

[G.R. No. 17763. July 28, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PROCESO BUSTOS ET AL., DEFENDANTS AND APPELLANTS.^[1]

D E C I S I O N

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Pampanga, finding the appellants, Proceso Bustos, Felipe Bustos, Jose Blanco, Filomeno Sunga, Donato Benosa, and Irineo Cailao, guilty of the offence of homicide, committed on June 19, 1920, in the municipality of Macabebe, in the Province of Pampanga, upon the person of Liborio Bustos, with the aggravating circumstance of advantage taken of superior strength, and sentencing each of them to undergo imprisonment for seventeen years, four months and one day, *reclusion temporal*; to indemnify jointly and severally the heirs of the deceased in the sum of P1,000; and to pay each the one-ninth part of the costs.

Three other individuals, to wit, Alejandro Ronquillo, Francisco Reyes, and Roman Bondoc, were named in the original information as joint authors of the same crime with the six appellants; but these three were acquitted by the trial judge, and they are not concerned in the present appeal.

A somewhat peculiar turn has been given to the case by the circumstance that after the six appellants had been convicted in the court below of the crime of homicide committed upon the person of Liborio Bustos, an independent prosecution was instituted against one Pablo Ocampo as author of the same homicide, and upon his conviction of the same offence, he also appealed to this court.

As Ocampo had been used as a witness for the prosecution in the trial against Bustos and his associates (the present appellants), and the two prosecutions are

otherwise intimately related, it became important that this court should have before it the record in both causes before determining either appeal; and although the case to be disposed of in this opinion (*People vs. Bustos et al.*, G. R. No. 17763) was submitted to us a short while before the second case (*People vs. Ocampo*, G. R. No. 18869)^[1] reached the calendar, the voluminous record in the two causes have been examined together.

Proceso Bustos is an influential resident of the municipality of Macabebe, in the Province of Pampanga; and at the time of the homicide in question was holding the office of president of said municipality. Felipe Bustos is a cousin of Proceso Bustos and at the time of the homicide was the municipal secretary of Macabebe; while Donato Benosa appears to have been an amanuensis in the office of the president. Filomeno Sunga was chief of police of the municipality. Irineo Cailao, Francisco Reyes, and Roman Bondoc were members of the police force under Filomeno Sunga; and Alejandro Ronquillo was a domestic servant of Proceso Bustos. Liborio Bustos, the deceased, was a prominent resident of the same municipality of Macabebe and a cousin of Proceso Bustos. At the time of his death Liborio Bustos was vice president of the municipality.

For some months prior to the date of the homicide, Proceso Bustos had entertained the belief that his cousin Liborio Bustos had been guilty of improprieties with the former's wife; and this conviction, whether rightly or wrongly entertained, engendered in the bosom of Proceso Bustos a feeling of deep resentment against Liborio Bustos, calling for vengeance. At the same time, owing to political differences, animosity existed between Jose Blanco and Liborio Bustos. As a result of the antagonisms above-mentioned Liborio Bustos was not in friendly relations with Jose Blanco, and the relations between Liborio Bustos and Proceso Bustos were so strained that the two did not speak to each other even in the meetings of the municipal council.

On the night of June 19, 1920, an exhibition was given in Macabebe by a traveling circus; and upon that occasion, in the circus tent, an assault was made upon Liborio Bustos which cost him his life. The details of this affair, as related by credible witnesses, are substantially these: After the first act of the performance had commenced, Liborio Bustos came in, accompanied by his wife, a son (Felicisimo) of the age of fourteen years, and two small nieces, together with a house girl or nurse. Upon entering the tent, he conducted his family

around towards the right of the ring used by the performers and placed them on the first row of seats to the right of the central aisle. After the members of the family had been thus accounted for, it appeared that no chair was there available for Liborio himself; and in order to provide himself with a seat it was necessary to go around to the left side of the ring. Upon passing around in that direction, he found a vacant chair between Irineo Cailao and Alejandro Ronquillo, and he accordingly took possession of this seat. Proceso Bustos at the same time was sitting near by on the left of Irineo Cailao, who in turn was seated at the immediate left of Liborio Bustos. Filomeno Sunga was seated in a chair behind the one taken by Liborio Bustos, and others of the nine persons named as defendants in the original information were sitting in close proximity. Liborio Bustos, apparently thus led by chance rather than design, had planted himself squarely in a nest of his personal and political enemies surrounded by their dependents or partisans.

After Liborio Bustos had been thus seated for a few minutes and the circus act then under way had been concluded, a number of spectators indicated their approval of the performance by applause; and Liborio Bustos himself joined in this manifestation by clapping his hands. As he lowered his hands after thus applauding, his right arm was seized by Alejandro Ronquillo who was on his immediate right, and at the same instant his left arm was seized by Irineo Cailao; while Filomeno Sunga approached from behind and with his right hand caught Liborio by the hair, at the same time passing his left arm around Liborio's neck. Others belonging to the same gang immediately swarmed around and blows began to fall upon various parts of the victim's body, including his chest, face and back. In this assault Felipe Bustos and Jose Blanco took a conspicuous part. One or both of these individuals were armed with a revolver and Jose Blanco either struck Liborio in the forehead with the barrel of his revolver or pointed the weapon at his head in a threatening manner. The policemen meanwhile used their clubs on the deceased, and Donato Benosa struck him either with brass-knucks or with his fist. As the assault proceeded Felipe Bustos called aloud more than once "kill him."

The commotion which had thus arisen around Liborio Bustos of course attracted the immediate attention of the spectators of the circus, and its significance was not lost upon the elder members of Liborio's family who, as already stated, were sitting almost directly across the circus ring from the point where the

assault had occurred. Among these observers was Felicísimo, the fourteen-year old son of Liborio Bustos, whose eye had caught the first signs of trouble, and who bounded across the ring, now vacated by the performers, and placed himself at a point near the assailants, from which he would be able to see whatever might happen. To this spot the boy was followed by his mother.

Meanwhile Proceso Bustos, with a dagger in hand, approached the circle where Liborio Bustos was standing engaged with the individuals who had seized and were still holding him. Seeing this act on the part of Proceso Bustos, and comprehending the danger with which her husband was threatened, the wife of Liborio Bustos threw herself in front of Proceso and besought him to do her husband no harm. Proceso Bustos, however, gave the woman a shove which caused her to fall to the ground, and he then made his way into the circle where Liborio Bustos now stood erect and with an upward movement of the right hand Proceso Bustos stabbed Liborio in the left epigastric region with a dagger. The wound thus inflicted appears to have been several inches deep, and it resulted in the perforation of the stomach in two places. This injury having been inflicted by Proceso Bustos, the assailants desisted from the attack; and the wife of Liborio Bustos, assisted by Julian Mendoza, were able to approach the injured person and take him in hand. Weakened by the wound and exhausted no doubt in part by the numerous blows which he had received on various parts of the body, Liborio Bustos quietly left the circus, supported on either side by his wife and Julian Mendoza, by whom he was conducted to the residence of his mother, situated about one hundred and fifty meters away.

The voluminous proof contains many details which, when understood in their proper relations, enable one to visualize the scene more clearly, but for the most part these details are either unnecessary to an understanding of the real nature of the assault or are not established with sufficient certainty to justify a court in attaching much weight to them. For instance, one of the prosecuting witnesses says that before Alejandro Ronquillo began the assault by seizing the right arm of Liborio Bustos, Alejandro Ronquillo glanced towards Proceso Bustos, who had his eyes fixed on Ronquillo, and who then with an approving nod gave the signal to Ronquillo to proceed. Several witnesses further say that as Proceso Bustos entered the group which surrounded Liborio Bustos, preparatory to stabbing the latter, Proceso Bustos said, "Make way, let me pass" (*Den me paso, den me paso*). Another circumstance, accredited by many

witnesses, is that when the scuffle started some one called aloud "Liborio Bustos is drawing a revolver." Alejandro Ronquillo says that he was the person who made this exclamation; and his testimony, as well as that of other witnesses examined in behalf of the defendants, is to the effect that Liborio Bustos had a revolver on his person and attempted to draw it. Other proof, however, shows that in all probability Liborio Bustos was unarmed on this occasion; and the exclamation emitted by Alejandro Ronquillo was without doubt a mere ruse, intended to mislead the bystanders as to the true nature of the commotion.

When Liborio Bustos, with the assistance of his wife and Julian Mendoza, arrived at the home of his mother, he was at first placed in a chair in front of the house, but a little later he was taken inside and placed on a bed in the front room.

At about 9 p. m., two physicians arrived, namely, Jose Talag and Lazaro Yambao. Upon casual examination of the wound in the side, it was at once seen to be of a serious nature; and though nothing was said to excite the injured man, Dr. Yambao told the family that the first symptom of nausea and vomiting would be a danger signal, as it would indicate the existence of peritonitis resulting from perforation of the intestines. In such eventuality, he told them, it would be necessary to carry the patient at once to Manila where an operation might be performed with some hope of saving life. Later in the night this symptom of nausea and vomiting manifested itself in violent form, and arrangements were at once made to take the patient to Manila. To this end an automobile was procured; and the patient left Macabebe at between 1 and 2 a. m. on the morning of June 20, accompanied by a physician and other persons.

After a journey of several hours, made tedious from the necessity of going very slowly, owing to the condition of the sufferer, the party arrived in Manila; and at about 8 a. m. he was placed in the Philippine General Hospital. An operation was there performed, but the patient began to sink during the day and died in the evening, about twenty-four hours after the injury had been inflicted.

Upon examining the body of the deceased, both at the time of the surgical operation and upon the subsequent occasion of the *post mortem* autopsy, the physicians found that the weapon used had perforated both the anterior and

posterior walls of the stomach of the deceased. In addition to this wound, which was necessarily fatal, various bruises were found on the breast, back, and forearms of the body, as well as on the face, one considerable bruise being found immediately between the eyebrows. Neither physician was able to say with certainty whether the instrument used in making the wound had two cutting edges or only one, but the stroke had been evidently made in a direction from below upwards.

The proof shows conclusively that from the beginning Liborio Bustos believed he had received a fatal injury and that death was certain. While he was still sitting in the chair in front of his mother's house, the justice of the peace of the municipality, Aureliano Dizon by name, came up. Seeing Dizon, the deceased said: "Judge, I am going to die," at the same time observing that he had been attacked by Proceso Bustos, Felipe Bustos, and the policemen. The son, Felicisimo Bustos, was then crying; and the deceased said to him, "my son, do not cry, for you will not be poor. Your uncle Marcelino will not desert you, and you can continue your studies better. Call the priest, I want to confess." In response to the request for spiritual assistance, Father Guevara, the parish priest, was sent for; who presently came, and finding the deceased prostrated in bed, took his confession and administered the last sacrament in conformity with the rites of the Church. Another circumstance which shows that the deceased fully realized the fatal nature of the wound he had received, is that he objected to being taken to Manila, on the ground that it would be of no use. Furthermore, in the *ante mortem* statement signed by himself, to which more particular reference will be made hereafter, the deceased declared that his declaration was given in contemplation of approaching death and the consequent necessity of soon presenting his soul before the Almighty Creator. Immediately before this statement was signed, the deceased had been vomiting blood; and some of the material ejected from his stomach was at that time scattered over the floor. Even Dr. Talag, who testified as a witness for the defendants, admits that the deceased said he was going to die, though neither nervous nor unquiet, and he remained throughout in the full possession of his mental faculties.

