemonium broke loose because there were heard successive bursts of gunfire.

Rebecca M. Quijano, listed in the flight manifest as Mariemil Quijano, was one of the passengers on CAL Flight CI-811, Taipei to Manila, on August 21, 1983. About 10 minutes before the plane docked at Gate 8, she learned from a Japanese reported thatSen. Aquino was on board. She went near the senator and asked, "*Bakit po kayo bumalik? Hindi ba kayo natatakot?*" Sen. Aquino merely smiled at her. She shook hands with him and bade him, "Good luck."

When she returned to her seat, which was at the right side of the plane but about three rows ahead of Sen. Aquino's seat, she told Arilinia Santos, her traveling companion, that she would like to take a photograph of Sen. Aquino. After she obtained the senator's permission, she got her camera and took a picture of Sen. Aquino and Arilinia Santos.

When the plane finally landed at 1:04 p.m. instructions were

given over the intercom to the effect that the passengers were to remain seated until after a boarding party shall have boarded the aircraft. After a little delay, the plane's door opened and some military men went in. A lady passenger uttered: "They are here." Then, she heard Sen. Aquino saying, "Oh my God!"

Three soldiers, led by one wearing a Metrocom uniform, later identified as CIC Mario Lazaga, entered the plane. Lazaga, seemingly failed to recognize the senator and went past him. Another soldier who was following Lazaga halted beside Sen. Aquino and, having identified the senator, called the attention of Lazaga to the fact that he had found the senator. The two soldiers greeted the senator and she heard them say, "*Iniimbata kita.*"

One of the soldiers picked up one of the senator's bags. Another got the bag which the senator was holding and slug it over his shoulder. Then, the soldiers, together with Sen. Aquino proceeded towards the first class section of the plane, passing through the left aisle, and into the exit door. Some of the reporters on board who were carrying videos, cameras and cassette tapes tried to follow Sen. Aquino. Rebecca Quijano followed by passing through the right aisle when facing the nose section of the plane.

Many of the passengers immediately unfastened their seat belts, collected their bags and packages, moved to the aisles, and began to shuffle slowly towards the exit. A commotion occurred when the passengers and the journalists started talking and protesting when prevented from exiting.

When Quijano reached the first class section, she realized that

some men in polo Barong had blocked the plane's door and were pushing her back. Since she could not get through the exit door, she hurriedly went to one of the windows between the left wing of the plane and the airbridge. From the window, she saw that Sen. Aquino was being held by soldiers and was already led down the lower fourth portion of the bridge stairs. Sen. Aquino was in between two AVSECOM soldiers. The soldier at the right held the right arm of the senator, walking slightly ahead, while the one at the left was holding the left arm of the senator, walking slightly behind.

Another soldier in khaki uniform who was behind Sen. Aquino held a short gun, aimed it at the nape of the senator- and it was then that she heard a shot. She consequently shouted and was about to run towards the economy section where Arilinia was, but the latter yelled at her to drop to the floor. A series of gunshots were fired. Instead of heeding her friend's advice, she peered again through the window and she saw several men in blue overalls pointing their long firearms at the tarmac.

At that time, she was already crying because she thought that Sen. Aquino who was already lifeless was still being riddled with bullets. She added that she took out her camera to take pictures of the scene but she failed because she realized that her camera had no more film.

A few moments later, the passengers were allowed to deplane. She did nothing but cry bitterly. When she and Ariliana went out through the airbridge, a group of reporters accosted her. Evidently in response to a question as to why she was weeping, she said, sobbing, *"Pinatay na nila si Ninoy, bakit hindi pa kayo umiiyak?"*

She was about to tell reporters that she actually saw a military

man shoot Sen. Aquino but a man in T-shirt, who later was identified as Col. Vicente Tigas Jr., apparently seeing her being besieged by reporters, moved rapidly towards her and the newsmen. Col. Tigas held her tightly by the shoulder, and whispered to her: "*Huwag kang maingay, kung hindi mapapahamak ka.*"

In the company of a man in a bush jacket, Col. Tigas led her to the departure lounge. Col. Tigas advised her to refrain from talking to reporters. Then, the man in a bush jacket gave her a glass of water. Moments later, the three of them went outside. With Arilinia Santos, she proceeded to the Bureau of Immigration area. After being cleared at Immigration, she asked Col. Tigas to just leave her, "*Iwanan na ninyo ako,*" and assured him,. "*Kasi wala naman akong nakita.*"

Shortly, she proceeded with Arilinia to the Holiday Inn. While Arilinia was waiting for her escort, Rebecca made an overseas call to her sister, Cielo Olpindo, in the United States. She told her sister that Sen. Aquino was shot by a soldier and that a military man had threatened to harm her.

After about 10 minutes, Ariliana left the hotel. She tried to call up her friend, Randy Guerrero, in order to tell him about the incident, but Randy was not in his residence at the time. To Randy's mother she was constrained to relate what she saw, but Randy's mother, wise to the ways of the world, advised her to just keep quiet to avoid trouble.

The traveling companion of Rebecca Quijano, Ariliana Santos,

simply corroborated the statement of the former as to the fact that military soldiers had fetched Sen. Benigno Aquino Jr from the CAL plane; that when she heard a shot, she took cover under a seat; that she was told by Rebecca Quijano right after the happening that, when Quijano peeped into one of the portholes of the plane, she saw a soldier in uniform shoot Sen. Aquino; and that she saw Col. Tigas approach Rebecca Quijano and led her to the VIP room, away from the crowd of reporters.

Jessie M. Barcelona, ground equipment operator of the Philippine Airlines, gave testimony to the effect that on Aug. 21, 1983, his specific assignment was to service the equipment of the incoming planes of the Cathay Pacific Airlines and the China Airlines. The Cathay Pacific aircraft arrived earlier. He recalled that, as soon as it parked at Bay 14, he attached to its nosewheel the ground power unit to supply the same with electric power. Leaving the said equipment, he proceeded to an area between Bay 9 and Bay 5 to get a towing tractor which was placed somewhere there. While at this place, he saw that Col. Rolando Abadilla, who was in civilian clothes, was talking with a man clad in a light blue shirt and maong pants, the uniform of a PAL employee. The two were in a place opposite the office of the Aircraft Equipment Support. He had the chance to glance at them now and then while he was attaching the towing equipment to the tow bar. The tow tractor with him, he went back to Bay 14. Col. Abadilla and the man in a PAL uniform were still in the place where he left.

After completing the equipment service of the Cathay Pacific

aircraft, Jessie Barcelona headed towards Bay 8 abroad the towing tractor where the China Airlines plane Flight CI-811 had docked. When he reached that area between Bay 9 and Bay 8, he stopped in surprise because he noticed that soldiers in blue coveralls, the uniform of the SWAT of the AVSECOM, were cordoning the aircraft. He was about 15 to 16 meters from them. Then he saw descending the bridge stairs, almost in the middle of it, a man in white being led down the stairs by two soldiers; one was at the right of the man in white while the other was at the left of the latter. Then, he saw that the soldier who was immediately behind the man in white, pointed a gun at the nape of the man in white and fired. The next thing he saw was that the man in white lurched forward onto the tarmac as the soldiers on his sides ran away. The gunman also fled when the two escorts let go of the victim.

Taken aback by what he had witnessed, he wanted to move away from the scene but before he could move, he heard another shot. At this precise moment, he saw that the man in a blue PAL uniform, with whom Col. Abadilla had been conversing shortly before, appeared hit and was about to fall at one side of the aircraft but off the stairway. This man was nearer the aircraft than the man in white. Beside him was a soldier holding a gun. Nearby was a closed van of the AVSECOM. A group of soldiers were seen by him coming out of it. He still heard a series of shots even as he went farther to the parking area for various maintenance and ultimately he hid in his office, the office of the Aircraft Equipment Support.

He came to know the man in white to be Senator Benigno Aquino Jr from conversations in his office that very day. The other victims he came to know only from the newspapers as Rolando Galman. Upon seeing Galman's picture, he readily recognized the man who conversed with Col. Abadilla before the incident that he witnessed.

He found the situation unusual. Extraordinary was the fact that a passenger was made to get off the plane through the bridge stairs. Ordinarily, passengers are made to disembark via the tube.

He claims to have confided the matter only to his father. In fact, when he was interviewed on the day of the incident, he denied that he was a witness to the killing of Sen. Aquino. However, he admitted having written Col. Octavio Alvarez, a close family friend, a letter, dated June 11, 1985, relating what he witnessed on Aug. 21, 1983. He wanted to seek Alvarez's assistance on the matter of providing himself with security. He feared that someone might have gotten to know that he was a witness to the Aquino assassination. Col. Alvarez attempted to dissuade him from getting himself involved in the case. Despite this, he still want to see Tanodbayan Raul Gonzalez to whom he signified his intention to testify in this case.

A statement relating to the incident was given by him to the National Bureau of Investigation on Dec. 16, 1987. The Tanodbayan had advised him to go to the NBI, if protection was what he wanted. It was a condition of the NBI that he make a written statement in order to justify the grant of his request for protection.

The eyewitness testimony of Ramon B. Balang, a ground engineer of the Philippine Airlines, was found very helpful. His version: On Aug. 21, 1983, at about 11:45 in the morning, while he was on his way to report for work, he was delayed at the entrance gate to the MIA. he was refused entry by AVSECOM guards because security measures were being strictly conducted at the time. Only at Gate No. 2 was he allowed by the security personnel to enter, but only after he had been thoroughly frisked. In the office, he learned that Flights CAL -811 and PR 502-501 had already been assigned to him. He was supposed to work side by side with Celso Loterinia, also a ground engineer of the Philippine Airlines. he immediately donned his uniform, got his

tools, and went to the canteen for lunch. His uniform, he added, was a white overall, the backside of which bears a monogram of the Philippine Airlines, with a logo in the middle of the word, "Line," underneath.

Thereafter, Loterinia and he checked the ramp light guide, located at the port of the aerobridge, near the movable tube. Although the light guide was functioning well, they made use of the manual mode which was the automatic selector.

At about 12:45 in the afternoon, he found that the representatives of Customs, Immigration, Quarantine and the regular Gate Guards of the AVSECOM were already waiting underneath the building.

When he was already at the tail section of CAL plane, Flight CI-811, which had docked at Gate 8, he noticed two military vehicles, a SWAT van and an Isuzu jeep, approaching. The Isuzu jeep was parked underneath the tail cone of the plane, while the van had stopped in front of the bridge stairs. Soldiers in blue coveralls, armed with M-16s, alighted from the Isuzu jeep and started cordoning the aircraft. Those who came out of the van signaled him not to go near the van and the stairs. he paused for a while and then proceeded to the nosewheel. From where he was, he could see the bridge stairs.

Reminded that he needed his worksheet, he proceeded to the concrete post where it was placed. On his way, he noticed people going down the bridge stairs. He saw a man in white suit being clasped on both arms by two khaki clad soldiers. Trailing the trio were two uniformed military personnel and at the back of them were two men in short-sleeved Barong. He had presumed that the man in white was Sen. Benigno Aquino Jr. He was already walking towards the direction of the concrete post when he heard a gunshot. He turned to

the place where he thought the sound of gunfire came from and he saw Sen. Aquino's body falling down on the tarmac while blood was spurting out copiously from the back of the senator's head.

At almost the same instant, he noticed a man in blue at the rear of the AVSECOM van being surrounded by about three or four men in navy blue coveralls. The man in blue, later identified as Rolando Galman, was about four meters away from the man in white. He was smiling at the soldiers and gesticulating and raising his hands, making it appear to him that he was familiar with them. Then he heard bursts of gunfire and he saw that the man in blue was shot, full of holes and had obviously died even as he fell to the ground. Balang hurriedly ran for cover because the soldiers were aiming their firearms in different directions.

Sen. Aquino's body was carried into the van by two AVSECOM SWAT soldiers, while another soldier at the bumper of the van continued to fire shots at Galman. Then the AVSECOM van sped away, leaving behind the bullet-riddled body of Galman.

On December 27, 1983, a certain Capt. Edgar Dantes of the CIS came to his house and handed him a letter, inviting him to the CIS Headquarters for investigation. Capt. Dantes had manifested that they will bring him to the President either in Malacanang or in Baguio. He told Capt. Dantes that he would consult his lawyer first. The former agreed and so he sent his brother, Vicente, to fetch Atty. Isidro Hildawa. Atty. Hildawa, however, could not be found at the time. His wife, a lawyer by profession, had to represent and assist him then. But his wife postponed an appointment with a certain Col. Peralta until the following day. When he asked Capt. Dantes as to how his address had become known, the captain merely told him that his whereabouts had been monitored by Malacanang.

After sometime, his brother told him that a certain Sgt. Pisa from the office of Col. Balbino Diego, with the same mission, left a note for his lawyer urging the latter to call Col Diego. Fearing a rubout, he asked Atty. Hildawa, his lawyer, and Fr. Douglas de Souza of San Ildefonso Parish, to witness the video taping of his testimony.

One such PAL Aircraft Technician as Mario Laher Jr. is given the responsibility of making incoming aircraft on international flight safe from aircraft flight deterioration and defects, such as dents, cracks, and bird strikes. The aircraft technician does what is termed as "360-degree check."

At 11:30 a.m. of August 21, 1983, Mario Laher Jr. reported for work. When he entered the side gate where PAL employees used to pass, he had a hard time getting inside the MIA because security was very tight. A showing of one's identification card was not enough identification for entry. The employee's purpose in entering MIA was inquired into and the employee's features were matched with his ID picture. AVSECOM soldiers, the airport police, and security guards guarded the gate.

Since his assignment was with the Royal Air Brunei, he proceeded to Bay 7 where the Royal Air Brunei was docking. Alexander Dagani was paired with him in this assignment. As soon as the Royal Air Brunei plane arrived at about 1 p.m., Mario Laherh Jr conducted the usual "360-degree check" of the aircraft. He started from the right of the nose of the aircraft and from there saw that the China Airlines plane was berthing at Bay 8, around 40 meters from Bay 7.

All of a sudden, he heard a burst of gunfire. As he turned

towards the direction of the place where the shot had come from, he saw a man in white clothes fall face down, two to three paces from the last rung of the bridge stairs. A commotion ensued. Other shots followed and so, he ran to seek cover behind a concrete wall. A series of shots again followed and only then did he see a man in blue lying down on the tarmac.

Assigned to cover Sen. Benigno Aquino Jr, Sandra Jean Burton, correspondent and bureau chief of Time Magazine in Hong Kong, accompanied the senator on CAL Flight CI-811 from Taipei to Manila on Aug. 21, 1983.

In the evening of Aug. 20, 1983, between 8 and 9 o'clock, journalists assembled in a room at the Grand Hotel in Taipei and talked with Sen. Aquino up to about midnight on a wide range of topics - logistics, politics and the details of the flight to Manila on August 21. Sen. Aquino had intimated that he intended to effect a reconciliation with the then President Ferdinand e. Marcos. Also discussed were positive threats to his life by communists or by high military and government officials.

Shortly after CAL Flight CI -811 was airborne and the fasten seatbelt sign had been turned off, the media people went to Sen. Aquino and asked for another interview. When the senator agreed, they all repaired to the back of the plane where a conference could be held more conveniently. Photographs and TV films were taken. in the context of many reporters' questions as to whether he though he would be safe in returning to Manila against the advice and the wishes of the government. Sen. Aquino candidly acknowledged to them that he had provided himself with a bullet-proof vest to protect him against any threat to his life.

When the China Airlines Flight CI-811 had stopped taxiing, some

of the passengers got up and tried to get their baggage from the overhead racks, thinking that they would be able to leave. An announcement over the plane's public address system, however, asked the passengers to remain seated for 10 minutes. some passengers sat down, while the others chose to remain where they were. After a while, three soldiers in khaki uniforms entered the plane. The soldier who was ahead of them passed by Sen. Aquino. Obviously, he did not recognize Sen. Aquino. The second soldier motioned to the first that he had spotted the senator. The three soldiers then stood in the aisle and, when Sen. Aquino extended his hand, the soldiers all shook hands with him. At the soldiers' bidding, the senator got up and went out with the. Then she, together with the other reports and the camera crew, tried to follow Sen. Aquino and his escorts. She tried to stay as close as she could to keep him within sight but there were two camera crew before her.

Sen. Aquino had turned left with his escorts to go to the service door of the aerobridge when she last saw him. There were many people crowding them. There was a lot of pushing and shoving among passengers and the soldiers, and it became very strenuous when they were already at the service door in the passenger tube. She turned on her mini-cassette tape recorder for the third time, just about the time she lost sight of Sen. Aquino and she kept it on for 30 minutes until the tape ran out.

She was never able to get to the door because the men in white polo Barong were blocking the door. Her tape recorded all sounds and noise, including the sounds of thje pushing and shoving of the people trying to get out, and some voices of various people.

As these jostling went on, she heard a sound of gunfire. Then,

it was followed by a flurry of shots. At that precise moment, she was pushed, along with several other journalists into the body of the airplane. Realizing that she could not go near the door, she rushed to peer out through the nearest porthole and saw the body of Sen. Aquino lying face down on the ground with blood spurting out of the back of his neck while another body was lying close to him. There was a period of eerie silence after the several shots were heard. Later that day, after having recovered from the excitement, she replayed her small cassette tape while she was writing her story and played it many times more. She timed the period that elapsed from the time she turned on the tape for the third time and the first gunfire.

From the tape recorder which she left on when Sen. Aquino was led out of the door, she reckoned that the senator could have been shot on the stairway. This was because, from the time he was escorted out into the service stairway, barely 10 seconds elapsed when the first shot rang out.

Shown a transcript of the recorded statements and sounds, marked as Exhibits U7-2 and U7-2A, she declared that she had seen it earlier and read it and that it was the same transcription of her tape that she identified before the Agrava Board and before the Sandiganbayan.

At the TV ramp monitoring service of the Bureau of Air Transport, Air Traffic Controller Ildefonso Torres and apprentice cameraman Jose Eric Flores monitored CAL Flight CI-811 by means of a close circuit camera, particularly by Camera No. 3. Seen by Jose Eric Flores on the TV monitor were the nose of the plane and about five of the topmost steps of the airbridge stairs. When their telephone rang, Ildefonso Torres answered the phone and, as he did, Jose Eric Flores saw on the TV screen four persons going down the airbridge stairs. Since Flores found this to be unusual, he turned to tell Ildefonso Torres about it. When Jose Eric Flores looked back at the monitor,

the group had already disappeared from view. Ildefonso Torres readjusted the camera and tried to locate the four men at the stairs. Torres, to his surprise, saw two figures on the tarmac lying just a few feet from each other.

The body that he saw lying on the tarmac with a light attire was the very person he had seen going down the bridge stairs. That body was lifted and then thrown into the van. Considering the manner by which the body was loaded, Ildefonso Torres and he had thought that what was thrown into the van was just a mannequin.

