

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FEDERICO RELUCIO @ “PEDRING”; EDRI PINEDA,
ROSENDO VELASCO @ “MANGYO”; DANTE ARIOLA,
MIGUEL ESPEJO PADRONES @ “EGI”; PETER...**

G.R. No. L-38790. November 09, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the judgment of conviction against appellant Rosendo Velasco of the crime of murder by the Circuit Criminal Court of the Fourth Judicial District dated January 4, 1974, the dispositive part of which reads:

"WHEREFORE, this Court, finding the accused Federico Relucio and Rosendo Velasco guilty beyond reasonable doubt of the crime of Murder as charged in the information, and in the absence of any modifying circumstance, hereby sentences them to reclusion perpetua; to indemnify jointly and severally the heirs of the herein deceased victim Gonzalo Talastas in the amount of P12,000.00 without, however, subsidiary imprisonment in case of insolvency by reason of the nature of the sentence, and to pay the proportionate costs."

It appears that the other accused Federico Relucio withdrew his appeal upon the filing of a motion for new trial, but pending the resolution of said motion, said accused broke out of the Nueva Ecija Provincial Jail together with two other inmates, named Mario David and Amante Villaseñor, for which reason the trial court declared the decision final as to him. (Order of the trial court of June 4, 1974.)

Appellant was charged with murder in the court below, together with Federico Relucio, alias "Pedring", Edri Pineda, Dante Ariola, Miguel Espejo Padrones, alias "Egi", Peter Doe and Richard Doe, in an information dated May 29, 1972 reading as follows:

"The City Fiscal accuses Federico Relucio alias "Pedring", Edri Pineda, Rosendo Velasco alias "Mangyo", Dante Ariola, Miguel Espejo Padrones alias "Egi", Peter Doe and Richard Doe, the true identities of the last two-named accused being presently unknown, of the crime of Murder, committed as follows:

'That on or about the 23rd day of June, 1971, in the City of Cabanatuan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding and abetting one another, with treachery, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one Gonzalo Talastas by shooting the latter on different parts of his body with guns thereby inflicting upon him serious physical injuries which directly caused his death.'

"CONTRARY TO LAW, with the generic aggravating circumstances of evident premeditation and cruelty.

"Cabanatuan City, May 29, 1972.

FOR THE CITY FISCAL:

(SGD.) MARIO M. DEL ROSARIO
Special Counsel."

The trial began on November 16, 1972 and ended on November 5, 1973, the court holding no less than twenty-four sessions. Four witnesses, Patrolman Jose E. Garcia, Crispin Angeles, Dra. Melicia C. de Guzman and Miguel Padrones, testified for the prosecution during the presentation of the direct evidence and four witnesses, Jose Serafica, Inday Tinio, Benito Custodio and again Miguel Padrones were presented as rebuttal witnesses. The defense had, aside from the accused Relucio and Velasco, the following witnesses: Eduardo Mangahas, Jose Aguilar, Ligaya Velasco, Elias Estrella, Judge Alfin Vicencio, Segundino Gabriel, Pablo Padilla, Eusebio Mendiola and Dr. Emiliano Perez. Later, Velasco testified again in rebuttal. The transcript of the stenographic notes of the testimonies of all the witnesses consist of over 930 pages.

Of the four witnesses in chief presented by the prosecution only two, Crispin Angeles and Miguel Padrones, can be said to have given incriminatory evidence against appellant.

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According to Angeles, (pp. 18-115, t.s.n.), on the day in question, June 23, 1971, he met the deceased Gonzalo Talastas (Along) near the entrance to the Capital Theater in Cabanatuan City at about 2 o'clock in the afternoon. He invited Talastas to see the movie. The latter said he was waiting for a woman. When the woman named Amanda arrived, she had a female companion, and the four of them went in. After a while Amanda left and did not go back anymore. So, Angeles invited Talastas to leave but the latter said he would wait for Amanda to return. A little later, however, he acceded just the same, but Angeles "left ahead of him."

As Angeles was going out, he met the accused Federico Relucio and another person unknown to him going inside the theater. After the two went in, Angeles heard shots, after which he saw Talastas going out of the theater with blood on his shoulder. (He could not say whether left or right.) At that moment, he (Angeles) was "in the place opposite the Capital Theater near the Avenue Theater" (across Burgos Street). He saw "someone following and shooting him" (Talastas), "somebody who was chasing him . . . He was firing shots," but he did not say clearly who fired the shots. His vague testimony on this point is as follows:

"Q Where were you when you saw Gonzalo Talastas going out of the theater?

A I was there in front of the Avenue theater, sir.

Q What happened if you know when you saw Gonzalo Talastas going out the theater?

A There was somebody who was chasing him, sir.

“Prosecutor

Q What was that one chasing him doing while chasing him?

A He was firing shots, sir.

Q To whom was he firing shots?

A Gonzalo Talastas, the one who died.

Q Do you know that one chasing Gonzalo Talastas?

A Yes, sir. The one chasing him I know him by face and the other one I know him by name only, sir.

Q How many were chasing Gonzalo Talastas?

A There were many but I recognized only four, sir.

Q You said that you know the name of one of them, will you please tell the Honorable Court the name of one of them whom you know by name?

A Yes, sir.

Q What is his name?

A Ige, sir.

Q If Ige is in this Courtroom, can you point to him?

A Yes, sir.

Atty. Abesamis

We object to the question for it lacks basis because the witness categorically stated that he only knew the name. He did not state that he knows the person who carries the name of Ige, your Honor.

Court

But he saw the man. If he did not see, I would not insist. I would sustain you easily but he saw the face.

Atty. Abesamis

I submit, your Honor.

Court

Witness may answer.

"Witness

A Yes, sir.

Prosecutor

Q Please point to him?

A (witness pointing to a person wearing a white shirt when asked of his name answered that he is Miguel Padrones).

Q You said you saw four persons, besides Miguel Padrones, can you tell if any of the three is in this courtroom?

A Yes, sir.

Q Please point to them?

A (witness going down from the witness stand and pointing to somebody sitting handsome and with curly hair who, when asked of his name, answered that he is Rosendo Velasco).

Q Who else if there are still in this courtroom?

A I have already pointed three. The other one is not here, sir.

Q You said that you recognized four men among those chasing the deceased Gonzalo Talastas and you pointed to Ige who is Miguel Padrones and now you pointed to Mangyo who is Rosendo Velasco, who is the other one?

Atty. Abesamis

Already answered, he already pointed three according to him, your honor.

Court

Q You only pointed two as far as the Court remembers. You said four were there other still present in the courtroom?

A Yes, sir. This is the third one (witness pointing to somebody who is used to be identified to be Federico Relucio), and the fourth one is not here.

Prosecutor

Q You said that they were chasing Gonzalo Talastas, what happened with that chasing?

A He was hit and he fell down, sir.

Q Where did he fall?

A In front of the Liwag College, sir.

Q How far is that point from the theater where Gonzalo Talastas came?

A It was quite far, sir, I cannot estimate but he came from the Capital theater, and he fell down in front of the Liwag College.

"Court

Q Can the parties determine as to the distance from the Capital theater up to the Liwag College?

(Make of record that the distance approximated by the parties is more or less 150 meters)."

(t.s.n., pp. 37-42, hearing of November 16, 1972.)

Explaining further, he testified that Talastas was running towards the east and that "those chasing him, some were in the jeep and others running." Among those in the jeep was appellant Rosendo Velasco, the only one he recognized, and among those on foot he recognized only Miguel Padrones. After Talastas fell, the witness went to the municipal building "looking for a policeman whom I know because I will tell him that Gonzalo Talastas was shot", but he could not find anyone he knew, so he went home.

On cross-examination, however, he identified Padrones as the only one chasing Gonzalo thus:

"Atty. Pablo

Q Now, you saw Ige chasing him on foot when he was going out of the theater or when he was already running along the street?

A When he was already running in the street, sir.

Q He was alone chasing him when he was proceeding along the Liwag College?

A I only saw one. He was alone Ige only, sir." (t.s.n., p. 60, hearing of November 16, 1972.)

Moreover, whatever frail indication may appear in the testimony of this witness linking appellant to the offense charged was virtually shattered by Exhibit 17, the sworn statement of the same witness given to Detective Justiniano E. Fernandez of the Cabanatuan City Police on January 11, 1972, which the defense presented for impeachment purposes, strangely without objection on the part of the prosecution notwithstanding that the defense failed to lay the predicate therefor. (t.s.n., p. 388.) In said statement, Angeles gave practically a different story from beginning to end – from the reference to the time place and reason how he and Talastas and Amanda came to be together that fateful afternoon up to the identification of Ige or Egi (Miguel Padrones) as the one who shot Talastas) - from that related by him on the witness stand. Exhibit 17 reads as follows:

"CCPD-Bilang 1356-71

SALAYSAY NI CRISPIN ANGELES Y SANTIAGO NA KUHA SA PAGTATANONG NI TIKTIK JUSTINIANO P. FERNANDEZ NG PANGKAT NG TAGATUGAYGAY NG HIMPILAN NG PULISYA NG LUNGSOD NG KABANATUAN NGAYONG IKA-11 NG BUAN NG ENERO 1972, SA GANAP NA IKA-4:00 NG HAPON.

