

EL PUEBLO DE FILIPINAS, QUERELLANTE Y APELADO, CONTRA MARIANO PATRICIO, ACUSADO Y APELANTE.

G.R. No. L-864. September 16, 1947

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BRIONES, M.:

Mariano Patricio interpone esta apelacion de la sentencia del Juzgado de Primera Instancia de Batangas en que se le condena por el delito de robo con homicidio a sufrir la pena de reclusion perpetua mas las accesorias de ley, a pagar a los herederos de la occisa, Bonifacia Petate, la suma de P2,000 en concepto de indemnizacion, y las costas del juicio.

En la sentencia del Juzgado a quo danse por establecidos y probados fuera de toda duda razonable los siguientes hechos. A eso de las 11 de la noche del 16 de Mayo, 1945, Roman Petate, su esposa Maria Baybay y sus cuatro hijos llamados Bonifacia, Arcadio, Pio y Reynaldo, ya estaban todos durmiendo en su casita situada en el lugar de Campahoyan, Municipio de Talisay, provincia de Batangas, cuando hubieron de despertarse al ruido producido por las detonaciones de armas de fuego y los ladridos de los perros. Inmediatamente despues forzaron su entrada en la choza dos hombres armados de rifles y con ademan amenazador preguntaron donde estaba el toro de la familia. Aterrorizado Arcadio les indico y guio al sitio donde estaba amarrado el animal, el cual fue desatado por los ladrones llevandolo consigo. No contentos con esto los asaltantes, antes de abandonar el lugar, hicieron varios disparos dirigidos hacia Arcadio y la casa. Arcadio salio ileso, pero no asi su hermana Bonifacia quien, estando dentro de la choza, recibio un tiro en la cadera derecha atravesando el proyectil los intestinos, y muriendo dicha Bonifacia al dia siguiente de resultas de la hemorragia interna producida por la herida, segun dictamen facultativo del medico que le asistio.

Los asaltantes fueron positivamente identificados resultando ser el apelante Mariano Patricio y su coacusado, Jorge Ortila. Al dia siguiente, o sea el mismo dia en que murio Bonifacia Petate, diose cuenta del hecho a las autoridades municipales del pueblo, y efectivamente el alcalde y el jefe de policia practicaron la correspondiente investigacion si bien no con la diligencia y el empuje necesarios teniendo en cuenta lo anormales y peligrosas que eran las circunstancias en aquel tiempo, inmediatamente despues de la liberacion, o aun sin estar completa esta, por lo menos en algunas provincias—situacion de caos y desorden en que los malhechores campaban por sus respetos, aterrorizando al vecindario, sin excluir a los funcionarios y agentes de seguridad publica. Esto explica el por que se presento algo tarde la querella contra los nombrados Mariano Patricio y Jorge Ortila. Ya presentada, y estando los acusados en espera de la investigacion preliminar, el Ortila logro escaparse tomando ventaja de la escasa vigilancia que podia ofrecer la precaria fuerza policiaca y el estado de inseguridad del calabozo municipal. Asi que la causa hubo de seguirse contra el Mariano Patricio solamente, quien, despues del juicio, fue hallado culpable por el Juzgado de Primera Instancia de Batangas y condenado como queda dicho arriba.

La defensa del apelante es simple coartada, y la unica cuestion que tenemos que determinar es si tal defensa puede prevalecer frente a las pruebas de positiva e inequivoca identificacion establecidas de manera fidedigna por los testigos de cargo. Tres testigos declaran haber reconocido inconfundiblemente a los acusados y son, a saber: Roman Petate, el padre de familia, de 62 años de edad; su hijo Arcadio, de 23 años; y un vecino, Zacarias

Talatala, de 37 años.

Roman Petate dice que habia luz en la casa y reconocio a Jorge Ortila porque habia sido su vecino por largo tiempo en la montaña, y al apelante, Mariano Patricio, porque este es hijo de un compadre suyo y tambien habia sido su vecino antes de trasladar su domicilio al barrio de Sumil, municipio de Silang, provincia de Cavite.

Arcadio Petate dice haber reconocido a los acusados, primero, por sus voces porque habia luz en la casa, pues estaba enfermo un hijo de su hermana Bonifacia; segundo, porque los conocia de antiguo siendo Ortila compoblano suyo y el padre de Mariano Patricio tambien del mismo pueblo de Talisay, y cuando este ya vivia en Silang, Cavite ellos solian verse durante las epocas de cosecha; y tercero, porque el, Arcadio, fue quien los acompaño y guio hacia el sitio donde estaba amarrado el toro.