The Prosecution took time, money and effort to retain a voice expert in order to determine and analyze three different matters:

1. Voice prints;
2. Gunshots; and,
3. Sounds on the stairs.

Retained by the prosecution for these purposes was Matsumi Suzuki, president of the Japan Acoustics Laboratory, who professes to be a voice recognition and identification expert. He has a sophisticated voice recording laboratory in Japan which has equipment which is more advanced than the equipment for the purpose in other countries, even that in the United States. It is Dr. Suzuki's claim that, with the use of his equipment, his analysis of sounds and voices are as accurate as the results of a finger print analysis.

With the use of the spectro-analyzer, a computer device which records the results of analyses of sounds, voice print is made and from the spectrogram of the voice, an analysis and determination and identification of the voice may be discerned.

Dr. Matsumi Suzuki is an Electronics Engineering Graduate of

Kingco University; a graduate of the National Police Agency Research Institute; a graduate of the Sorbonne University in France; a graduate of the International Commission Communication of Voice Science and also a graduate of the Kay Elemetrics Research Center, a subsidiary of the Bell Telephone Corporation of the United States.

He designed and did work construction on equipment voice prints and did research on voice prints for the Federal Bureau of Investigation. He also had some experience in this kind of work with the Tokyo Aircraft Institute and did research on the use of voice to withdraw money from Electronic banks.

He earned the degree of Doctor of Engineering thereafter.

The voice print machines now in use in his Japan Accoustics Laboratory are very accurate machines for identifying voice prints. For his successes in this line of work, he received an Award of Merit from the Prime Minister of Japan and the Minister of Science and Technology. Thus, he was the one who founded the Development of Voice Technology.

In a great number of civil and criminal cases, he testified in court and was instrumental in aiding the court in arriving at conclusions as to voice determination.

An example of his work was that which he rendered in the Prime Minister Tanaka case wherein, on the basis of his testimony, Prime Minister Tanaka was convicted. There was this kidnapping case wherein 15,000 suspects were recorded. In one sweep, he was able to reduce the suspects to five and by the use of his spectro-analyzer and the voice prints derived therefrom, he was able to pinpoint the lone culprit. He it was who solved the JAL accident and the controversy regarding the Korean Airlines plane crash at the Sakhalin Island

wherein he determined that the plane was downed by the Soviets.

In respect to the assassination of Sen. Benigno Aquino Jr., Mr. Kiyoshi Wakamiya retained him to make an analysis and identification of voices in the video tape taken by the latter in the course of the perpetration of the killing. On the basis of materials furnished him by Mr. Wakamiya and others, he made an investigation of his own by analyzing the sound of the gunshots he heard in the tape, the distance between the tape recorder, the place where the shot came from and the analysis of the sounds of the footsteps which went down the stairs, that is, that of Sen. Aquino and the soldiers who escorted him. the materials he used were the voice tape samples in the ABS tapes and such other tapes which are in evidence, especially the voice tapes of the conversations between Sen. Aquino and the soldiers who fetched him and the voice prints of the soldiers who testified before the Agrava Board.

On the basis of the foregoing, it was the conclusion of Dr. Matsumi Suzuki that, while the following words were heard to have been uttered in the Wakamiya tape: "*Ako na! Ako na! Op. Ito na! Ito na ya Op pusila pusila,*" it was:

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

Sgt. Arnulfo de Mesa uttered the second phrased, "*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 expression, "*Op.*"

Lt. Jesus Castro next uttered the word, "*Pusila*," and

CIC Mario Lazaga uttered the second, "*Pusila*."

The results of the analyses of the voice prints are marked by the prosecution as Exhibit M8 and Exhibits M8-1 to M8-30.

The pneumatic original tape, Exhibit L8, and the Exhibits L8-1 and L8-2 form the bases of the findings and analyses of Dr. Suzuki.

In respect to the single gunshot of explosion heard over Mr. Wakamiya's VTR which is presumed to have been the shot that killed Sen. Aquino, it is Dr. Matsumi Suzuki's finding that the explosion heard over Mr. Wakamiya's VTR and on the sound track of the ABS tape was an explosion close to the sound of a .45 automatic gun, which explosion has been verified to be very different from the explosion of a .357 magnum.

From the sounds on the stairs heard in the foregoing tapes, the sounds of the footsteps of Sen. Aquino and the soldier escorts, Dr. Matsumi Suzuki made the conclusion that, when the explosion of the gun which killed Sen. Aquino was heard, Sen. Aquino was at the 11th rung of the bridge stairs because the footsteps could be heard only up to the 11th step. Sounds were heard, however, which indicated that the senator could have jumped from the 11th step to the 15th.

Evidence furnished by Octavio Alvarez y Valderosa, a colonel who was retired on March 7, 1985, touched on two matters: First, in respect to the letter of prosecution witness Jessie Barcelona which asked for advice as to what action to take regarding the incident he saw on Aug. 21, 1983; and Second, in respect to his service firearm, a .357 magnum, which is now claimed by the defense as the gun which

Rolando Galman allegedly used in assassinating Sen. Benigno Aquino Jr.

Since he had been a long time friend of the Barcelonas, both Hermie, the father, and Jesie, the son, Jessie Barcelona wrote him a letter which, while informing him that he was an eyewitness to the killing of Sen. Benigno Aquino Jr., had in fact asked for protection just in case he decides to testify. While he tried to dissuade Jessie from testifying in order to avoid trouble and peril to his life, Jessie Barcelona went ahead and testified anyway.

On his second point, he declared that, as a military officer, he was issued a .357 revolver with Serial No. K919079. he was issued Memorandum Receipts for the purpose and Mission orders in connection with its issuance. The foregoing authority is supported by Exhibits C6 and X6-1 to X6-11. This service firearm was stolen from his service car on Aug. 10, 1979, while he parked his car at the parking lot of the Ateneo Graduate School where he was working on the degree of Master of Political Management. Upon discovering the theft, he immediately informed the school administration and reported the matter to the school's chief of security. Immediately thereafter, he complained to the police in Makati. His complaint was entered in the police blotter, Exhibit Y6. He sent a letter to the chief of the Philippine Constabulary in respect to the loss on Aug. 15, 1979, Exhibit Y6-1. A radio message in connection herewith, Exhibit Y6-1-A, was sent by him to Simplicio Taguam, private secretary to the President. Notice of Loss was likewise given by him to Army Supply and Accountable Officer Elmor Monastrial.

A week after the assassination of Sen. Benigno Aquino Jr., a

certain Rolando Chiu called him up by telephone and confessed the error that he tampered the serial number of a .357 magnum revolver which he possessed without license and the serial number which he inscribed illegally on his gun was the serial number of the .357 magnum of Octavio Alvarez. This serial number he saw in Alvarez's memorandum receipt. While Octavio Alvarez was the Provost Marshal, Rolando Chiu was a frequent visitor of his office on account of the fact that Chiu had sought the assistance of his office regarding a kidnapping of which Chiu was interested in. Chiu had surrendered this gun to a sergeant of the Western Police District in 1980. Rolando Chiu was an agent of Col. Rolando Abadilla of the CIS.

When Gen. Prospero Olivas learned that Octavio Alvarez had claimed that the .357 magnum revolver was the service firearm which was stolen from him, Gen. Prospero Olivas got fuming mad and called for Octavio Alvarez. Pressured into retracting what he had previously claimed, Octavio Alvarez was forced to sign an affidavit which disclaimed any allegation of ownership of the gun. This, however, was immediately retracted by an affidavit which he signed and executed before Manila CFI Judge Herminio Mariano.

As against Col. Arturo Custodio and Hermilo Gosuico, the prosecution presented Roberta Masibay y Lazaro, 20 years old, stepdaughter of Rolando Galman, who testified that at about 7 o'clock in the evening of Aug. 17, 1983, she was at home with her parents, Lina Lazaro and Rolando Galman, in Bagong Silang, San Miguel, Bulacan, when four men in civilian clothes, two of whom she identified as Col. Arturo Custodio and Hermilo Gosuico, arrived to fetch her stepfather, Rolando Galman. She came to know Col. Arturo Custodio, as she remembered seeing her "Tatay Lando" with the former during the feast of San Vicente at Zaragoza, Nueva Ecija, on April 5, 1983 and during her stepfather's birthday on April 16, 1983.

It was also Hermilo "Boy" Gosuico who, together with an unidentified companion, picked their mother up sometime in late January 1984 at their house at Bagong Siland, San Miguel, Bulacan. Noy Gosuico, she said, was the same person who had been with Col. Arturo Custodio when the latter took her stepfather away on Aug. 17, 1983. She had not seen her mother, Lina Lazaro, since then. However, before her mother left with the two men, she told her that General Ver was sending for her but that she was not to tell anybody as their lives would be endangered.

From her preparatory military training at school, the Citizens Army Training (CAT), she knew that Gen. Fabian Ver was the chief of staff of the Armed Forces of the Philippines. In vain did some people try to look for her. Rogelio Taruc was with her mother at the time her mother was picked up, but Rogelio Taruc, too, has not returned to Bagong Silang.

She saw Hermilo Gosuico sometime in July 1983 when, upon the request of Rogelio Taruc, their neighbor, Hermilo Gosuico offered to give her and her stepbrother Reynaldo a lift on their way to their school, the San Miguel High School. They rode on a blue pickup driven by Boy Gosuico himself.

Reynaldo L. Galman, 14 years old, son of Rolando Galman, positively identified Col. Arturo Y. Custodio and Hermilo Gosuico as two of the four men who picked up his father at their house in Bagong Silang, San Miguel, Bulacan, at about 7 o'clock in the evening of Aug. 17, 1983.

Prior thereto, he had already been familiar with the identities

of Col. Arturo Custodio and Herminio Gosuico. The former, he first met at Zaragoza, Nueva Ecija on April 5, 1983 during the town fiesta. He met the colonel again at their house on April 16, 1983. Hermilo Gosuico he saw for the first time in July 1983 when Gosuico brought him and his stepsister, Roberta Masibay, to school in a pickup.

Since Aug. 17, 1983, the day Col. Arturo Custodio and Hermilo Gosuico went to their house and fetched his father, he never saw his father again. The news about his death had reached him only on Aug. 21, 1983 when his mother heard over the radio that his father was involved in the assassination of the late Sen. Aquino.

A few days after the assassination of Sen. Aquino, his mother left the house together with some unidentified persons who were looking for her. She returned home, however, accompanied by Rogelio Taruc, their neighbor. From that time on, she would leave the house and then come home with Rogelio Taruc. He saw his mother for the last time on Jan. 29, 1984 at their house in Bagong Silang, San Miguel, Bulacan. A certain Boy Gosuico and another man whom he did not know and come to their house and fetched his mother. They left on board a military vehicle. Before his mother left, she talked to his sister, Roberta, but he did not know what his mother had told her. From then on, he never saw his mother again.

During the Aug. 24, 1987 hearing before this court, Reynaldo Galman pointed to Col. Arturo Custodio and Hermilo Gosuico as the two persons who fetched his father on Aug. 17, 1983.

When cross-examined by Atty. Bernaldo, he confirmed that it was

only Col. Arturo Custodio whom he saw on April 5, 1983 during the town fiesta of Zaragoza, Nueva Ecija, and on April 16, 1983 during the birthday of his father. He only saw Mr. Gosuico sometime in July 1983 when Gosuico brought him and his stepsister, Roberta, to school. Prior to that, he had not heard from his parents about the name of Boy Gosuico.

Since the time of the Agrava Fact-Finding Board and even during the initial hearing of this case, he was already staying in the residence of Atty. Lupino Lazaro together with Saturnina Galman and Marilyn Galman, his grandmother and aunt, respectively. It was Atty. Lazaro who spent for his school expenses. They left Atty. Lazaro's residence sometime in 1986.

On March 1, 1984, he recalled having testified before the Agrava Fact-Finding Board wherein he stated that he did not recognize the persons who allegedly fetched his mother on January 29, 1984, claiming that he relied merely on what his sister had told him that she knew the identities of the said persons.

After his mother's disappearance on January 29, 1984, he continued to stay in their house at Bagong Silang. His uncle, Vicente Galman, and his wife lived with them temporarily to attend to him and his sister Roberta. Nobody had threatened them during their stay there.

At one time, he asked his uncle Vicente to bring him to Zaragoza, Nueva Ecija, but not one of his relatives would accept him there. So, he went to Mabalacat, Pampanga where he stayed in the house of his aunt. He returned to Bagong Silang the following day and stayed there until he was fetched by Atty. Lazaro.

Further, he stated that, if his father would leave their house

in the morning, he would always come back in the afternoon. Occasionally, he would leave in the afternoon to work in the field but would come home the next morning.

When asked by the court if his father possessed any firearm, he answered in the negative. Aside from being a farmer, he does not know if his father had any part-time job or in any way connected with some group of persons. From 1980 up to the time they transferred to Bagong Silang in 1983, there was no occasion that his father had been away from home for more than a day. he was not aware of the fact that his father was detained in Camp Olivas in 1982 or 1983.

After the death of Rolando Galman, military men led by Major Ruben Alcantara of the PAF went top the house of Saturnina Galman, mother of Rolando Galman, in order to inform her of the death of Rolando Galman. She was brought to Cabanatuan, later to Fort Magsaysay, and then to the Nichols Air Base where, in an office, she was made to admit that her son Rolando Galman killed Sen. Benigno Aquino Jr. She was coaxed into making such an admission with the promise that she would be helped financially. She allegedly denied this request, notwithstanding the presence of armed men who were belligerently surrounding her. She was made to identify Rolando Galman, however, at the morgue and she was made to suffer a lot of hardship before she was allowed to take the body of her son for burial.

Saturnina Galman claims reimbursement for burial expenses in the sum of P30,000.00 She demands moral damages in the some of P1, 000, 000.00.

The efforts of accused Col. Arturo Custodio and his brothers,

Col. Benito Custodio and Gen. Vicente Custodio, to cause Estelita Lacsamana and Lino Parungao to testify in favor of the aforesaid accused and to retract their testimonies before the Agrava Fact-Finding Board concerning the disappearance of Lina Lazaro Galman and Rolando Galman were described in detail by Estelita Lacsamana.

Before they were heard by the Sandiganbayan on July 26, 1985, they were billeted at the Apartelle Hotel in Quezon City at the expense of the brothers Custodio.

Estelita Lacsamana had the occasion to talk to Lina Lazaro Galman, wife of Rolando Galman, on Jan. 27, 1984 at 7 o'clock in the evening. Lina confided to her that she had much to tell respecting the death of Rolando Galman and this she wrote down in a letter to Roberta Masibay. Lina Lazaro Galman had told her that, if she disappears, no one but the military is to be blamed. She did not reveal to Estelita Lacsamana the information respecting Rolando Galman which she locked up in her heart. All of these she wrote down, anyway, in the letter she left with Roberta Masibay. Unfortunately, the letter was burned by Roberta Masibay when she was told that her mommy had died.

Estelita's statement in respect to the disappearance of Lina Lazaro Galman was taken down by Atty. Felix Solomon. She claims that she was not made aware of its contents. She seemed to have noticed, however, that when she happens to tell the truth about a matter of fact, the opposite would be taken down by the one interrogating her.

The prosecution of Col. Vicente Tigas centered on the charge of

prosecution witness Rebecca Quijano that Col. Tigas had threatened her with harm should she reveal to news reporters as to what she saw at the bridge stairs wherein Sen. Aquino was shot and killed. The exact words of Col. Vicente Tigas, as quoted by Rebecca Quijano were: "*Huwag kang maingay, kung hindi, mapapahamak ka.*" Also, the prosecution appeared to have relied on the testimonies of duly accredited correspondents covering the Manila International Airport, namely: Manuel Silva y Naval, Benjamin Malumay, Recto de Leon Mercena, Jose Macaspac, Luciano Caliwan, Jose Mendoza, Zenaida Silva and Luiz Perez y Castro.

These newspapermen, knowing that Col. Vicente Tigas was the chief of Media Relations of the Presidential Security Command, sought the aid of Col. Tigas in allowing them to provide press coverage for the arrival of Sen. Benigno Aquino Jr right at the pre-departure area. Considering their number, the airport authorities agreed to allow only MIA-accredited reporters, 14 of them, to enter as far as the pre-departure area at Gate 8, upon the intercession of Col. Vicente Tigas and Media Affairs Officers Jolly Riofrit and Roberto Sietereales. But as CAL Flight CI-811 was cleared to land, the group of 14 newspapermen, accompanied by Col. Vicente Tigas, proceeded as far as the concrete tube of Gate 8 and there positioned themselves in such a way as to get a clear view of the door of the aircraft. Manila International Airport manager Luis Tabuena, however, ordered them to move backwards and into the middle of the concrete tube, thus depriving them of a view of the door of the aircraft. Col. Vicente Tigas arranged them in such a way that passage at the concrete tube would not be completely blocked. They all were of the belief that, as intimated by Col. Vicente Tigas, Sen. Aquino would pass through the concrete tube.

Even as they were waiting for Sen. Aquino to exit through the

concrete tube, they heard all of a sudden a burst of gunfire which to them seemed to have come from the end of the tube. A commotion ensued, screams were heard, and then successive bursts of gunfire followed.

The newsmen, coming out of the concrete tube, ran in every which way. Those who had presence of mind peeped out of the windows and, as they did, they saw two bodies already lying on the tarmac, that of Sen. Benigno Aquino Jr and a blue-uniformed unidentified man, later known to them to be Rolando Galman. Several pictures were taken of the scene at this point but this constituted evidence *post litem motam*.

Of significance is the allegation of these newsmen that, while they were converging at the pre-departure area in the company of Col. Vicente Tigas, they had not noticed any unusual remark or movement on the part of the said colonel. Their actuations and respective positions were not restricted by him. The fact bears repeating that they, Col. Vicente Tigas included, were so engrossed in the belief that Sen. Aquino would pass through the tube that none of them had ever thought of going back to the pre-departure area and peep through the windows there.

On the part of Recto de Leon Mer5cene, a journalist of the *Times Journal*, it is his testimony that a briefing in connection with the arrival of Sen. Benigno Aquino Jr on Aug. 21, 1983 was held at the Philippine Village Hotel, with Col. Vicente Tigas making announcements as to the manner of entry into the MIA and as to who the duly accredited media people will be allowed to enter. It was his impression that the invitation to the briefing had been extended to all member of media in order to insure that the arrival of Sen. Benigno Aquino Jr will be covered by proper media people.

To serve as evidence of the prosecution in respect to the charge against Minister Jose Aspiras, Brig. Gen. Jesus Singson and Minister Gregorio Cendana, Jose D. Tiongson, a waiter of the Plaza Restaurant, was presented. this witness testified that, on Aug. 20, 1983, he, together with head waiter Bert dela Pena and companions, Sammy Abella and the brothers Reynaldo and Celerino Sister, were assigned by their employer as caterers to serve in the office of then tourism minister Jose Aspiras, at the 4th floor of the Ministry of Tourism building. While they started serving at around 7 o'clock in the evening, the party broke up at 3 o'clock dawn the following day.