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01. TANONG: - Ito'y isang pagsisiyasat, ikaw ba'y handang magbigay ng isang malaya at kusang loob na salaysay na ang iyong sasabihin dito ay pawang katotohanan lamang?

SAGOT: - Opo.

02. T - Sabihin mo ang iyong pangalan at bagay na maaring pagkakakilanlanang sa iyong pagkatao at sabihin mo din kung saan ka kasalukuyang naninirahan?

S - CRISPIN ANGELES Y SANTIAGO po, 22 taong gulang, may asawa, magsasaka at sa kasalukuyang naninirahan sa Bo. Pamaldan, Lungsod ng Cabanatuan.

03. T - Ano ang dahilan at ikaw ay naririto ngayon sa Tanggapan ng Pulisya at ikaw ay nagbibigay ng isang

malaya at kusang loob na salaysay dito?

S - Dahilan po sa ako'y magpapatunay sa isang pangyayari na naganap.

04. T - Ano ba ang pangyayaring ito na ayon sa iyo ay naganap na nais mong patunayan dito?

S - Ganito po iyon. Nuong ika-2:00 ng hapon ng ika-23 ng buan ng Hunyo 1971, samantalang kami nitong si GONZALO TALASTAS ay nanduon sa isang bahay na aming tinutuluyan sa Bo. Aduas, dito sa Lungsod ng Kabanatuan, ay dumating itong si MANDA at ang isang babae na sinabi niyang kanyang pinsan at kami ay kanilang inamuki na samahan sila na manood ng Cine. Amin naman pong sinamahan ang dalawang babae na ito at ang kanilang piniling pasukin na Cine ay iyong Capital sa may daang Burgos. Ng kami'y nanduon na sa loob ng sine, hindi pa gaanong nagtatagal kami sa aming pagkakaupo na magkakatabi duon sa hulihang upuan sa ibaba sa gawing kaliwa ay nagpaalam ang dalawang kasama naming ito na sila'y di umano'y pupunta sa kasilyas ng mga babae at sila'y ihi. Ng mayruon ng humigit kumulang na kalahating oras ang nakakaraan ang dalawang babae na ito ay hindi pa nagbabalik sa kanilang upuan sa tabi naming dalawa ay nainip kami at amin silang hinanap subalit hindi na namin sila nakita. Sa pangyayaring ito ay nagusap kami nitong si GONZALO TALASTAS at napagkasunduan naming dalawa na kami'y lumabas na din, ang ginawa ko ay nagpatiuna na ako sa paglabas na sumusunod itong si GONZALO TALASTAS at siya ay naghinto sa may tapat ng takilya. Ng ako'y malapit ng makarating duon sa mga bungad ng pasilyo ay napansin ko na mayruong tatlong tao na mayruong mga dalang baril ang nanduon sa magkabilang gilid at sa aking palagay ay mayruong silang inaabañgan. Ng ako'y makalagpas na sa mga taong ito, iyong isa sa kanilang tatlo ay humiwalay at pumasok duon sa loob. Sa napansin kong ito ang ginawa ko ay nagbalik ako at sa aking pagpasok ay bigla na lamang mayruong pumutok na baril at ng aking tingnan ang pinangaliñgan ng putok ay nakita ko itong si FEDERICO RELUCIO na mayruong palayaw na "PEDRING" na binabaril itong si GONZALO TALASTAS na tinamaan sa kanyang kaliwang balikat. Nakita ko din na gumanti itong si GONZALO TALASTAS at tinamaan din itong si PEDRING na hindi ko alam kung saang parte. Nakita ko din po na itong si GONZALO TALASTAS ay tumakbong papalabas ng sine na naiwanan itong si PEDRING duon sa loob. Sa ginawang paglabas nitong si GONZALO TALASTAS ay sumunod na din ako at nakita ko na iyong ibang mga kasamahan nitong si PEDRING na nagaabang sa labas at nakasakay duon sa jeep na di pasaheros na kasama na duon iyong dalawang kasamahan nitong si PEDRING na nakita kong nakatayo sa magkabilang gilid ng pasilyo ng Cine Capital. Nakita ko na bumaba itong si EDRI na ang kanyang apilyedo ay PINEDA at itong si IGE at kanilang hinabol itong si GONZALO TALASTAS na kasalukuyan nuong nagtatakbo na patuño duon sa may gawi ng Cine Broadway na binabaril naman nitong si IGE ng isang baril na Carbine, subalit hindi tinamaan itong si GONZALO TALASTAS. Nakita ko din po na itong si EDRI ay nagbalik at kanyang kinuha ang isang jeep na army type at kanyang iminaneho ito na kasama itong dalawa na sina Mangyo Velasco at si Dante Arriola at kanilang pinulot itong si IGE. Natapos na maisakay itong si IGE ay kanila ng sinundan itong si GONZALO TALASTAS at kanilang inabutan duon sa may panulukan ng daang Bonifacio at Burgos na sumasakay sa tricycle. Inihinto po nitong si EDRI ang jeep na army type at bumaba itong si IGE at kanyang binaril itong si GONZALO TALASTAS ng dala niyang Carbine. Tinamaan itong si GONZALO TALASTAS at nakita kong nabuwal at habang ito'y nabubuwal ay binabaril ito ng mga kasamahan ni EDRI na naiwanan duon sa jeep na tumatama naman sa katawan nito. Matapos ang maramihang pagpapaputok na ginawa ng mga naiwanan sa jeep, itong si IGE ay lumapit dito sa kinabuwalan nitong si GONZALO TALASTAS at kanyang itinaas ang ulo nito at pinaputukan ng kanyang baril na mahigsi sa may gawing likuran at pagkatapos ay kinuha niya ang baril na dala nitong si GONZALO TALASTAS. Pagkatapos nuon ay sumakay na itong si IGE duon sa jeep na nakahinto at sila'y tumakas na.

05. T - Ayon sa iyo ay sinundan mo itong mga taong ito at iyong sinubaybayan ang mga nagaganap na pangyayari, saan lugar ka naman lumagay nuon?

S - Duon po ako nanduon at nakakubli sa bangketa bago dumating sa Mobil Gas Station sa gawing kanan ng

daang Burgos.

06. T - Ilan bang magkakasama itong mga taong ito na pumatay dito kay GONZALO TALASTAS?

S - Sa akin pong pagkakakita sila'y mayruong pito ang bilang.

07. T - Binangit mo dito sila, FEDERICO RELUCIO @ PEDRING, EDRI PINEDA, @ IGE, @ MANGYO VELASCO at DANTE ARRIOLA, lumilitaw o lumalabas na mayruon na itong lima ang bilang, iyong dalawa na hindi mo nabangit dito dahil sa ayon sa iyo ay pito ang magkakasamahan na ito, sino pa iyong dalawa kung nakikilala mo?

S - Hindi ko po sila kilala dahilan sa nuon ko lamang sila nakita.

08. T - Ayon sa iyo dito na nuong lumabas itong si GONZALO TALASTAS sa loob ng Cine Capital na mayruon ng tama ng baril upang tumakas ay nakita mo na iyong mga kasamahan nitong si PEDRING RELUCIO na siyang pumasok dito sa boob ng sine at binaril si GONZALO TALASTAS ay nanduon sa isang jeep na di pasahero na nakaparada sa tapat ng bowling alley, at ng tugisin nila itong si GONZALO TALASTAS ay sakay na sila ng isang jeep na army type ang ibig mo bang sabihin dito ay dalawa ang sasakyan na ginamit ng mga taong ito?

S - Opo.

09. T - Alam mo ba kung ano ang mga Plaka ng dalawang sasakyang ito na ginamit ng mga taong ito na pumatay dito kay GONZALO TALASTAS?

S - Hindi dahil sa hindi ko na napagtuonan ng pansin ito at ang hinahabol ko ay iyong nagaganap na pangyayari tungkol sa pagkapatay dito kay GONZALO TALASTAS.

10. T - Ito bang mga taong binangit mo dito liban dito sa dalawa na hindi mo kilala, ay dati mo ng kilala?

S - Opo iyong tatlo na sina, FEDERICO RELUCIO @ PEDRING, @ EDRI PINEDA at @ IGE na pawang mga taga Bo. Talipapa, dito sa Lungsod ng Kabanatuan, at itong dalawang sina MANGYO VELASCO at DANTE ARRIOLA ay hindi pa gaanong nagtatagal.

11. T - Ano ba naman ang relasyon ninyong dalawa dito sa dalawang babae na sumundo sa inyo duon sa inyong tinutuluyang bahay sa Bo. Aduas, na humimok sa inyo na sumama sa kanila na manood ng Cine?

S - Wala po kaming relasyon, subalit hindi katagalang magkakilala.

12. T - Sino sa dalawang ito ang kakilala ninyo?

S - Iyon pong MANDA.

13. T - Saan ba naman nagtitira itong si MANDA at ang kanyang kasama na isang babae din?

S - Sa Bo. Dalampang po.

14. T - Hindi mo ba alam kung ano ang kanilang mga apilyedo?

S - Hindi ko na po maalala ang kanilang mga apilyedo subalit sila ay maituturo ko kung sila'y aking makitang muli.

15. T - Simula ng pangyayaring iyon, nagkita ba kayong muli ng dalawang babae naito?

S - Hindi na po napakita sila sa akin.