Zacarias Talatala declara que tambien el se despertó al ruido de los disparos y ladridos de los perros; que entonces trato de ir a la casa de Roman Petate de cuya direccion venia el ruido; que en el trayecto hubo de esconderse detras de unas malezas al notar el movimiento de dos personas que se estaban aproximando; que poco despues, a eso de un metro y medio de distancia de su escondite, vio al Ortila y al apelante conduciendo un toro; que pudo conocer y distinguir a los acusados, pues era noche estrellada si bien no habia luna, y ademas porque los conocia de antiguo por haber sido vecinos suyos.

Asi que no pudo haber habido error en la identificacion. Respecto de algun motivo bastardo, nada se trasluce en autos: no se ha insinuado siquiera ninguna causa o razon torticera por que los testigos arriba referidos, sobre todo el vecino Zacarias Talatala, habian de formular cargos falsos contra el apelante y su coacusado. Por lo que es forzoso dar a las conclusiones de hecho del tribunal sentenciador todo el valor y credito que se merecen, teniendo en cuenta su posicion ventajosa al ver y oír declarar a los testigos. Ciertas contradicciones, defectos y lagunas que se señalan en los testimonios de cargo no son de tal importancia para poder afectar seriamente a su credibilidad.

Se hace hincapie en la demora con que se presento la querella, insinuandose que esa demora provoca la sospecha de que las pruebas de la acusacion se han falseado. Sin embargo, la tardanza se ha explicado satisfactoriamente por el alcalde en sus declaraciones prestadas en el juicio cuando fue llamado como testigo de la defensa. Segun el alcalde, el y su jefe de policia, despues de recibir la denuncia acerca del crimen el 17 de Mayo, procedieron a dar los pasos para una acabada investigacion del caso, pero despues prefirieron suspender las diligencias por razones de prudencia, temiendo por su seguridad personal, pues los malhechores amenazaban al vecindario con toda clase de represalias, y tenian medios y armas para hacer efectivas sus amenazas, mientras que los agentes del orden publico eran pocos y mal armados. Pero una cosa es positiva, a saber: que el padre y hermano de la occisa Bonifacia denunciaron inmediatamente el caso a las autoridades del pueblo, lo que demuestra que la identificacion fue pronta, espontanea, y no tardia ni artificiosamente amañada como se pretende insinuar.

Tampoco tiene merito el argumento de que no se cometio robo, pues el animal fue recuperado por el dueño al dia siguiente en los alrededores del sitio mismo de autos. El delito quedo consumado cuando los acusados, mediante fuerza e intimidacion, lo desataron en la noche anterior, sustrayendolo del lugar donde estaba amarrado. La circunstancia de que despues lo hayan abandonado, quien sabe si para no llevar impedimento en su fuga al advertir que habian herido a una persona con sus disparos, no pudo borrar la responsabilidad criminal resultante de la consumacion del delito, extinguiendose solo la responsabilidad civil.

Se arguye tambien que no cabe declarar al apelante como responsable del delito complejo de robo con homicidio penado en el art. 294, par. 1, de nuestroCodigo Penal Revisado, por la razon de que no hay en autos prueba directa de que el disparo fatal que causo la muerte de la Bonifacia habia sido hecho por el apelante. Es verdad que no hay tal prueba directa, pero consta establecido fuera de toda duda, por el testimonio de Arcadio, que inmediatamente despues de desatar el toro y antes de dejar el lugar ambos acusados dispararon simultaneamente

contra Arcadio y hacia la casa—unos 12 disparos, segun el testigo—y acto seguido se oyeron los gemidos de Bonifacia quejandose de estar herida. De esto resulta indudable que fue uno de tales disparos el que ocasiono la herida y muerte de que se trata. No importa que no se pueda determinar si fue del apelante, o de su coacusado fugitivo, el disparo homicida. Habiendose confederado ambos para cometer el delito complejo de que se les acusa—conspiracion que ha quedado concluyentemente establecida—los actos de uno deben considerarse como actos del otro, siendo ambos mutuamente corresponsables. "Cuando se ha probado la comision del delito de robo con homicidio, todos aquellos que tienen participacion como autores directos en la comision del robo, son culpables del delito complejo de robo con homicidio, a menos que aparezca que procuraron impedir la comision del homicidio (E. U. contra Macalalad, 9 Jur. Fil., 1). No solo no aparece que el apelante tratara de impedir el homicidio, sino que, por el contrario, consta probado que el y su coacusado Ortila hicieron conjuntamente los 12 disparos, uno de los cuales resulto ser fatal.