A bugger table was set up at a sort of ante-room beside the office of Minister Aspiras. It is his claim that Reynaldo Sister and he were stationed inside the minister's office for the duration of their stay and so he was most of the time in the said office. Minister Aspiras, Gen. Singson, Minister Cendana, three persons who were addressed as generals, an attorney-aide of minister Aspiras, Boy Aspiras, one referred to as governor, one who was addressed as justice, and around 20 security men were present.

Viewed by them at the outset were Betamax tapes which featured Ninoy Aquino's speaking engagement in America and Doy Laurel's detention at the Western Police District on the occasion of the noise barrage. Shortly, minister Aspiras was summoned to the telephone. While he did not know the person at the other end of the line, he had understood from Aspiras's answers that the call was about an intelligence report that Ateneo students were going to meet the senator. Minister Aspiras allegedly gave instructions to the effect that the said students should not be allowed to enter the arrival area.

Another telephone call came in at about 10 o'clock. This time,

it came from Taipei. He heard minister Aspiras say, "*Ano, nasa Taipei na si Ninoy?*" He also gathered that Sen. Aquino used the name Marcial Bonifacio and that he was on board a China Airlines plane. Forthwith, the minister asked one of his security aides to get in touch with Col. Tigas and Col. Custodio. Soon after, the telephone rang again. Taking the phone himself, Minister Aspiras said, "*O, Custodio, darating si Ninoy bukas. Huwag mong paraanin sa passenger tube dahil baka may tamaang turista. Ako ang madadamay. Sa tarmac mo paraanin.*"

"Huwag magpapasok ng sasalubong kay Ninoy sa arrival area dahil makasasagabal."

At this time, he did not notice where the Sister brothers were as his attention was focused on the guests. Neither did he notice where Gen. Singson was but he recalls that the general was moving in and out of the room carrying his two-way radio. Calls were made every 15 minutes until dawn of Aug. 21, 1983.

At about the time they were to leave, he heard minister Aspiras say to minister Cendana, "*Cendana, kailangan, bukas, nasa control tower tayo.*"

Asked to describe the set-up/structure of the office, of the fixtures, and of the relative positions of those present, he drew a sketch, marked by the prosecution as Exhibit C7.

On cross-examination, he declared that all the waiters were excluded from the minister's office for about five minutes. This was at past one o'clock. The security men were not ordered out.

While he learned that Sen. Aquino was shot that day, eh did not

report what he witnessed out of fear for his life. However, the other waiters and he did talk about the matter but no one reported the same to the police or the PC.

Breaking his silence after four years, he narrated what he knew about the Aquino case to a friend, Romeo de la Cruz. The latter arranged a meeting between commissioner Pagulayan of the National Police Commission and him. His statement (Exhibits 1-C and 1-D-Aspiras and Exhibits 17-1 and 17-4, was taken at about the middle part of February 1987. Upon his request, commissioner Pagulayan accompanied him to the Tanodbayan. He showed the Tanodbayan his statement as taken by the NAPOLCOM official. After a cursory reading thereof, then Tanodbayan Raul Gonzalez told him to write down what he narrated in his own handwriting. Thus, he accomplished Exhibits 1, 1-A and 1-B.

The other waiter, Reynaldo C. Sister, testifying in a manner identical to that of Jose D. Tiongson, except that Reynaldo said that the buffet table where food was placed was set up by them at the social hall, a room which adjoins the minister's office, that they had put up a 'service station' somewhere in a corridor next to the door leading to the minister's office, that is, at the time Tiongson and he finished 'skirting' the buffet table; that all the minister's guests were inside his office and he was able to see them only because he was summoned to go inside; that communications equipment was placed in an adjacent room and, thus, when Aspiras answered an overseas call, he had to get inside his room, without anyone else hearing what the call was all about; and that, while he heard about the assassination of Sen. Benigno Aquino Jr at 4 o'clock p.m. of Aug. 21, 1983, he had a disclosure to Tanodbayan Raul Gonzalez of what he saw and heard that evening of Aug. 20, 1983 only on Jan. 13, 1987.

Jose Fronda Santos Jr., a Barangay Self-Defense Unit (BSDU)

organizer in O'Donnell, Capas, Tarlac, before he became one of the security escorts of Sen. Benigno Aquino Jr, during the pre-martial law days, declared that, in 1973, he was conferred a meritorious commission by Gen. Romeo Gatan for having killed top guerilla commander Jose Buscayno. He remained a Philippine Constabulary trooper, reaching the rank of Constable First Class (CIC) until 1979 or 1980 when he went on absence without leave.

In the early part of 1981, an uncle of his. Dr. Bartolome Lapuz, introduced him to Gen. Luther Custodio, then a colonel, and the intelligence officer of the Philippine Security Command. From Col. Custodio, he asked that he be reinstated. He imparted to Col. Custodio the matter of Geronimo Fronda's having sent him to Hong Kong to see Sen. Aquino.

At the G-2 PSC office in Malacanang, he came to know Col. Romeo Ochoco and Lt. Nestor Sadjarin.

His request for reinstatement was granted, conditioned upon his willingness to do intelligence work on the activities of Sen. Aquino in the United States of Hong Kong. Acceding to the condition, he was made to accomplish a personal history statement which he submitted to Gen. Custodio. He was then asked to infiltrate the ranks of the rest of the opposition, Vice President Salvador Laurel and Sen. Eva Kalaw, in particular. Lt. Sadjarin was to be his tail, back-up or buddy. For this particular mission, he was not to report to Gen. Custodio in person. He was to report to the general by phone. Given the codename or Rafael Bernardo, he capped his job with the arrest of Sen. Kalaw.

He made three trips to Hong Kong at the instance of Gen.

Custodio within the period, June 1981 to 1984.

Before his first trip to Hong Kong on June 15, 1981, he received specific instructions from Gen. Custodio to make an overseas call if and when Sen. Aquino would arrive in Hong Kong from the United States or Canada. Sen. Aquino did not go to Hong Kong as expected. Still loyal to Sen. Aquino, however, he called up the latter in the United States and informed him that he was already working for Gen. Luther Custodio.

While he was still with Gen. Luther Custodio in 1982, he was ordered by the general, in the presence of Dr. Lapuz and Col. Ochoco, to kill Sen. Aquino outside the United States. He was to do it cleanly. He was to make the killing appear to be an accident. He expressed his assent, like a good soldier, but he knew that he could not in conscience commit the act.

In 1983, the same instructions were repeated, with the reiteration that the killing be done cleanly, lest the killing would embarrass President Ferdinand E. Marcos. Col. Ochoco told him, "*Kung nandoon, tirahin mo na,*" but Gen. Custodio cut him short, "*Huwag muna, tumawag ka muna at darating kami doon.*"

He was cautioned by Dr. Lapuz against it, reminding him that his task was only to infiltrate. Nevertheless, he left for Hong Kong in January of the same year. Thereat, he called up an uncle in Canada, he having failed to contact Sen. Aquino.

Back after a two or three-week stay in Hong Kong, he reported to Gen. Luther Custodio and informed him of the non-accomplishment of his mission.

Meanwhile, he continued to report to the AVSECOM headquarters at

the Villamor Air Base, the instructions of Gen. Custodio having been that he was to report everyday.

He recalled having seen Lt. Jesus Castro, an aide of Gen. Custodio, and Sgt. Mateo in the same office a few days before the arrival of Sen. Aquino. A week before the same arrival, he saw Sgt. Mateo handling a .357 magnum firearm. The same gun was also held by Sgt. Arnulfo de Mesa. Taking a good look at the gun, he had noticed its yellowish white grip. Lt. Castro, likewise, handled the said gun and even showed it to the other soldiers about five or six days before the Aquino assassination.

In the morning of Aug. 20, 1983, Gen. Luther Custodio, after being reassured of Santos' loyalty, asked Santos again if Santos would do what he would be ordered to do, that is, to kill Sen. Aquino. At the time, Santos observed that the AVSECOM was alerted on the coming of the senator. There was a briefing in the conference room where all the escorts of Sen. Aquino were. He reiterated his assent and so Gen. Luther Custodio asked him to stand by. he stayed at the headquarters until 6 o'clock p.m. He asked permission to leave but was told to come back before midnight. He proceeded to the house of the Tarlac Vice Governor Alfonso "Amang" Roy at the Fairview Park, Quezon City, and disclosed to him the assassination plot. He also informed congressman Jose Yap about the matter. Both countered that the plot could not possibly prosper because 14 newspapermen were joining the senator. He stayed with Mr. Roy for the rest of the evening and decided not to return to the headquarters. He had then wanted to stop the operation against Sen. Aquino.

At around 8 a.m. of Aug. 21, 1983, he, in the company of Messrs.

Roy and Yap, went to the Manila International Airport. They joined the group from Tarlac at the MIA chapel, and all together they marked towards the MIA building. They stayed at the VIP lounge where he saw Mayor Macapinlac, Dona Aurora and Butz Aquino.

He learned of the death of Sen. Aquino when Mr. Kashiwahara came rushing into the VIP lounge and heard him say that Sen. Aquino had been shot.

He called up Gen. Custodio but he was told by Lt. Castro that the general was sleeping.

After the MIA incident, he went to Barangay Sampaloc, Tanay, Rizal and stayed in the house of his brother for a month. He left for the United States in January 1984, informing only Dr. Lapuz of his trip.

He appeared before the United States Congress at the time the US\$900 million aid to the Philippines was being taken up. President Marcos' oppositionists in the United States asked him to do so in order to block the grant of the aid. He was accompanied by Salvador Laurel, Heherson Alvarez, Steve Psinakis and Alex Exclamado.

He also appeared before the Agrava Board in Los Angeles and submitted thereto a sworn statement. He also submitted the statement to the United States Congress.

As against Maj. Gen. Prospero A. Olivas, charged as an accessory

after the fact, the prosecution presented evidence to the effect that, after Sen. Benigno Aquino Jr and Rolando Galman were killed, Gen. Fabian C. Ver, chief of staff of the Armed Forces of the Philippines, directed him to investigate both murders. On Dec. 19, 1983, Gen. Olivas, as office in charge of the investigation of the Aquino assassination, submitted three reports marked by the prosecution as Exhibits NNNNN, NNNNN-1 and NNNNN-2.

In fine, the report is to the effect that that the interlocking testimonial and scientifically proven pieces of evidence sustained the conclusion that Rolando Galman y Dawang, killed ex-Sen. Benigno Aquino Jr. on Aug. 21, 1983, at the Manila International Airport, using the revolver smith and Wesson Caliber .357 magnum, with Serial No. K919079, which was retrieved by Sgt. Arnulfo de Mesa.

As to the weapon used, it was his finding:

"That Laboratory examination showed that the evidence firearm had been fired recently (Annex T-31, NBI Chem, Report No. C-83-867).

That the lead fragment of a bullet recovered from the head of ex-Sen. Aquino had similar constituents, namely: lead and antimony, with those of the lead case of a Caliber. 357 magnum bullet (Annex 7-33, NBI Chem. Report No. C-83-872).

Re: Slaying of Aquino's Killer by Soldier

"Galman was himself shot down by members of Team Alpha of the 805th Special Operations Squadron, AVSECOM. The ... firing of one shot by Rolando Galman at the nape of ex-Sen. Aquino was followed by Team A...Sgt. Rolando de Guzman was the first to shoot Galman. Sgt. Ernesto Mateo, Sgt. Rodolfo Desolong and AIC Cordova Estelo, also fired their guns at Galman...Galman sustained 16 gunshot wounds and two other grazing wounds....Rolando Galman was killed by bullets fired by Sgt. Rolando de Guzman PAF, Sgt. Ernesto Mateo PAF, and AIC Cordova Estelo PAF. It is also probable that bullets fired by Sgt. Rodolfo Desolong PAF hit and contributed to the death of Rolando Galman. Sgt. Desolong's bullets could have inflicted through and through or grazing wounds on Galman's body."

Re: Reason for Assassination

"The statements of four named witnesses, although not completely interlocking, point out Galman was under instructions by the New People's Army when he committed the dastardly crime. His co-conspirators, however, have not been completely identified except for Rodolfo Salas, alias Commander Bilog, and Romeo Juliano, alias Ka Romy, of the New People's Army."

Re: Galman's Strategem to Penetrate Security

"Galman succeeded in penetrating the security cordon put up by the elements involved in OPLAN BALIKBAYAN by (1) disguising himself in the uniform of an airport maintenance or utility employee, (2) using the ID card of Sgt. Dominador Aguayo (of the Presidential Security Unit, MIA) which the latter had mislaid and Galman had evidently found, and (3) mingling with the employees then servicing or about to service the CAL flight. And Galman could have learned that Aquino was on board CI-811 by observing the earlier movements of the AVSECOM soldiers and vehicles, or from information furnished by co-conspirators or accomplices."

Re: Copper Fragment

"That a mangled piece of copper found submerged in a small pool of water some four meters to the right of the head of Sen. Aquino as he lay on the tarmac, was part of the copper jacket of a magnum bullet and had come out through the exit wound at Sen. Aquino's chin."

That when he testified before the FFB (fact-finding board), he re-asserted his findings and conclusions. He testified further than the two holsters (one black and the other brown) were used by Galman in carrying the .357 magnum revolver and that the black holster had two perforations - one in the outer side and the other at the other side. The holes approximate the diameter of a Caliber 5.56 mm. bullet.

That these conclusions of his were rejected by the FFB.

That NBI Chemistry Report No. C-83-1136 was not incorporated in his Investigation Report. (Testimonies of Leonora C. Vallado, Atty. Domingo del Rosario, Dr. Bienvenido Munoz, Dr. Pedro Solis, Sandra Burton, Photo-Chronology, Chem. Report No. C-83-1136, Ballistics Report No. B-315-22-883, .357 Magnum Revolver, NBI Chem, Report C-83-918, NBI Chem. Report C-83-867, NBI Biology Report B-83-1101).

The sworn statements voluntarily given to the Agrava Fact-Finding Board by Brig. Gen. Lutehr A. Custodio, Capt. Llewelyn Kavinta, Sgt. Rodolfo Desolong, AIC Cordova Estelo, Sgt. Tomas Fernandez, Sgt. Pepito Torio, Sgt. Prospero Bona, AIC Anicerto Acupido, Sgt. Arnulfo Artates, AIC Felizardo Tarang, Sgt. Oscar Fabian, AIC Joseph Opilas, Sgt. Jun Catada, M/Sgt. Pablo Martinez and Sgt. Ruben Aquino, Exhibits AAAA to TTTT, inclusive, were presented in evidence by Lt. Col. Berlin Alvaran Castillo, deputy commander and legal officer of the PC-CIS.

There appears to be no question as to the fact of the death of Rolando Galman, the victim in Crim. Case No. 10011. He was shot dead with powerful firearms from military en after Sen. Benigno Aquino Jr. was gunned down. Dr. Nieto Salvador, NBI medico-legal officer, conducted the autopsy of the cadaver of the late Rolando Galman late in the evening of Aug. 21, 1983 at the PC Crime Laboratory, Camp Crame, Quezon City, with the assistance of photographer Mapa and chemists Yolanda Villar and Felisa Dejilla. The following results of the autopsy, Autopsy Report No. 83-2237, had been approved by NBI deputy director Pedro Solis:

POSTMORTEM FINDINGS

Abrasion, reddish-brown, 5.9 x 4.0 cm, left scapular region, along posterior axillary wound, lacerated, 1.5 cm., right frontal region, above eyebrow.

Wounds, gunshot, multiple:

1. Entrance, ovaloid, 1.2 x 1.0 cm. in diameter with abrasion collar widest superiorly, 0.2 cm., oriented downward and medially, edges inverted; located at the left occipital region, 6.5 cm. behind and 2.0 cm. above the left external auditory meatus, directed slightly forward, downward and medially, involving scalp, making a punch in fracture of occipital bone, left, penetrating cranial cavity, lacerating extensively occipital lobe, bony spicules hitting cerebellum, temporal lobes and frontal lobes of the cerebrum, bullet hitting and fracturing right occipital bone, making a wound, EXIT, rounded in Shape, edges averted, located at right side of the neck, posterolateral aspect, middle third, 6.0 cm. behind and 9.0 cm. below right external auditory meatus.
2. Entrance, ovaloid, 1.6 x 0.8 cm. in diameter with abrasion collar, 0.6 cm, widest medially, oriented upward and laterally, edges inverted; located at anterior axillary fossa, 17.0 cm. to the left of anterior median line and 139.0 cm. above left heel, directed backward, slightly upward and laterally, involving skin, underlying soft tissues, penetrating left thoracic cavity, thru the 4th intercostals space,

grazing the upper lobe of left lung, piercing soft tissues of the back, making a wound, EXIT, irregular shape, 3.0 x 2.5 cm. in diameter, edges averted, located at the posterior lone, 19.5 cm to the left of posterior median line and 140.0 cm. above left heel.

3. Entrance, ovaloid , 1.1 x 1.0 cm. in diameter with abrasion collar widest inferiority, 0.2 cm., oriented upward and medially, edges inverted; located at left lateral aspect of the chest, 22.0 cm. to the left of anterior median line, 131.0 cm. above left heel, level of 6th intercostals space, directed backward, upward and medially involving skin, underlying soft tissues, thru the 6th intercostals space, penetrating left thoracic cavity, perforating posterior border of right ventricle, grazing the thoracic vertebrae and scapular bone, right, piercing tissues of the back making a wound, EXIT, irregular in shape, 3.0 x 2.0 cm. in diameter, edges averted, located at the supre scapular region, left, 5.0 cm. to the right of posterior median line and 145.0 cm. above right heel.

4. Entrance, ovaloid, 1.2 x 1.1 cm. in diameter with abrasion collar widest inferiorly, 0.2 cm., oriented upward and medially, edges inverted; located at the left hypochondriac region level of the coastal arch, 8.5 cm to the left of anterior median line and 106.0 cm. above left heel, directed backward, upward and medially, involving skin, underlying soft tissues, penetrating abdominal cavity, perforating stomach, hitting and piercing diaphragm, hitting and fracturing 10th thoracic vertebra, bony spicules making a wound in the skin at the back, measuring 0.8 x 0.3 cm., located

at the back, along posterior median line, 113.00 cm. above right heel, bullet recovered near the bone-lacerated skin.

5. Entrance, ovaloid, 1.1 x 1.0 cm. with abrasion collar, widest laterally, 0.2 cm., oriented forward and medially, edges inverted; located at the back, inferior border of the interscapular space, left side, 6.5 cm to the left of posterior median line, 125.0 cm above heel, directed forward, upward and medially, involving skin, underlying soft tissues, piercing muscles along the vertebral column, hitting and fracturing comminutely 7th thoracic vertebra, bullet lodged and recovered at the back, near the 7th thoracic vertebra.
6. Entrance, ovaloid, 1.5 x 1.0 cm in diameter with abrasion collar widest laterally, oriented forward and medially, edges clean cut; located at the back, left interscapular region, 3.0 cm. to the left of posterior median line, 105.0 cm. above left heel, directed forward, upward and medially, involving skin, underlying soft tissues, piercing muscle tissues around the vertebra, hitting and fracturing 6th thoracic vertebra, bullet lodged and recovered near the 6th thoracic vertebra.