16. T - Sa iyong pagaaral o pagkakaalam ano ang motibo ng ginawang pagpatay dito kay GONZALO TALASTAS ng mga taong binangit mo dito?

S - Ang pagkakaalam ko po ay dahilan sa ginawang pagbaril nitong si GONZALO TALASTAS dito kay VITO RELUCIO na kapatid nitong si PEDRING RELUCIO na pamangkin naman nitong si EDRI PINEDA.

17. T - Alam mo din ba kung bakit binaril nitong si GONZALO TALASTAS itong si VITO RELUCIO?

S - Opo.

18. T - Ano naman ang pagkakaalam mo?

S - Dahil sa nasabi po sa akin ng personal nitong si GONZALO TALASTAS na iyon daw pong kanyang asawa ay siniraang puri nitong si VITO RELUCIO at ito'y nagsumbong dito.

19. T - Ayon saiyo dito na ng mangyari ang pagpatay dito kay GONZALO TALASTAS ay nuong ika-23 ng buan ng Hunyo 1971 ng bandang hapon, bakit ngayon ka lamang nagbigay ng isang malaya at kusang-loob na salaysay dito bilang pagpapatunay sa pangyayari naiyon na naganap?

S - Dahil po sa ako'y natatakot sapagkat panahon nila ng panunugis.

20. T - Ito ba lang ang dahilan kung kaya ngayon ka lamang nagkaruon ng lakas ng loob upang magpatunay sa naganap na patayan naito na ang naging biktima dito ay si GONZALO TALASTAS?

S - Mayroon pa po, wala namang nagpunta sa akin na investigador upang ako'y tanungin tungkol sa naganap na pangyayaring ito.

21. T - Dito ba sa pagbibigay mo ng isang malaya at kusang-loob na salaysay dito sa Himpilang ito ay walang tumakot saiyo o kaya nangakong ikaw ay bibigyan ng pabuya upang sabihin mo dito ang lahat ng mga binangit mo na salaysay mong ito?

S - Wala po ang lahat ng mga sinabi ko dito sa harap ninyo ay kusang-loob ko at walang pumilit sa akin o tumakot o dili kaya ay nangako na ako'y bibigyan ng ano mang pabuya, bagkus ito ay aking karapatan bilang isang mamamayang Filipino at tungkulin ko din pong makipagtulungan sa mga ahensya ng batas lalo na sa ganitong uri ng krimen ginanap na nagdamay pa ng iba.

22. T - Nasabi mong nagdamay pa ng iba, bukod dito kay GONZALO TALASTAS, mayroon pa hang ibang mga taong naging biktima ng pangyayaring ito?

S - Mayroon po.

23. T - Sino naman ang mga taong ito kung mayroon kang nalalaman?

S - Sa akin pong pagkakaalam ay iyong mayari ng dating tindahan na isang babae na asawa ng manager ng isang bangko dito sa Lungsod ng Kabanatuan na napagalaman ko ang pangalan na GINANG LUISA MONDELO.

24. T - Ano naman ang naging pinsala nito kung nalalaman mo?

S - Ayon po sa aking pagkakaalam ay tinamaan ito ng ligaw na bala sa kanyang baraso hindi ko po malaman kung kaliwa o kanan.

25. T - Tutuo bang lahat ang mga sinabi mong ito at handa mong panumpaan sa harap ng Hukuman kung sakaling ikaw ay kailainganin na magpatutuo sa pagpapatunay sa pangyayaring iyong nasaksihan ng ayon sa iyo?

S - Opo.

(Lumagda) CRISPIN S. ANGELES"

(Pp. 369-372, Record of Lower Court.)

As may be seen, the material discrepancies between the contents of the above-quoted statement, on the one hand, and the testimony of Angeles in open court, on the other, are so irreconcilable that even if the proper predicate had been laid upon proper objection of the fiscal, it is doubtful, if any believable reconciliation could have been given by him. In open court, he testified that in the afternoon of June 23, 1971, it was at the entrance of the Capital Theater that he met Talastas and invited him to see the movie but the latter said that he was waiting for Amanda. It turned out, according to Exhibit 17, that he and Talastas were still in Barrio Aduas where they were staying, when Manda arrived with a woman companion and invited them to go to the "cine". In his testimony, he said that it was Amanda who left and did not go back anymore, while in the above statement, he declared that both of their two female companions told them they would only go to the comfort room but eventually disappeared. In court, he said that when Manda did not return, he invited Talastas to leave but the latter answered he would wait for Manda's return. In Exhibit 17, it appears that he and Talastas agreed to follow and look for their lady companions and that he went ahead and Talastas stopped by the ticket booth. Whereas in court, he testified that he was already in the middle or across Burgos Street near the Avenue Theater when he heard shots inside the Capital Theater where Talastas had returned, as they met Federico Relucio with a companion, unknown to him, who were going inside, hence he did not see who fired the shots, in the above sworn statement, he categorically stated that upon seeing Relucio, who had separated from his two armed companions and gone inside, he (Angeles) went back inside the theater and actually saw Relucio firing at Gonzalo and the latter retaliating with his own gun. In court, he said that when Talastas came out of the theater already wounded and running towards the east, the two companions of Relucio, referring to Velasco and Padrones, chased Talastas, with Relucio riding in a jeep and Padrones going on foot. In Exhibit 17-A, he said:

"04. S - Nakita ko din po na itong si GONZALO TALASTAS ay tumakbong papalabas ng sine na naiwanan itong si PEDRING duon sa loob. Sa ginawang paglabas nitong si GONZALO TALASTAS ay sumunod na din ako at nakita ko na iyong ibang mga kasamahan nitong si PEDRING na nagaabang sa labas at nakasakay duon sa jeep na di pasaheros na kasama na duon iyong dalawang kasamahan nitong si PEDRING na nakita kong nakatayo sa magkabilang gilid ng pasilyo ng Cine Capital. Nakita ko na bumaba itong si EDRI na ang kanyang

apilyedo ay PINEDA at itong si IGE at kanilang hinabol itong si GONZALO TALASTAS na kasalukuyan nuong nagtatakbo na patungo duon sa may gawi ng Cine Broadway na binabaril naman nitong si IGE ng isang baril na Carbine, subalit hindi tinamaan itong si GONZALO TALASTAS. Nakita ko din po na itong si EDRI ay nagbalik at kanyang kinuha ang isang jeep na army type at kanyang iminaneho ito na kasama itong dalawa na sina Mangyo Velasco at si Dante Arriola at kanilang pinulot itong si IGE. Natapos na maisakay itong si IGE ay kanila ng sinundan itong si GONZALO TALASTAS at kanilang inabutan duon sa may panulukan ng daang Bonifacio at Burgos na sumasakay sa tricycle."

In court, Angeles intimated that Padrones or Egi did not fire at Talastas, leaving the inference that it was appellant Velasco who was shooting the deceased. In the above statement, he positively said:

"Inihinto po nitong si EDRI ang jeep na army type at bumaba itong si IGE at kanyang binaril itong si GONZALO TALASTAS ng dala niyang Carbine. Tinamaan itong si GONZALO TALASTAS at nakita kong nabuwal at habang ito'y nabubuwal ay binabaril ito ng mga kasamahan ni EDRI na naiwanan duon sa jeep no tumatama naman sa katawan nito. Matapos ang maramihang pagpapaputok na ginawa ng mga naiwanan sa jeep, itong si IGE ay lumapit dito sa kinabuwalan nitong si GONZALO TALASTAS at kanyang itinaas ang ulo nito at pinaputukan ng kanyang baril na maiksi sa may gawing likuran at pagkatapos ay kinuha niya ang baril na dala nitong si GONZALO TALASTAS. Pagkatapos nuon ay sumakay na itong si IGE duon sa jeep na nakahinto at sila'y tumakas na."

In brief, in court, Angeles' account of the participation of appellant in the shooting of Talastas was vague and inconclusive; in his statement, Exhibit 17, nothing points definitely and specifically to appellant as having fired any shot at all; importantly, the one clearly and categorically referred to as having shot Talastas is Egi or Padrones.

It results, therefore, that at least insofar as herein appellant Velasco is concerned, the testimony of Angeles has been completely impeached or discredited.

It is a basic postulate in the law on evidence that every witness is presumed to be truthful and perjury is not to be readily inferred just because apparent inconsistencies are evinced in parts of his testimony. Every effort to reconcile the conflicting points should first be exerted before any adverse conclusion can be made therefrom. These considerations lie at the base of the familiar rule requiring the laying of a predicate, which in essence means simply that it is the duty of a party trying to impugn the testimony of a witness by means of prior or, for that matter, subsequent inconsistent statements, whether oral or in writing, to give the witness a chance to reconcile his conflicting declarations, such that it is only when no reasonable explanation is given by him that he should be deemed impeached. Thus, Section 16 of Rule 132 provides:

"Section 16. How witness impeached by evidence of inconsistent statements. - Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them."