De lo dicho se infiere que tampoco tiene merito la alegacion de que la muerte en el presente caso fue puramente accidental, causada por una bala perdida. Los disparos fueron deliberadamente dirigidos contra Arcadio y hacia la casa en la cual sabian los acusados que habia moradores, entre ellos la occisa. No cabe duda de que los disparos en cuestion eran actos de violencia e intimidacion contra las personas ejecutados por los acusados en la perpetracion del robo; y el art. 294, par. 1, delCodigo Penal Revisado provee que cuando por tales actos y con ocasion de ellos se comete homicidio, se engendra el delito complejo de robo con homicidio y se castiga con la pena de reclusion perpetua a muerte. El Tribunal Supremo de España tiene declarado que "una relacion directa, enlace intimo entre el robo y la muerte, ya preceda esta a aquel, o ya le subsiga, o ya se verifiquen ambos a un mismo tiempo, es indudable que constituyen el delito complejo especial, previsto y penado en el art. 503, No. 1, delCodigo Penal." (Sentencia del Tribunal Supremo de España de 26 de mayo de 1877; E.U. contra Landasan, 35 Jur. Fil., 366; E.U. contra Antonio, 31 Jur. Fil., 216; Pueblo contra Hernandez, 46 Jur. Fil., 50.)

El Procurador General sostiene en su alegato que en esta causa se ha cometido, ademas, el delito de aborto no intencional enlazado con el de robo con homicidio y complejo con el mismo, puesto que, segun el dictamen facultativo, la occisa estaba embarazada con preñez de 4 meses, y cita a este efecto la causa de Pueblo contra Genoves (61 Phil., 382). Sin embargo, es incuestionable que no cabe imputar este cargo contra el reo por no haberse alegado en la querella.

No se debe apreciar la nocturnidad como circunstancia agravante, como pide el Procurador General, pues no hay prueba de que la noche se busco de proposito para cometer el delito (E. U. contra Ascue, 4 Jur. Fil., 138; E. U. contra Balagtas, 19 Jur. Fil., 175).

Es acertada la recomendacion del Procurador de que debe apreciarse como agravante el haberse cometido el delito en la morada de la ofendida (E. U. contra Leyba, 8 Jur. Fil., 682), pero esta agravante queda compensada por la falta de instruccion del apelante.

En meritos de lo expuesto, se confirma la sentencia apelada, con las costas a cargo del apelante.

Asi se ordena.

Moran, Pres., Paras, Feria, Pablo, Bengzon, Padilla, y Tuason, MM., estan conformes.

DISSENTING

PERFECTO, J.:

Appellant is accused of robbery with homicide and was sentenced to reclusion perpetua with the accessory penalties of the law, to pay an indemnity of P2,000 to the heirs of Bonifacia Petate and the costs. Four witnesses testified for the prosecution and five for the defense.

Rizalino Atienza, 35, practicing physician, testified that on May 17, 1945, he attended Bonifacia Petate for gunshot wounds which she sustained on her thigh and which subsequently caused her death. The victim was about four months pregnant. The deceased was brought to witness's house on May 16, and died on May 17. After the woman died, the witness found that the bullet passed through the large intestines, but the bullet could not be found.