7. Entrance, ovaloid, #9 in number, largest 0.9 x 0.6 cm. and smallest is 0.6 x 0.5 cm., with abrasion collars, widest inferiorly, 0.2 cm., oriented backward and slightly upward, edges inverted; located over an area of 27.0 x 17.0 x 13.0 cm in diameter, extending from the hypogastric region down to the right thigh, along the perineum, directed backward, upward and medially, involving skin, underlying soft tissues, incompletely fracturing right femur, perforating and rupturing testes, penetrating abdominal and pelvic cavities, perforating large and small intestines, urinary bladder, cutting completely iliac vessels, left and right including distal end of aorta, piercing soft tissues in the left buttock, anal region, making two wounds, at the left buttock and one common wound at the anal region, EXITS, irregular in shape, 0.3 x 2.0 cm. and 1.2 x 1.0 cm. each at the left buttock and 5.0 x 4.0 cm, at the anal region, edges everted; located at the left buttock, upper and lower quadrants and anal region, three deformed bullets lodged and recovered at the buttocks and pelvic tissues.

8. Entrance, ovaloid, 1.0 x 0.5 cm. with abrasion collar, widest inferiorly, 0.3 cm., edges inverted; located at the elbow region, posterior aspect, directed slightly forward, upward and medially, involving skin, fracturing bones of the elbow, bony spicules producing lacerated wounds around the entrance, thru the soft tissues of the left arm, fracturing comminutely left humerus, hitting soft tissues of the back, left supra-scapular region, making a wound, EXIT, rounded 4.0 x 2.0 cm in diameter, edges everted, located at left supra-scapular region, along the border of the

shoulder region, 145.0 cm. above left heel and 19.5 cm. to the left of posterior median line.

Grazing wounds, #2 in number, 0.9 x 0.3 cm. and 0.5 x 0.3 cm. each located at the right deltoid region and right cubital region.

Scars, #2 in number, 1.5 x 1.0 cm. and 1.0 x 1.0 cm. each at the right and left external canthi of both eyes.

Scar, 8.0 cm. in length, right thigh, lower third, anterior aspect.

Scar, #2 in number, 8.0 cm. and 5.0 cm. each, located at the right chin, upper third.

Hemothorax, left, 1,200 cc; right, 500 cc.

Hemoperitoneum, 1000 cc.

Hemopericardium, 400 cc.

Other visceral organs, pale.

Stomach is filled up to 1/3 with partially digested rice."

(Exhibit "TT")

Significant in Dr. Salvador's Autopsy Report is the fact that eight gunshot wounds were inflicted on Rolando Galman, the most fatal of which were the wounds in the head and in the heart. of the bullets recovered three appeared to be .45 caliber bullets while three were armalite rifle bullets. One of the wounds appear to be a grouping of nine gunshot wounds, appearing to have been inflicted by one burst of an automatic gun. All the gunshot wounds were ante-mortem in as much as hemorrhage was present along their trajectory. Most of the wounds appeared to have an upward trajectory. The victim must have been shot between 1:10 p/m/ and 1:30 p.m. of Aug. 21, 1983. Thus, he admits that his earlier statement that Rolando Galman had died 10 or 11 hours before the autopsy may be incorrect.

EVIDENCE FOR THE DEFENSE

The defense holds the contention that it was Rolando Galman who shot Sen. Benigno Aquino, Jr. from behind with a single bullet from a .357 magnum revolver and that the senator was hit at the back of the head while he was already walking on the tarmac two to three steps away from back of the SWAT van. This theory of the defense is in direct contrast with the evidence of the prosecution which indicates that the late senator was shot on the steps of the bridge stairs as he was coming down from the plane. The accused consequently deny the charge that they, or any of them, had shot and killed Sen. Aquino in conspiracy with each other. It is the contention of the accused that, when Sen. Salvador H. Laurel wrote Lt. Gen. Fidel Ramos on August 18, 1983, seeking government assistance to secure the person of Sen. Benigno Aquino, Jr. upon his arrival, Gen. Fabian Ver - to whom the letter was endorsed - immediately instructed Brig. Gen. Luther Custodio "to provide necessary security measures to protect Sen. Aquino while at the MIA complex upon his arrival" and "to return Sen. Aquino to the country of origin on the same aircraft should he arrive without any travel papers or to return him to his former detention cell at the Military Security Command in Fort Bonifacio should he come with travel papers." In turn, Gen. Custodio ordered Col. Ager Ontog, his Operations Officer, to draft an operations plan for the purpose. The plan as drafted by Col. Ontog was approved by Gen. Custodio and was code-named 'OPLAN BALIKBAYAN' appropriately significant of Sen. Aquino's return to his homeland.

The plan was forwarded to the general headquarters of the Armed

Forces of the Philippines and was received by Assistant Chief of Staff, Gen. Corachea, the aforesaid plan was approved by the Chief of Staff, AFP, Gen. Fabian Ver. The formulation of implementation plans and the appointment of personnel required therefore was left to Brig. Gen. Luther Custodio. Gen. Fabian Ver had overall supervisory authority.

Implementing plans consisted of Implan Sawata, Implan Masid, Implan Salubong, and Implan Alalay. Gen. Luther Custodio declared that these implementing plans were formulated and drafted by the respective Squadron Commanders and it is his claim that the Squadron Commanders took care of the assignment of personnel in each plan, although the assignment of Squadron Commanders was his responsibility.

Two Squadrons from the Aviation Security Command were ordered to implement the aforescribed security operations: the 801st Aviation Security Squadron under the command of Lt. Col. Avelino Abiol and the 805th Special Operations Squadron under the command of Capt. Felipe Valerio. The 801st ASS was given the responsibility of conducting operations, overt and covert, within and in the immediate vicinity of the then Manila International Airport (now the Ninoy Aquino International Airport). The 805th SOS was assigned the task of conducting close-in security operations and was composed of five (5) teams: Team Alpha, Team Bravo, Team Charlie, Team Delta, and the boarding party.

The aide of Brig. Gen. Luther Custodio, Lt. Jesus Castro, was designated as the head of the boarding party, while Sgt. Claro Lat, Sgt. Arnulfo de Mesa, Sgt. Rogelio Moreno and Sgt. Mario Lazaga were designated as members thereof. The boarding party was given the task of fetching Sen. Benigno Aquino, Jr. from inside the plane to the place where the team Alpha was supposed to be. According to the plan,

Team Alpha was supposed to bring Sen. Aquino to the office of Gen. Luther Custodio at the Villamor Air Base. Metrocom Sgts. Moreno and Lazaga were assigned as members of the boarding party allegedly for the purpose of having on board the plane men with police authority, upon the theory that while as Metrocom troopers Moreno and Lazaga were invested with police authority, AVSECOM troopers have none.

In the morning of August 20, 1983, Capt. Felipe Valerio briefed his men about the mission they were about to perform the following day. He expected Sen. Benigno Aquino, Jr. to arrive on JAL plane at around 1:30 P.M., August 21, 1983. The members of the boarding party were to identify, invite and bring the senator to the office of Brig. Gen. Luther Custodio in a SWAT van to be provided for the purpose. The choice of the SWAT van was in consonance with a tactical plan, for it was better secured and able to withstand an attack while on the move because it was bullet proof.

For his part and in his capacity as team leader of the boarding party, Lt. Jesus Castro briefed his men on the manner of escorting Sen. Aquino, Jr. out of the plane. The men were supposed to position themselves in a V-shape formation, with Sgt. Claro Lat taking the right front and Sgt. Arnulfo de Mesa taking the left. Sgt. Moreno was to be immediately behind Sgt. Lat and Sgt. Lazaga was to be immediately behind Sgt. de Mesa. Lt. Jesus Castro was supposed to be at the tail end. Sen. Aquino, Jr. was supposed to be in the pocket portion of the V-shape formation. No member of the boarding party was supposed to carry firearms allegedly because standard operating procedure in the Manila International Airport required that no one should enter an aircraft with a firearm for reasons of security and the support groups surrounding the plane to be fully armed.

Defense witnesses impressed upon us with the fact that the team leaders and the members of each of the aforementioned teams were pre-selected long before the aforesaid security operations were conceived, except for the augmentation of the boarding party with Sgts. Moreno and Lazaga. While one aircraft from the Villamor Air Base was on stand by for purposes of the Oplan Balikbayan, that plane was supposed to be used only in ferrying AVSECOM personnel to different airports just in case Sen. Aquino would slip in surreptitiously via any of these airports.

Par. 5 of *OPLAN BALIKBAYAN* provided for a medical team, headed by Col. Efren Rivera, a flight surgeon attached to the AVSECOM. It is worthy to mention that Col. Efren Rivera's group was supposed to include a doctor and medical aides and was also supposed to be equipped with an ambulance. At the time of Sen. Aquino's arrival, the ambulance together with its complement was parked near the Quick Reaction Center of the MIA complex.

At 6:00 o'clock A.M. of August 21, 1983, Lt. Jesus Castro and the members of the boarding party met as scheduled at the Customs Immigration and Quarantine Office at the second floor of the MIA building. Lt. Jesus Castro then made his final briefing to his men.

At 6:00 o'clock in the morning of August 21, 1983, Brig. Gen. Luther Custodio was summoned to Malacanang by the Chief of Staff, Gen. Fabian Ver, and there he was informed of an alleged change in the directive contained in *Oplan Balikbayan*. The order of the Chief of Staff was allegedly that Sen. Benigno Aquino, Jr., in any case, shall be arrested and delivered to the AVSECOM at Fort Bonifacio. For this reason, upon his arrival at his headquarters, Brig. Gen. Luther Custodio informed Lt. Castro of the latest directive of the

Chief of Staff. Then, he directed Lt. Jesus Castro as head of the Boarding Party to implement Plan Bravo, which was, that the boarding party will escort Sen. Benigno Aquino, Jr. to exit through the bridge stairs to the SWAT van.

Brig. Gen. Luther Custodio supervised the entire operation from his Advance Command Post in the CIQ office. The Boarding Party allegedly met some nine flights before CAL Flight CI-811 with negative results. At about ten (10) minutes before the formal announcement of the arrival of China Airlines plane, Brig. Gen. Luther Custodio ordered the Boarding Party to enter the plane because he had a strong feeling that Sen. Aquino, Jr. was on board that plane.

Oplan Balikbayan provided for two (2) alternative routes by which Sen. Aquino, Jr. was to be brought to the SWAT van, Plan Alpha and Plan Bravo. Plan Alpha was the route wherein the boarding party would escort Sen. Aquino, Jr. from the aircraft down to the movable tube, to the concrete tube, to the satellite, down to the concourse, then to the remote holding area, down to the stairs of the remote holding area, then to the SWAT van. Plan Bravo was the route where the boarding party would escort Sen. Aquino from the aircraft down to the movable tube, then to the service stairway and then to the SWAT van.

Consistent with his conversation with Chief of Staff Fabian Ver early that morning, Brig. Gen. Luther Custodio declared that it was his decision to implement Plan Bravo instead of Plan Alpha. This he allegedly relayed to Lt. Jesus Castro ten (10) minutes before the China Airlines plane arrived. When reminded that, from evidence furnished by Maj. Gen. Prospero Olivas, he relayed this change of plans to Lt. Jesus Castro by handheld radio only after the boarding party had entered the China Airlines plane, Brig. Gen. Luther

Custodio affirmed the Olivas statement without so much as denying his first allegation. Brig. Gen. Luther Custodio alleged that he considered it safer if Plan Bravo would be used because the route which Sen. Aquino would have used in the alternate Plan Alpha had already been congested with people and he considered it a long walk from the aircraft to the movable tube through the concrete tube, through the satellite, then through the concourse, down to the remote holding area, then to the stairs. He allegedly saw that people were already converging around this route; passengers coming in and out, newspapermen, well-wishers, and other people he did not recognize.

When the China Airlines Flight CI-811 finally docked at Bay 8, Lt. Jesus Castro and the Boarding Party that he led were on hand to meet the plane. Lt. Jesus Castro instructed Sgt. Lazaga, Sgt. de Mesa and Sgt. Lat to enter the aircraft while Sgt. Moreno was left standing by the door to prevent unauthorized persons from leaving or entering the plane. When Lt. Jesus Castro noticed in the tube the presence of Sgt. Miranda, a member of the Intelligence Directorate of the AVSECOM, Lt. Jesus Castro told Sgt. Miranda to go inside the plane with him because he might be needed.

Sgt. Lazaga, followed by Sgt. de Mesa and Sgt. Lat, entered the plane. They proceeded to the Economy Section in search of Sen. Aquino, Jr. Sgt. Lazaga went past the Senator and so Sgt. de Mesa, recognizing the Senator, called back Sgt. Lazaga. It was Sgt. Lat who first met Sen. Aquino, Jr. and, as he shook hands with the Senator, he invited the senator to go with them. When Sen. Aquino, Jr. stood up and told them that he was carrying a bag with him, Sgt. de Mesa offered to carry it. Sgt. de Mesa, however, passed it on to Sgt. Lazaga.

At this point, Lt. Jesus Castro communicated by handheld radio with Brig. Gen. Luther Custodio by saying "*Balikbayan* Positive, China Airlines, Bay 8." Brig. Gen. Luther Custodio answered "Copy. To all units implement Plan Bravo." This order having been relayed to and received by Lt. Jesus Castro, the latter stood up by the door at the movable tube leading to the service stairway and directed his men who had Senator Aquino, Jr. in tow to pass through the door and, thus, take the alternative route. Sgt. Claro Lat went out of the door first. He was followed by Sen. Aquino, Jr. Closely following the senator was Sgt. Arnulfo de Mesa. Sgt. Rogelio Moreno followed Sgt. Arnulfo de Mesa. Sgt. Filomeno Miranda followed Sgt. Rogelio Moreno. Sgt. Mario Lazaga followed Sgt. Filomeno Miranda.

The Boarding Party members testified that they went down the stairs at a fast clip allegedly with a view to exposing the Senator at a shortest possible time. The fact was that they could not go fast enough because the negotiation of a steep and narrow stairway consisting of twenty steps by big burly men with a prisoner in tow could hardly be conducive to a speedy descent. The defense claims that the V-formation which Lt. Jesus Castro had planned earlier for the better protection of Sen. Aquino, Jr. had thereby been abandoned because the stairway which was cordoned at the sides were too narrow.

The Boarding Party and Sen. Aquino allegedly reached the tarmac and were headed for the SWAT van. When they reached about two or three steps from the rear bumper of the SWAT van, Sgt. Arnulfo de Mesa said that he noticed that something brushed his right shoulder and that, when he looked in that direction, he saw a hand holding a gun pointing at the head of Sen. Aquino, Jr. He was then at the left side of the Senator holding the Senator by the arm. Sgt. Claro Lat was on the Senator's right also holding Sen. Aquino's other arm.

Sgt. Arnulfo de Mesa reacted to the circumstance allegedly by making an effort to parry the gun but he claims that his reaction had come too late because a shot had already been fired hitting the Senator at the back of the head. This, notwithstanding the fact that the gunman went off-balance, Sgt. Arnulfo de Mesa dropped to the ground and Sgt. Rolando de Guzman fired at the alleged assailant of Sen. Aquino, Jr. The alleged assassin's gun was seen by Sgt. Arnulfo de Mesa to have dropped beside the assassin and so Sgt. Arnulfo de Mesa picked it up and ran for cover as more shots were fired at the alleged assassin. When he met Sgt. Pablo Martinez, the first superior officer he saw at the scene, he delivered the alleged assassin's gun to the latter.

It is the version of Lt. Jesus Castro that he was unable to immediately join the boarding party of which he was supposed to be the Team Leader. He had to remain at the platform at the service stairway because he had to fight off attempts of some passengers to go out of the plane through the exit door. While he was preoccupied with the effort to hold the passengers at bay, he heard a shot coming from the direction of the place where Senator Aquino, Jr. was and at the moment he saw the Senator about to fall to the ground. Sgt. Lat's right arm was allegedly clasped around the Senator's right arm while his left hand was embracing the body of the Senator. The Boarding Party was then near the SWAT van.

Sgt. Rogelio Moreno declared that he was walking behind Sgt. Lat, his eyes looking from one direction to another in the manner of a security man. When he heard a shot being fired, it was then that he looked at the direction of the shot and saw a man in blue, his hands raised, holding a gun in an out-balanced position. He saw that Sen. Aquino, Jr. and Sgt. Lat were about to fall to the ground. Even as they were falling, he heard more shots being fired. AVSECOM men jumped out of the SWAT van and pointed their firearms in different directions. He himself ran and took cover behind a concrete post.

It was the testimony of Sgt. Miranda that, while he was not regularly assigned as a member of a boarding party, he was called upon by Lt. Jesus Castro to join the team, just before the boarding party entered the plane. Lt. Jesus Castro, as Executive Officer of the Intelligence Directorate, was his Commanding Officer. He was then in civilian clothes and was made to carry one of the Senator's bags, Sgt. Claro Lat having handed the same to him while they were inside the plane. It is his further claim that he was unarmed at the time.

The very SWAT van which featured in this incident had come from the Quick Reaction Center and had gone to the MIA Complex in the early morning of August 21, 1983. Nineteen (19) officers and men comprising TEAM ALPHA and TEAM DELTA under the overall command of Capt. Felipe Valerio were on board it. Capt. Llewelyn Kavinta was the team leader of Team Delta while Sgt. Rodolfo Desolong was the team leader of Team Alpha.

They had allegedly met several international flights in the off-chance that Senator Aquino, Jr. had taken them before China Airlines Flight CI-811 arrived.

Capt. Lewelyn Kavinta testified that the moment China Airlines CI-811 was berthed at Bay 8, the members of his Team Delta immediately deployed themselves around the nose section of the aircraft.

M/Sgt. Pablo Martinez, also a member of the team said that,

while he was on reserve duty on that day, it had just happened that he reported for duty to Capt. Valerio, thus explaining his presence during the incident. When he saw that Sgt. Pepito Torio and Airman Joseph Opilas, ramp guards, had placed themselves too near the foot of the service stairway, he ordered them to stay back two or three steps away. Airman Opilas was armed with an armalite rifle. Sgt. Pepito Torio was in possession of a .45 caliber service pistol. Affirmed by M/Sgt. Pablo Martinez was the allegation that when Sen. Aquino, Jr. and the boarding party descended from the plane and were about two to three steps away from the door of the SWAT van, a man in a light blue suit pointed a gun at the back of the Senator's head and fired a shot. M/Sgt. Pablo Martinez drew his own firearm when he saw what transpired before him and, while he shot the man in blue, he was not the first to do the shooting. He allegedly saw Sgt. Arnulfo de Mesa parry the gunman's hand, causing the gunman to spin around. When he saw Sgt. Rolando de Guzman firing at a man in blue, he felt that he need not shoot anymore because he knew that if Sgt. de Guzman shoots, he is sure to hit his mark. He took cover behind a tug and joined there by Sgt. de Mesa, the latter handed over to him the alleged assassin's firearm.