When Aureliano Dizon, the justice of the peace, encountered Liborio Bustos at the house to which the latter had been carried, he was not at first impressed with the idea that the injury would necessarily prove fatal, although even then Liborio Bustos said he was going to die. Dizon therefore did not at once make

any preparations for the taking of an *ante mortem* statement from Bustos; but as the night advanced and alarming symptoms developed, Dizon determined to procure a written statement from the injured man. To this end he caused his typewriting machine to be brought to the house and, placing it upon a table at the bedside of the sufferer, he proceeded to reduce to writing in the Pampangan dialect a narrative of the occurrence substantially in the form in which it was dictated by the declarant. This statement is in evidence as Exhibit B of the prosecution. It fills a single sheet of ordinary legal-cap paper and in addition to being signed by Liborio Bustos Zabala, as declarant, it bears the signature of Dr. Jose Talag, as witness.

The testimony shows that this statement, after being reduced to writing by Aureliano Dizon, was read over to the declarant and signed by him while in bed. Dr. Talag, the attesting witness, admits his signature, and though evidently hostile to the prosecution, he virtually admits that the document was signed by the deceased in his presence; since he says that he saw the deceased with pen in hand preparatory to the act of signing, in which instant he turned away to the light to examine the material in a pan into which the deceased had just vomited. Antonio Garcia, of the age of twenty-nine years and a school teacher by profession, happened to be in the house at the time. He says he saw Liborio Bustos sign the paper in question as well as Dr. Talag, and that after Liborio Bustos had read and signed the paper himself, he handed the pen to Dr. Talag in order that the latter might sign. Other testimony with reference to the same incident shows conclusively that Liborio Bustos was fully informed of the contents of this paper and signed the same with his own hand while in the full possession of his mental faculties.

It appears that Aureliano Dizon began the work of typewriting this statement possibly before midnight, and the final clause recites that it was signed by the declarant on June 20, 1920, at 1.40 a. m. In the original document, however, the figures indicating the day of the month (20) appear to be printed over the figures "19." Dizon explains this by saying that, as he was conscious that the affair at the circus had occurred on the nineteenth of June, he at first wrote this date, but immediately noticing that the clock then showed the hour of 1.40 a. m., he changed the date by writing the figures "20" over the "19." The explanation of this error is so entirely reasonable and natural that its truthfulness cannot be doubted.

The following additional circumstance in connection with the signing of this document is also in evidence; and we think it of some value as showing the scrupulous exactitude of the declarant, as well as the sense of responsibility exhibited by Aureliano Dizon in the matter of taking the declaration. In this connection it appears that in the course of reducing the declarant's statement to writing the declarant had said that while the chief of police was holding him, Jose Blanco was pointing at him with a revolver. In putting this statement on paper Aureliano Dizon had caused the declarant to say that while the chief of police was holding the declarant, Jose Blanco was "pointing," omitting to add the words "at me with his revolver." The sentence as thus written, while intelligible, was nevertheless incomplete; and when the statement was read over to Liborio Bustos, or by him, his attention was attracted by the omission of the quoted words. He thereupon requested Aureliano Dizon to add the words "at me with his revolver." Dizon thought it inadvisable to make the correction by inserting the words on the typewritten sheet, and probably in view of the approaching departure of the declarant for Manila, he did not attempt to copy the statement off again. He therefore wrote the words "at me with his revolver," or their equivalent in the Pampangan dialect, on a separate slip of paper and attached it with a clip to the declaration itself, with marks indicating the point at which the words should be inserted. As thus amended the statement was approved by the declarant.

The statement shows on its face that it was made in contemplation of approaching death; and the narrative contained therein covers not only circumstances connected with the act of homicide, but certain facts relating to the history of the trouble between the declarant and his assailants and the motive for the killing. Now, it is a well-recognized rule that an ante mortem statement made under the requisite conditions by the victim of a homicide is admissible in a trial against its author, or authors; but it is equally well settled that such a declaration is admissible only in so far as it relates to the homicide itself. So far, therefore, as this statement relates to past history, its contents are inadmissible, and to that extent the court must exclude it from consideration. But this does not make such statement inadmissible in so far as it is confined to the immediate act of homicide.

Upon examining the declaration in the light of this consideration, it will be found to contain substantially the following competent facts, namely, that while

the declarant was sitting on a stool at the circus on the night in question, he was approached by Proceso Bustos, Filomeno Sunga, Felipe Bustos, Jose Blanco, and Donato Benosa. Felipe Bustos struck him without provocation; and Sunga placed his arm firmly around the declarant's neck. While the declarant was in this position, Proceso Bustos stabbed him with a dagger, inflicting the wound below the ribs in the left side. In addition to this the policeman Irineo Cailao struck the declarant with his club. While Sunga was holding the declarant, Jose Blanco pointed at him with his revolver.

We have been careful to state with precision the facts relating to this written statement of Liborio Bustos exactly as they are revealed in the record by what appears to us to be the overwhelming weight of the evidence; and this for the reason that the defence in this case is largely planted upon the proposition that this document is a fabrication concocted by Aureliano Dizon and that the signature of Liborio Bustos thereto is a forgery. In view of this imputation upon the honesty of the justice of the peace and the good faith of the case of the prosecution in general, we deem it important to collate from the record certain other circumstances which corroborate this document in a most emphatic manner.

In the first place, we note that Dr. Lazaro Yambao, who was introduced as a witness for the defendants and who exhibited manifest hostility to the case for the prosecution, admits having had a conversation with Liborio Bustos while in attendance upon him on the night of the homicide. Dr. Yambao says that in this conversation Liborio Bustos told him that Proceso Bustos and his companions were the ones who had assaulted him, or as the deceased said, "*Proceso y compania,*" mentioning in this connection the names of Felipe Bustos, Jose Blanco, and Filomeno Sunga, in addition to that of Proceso Bustos, as being among those who were engaged in the assault. When this conversation between Dr. Yambao and Liborio Bustos is viewed in connection with the proof relating to the condition of the deceased and his state of mind during the whole evening, we see no reason to doubt that it is itself independently admissible as an *ante mortem* declaration and competent evidence against the four persons therein mentioned. Though the declarant did not attempt to go into details to Dr. Yambao, the statement made to him corroborates the written declaration fully upon the point that said four individuals participated in the assault; and these four are precisely the ones who were chiefly responsible for the killing, the

others being mere tools or dependents.

Further corroboration of the truthfulness of the *ante mortem* statement is found in the testimony of Telesforo Martinez, a captain of the Constabulary and a resident of the Province of Pangasinan, who was in Macabebe on the night of the homicide. This witness states that, hearing of this affair, he went between 12 and 1 o'clock a. m., to the house of Liborio Bustos's mother, in company with the acting governor of the province, the provincial fiscal, and another. Upon arriving in the house at the time stated, he found Liborio Bustos lying in bed, and the latter related to the witness what had occurred that night. Of this conversation Captain Martinez made certain notes in writing, in conformity with his duty and practice as an officer of the Constabulary. These notes were produced in court by the witness and introduced in evidence as Exhibit Z, which is of the following tenor:

“VICE PRESIDENT.—Entered circus with family. Took seats on right side for wife. Opposite this place on other side of ring saw an empty chair and occupied it. Sat between Irineo Cailao and president's muchacho Ronquillo. After first act a few minutes after he sat down felt held by Ronquillo and Cailao. Saw striking him F. Bustos struck him on nose (pointing on bridge). Filomeno Sunga, C. of P., held him from behind on neck and head. Jose Blanco struck him with muzzle of revolver on his forehead (pointing just above bridge of nose). These parts of face show contusions, and just above bridge of nose shows about 1/8 part of circle like scratch slightly bleeding. Proceso Bustos stabbed him in abdomen. Surrounded and held by other policemen, among whom he mentioned Roman Bondoc and Policronio Bondoc.

“(The above taken in V. P.'s own house while in his bed June 19 '20. V. P. fearing death, as from his answers and statements to me and fiscal.)”

After Captain Martinez had concluded his conversation with Liborio Bustos, he asked the fiscal if it were not necessary to take his formal declaration. The fiscal replied that the declaration had already been taken. The witness then asked Liborio Bustos if he had made such declaration, and he answered that he

had, and he said that he had signed it. The witness then saw the declaration itself (Exhibit B) in the hands of the fiscal.

The statements of the deceased in this conversation with Captain Martinez fully corroborate the formal declaration (Exhibit B) in respect to the complicity of Proceso Bustos, Felipe Bustos, Jose Blanco, Filomeno Sunga, and Irineo Cailao; and said statement was also given under circumstances that make it independently admissible as an *ante mortem* statement. Barring the reference to Policronio Bondoc, whose complicity does not appear by other sufficient evidence, the statement made by Liborio Bustos to Captain Martinez conforms in all material particulars with the account given of the killing in the opening statement in this opinion.

But this is not all. The authenticity of Exhibit B as a veridical declaration of the deceased is further corroborated by the testimony of Augusto Reyes, who, at the time of the commission of this homicide, was the provincial fiscal of Pampanga. On the night of the homicide he went between 12 and 1 o'clock a. m., to the house of the mother of Liborio Bustos, entering at about the same time as Captain Martinez. The witness approached the bed where the deceased was lying and listened to the conversation which passed between the deceased and Captain Martinez. While the two were conversing, the justice of the peace (Dizon) came and handed the witness the *ante mortem* statement (Exhibit B) of the deceased, saying that it had been signed by Liborio Bustos and attested by Dr. Jose Talag. The witness then asked Liborio Bustos if the signature appearing thereon was his, and he replied that it was. The witness then asked Liborio Bustos how it had happened, and the latter told the witness of what occurred at the circus. Afterwards, upon causing the signed statement of the deceased to be translated to him, the witness recognized that the narrative given to him by Liborio Bustos coincided with the declaration contained in said document.

In the light of all this testimony it is impossible to entertain any doubt whatever that the Exhibit B was signed by Liborio Bustos in the full possession of his faculties and that it contains an authentic statement by Liborio Bustos of the facts regarding the homicide, as he understood them.