In *United States vs. Baluyot*, 40 Phil. 385, at pp. 406-407, the Court made a clear exposition of the universal rule of laying a predicate as follows:

"In order that we may not be misunderstood, as well as for the purpose of clarifying the practice in such

matters, a few words may here be properly said in respect to the proper mode of proceeding in a case where a party wishes to get before the court contradictory statements made by a witness who is testifying for the adversary party. For instance, if the attorney for the accused had information that a certain witness, say Pedro Gonzales, had made and signed a sworn statement before the fiscal materially different from that given in his testimony before the court, it was incumbent upon the attorney when cross-examining said witness to direct his attention to the discrepancy and to ask him if he did not make such and such statement before the fiscal or if he did not there make a statement different from that delivered in court. If the witness admits the making of such contradictory statement, the accused has the benefit of the admission, while the witness has the opportunity to explain the discrepancy, if he can. On the other hand, if the witness denies making any such contradictory statement, the accused has the right to prove that the witness did make such statement; and if the fiscal should refuse upon due notice to produce the document, secondary evidence of the contents thereof would be admissible. This process of cross-examining a witness upon the point of prior contradictory statements is called in the practice of the American courts 'laying a predicate' for the introduction of contradictory statements. It is almost universally accepted that unless a ground is thus laid upon cross-examination, evidence of contradictory statements are not admissible to impeach a witness; though undoubtedly the matter is to a large extent in the discretion of the court.

"We wish to add that in a case of this kind, if the accused had, by affidavit or otherwise, made it appear to the satisfaction of the court that the witnesses named had made statements in their declarations before the fiscal materially at variance with their statements in court and that the production of said declarations was necessary or even desirable, in the interests of justice, the court would have had ample power to order their production."

This doctrine has been reiterated consistently in subsequent cases. (Moran, Comments on the Rules of Court, Vol. 6, 1970 ed. p. 92, citing *People vs. Resabal*, 50 Phil. 780; *People vs. Quingsy*, 54 Phil. 88; *People vs. Lara*, 75 Phil. 786; and *People vs. Escusura*, 82 Phil. 41.)

But if, as in the instant case of the witness Angeles, the prosecution did not object to the presentation of Exhibit 17 which was offered expressly for impeachment purposes, notwithstanding that the defense did not give the witness the opportunity to give his own explanation of the apparent contradictions in his testimony, the trial judge and the appellate courts have no alternative but to determine, if they can, possible reconciliation on the basis alone of logic and common experience. The omission to object on the ground of failure to lay the predicate is waived by the omission to interpose the same when the impeaching contradictory statement is offered. (Evidence, [Rules of Court] Vol. VII, 1973 ed. by Vicente Francisco, p. 398.) On this score, We find the inconsistencies in the two versions of Angeles utterly beyond possible rational explanation. The various discrepancies We have pointed out above -- and there are still others We have not mentioned -- are so disparate that there can be no other conclusion than that the witness must have lied in either of them. Accordingly, We have to reject both of them.

- 2 -

The testimony of the other witness Miguel Padrones, one of appellant's co-accused, cannot be viewed in better light.

After Patrolman Garcia and Crispin Angeles had testified, at the hearing on January 4, 1973, the prosecutor, District State Prosecutor Mariano D. Copuyoc, asked for resolution of his motion to discharge the accused Miguel Padrones in order to be utilized as a state witness, evidently by virtue of Section 9 of Rule 119, on the ground that "this representation has found absolute necessity of the testimony of said defendant because the prosecution has no other direct evidence available for the prosecution of the offense committed except the testimony of said Miguel Padrones; that the said testimony of the defendant Miguel Padrones could be substantially corroborated in its material points by the testimony of the other prosecution witness Crispin Angeles; that the said accused Miguel

Padrones appears to be the least guilty and that he has never been convicted of any crime involving moral turpitude." No notice was given to the defense of the motion; it turned out it was filed as early as December 14, 1972, after Angeles had already finished testifying on December 6, 1972. Counsel for Relucio and Velasco protested they had no notice of the motion and objected to it contending that from the testimony of Angeles, Padrones did not appear to be the least guilty and that the prosecution had not shown that Padrones had not been previously convicted of a crime involving moral turpitude, but the trial court overruled them.

Briefly, the testimony of Padrones on direct examination (pp. 427-453, t.s.n.) was as follows:

Between 4:00 and 5:00 p.m., June 23, 1971, while he was in the residence of Atty. Perez (in Cabanatuan City), "an information was received" . . . from a person named Og that Gonzalo Talastas was inside Capital Theater also in Cabanatuan City. The "information" was addressed to the accused Federico Relucio who was then present together with Atty. Perez and two other persons not known to the witness. Then appellant Mangyo Velasco and two others unknown to the witness arrived. After these three arrived, "they (referring to "Relucio, Mangyo and the other two whom I do not know and I") went to the Capital Theater". They went there "because Gonzalo Talastas was really to be killed." This, he was told by Relucio, for "according to Federico Relucio, Gonzalo Talastas was the one who killed his brother." He did not mention anything about any conversation among those present from which a conspiracy could be deduced.

Upon arriving at the Capital Theater, Pedring (Relucio) went inside, while the witness and Mangyo and the two others were in front of the bowling hall. Padrones said they were all armed, Relucio with a .45, Mangyo with a .38 caliber and a carbine, the other two with armalite and he (Padrones) with a .45, but there was no suggestion that they did so with the intent to kill anyone. Not long after Federico (Relucio) entered the theater, there were shots (he does not know how many). "Not long after, the late Gonzalo Talastas went outside of the theater with a wobbling motion (susuray-suray), and wounded . . . in his chest portion (where there was) blood." Gonzalo ran going towards "hulo" (east). Not long thereafter, Federico Relucio followed also wounded.

Then, Mangyo (Velasco), the other two unknowns and Padrones "boarded a jeep and . . . followed them (Talastas and Relucio) with us inside the jeep." They followed them up to the Old Republic Telephone Company Building. Gonzalo "was running" and Relucio "boarded a tricycle, sir, following Gonzalo Talastas." And when the witness and his companions were already in front of the Republic building, "Doon nga po pinagbabaril (si) Gonzalo Talastas." "Mangyo and the other two whom I do not know and also Pedring, (Relucio) because Pedring arrived," were the ones who shot him, and Gonzalo died.

After the cross-examination of Padrones, the prosecution rested its case, asking for and securing at the same time, the dismissal of the case against the accused Dante Arriola as to whom the prosecutor did not unexplainedly present any evidence. At this point, it may be stated relatedly that Our review of the records of this case has revealed a number of other loose ends in the proceedings which warrant special attention. Indeed, what must have been a preconceived plan of the prosecution to save Padrones and to pin down appellant instead is quite evident. And worse, it was not without significant, if perhaps unwitting, assistance from the court.

Thus, having in view the testimony of Angeles We have discussed earlier, which had only a hazy reference to the supposed participation of appellant in the offense charged, and taking into account Exhibit 17, which the prosecution could not have been ignorant of, pointing to Padrones instead of said appellant as the one who chased and shot the deceased as the latter came out of Capital Theater, it is to be wondered how Padrones was selected as state witness. Moreover, from Padrones' own account, readily available beforehand to the prosecutor, he was with Relucio, who was the one who had the motive to do away with Gonzalo, earlier than appellant Velasco in the house of Atty. Perez, and there is no indication at all that before the group went to Capital Theater, appellant

knew, unlike Padrones, that Gonzalo was to be killed. To reiterate, there is no evidence that the killing of Talastas was ever talked about in the house of Atty. Perez.

In other words, the prosecution could easily have chosen other witnesses, even from among the other alleged participants in the affray, who appeared to have had minor parts therein, if not from the tricycle drivers who, from Padrones' own account, must have seen what happened, and yet Padrones had to be the one allowed to go scot-free. Withal, the repeated references to unknown participants is unnatural. How could there be a conspiracy of the character charged in the information where four of the participants were not supposedly known to any of the witnesses who themselves are alleged to have been in the conspiracy? Why was Dante Ariola included in the information when there was absolutely no evidence against him? Why was Edri Pineda who was mentioned by Angeles in Exhibit 17 or Dante Ariola, who was also charged, not chosen instead? For that matter, why was Atty. Perez in whose house and in whose presence the plot to kill Talastas is alleged to have originated not among the accused?

All these questions and many more are intriguing, but the most mystifying circumstance extant in the record was the attitude of both the prosecution and the trial judge in regard to what appears clearly to be a statement given by Padrones to the Cabanatuan City police in the person of a certain Patrolman Corporal J. S. Vloria on October 5, 1972 immediately after he was arrested. This is the same statement, Annex A, on which the defense motion for reconsideration and/or new trial, the denial of which is the plaint in the fourth assignment of error of appellant's brief.

Counsel for accused Relucio started his cross-examination of Padrones by inquiring about the circumstances surrounding his arrest and detention which incontestably took place on October 5, 1972. The witness readily revealed that:

"ATTY. ABESAMIS

q Immediately after your arrest you were placed in jail?

D. S. PROSECUTOR

Answered already, Your Honor.

COURT

Answer the question.

WITNESS

a No, sir.

ATTY. ABESAMIS

q Where were you first brought by the apprehending officers immediately after you were arrested in the afternoon of October 5, 1972?

a An investigation was made, sir, on my person.

q Who investigated you?

a Vilorio, sir.

q Where?

a At the city hall, sir.

q In what part of the city hall did Vilorio investigate you, please tell the Court?

a Downstairs at his table, sir.