It was the testimony of Sgt. Rolando de Guzman that, consistent with the allegation of the other witnesses, Sen. Aquino, Jr. and the members of the Boarding Party were two or three steps away from the rear of the SWAT van, he was in the act of extending his hand to help the Senator get on board the van. At that precise moment, he allegedly saw a gun aimed at the head of Sen. Aquino. In quick reaction, he drew his own gun in order to fire at the man aiming the gun at Sen. Aquino but, before he could take a shot at the man, the man had already fired at Sen. Aquino. Sgt. Arnulfo de Mesa had in a way covered the gunman from him and it was only when Sgt. de Mesa had parried the gunman's hand that he saw that he had a clear shot at the man. He shot the man seven (7) times and hit the latter on the head

and at several parts of the body. He jumped to the right side of the van and changed magazines, scanning the surroundings as he did so, searching for companions of the gunman, if any. Sgt. Ernesto Mateo, also a member of his team, who was in a prone position on the tarmac fired at the gunman. Sgt. de Guzman has been rated as an expert and had reaped medals as an excellent shot.

The testimonies of civilian witnesses Pelagia Hilario and Lydia Morata, co-passengers of the Senator who had playfully kissed him earlier in the plane, and Augusto Fred Floresca, a passenger who was then to take the flight for Brunei, taken in the first trial, were reproduced in the present proceedings. Pelagia Hilario and Lydia Morata allegedly witnessed the shooting of Sen. Aquino, Jr. They saw that the Senator was already on the tarmac, walking towards the SWAT van, when a man reached out, gun in hand, and fired at the back of the Senator's head. Only Lydia Morata saw that the assassin was "parried" by Sgt. de Mesa.

Augusto Fred Floresca said that he was scheduled to take a flight for Brunei in the afternoon that Sen. Aquino, Jr. was to arrive. Since he learned from streamers outside the MIA that Sen. Aquino, Jr. was arriving, he positioned himself at the passenger lounging area in the hope that Sen. Aquino, Jr. would pass by the place. The Senator did not pass by the place as he expected but he allegedly saw the Senator and some escorts going down the service stairway at Bay 8. He saw the Senator shot by a man attired in "blue-gray uniform."

Jose Orias was a load controller of the Philippine Airlines,

whose duties were to make a plan of the loading of cargo in any particular aircraft and to prepare the loadsheets therefor. He claims that he was at the cockpit of the Royal Brunei plane, then parked at Bay 7, fifty (50) to sixty (60) meters from Bay 8, because he was presenting to the plane Captain the flight plan of the Royal Brunei plane. At the cockpit, he allegedly saw that soldiers surround the CAL Flight CI-811. When he was focusing his attention on the China Airlines plane, he saw that the door of the service stairs of Bay 8 had opened and a man in white, together with uniformed military men, went down the stairs. When the man in white, whom he later learned to be Sen. Benigno Aquino, Jr., and the military went down the tarmac and reached a place four to five steps from the van, a man in blue suddenly darted from behind the man in white and appeared to have delivered a fist blow on the man in white. The head of the man in white allegedly jerked forward. He heard several gunshots thereafter.

Col. Vicente Tigas, on his part, declared that, since it was a Sunday, he was not supposed to be on duty. While essentially a part of the Presidential Security Command, he was detailed to serve at the Office of Media Affairs, his function being the facilitation of media coverage of the arrival of dignitaries and state guests in places like the airport and Malacanang. At around 11:00 o'clock in the morning of August 21, 1983, a certain Miss Romero, for and in behalf of Asst. Press Secretary Vic Maliwang, told him that he was to report to the MIA in order to settle a problem as to press and media coverage thereat. He went forthwith to the MIA and arrived there at past 12:00 o'clock noon. Even as he reached the entrance, he realized the problem of around fifty (50) mediamen who had wanted to cover the arrival of Sen. Benigno Aquino, Jr. While they were in the remote holding area, they were not allowed to enter the arrival concourse. At the newsmen's request, Col. Tigas made representations with the officer-in-charge of the security of the area, Col. Avelino Abiol. Col. Abiol found that fifty was too great a number to be allowed at

the arrival concourse but he referred Col. Tigas to the MIA Manager, Mr. Luis Tabuena. Col. Tigas somehow found MIA Manager Tabuena and, when he posed the problem to Tabuena, the latter decided to allow only card-bearing members of the MIA Press Corps and the team from Channel 4. Col. Tigas requested Robert Sietereales to give him a list of the MIA accredited newsmen. The matter was relayed by Sietereales to Macaspac and so it was Macaspac who gave Col. Tigas the names of fourteen (14) accredited newsmen. The fourteen (14) accredited newsmen and Col. Tigas rushed, therefore, to the West Satellite where they awaited the coming of the plane wherein they had thought Sen. Aquino, Jr. would take. Col. Tigas had no idea as to which plane Sen. Aquino, Jr. had taken. For this reason, he likewise did not know when Sen. Aquino was supposed to arrive. They all waited until it was made certain that the Senator was certain to arrive via CAL Flight CI-811 from Taipei. The newsmen and Col. Tigas proceeded to Bay 8 but three security men in polo barong stopped them from entering the area. Col. Tigas interceded for the newsmen and so they were allowed to enter tube 8 but only up to the mid portion of the concrete tube. Col. Tigas, Jr. allegedly requested the security officer to allow the newsmen to go as far as the movable tube but the security officers refused to let them go any further. MIA Manager Tabuena appeared with two companions and the newsmen followed Tabuena. When Tabuena noticed this, he ordered the newsmen to move back to the middle of the concrete tube. "*Atras, atras. Babagsak ito, babagsak ito,*" Tabuena cautioned them.

Col. Tigas, Jr. denies that he prohibited newsmen from taking photographs or from positioning themselves at whichever they wanted. He did not bar Ruby Serra of Channel 4 and her crew from taking TV footages of the Senator's arrival or from interviewing the Senator. He did not give any instruction to any media representative as to what to do or not to do as far as their coverage was concerned.

All of a sudden, Col. Tigas and the newsmen heard the explosion of a firearm. This was followed by a series of shots. While it was obvious that the shots were fired outside of the tube where they were, it was definite that the explosions came from the direction of the plane.

They ran out of the tube in every which way, but, while some newsmen sought for cover, the others peeped out of the holes or windows at the corridors and took pictures. Col. Tigas himself peeped out of one of the windows at the corridor leading to Gate 7 and from there he saw the bodies of the two persons, one dressed in white and the other in dark clothing. He saw the man in white loaded on the SWAT van. At a corridor in the vicinity of Gate 7, Robert Sietereales told Col. Tigas that he noticed from among the passengers who were exiting, a woman who was crying. Indeed, Col. Tigas saw a woman who was crying her heart out and had appeared hysterical. He went behind her, gently touched her shoulder, and asked her what had happened. The lady turned out to be Rebecca Quijano. Col. Tigas denied having said, "*Huwag kang maingay; kung hindi, mapapahamak ka.*" The crowd had started to gather around them and so Col. Tigas requested Rebecca Quijano to get into the pre-departure area in order to keep the corridor free and to avoid the crowd. Rebecca Quijano was very pale and was trembling and Col. Tigas thought she needed more breathing space. A certain Miss Santos sat beside Rebecca Quijano. Col. Tigas repeated the same question "What happened?" "*Nakita mo ba? Si Ninoy ba ang nabaril?*" Instead of answering, Rebecca Quijano stood up and started to walk away. Col. Tigas gave her water to drink and drink she did.

Five to ten minutes thereafter, Col. Tigas saw that Rebecca

Quijano had already calmed down. Rebecca Quijano had consented that Col. Tigas carry her bag by then. They parted ways at the hallway as they walked towards the exit. Col. Tigas gave back her luggage to her at the neck of the concourse.

Lt. Col. Avelino Abiol, then the Squadron Commander of the 801st Aviation Security Squadron, and designated head of Implan Salubong, affirmed the testimony of Col. Tigas to the effect that his order was that media people were restricted from going beyond the remote holding area, and so when Col. Tigas interceded for media people, he referred Col. Tigas to MIA Manager Tabuena because only Tabuena had the authority to allow newsmen to enter the entrance to the West Satellite. Manager Tabuena allowed only the MIA press corps to go up to the entrance of the West Satellite.

Roberto Sietereales, corroborated the testimony of Col. Tigas to the effect that, when reporters and journalists encountered some difficulty in entering the West Concourse, Col. Tigas was instrumental in allowing MIA accredited reporters to go as far as the concrete tube at Gate 8 where they had thought that Sen. Benigno Aquino, Jr. would pass through.

Also affirmed by Sietereales is the fact that Col. Tigas did not tell Rebecca Quijano to keep quiet by means of threats. He it was, instead, who had arranged that Rebecca Quijano be led to the pre-departure area in order that she would not be hounded any further by reporters. At the pre-departure area, Rebecca Quijano, after being given a glass of water had quited down.

Alberto Trinidad, a freelance cameraman and at the time a video

tape recorder of the MBS Channel 4, had gone to the MIA at 10:30 o'clock in the morning of August 21, 1983, with Ruby Serra Zosimo Gabriel, Jr. While at first denied entrance, his crew and he were granted clearance to go inside the concrete tube at the West Satellite, Gate 8, through the help of Col. Tigas, Sietereales and MIA Manager Tabuena.

In his defense, PAF Lt. Col. Arturo Custodio y Yarza denied the charge that he had been in the conspiracy with his co-accused in the killing of Sen. Benigno Aquino, Jr. While the evidence of the prosecution indicated that it was he who fetched Rolando Galman from the house of the latter at Bagong Silang on or about August 17, 1983, in the company of Hermilo Gosuico, he claims that he did not go to Bagong Silang on that date. It is true that he had known Rolando Galman even before that date, but the last time he saw Rolando Galman was in July, 1983. As to the allegation that, on April 16, 1983 he went to the house of Rolando Galman to attend the birthday celebration of Rolando Galman, he claims that at the time he was at the MIA assisting his sister-in-law and two nieces who were then departing for the U.S. On April 20, 1983, he was in Zaragoza because he was the principal sponsor of a wedding which took place in the morning. As a matter of fact, he stayed in Zaragoza up to 2:00 o'clock in the afternoon of August 21, 1983.

He did not know his co-accused, Hermilo Gosuico, even as of August 19, 1983, he having met Gosuico only at the time Gosuico and he were charged of complicity in the herein crimes. Col. Arturo Custodio, however, admits a certain familiarity with Rolando Galman, it appearing that they both come from the same town. Rolando Galman's grandfather, Mang Estong, during his lifetime, had lived in a house four houses away from Col. Custodio's residence. He knew the father of Rolando Galman when he was fifteen (15) years old. He met Rolando Galman for the first time, sometime in April, 1979, during a fiesta

celebration where their host was a certain Mario Mana.

In April, 1983, Atty. Espino sought Col. Custodio's help in releasing Rolando Galman from Camp Olivas. The latter referred him to Col. Nicolas whom he believed was more adept at releasing persons from military custody.

Rolando Galman met Col. Custodio twice within the month of April, 1983. Rolando Galman visited Col. Custodio after his release from Camp Olivas. Rolando Galman had wanted to know him better and to be acquainted with him. At times, Rolando Galman would go to his house alone.

The first time Rolando Galman visited Custodio within the month of April, 1983, Rolando Galman had stayed in Col. Custodio's house for only fifteen (15) minutes. He was not able to talk to Col. Custodio about the purpose of his visit then because Col. Custodio was in a hurry to go to his office. At the second visit, however, Rolando Galman was able to talk to Col. Custodio for one and a half hours. Rolando Galman talked about such pending cases against him as murder, homicide, illegal possession of firearms and resistance. Atty. Espino took advantage of the occasion to inquire about establishments that sell cheap lumber. Col. Custodio promised to donate fifty (50) chairs for charity. Rolando Galman visited Col. Custodio for the last time, sometime before August 21, 1983.

In order to prove the marriage contract, Exhibit 22, between Antonio G. Isidoro and Elenita C. Santiano, dated August 20, 1983, in whose wedding Col. Arturo Custodio was the principal sponsor, Josefino Reyes, Local Civil Registrar, came forth to testify on the matter, but, since the marriage contract, the marriage license, Exhibit 30, and the Register of Marriages, Exhibits 31, 31-A, and 31-A-1, were admitted in evidence by the prosecution because they were

official documents, Josefino Reyes was no longer placed on the stand.

RTC Judge Ibarra Vegilla of Cabanatuan City, Branch XVII, gave the assurance that the "*Sinumpaang Salaysay*" of Roberta Masibay which the latter described and sworn to before him on March 13, 1985, was freely and voluntarily signed and executed by Roberta Masibay before him. Contrary to the allegations of Roberta Masibay during the presentation of the evidence in chief of the prosecution that she was coerced and forced to sign the aforesaid affidavit, Judge Vegilla maintained that Roberta Masibay came to him, although not during office hours in order to sign and execute the affidavit. The affidavit of Roberta Masibay, Exhibit "4", having been in the nature of a retraction of her testimony before the Agrava Board, was vehemently assailed by the then Tanodbayan Raul Gonzales. This disturbed Judge Vegilla quite a bit considering that, in a press release, Tanodbayan Raul Gonzales had threatened to file charges of perjury against Roberta Masibay and he. It appeared that the Tanodbayan did not make good his promise to file the charges because the Supreme Court had sometime thereafter suspended him from the practice of the law.

RTC Judge Felipe R. Villajuan, Jr., a witness to the signature of Roberta Masibay in the affidavit, Exhibit "4", claims that he was called by Judge Vegilla to the residence of the latter before Roberta Masibay signed and executed her "*Sinumpaang Salaysay*". Thus, he declared that Roberta Masibay voluntarily signed the affidavit. The affidavit was, however, already prepared when he arrived at the Vegilla residence to be a witness to the signing.

Vicente Galman y Costales, a thirty-one year old farmer of Del

Pilar, Zaragosa, Nueva Ecija, claiming to be the uncle of the late Rolando Galman and grandfather of Reynaldo Galman, gave evidence to the effect that at the time of the death of Rolando Galman and the disappearance of Lina Lazaro, he had asked Reynaldo Galman and Roberta Masibay who were under his care as to whether they knew anything relative to the said two incidents. Roberta and Reynaldo allegedly assured him that they knew nothing about the two incidents because when Rolando Galman left Bagong Silang, they were at school.

Within the first week of February 1984, he met Lupino Lazaro who was with Saturnina Galman, mother of Rolando Galman. Lupino Lazaro asked him if he knew anything material in respect to the death of Rolando Galman and the disappearance of Lina Lazaro. He said that he knew nothing about the matter but Lupino Lazaro told him to cooperate because, if he did, he would be able to implicate the military and this would mean a lot of money. He told Lupino Lazaro that he found it difficult to tell a lie.

Atty. Mario Ongkiko, private prosecutor, was able to elicit from Vicente Galman the admission that Lino Parungao and he stayed at the Metropolitan Apartelle in Quezon City at the expense of the defense of Col. Custodio. Atty. Felix Solomon himself manifested before the court that he, in behalf of his client, paid for the hotel bills and meals of Lino Parungao and Vicente Galman. He gave them some amount as pocket money.

Lino Parungao, school janitor at San Rafael, Zaragosa, Nueva Ecija, younger brother of Lina Lazaro, gave the same testimony as that given by Vicente Galman, that is, that when he confronted Reynaldo Galman and Roberta Masibay as to whether they knew anything about house with persons who were not known to the family. Reynaldo Galman was in school. There was no mention of the fact that the persons who visited Rolando Galman were Col. Arturo Custodio and Boy

Gosuico.

While Brig. Gen. Jesus Singson did not come forth and testify in his behalf, he relied for his defense on the evidence furnished by Maj. Gen. Vicente Piccio and Minister, now Congressman Jose Aspiras, the Minister of the Ministry of Tourism in 1983, charged herein as an accomplice together with B/Gen. Jesus Singson and Minister Cendana, gave evidence to the effect that, as Minister of Tourism, he served as Chairman of the Civil Aeronautics Board, of which B/Gen. Jesus Singson, Maj. Gen. Vicente Piccio and Leon Tinsay were members. In view of newspaper reports to the effect that Sen. Benigno Aquino, Jr. was due to return to the Philippines without proper travel papers, he called for a meeting of the Civil Aeronautics Board in order to agree on the action to be taken by the board upon the contingency that the Senator would arrive without a passport or valid travel papers. The board decided that, should the aforesaid contingency happen, sanction should be imposed on the airline whose plane the Senator would take, in accordance with international treaties such as the International Air Transit Agreement.

Emphasized by Minister Aspiras and Gen. Piccio is the fact that while food was served during the meeting, they were not served by waiters. Such personalities as Reynaldo Sister and Jose Tiongson were unknown to the members of the board. No betamax existed in Minister Aspiras' office. He only had a sound system there. During the meeting, he never sent or received any overseas call.

Considering the uncertainty as to when Sen. Aquino was truly arriving and, if he were, it was not certain as to which plane he would take, the board decided to meet again in the morning of August 21, 1983. Only after 2:00 o'clock in the afternoon of that day did the board realize that, indeed, Sen. Aquino arrived on CAL Flight CI-811. They were dazed and shocked upon receiving news of the

senseless killing of the Senator.

The board, upon learning of the fact that China Airlines had indeed allowed Sen. Benigno Aquino, Jr. to take its flight CI-811 had appropriately sanctioned the airline.

On his part, Maj. Gen. Prospero Olivas, accused in these cases as an accessory after the fact, gave evidence to the effect that, on August 21, 1983, he was the Commanding General of the PC Metropolitan Command, supervising civil disturbance control units in the vicinity, but outside of the Manila International Airport. The area within the Manila International Airport was within the jurisdiction of the AVSECOM under the command of B/Gen. Luther Custodio. In the expectation that Sen. Benigno Aquino, Jr. would arrive that day, preparations were made within his jurisdictional control in respect to traffic control, crowd control and civil disturbance control.

Gen. Olivas had played golf from 6:00 A.M. to 10:00 A.M. that day, August 21, 1983, and, since he passed by Camp Aguinaldo, he went to office at 11:00 that morning. From there, he proceeded to inspect his area of jurisdiction outside of the MIA, inspected the traffic crowd control units, the Civil Disturbance Control Units of Gen. Corachea, the South District and the Imelda Avenue, the ramp in front of the MIA, and the mobile command. At past 2:00 o'clock that afternoon, Gen. Fabian Ver contacted him by telephone and told him: "*Ang AVSECOM, nasingitan, nagkaroon ng barilan. Sen. Aquino injured. You will be in charge of the investigation. Go to MIA.*"

Right after that, Gen. Olivas proceeded to the scene of the

incident which appeared to be the tarmac near Gate 8. A dead man, later to be identified as Rolando Galman, was left lying on the tarmac and it was his presumption that this dead man shot Sen. Aquino. He learned that B/Gen. Luther Custodio had left the scene of the incident immediately after the wounded Sen. Aquino was transported from the airport by means of a SWAT van. He started his investigation in the case by interviewing personalities he met there, such as Generals Lopez and Piccio. It was the latter who informed him that Sen. Aquino died on arrival at the hospital. He called on the OIC of the PC/INP component detailed with the METROCOM, Luisito Maralit, Col. Rolando Abadilla, the inquest fiscal from the Office of the City Fiscal of Pasay, and Director Jolly Bugarin of the NBI.