But there still remains to be considered the evidence afforded by an inspection of the questioned signature itself. In this connection it should be

observed that after the case had been heard in the lower court and the six appellants there convicted, and after the cause had reached this court upon appeal, a petition was here filed in behalf of the appellants, asking that the case be reopened for the reception of the newly discovered evidence; and certain affidavits were exhibited which tended to show that expert evidence could be procured to the effect that the signature of Liborio Bustos Zabala to the Exhibit B is a forgery. Upon the presentation of said request this court at first withheld its approval, reserving, however, the right to act favorably upon the petition, if the interests of justice should so require, at the time when the cause should come on to be heard. At a later date, in view of developments in the related case against Pablo Ocampo, and particularly in view of the attitude of both the Attorney-General and of the attorneys for the present appellants, this court ordered that the record (G. R. No. 17763) should be returned to the lower court for the taking of additional proof. (Orders of March 23, and March 28, 1922.) Pursuant to this authority, additional proof was submitted by the defence, the purpose of which was to impeach the authenticity of the *ante mortem* declaration (Exhibit B); and in rebuttal thereto additional proof was submitted by the fiscal to establish the authenticity of the same document. All of this additional testimony, having been incorporated in the record with the consent of all parties, and with the prior approval of this court, is competent to be here considered; and it has been duly weighed by us in connection with all the other proof. Its general effect may be stated in a few words to be this, that, far from bearing out the imputation of forgery with respect to the signature of Liborio Bustos Zabala to the statement in question, it completely refutes that imputation and demonstrates the authenticity of said statement beyond a shadow of doubt. In other words, the opening of the case for additional proof has produced the complete collapse of the attack made by the appellants upon the authenticity of the document in question. In partial confirmation of this we point to the circumstance that it was by this means that the testimony of Captain Telesforo Martinez, Augusto Reyes, and Antonio Garcia, relating to the conditions under which the statement in question was signed by Liborio Bustos, was first brought into the record. But inasmuch as the substance of their testimony in this connection has already been stated in this opinion, no further comment will be made thereon, and we confine ourselves at present to a consideration of the evidence supplied by the questioned signature itself and the testimony of the single "expert" examined with reference thereto.

In order to supply a basis of comparison, three signatures of Liborio Bustos Zabala, but appearing once in the form Liborio Z. Bustos, have been brought before us. These three signatures are taken from official documents and about their authenticity no question is made. For our own satisfaction, and in view of the importance of the point at issue, we have caused a photograph to be made of these three genuine signatures in company with the disputed signature; and as the four signatures were photographed together upon the same card-board backing, all are necessarily upon the same scale.

(See Image)

Upon examining these signatures together, the uninformed person would, we think, hesitate some time before hazarding a conjecture as to which one of the four may be the questioned signature, so strong would be the conviction that all four were made by the same hand. We may state, then, that the signature photographed at the bottom of the plate is the one that has been questioned; and upon careful comparison with its companions it will be found to differ from them chiefly in the circumstance that as the pen proceeds to the formation of the last word in the name, *i. e.*, Zabala, there is a growing uncertainty of movement and a consequent irregularity in the shape of the letters, as compared with "Zabala" in the first and second of the authentic signatures. Then there is lacking the period at the conclusion of the name, which the writer placed after each of the three admittedly genuine signatures. For the rest, all four of the signatures are so clearly the work of the same hand that it is almost superfluous to attempt to point out the numerous minor resemblances and differences which prove the identity of authorship.

Doctor Warren D. Smith, who assumed the role of handwriting expert in behalf of the defendants and undertook to maintain that the questioned signature is a forgery, admits that he has had little technical instruction in the art, or science, of judging handwriting; and his practical experience as an expert witness in such matters seems to have been limited to appearances in the Court of First Instance of Manila in two cases mentioned by him.

In beginning his exposition of the matter now under consideration, Dr. Smith admonishes the court that no handwriting expert would wish for his testimony to be received as unquestionable authority, the idea being rather that it is the

function of the expert to place before the court data upon which the court can form its own opinion. We admit the propriety of this observation, especially as related to the case in hand, and we commend the diffidence which the witness exhibits with respect to the conclusion advanced by him.

The first proposition which the doctor advances is that the questioned signature is altogether too well formed to be genuine, considering the conditions under which it is supposed to have been made. This signature, the doctor suggests, is about what it might have been if it had been written under normal conditions, and it cannot be supposed that a person lying stretched upon a cot and suffering from a mortal wound of the character of that inflicted on Liborio Bustos could sign his name as well as this. In this connection we quote the following passage verbatim from the testimony of Dr. Smith, as it appears in the transcript:

“The main thing is that the script is too well formed for a man who was dying of hemorrhage caused by a mortal wound. There should be much more difference than that which actually appears. The trouble is that the difference is not the true difference that should appear between the two signatures” (*i. e.*, between the questioned signature and one of the authentic signatures). “There should be indications of shaking or signs of a trembling of the hand. When a man writes under the stimulus of powerful pain there should be signs of it, characteristic of his condition. And it is the duty of a handwriting expert to know what those signs are. For the reasons stated I am sure, according to my judgment, that a man placed in these conditions could not have written this signature” (*i. e.*, the questioned signature) “in the form in which it is written.”

The doctor hastens to add that he is not testifying on this point as a physician; and it should be stated that he is not a doctor of medicine. He is speaking, so he says, rather in the light of general knowledge and common sense, since it is known that the state of the nerves and the condition of blood pressure leave their traces in the character of the writing.

It results, according to the witness' own statement, that the criterion upon which he pronounces the signature a forgery has no relation to the specialized

knowledge with which experts in handwriting should be conversant; and the circumstance will not pass unperceived that his argument rests upon an hypothesis of fact totally at variance with the facts revealed of record. The defendants' own witness, Dr. Jose Talag, testifies, as we have already stated, that Liborio Bustos, while appreciating fully his precarious condition, was neither nervous nor unquiet at the time he signed the document in question and that he was then in the full possession of his mental faculties. Moreover, it must be remembered that this signature was made only three or four hours after the injury had been inflicted and about twenty hours before death supervened. The assumption that the injured man ought not to have been able to make as good a signature as this at the time he signed the questioned document is, therefore, wholly gratuitous and unwarranted.

But of course there is truth in the general proposition that the physical and nervous condition of a writer should be reflected to some extent in his script; and we point to the irregular formation of the word "Zabala" in the questioned signature and the absence of the customary period after the signature as indicative of increasing weakness as the hand of the writer moved over the paper.

We have been at pains to exhibit clearly the principal argument used by this witness not only to expose its weakness but in order to exhibit with greater clearness the inconsistency between his main proposition and his subsequent comment upon the signatures before us. In this connection it will be observed that, after planting his attack upon the proposition that the signature in question is too well formed, the witness proceeds to enumerate twelve points wherein the questioned signature differs from one or more of the three admittedly genuine signatures. In other words, the witness would first have us believe that the questioned signature is so much like the others that it cannot be genuine and again that it differs from them in so many features that it must likewise be pronounced a forgery. This is absurd. The twelve points of real or imaginary difference to which the witness refers are in our opinion rather twelve reasons for believing the questioned signature to be genuine.

It is a first principle in writing that exact coincidence between two signatures is absolute proof that one or the other is a forgery. There must be some difference before authenticity can be admitted; and the general rule is

that authenticity reposes upon a general characteristic resemblance, coupled with specific differences, such as naturally result from the infinite variety of conditions controlling the muscles of the writer at each separate effort in forming his signature.

In the case before us we may point to the following points of similarity between the questioned signature and one or more of the genuine signatures as indicative of unquestionable authenticity: (1) The similar general effect of all the signatures taken in their entirety; (2) the similarity between the third and fourth signatures as to the alignment of the word "Liborio Bustos;" (3) the similarity of all the signatures in respect to the inclination of the letters, and especially as regards the slight inclination to the left of the letter B in the name Bustos; (4) the manifest confidence exhibited by the writer of the questioned signature as regards sequence of effort, there being no indication at any point of hesitation or lack of confidence as to the next stroke to be made; (5) the similarity of all the signatures in respect to certain combinations of letters made after the muscles of the hand had become free and automatic as "ibori" in Liborio, and "ust" in Bustos; (6) the similarity of the formation of other particular letters, notably the B in Bustos, the small "b" throughout, and the characteristic mode of connection between Bustos and Zabala; and (7) the notable similarity of pen-pressure in curves lying at similar angles. Thus, it will be noted that in the small "b" in both Liborio and Zabala, the pressure is invariably on the right nib of pen.

Our conclusion, then, after a careful comparison of the questioned signature with the genuine signatures of Liborio Bustos, must be that the signature attached to his *ante mortem* statement (Exhibit B) was undoubtedly made by him and by no other person. This is in conformity with the credible testimony of persons who were present when the statement in question was signed, which testimony has not been contradicted by any witness. It results, as already suggested, that the attack upon the authenticity of this document must be considered to have completely collapsed.

We have now arrived at a point where it is desirable to make comment upon the personality and character of the principal witnesses for the prosecution, as well as their opportunity to know the facts about which they speak, and particularly with reference to the circumstances immediately connected with the

stabbing of Liborio Bustos in the circus. But by way of preface to what is now to be said, an observation or two may be justly made concerning the conditions with which the prosecuting officials were apparently confronted when conducting their investigations in this case.

In this connection it appears that after the homicide was committed, a rumor began to be propagated in the municipality of Macabebe to the effect that anybody giving information with respect to the killing would be joined as an accused person in the prosecution which was presently to be begun. Witness after witness for the defendants have testified to the fact of this rumor; and although the same witnesses have, as we well know, testified falsely as to the identity of the immediate perpetrator of the homicide, we see no reason why their statement with respect to the currency of this rumor might not be accepted as true. Of course such a rumor could not possibly have been put out by the investigating officers, for what they were after was information; and naturally it was desirable from their point of view that every person knowing anything should reveal it. Such a rumor, in the nature of things, could only have emanated from the accused or persons acting in their behalf. However, whether due to that rumor or to the ramifications of wealth, power and kinship enlisted in behalf of the accused, the mouths of some persons who might have been supposed to know something about the killing were mysteriously sealed; and it is noteworthy that even the two physicians who attended Liborio Bustos on the night he received the fatal injury were examined as witnesses for the accused and both showed a marked bias in their favor. Rarely indeed has a case come before this court in which the administration of justice has been so manifestly imperilled by influences deriving from the potency of an accused person.

The witnesses who testified in court with reference to facts occurring in the circus at the time the homicide was committed, and as to whose truthfulness we entertain no doubt, are four in number. Two of these, to wit, Julian Mendoza and Felicísimo Bustos, saw Proceso Bustos drive the dagger into the body of Liborio Bustos; a third, Florencio Coquia, saw most of the assault from the beginning; and though the movement of Proceso Bustos at the time he made the fatal stroke was shut off from the view of this witness, and hence the fatal blow was not seen by him, he saw practically everything else, including the knife in the hands of Proceso Bustos after the stabbing was over. The fourth of the witnesses referred to is Aureliano Dizon, the justice of the peace, who saw the beginning

of the assault; but who, believing, with good reason, that his own life was in danger, immediately withdrew from the circus.