COURT

(To witness) Speak louder.

ATTY. ABESAMIS

q This Vilorio is also a member of the Cabanatuan City police force?

a Yes, sir.

q Who were present when you were investigated by Vilorio?

a The two of us, sir.

q He was asking you questions?

a Yes, sir.

q And you were giving answers to the questions propounded by Vilorio to you?

a Yes, sir.

q And Vilorio was typing the questions propounded and the answers given by you?

a Yes, sir.

q And Vilorio investigated you in connection with your anti-government activities?

a No, sir.

q In what connection were you investigated by Vilorio?

a Regarding the case of Gonzalo Talastas, sir.

q Did you sign that written investigation?

a Yes, sir, I signed it.

q Also on October 5, 1972?

a I was brought before the presence of Judge Vicencio, sir.

q But you have not answered my question, Mr. Witness. My question to you was, did you sign that typewritten investigation conducted by Vilorio also on October 5, 1972?

a Yes, sir, I signed it before the judge.

q On October 5, 1972?

a Yes, sir.

q You were escorted by armed policemen of Cabanatuan City when you were brought in connection with that written investigation before Judge Vicencio on October 5, 1972?

D. S. PROSECUTOR

It is very immaterial and irrelevant, Your Honor.

COURT

Answer the question.

WITNESS

a Yes, sir.

ATTY. ABESAMIS

q Who were those policemen who brought you to Judge Vicencio on October 5, 1972?

a They were two, sir.

q I am not asking you about the number; I am asking you who they were?

a One of them is Vilorio and I do not know the other policemen who is old.

q Now, could you tell the Honorable Court the time when Vilorio started investigating you on October 5?

a I cannot remember, sir.

q But it was night time?

a No, sir.

q But the investigation was conducted several hours after you were already apprehended by the three

policemen headed by Pat. Adriano?

D. S. PROSECUTOR

It is vague, Your Honor.

ATTY. ABESAMIS

To obviate the objection, I will modify the question.

q How many hours after you were arrested were you investigated on October 5?

a The moment we arrived at the city hall I was investigated, sir." (t.s.n., pp. 66-70, hearing of January 4, 1973)

On the basis of such clear and categorical testimony about a statement signed by him before Judge Vicencio of the City Court on that date October 5, 1972, the defense counsel asked "the Honorable District State Prosecutor to produce the written investigation of this witness on October 5, 1972, if he has it in his possession." (p. 70, Id.) And to add to the basis for such request, there was the following manifestation of Atty. Pablo, counsel for Velasco:

"ATTY. PABLO

May it please the Honorable Court.

Atty. Taguam would be a witness to this statement of mine that in the first hearing of this case, Your Honor, Atty. Taguam requested the District State Prosecutor to lend him the two affidavits executed by this witness and I reiterate that the first affidavit was dated October 5, and the second, October 20, 1972. After Atty. Taguam has read this affidavit I was able to take hold of this affidavit and to read it. It was the District State Prosecutor who lent these two affidavits to Atty. Taguam during the first hearing of this case."

(pp. 71-72, Id.)

Surprisingly, the reaction of the state prosecutor was negative, and the following exchange of words took place:

"ATTY. ABESAMIS

Your Honor please, I would like to make it appear on record that when the recess was called by the Honorable Court in order to afford the District State Prosecutor to look over his records, he was sorting out his records in connection with this case in order to look for the affidavit demanded of him to be produced by the defense. May we know from the Honorable District State Prosecutor what is the answer.

D. S. PROSECUTOR

I do not have any affidavit dated October 5, but with respect to the affidavit they want me to produce I want that that affidavit be described what is that.

ATTY. ABESAMIS

But Your Honor, it is already sufficiently described, the affidavit executed by this witness on October 5.

COURT

How about on October 20?

ATTY. PABLO

And December 14, Your Honor.

D. S. PROSECUTOR

I would not answer that, Your Honor, unless it is described.

ATTY. ABESAMIS

We would like to make it appear on record, Your Honor, by the actuation of the Honorable District State Prosecutor construes a suppression of the evidence, a suppression of a very vital evidence which the defense has been demanding pursuant to the rule on discovery as sanctioned under our rules of court

We will proceed, Your Honor.

D. S. PROSECUTOR

May I state also a manifestation that it could not be suppression if it came from the mouth of this witness. The witness is present. You can ask him, so it could not (be) suppression of evidence." (pp. 73-75, Id.)

Then came the inexplicable ruling of the court:

"COURT

Well, those are manifestations only of counsel. You give the basis for the Court to compel the Fiscal to produce such document. Up to now there is no basis. I think, the Fiscal would want to describe that affidavit. He does not like to fish.

All right, continue." (p. 76, Id.)

Not only that, in its decision, the trial court reasoned out thus:

"But it is not all rosy with the testimony of Miguel Padrones. Like all other witnesses of the same capabilities he suffers from a poor memory as regards remembering dates of events and faces of persons whom he occasionally saw and met. The records is replete of incidents showing the poor memory of the witness as regards the exact dates of events and the faces of persons he met. The following instances will show that while in the witness stand he was asked the following: 'Do you remember where were you on June 23, 1971 between the hours of four o'clock in the afternoon?' His answer was: 'I was in the residence of Atty. Perez.' It may be noted that June 23, 1971 was the date of the commission of the crime and the same date was included in the question. But when he was asked again on cross examination the date of the commission of the crime, he answered that he could not remember but if he would be allowed to refer to his affidavit he could answer the same. It was only when he was allowed to refer to his affidavit that he came to know that the crime was committed on June 23, 1971. Again, he was asked when on October 5 he was arrested, and he answered that he did not know other than that it was after lunch. There was much confusion with regard to the execution of the affidavit of Padrones on October 5. The Court believes that there was no such affidavit executed on October 5, 1971. The confusion came up only when Padrones was asked when he was arrested and he answered on October 5. In answer to the subsequent questions he answered that he was brought before Judge Alfin Vicencio, the city judge, now the Honorable Judge of the Court of First Instance of Masbate. Then the defense assumed in the following questions that the investigation took place on October 5 and that his affidavit was taken on the same date, to which the accused answered in the affirmative. Whether the accused realized the truth of his answer or not, the Court has its doubts, upon which it based its conclusion that this witness has a poor memory as to dates of events. Capitalizing on this weakness of the witness, the defense confined its cross examination on the several affidavits supposedly executed by Miguel Padrones on October 5 and 20. But Padrones denied vehemently that after that investigation of October 5 he made any affidavit except that given by him to Corporal Vilorio on October 20, 1971 and to the District State Prosecutor on December 14, 1972, which the latter offered to show to the defense (referring to the affidavit of December 14, 1972). The District State Prosecutor also denied possession of the affidavit of October 5, of Miguel Padrones. The defense, to strengthen its position, manifested that the affidavit of October 5 was lost and that this could be confirmed by Atty. Fidel Taguiam, counsel of one of the defendants; but Atty. Taguiam was never presented in court to confirm or deny the same. The Court honestly believes that there was no such affidavit ever executed on October 5, 1971 and that the witness might be referring to the affidavits executed by him on October 20, 1971 (Exhibit "2" Relucio) and on December 14, 1972 before the District State Prosecutor. To further justify their actuations, the defense called on to the witness stand the former Cabanatuan City Judge Alfin Vicencio, now the presiding judge of one of the branches of the Court of First Instance of Masbate. His Honor testified that he remembers one Miguel Padrones to have executed an affidavit before him on October 5, 1971, but that he had only a general idea of its contents. The defense got what it wanted to get from the lips of His Honor, Judge Alfin Vicencio and i.e., that it was only accused Miguel Padrones who shot and killed the deceased victim Gonzalo Talastas when the latter caught up with him near the Retelco building. As a whole, His Honor wanted this Court to believe that only Miguel Padrones shot and killed Gonzalo Talastas and that his co-accused

Federico Relucio and Rosendo Velasco were not with Padrones when he killed said deceased victim. To this testimony of His Honor, it is regrettable to state that he failed to state at least all the substantial contents of the said affidavit, assuming that there was really an affidavit of October 5 executed by Miguel Padrones. Human as we all are, it is unavoidable for our minds to slip, particularly as regards the dates, considering the length of time and the work that confronted His Honor, the Honorable Alfin Vicencio." (Pp. 107-110, Appendix A, Appellant's Brief.)

Such ratiocination is strange, to say the least. The record shows that His Honor himself asked:

"COURT

q Do you know the date when the statement was made?

a It was on the 5th, sir.

q Of October?

a Yes, sir.

COURT

Proceed." (t.s.n., p. 77, hearing of January 4, 1973)

As can be seen, seemingly there was a deliberate and concerted intent to prevent the impeachment of Padrones, except that the prosecutor failed to realize that with his omission to object to the testimony of Judge Vicencio, all his transparent moves to suppress the presentation of the statement of said witness of October 5, 1972 would come to naught. The record reveals only too plainly that several recesses were allowed by His Honor at critical stages of the cross-examination for the obvious purpose of affording the witness opportunity to adjust his testimony with the help of the prosecutor -- what with his being already released after his discharge on January 4, 1972 -- so much so that after the spirited skirmishes between defense counsel and the prosecutor when the session of January 4, 1972 was to end, the significance of which could not have been lost to him, at the resumption of the trial on February 12, 1972, the witness tried to sing a different tune. As to be expected, he came out with the theory that the statement given by him before Patrolman Corporal Vilorio on October 5, 1972 was actually signed by him on October 19 or 20, 1972 before Fiscal del Rosario thus:

"COURT:

Q Are you sure that your statement was taken on the 5th of October?