From the evidence he gathered, it was his finding that Sen. Benigno Aquino, Jr. died of a single gunshot fired upward at close range at the back of the head; that it was Rolando Galman who shot and killed the Senator with the use of Smith and Wesson Caliber .357 Magnum with Serial No. K919079; that, considering the statements of Col. Arturo custodio, Eduardo de Guzman, Cawigan and a certain Conde, related to then Col. Hermogenes Peralta, Rolando Galman was recruited by the Communist Party leader Kumander Bilog to kill Sen. Aquino. It was his finding that Rolando Galman succeeded in penetrating the security cordon put up by the elements involved in Oplan Balikbayan by:

- (1) Disguising himself in the uniform of an airport maintenance or utility employee;
- (2) Using the ID card of Sgt. Dominador Aguayo of the Presidential Security Unit, MIA, which the latter had mislaid and which Galman had evidently found; and

- (3) Mingling with employees then servicing or about to service the CAL flight.

Galman could have learned that Sen. Aquino was on board CI-811 by observing the earlier movements of AVSECOM soldiers and facilities and information furnished by co-conspirators and accomplices.

He likewise reported the finding that Rolando Galman was himself shot down by members of Team Alpha of the 805th Special Operations Squadron AVSECOM. Sgt. Rolando de Guzman was the first to shoot Galman, Sgt. Ernesto Mateo, Sgt. Rodolfo Desolong, A1C Cordova Estelo, also fired their guns at Galman. Galman sustained sixteen (16) gunshot wounds and two (2) other grazing wounds. Rolando Galman was killed by bullets fired by Sgt. Rolando de Guzman, PAF Sgt. Ernesto Mateo, PAF A1C Cordova Estelo. Probably bullets fired by Sgt. Rodolfo Desolong, PAF, may have hit and contributed to the death of Galman. Sgt. Desolong's bullets could have inflicted "through and through" or "grazing" wounds on Galman's body.

Maj. Gen. Prospero Olivas submitted status reports on his findings, Exhibits NNNN, NNNN-1 and NNNN-2 to the Fernando Commission and to the Agrava Fact-Finding Board.

With a view to refuting the allegations of Col. Octavio Alvarez in respect to the gun in question, the defense presented Rolando Noguera of the PC Capcom who declared that, since December 1977, he was the Evidence Custodian, M-2, at the PC Capcom. The gun in question was turned over to him by a police sergeant, specifically, Sgt. Carlito Mariano himself. He was not informed as to whether the gun was turned over to him in connection with a criminal case.

Businessman Rolando Chu declared that then Major Octavio Alvarez

gave the gun in question to him under the following circumstances: Major Octavio Alvarez had extended some help to a brother of a very close friend who was kidnapped for ransom. Major Octavio Alvarez and he became fast friends after his friend, Antonio Sy, introduced him to the Major. At Rolando Chu's mother's birthday on October 19, either in 1975 or 1976, another officer, a certain Major Bienvenido Datuin, fell in love with his modern snub-nose .357 magnum. Rolando Chu at the instigation of Major Octavio Alvarez, was constrained to give the gun to Major Datuin. Major Octavio Alvarez meant to give him a gun in exchange. The gun given by Major Octavio Alvarez turned out to be the gun now the subject of controversy, SNK009179. Since the gun was still unlicensed, Rolando Chu gave it to Sgt. Carlito Mariano, another close friend for safe keeping until after he can get a license for it, but he told Sgt. Carlito Mariano that if Major Octavio Alvarez would demand its return, he was willing to give it back to the PC officer.

After the assassination of Sen. Aquino, Major Octavio Alvarez called him up and informed him that the gun used in the killing of Sen. Aquino had the same serial number as the gun which Major Alvarez gave to Rolando Chu. For this reason, Rolando Chu caused the gun to be turned over to M-2, Metrocom.

Thereafter, Major Octavio Alvarez saw him in a restaurant and asked him for the gun. He informed the officer that Sgt. Carlito Mariano had already surrendered it to M-2, Capcom. Major Alvarez told him that he had already declared the gun lost in Makati. Sgt. Carlito Mariano, now a police lieutenant of the Western Police District, identified Exhibit 12 as the gun which he surrendered to the M-2, Metrocom.

THE ISSUE

The judgment as to the, guilt or innocence of the accuse - in both cases depends mainly on which contention is upheld by the evidence that of the prosecution which foists upon us evidence, to show that, the responsibility of the assassination of Senator Benigno Aquino, Jr. rests on the accused military soldiers or that of the defense which upholds that the killing was perpetrated by Rolando Galman.

COURT FINDINGS

As to the physical evidence

Great significance has to be accorded the trajectory of the single bullet that penetrated the head and caused the death of Sen. Benigno Aquino, Jr. Basic to the question as the trajectory ought to be the findings during the autopsy. The prosecutor in the autopsy, Dr. Bienvenido Munoz, NBI Medico-Legal Officer, reported in his Autopsy Report No. N-83-22-36, that the trajectory of the gunshot, the wound of entrance having been located at the mastoid region, left, below the external auditory meatus, and the exit wound having been at the anterior portion of the mandible, was "forward, downward and medially." (Autopsy Report No. N-B3-22-36, Exhibit "NNNt1-2-t-2").

A controversy as to this trajectory came about when, upon being cross-examined by counsel for the defense, Dr. Bienvenido Munoz made a significant turnabout by stating that the correct trajectory of the fatal bullet was "upward, downward, and medially."

The present position of Dr. Munoz is premised upon the alleged fact that he found the petrous bone fractured, concluded, obviously hit by the fatal bullet. He concluded, in view of his finding, that the fatal bullet must have gone upward from the wound of entrance. Since the fatal bullet exited at the mandible, it is his belief that the petrous bone deflected the trajectory of the bullet and, thus, the bullet proceeded downwards from the petrous bone to the mandible.

This opinion of Dr. Bienvenido Munoz in this regard notwithstanding, We hold that the trajectory of the fatal bullet which killed Sen. Benigno Aquino, Jr. was, indeed, "forward, downward and medially." For the reason that the wound of entrance, was at a higher elevation than the wound of exit, there can be no other conclusion but that the trajectory was downward. The bullet when traveling at a fast rate of speed takes a straight path- from the wound of entrance to the wound of exit. It is unthinkable that the bullet, while projected upwards, Would instead of exiting to the roof of the head, go down to the mandible because it was allegedly

deflected by a petrous bone which though hard is in fact a mere spongy protuberance, akin to a cartilage.

Clear is proof of the downward trajectory of the fatal bullet; First, as Dr. Pedro Solis and Dr. Ceferino Cunanan, the immediate superiors of Dr. Bienvenido Munoz, manifested before the Court, that, since the wound of entrance appeared ovaloid and widest at the superior portion, indicating an acute angle of approaching downward trajectory of the bullet is indicated. This phenomenon indicates that the muzzle of the fatal gun was at a level higher than that of the point of entry of the fatal bullet.

There was no showing as to whether a probe could have been made from the wound of entrance to the petrous bone. Out of curiosity, Dr. Juanita Billote tried to insert a probe from the wound of exit into the petrous bone. He was unsuccessful notwithstanding four or five attempts. If at all, this disproves the theory of Dr. Munoz that the trajectory was upward, downward and medially. On the other hand, Dr. Juanito Billote and photographer Alexander Loinaz witnessed the fact that Dr. Muñoz' understudy, Alejandrino Javier, had successfully made a probe from the wound of entrance directly towards the wound of exit. Alejandrino Javier shouted with excitement upon his success and Alexander Loinaz promptly photographed this event with Alejandrino Javier holding the protruding end of the probe at the mandible.

(Exhibit "XXXXX-39-A")

To be sure, had the main bullet hit the petrous bone, this spongy mash of cartilage would have been, decimated or obliterated. The fact that the main bullet was of such force, power and speed that it was able to bore a hole into the mandible and crack it, is an indication that it could not have been stopped or deflected by a mere petrous bone. By its power and force, it must have been propelled by a powerful gun. It would have been impossible for the main bullet to have been deflected from an upward course by a mere spongy protuberance. Granting that it was so deflected however, it could not have maintained the same power and force as when it entered the skull at the mastoid region so as to crack the mandible and make its exit there.

But what caused the fracture of the petrous bone? Was there a cause of the fracture, other than that the bullet that hit it? Dr. Pedro Solis, maintaining the conclusion that the trajectory of the bullet was downward, gave the following alternative explanations for the fracture of the petrous bone.

First, the petrous bone could have been hit by a splinter of the main bullet, particularly, that which was found at the temporal region; and,

Second, the fracture must have been caused by the kinetic force applied to the point of entrance as the mastoid region which had the tendency of being radiated towards the petrous bone.

Thus, the fracture in the occipital bone, of the temporal bone, and of the parietal bone, Dr. Pedro Solis pointed out, had been caused by the aforesaid kinetic force. When a force is applied to the mastoid region of the head, Dr. Pedro Solis emphasized, a radiation of forces is distributed all over the cranial back, including, although not limited to, the parietal bone. The skull, Dr. Solis explains is a box-like structure. The moment you apply pressure on the portion, a distortion, tension or some other mechanical defects is caused. This radiation of forces produces what is known as the "spider web linear fracture" which goes to the different parts of the body. The so-called fracturing of the petrous portion of the left temporal bone is one of the consequences of the kinetic forcefully applied to the mastoid region.

The fact that there was found a fracture of the petrous bone is not necessarily indicative of the theory that the main bullet passed through the petrous bone.

Doubt was expressed by Dr. Pedro Solis as to whether the metal fragments alleged by Dr. Bienvenido Muñoz to have been found by him inside the skull or at the wound of exit were really parts of the main bullet which killed the Senator. When Dr. Pedro Solis examined these fragments, he found that two (2) of the fragments were larger in size, and were of such shapes, that they could not have gone out of the wound of exit considering the size and shape of the exit wound.

-

Finding of a downward
trajectory of the
fatal bullet fatal
to the credibility of defense witnesses.

The finding that the fatal bullet which killed Sen. Benigno Aquino, Jr. was directed downwards sustains the allegation of prosecution eyewitnesses to the effect that Sen. Benigno Aquino, Jr. was shot by a military soldier at the bridge stairs while he was being brought down from the plane. Rebecca Quijano saw that the senator was shot by the military man who was directly behind the Senator while the Senator and he were descending the stairs Rebecca Quijano's testimony in this regard is echoed by Jessie Barcelona, Ramon Balang, Olivia Antimario, and Mario Laher, whose testimonies, this Court finds likewise as credible.

The downward trajectory of the bullet having been established, it stands to reason that the gun used in shooting the Senator was fired from an elevation higher than that of the wound of entrance at the back of the head of the Senator. This is consistent with the testimony of prosecution witnesses to the effect that the actual killer of the Senator shot as he stood at the upper step of the stairs, the second or third behind Senator Aquino, while Senator Aquino and the military soldiers bringing him were at the bridge stairs. This is likewise consistent with the statement of Sandra Jean Burton that the shooting of Senator Aquino occurred while the Senator was still on the bridge stairs, a conclusion derived from the fact that the fatal shot was fired ten (10) seconds after Senator Aquino crossed the service door and was led down the bridge stairs.

It was the expert finding of Dr. Matsumi Suzuki that, as was gauged from the sounds of the footsteps of Senator Aquino, as the Senator went down the bridge stairs, the shooting of the Senator occurred while the Senator had stepped on the 11th step from the top.

At the ocular inspection conducted by this Court, with the prosecution and the defense in attendance it should be noted that the following facts were established as regards the bridge stairs:

"Observations:

The length of one block covering the tarmac - 19' 6"
 the width of one block covering' the tarmac 10'
 the distance from the base of the staircase leading
 to the emergency tube to the Ninoy marker at the tarmac - 12'
 6"; There are 20 steps in the staircase including : the landing;
 the distance floor, the first rung of the stairway up to the 20th
 rung which is the landing of stairs - 20' 8" ;
 Distance from the first rung of the stairway up to the 20th rung
 until the edge of the exit door - 23'11";
 Distance from the 4th g up to the exit door - 21";
 Distance from the 5th rung up to the exit door - 19'11";
 Length of one rung including railpost - 3'4";
 Space between two rungs of stairway - 9";
 Width of each rung - +1-1/2";
 Length of each rung (end to end) - 2'9";
 Height of railpost from edge of rung to railing - 2' 5" .
 (Underlining supplied)

Identity of the actual
 killer disclosed.

It was established as a fact that, when Senator Benigno Aquino,
 Jr. descended the bridge stairs, he was hedged in by his supposed
 escorts. More specifically, their relative positions unquestionably
 were: Sgt. Claro M. Lat was supporting the Senator's right arm and
 was slightly ahead of him. Next to Lat was Sen. Benigno Aquino, Jr.
 Sgt. Arnulfo de Mesa, who was at the left of the Senator, although
 slightly behind him, had held on to the Senator's left arm. ClC
 Rogelio Moreno followed two or three steps behind Senator Aquino and
 was, thus, the one directly behind the Senator. Sgt. Filomeno Miranda
 follower Moreno, ClC Mario Lazaga was the one following Sgt. Miranda.
 Far behind them were Sgt. Armando dela Cruz and Lt. Jesus Castro.

On the basis of the testimonies of Rebecca Quijano and Jessie Barcelona, there can be no other conclusion but that it was ClC ROGELIO MORENO who fired the fatal shot that killed Senator Benigno Aquino, Jr.

The physical evidence indicates that the Senator was struck on top of the head with a blunt instrument, most probably with the butt of a gun. A large and perceptible fracture on the skull and massive hematoma on the scalp, parietal region, 6.0 x 7.5 cm, support this finding.

Defense evidence
rendered nugatory.

Thus, the pretensions of the accused military men and the civilian defense witnesses that Senator Benigno Aquino, Jr. was shot by Rolando Galman on the tarmac can not but be set at naught.

Granting in *gratia argumenti* that Senator Aquino had been shot on the tarmac by Rolando Galman while both Rolando Galman and Senator Aquino were standing up, Rolando Galman would have shot Senator Aquino in his most convenient manner, if he meant to hit the head, and it is by extending his hand forward and by shooting while his gun was at the level of his shoulder. The trajectory of the bullet which would hit Senator Aquino in this manner would, neither be upward nor

downward, but forward and horizontal. This considers the fact that the evidence indicates that Senator Aquino and Rolando Galman were of the same height. Since, according to defense witnesses, both were standing up when, Rolando Galman allegedly shot him at the back of the head, there could have been no other convenient way to shoot Galman's victim than in the manner. We have herein indicated.

The absurdity of the defense's proposition that Rolando Galman had shot Senator Aquino while both the Senator and he were standing up on the tarmac is thus clearly emphasized.

Illustrative of this absurdity is the testimony of S/Sgt. Tomas Fernandez to the effect that Rolando Galman had suddenly, shot Senator Aquino from the back when Senator Aquino was walking towards the back part of the SWAT van and while Rolando Galman was catching up with his victim. Asked to demonstrate the manner by which Rolando Galman allegedly shot Senator Aquino, Sgt. Fernandez demonstrated the shooting by raising his right hand at an angle of 45 degrees, without realizing that, had Rolando Galman raised his gun at an angle of 45 degrees, he could not have possibly hit the head of Senator Aquino, unless Rolando Galman had knelt down before shooting or had otherwise sat on his haunches. The alleged assailant could have bird up in the sky but not the head of Senator Aquino.

If it were true that Senator Aquino had practically embraced Sgt. Claro Lat after being hit and had slid down to the tarmac while clutching at Lat, blood should have drenched the clothes of Lat because it was shown that Senator Aquino's breast and front part of the body was full of blood. Obviously, Lat's clothes showed no blood in them because it not been so alleged. This, again, disproves the allegation that the Senator was shot on the tarmac by Galman.

The ID card of Sgt. Dominador Aguayo was lost within the premises of the MIA. One could have found it, therefore, if he were already in" the premises of the MIA." Since Rolando Galman was an infiltrator, not a legitimate employee of PAL, he could not have entered MIA without any authorization and be expected to find Dominador Aguayo's ID card. The uncontested fact that Rolando Galman was seen talking to Col. Rolando Abadilla of the PC-CIS in the shadows for quite a period of time, before the assassination of Senator Aquino, and the fact that he was seen smiling at "the soldiers and gesticulating by raising his hands near the CAL plane, support the conclusions that Rolando Galman entered the area where the CAL plane was berthed in connivance with or at the behest of the conspiring military officer and men.

Besides, even if Rolando Galman had an ID which could pass the inspection of three groups of guards manning the gates, Rolando Galman would not have been allowed to enter MIA because he was allegedly carrying with him a .357 magnum revolver placed in a leather holster. One spare holster, an empty one, could pass the inspection of three groups of guards manning the gates, Rolando Galman would not have been allowed to enter MIA because he was allegedly carrying with him a .357 magnum revolver placed in a leather holster. One spare holster, an empty one, was allegedly also carried by him.

If he were cleared for entry into the MIA, was allegedly also carried by him the military neither gun nor holsters were on his person. The gun and the holsters must have been brought in by the military conspirators.

Circumstances proving
conspiracy.

Circumstances proven by the prosecution, pieced together, lead but to the conclusion that the accused military men had conspired to, kill Senator Benigno Aquino, Jr. as soon as, and even before they had definite knowledge that the senator was coming back to the country.

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 snows 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).

The participants in
the conspiracy

It is obvious that coordinated efforts were made by B/Gen. Luther Custodio to achieve a single end, the annihilation of Sen. Aquino. While the supposed purpose of OPLAN BALIKBAYAN which Col. Ager Ontog had formulated was intended to secure the well-being and safety of Sen. Benigno Aquino, ,Jr., the plan turned out to be the basis for the oneness and conivence by which the military men involved had pursue, their intention to snuff out the life of their Commander-in-Chief's foremost contender.

The OPLAN BALIKBAYAN as, conceived by Col. Ager Ontog for the purpose of organizing elements of AVSECOM to provide for the safety of Senator Aquino was perfect for the purpose. But, as the circumstances and events unfolded, the officers and men of the OPLAN appeared to have changed their roles as guardians of the life and limb of the Senator. The men as organized in the OPLAN utilized their organizational set up:

First, to stem the tide of journalists from following the Senator and viewing the spectacle of his martyrdom; second, to convert the Boarding Party into a patsy and shoot him as soon as it becomes evident that the Senator is already killed; fourth, to see to

it that no one comes in the way of Senator Aquino and his supposed escort as they go down the stairs; fifth, to make as show of picking up the gun allegedly used by Rolando Galman; sixth, to cordon the area, not to protect the Senator, but to prevent; anyone from witnessing the charade, and seventh, to load the Senator, without anyone affording him first aid or determining whether he was dead or still alive on board the SWAT van to keep him away from the view of possible onlookers and to bring him to the hospital already dead.

Brig. Gen. Luther Custodio

The key that set the conspiracy in motion was his command:

"Copy. All Units. Implement.