Julian Mendoza is a notary public in the municipality of Macabebe, of the age of 34 years. At the time of the homicide he was upon friendly relations both with Liborio Bustos and the accused; and on the night in question he had gone with Aureliano Dizon to the circus, the latter being accompanied by members of his own family. They arrived at the circus a few minutes before the family of Liborio Bustos appeared; and passing around to the right, they took seats in the front row, adjacent to those taken a few minutes later by the family of Liborio Bustos when the latter arrived at the circus. The witness noted the arrival of the family of Liborio Bustos and observed that Liborio Bustos had to go over to the other side of the ring to find a seat for himself, there being no other seat in the place where his family had been bestowed. The witness further saw Liborio Bustos seat himself between Irineo Cailao and Alejandro Ronquillo, under the circumstances already described in this opinion. The instant the assault on Liborio Bustos began, the witness hurried across the ring, believing that as a friend of both parties he could safely intervene and put an end to the disturbance. He saw the various accused participating in the assault substantially in the manner already set forth in this opinion; and in particular he saw Proceso Bustos making his way into the circle, and heard him at the same time say "Make way; let me pass," as testified to by Felicísimo Bustos. The witness said that he was at the distance of about one meter from Proceso Bustos when the latter stabbed Liborio Bustos with a dagger ten or twelve inches long; and he demonstrated the manner, *i. e.*, from below upwards, in which the stroke was delivered by Proceso Bustos.

A careful perusal of the testimony of this witness fails to reveal the slightest reason to doubt the substantial truthfulness of any part of it. The circus was at the time well lighted by four large and bright lights. When the trouble began the witness was about ten meters distant, being seated in the front row on the right; while Liborio Bustos was seated in the front row on the left, and almost immediately opposite. At the same time the ring had just been vacated by the performers; and there was nothing whatever to obstruct the view of a person placed as was this witness, or to prevent him from seeing the assault from the moment of its inception. When he crossed the ring, as he at once did, to separate the contending parties, his opportunity for seeing what

occurred was improved; and, as already stated, he was only one meter away from Proceso Bustos when the latter delivered the fatal blow. To believe that this intelligent witness, who is friendly to all concerned, has perjured himself in order to convict nine innocent men on a charge of murder is preposterous.

Felicisimo Bustos, at the time of this homicide, was about fourteen years of age and was then a student in the seventh grade of the Burgos Institute in the City of Manila. On the night in question he was seated near Julian Mendoza at the circus and had the same opportunities for observation as the latter. He says that he knew that a state of enmity existed between his father and Proceso Bustos, but he was ignorant of the cause. This witness, as already stated in this opinion, saw the first movement of Alejandro Ronquillo as the latter grabbed the hand of Liborio Bustos; and the witness immediately crossed over to a point near the place where the disturbance had arisen and was there able to see perfectly every important movement made. A careful examination of his testimony is convincing to the effect that he speaks with candor, and we believe that he has described the scene exactly as he saw it.

Doctor Hans Gross, a celebrated Austrian jurist and expert in criminology, has made an observation as to the weight to be attached to the testimony of youths, which we here quote as pertinent to the point of the weight to be conceded to the testimony of Felicisimo Bustos. Says this learned author:

“An intelligent boy is undoubtedly the best observer to be found. The world begins to take him by storm with its thousand matters of interest; what the school and his daily life furnish cannot satisfy his overflowing and generous heart. He lays hold of everything new, striking, strange; all his senses are on the stretch to assimilate it as far as possible. No one notices a change in the house, no one discovers the bird’s nest, no one observes anything out of the way in the fields; but nothing of that sort escapes the boy; everything which emerges above the monotonous level of daily life gives him a good opportunity for exercising his wits, for extending his knowledge, and for attracting the attention of his elders, to whom he communicates his discoveries. The spirit of the youth not having as yet been led astray by the necessities of life, its storms and battles, its factions and quarrels, he can freely abandon himself to everything which appears out of the way; his life has not yet been disturbed by

education, though he often observes more clearly and accurately than any adult. Besides, he has already got some principles; lying is distasteful to him, because he thinks it mean; he is no stranger to the sentiment of self-respect, and he never loses an opportunity of being right in what he affirms. Thus he is, as a rule, but little influenced by the suggestions of others, and he describes objects and occurrences as he has really seen them. We say again that an intelligent boy is as a rule the best witness in the world." (As quoted in Moore on Facts, vol. II, pp. 1055, 1056.)

Florencio Coquia is a native and resident of the Province of Pangasinan, but for some time prior to the homicide in question he had been acting as postmaster of Macabebe. He happened to be at the circus in Macabebe on the night when Liborio Bustos was slain, having taken a seat in the front row to the left of the entrance. The seat occupied by him appears to have been about three meters distant from the place where Liborio Bustos had found a seat. When the disturbance began he directed his attention to the scene and at the same time moved out to a point somewhat more in front of the actors and about one meter farther away. He saw the various assailants engaged substantially in the manner already explained in this opinion; and in particular we note that he mentions Felipe Bustos as one who struck the deceased in the face and he also describes the act of Jose Blanco in placing his revolver against the forehead of the deceased. He saw the wife of Liborio Bustos catch Proceso in her arms as the latter hurled himself at Liborio Bustos, and saw Proceso push the woman to the floor. He did not see Proceso Bustos stab Liborio Bustos, but, as already stated, he saw the dagger in the hand of Proceso Bustos when the assault was over and Liborio Bustos had been carried out. This witness also states that he did not observe the presence of the boy, Felicísimo Bustos, until Liborio Bustos was being removed, when he noticed that the boy was helping his mother and Julian Mendoza, as they conducted the deceased out of the circus.

A careful examination of the testimony of this witness fails to reveal any sufficient reason for doubting the substantial truth of his testimony; and no motive is apparent or imaginable why he should have testified as to these facts against the accused, supposing them to be innocent of the crime charged. In weighing his testimony it should be noted that since the commission of this homicide this witness has returned from Macabebe to live in his native province

of Pangasinan, and he is therefore separated from the local prejudices and local influences that might operate to create a bias in the mind of a resident of Macabebe.

Aureliano Dizon, the justice of the peace, at the time the trouble arose was sitting near Julian Mendoza and Felicisimo Bustos; and he had equal opportunity with them of seeing the beginning of the disturbance, which he describes substantially as narrated by others. Indeed, this witness testifies to a fact which, if it occurred, was not observed by either of the three witnesses already mentioned. We refer to the approving nod given as a signal by Proceso Bustos to Alejandro Ronquillo when the latter first seized Liborio Bustos. While it is not impossible that such a signal may have been given, there is a possibility that the witness may have misinterpreted the movement attributed to Proceso Bustos, and we pass the incident as unimportant.

Aureliano Dizon recounts that in December, 1919, or several months prior to the homicide, Proceso Bustos confidentially told him to keep away from Liborio Bustos, adding at the end, "Take care, if you do not mind my advice as a brother and a friend." It was upon this occasion that Proceso Bustos told Dizon that Liborio Bustos had proved a traitor, referring to the matter of improper relations between Liborio Bustos and a woman. Dizon thereupon tried to soothe Proceso Bustos, saying that he believed the rumor was groundless and pointing furthermore to the fact that Liborio Bustos had valiantly supported Proceso Bustos in his candidacy for the office of president. This effort of Dizon to quiet the feelings of Proceso Bustos was ineffectual; and as Dizon continued in friendly relations with Liborio he recognized that he himself had incurred the enmity of Proceso Bustos. Accordingly when he saw the beginning of the assault upon Liborio Bustos, he naturally believed that, if he attempted to interfere, he himself would be slain. For this reason he left the circus at once and hastened to the municipal building to report the trouble by telephone to the Constabulary. From this point he directed himself towards home, passing on the way the house to which Liborio Bustos had been conveyed; and, as already stated, he there found Liborio Bustos sitting in a chair in front of the house, and Dizon remained with him practically until the time of the departure of Liborio Bustos for Manila.

As Aureliano Dizon took the dying declaration of Liborio Bustos, and has

otherwise manifested interest in the prosecution of the present appellants, his personality has been made a target in the attacks of the defence; and his activities have thus been subjected to considerable criticism. We find little or nothing in the record to justify these criticisms; and we believe he has acted throughout with the commendable purpose of assisting in the administration of justice, a duty incumbent upon a person in the office of justice of the peace.

In closing our observations upon the testimony of the more important witnesses for the prosecution upon whom full reliance is placed by this court, we should not omit to mention Aquilino Silva, a cousin not only of the deceased but of Proceso Bustos and Felipe Bustos as well. This witness testifies to the deep feeling of enmity with which Proceso Bustos regarded Liborio Bustos, due to the fact that Felipe Bustos had told Proceso Bustos of improper relations between Liborio Bustos and Proceso's wife; and the witness says that upon a certain occasion (December 22, 1919) he had sought an interview with Proceso Bustos in the hope of bringing about a reconciliation. He found Proceso Bustos highly inflamed towards Liborio, and the friendly efforts of the witness were unavailing. The testimony of this witness, apart from being wholly uncontradicted in the record, bears every appearance of truth, and no motive appears that would have impelled him to testify falsely against his two cousins and their associates in this case.

We now proceed to consider the testimony of Pablo Ocampo, the last of the witnesses for the prosecution requiring particular mention; and we have designedly reserved this subject for comment at the end, not only because of his relation to the defence but because his antecedents and character are such as to require a court to accept his statements with reservation.

It appears, then, that a few months prior to the homicide, Pablo Ocampo emerged from prison, after having extinguished a sentence of seventeen years for a homicide committed by him many years ago while serving in the Philippine Constabulary in the Province of Albay. Upon the termination of this long period of incarceration Ocampo naturally turned his steps in the direction of the municipality of Macabebe, having been there brought up as a child upon the estate of Felix Bustos, the grandfather of Proceso Bustos. With no present means of support, he applied to Proceso Bustos for employment; and the latter accepted

him as a cropper, placing at his disposal three cavans of land located near the home of Proceso Bustos in Saplat, Macabebe. As the land thus let to Ocampo contained no house upon it in which the renter could live, Proceso Bustos took Ocampo into his own house, and Ocampo thus became virtually a member of the household of Proceso Bustos. This relation was established in April, 1920. Very soon thereafter, according to the witness, Proceso Bustos approached the witness with a proposition that the witness should assist in putting Liborio Bustos and Aureliano Dizon out of the way. The motive which impelled Proceso Bustos to this step, as stated by Bustos, was that Liborio Bustos had been intimate with Proceso's wife. As against Aureliano Dizon, the grievance was that Dizon was a friend of Liborio Bustos and otherwise obnoxious to Proceso Bustos. The witness says that Proceso Bustos promised him, in case he should slay Liborio Bustos, to increase the three cavans of land, which Ocampo then held, to six, and further to give him the sum of five thousand pesos. This proposition, the witness pretends, was not received with enthusiasm by him, and this fact having been noted by Proceso Bustos, the latter became irritated and indulged in veiled threats towards the witness in case he should not make himself subservient to his master's will. The result was that the witness gave in and exhibited external indications of a willingness to assist in the projected double homicide. The witness insists, however, that it was a complicity on the part of the body only and not of the mind, and he says that he had a secret reservation not to assist in carrying the project out. Nevertheless he says that, during the month of May, 1920, he accompanied Proceso Bustos to two different *fiestas* in different barrios of the municipality of Macabebe, with the avowed intention, on the part of Proceso Bustos, of slaying Liborio Bustos and Aureliano Dizon if they should be so unfortunate as to show themselves on either of those occasions. As they did not appear those two schemes failed of effect.