Arcadio Petate, 23, single, farmer, resident of Talisay, Batangas, testified that on the night of May 16, 1945, he was in their hut in the sitio of Campahoyan, Talisay. He was with his sister Bonifacia and their parents Roman Petate and Maria Baybay. Bonifacia and the witness were sleeping when they were suddenly awakened by successive shots which came from the outside of the hut. Later on, two men named Jorge Ortila and Mariano Patricio went up the hut. They asked for the cow of the witness who pointed the place where the cow was tied. The accused were pointing their guns at the witness. They were carrying American rifles bigger than a carbine. The accused untied the cow and pulled it away and afterwards they fired at the witness with the Garand rifle. The witness ducked. The accused ran away, but before that, they fired at the hut and the witness heard the moaning of his sister Bonifacia. They fired about twelve shots. The witness found Bonifacia wounded in the thigh and near the stomach. He shouted for help and Zacarias Talatala, a neighbor, arrived. Talatala's hut is about thirty meters away from the witness's hut. They attended to Bonifacia and brought her to the poblacion of Talisay for treatment by Dr. Rizalino Atienza in his drug store. Dr. Atienza could not control the hemorrhage, so he called for some American soldiers in order to take Bonifacia to Lipa. According to information, she died upon arrival in Lipa. The witness was not with her when she died. The cow was valued at P540 and the witness recovered it. The accused abandoned it in a certain place north of the house of the witness. The witness recovered the cow the following morning, in a place forty-five meters away from his house. The witness recognized the two accused by their voices and besides they had been his companions for a long time. At the time they were pointing their rifles at the witness, Mariano Patricio was at his left at about half a meter's distance, while Ortila was at his back, about three meters away. Both were carrying Garand rifles. Witness's mother was also in the hut. The witness recognized the accused because the hut was lighted. The witness recognized them not only by their voices but also by their faces. He recognized them at the very moment when he left them in the place where the cow was tied. He brought his sister to the drug store of Dr. Atienza, the following morning, May 17. She was brought by the witness, his cousin Eliseo Baybay and his parents. They arrived at about one o'clock in the morning. It took less than an hour's trip. Bonifacia was taken to the drug store an hour and a half after the incident. Bonifacia was brought to Lipa at about ten o'clock in the morning. The witness was in Talisay when Bonifacia was taken to Lipa. Upon being reminded that Dr. Atienza stated that Bonifacia was not brought to Lipa, the witness stated that the truth is that what Dr. Atienza said was that the intention was to take Bonifacia to Lipa, but she was not really brought there. Asked why he testified that his sister was taken to Lipa, the witness answered that he was mistaken. He saw Bonifacia being taken to Lipa, but she was immediately returned. She was taken at about ten o'clock and returned at about four o'clock in the afternoon. The witness found his cow at about nine o'clock the following morning. The cow is the same which the witness and his father sold to Benedicto de Leon, brother-in-law of Dr. Atienza, at P540. The sale took place several days after the shooting, about one week from the date the witness heard the shots which took about ten minutes before the accused went up the hut. They forced the door open. The witness heard several shots. Bonifacia was taken by the witness and others from the hut at about ten o'clock on the night of the shooting to be brought to Dr. Atienza at Lipa and the witness did not return until before ten o'clock the next morning. He

remained in Talisay from one o'clock in the morning to four o'clock in the afternoon of May 17. He happened to learn about the recovery of the cow through information received from his brother. The latter went immediately to Talisay to inform the witness that the cow was recovered. On that same night, Pedro Holgado was sleeping in his hut located about thirty meters from witness's hut. He was watching his own cow. Witness did not see Pedro Holgado on that night. Holgado's cow did not disappear that night. Witness signed his affidavit only on September 1, 1945. He reported the incident to Mayor Artemio Atienza, father of Dr. Atienza. The mayor conducted an investigation. The witness told the mayor that the accused were the ones who shot and killed his sister. Zacarias Talatala arrived at witness's house at about 11.30, but the witness did not talk with him. The witness cannot tell whether any conversation took place among the witness's companions in the hut, because witness was away south of the hut. The witness took their palay from that place. When Talatala arrived, the accused were already gone. They went towards the mountains. There was no moonlight. The witness was able to recognize the accused by their voices only. At the time the accused entered the hut, the father and mother of the witness were present. When the accused were outside pulling the bull away, Bonifacia had already been wounded. The witness saw her after the two accused had left.