PLAN BRAVO"

At this order, all units were synchronized. 2Lt. Jesus Castro mobilized the Boarding Party and saw to it that Senator Aquino would be brought down the bridge where he was to be shot with the least difficulty and obstruction. Captain Bautista and the men of his IMPLAN MASID fought; off journalists and passengers from following

Senator Aquino and from taking movies and pictures of him on the bridge stairs. The Boarding Party was secure in the thought that no one could bar the objective or even observe their actions. Thanks to IMPLAN MASID.

Captain Valerio and with the SWAT van at or near the foot of the bridge stairs. Team Alpha had cordoned the front part of the CAL plane with a view to preventing interference from the outside.

Even AVSECOM ramp guards and MIA hired security guards were shooed off and were prevented from witnessing an unfolding charade. Sergeants Torio and Opilas backed off and went away from the bridge stairs. Cabin security guards were prevented from ascending the bridge stairs to perform their jobs.

Thus, 1.11.13 assassination of Senator Aquino Has perpetrated without any hitch.

"Copy. All Units. Implement Plan Bravo II." To the conspirators it was meant to start action on what had been agreed upon. "Throw Aquino to the wolves."

This, and the incriminating circumstances heretofore adduced point a guilty finger to the General.

Brig. Gen. Luther Custodio was the man who called the shots and from whom all orders emanated, at least within the confines of his territorial jurisdiction, in connection with the operation ostensibly to meet: Senator Aquino, Jr. He was coordinating all units and all units were supposed to report to him. A disclaimer on his part that he was not in on the conspiracy to kill Senator Aquino, notwithstanding the foregoing incriminating circumstances, deserves no credibility.

2Lt. Jesus Castro

Sgt. Claro Lat

Sgt. Arnulfo de Mesa

CLC Rogelio Moreno

CLC Mario Lazaga

Sgt. Filomeno Miranda

A death squad if ever there was one. Assigned as the Boarding Party to fetch Senator Aquino from the CAL plane and to provide for his safety, this team virtually held him as a prisoner, instead, by holding him by *his* arms; literally bodily lifting him out through the plane door, thence, through the aerobridge exit, and then onto the bridge stairs, where he was shot.

2Lt. Jesus Castro:

Upon the cue: "Copy All Units. Implement Plan Bravo," guided his men, who were bringing Senator Aquino, to the aerobridge exit, so as to make them go down the bridge stairs where he knew Senator Aquino was to be executed by his men upon his go signal.

CIC Rogelio Moreno acted the way he did because, and We quote him, "I was only following orders." No question, Lt. Jesus Castro directly gave the Order to implement the plan to kill. If he says he had simply relayed the Order emanating from the top man in the totem pole, his criminal liability is not diminished thereby.

It was Lt. Jesus Castro who got ClC Moreno and CIC Lazaga, feelings or PC personnel devoid of penitential feelings or compunction for their brutal nature, to join the Boarding Party, with the consent and conformity of PC Major Senador.

He augmented his force by taking in Sgt. Filomeno Miranda of IMPLAN MASID.

These acts of taking in personnel from other units obviously were not intended to pursue the Boarding party's original mission. All units below the CAL plane had cordoned the plane and were there at the imaginary route of Senator Aquino supposedly to secure and protect the Senator's person. The augmentation of forces clearly was designed to inject personnel to implement their plot to kill the Senator.

The voice comparison and sound analysis conducted by Dr. Matsumi revealed that the words, 'Eto na " and "Pusila" ...which were heard shortly before Senator Aquino was shot were uttered by Lt. Jesus Castro.

ClC Rogelio Moreno

The accused ClC Rogelio Moreno, according to his declaration in open court was following Sgt. Arnulfo De Mesa and Senator Aquino when they were descending the stairs. Actually, De Mesa was more to the left of the Senator. Moreno, therefore, was directly left behind the Senator. Moreno was in khaki uniform, with the familiar red shoulder boards worn by elements of the PC METROCOM.

Prosecution witness Jessie Barcelona singled out the soldier in khaki following Senator Aquino as the escort who shot the Senator.

Considering the established order of descent of the Boarding Party, the fact being that ClC Moreno was the man in khaki uniform immediately following Senator Aquino, the inescapable conclusion is that ClC Rogelio Moreno was the actual killer.

The paraffin test on ClC Rogelio Moreno, taken on August 24, 1983, revealed the presence of gunpowder specks (nitrates) on both persuasive evidence of the fact that he it was who was the actual perpetrator of the brutal act herein charged.

CIC Rogelio Moreno, when interviewed by H/Sgt. Pedro J. Aquino, a CIS investigator, declared that he was a member of the Boarding Party and was assigned to the AVSECOM only on August 19, 1983 for the purpose. M/Sgt. Aquino observed that ClC Moreno, then, was uneasy, listless, morose and lonely. When ClC Moreno was asked by Sgt. Aquino as to Moreno's participation in the dastardly crime against a former Senator of the Republic, M/Sgt. Pedro J. Aquino related that:

"A So I asked him bluntly that you were the one who did the shooting on the late Senator?

Q Yes?

Q And he answered me, "I cannot do anything, sir, I just followed orders." (TSN, M/Sgt. P. Aquino, March 8, 1988, p. 37). (underscoring supplied)

Galman, certainly, to make a false allegation that Senator Aquino had embraced him after the Senator was shot on the tarmac by Galman, when the truth is that the Senator was shot by Moreno up at the stairs, is an indication of Lat's complicity.

Sgt. Rolando Guzman

Sgt. Ernesto Mateo

Sgt. Rodolto Desolong

AlC Cordova Estelo

M/Sgt. Pablo Martinez

De Guzman, Mateo, Desolong and Estelo were members of Team Alpha, under the command of Captain Felipe Valerio. Under IMPLAN.ALALAY, Team Alpha was supposed to, ferry Senator Aquino, by means of the AVSECOM van, to the office of Gen. Luther Custodio.

But, they had instead become the instruments for the completion of the charade in which Rolando Galman was made to look like the assassin and was thus repeatedly fired at until he died.

De Guzman, Mateo, Desolong, and Estelo were the soldiers who, by their admission and as borne out by the evidence, shot and killed Rolando Galman. The fact that they did is an indication that they were a part of the conspiracy to kill Senator Aquino. Seeing as they did that the Boarding Party committed the foul deed of killing Senator Aquino at the bridge stairs, why would they kill Rolando Galman if it were not to complete the deception of those minded to make an inquiry into the death of the, Senator?

M/Sgt. Pablo Martinez was standing guard seven (7) meters from the foot of the bridge stairs when he allegedly saw Senator Aquino and the Boarding Party at the mid-section of the bridge stairs; that he turned his head for a moment to see if there were intruders around; that when he turned back to gaze at Aquino, he had allegedly seen Rolando Galman pointing a gun at the head of the Senator, at which point, he has about to shoot Galman but Galman had already fired at the Senator before he could act.

Since his allegations of fact are falsities and, since he ought to have seen that it was Moreno who shot the Senator at the bridge stairs, We are convinced that accused Martinez was at the scene pursuant to the conspiracy to kill the Senator. That he had fired, or was about to fire at Galman, made him a part of the charade.

Also, he made a show of getting hold of the gun alleged by Sgt. de Mesa as the murder weapon and publishing that fact before everyone. He saw what the Boarding Party did to Senator Aquino. Why did he go along with the allegations of Sgt. De Mesa and, thus, add his ten cents worth to the deception if he were not in on the conspiracy?

Sgt. Ruben Aquino

Sgt, Arnulfo Artates

Sgt. Felizardo Taran

Having been members of Team Alpha, these three accused complemented the actuations and the role of De Guzman, Desolon9, Mateo and Estelo in the conspiracy.

Sgt. Aquino provided actual and moral support to his said co-accused by taking a position at the doorway of the van, aiming his rifle at the fallen rear bumper, even as his companions performed their pantomime at the tarmac.

These actions of Sgt. Aquino were performed to make it appear as though Galman had shot Senator Aquino. Since he saw for a fact that the Senator was shot while at the bridge stairs by a member of the Boarding Party, his said actions indicate knowledge of participation in the conspiracy to kill the Senator.

Artates and Taran, by their actions, were on the ready to support whatever action their leaders De Guzman, Desolong, and Mateo undertook to perform. Their participation consisted of supportive action, but they were definitely in the conspiracy. They went along with the pantomime and farcical actions of their companions.

Then, upon seeing that Senator Aquino fell on the tarmac after having been shot by Moreno, they lifted the Senator and threw him into the SWAT van as though he were a sack of rice, without as much as verifying whether the Senator was still alive.

Senator Aquino suffered a depressed fracture on the head which was there for all to see. The question is where and when the Senator was struck on top of the head. Up to the moment of the first shot, Senator Aquino held his head erect and was seen walking down the stairway. There was no point in hitting him on the head after he had been shot and as he lay dying on the tarmac. The film footage and pictures taken of him as he lay there up to the time he was lifted and shoved onto the SWAT van do not show anyone hitting him on the head. When the SWAT van arrived at the hospital, Senator Aquino was already dead; at that point, there was no point in bashing his head. In all probability, therefore, Senator Aquino's head was hit by a blunt instrument, which could be the butt of the gun when he was already in the van. One among the members of Tea Alpha, sensing that the Senator might still be alive, struck his head to make sure that he was dead. This further incriminates all who rode in that van.

Capt. Romeo Bautista

Capt. Bautista was the head of the Directorate fir Intelligence (DI) which designed, and was supposed to implement, IMPLAN MASID. DI was, in short supposed to proved covert security and gather information.

Contrary to the DI's assigned task, Capt. Bautista ordered his men to converge at the movable tube of Bay 8. Even before CAL Flight CI-811 docked, members of IMPLAN MASID, whose names have not been specified by the evidence, were already at the movable tube.

After the Boarding Party, with the Senator in tow, got out of the plane and, while they were on their way to the aerobridge stairs, the members of IMPLAN MASID, upon the order of Capt. Bautista, formed human blockade at the plane door and prevented the journalists who were brought along by Senator Aquino, and the passengers, from following the Senator down the bridge stairs. Since Senator Aquino was to be shot alter exiting from the plane, the act of preventing the journalists who were ready with their still and moving cameras from following him must necessarily be a part of the conspiracy. As the, military officer who gave order to bar the journalists from exiting thru the door of the movable tube, Capt. Romeo Bautista was essentially a knowing and willing participant of the conspiracy. By

the said maneuver, he prevented the journalists and the passengers from witnessing Senator's Aquino's descent and eventual assassination at the bridge stairs.

Were it not for his order to his end for concerted action, the double killing subject matter of these cases could have been prevented or, in any case, earlier revealed and fully documented.

A fact which is most incriminating to Capt. Bautista is that wherein he was caught by the video camera, Exhibits "U7-3", "U7-5", "E10-12", coming up from the bridge stairs and entering the movable tube after the first five (5) shots were fired. Obviously, he was with the Boarding Party when the latter and Senator Aquino made their descent. After the Senator was shot, he fled, not towards the open space at the tarmac, but towards the safety of the movable tube.

Despite his knowledge of the true facts, he falsely testified to support the theory of the defense which all more proves his complicity.

No evidence has been introduced to prove the charges against Capt. Llewelyn Kavinta, Sgt. Armando Dela Cruz, Sgt. Prospero Bona, Sgt. Reynaldo Pelias, Sgt. Eugenio Caliboso, Sgt. Onofre Danao, AM Alejandro Febrero, Sgt. Clemente Casta. Sgt. Tomas Fernandez, Sgt. Oscar Fabiana, Sgt. Juan Catador, Sgt. Pepito Torio, and AM Joseph Opilas. They were not involved in the circumstances showing conspiracy.

In respect to former Minister Jose D. Aspiras and former BAT Director Jesus Z. Singson, the evidence furnished by two (2) waiters against them appear insufficient to sustain the charge that they were accomplices to the murder of Senator Aquino. Nothing of relevance had been adduced as against Director Jesus Z. Singson, particularly. The statements of Minister Aspiras as allegedly overheard by two waiters in the evening of August 20, 1983, if truly uttered by Minister Aspiras, would indicate knowledge that Senator Aquino will be shot the following day. This, however, is not valid evidence to prove that Minister Aspiras had in anyway conspired with his co-accused to perpetrate the foul deed subject of the herein charge. But, we find reason in the denial made by Minister Aspiras that he did not make any statements because he had no reason to make it. He was not privy to the affairs of the military and had no authority over B/Gen. Luther Custodio or such other officers of the AVSECOM. Minister Aspiras likewise denies that he asked any restaurant to bring food and drinks to him on August 20, 1983 and, thus, there could have been

no waiters on hand to serve him and his guests.

An accomplice is one who cooperates in the commission of a crime by anterior or simultaneous acts. That night, neither Minister Jose D. Aspiras nor Director Jesus Z. Singson committed any act which may be interpreted as an enhancement or promotion of the commission of murder by the principals in the murder of Senator Aquino. There is no showing that Minister Aspiras or Director Singson forced or induced others to commit the crime or murder as against Senator Aquino.

That the accused used their public positions to dissuade various airlines from accepting Senator Aquino as a returning passenger is not evidence to show that the accused Aspiras and Singson had wanted to kill Senator Aquino. On the other hand, this act of the accused merely indicates that they have used their authority to stop Senator Aquino from coming home.

The only evidence against Col. Arturo Y. Custodio and Hermilo Gosuico is that furnished by Reynaldo Galman and Roberta Masibay, which is that Col. Arturo Custodio and Hermilo Gosuico went to Rolando Galman's house in the evening of August 17, 1983 and brought Rolando Galman along with them. The charge is that these two accused procured Rolando in order that the latter can perpetuate the end of the military. The fact that Col. Arturo Custodio and Hermilo Gosuico

brought Galman out of his house five (5) days before the killing of Senator Aquino is not sufficient to show that Galman was brought by the two accused to B/Gen Luther Custodio of the AVSECOM or that these two (2) accused knew the purpose for which Galman was to be brought to the latter. There is no evidence to show that the accused, Custodio and Gosuico, were present during the commission of the charge.

We can not understand why Col. Vicente B. Tigas, was charged at all. Clearly, he had no knowledge of the arrival of Senator Aquino, Jr. on 21, 1983. He came to know of this fact only when called upon by Malacañang, particularly the Office of Media Affairs, in order to assist the newspapermen at the Manila International Airport. He interceded, as was his duty, for in behalf of newspapermen and other media people so that they can be allowed to interview and take pictures of the arrival of the Senator. Although he succeeded in allowing only fourteen (14) of the media people to get inside the concrete tube in the expectation that Senator Aquino would pass through there, he was with these media people up to the time the tragedy occurred. We entertain grave doubt as to the charge that he has conspired with his co-conspirators in order to kill Senator Aquino.

As to Maj. Gen. prospero Olivas, charged herein of Murder as an accessory after the fact, "for concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery" par. 2, Art. 19, R.P.C., the evidence does not sustain the charge.

In connection with the above-entitled cases, the only acts of General Olivas were: to gather evidence against the possible perpetrator or the perpetrators of the killing of Senator Aquino; to collate evidence gathered in connection therewith; and to make proper recommendations on the basis of the evidence gathered. That the accused Olivas made certain conclusions in consisted with the facts is not necessarily a violation of the law herein cited. Certainly, in so acting he did not conceal or destroy the body of the crime or the effects or instruments thereof, in order to prevent its discovery.

WHEREFORE, in Criminal Case 10010, for the killing of Senator Benigno Aquino, Jr., the Court finds the following accused guilty beyond reasonable doubt as principals of the crime MURDER, qualified by treachery:

1. B/Gen Luther A. Custodio

2. Capt. Romeo Bautista

3. 2nd Lt. Jesus Castro

4. Sgt. Claro Lat

5. Sgt. Arnulfo de Mesa

6. ClC Rogelio Moreno

7. ClC Mario Lazaga

8. Sgt. Filomeno Miranda

9. Sgt. Rolando De Guzman

10. Sgt. Ernesto Mateo

11. Sgt. Rodolfo Desolong

12. AIC. Cordova Estelo

13. M/Sgt. Pablo Martinez

14. Sgt. Ruben Aquino

15. Sgt. Arnulfo Artates

16. AIC. Felizardo Taran

Considering as against the accused the aggravating circumstances of: (1) evident premeditation; (2) advantage taken of public position; (3) superior strength; and (4) employment of craft and fraud, these circumstances not having been offset by any mitigating circumstance adduced and proven, the aforementioned accused ought to be sentenced to the extreme penalty of death in accordance with Article 248 of the Revised Penal Code.

In view of the prohibition in Section 19 (1), Article III, of the 1987 Constitution, against the imposition of the death penalty, however, there is hereby imposed on the aforementioned accused in the crime of MURDER the penalty of **RECLUSION PERPETUA**, with the accessory penalties of the law.

The aforementioned accused shall indemnify the heirs of the deceased Senator Benigno Aquino Jr., by way of actual and compensatory damages in the sum of P100,000; moral damages in the sum of P7,000,000.00 ; and exemplary damages in the sum of P700,000.00, with proportionate costs against them.

Upon failure of proof beyond reasonable doubt, the accused Col. Arturo y. Custodio, Col. Vicente B. Tigas, Jr., Hermilo Gosuico, Capt Llewelyn Kavinta, Sgt. Armando Dela Cruz,. Sgt. Prospero Bona, Sgt. Reynaldo Pelias, Sgt. Eugenio Caliboso, Sgt. Onofre Danao, AM Alejandro Febrero, Sgt. Clemente Casta, Sgt. Tomas Fernandez, Sgt. Oscar Fabiana, Sgt. Juan Catador, Sgt. Pepito Torio, AM Joseph Opilas, AM Aniceto Acupido, Minister Jose D. Aspiras, BAT Director Jesus Z. Singson, should be, as they are, acquitted of the offense charged against them, with costs de officio.

Upon the report of the prosecution and the defense that Sgt. Leonardo Mojica had died while these cases were being tried, the cases against Sgt. Leonardo Mojica is dismissed, in accordance with the Article 89 of the Revised Penal Code.

In Criminal Case No. 10011, for the murder of Rolando Galman, the Court finds the following accused guilty beyond reasonable doubt as the principals of the crime of MURDER, qualified by treachery:

1. B/Gen. Luther A. Custodio

2. Capt. Romeo Bautista

3. 2nd Lt. Jesus Castro
4. Sgt. Claro lat
5. Sgt. Arnulfo de Mesa
6. ClC Rogelio Moreno
7. ClC Mario Lazaga
8. Sgt. Filomeno Miranda
9. Sgt. Rolando De Guzman
10. Sgt. Ernesto Mateo
11. Sgt. Rodolfo Desolong
12. AIC. Cordova Estelo
13. M/Sgt. Pablo Martinez
14. Sgt. Ruben Aquino
15. Sgt. Arnulfo Artates
16. AIC Felizardo Taran

Considering as against the accused the aggravating circumstances of: (1) evident premeditation; (2) advantage taken of public position; (3) superior strength; and (4) employment of craft and fraud, these circumstances not having been offset by any mitigating circumstance adduced and proven, the aforementioned accused ought to be sentenced to the extreme penalty of death in accordance with Article 248 of the Revised Penal Code.

