

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JAKARIA GANDAO, JANUL GANDAO, ABDUL GANDAO AND ABO
GANDAO, DEFENDANTS-APPELLANTS.**

G.R. Nos. L-36060-65. January 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

ABO GANDAO and his two sons, JAKARIA and ABDUL, a nephew, JANUL GANDAO and two "DOEs" were accused of multiple murder and multiple frustrated murder, for the shooting of Gonzalo Ancheta and his family in the evening of July 17, 1970, at their residence in Amao, Bula, General Santos City. The case was docketed as Criminal Case No. 66 in the Court of First Instance of South Cotabato (Branch I), General Santos City, presided by Judge Pedro Samson Animas.

Subsequently, the information in Criminal Case No. 66 was amended so that in said case the above-named persons were accused of murder for the death of Rosita Q. Ancheta; in Criminal Case No. 104 they were accused of murder for the death of Ricardo Ancheta; in Criminal Case No. 105, they were accused of murder for the death of Editha Ancheta; in Criminal Case No. 106, they were accused of frustrated murder for the wounding of Erlinda Ancheta; in Criminal Case No. 107, they were accused of frustrated murder for the wounding of Roberto Ancheta; and in Criminal Case No. 108, they were accused of frustrated murder for the wounding of Gonzalo Ancheta.

After joint trial, the accused were found guilty and sentenced accordingly in a well-written decision dated January 13, 1972, as follows:

"ACCORDINGLY, finding beyond reasonable doubt the guilt of accused JAKARIA GANDAO and JANUL GANDAO as principals, with ABDUL GANDAO and ABO GANDAO as accomplices:

"(a) of MURDER in Criminal Case No. 66, JAKARIA GANDAO and JANUL GANDAO are hereby sentenced to RECLUSION PERPETUA, while ABDUL GANDAO is sentenced to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor in its medium period as the minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal in its medium period as the maximum, and ABO GANDAO is sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor in its minimum period as the minimum to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal in its minimum period as the maximum. All the accused are further ordered jointly and severally to pay the heirs of the deceased, Rosita Q. Ancheta, the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs;

"(b) of MURDER in Criminal Case No. 104, JAKARIA GANDAO and JANUL GANDAO are hereby sentenced to RECLUSION PERPETUA, while ABDUL GANDAO is sentenced to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor in its medium period as the minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal in its medium period as the maximum, and ABO GANDAO is sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY or prision mayor in its minimum period as the minimum to TWELVE (12) YEARS and ONE (1) DAY

of reclusion temporal in its minimum period as the maximum. All the accused are further ordered jointly and severally to pay the heirs of Ricardo Ancheta the sum of P12,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs;

“(c) of MURDER in Criminal Case No. 105, JAKARIA GANDAO and JANUL GANDAO are hereby sentenced to RECLUSION PERPETUA, while ABDUL GANDAO is hereby sentenced to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor in its medium period as the minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal in its medium period as the maximum, and ABO GANDAO is sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor in its minimum period as the minimum to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal in its minimum period as the maximum. All the accused are further ordered jointly and severally to pay the heirs of Editha Ancheta the sum of P12,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs;

“(d) of ATTEMPTED MURDER in Criminal Case No. 106, JAKARTA GANDAO and JANUL GANDAO are hereby sentenced to an imprisonment of SIX (6) MONTHS and ONE (1) DAY of prision correccional in its minimum period as the minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor in its minimum period as the maximum while defendant ABDUL GANDAO is hereby sentenced to an imprisonment of EIGHT (8) MONTHS, and ABO GANDAO to an imprisonment of SIX (6) MONTHS and to pay the costs;

“(e) of ATTEMPTED MURDER in Criminal Case 107, JAKARIA GANDAO and JANUL GANDAO are hereby sentenced to an imprisonment of SIX (6) MONTHS and ONE (1) DAY of prision correccional in its minimum period as the minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor in its minimum period as the maximum while defendant ABDUL GANDAO is hereby sentenced to an imprisonment of EIGHT (8) MONTHS, and ABO GANDAO to an imprisonment of SIX (6) MONTHS and to pay the costs;