Roman Petate, 62, married, farmer, resident of Campahoyan, Batangas, testified that on the night of May 16, 1945 he was in their hut in Campahoyan. All the members of his family were present, Arcadio, Maria Baybay, his wife, Pio, Bonifacia, Reynaldo, and Bonifacia's daughter. They were sleeping when they were awakened by the barking of the dogs. Later on, they heard shots. Then two men went up their hut. They were Jorge Ortila and Mariano Patricio. They took Arcadio Petate and asked him where his cow was. The accused were carrying rifles. They went to one side of the hut and took the bull. The bull was tied at about thirteen meters away from the hut. When the two men returned with Arcadio they fired at the hut. Bonifacia complained that she was hit on the right side and in the stomach. Bonifacia was taken to Dr. Atienza, who treated her. She died in the house of Dr. Atienza at about ten o'clock in the morning. Immediately after the incident, Zacarias Talatala went to witness's hut. Talatala asked the witness if he recognized the two men. The witness answered "Yes." He recognized them as Jorge Ortila and Mariano Patricio. The light inside the hut was quite bright. The witness is the owner of the bull taken by the accused. The witness bought it for P18,000 in Japanese money, equivalent to P550 in Philippine currency. The witness found the bull the following morning. He was in the town of Talisay to conduct Bonifacia the day after the incident. He left the town of Talisay at dawn. He found the cow after an hour's search. There was nobody in the place. It was in the mountains, the place where the witness was living. When the witness returned from town to his hut, he went directly north of his house and found the bull. He found it at about 8 or 8.30 in the morning. When he left the poblacion of Talisay his daughter was already dead. Upon cross-examination, he denied having stated that his daughter died at ten o'clock. Bonifacia died early in the morning, at dawn. The witness was the only one who brought Bonifacia to Talisay. Eliseo Baybay did not accompany them. Bonifacia had never been sent to Lipa for treatment and was only treated in Talisay. Nobody attempted to take her to Lipa. What Arcadio testified that Bonifacia was sent to the hospital in Lipa at about ten o'clock in the morning is not true. Bonifacia was buried at about two o'clock in the afternoon. As there were other persons attending to his daughter, the witness decided to return to his hut in order to look for the bull. His wife took care of their daughter's burial. After finding the bull, the witness returned to Talisay. Witness's wife accompanied him to Talisay. The witness did not report the incident personally either to the mayor or the chief of police of Talisay. Witness's son was investigated after the incident. The investigation took place before he signed the affidavit on September 12, 1945. Talatala's house was not yet burned when the incident took place. It was burned by the Japanese after the incident took place.

Zacarias Talatala, 37, married, farmer, resident of Campahoyan, testified that on the night of May 16, 1945, he was sleeping in his hut in Campahoyan, Talisay when he was awakened by gunshots. The shots came from the house of Bonifacia Petate. Upon hearing the shots, the witness went to Petate's hut which was about sixty meters

distant. The witness heard loud voices of crying persons. Because of the shots and the cries, the witness suspected that something serious was happening, so he took cover in a hidden place. Then he saw Jorge Ortila and Mariano Patricio passing by the place where he was hiding and dragging a bull. Ortila was in front and Patricio, behind, both of them armed. After they had passed, the witness went to Bonifacia's house. He saw Bonifacia and her mother embracing each other. Bonifacia complained that she had been shot. The witness did not see the wounds but he heard that she was wounded in the thigh and in the stomach. Roman Petate said that his daughter was wounded by Jorge Ortila and Mariano Patricio and the witness told him that they must have done it because he saw the two men on his way towards the hut. The witness recognized the bull as belonging to Roman Petate. The accused were going towards the mountain or towards the north. There was no moon but the night was not so dark. At the place where the witness hid, there was no light and the accused were not carrying any light. They were about one and a half meters away from the witness. The way was a natural trail although there was shrubbery. The houses in Talisay were burned by the Japanese in the month of September. The house of the witness was burned before the town fiesta. The town fiesta takes place on the tenth of September of each year. The incident took place on the night of May 16, 1945. When it took place on May 16, the witness had not yet built his new house near the place where his former house was burned. The witness was investigated by a policeman the day after the occurrence of the incident. After investigation he signed a statement, which was sworn to before the mayor. He identified the statement shown to him. The statement is dated September 1. He was first investigated on May 17, and again at a later date, and then he affixed his thumb mark on the affidavit on September 1.

The inherent improbabilities in the facts that the prosecution attempted to prove and the contradictions of its witnesses concur in militating against our finding appellant guilty beyond all reasonable doubt.

If the motive behind the serious complex crime imputed to appellant was the robbery of the cow of the Petate family, as can be gleaned from the prosecution's theory, why is it that the next morning, after the alleged robbery, the cow was found a few meters away from the very place where it was allegedly taken by the malefactors? We cannot believe that they, with the perversity attributed to them by the prosecution, could have suddenly repented for the evil done, and decided to restore what they have taken by force. The presence of the cow near the hut of the Petate family in the morning of May 17, 1945, under the facts in this case, can only be explained to the effect that it is not true that it was robbed the previous night, as pretended by the witnesses for the prosecution, by bandits who went away in the direction of the "mountains."