A Yes, sir.

Q So Sgt. Vilorio has taken two affidavits from you?

A It was only on the 5th, sir.

Q How many times did that Sgt. Vilorio take your statement?

A It was only the time when I was apprehended, sir.

Q And when was that time when you were apprehended?

A On the 5th, sir.

Q Why is there now an affidavit subscribed and sworn to before Fiscal Del Rosario dated October 19?

A It was there at the City Court where I was made to sign my statement, sir.

Q When was that? Refer to your affidavit to refresh your memory.

A (Witness reads Exhibit "2-A".) May I ask a question.

Q Read it all.

ATTY. PABLO:

May we make of record that the State Prosecutor is instructing the witness to read the contents of the statement before the witness could be guided by this Honorable Court that he read the said affidavit.

COURT:

Now what is your question, Mr. Padrones?

A Because, this morning I was being asked by them whether I was made to sign before Vilorio, but they are not asking me whether I have signed before the Fiscal, sir.

Q What do you mean? Explain further.

A Only about that question whether I was made to sign before Vilorio that is why I answered yes. But it was not asked of me whether I was made to sign before Fiscal Del Rosario, sir.

ATTY. ABESAMIS:

Q So you mean to tell the Honorable Court is that your affidavit dated October 5, 1972 was signed before

Police Cpl. Vilorio?

A It was only before the city hall that I affixed my signature, sir.

Q Precisely that affidavit of yours dated October 5, 1972 was signed by you before Judge Vicencio, is that correct?

A Before Del Rosario, sir.

Q So the affidavit dated October 5, 1972, for purposes of clarification only, Your Honor, was signed by you before Fiscal Del Rosario?

A Yes, sir.

Q What is that affidavit which you signed before Judge Vicencio and that is included in your cross examination before on January 4, 1973?

A It came from the City Court, sir.

Q That was not on October 5, 1972?

A I do not know, sir, whether it was the one.

COURT:

Q The question is what is that affidavit that you subscribed and swore to before Judge Vicencio, if you have any?

A I do not remember that affidavit, sir. What I remember I only signed before Fiscal Del Rosario, sir.

Q So you do not recall having signed any statement before Judge Vicencio?

A In the City Court I do not remember having signed any affidavit before Judge Vicencio, sir.

Q In any other place do you remember having signed any affidavit before Judge Vicencio?

A None, sir.

Q You are sure?

A I remember nothing, sir.

Q You do not remember or you do not even recall that you were presented before Judge Vicencio by Police Cpl. Vilorio?

PROSECUTOR:

We request that the witness be shown any statement to that effect, if there is any.

COURT:

He is testing the credibility of the witness.

ATTY. ABESAMIS:

Q When you testified here on January 4, 1973 you said following which I am reading from the transcript of the stenographic notes taken during January 4, 1973 hearing ...

PROSECUTOR:

It seems the witness is confused about his affidavit.

ATTY. ABESAMIS:

The witness, Your Honor, is not confused; the witness is lying.

COURT:

Proceed.

ATTY. ABESAMIS:

Q I will read from your testimony during the trial of January 4, 1973, specifically the questions and answers found on page 68, which I quote:

'Q. In what connection were you investigated by Vilorio?

'A. Regarding the case of Gonzalo Talastas, sir.

'Q. Did you sign that written investigation?

'A. Yes, sir.

'Q. Also on October 5, 1972?

'A. I was brought before the person of Judge Vicencio, sir.

'Q. But you have not answered my question. My question to you was, did you sign that typewritten of Vilorio also on October 5, 1972?

'A. Yes, sir, I signed it before the judge.

'Q. On October 5, 1972?

'A. Yes, sir.

And Your Honor, on page 76, I read the following questions and answers:

'Q. Who was carrying the typewritten investigation when you were brought before the judge on October 5, 1972?

'A. Vilorio, sir.

'Q. After coming from the place of Judge Vicencio who was carrying that statement?

'A. Vilorio also, sir.'

Q My question now, Mr. Witness, is will you insist that you were never brought before Judge Vilorio in order to swear, to sign and to subscribe your statement in connection with this case since the beginning?

A I do not remember, sir. What I remember is I signed it before Fiscal Del Rosario, sir.

COURT:

Q Then why did you assure counsel for the defense before the court that you were presented before Judge Vicencio, during our hearing of January 4, 1973?

A I do not remember having been asked that question, sir.

Q It was asked of you and the court also remembers that question asked of you. Will you now insist that you were never brought before Judge Vicencio in connection with this case?

A I cannot comprehend the question, sir.

Q What do you not comprehend?

A Regarding that point that I was brought before the judge, sir.

Q But when you were asked by counsel about that fact on January 4, 1973 your mind was clear then, is it not?

A I do not remember whether I was brought before Judge Vicencio, sir.

Q You know very well Judge Vicencio before that date?

A I know him to be in the City Court, sir. He was being pointed to me by the police, sir.

Q My question is do you know Judge Vicencio personally before that date?

A Yes, sir.

Q What about Fiscal Del Rosario, you know him also personally?

A Yes, sir.

COURT:

Continue.

ATTY. ABESAMIS:

We request also, Your Honor, that pages 68 and 69 of the transcript of the stenographic notes of the trial dated January 4, 1973 be marked as Exhibit '3-Impeachment-Relucio' and the bracketed portion be marked as Exhibit '3-A-Impeachment-Relucio.'

COURT:

Mark it." (t.s.n., pp. 23-31, hearing of February 12, 1973)

His Honor continued asking questions as the witness was already faltering, until finally, to save him, the session was adjourned:

“Q What day were you arrested?

A On a Friday, sir.

Q That was on October 5, 1972?

A Yes, sir.

Q So, that coming Monday you were brought before Fiscal Del Rosario?

A Yes, sir.

Q Are you sure of that?

A Yes, sir.

Q Do you remember if you signed this affidavit before Fiscal Del Rosario?

A It was only the statement which I swore to that I remember, sir.

Q Did you see Fiscal Del Rosario sign his name?

A Yes, sir.

Q You do not remember if you signed the affidavit before Fiscal Del Rosario?

A I signed, sir.

Q What pen did you use? The pen of Fiscal Del Rosario or some other kind of pen?

A I do not remember whether I used the same pen used by the Fiscal, sir. I remember only that I borrowed a ball pen placed on the table of the Fiscal, sir.

Q But you said you signed that statement of yours before Policeman Vilorio, do you recall that now?

A I do not remember whether I was able to sign that or not, sir.

Q Are you tired already?

A My head is aching, sir.

COURT:

All right, we will adjourn this hearing and continue tomorrow, as previously scheduled. At any rate it is already twelve o'clock noon. (pp. 35-36, Id.)

At this point, it must be noted that Exhibit 2-A, the statement which Padrones claimed above to have been admittedly taken by Vilorio on October 5, 1972 but, supposedly signed by him later and not on the same day before Judge Vicencio as he had previously stated, bears the following heading:

"SINUMPAANG SALAYSAY NI MIGUEL PADRONES y ESPEJO SA PAGTATANONG NI P/CPL J. S.

VILORIA DITO SA HIMPILAN NG PULISYA NG KABANATUAN NGAYONG IKA-19 NG OKTUBRE 1972 SA GANAP NA IKA 5:15 NG HAPON . . . "

and ends with the following jurat:

"NILAGDAAN AT PINANUMPAAN sa aking harap ngayong ika 20 ng Oktubre 1972, dito sa Lunsod ng Kabanatuan."

With the dates October 19 and 20 thus appearing in this statements, how could there be any proximity to the truth in the assertion of Padrones that his statement was first taken by Vilorio on October 5, 1972 and that it was signed by him before Fiscal del Rosario on October 19, 1972 and that it was the very statement he had been referring to earlier as having been signed by him before Judge Vicencio?

And then, at the session of February 13, 1972, he tried to foist upon the court another theory:

"COURT:

I was the one asking questions yesterday to the witness. Let me finish my questioning of this witness.

Q So that the court understands from you that you have only executed two affidavits in connection with this case, one was taken from you by Cpl. Vilorio of the Cabanatuan City police department; and the second was taken before District State Prosecutor Copuyoc, is that right?

A No, sir, it is on the 19th; the third is on the 4th.

"Q So you have three affidavits taken in connection with this case, is that it?

A The one taken by Vilorio which was subscribed before Fiscal Del Rosario, sir.

Q Yes, and the other one taken is that one taken by Fiscal Copuyoc?

A Yes, sir.

Q I did not mention any dates, remember.

A Yes, sir.

Q I repeat again. Your mind is not yet confused this morning?

A Yes, sir.

Q The first affidavit was taken before Cpl. Vilorio of the city police and subscribed and sworn to before Fiscal Del Rosario?

A Yes, sir.

Q And the second was the one executed before District State Prosecutor?

A Yes, sir.

Q You have not executed any other affidavit in connection with this case before any administering officer?

A None, sir.

COURT:

Continue.