The witness then goes on to declare that the homicide committed upon the person of Liborio Bustos in the circus at Macabebe on the night of June 19, 1920, was the direct result of a premeditated plan arranged on that date by Proceso Bustos with the assistance of Felipe Bustos and Jose Blanco and other henchmen and dependents of Proceso Bustos. In this connection the witness says that Proceso Bustos, having become aware that the performance was to occur on the night stated, provided himself with a number of tickets and advised Ocampo

to be on hand. The final conference among the conspirators was held, so the witness states, in the afternoon of the date stated, at the house of Felipe Bustos, at which place were collected a number of individuals who were expected to take part in the tragedy.

The witness says that Proceso Bustos was at first inclined to confide the work of killing Liborio Bustos to Ocampo himself, observing that Ocampo was the most brutal of the gang and had already been in prison. Jose Blanco objected to this, on the ground that inasmuch as Proceso Bustos was the person who had been dishonored by Liborio Bustos, Proceso Bustos himself ought to assume the role of the slayer of Liborio Bustos. This suggestion met with approval from others; and it was agreed that Proceso Bustos should kill Liborio Bustos, while Ocampo was appointed to make way with Aureliano Dizon. At this conference arms, including four pistols, were distributed among the conspirators.

The circus tickets used by the members of the gang on this occasion called for reserved seats, and Ocampo was at first seated next to Alejandro Ronquillo in the front row on the left, the other conspirators being disposed substantially in the manner stated by other witnesses for the prosecution. After the party had been thus seated for a few moments Proceso Bustos directed Ocampo to vacate his seat and go back towards the entrance and seat himself in that section of the circus assigned for general admission. The purpose of this maneuver was to place Ocampo behind his intended victim, Aureliano Dizon, and somewhat between Dizon and the door. This order Ocampo obeyed. The witness says that he was told to assault Dizon at the moment when the disturbance, to be promoted by others against Liborio Bustos, should begin.

Supposing the witness to have spoken truly with respect to this shifting of his position in the circus, it is obvious that a vacant seat was thus left in the front row next to Alejandro Ronquillo though apparently to his right. Ronquillo must then have shifted over to the seat vacated by Ocampo, with the result that the seat between Ronquillo and Cailao became vacant. In this, as we have already seen, Liborio Bustos presently seated himself. Fortune was evidently for once playing into the hands of his enemies.

The account given by Pablo Ocampo of the circumstances immediately connected with the killing of Liborio Bustos in the circus agrees in most particulars with

the narrative given by other credible witnesses for the prosecution, though Ocampo is apparently somewhat less trustworthy than the others. According to Ocampo two sons of Proceso Bustos were original parties to the plot, though he does not say that they took a direct part in the killing; and he also intimates that Policronio Bondoc was implicated. Neither of these three individuals have been prosecuted in this case. Another point upon which the witness is not borne out by other testimony is this: When first examined, he said that after Liborio Bustos had been stabbed he was carried out by two of the policemen. This statement was clearly incorrect, as other proof shows that Liborio Bustos was taken out by his wife and Julian Mendoza, accompanied by the son, Felicísimo Bustos. This error on the part of the witness was evidently called to his attention during an intermission of the session of the court; and when he returned to the stand he changed his testimony on this point and said that he then remembered that Liborio Bustos had been conducted out of the circus by his wife and another person.

It will be remembered that, according to Ocampo, he had been deputed to slay Aureliano Dizon, but he says he had never intended to commit any such murder; and he permitted Dizon to leave the circus without molestation. For this failure of Ocampo to carry out his part of the murderous compact, he says he was roundly abused by Proceso Bustos that night, after the conspirators had withdrawn from the circus.

Considering the bad antecedents of this witness and other proof of his untrustworthiness and corruption revealed in the record, we think the trial judge was justified in making *casus omissus* of his testimony and in deciding the case upon the testimony of other credible and unimpeached witnesses. As we shall follow the same course in here disposing of the case, we shall not encumber the record with any lengthy discussion of his testimony. In this we do not close our mind to the possibility, not to say probability, that there was some sort of preconceived plan to take the life of Liborio Bustos, in which the accused in this case may have participated. But the testimony of Pablo Ocampo cannot safely be accepted as proving the existence of such a conspiracy. Having admitted his own complicity, he occupies virtually the position of a co-conspirator who testifies against his fellows, and his testimony cannot safely be accepted against them upon points where it is uncorroborated.

Having concluded our review of the proof submitted for the prosecution and having indicated the parts thereof which we consider true and irrefutable, we proceed to consider the testimony of the principal witnesses for the defence. Upon turning our attention to this branch of the case, we find that the defence is chiefly planted upon the proposition that Liborio Bustos was not slain by Proceso Bustos at the place where the disturbance occurred in the circus but by Pablo Ocampo in another place. Upon the question as to the exact place where the fatal blow was delivered, the witnesses testifying for the defence in the case now before us and those testifying against Ocampo in the other case are not in harmony among themselves; and a careful examination of this important and fatal discrepancy in the proof for the defence becomes desirable. The discussion incidentally brings to light a striking illustration of the futility of attempting to fabricate proof successfully upon a material matter when related circumstances are ascertainable with reasonable certainty. In order, however, fully to exhibit the falsity of the proposition that Ocampo was the slayer of Liborio Bustos, it is necessary to consider the manner in which this pretence was introduced into the case, the character of the witnesses relied upon to prove it, and the manner in which the proof has been varied to meet the exigencies of the defence.

It appears, then, that Pablo Ocampo was before the court as a witness for the prosecution on three successive days, namely, April 12, 13, and 14, 1921. With the presentation of his testimony the case for the prosecution was closed. The defence then began to put its witnesses on the stand, and the hearing of these witnesses occupied a period of several days. Five days after the testimony of Pablo Ocampo had been concluded, or on April 19, two witnesses for the defence were examined, to wit, Tomas Laquindanum, and Jacinto Manansala. They were followed on the next day by Ciriaco Cunanan; and these are the three who were at first relied upon by the defence to prove the fact that the homicide had been committed by Pablo Ocampo. To them we now accordingly direct our attention.

At the very outset it must be stated that no one of these witnesses has a personality, character, or antecedents such as would tend to generate confidence in his testimony. Tomas Laquindanum is a frequenter of cockpits, by his own admission; and though he was a member of the local band of musicians which was employed to supply musical entertainment at the circus, he admits that he was not with the band on the night in question. He also admits that he had taken his

family to Antipolo in the month of June, 1920; and after the homicide occurred he told Florencio Coquia, whom we credit as an unimpeached witness, that he (Laquindanum) was not in Macabebe on the night of the homicide, not having as yet returned with his family from Antipolo. It is furthermore noteworthy that this witness did not reveal the information which he now pretends to possess concerning the homicide until the Tuesday preceding the day when he appeared in court, and apparently after he had heard Ocampo testify as a witness on April 12, 1921, which was Tuesday. Nevertheless he was fully aware that the homicide in question had been the subject of investigation soon after it occurred. All external indications point to the conclusion that Laquindanum's testimony is a mere fabrication from beginning to end and that he was not even in the circus on the night in question.

Jacinto Manansala and Ciriaco Cunanan belong to a class which seems to be numerous in Macabebe, namely, that of ambulant merchants or peddlers,—an occupation well adapted to the purveyance of irresponsible gossip. Although both of these witnesses now pretend to know about the killing of Liborio Bustos, neither confided his important information to the prosecuting officials at the time of the investigation or thereafter; and the testimony of both must be considered as a new revelation brought into the case after the testimony of Pablo Ocampo had been given in open court and reduced to certainty. It is true Jacinto Manansala pretends to have intimated on one occasion to Aureliano Dizon that Ocampo was the person who killed Liborio Bustos; but this is denied by Dizon, and in all probability the assertion of this witness upon this, as upon other points, is false. Both Manansala and Cunanan assert that their preceding silence was due to the insistent rumor that any person who gave information about the killing would be punished, or joined in the prosecution to be promoted by the public authorities. Yet Manansala admits that as a member of the Philippine Constabulary many years ago he had learned that people who denounce crimes in this country are protected from molestation.

What then is the story told by these impostors? It is in brief this: That Liborio Bustos, unnecessarily and in a spirit of bravado, planted himself in the seat between Alejandro Ronquillo and Irineo Cailao, deliberately refusing another seat to which he had been directed by the usher; and that soon after thus seating himself, Liborio Bustos began a disturbance and attempted to draw a revolver. Upon this some one cried aloud, "Liborio Bustos is drawing a

revolver;" and Proceso Bustos, observing the commotion, called aloud to the police to arrest the disturbers. In obedience to this command the policemen who were near Liborio Bustos wrested a pistol from his hands; after which Liborio Bustos disengaged himself from the persons who had seized him and hurriedly proceeded towards the exit of the circus in order apparently to make his way out. All three of the witnesses agree that when he left the spot where the disturbance occurred, his movements were free and unobstructed and that he proceeded from that spot towards the exit alone. Meanwhile, according to the same witnesses, during the disturbance which we have described Felipe Bustos was occupying the position of a mere spectator, standing in a chair a little distance away with a child in his arm; and as the commotion subsided, Jose Blanco raised his hands aloft, as if to command attention, and said to the public, "Do not move, the trouble is now over."

The witnesses referred to are further a unit in saying that as Liborio Bustos approached the exit on his way out of the tent, he found his progress blocked in some measure by persons collected near the door inside; and as he passed through, Pablo Ocampo stabbed him with a big knife, inflicting the wound which caused death. Upon receiving this blow, Liborio Bustos is said, upon the same authority, to have addressed to Pablo Ocampo a base exclamation not infrequently heard among Filipinos of the lowest type but unfit to be reproduced in print, adding, "You have wounded me."