According to said witnesses, after the malefactors had taken the cow, they fired several shots in the direction of the Petate's hut, thus wounding Bonifacia. After succeeding in taking the cow, what motive could they have had for firing the shots? The record does not disclose any. The witnesses for the prosecution do not offer us any help in solving the mystery. Were not the belated shots imagined so as to explain how Bonifacia was wounded?

The self-contradictions of Arcadio Petate, his admission of having committed mistake in telling what is not true, and the contradictions between him, his father and Dr. Atienza, as to the hour when Bonifacia died, as to whether Bonifacia was taken or not to Lipa, as to who were the persons who brought Bonifacia to Dr. Atienza's clinic, and as to who found the cow in the morning of May 17, 1945, only add more reasons why we have to put in doubt the narration of said witnesses.

We vote for appellant's acquittal.

DISSENTING

HILADO, J.:

To my mind decisive question in this case is that of identification. Is there evidence identifying the accused-appellant beyond reasonable doubt as one of the perpetrators of the crime charged in the information? I would answer this question negatively.

The prosecution witnesses who attempted to identify the appellant as one of the authors of that crime were Arcadio Petate, Roman Petate, and Zacarias Talatala. The first, on direct examination, stated that he recognized the appellant and Jorge Ortila by their voices (t.s.n., p. 6). Upon being questioned by the court, he tried to make it appear that he recognized them by their faces as the hut was lighted (t.s.n., p. 7). But when the court asked him to explain his conflicting answers, he stuck to his original answer that he recognized them by their voices (t.s.n., p. 7). And ultimately, when the court addressed to him what clearly amounts to a leading question, he replied that he recognized them by their faces (t.s.n., p. 7). Again, upon cross-examination, in answer to a question made by counsel for the defense, he declared that he recognized the appellant and Ortila by their voices only (t.s.n., p. 10). But when the court asked whether he recognized them by their faces, (a leading question, it would seem) he replied affirmatively (t.s.n., p. 10). It is instantly apparent that this witness could not be telling the truth in each of these contradictory and rapidly changing statements of his. In the space of perhaps one single minute he changed his version no less than six times. Who knows but that he was not telling the truth in any of them?

Roman Petate stated that he recognized the two men by their faces "because of the light in our hut that was quite bright" (t.s.n., p. 13). In this connection, it will be noted that this witness did not testify on the same day as his son Arcadio. This fact appears from the statement on page 11 of the transcript saying: "Continuation of hearing at 9 o'clock, same appearances June 4, 1946." Whether or not a conversation took place in the interregnum between father and son with particular reference to the identification of the accused, one guess is as good as another. In fine, I do not find any appreciable contribution from this witness to our search for the truth.

Zacarias Talatala also tried to identify the appellant. He declared that, upon hearing the shots, which he thought came from the house of the Petates, he went down to go thereto (t. s. n., p. 18). He admitted that there was no moonlight and that the two men did not carry any light, but asserted that he was able to recognize them because the night was not so dark (t. s. n., p. 19). To say the least, it is exceedingly strange that this witness, notwithstanding the abnormal peace and order conditions then prevailing, as appears from the evidence of record and of which the trial court took judicial notice, should have gone down his house on hearing the shots in the dead of that moonless night. Under said circumstances, a man of ordinary care and prudence over his life and safety would not, in the ordinary course of events, risk them by going down his house, and approaching the place where the shots had been fired. Such a man would be presumed to fear that those shots might, if not must, have been fired by malefactors bent on committing crimes against life itself. This witness was not a peace officer whose duty it would have been to face the danger and perform the official functions of his office.

It is also most remarkable that the deceased's husband, Norberto Ortila, although subpoenaed, failed to appear (t. s. n., p. 40). If he knew, or even only thought, that the appellant was one of the criminals, why did he not appear? This has not been explained.

Upon evidence so shaky, unstable and weak, to identify the appellant as one of the authors of the crime, I am not prepared to deprive him of his personal liberty through a judgment of conviction.

For the foregoing considerations, I vote for the acquittal of the appellant.

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