“(f) of ATTEMPTED MURDER in Criminal Case No. 108, JAKARIA GANDAO and JANUL GANDAO are hereby sentenced to an imprisonment of SIX (6) MONTHS and ONE (1) DAY of prision correccional in its minimum period as the minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor in its minimum period as the maximum while defendant ABDUL GANDAO is hereby sentenced to an imprisonment of EIGHT (8) MONTHS and ABO GANDAO to an imprisonment of SIX (6) MONTHS, to pay Gonzalo Ancheta the sum of P742.00 as income which he failed to realize because of his injuries, the sum of P700.00 as hospitalization expenses and P5,000.00 moral damages, with subsidiary imprisonment in case of insolvency with respect to ABDUL GANDAO and ABO GANDAO only at the rate of P8.00 a day but not to exceed one third (1/3) of the principal penalty and to pay the costs. Credited in favor of all the accused in this case is the full period during which they were undergoing preventive imprisonment in the City Jail during the pendency of the cases.

"For the appearance of a private prosecutor in the active prosecution of the above-entitled cases, all the defendants are hereby ordered jointly and severally to pay the sum of P2,000.00 as attorney's fees. All the defendants shall serve their sentence in accordance with the provisions of Article 70 of the Revised Penal Code at the National Penitentiary."

In imposing the penalties the trial court concluded that the crimes committed were murder and attempted murder because they, "were attended by alevosia, it indubitably appearing that defendants attacked by surprise their defenseless victims who were about to eat their supper in their home at about 8:00 o'clock in the evening, in that lonely sitio of Amao, Bula, General Santos City, with a cocked automatic carbine and a shotgun, thereby 'employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself (themselves) arising from the defense which the offended party (parties) might make' (Article 14, par. 16, Revised Penal Code; People vs. Villaseñor, 35 SCRA 460, 465-468; People vs. Brioso, 37 SCRA 336, 344)." It also concluded that "as the victims were shot inside their house, although the triggermen

were outside, there was the attendant aggravating circumstance of dwelling (People v. Pantoja, 25 SCRA 468, cited in People v. Brioso, 37 SCRA 336, 345; People vs. Casillar, 36 SCRA 352)." However, the trial court found that: "[A]ll the accused are members of the cultural minorities and specifically Jakaria Gandao, Janul Gandao, and Abo Gandao appear to be illiterate (Exh. "Z"; Record, Criminal Case No. 66, pp. 10, 13, 16 & 18). Abdul Gandao, however, is a sixth grader. With the exception of Abdul Gandao, the three (3) indictes are entitled to the mitigating circumstance of lack of instruction (People vs. Casillar, 30 SCRA 352, 358-359; People vs. Gande, 31 SCRA 348, 353)."

Attempted, not frustrated murder, was ascertained to have been committed in Criminal Cases Nos. 106, 107 and 108 because the injuries sustained by the victims were not necessarily fatal.

The court found Jakaria and Janul as principals in the six crimes because they were the ones who actually fired the shots while Abdul and Abo were considered merely as accomplices because by their presence at the scene of the crimes they gave moral aid to Jakaria and Janul.

The record shows that at around 8:00 o'clock in the evening of July 17, 1970, Gonzalo Ancheta and the members of his family, consisting of his wife, Rosita Q. Ancheta, and their children - Erlinda, Roberto, Ricardo, Zitha, Bonny and Editha, and a niece, Lita - were shot by several assailants who suddenly appeared at the open window on the ground floor of their residence at Sitio Amao, Bula, General Santos City. Rosita, Ricardo and Editha were killed, due to several gunshot wounds as described in the following post-mortem reports:

Exhibit "N", Rosita Q. Ancheta -

"1. Gunshot wound, through and through, with the following descriptions:

(a) Entry: About 7 mm. in diameter, situated at the postero-lateral aspect the left arm at its middle third, with fracture of the humerus.

(b) Exit: About 1 inch in diameter, situated at the medial aspect of the left arm, about 2-1/2 inches above the elbow joint.

2. Gunshot wound, through and through, with the following descriptions:

(a) Entry: About 7 mm. in diameter, situated at the right gluteal region near the border of the sacrum.

(b) Exit: About 1-1/2 inches in diameter, situated at the right lateral side of pelvis.

3. Gunshot wound, through and through, with the following descriptions:

(a) About 15 mm. in diameter, situated at the postero-medial aspect of the middle third of right thigh.

(b) Exit: About 1-1/2 inch in diameter, situated at the postero-medial aspect of upper third of right thigh, about 2-1/2 inches above the entry wound.

4. Gunshot wound, through and through, with the following descriptions:

(a) About 8 mm. in diameter, situated at the antero-lateral aspect of left thigh, about 3 inches above the knee joint.