ATTY. ABESAMIS:

Q In answer to a question propounded by the Honorable Court you said that your third affidavit was on the 4th, do you remember having said that?

A It was here that I swore, sir.

Q To an affidavit?

A Being a witness, sir.

Q So when you executed a third affidavit on the 4th you merely refer to your declaration made in open court on January 4, 1973?

A I cannot comprehend very well what is affidavit, sir.

“Q Did you make a written statement in connection with this case on the 4th?

COURT:

Fourth of what?

ATTY. ABESAMIS:

Q On the 4th of your testimony?

COURT:

Fourth of what month? Be specific, let us be fair with the witness, especially with his kind of mentality.”
(t.s.n., pp. 38-41, hearing of Feb. 12, 1973.)

Only to fall back at the trial on February 19, 1973 on his original version that Viloría accompanied him before Judge Vicencio:

"ATTY. ABESAMIS:

q You having stated before this Honorable Court on January 4, 1973 under oath that you were accompanied by Viloría in order to swear to one of your statements and another policeman whom you do not know, will you still insist that you were never accompanied by Viloría?

a When I signed before Fiscal del Rosario, Viloría was not with me, sir.

q When was Viloría with you?

a It was on the 5th, sir.

q Before whom?

a Before Judge Vicencio, sir.

q Where?

a In the city jail, sir." (pp. 13-14, Id.)

We have taken pains to quote above several portions of the transcript of the stenographic notes of the proceedings in the court below even at the risk of unduly extending this opinion – and there are actually many more of similar tenor that can be mentioned – in order to bring out in bold relief how Padrones, the state witness who was freed from prosecution by the fiscal and the trial court played fast and loose with the truth in the course of his lengthy testimony. How unfounded indeed is His Honor's laudation of Padrones in the decision under review to the following effect:

"This Court has been extra careful in the analysis and appreciation of the evidence in question, particularly that of the two principal witnesses for the prosecution, namely: Crispin Angeles and Miguel Padrones. The latter having been discharged as prosecution witness he cannot escape, of course, like all accused similarly situated the imputation that he was allowed to be discharged from the information only for one basic reason, i.e., to escape criminal responsibility. The discharge of one or two accused is allowed by law in consideration of justice and truth with the injunction to the discharged accused to testify to the truth and run the risk only of being recalled and included in the information again should he refuse to live up to his commitment to the prosecution. That injunction is the consideration that compels the discharged accused to toe the line. Nevertheless, the Court has been scrupulously and judiciously wary over the conduct, behaviour and testimonies of this particular witness, Miguel Padrones. Even his means of walking from the place where he was seated to the witness stand and his return to his seat did not escape the vigilance of this court. As Padrones was called to the witness stand for several times the Court observed that he walked in a natural manner, as if he was to face nobody. He answered the questions immediately if he understood them and if he did not he asked the interpreter to repeat the same; he answered the questions without hesitation or nervousness. In fine, he took

everything in his stride, and one noticeable behaviour which he has shown the Court was when he answered questions the said witness looked straight to the Court and lowered his eyes only after he has answered the same. This Court went further into his educational attainment and he admitted he was only a second grader. He made no bones about his educational background. The Court believes he has acquired a very low standard of education, otherwise, he would not be a willing tool of the accused Federico Relucio who, together with him in that afternoon of June 23, 1971 purposely went to the Capital theater to kill Gonzalo Talastas. He showed his blind loyalty to Relucio as a friend, if the Court were to believe the theory of the defense. But, of course, the testimonies of Relucio and his wife on this point were of doubtful efficacy. According to the defense and this is admittedly true, Miguel Padrones was a member of the BSDU and at one time a security guard. As person belonging to a unit of the BSDU was fighting the dissidents, while being a security guard helps the police authorities to maintain peace and order in a given place, so that by the nature of the work of Miguel Padrones, he is working for, with and by the side of the law. Notwithstanding his low educational attainment there was not even a record of conviction offered by either the prosecution or defense. Under these circumstances attributed to the same witness, what more can a court of justice expect from an ignorant and sincere witness like Miguel Padrones?" (Appellant's Brief, pp. 104-106.)

Such unusually elaborate but obviously unmerited encomium given a discharged state witness could have no other purpose than to induce the appellate court to rely implicitly on the findings in the decision.

There is more than meets the eye here in the actuations of the district state prosecutor who handled the case for the People, and regrettably, the trial court was apparently carried away by his antics to the point that His Honor came to seemingly join in the effort to concoct the obvious falsehood that Padrones did not swear to a statement about the incident in question before Judge Vicencio on October 5, 1972. Judge Vicencio was city judge then of Cabanatuan City and at the time of the trial was already presiding in the Court of First Instance of Masbate. He declared under oath:

"Atty. Abesamis

Q Sir, you said that you are the incumbent CFI judge of Masbate, when did you assume that office?

A I assumed office on May 21, 1973 and I took my oath on May 16, sir.

Q Before that date Sir what was your occupation?

A I was the city judge of Cabanatuan City presiding over Branch I, sir.

Q On October 5, 1972 were you still the City judge of Cabanatuan City presiding over Branch I of the said court?

A Yes, sir.

Q And as City judge of Cabanatuan City on October 5, 1972 it was your duty to administer all oaths of affiants on their respective statements is that correct?

A Yes, sir.

Q Now, sir, I would like to inform you that a certain Miguel Padrones alias 'Ige' testified before this Honorable

Court as a witness for the prosecution on January 4, 1973 and among others, he said the following: that he was arrested by the Cabanatuan City Police Department on October 5, 1972 in the afternoon thereof; that he was formally investigated by the police department of Cabanatuan City and that his statement was taken by a certain Cpl. Julio S. Vilorio on the same date October 5, 1972 - page 68 of the transcript of the stenographic notes of the testimony of Miguel Padrones on January 4, 1973. After Padrones made that declaration before the Honorable Court, the defense asked for the production of that affidavit which he allegedly executed on October 5, 1972 but the Honorable District State Prosecutor said that he did not have it in his possession and the manifestation of the District State Prosecutor is page 71 of the transcript of the stenographic notes of the same hearing. He likewise stated that he signed his affidavit of October 5, 1972 on the same date before you. However, during the hearing of February 12, 1973 before this Honorable Court the same Padrones declared under oath that his affidavit dated October 5, 1972 was signed by him before Fiscal del Rosario of the Office of the City Fiscal of Cabanatuan City pages 25-26 of the transcript of the stenographic notes, February 12, 1973, and he said categorically that he does not remember having signed any statement before Judge Vicencio in the city court nor in any other place for that matter page 26 t.s.n. February 12, 1973 which we have exerted efforts to locate that alleged statement of Miguel Padrones alleged executed on October 5, 1972 but we failed to do so. Now, on the basis of this will you please tell us sir whether or not on October 5, 1972 a certain Miguel Padrones alias 'Ige' had appeared before you in order to swear to a statement given by him before Cpl. Vilorio on the same date October 5, 1972?

A I remember this Miguel Padrones accompanied by policeman Vilorio and del Rosario. They went to my residence at Gen. Tinio street and they sat in the terrace of my residence. It was there when I asked to administer the oath to Mr. Padrones, sir.

Q That was sir in the afternoon of October 5, 1972?

A It was late in the afternoon of that date, sir.

Q Now, since that affidavit could not be retrieved and could not be found despite efforts exerted by the defense to look for the same, can you tell us sir the contents in brief of that statement of Miguel Padrones alias 'Ige'?

A I can give you a general idea of the statement, sir.

Q Yes, sir, please state.

A Padrones stated among others that he is Ige mentioned in a warrant of arrest with respect to the death of a certain Gonzalo Talastas. I believe it was then that he stated that Gonzalo Talastas shot a certain Federico Relucio inside the Capital theater and that, he, Padrones chased this Talastas along Burgos Avenue and caught up with him in front of the former Retelco office at Burgos Avenue and then he shot this Talastas, sir.

Q What else did he state in that statement?

A Well, that is the general idea that I recall that he chased Talastas and he shot him until he died, sir.

Q Did Padrones state in that affidavit where he left Federico Relucio after Relucio was shot by Talastas inside the Capital theater and after Padrones had chased Gonzalo Talastas?

A I do not remember Padrones having made any statement except that according to him, Talastas shot Federico Relucio inside the Capital theater and that on his part, he chased Talastas along Burgos Avenue caught up with him in front of the former Retelco office that is the residence of the late Judge Cecilio then he shot Talastas, sir.

Q Did Padrones as far as you could recall mention in that affidavit his companions in chasing and shooting Gonzalo Talastas?

A I do not remember any other name except him, Talastas and Relucio. Those are the names that I remember.

Q Do you remember if Padrones had ever mentioned in that statement of his the name of Rosendo Velasco alias Mangyo?

A No, sir, I do not remember that he ever mentioned.

Atty. Abesamis:

That is all, your honor.

Court:

Cross.

Fiscal:

No cross examination, your honor." (t.s.n., pp. 28-35, hearing of July 25, 1973.)