The foregoing narrative contains the important features of the testimony of the three witnesses mentioned; and upon these points concert is so obvious as, in our opinion, to be indicative of previous instruction. The capital thing of course is that Liborio Bustos was killed by a stab from a big knife in the hands of Pablo Ocampo; and all three agree that the blow was struck *within the tent and before Liborio Bustos had reached the exit.*

We now proceed to demonstrate the impossibility of such an occurrence; and for this purpose we limit the discussion exclusively to the testimony of witnesses introduced by the defendants themselves. The names to be thus invoked by us are Juan Yuson, Aurelia Bondoc, Macaria Mallari, Olimpia Gutierrez, Irineo Cailao, Felipe Bustos, and Jose Blanco. Juan Yuson was introduced by the defendants with a view to showing that Liborio Bustos was armed and that the tumult was caused by an attempt on his part to draw a pistol. The witness says

that when the disturbance occurred he arose from his seat in the part of the circus assigned to general admission, and inasmuch as this part of the enclosure was elevated at least a meter above the center, he was able to see clearly what then occurred. According to his statement, Liborio Bustos, after having been disarmed in the manner described by other witnesses for the defence, made his way unmolested and unaccompanied to the exit of the circus. At one point he seems to say that he saw Liborio Bustos pass out of the circus; but apparently becoming immediately conscious of the delicacy of the point, he qualified this statement by saying that he saw him go towards the exit but did not follow him with his eyes all the way. One thing is certain from his testimony and this is that not the slightest indication of disorder occurred within the circus while Liborio Bustos was passing out. If any such incident had occurred as the stabbing of Liborio Bustos by Pablo Ocampo at that place and time, this witness, who was near the door, would have undoubtedly seen it; and yet according to his testimony it is clear that nothing of the kind occurred.

Aurelia Bondoc, wife of Roman Bondoc, one of the accused, testifying as a witness for the defendants, says that after the disturbance had occurred, in which Liborio Bustos is supposed to have been disarmed, she saw him run towards the door alone and unaccompanied. As he went towards the door, no disturbance, great or small, occurred. The only tumult, according to her, was that which had taken place at the point where Liborio Bustos had had his altercation with the policemen when they are supposed to have disarmed him.

Macaria Mallari, the wife of Felipe Bustos, another of the accused, was also introduced as a witness for the defendants. She was present at the circus with her husband and two children. She saw the disturbance, as described by other witnesses, and saw Liborio Bustos leave the place of the altercation and go out. He went at a pace somewhat quickened, and she observed him until he passed out at the door. According to this witness, he was alone as he passed out; and he proceeded apparently without molestation.

Olimpia Gutierrez, testifying as a witness for the defence, saw Liborio Bustos go out from the circus, proceeding from the place where the disturbance had occurred. He was alone, and was not accompanied on his way out by any policeman or any other person. She saw no disturbance at or near the exit as Liborio Bustos went out.

More suggestive than anything else found in this connection is the testimony of the three defendants, Irineo Cailao, Felipe Bustos, and Jose Blanco. These are the only ones of the nine accused who testified on their own behalf, the other six having elected to remain silent. Of the three who testified in court, not one had the temerity to open his lips and say that Liborio Bustos was slain by Pablo Ocampo.

Irineo Cailao, the first of the three mentioned, describes the incident substantially as follows: While the first act was being presented by the circus performers, this witness saw Liborio Bustos put one leg over the other, but as the act was being concluded, he changed his position, placing the leg that had been below over the other. At the same time Liborio Bustos spat out some tobacco juice and ejected a quid of tobacco on the floor in front of Proceso Bustos who, as will be remembered, was one seat further removed to the left. After this, the witness heard some one say aloud, "Liborio Bustos is drawing a pistol." The witness then turned his head and saw Alejandro Ronquillo and Roman Bondoc snatching a revolver from Liborio Bustos, and he himself then intervened to assist them. In the course of the scramble over the pistol the weapon fell to the floor and was picked up by Roman Bondoc. The witness denies that Filomeno Sunga took any part in the affair, although then present in the circus. He says that after Liborio Bustos was disarmed he ran out, unaccompanied by any one on his way to the exit.

Felipe Bustos, the second of the accused who testified for the defence, saw Liborio Bustos hastily leave the circus after the disturbance. The latter, according to this witness, was unaccompanied by any one as he went towards the door.

Jose Blanco, the third of the accused who testified for the defence, pretends to have been completely innocent of all participation in the affair; so much so that he did not even see Liborio Bustos at the circus, his back being turned away when a slight disturbance occurred a few meters away from where the witness was sitting.

From the testimony of all these witnesses, it becomes absolutely certain that no commotion whatever could have occurred near the exit from the circus; and it is impossible that Liborio Bustos could have received the fatal stab from Pablo

Ocampo at that place.

In the opinion in the lower court the trial judge did not fail to comment with much effect upon this feature of the defence; and when his decision was published, it must have been obvious to any one that a serious mistake had been made by witnesses for the defence in supposing that Ocampo had struck the fatal blow inside the tent. With this in mind it is instructive to note the developments that thereafter occurred in the efforts of the defence to remedy this blunder.

In this connection it appears that, after the judgment convicting the appellants had been entered in the lower court, an uncle of Proceso Bustos, by the name of Isip, produced two new witnesses, to wit, Honorio Garcia and Fausto Navarro, who pretend to have seen Ocampo inflict the fatal wound upon Liborio Bustos; and the affidavits of these two individuals were submitted in connection with the petition to open the cause for new proof, which was presently filed in this court. After that application had been granted, their testimony was duly taken in connection with the proof by which it was intended to impeach the authenticity of the signature of Liborio Bustos to the *ante mortem* statement, Exhibit B. Both of the new witnesses to whom reference is now made belong to the class of petty ambulant merchants, or peddlers, so numerous in Macabebe; and the important information which they claim to possess had been carefully guarded as a secret in their own bosoms until casually disclosed to Isip at the time when new proof was so badly needed by the defendants in this cause.

We consider it morally certain that Fausto Navarro was not present at all in the circus on the night of the homicide; and for that reason alone his testimony with reference to what occurred in the circus must be taken to be absolutely false. The reason for saying this is, that a short while after the homicide was committed a brother of the deceased, one Agustin Bustos, embarked in an automobile belonging to Ramon Yanga, which was going from Macabebe to Manila. When the party in this auto reached Apalit, Fausto Navarro asked as a favor to be taken to Manila. The request was granted, and Navarro got in. In the course of this journey to Manila, Navarro asked Agustin Bustos a number of questions with respect to the homicide, stating that he himself had not been present in Macabebe on the night in question.

Now, what is the story told by these two new witnesses? It is to the effect that while Liborio Bustos was in fact killed by Pablo Ocampo, as other witnesses for the defence had claimed, the blow was not given within the circus—as said witnesses had erroneously supposed—but at the entrance to the circus door. It will be observed that the problem of locating the spot where the killing occurred was one that involved some nicety of discernment, since it was necessary to place the scene of the tragedy at a point where it could be seen only by a few persons inside the tent (*i. e.*, those falsely pretending to have seen it), and by none others. Honorio Garcia says that Ocampo stabbed Liborio Bustos in front of the door of the circus; or, as he puts it in another place, just as Liborio Bustos emerged from the door of the circus. Fausto Navarro says that he was sitting near the door and as he saw Liborio Bustos going out, he (the witness) followed and saw the act of aggression committed by Pablo Ocampo in the door of general admission looking into the street. This witness brings out the fact that there were also two side door of admission to the circus but the exit was only through this door looking into the street; and it was in front of this door that the killing occurred. Both witnesses report the exclamation supposedly made by Liborio Bustos at the time of receiving the stab from Ocampo in the same words as the other three witnesses (Laquindanum, Manansala, and Cunanan). The purely artificial character of all of this alleged new evidence is too manifest to require discussion; and when the entire proof is carefully considered, it becomes clear that this branch of the defence is as fragile as that which supposed the forgery of Exhibit B.

There are, however, numerous circumstances, as yet unmentioned, which likewise show the falsity of the testimony which imputes the crime to Pablo Ocampo. In the first place, no reasonable motive has been shown why Pablo Ocampo should have committed the homicide; while the existence of a revengeful spirit, or malice, on the part of Proceso Bustos towards Liborio Bustos is abundantly shown. It is true that some testimony has been submitted in behalf of the defendants to the effect that Pablo Ocampo had a grievance against Liborio Bustos, arising from the supposed failure of the latter to pay the former some petty wages for labor alleged to have been performed by Ocampo. We consider this proof too insignificant to require analysis.

In the second place, the testimony which supposes the fatal blow to have been given by Pablo Ocampo near the door of the circus fails to account for the

circumstance that Liborio Bustos should have been allowed to leave the circus alone, or should have desired to leave the circus alone under the circumstances supposed. If Liborio Bustos was a disturber of the peace or an aggressor in an assault attempted by him upon others, he would have been arrested, as the municipal president is said to have ordered; and the numerous policemen present were the ones who would have made the arrest. In that case the natural thing would have been for some of the policemen to accompany him as he was conducted out. Again, supposing the disturbance to have been of the trivial nature suggested by some of the witnesses for the defence, no reason is apparent why Liborio Bustos should have left the circus at all, especially as his family was then presumably still within the tent.

It will be noted that the preceding exposure of the pretence that Ocampo was the slayer of Liborio Bustos is based upon the inherent weakness of the testimony submitted by the defence; and when, as against this, is placed the affirmative proof for the prosecution, no doubt can be entertained as to where the truth lies.

The trial judge evidently attached great weight to the *ante mortem* statement of Liborio Bustos (Exhibit B); and in this his Honor was clearly right. Liborio Bustos could not possibly have been mistaken as to the personality of the individual who stabbed him and the place where the act was done. In this connection it must be remembered that the conditions surrounding the tragedy were not such as to permit of confusion as to the identity of the assailant, that is, as between Proceso Bustos and Pablo Ocampo; for it is not pretended by the defence that Ocampo took any part in the altercation near the circus ring. In the very nature of things Liborio Bustos must have known truly whether he was stabbed in that place or outside the tent; and if he was stabbed at the place claimed by him, the act could not possibly have been done by Pablo Ocampo.

Another consideration showing that the *ante mortem* statement of Liborio Bustos is entitled to much weight is to be derived from the lack of motive on his part to involve persons in ruin against whom he could have entertained no real enmity. Granting that he recognized Proceso Bustos as his personal enemy, and that he also entertained malice against Felipe Bustos and Jose Blanco, it is not easy to see why he should have wished to involve several

other innocent persons in destruction. If it was his purpose falsely to accuse his three enemies, would it not have sufficed to have named those three in his *ante mortem* statement as the authors of the homicide? From whatever angle the matter be viewed, the essential truth of the *ante mortem* statement is apparent.

In concluding our analysis of the case a few words of comment will be added upon certain aspects of the evidence supposedly favorable to the accused which have not already been the subject of treatment in this opinion.

The proof shows that Pablo Ocampo is left-handed; and, as we have already seen, Liborio Bustos was wounded in the left side. From this it is argued that the wound must have been made by Pablo Ocampo, while standing on the left of Liborio Bustos as the latter passed out of the circus tent. But this proves nothing. The wound was exactly where it would have been if inflicted by a right-handed person confronting the person against whom the blow was directed. And this is precisely the position occupied by Proceso Bustos with relation to Liborio Bustos at the time the fatal blow was given, by all reasonable inference from the testimony of the witnesses for the prosecution.