(b) Exit: About 1-1/2 inch in diameter, situated at the antero-medial aspect of the left thigh at the same level as the entry wound, with fracture of the left femur.

5. Gunshot wound, about 15 mm. in diameter, situated at the left lateral side of the chest.

"CAUSE OF DEATH: Death was presumably due to shock and hemorrhage as a result of the above injuries."

Exhibit "O", Ricardo Ancheta -

"1. Gunshot wound, through and through, with the following descriptions:

- (a) Entry - About 7 mm. in diameter, situated at the posterior aspect of left shoulder joint.
- (b) Exit - About 3/4 inch in diameter, situated about the left shoulder.
- (c) Re-Entry – About 3/4 inch in diameter, situated above at the left lateral aspect of neck near the base.
- (d) Re-Exit - About 3/4 inch in diameter, situated at the right lateral aspect of neck just below the mandible.

2. Gunshot wound, about 6 mm. in diameter, situated at the left ear just below the auditory canal.

"CAUSE OF DEATH: Death was presumably due to shock and hemorrhage as a result of the above injuries."

Exhibit "P", Editha Ancheta -

"1. Gunshot wound, through and through, with the following descriptions:

- (a) Entry: About 7 mm. in diameter, situated at the left side of the abdomen, about 2 inches above and to the left of the umbilicus.
- (b) Exit: About 15 mm. in diameter, situated at the right lumbar region.

2. Gunshot wound, through and through, with the following descriptions:

- (a) Entry: About 8 mm. in diameter, situated at the lateral aspect of right knee.
- (b) Exit: About 1 inch in diameter, situated at the anterior aspect of the upper third of right thigh.

3. Severe lacerations of the big toe of left foot causing complete separation of said digit.

4. Gunshot wound, about 1 inch in diameter, situated at the right scapular region.

"CAUSE OF DEATH: Death was presumably due to shock and hemorrhage as a result of the above injuries."

Gonzalo, Erlinda, and Roberto were wounded, as the following medical certificates attest:

Exhibit "D", Gonzalo Ancheta -

"Entrance wound: Lacerated about the sup. border of the distal 3rd., medial aspect.

Abrasions extensive (about 2 - 2-1/2 inches width extending upwards & obliquely to the exit wound, traversing the medial portion of the thigh & contusion collar.

"Exit wound: Lacerated about the inferior border of the proximal 3rd of the anterior aspect of the right thigh.

Abrasions & contusions of the right forearm posterior aspect.

Healing period: 30 - 45 days."

Exhibit "K", Erlinda Ancheta -

"Entrance wound: About the superior border of the left patella, anterior aspect.

Exit wound: About 1-1/2 inches inferiorly, anterior aspect more or less perpendicular to the entrance wound.

Healing period - 25 - 30 days."

Exhibit "L", Roberto Ancheta -

"Entrance Wounds:

1. right deltoid anterior aspect directed medially & inferiorly.
2. Rt. arm lateral aspect of the middle 3rd, inferomedially.
3. Left forearm, proximal 3rd, posterior aspect directed superiorly & medially.

Lacerated wound w/ cpd. fracture.

Superficial wound of rt. wrist, dorsal aspect.

Healing period - 30-60 days. "

It appears that Gonzalo Ancheta was the overseer of Atty. Francisco Avena (his brother-in-law) in the latter's coconut plantation in Amao, Bula, General Santos City. Gonzalo migrated to General Santos City from Roxas, Isabela, where he used to be a police sergeant. He arrived in Amao, with Atty. Avena on April 18, 1969. His wife, Rosita and children Zitha, Editha and Bonny followed on June 10, 1969. And Erlinda, Roberto and Ricardo joined them on December 1, 1969. They lived in a house owned by Atty. Avena situated within the plantation which is surrounded by a barbed wire fence.

Abo Gandao and his family lived on the land adjacent to the plantation. The house of Abo Gandao was just outside the fence, about 80 to 100 meters from Ancheta's residence. The Gandao household included not only Abo and his wife, Inding Laganasi but also his sons, Abdul and Judin and a brother, Omal, nephews, Janul Gandao and Amsa Tunis, and other relatives. Janul Gandao actually lived in Calambiga, Glan. He arrived at Abo's house sometime in June, 1970, together with his mother and sister.