For the trial court to hold in its decision under review, in the face of this solemn testimony of a fellow member of the judiciary of equal rank, as against the wavering and fast changing declarations of a discharged accused, that "it is regrettable to state that he (Judge Vicencio) failed to state at least the substantial contents of said affidavit, (the statement of Padrones before him of October 5, 1972) assuming that there was really an affidavit of October 5 executed by Miguel Padrones. Human as we all are, it is unavoidable for our minds to slip particularly as regards the dates, considering the length of time and the work that confronted His Honor, the Honorable Alfin Vicencio" is purely a slanted rationalization and an unexcusable display of uncommon naivety truly unbecoming of a judicial trier of facts. This observation is also justified by His Honor's own admission that:

"But it is not all rosy with the testimony of Miguel Padrones. Like all other witnesses of the same capabilities he suffers from a poor memory as regards remembering dates of events and faces of persons whom he occasionally saw and met. The records is replete of incidents showing the poor memory of this witness as regards the exact dates of events and the faces of persons he met. The following instances will show that while in the witness stand he was asked the following: 'Do you remember where were you on June 23, 1971 between the hours of four o'clock and five o'clock in the afternoon?' His answer was: 'I was in the residence of Atty. Perez.' It may be noted that June 23, 1971 was the date of the commission of the crime and the same date was included in the question. But when he was asked again on cross-examination the date of the commission of the crime, he answered that he could not remember but if he would be allowed to refer to his affidavit he could

answer the same. It was only when he was allowed to refer to his affidavit that he came to know that the crime was committed on June 23, 1971. Again, he was asked when on October 5 he was arrested, and he answered that he did not know other than that it was after lunch." (Appellant's Brief, p. 107.)

In other words, His Honor could excuse the supposed lapse of memory of a discharged accused while he would condemn a supposedly similar fault in the testimony of a judge.

We hold that, contrary to the unwarranted and incomprehensible finding of His Honor, the evidence on record conclusively establishes that Padrones did give to Patrolman Corporal Vilorio of the Cabanatuan City Police on October 5, 1972 immediately after his arrest, his own account of what happened in the afternoon of June 23, 1971 at the Capital Theater and subsequently near the Old Republic Telephone Company in Cabanatuan City that led to the death of Gonzalo Talastas and that he signed and swore to said statement before Judge Alfin Vicencio, then of the City Court of Cabanatuan City, that same day, to whom he was brought by the same Patrolman Corporal Vilorio. We consider the attitude shown in the premises by District State Prosecutor Mariano D. Copuyoc of feigning ignorance of Annex A and attempting to foist upon the court the theory that Exhibit 2-A was the one given by Padrones on October 5, 1972, to be lacking in candor to the court and prejudicial to the interests of justice. Likewise, the circumstances under which Exhibit 2-A, the supposed statement of Padrones bearing two dates, October 19 or 20, 1972, and supposedly signed before Fiscal del Rosario, came into being need to be inquired into, there being indications from the circumstances We have found borne by the record that it is not of regular origin. We further hold that the trial court committed a reversible error in not giving due course to the motion for reconsideration and/or new trial of the defense dated April 16, 1974, if only for the purpose of delving deeper into the execution of Annex A thereof, which appears to be the statement given by Padrones on October 5, 1972 to Patrolman Corporal Vilorio and which he signed and swore to before Judge Vicencio, wherein Padrones categorically confessed that he, and not appellant Velasco, was the one who chased and shot to death Gonzalo Talastas during the incident here in question thus:

"SINUMPAANG SALAYSAY NI MIGUEL PADRONES Y ESPEJO SA PAGTATANONG NI P/CPL J S VILORIA DITO SA HIMPILAN NG PULISYA NG KABANATUAN NGAYON IKA 5 NG OKTUBRE 1972 SA GANAP NA IKA 5:15 NG HAPON . . . x

01. TANONG: Ito ay isang pagsisiyasat ipinaaalala ko saiyo ang iyong karapatan na itinatadhana ng Saligang Batas ng Bansang Pilipino na ang sino man ay hindi maaaring piffling magbigay ng ano mang pahayag at kung magbibigay man ay maaari namang gamitin ng laban saiyo sa alin mang Hukuman, ikaw ba ay handang sumagot sa mga itatanong saiyo?

SAGOT: Opo.

02. T: Ano ang iyong pangalan at iba pang pagkakailanlan saiyo?

S: MIGUEL PADRONES Y ESPEJO, 43 taon, mayasawa, manggagawa sa NIA, Talipapa, Cabanatuan.

03. T: Ano ang iyong palayaw?

S: EGI po.

04. T: Ano ba ang dahilan at narito ka sa Himpilan ng Pulis?

S: Ako po ay kasalukuyang napipiit sa isang usapin.

05. T: Aling asunto ang iyong kinasasangkutan?

S: Iyon pong pagkapatay kay ALONG.

06. T: Kailan napatay si ALONG?

S: Buan po ng Hunyo 1971.

07. T: Saang lugar napatay si ALONG?

S: Duon po sa Burgos, Kabanatuan malapit sa dating "Republic Telephone".

08. T: Papaano napatay si ALONG?

S: Sa barilan po.

09. T: Sino ang tao o mga taong kabarilan ni ALONG?

S: Ako po.

10. T: Maliban sa iyo, wala na bang iba pang tao o mga taong kasama sa pakikipagbarilan kay ALONG?

S: Wala na po.

11. T: Isalaysay mo nga ang buong pangyayari?

S: Si RELUCIO at saka ako ay nagpunta sa bahay ni Atty. PEREZ sa Gen. Tinio, Kabanatuan at pagdating namin duon ay nabalitaan ni RELUCIO na si ALONG ay nasa boob ng cine 'Capital'.

12. T: Sa nabalitaan ni RELUCIO na tungkol kay ALONG ano pa ang nangyari, kung mayroon man?

S: Inaya po ako ni RELUCIO at sumakay kami sa tricycle at nagpunta kami sa malapit sa cine 'Capital'.

13. T: Nuong dumating kayo sa may cine 'Capital' ano ang inyong ginawa?

S: Pumasok si RELUCIO sa cine samantalang ako ay naghintay sa labas ng cine.

14. T: Nuong makapasok si RELUCIO sa boob ng cine 'Capital' ano ang nangyari?

S: Hindi po nagtagal ay nagkaroon ng mga putok sa loob ng cine.

15. T: Matapos kang makarinig ng mga putok ano ang iyong nakita?

S: Lumabas po si ALONG.

16. T: Saan nagtuloy si ALONG?

S: Nagtatakbo po siyang patungong hulo.

17. T: Ano pa ang nangyari nuong tumakbo si ALONG?

S: Sinundan ko po si ALONG sa pamamagitan ng paghabol sa kanya.

18. T: Inabutan mo ba si ALONG?

S: Inabutan ko po sa malapit sa dating Tanggapa ng 'Republic Telephone'.

19. T: Ano ang nangyari ng abutan mo si ALONG?

S: Nagbarilan po kami.

20. T: Ano ang baril ni ALONG?

S: 45 calibre po.

21. T: Matapos ang putukan saan ka nagtuloy?

S: Umuwi na po ako sa amin.

22. T: Si ALONG ano ang ayos ng iyong iwan?

S: Patay na po.

23. T: Ano ba ang nagudyok sa iyo upang ipahayag sa akin ang iyong salaysay na ito?

S: Gusto ko pong maliwanagan ninyo ang pangyayari sa pagkamatay ni ALONG.

24. T: Ano ang ipinamaril mo kay ALONG?

S: Carbine at calibre 45 po.

25. T: Wala na akong itatanong mayroon ka pang nais sabihin?

S: Wala na po.

26. T: Lalagdaan mo at panunumpaang ang iyong salaysay na ito patotoo at pagpapatibay sa iyong sinabi?

S: Opo.

(Nilagdaan) MIGUEL PADRONES

NILAGDAAN AT PINANUMPAAN sa aking harap ngayong ika 5th ng Octubre, 1972, sa Lunsod ng Kabanatuan.

(Nilagdaan) ALFIN VICENCIO
City Judge"
(Pp. 509-510, Record.)

Indeed, in the light of all the foregoing, We can safely say that with the testimony of Judge Vicencio, the evidence against appellant Velasco coming from the lips of Padrones is not entitled to any credit at all. And there is even no need for the new trial prayed for by the defense. In the premises, such a proceeding would obviously be superfluous.

- 3 -

With the disgusting character of the prosecution's evidence against herein appellant Velasco We have disclosed above, and Our ineludible conclusions against the evidentiary value of the testimonies of Crispin Angeles and the discharged defendant Miguel Padrones, it goes without saying that the charge of murder against said appellant has no leg to stand on. Accordingly, We find no need to elucidate on the other evidence on record, which, to be sure, based on Our careful study thereof could absolve him just the same, We have no alternative but to reverse the judgment of conviction of the trial court, for lack of any evidence to support the same.

WHEREFORE, the decision of the trial court under review is hereby reversed and the appellant Rosendo Velasco is acquitted and ordered immediately released from custody unless there is any reason for his further detention other than this case, with the corresponding portion of the costs de officio. Let copies of this decision be furnished the Minister of Justice and the Provincial Fiscal of Nueva Ecija, for their information and guidance relative to the actuations of Special District Prosecutor Copuyoc and Fiscal del Rosario discussed in the above opinion.

Fernando, (Chairman), Antonio, Concepcion, Jr., and Santos, JJ., concur.

Aquino, J., did not take part.

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