In view of the prohibition in Section 19 (1), Article III, of the 1987 Constitution, against the imposition of the death penalty, however, there is hereby imposed on the aforementioned accused in the crime of MURDER the penalty of **RECLUSION PERPETUA**, with the accessory penalties of the law.

The accused herein named shall indemnify the heirs of the deceased Rolando Galman by way of actual and compensatory damages in the sum of P30,000.00; moral damage in the sum of P500,000.00; and exemplary damages in the sum of P50,000.00., with proportionate costs against tem.

Upon failure of proof beyond reasonable doubt, the accused Col. Arturo Y. Custodio, Col. Vicente B. Tigas, Jr., Hermilo Gosuico, Capt Llewelyn Kavinta, Sgt. Armando Dela Cruz,. Sgt. Prospero Bona, Sgt. Reynaldo Pelias, Sgt. Eugenio Caliboso, Sgt. Onofre Danao, AM

Alejandro Febrero, Sgt. Clemente Casta, Sgt. Tomas Fernandez, Sgt. Oscar Fabiana, Sgt. Juan Catador, Sgt. Pepito Torio, AM Joseph Opilas, A. Acupido, Minister Jose D. Aspiras, BAT Director Jesus Z. Singson and Major General Prospero Olivas, should be, as they are, acquitted of the offense charged against them, with costs de officio.

Upon the report of the prosecution and the defense that Sgt. Leonardo Mojica had died while these cases were being tried, the cases against Sgt. Leonardo Mojica is dismissed, in accordance with the Article 89 of the Revised Penal Code.

The bail bonds posted by the accused Col. Arturo Y. Custodio, Hermilo Gosuico, former Minister Jose D. Aspiras, BAT Director Jesus D. Singson, and Major General Prospero Olivas in the above-entitled cases are ordered cancelled. In view of their acquittal from the two (2) aforequoted charges of Murder, Col. Vicente B. Tigas, Jr., Sgt. Prospero Bona, Sgt. Reynaldo Pelias, Sgt. Eugenio Caliboso, Sgt. Onofre Danao, AM Alejandro Febrero, Sgt. Clemente Casta, Sgt. Tomas Fernandez, Sgt. Oscar Fabiana, Sgt. Juan Catador, Sgt. Pepito Torio and AM Joseph Opilas are ordered immediately released from custody.

SO ORDERED.

Manila, Philippines, September, 1990.

REGINO HERMOSISIMA JR.
Associate Justice
Chairman

Sitting as Chairman, Special Division, per Administrative Order
No. 02-89 dated October 4, 1989.

DEL ROSARIO, J. : Concurring:

I concur in the main decision, but with due respect to the grounds stated for the acquittal of Gen. Prospero Olivas, I wish to add the following factual and legal reasons that turned and churned in my mind as we deliberated on their respective guilt or innocence:

In Re: Gen. Prospero Olivas

For allegedly "concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery," Gen. Prospero Olivas, who did not participate in the commission of the crime either as a principal or an accomplice, was charged as an accessory after the fact. To prove the charge, the prosecution capitalized on the following circumstances:

1. Gen. Olivas deliberately failed to mention in all his three reports Chemistry Report No. C-83-1136 (Exh. MMM) tending to prove that the composition of the two evidence bullet fragments (Exhibits 69 and 24 - Olivas), taken from the head of Senator Aquino was consistent with the theory that they could have come from either a .45 or .38 caliber bullet.

The truth, however, is that NBI Chemistry Report No. C-83-1136 (dated October 28, 1983) was not yet in existence when Gen. Olivas prepared his first and second reports (dated September 4, 1983 and September 20, 1983, respectively). It was therefore physically impossible for him to mention it. In his third report, he did not comment on it because:

x " The report to me had no significance because there was no positive mark between the evidence lead fragments which were mentioned and the standard lead fragments of caliber .45 and .38. The caliber .45 had aluminum which the questioned evidence lead fragments did not have. While the caliber .38 had tin which the two specimens which were questioned did not have, I could not find any place for it in my report. But I attached it just the same to my report as Annex T-35." (TSN, Prospero A. Olivas, 27 March 1990, p. 80)

In the absence of aluminum or tin in the evidence fragments, which metal constituents are present in .45 or .38 caliber bullets, accused ruled out such weapons as the ones used in the assassination and decided not to mention the chemistry report. In so doing, did he intend to conceal it? We do not believe so; otherwise, he would not have included it at all in his third report.

Besides, NBI Chemistry Report No. C-83-1136 is neither the body of the crime nor the effect or instrument thereof. It is a mere report of a chemical examination conducted on two lead fragments. The body of the crime or "corpus delicti" is the fact that a crime has actually been committed. (Moreno, Philippine Law Dictionary, 3rd ed., p. 217, citing People vs. Madlangbayan, L-33607, Dec. 14, 1979; 94 SCRA 685) . In these instant cases, the corpus delicti is the fact that the unlawful killing of Senator Aquino and Rolando Galman. On the other hand, the "effects or instruments of the crime" are those physical or tangible objects resulting from or used in the commission of the crime. In these two murder cases, the murder weapons with their bullets are the instruments of the crime while the wounds inflicted and the corpses of the slain victims would be some of the effects thereof. A mere report describing or analyzing certain pieces of evidence does not categorize that report as an effect or instrument of the crime.

2. The conclusions arrived at by Gen. Olivas in his three reports were intended to support the military version of the assassination and to exculpate the military men involved. Specifically, he concluded that it was Galman who shot Senator Aquino; that the murder weapons was a Smith & Wesson Caliber .357 magnum revolver with Serial No. K919709; that the NPA was behind the assassination; that Galman was able to penetrate the security arrangements by posing as a PAL maintenance man; and that the copper jacket found in a small pool of water on the tarmac some four meters away from where Senator Aquino had fallen, was part of the copper jacket of the magnum bullet that hit the senator. The prosecution argues that the evidence abundantly disprove these conclusions; ergo, Gen. Olivas is an accessory.

As Chief Investigator, Gen. Olivas was expected to gather all the evidence, make his own findings and draw his own conclusions. That his finding and conclusions were wrong and in favor of the military is not proof of concealment or destruction of the effects or instruments of the crime, particularly where such findings and conclusions also appear to have been supported by some evidence, spurious or otherwise supplied to him at that time. There is no proof that he knew that the evidence was planted. If error of judgment makes one an accessory, then every crime investigator or inquest fiscal who clears a suspect would himself be in peril of indictment if that suspect should later turn out to be guilty. But did Gen. Olivas plant or tamper with the evidence himself? The prosecution believes so and this is discussed in the next paragraph.

3. Gen. Olivas tried to pass the lead fragment (Exh. 000) as having come from Senator Aquino's head just to support his conclusion that the .357 Magnum revolver was the murder weapon, when said lead fragment was supplied by Gen. Olivas himself.

Did Gen. Olivas really say that this metal fragment was recovered from the head of Senator Aquino? The answer is yes because in his third report dated December 19, 1983 (Exh. NNNN-7), the following appears:

"x x x . Spectrographic examinations further revealed that the lead fragment of a bullet recovered from the head of ex-senator Aquino had similar constituents namely: LEAD and ANTIMONY, with those of a lead core of a Caliber .357 Magnum bullet (Annex T-33, NBI Chemistry Report No.C-83-872)" x x x . (p. 25, Exh. NNNN-2) (underlining supplied.)

What then was his basis for this statement? In a talk he had with then NBI Director Jolly Bugarin about the significance of NBI Chemistry Report No. C-83-872, the latter informed him that the lead fragment was recovered from the head of Senator Aquino:

"Q Is that all, General?

A There was also this report of lead fragments, BA-1, BA-2, BA-3 that were extracted from the head of ex-senator Aquino, and there was Chemistry Report No. C-83-872 where a lead fragment was compared to standard Magnum lead core. And when I talked to Director Bugarin about the significance of this particular report, he told me that it shows that the lead fragment from the head of Senator Aquino had similar constituents as the lead fragment of a lead core of a standard Magnum bullet.

x x x

"Q I show you again Exhibit "72." Aside from what you said, the information that was given to you by Director Bugarin, what made you use this Exhibit "72" as a basis for your findings?

A The stated specimen are: 1) lead fragment of a bullet; 2) lead core of a Magnum bullet.

Specimen No. 1 was confirmed by Director Bugarin to me as fragment that came from the head of the late Senator Aquino. Since there are two specimens, and according to practice, when there are two specimen, one is the evidence or suspect or questioned specimen, and the other is the standard specimen. So, even on the face of this laboratory report, and reading from the purpose of the examination which states "comparative analysis of the metal constituents of the specimen" indicate that what was intended to be done in that report was to compare the lead fragment extracted from the head of ex-senator Aquino as I said was stated by Director Bugarin and compare it to the lead core to a Magnum bullet." (TSN., March 27, 1990, pp. 66-67).

Gen. Olivas also based his statement on the testimonies of the NBI forensic experts, Atty. Domingo del Rosario and Leonora Vallado, before the Agrava Fact-Finding Board on December 7 and 9, 1983. (TSN., March 276, 1990, pp. 67-68).

From his explanation, it would appear that he was of the impression that the lead fragment (Exh. 000) is one of the three lead fragments (BA-1, BA-2, and BA-3) extracted from the head of Senator Aquino. It is also logical to assume, so he explained, that since the purpose of the examination was in relation to the shooting of Senator Aquino, the specimen lead fragment to be compared necessarily

must have come from the head of Senator Aquino:

"A x x x. In Chemistry Report No. C-83-872, Your Honor, the purpose of laboratory examination and this is stated as comparative analysis from the two metal constituents of the specimen. In the same form, Your Honor, the alleged case and I quote, Re: Shooting to death of ex-senator Benigno Aquino Jr so my deduction from this is, since the purpose of the examination is a comparative analysis of metal constituents from the specimens in relation to the shooting to death of ex-senator Aquino, then it only follows that the specimen lead fragment that is to be compared came from the head of Senator Aquino. In the case of 1136 I have explained that already yesterday that there is nothing positive because there is no similarity between the evidence lead fragments and the standard used so I don't know where to place it in my report." (TSN., March 28, 1990, p. 28).

The prosecution gave scant consideration to his explanation. The General's explanation may or may not be a mere afterthought, but its weakness cannot be the basis for his conviction. The prosecution still had the burden of proof. It was content to rely on the notation "Req. Officer/ Gen. Olivas" (Exh. NNN-1) (meaning that the Requesting Officer was General Olivas) written on an envelope which originally contained the lead fragment. It was established however, that the lead fragment was received by one I.S. Ordiaso on September 29, 1983 at 3:00 p.m., or over a month after the assassination. It was Mercedes Bautista, the Chief of Leonora Vallado, who wrote the notation and placed the name of Gen. Olivas as the requesting officer "since he was the General Investigator." It was not established who actually supplied the lead fragment. If a fake assassin could be

smuggled into the tarmac of the MIA, why not a false evidence fragment into the files of the NBI? In the absence of direct and clear proof that it was Gen. Olivas himself who personally requested the examination and who handed the lead fragment to the NBI for examination, which is improbable since Generals do not act as couriers or delivery boys, it would be rash to conclude that accused had requested the examination and supplied the lead fragment himself.

It might be recalled in this connection that while conducting his ocular inspection of the MIA tarmac in the afternoon of August 21, 1983, Gen. Olivas did see and pick up a small piece of metal from a shallow pool of water about four meters away from where Senator Aquino had fallen. That piece of metal, however, is not the lead fragment involved in NBI Chemistry Report No. C-83-872, but a copper jacket (PJA-25-H; Exhibit GGG-2) which is covered by a separate examination report (Ballistic Report No. 315-22-883; Exh. 69) (TSN., March 26, 1990, pp. 74 & 77).

It was not also explained why of the three lead fragments recovered by Dr. Munoz from Senator Aquino's head, only two were covered by Chemistry Report No. C-83-1136. Could not the third fragment have been the specimen lead fragment covered by Chemistry Report No. C-83-872? It is significant to note that one of the fragments (BA-1) taken from the head of Senator Aquino, which is not included in Chemistry Report No. C-83-1136, originally weighed 0.1225 gram (Exhibit GGG), but when weighed again on March 22, 1985, was only 0.0674 gram (Exhibit 41-Olivas), or lighter by 0.0551 gram. For a chemical analysis, only .03 gram of a particular specimen is required. Bearing in mind that the NBI had received and was in custody of all the fragments taken from Senator Aquino's head, and in the absence of proof that another fragment had been received from the

outside, could not be the missing 0.0551 gram of that fragment (Ba-1) after all be the specimen analyzed in Chemistry Report No. C-83-872? Even if the answer is no, Gen. Olivas would still be in the clear because he was not told about the fact that the specimen fragment analyzed in Chemistry Report No. C-83-872 allegedly did not come from the Senator's head. (TSN., November 8, 1988. pp. 23-25). These loose ends have created some doubts in our mind.

4. Gen. Olivas withheld from the Fact-Finding Board the information that there were two .357 Magnum revolvers that bear the same Serial No. K919709 and that one of them was issued to a military man, Col. Octavio Alvarez.

The trouble with this argument is that neither of these revolvers is the murder weapon since the prosecution's own evidence proves that it was either a .45 or .38 caliber firearm that was used to kill Senator Aquino. So, even assuming that Gen. Olivas concealed facts pertaining to the two magnum revolvers, his act cannot be considered accessorial because these firearms were not the instruments used in the crime of murder.

The evidence also proves that Gen. Olivas was silent on this episode of the two .357 Magnum revolvers bearing the same serial number because it would have unjustly implicated him as the mastermind of the assassination. Furious upon hearing rumors allegedly circulated by Col. Octavio Alvarez that the .357 Magnum revolver tagged as the murder weapon had previously been issued to, and lost by him (Col. Alvarez), Gen. Olivas had him summoned to his office on November 15, 1983 where the following incident transpired:

"Q You said you arrived at 3:30 p.m. but Gen. Olivas arrived at 5:30?

A He arrived earlier by the called me at 5:30 p.m.

Q When he called you at 5:30 in his office at the Metrocom headquarters at Camp Crame, will you tell us what happened?

A When I reported to him, he was mad, he was fuming mad at me.

Q At whom?

A At me, sir.

Q Do you know why?

A He was telling me somebody reported to me that you were circulating a rumor that the people who ransacked your car was the men of Col. Abadilla, don't you know that I am the chief investigator of the Aquino assassination and if that is what you are circulating, it would appear that I am one of the planners of the assassination of Senator Aquino?

x x x

Q That is all that he said?

A He told me, "Don't you know I am the chief investigator of the Aquino assassination and in that rumor that is circulating there will appear that I am one of the

masterminds of the assassination." (TSN., November 3, 1987. p. 28).

Considering the absurd implications of the rumor and the absence of proof to support it, such as:

a)there was no official record that Col. Alvarez was issued a .357 Magnum revolver;

b)Col. Alvarez had no license to show his legal possession thereof; and,

c)the .357 Magnum Exhibit FFF) was not a registered or "wanted" firearm. (Exhibits 59 and 59-A-Olivas); and, coupled by his own knowledge that he did not plan the assassination, a fact clearly borne out by the evidence from Day One, Gen. Olivas, we believe had valid cause to ignore the matter officially. It may have made good copy and added fire to an already explosive situation had he stepped down as Chief Investigator when he himself became suspect, but that would only have muddled and exacerbated the investigation. Now that the din and dust of that heinous crime have settled, his forbearance can at last be understood and his action vindicated.

In Re: Minister Aspiras & Gen. Singson

With respect to accused Minister Jose D. Aspiras and Director Jesus Z. Singson, the prosecution thought it odd that the Civil Aeronautics Board held no less than four meetings in August, 1983 which were not regular monthly meetings, without any agenda or

secretary to take notes, with no minutes at all, and why all the CAB members were at the Villamor Air Base on August 21, 1983. Accused explained that these were all informal meetings intended to enforce the regulations pertaining to undocumented or improperly documented airline passengers and to impose sanctions against the airline found to have violated the provisions of the International Air Services Transit Agreement and the Convention on International Civil Aviation of which the Philippines is a signatory. Their presence at the Villamor Hall near the MIA on August 21, 1983 was to formalize and serve a prepared resolution revoking the certificate of the airline found to be carrying on board Senator Aquino who was expected to arrive that day.

We find the explanation credible since informal meetings on just one subject matter and particularly one held at a public lounge, would not acquire the formalities of an agenda, a secretary taking notes and the preparation of minutes. After all, a resolution had already been prepared and all that was needed was to put the name of the airline and the date and for the board members to affix their signatures the moment it was known which airline had violated the regulation. The number of meetings is consisted with the importance of the matter taken up for it involved no less than the controversial return of Senator Benigno Aquino Jr., who was considered as the leading political rival of President Marcos at that time. Being the President's men, Minister Aspiras and Director Singson along with the other members of the Civil Aeronautics Board were naturally expected to give this matter their close personal attention.

The statements attributed to Minister Aspiras by the waiters showing that he had foreknowledge of Senator Aquino's arrival and the plan to assassinate him do not inspire belief. It is unthinkable that such a serious and delicate matter as the plan to assassinate the Senator would have been discussed so openly in the presence of

strangers. Whatever statements the waiters might have overheard could easily have been the personal remarks or ominous comments on the dire consequences of Senator Aquino's return despite the threats to his life, expressed by those who attended the meeting. For who during those uneasy and perilous days did not talk, albeit in whispers, about the senator's expected return?

For all the reasons stated in the decision penned by the Honorable Justice Regino Hermosisima, Jr., and those discussed above, I respectfully concur in said decision convicting those found guilty and acquitting those whose guilt has not been proved beyond reasonable doubt.

(Sgd.) CIPRIANO A. DEL ROSARIO

Associate Justice

* **Gen. Fabian C. Ver** - former chief, Armed Forces of the Philippines. He was diagnosed with emphysema and died in Bangkok, Thailand on November 21, 1998. He was buried in his hometown of Sarrat, Ilocos Norte.

* **Brig. Gen. Luther A. Custodio** - former head of Aviation Security Command (AVSECOM). He died of cancer in prison in 1991.

* **AIC Cordova Estelo** - PAF, formerly assigned with AVSECOM. He was stabbed dead by another inmate in 2005.

* **Sgt. Pablo Martinez** - PAF, formerly assigned with AVSECOM. He was granted pardon in November 2007 on humanitarian grounds after reaching the age of 70, and is diagnosed with diabetes and hypertension.

* **Ex-soldiers still in prison:**

1. Romeo Bautista, 57
2. Jesus Castro, 58
3. Rolando de Gusman, 55
4. Rodolfo Desolong, 62
5. Filomeno Miranda, 59
6. Claro Lat, 59
7. Ernesto Mateo, 53
8. Arnulfo Artates, 53
9. Ruben Aquino, 57
10. Arnulfo de Mesa, 48
11. Rogelio Moreno, 51
12. Mario Lazaga, 54
13. Felizardo Taran, 51