It has also been argued that Liborio Bustos could not have been killed by Proceso Bustos for the reason that the fatal wound was apparently made with a weapon having a single cutting edge, and it will be remembered that the witnesses for the prosecution have said that Proceso Bustos used a dagger (in Spanish *puñal*). As the trial judge pointed out in the appealed decision, the use of the word dagger does not necessarily indicate that the instrument had two cutting edges, and it does not appear that the witnesses for the prosecution intended by that term to indicate such an instrument. We note, furthermore, that a physician who examined the body of the deceased in Manila would not undertake to say whether the wound had been inflicted with a weapon having one or two sharp edges.

We have now traversed the proof in this voluminous record and have faithfully recorded such facts and considerations as are calculated to exert any decisive influence on the decision of the case. The conclusion is inexorable that the homicide in question was committed by the individuals named as defendants in the information filed in this cause, cooperating with each other in the manner and

to the extent already stated in this opinion. There was present, as against all of the accused, the generic aggravating circumstance that advantage was taken of superior strength. The trial judge, therefore, committed no error in sentencing the six appellants, under article 404 of the Penal Code, to undergo punishment as stated in the first paragraph of this opinion.

The information charges the offence as constituting murder, assigning as qualifying circumstances that the crime was committed with a known premeditation and *alevosia*. Neither of these factors is in our opinion proved with sufficient certainty to be made the basis of judgment. The testimony of Pablo Ocampo undoubtedly indicates the possibility that the homicide was planned beforehand and was the result of a deliberate conspiracy; but, as already indicated, the antecedents of this witness are not such as would justify the acceptance of his uncorroborated statement as to the existence of conspiracy. Evident premeditation is therefore not shown beyond a reasonable doubt, as against any of the accused. As to the element of *alevosia* it appears that Proceso Bustos struck the fatal blow while the deceased was engaged in a scuffle with others of the accused and possibly while he was actually held firmly by three of them. This undoubtedly tends to show the presence of *alevosia*; but we think the circumstance mentioned is adequately appreciated in the generic circumstance of abuse of superior strength, and *alevosia* otherwise does not sufficiently appear.

The judgment appealed from must therefore be affirmed; and it is so ordered, with proportional costs of appeal against each of the appellants, it being understood furthermore that, in addition to the penalties imposed by the trial judge, each of the accused shall also suffer the accessory penalties prescribed in article 59 of the Penal Code. So ordered.

Araullo, C.J., Avanceña,
and Villamor, JJ., concur.
Romualdez, J., concurs in the
result.

^[1] For resolution on motion for rehearing,

see p. 159, post.

[1]

Page 67, *post.*

CONCURRING AND DISSENTING

MALCOLM, J.:

I concur with the learned and exhaustive decision prepared by Mr. Justice Street in so far as it relates to the defendant and appellant Proceso Bustos. I concur with the equally learned dissenting opinion prepared by Mr. Justice Johns in so far as it relates to the other defendants and appellants. I desire to add a word of explanation with reference to my stand.

There are four possible courses for the court to take in the instant case against Proceso Bustos et al., and in the related case against Pablo Ocampo; namely, first, to acquit both Bustos and Ocampo because of the failure of the proof; second, to convict Bustos and to acquit Ocampo; third, to convict Ocampo and to acquit Bustos; and fourth, to convict both Bustos and Ocampo. Curious as it may seem, the last theory appeals to me as the correct one, Bustos being guilty as the author by induction and Ocampo as the probable perpetrator of the crime; but, unfortunately, this theory will fit into neither one of the informations. Accordingly, in concurring with the result arrived at by the majority, and in so doing, waiving such doubt as may persist with regard to the authenticity and value of the proof, I at least am permitted to join in convicting the principal accused.

I cannot conceive that any conspiracy or common agreement existed between the defendants to kill Liborio Bustos. Accordingly, the criminal responsibility is individual and not collective. For that reason, I think it unjust and unlawful to condemn the defendants other than Proceso Bustos to long terms of imprisonment.

DISSENTING

JOHNS, J.:

On June 19, 1920, Liborio Bustos was stabbed with a dagger in the municipality of Macabebe, Pampanga, P. I., from the effects of which he died on or about June 21, 1920. On the night that he was stabbed he verified the complaint before Mr. Aureliano Dizon, justice of the peace, in which he charged Proceso Bustos, Jose Blanco, Felipe Bustos, and Filomeno Sunga with the crime of frustrated murder.

It is alleged "that on or about June 19, 1920, the accused acting and confederating together did voluntarily, unlawfully, and criminally, Jose Blanco being armed with a revolver, point to the complainant threatening to kill or fire at him in case he should move, while said complainant was firmly held by the chief of police, Filomeno Sunga, and the municipal president, Proceso Bustos, and while the complainant was in this condition, the former wounded him with the dagger, which he was carrying, in the abdomen and the accused Felipe Bustos, taking advantage of this opportunity, gave the complainant several blows with his fist, inflicting several contusions and light injuries on his face."

On June 20, 1920, at 1.40 a. m., Liborio Bustos made the following *ante mortem* statement, known in the record as Exhibit B:

"I, Liborio Bustos, of age and a peaceful resident of the municipality of Macabebe, Pampanga, P. I., under solemn oath and having in mind that I am about to die, truthfully declare the following:

"That between 9.00 and 10.00 o'clock tonight and while I was seated on a chair on the stage of the circus show where a performance was being given in this municipality of Macabebe, Pampanga, P. I., Proceso Bustos, municipal president of Macabebe, the chief of police, Filomeno Sunga, the municipal secretary, Felipe Bustos, and Jose Blanco and Donato Benosa approached me.

Felipe Bustos slapped me without any reason, and the chief of police, upon seeing this, seized me strongly by the neck and when I was in such a position, Proceso Bustos slapped me also and struck me with a dagger, as a result of which I was wounded in the abdomen beneath the rib on the left side. Not content with this, a policeman by the name of Irineo Cailao also beat me with his club. All of these people consider me as their enemy. Before the last election was held, I slapped Jose Blanco on the street because he was insulting and belittling me before the crowd. Proceso Bustos was jealous of me and his wife without any lawful ground, and for this reason they tried all means to falsely accuse me. They accused and charged me with having fired at the house of secretary Felipe Bustos; they induced a Chinaman to accuse me of the crime of robbery although I was innocent of this. On account of the actions of my aforesaid enemies I am now involved in many prosecutions. While the chief was holding me, Pepe Blanco was pointing a revolver at me. These two people, the president and his secretary, have on various occasions threatened to have me killed or maltreated.

“And tonight, therefore, without any evil intention, I entered the circus with my beloved family to free my thoughts from the many dangers brought about by my bitter enemies, who yesterday were my friends, because they envy my peaceful life and the estimation in which I am held by my townsmen. Tonight I became the victim of these people who are my enemies.

“All of the foregoing is the whole truth, because at this time it seems as though death is approaching me and it is necessary to present my soul spotless before the Almighty God.

“In testimony whereof I have signed this, notwithstanding that I am lying on my mat, this 20th day of June, 1920, at 1.40 here in Macabebe, Pampanga, P. I.

(Sgd.) “LIBORIO BUSTOS
ZABALA

“Witness:

(Sgd.) “JOSE TALAG, M. D.”

In its opinion, the trial court says:

“The court, in order to arrive at the truth of what actually occurred, necessarily has to make an analytical examination of all the elements of proof adduced at the trial, because it feels that it cannot accept the evidence for the prosecution in its entirety, nor that of the defense, without committing a grave error. * * *

“The established facts are, that on the night in question all of the accused were gathered together in the theater where the incident occurred; that Liborio Bustos provoked the accused, Proceso Bustos, by a challenging glance, and, in his presence, casting aside the cigar which he was smoking, whereupon a fracas immediately occurred at the particular place where Liborio Bustos was seated. These facts were unquestionably proven at the trial. * * *

“If the theory of the prosecution cannot be absolutely accepted, nor that of the defense, how can we establish the truth of what occurred?

“The court, considering together all the evidence adduced at the trial, and according to the *ante mortem* declaration of the deceased (Exhibits B and B-1), in which it is clearly stated who had wounded him, believes, and is convinced, that the accused Proceso Bustos, Felipe Bustos, Jose Blanco, Filomeno Sunga, Donato Benosa, and Irineo Cailao are the persons who attacked and assaulted Liborio Bustos on the night in question. * * *

“From the evidence presented, it is not reasonable to suppose that Liborio Bustos did not recognize his aggressors, having been face to face with them, in a well-lighted circus show, on the night in question when he received his wounds and bruises. * * *

“Liborio Bustos, in his *ante mortem* declaration, as well as the other witnesses for the prosecution, pointed to Proceso Bustos as the person who struck him with the dagger and that the accused, Felipe Bustos, Jose Blanco, Filomeno Sunga, Irineo Cailao, and Donato Benosa, who were mentioned in the *ante mortem* declaration, had taken part in the commission of the crime in the manner already stated. * * *

“Therefore, the act cannot be qualified as murder by the circumstance of treachery, unless the court believes the fact brought out by the witnesses for the prosecution that Liborio Bustos was held by Ronquillo and Cailao while being assaulted by the other defendants; but as expressly stated above, this part of the testimony of the witnesses cannot be believed because Liborio Bustos, being a man of education, would not have overlooked this important detail in his dying declaration. As he did not mention this fact, it seems reasonable to believe that he was not held by Ronquillo and Cailao. * * *

“Referring to the defendants Alejandro Ronquillo, Francisco Reyes, and Roman Bondoc not being mentioned at all by the deceased in his *ante mortem* declaration, the court is of the opinion that they did not have any participation whatsoever in the crime, and if they have been named by some of the witnesses for the prosecution, it was probably due to the confusion at the time of the occurrence.”

From the foregoing, it is very apparent that the trial court convicted the defendant upon the strength of the *ante mortem* statement of the deceased, and that he did not believe any of the evidence for the prosecution, except in so far as it tended to corroborate that statement. In other words, in the opinion of the trial court, without the *ante mortem* statement the evidence would not have been sufficient to convict the defendant beyond a reasonable doubt.

The evidence shows that this dying statement was prepared by Mr. Dizon on a typewriter in an adjoining room. It will be noted that the first complaint charges Proceso Bustos, Jose Blanco, Felipe Bustos, and Filomeno Sunga with the crime of frustrated murder and the dying statement charges that the crime was committed by Proceso Bustos, the municipal president, Filomeno Sunga, the chief of police, Felipe Bustos, the municipal secretary, Jose Blanco, Donato Benosa, and a policeman by the name of Irineo Cailao. In other words, two persons are charged in the dying statement as parties to the crime who are not mentioned or described in the verified complaint for the crime of frustrated murder which was made by the deceased, under oath, before Mr. Dizon, as justice of the peace, who is the identical person that prepared the dying statement on the typewriter.

Whatever may be said about the authenticity of the dying statement and the mental condition of Liborio Bustos at the time it was made, it must be conceded that the criminal complaint is authentic and that the deceased knew the contents and what he was doing at the time he signed it. Yet, twenty-four hours afterwards he makes, what purports to be, a dying statement and charges two other men with the crime of murder who are not mentioned or included in the complaint for the crime of frustrated murder.

Much is said in the majority opinion about the dying statement, tending to show that the signature of the deceased was genuine. Although the question is not free from doubt, for the purpose of this dissenting opinion, I will treat the signature of Liborio Bustos to the dying statement as genuine. But even so, it clearly shows upon its face that it is not the statement of a dying man.

The proof is conclusive that at the time the dying statement was prepared, the deceased was lying in bed in one room and that the statement was written on a typewriter by Mr. Dizon in another room. The deceased was then a very sick man and, at times, was vomiting blood. Outside of the instrument itself, there is nothing in the record which shows, or tends to show, that the deceased ever dictated the dying statement, or told Dizon to prepare it, what he should write or what the statement should be. It is very apparent that it is not the statement of a dying man and that it was prepared by Mr. Dizon without any directions or suggestions from the deceased, and that after it was prepared the deceased signed it as it was prepared, at the instance and request of Dizon.

Again, the dying statement is flatly contradicted by the actual, physical and undisputed facts. It recites: "While I was seated on a chair on the stage of the theater," the defendants "approached me." That statement is flatly contradicted by every eye-witness for both the prosecution and the defense and the findings of fact made by the trial court above quoted, in which it is recited:

"The established facts are, that on the night in question all of the accused were gathered together in the theater where the incident occurred; that Liborio Bustos provoked the accused, Proceso Bustos, by a challenging glance and, in his presence, casting aside the cigar which he was smoking, whereupon a fracas immediately occurred at the particular place where Liborio Bustos was seated.

These facts were unquestionably proven at the trial.”

The trial court expressly finds as a fact that “Liborio Bustos provoked the accused, Proceso Bustos, challenging him, etc.” The dying statement then recites that “Felipe Bustos slapped me without any motive,” and that upon seeing this, the chief of police “seized me strongly by the neck and while I was in such a position, Proceso Bustos slapped me also and stabbed me.”

The testimony is conclusive that at the inception of the trouble Proceso Bustos was sitting in another and a different part of the theater with his own family. All of the eye-witnesses for the prosecution testify that after the trouble started Proceso Bustos left the place where he was seated and, brandishing a dagger above his head where it could be seen by all of the three or four hundred people who were in the theater, went directly to the place where the trouble was and inflicted the fatal wound.

Under the theory of the eye-witnesses for the prosecution, as well as the dying statement, at the time the wound was inflicted, the deceased was completely surrounded by, at least, a half a dozen persons with whom he was struggling and by whom he was securely held around the arms, body and neck, before Proceso Bustos left the place where he was seated.

Assuming this undisputed testimony to be true and that the deceased was stabbed at that particular place, it is a physical impossibility for him to have known by whom he was stabbed or that he was stabbed by Proceso Bustos.

Again, the dying statement further recites that he “entered the circus with my beloved family to free my thoughts from the many dangers brought about by my bitter enemies, who yesterday were my friends,” yet, by the undisputed testimony, after going to the theater with his family, he voluntarily left the place where his wife and son were seated and went directly to the place where his enemies were seated and took a seat between them, and, as the trial court found, “provoked the accused.”

This dying statement must be construed as a whole, and if it is false in any one of its material portions, then the whole instrument should be treated as false, but here all of its material portions are flatly contradicted by the

actual, physical, undisputed facts testified to by both the witnesses for the prosecution and the defense.

Again, if the deceased was stabbed by Proceso Bustos, as the prosecution contends, it is a matter of common, ordinary knowledge that blood would have flowed from the wound and there would have been some evidence of blood at the place of the struggle, which would have been an easy matter to have proved. The prosecution not only failed to prove that any blood was found there, but witnesses for the defense testified that no evidence of any blood was found.

In the final analysis, the defendants were convicted by the trial court upon the strength of the *ante mortem* statement, which is flatly contradicted by the actual, physical, undisputed facts, and that court found as a fact that in many important particulars the testimony of the eye-witnesses for the prosecution was not worthy of belief. He saw and heard the witnesses testify and in a case like this his findings upon the weight of the evidence in particular should be sustained.

The majority opinion of fifty-seven pages is largely devoted in an effort to sustain the credibility of the witnesses for the prosecution whom the trial court found as a fact to be unworthy of belief.

A detailed discussion of the evidence would not serve any useful purpose. The theory of the prosecution and the majority opinion is largely founded upon the fact that the deceased and the defendant, Proceso Bustos, were personal and political enemies; that for such reason Proceso Bustos had a vindictive motive for killing the deceased, and because he had such a motive it must follow that he committed the crime.

At the time in question, Proceso Bustos was municipal president of Macabebe, Pampanga, and Felipe Bustos was municipal secretary, both of whom were related to the deceased. Jose Blanco previously held an important office; Filomeno Sunga was chief of police; Donato Benosa was clerk to the municipal president; Irineo Cailao, Francisco Reyes, and Roman Bondoc were municipal police and Alejandro Ronquillo was a servant of the municipal president. A large majority of them were men of high standing in the community in which they lived, held responsible positions and had taken a solemn oath to uphold and enforce the law. Their

character, standing, and reputation are all waived aside, they are now declared to be felons and convicted of the crime of murder upon a dying statement which was prepared by Dizon, who was their political enemy and a personal friend of the deceased, a fact which is overlooked in the majority opinion.

Because Dizon prepared a statement showing that the defendants were guilty, it is assumed that they are guilty. Dizon was the justice of the peace. The deceased was seriously wounded by some one and was on the verge of death. If Dizon, as an official, wanted to be fair and impartial and find out what Liborio Bustos knew and obtain the actual facts from him as to who was guilty of the crime, the most natural and ordinary thing to have done was to have called in two or three responsible disinterested persons and, in their presence, to have taken the *ante mortem* statement at the bedside of the dying man. That was not done. Instead, Dizon went alone into another room and prepared a statement in his own language, and, outside of his signature, there is nothing in the record that tends to show that Liborio Bustos ever made any dying statement to Dizon, or told him what it should contain, or the cause of the trouble, or how it happened, or who was guilty. This dying declaration is a very forcible illustration of the Biblical saying that "The voice is Jacob's voice, but the hands are the hands of Esau."

The *ante mortem* statement, on its face, purports to have been made by the deceased, but, in truth and in fact, it was made and prepared by Dizon, an avowed personal and political enemy of the defendants, and a personal friend of the deceased, and seems to have answered its purpose.

It is admitted that soon after the trouble occurred, the deceased made and verified a criminal complaint, under oath, before Dizon, a justice of the peace, charging some of the defendants with the crime of frustrated murder. All of the facts were then clear in his mind and the deceased then knew what he was doing. Within twenty-four hours after that was done, when the deceased was vomiting blood and writhing in pain, he signed a statement, which Dizon personally prepared, in which he accused two other defendants here of the crime of murder who are not mentioned or described in the verified criminal complaint, and yet nothing is said about the verified criminal complaint in the majority opinion and the *ante mortem* statement is treated as a verity.

The writer does not believe that men of the prominence and standing of the defendants would ever commit the crime of murder in a public theater where every act and movement could be seen by three or four hundred persons. It is indeed strange that out of the whole number in the theater less than a half a dozen persons were called and testified as witnesses for the prosecution. If the crime was committed in the way and manner in which the prosecution contends, it could have, and must have, been seen by every person in the theater.

The majority opinion lays great stress upon the fact that the defendants were prominent citizens and for such reason all other persons in the theater were afraid to testify as to what they saw. That is a sad commentary on the administration of justice in the Philippine Islands, but it is the only way by which the prosecution in this case can be sustained.

Again, the majority opinion affirmed the decision of the lower court which finds all of the appellants guilty, sentenced each of them to imprisonment for seventeen years, four months, and one day of *reclusion temporal*. Under the theory of the prosecution, the deceased was stabbed by Proceso Bustos. *There is no evidence of any concert of action between the remaining defendants and Proceso Bustos.* There is no evidence that either of them inflicted upon him serious bodily injury, or that they were directly, or indirectly, the cause of his death. *Neither is there any testimony whatever tending to show that any of the co-defendants of Proceso Bustos were acting in concert with him,* or that they seized or held him so that Proceso Bustos could stab the deceased, or that they knew or had any reason to believe that Proceso Bustos, or anyone else, would stab the deceased, or that either one of them had any intention of doing the deceased any great bodily harm or injury. If that had been their purpose or intent, the injury could have been inflicted long before Proceso Bustos arrived on the scene. The testimony tends to show that they were trying to prevent Liborio Bustos from drawing his revolver in a crowded theater. That was their official duty. Yet, because they were discharging their official duty they are now sentenced, by a majority opinion of this court, to seventeen years of solitary confinement.

Under the facts shown to exist, the guilt of the co-defendants of Proceso Bustos as found by the trial court, and as affirmed in the majority opinion of this court, cannot be sustained upon any legal principle and is clearly in

conflict with the decision of this court in *United States vs. Magcomot* (13 Phil., 386), which reads:

“In the absence of a previous plan or agreement to commit a crime, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and each of the participants is liable only for the acts committed by himself.”

The law of that case has been affirmed in other recent decisions.

It is conceded that the death of Liborio Bustos was caused solely by a stab with a dagger and that any other injuries which he received were minor and not of a serious nature, and that all of the proof of the prosecution, including the *ante mortem* statement, tends to prove that he was stabbed by Proceso Bustos. How then, and upon what theory, under the facts shown in the record, can his co-defendants be convicted of the crime charged?

The majority opinion is apparently founded upon the fact that because the deceased was stabbed by Proceso Bustos during the time that he was held by the other defendants, the court has a right to infer that the defendants were all acting together. But here again it should be noted that upon that point the trial court found as a fact that the evidence for the prosecution, to sustain such an inference, was unworthy of belief; and, hence, in the absence of any clear or convincing testimony, under every rule of law, the defendants are entitled to the benefit of a reasonable doubt.

Upon such facts, there is no rule of law of this or any other court that will sustain the conviction of the co-defendants of Proceso Bustos of the crime charged in the information. It is a fundamental rule of law in criminal cases that to sustain a conviction the evidence must be sufficient to prove the guilt of the defendant beyond a reasonable doubt. In the opinion of the writer, that is an inherent, constitutional right of which the defendants have been deprived in this case.

Before leaving for the States, Mr. Justice Ostrand read and re-read the whole record in this case, and with me is of the firm opinion that

the defendants are the victims of a “frame-up” by Dizon, their political enemy,
and that all of them should be acquitted.

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