About 80 meters from the house of Abo is the house of Jakaria Gandao (another son of Abo), his wife Aida Panaligan and their children. Before the shooting incident, Jakaria used to harvest coconuts for Gonzalo Ancheta at the plantation.

Before Gonzalo Ancheta became the overseer of Atty. Avena, Abo Gandao and his family used to live in a house situated within the plantation. Abo Gandao had in fact, been employed by Guillermo Miana (former overseer of Atty. Avena), as a copra-maker at the plantation. In 1963, he left his work and sold his house to Atty. Avena. Abo and his family, then, settled on the land outside the fence of the plantation.

Atty. Francisco Avena acting as private prosecutor under the direct control and supervision of Asst. City Fiscal Franklin Gacal, presented evidence to show that the accused shot the Ancheta family in an outburst of animosity.

Speaking of his relationship with the family of Abo Gandao, Gonzalo Ancheta testified that "they were good to each other" until an incident sometime in October, 1969, when he shot, with his .32 cal. revolver, a dog owned by Abo Gandao, as it chased his daughter, Editha. Even after Gonzalo had apologized to Aida Panaligan (the wife of Jakaria Gandao) for the incident, Abdul Gandao reprimanded him in a store the next day, saying: "Lahat nakatira (yan) sa loob ay masasama." When his wife, Rosita Q. Ancheta (who arrived at the store), explained that Gonzalo had to shoot the dog to protect Editha, Abdul in the presence of Jakaria and Judin retorted: "Hindi bale, may araw rin."

On the same incident, Gonzalo added that Abdul also told him: "Masama ang lahat ng nakatira diyan sa loob, lalo na sa mga ginagawa nila nong araw linalason pa nila ang aming mga manok." This referred to an incident sometime in 1968 when Atty. Avena's tenants sprayed Endrin, a pesticide, at the plantation.

Gonzalo continued that when Janul arrived in Amao sometime in June, 1970, and stayed in Abo's house, he noticed that the Gandaos were "no longer friendly" because they avoided meeting him.

To bolster the theory that the family of Abo Gandao entertained grudges on the Anchetas, Erlinda and Roberto

Ancheta testified that on July 15, 1970, when Erlinda was washing clothes in a canal outside the fence of the plantation, Abdul, Janul and Amsa Tunis, in an act of arrogance, bathed in the same place where she was washing clothes. This irked Roberto who had a bolo at that time and told his sister, "why did you have to wash in this place when we have water at home, otherwise I could not hold my temper I will hack those people."

Then came the evening of July 17, 1970. According to Gonzalo, he and his wife, Rosita had just arrived from the nearby town of Silway where he was also working part-time in a sawmill. He was about to sit down at the head of the dining table with Rosita (deceased), Zitha, Editha (deceased), Bonny and Lita, when his attention was called by Ricardo (deceased), who said: "Daddy, tao," while opening a window. Looking thru the window, about 2-1/2 meters from the table, Gonzalo saw one of his neighbors, the one with the curly hair (whom he later identified as Janul Gandao), point a carbine at them. Flanking Janul were Jakaria, Abdul and Abo. Upon seeing the group, Gonzalo told the members of his family to take cover at the side of the table, under the bench.

At that time, Roberto was lying on a bed near the window where the group showed up. He stated that his father told them to seek cover. Then, the accused came inside and pointed their guns at his relatives. He thought of grabbing the gun of the curly-haired member (Janul Gandao) but he restrained himself, when he noticed two other persons (whom he did not identify) at the other window. Janul pointed his gun at Roberto and motioned him to join the rest of the Ancheta family. At the same time, Janul asked Roberto: "diin ang papa mo?" (Where is your father?). Roberto did not reply and proceeded to where his parents, brothers and sisters were. Janul fired at him thrice, but missed.

Erlinda was about to get some rice when she heard her brother, Ricardo (deceased) say, "Ah, " then, "Tao, daddy." She looked at his direction near the window and she saw that his hands were raised. She saw the four accused thru the open window, one of them pointing a gun, she recognized as a .30 carbine. Ricardo moved back and sought cover under the table. According to Erlinda, Janul followed his brother under the table.

On cross-examination, Gonzalo described the relative positions of the members of his family as they sought cover under the table, in the following manner:

"ATTY MIRABUENO:

Q: Before the firing what were you doing?

A: We were lying down.

Q: And where were you lying down?

A: At the left side under the wooden bench.

Q: Immediately beside you, will you mention who was lying down there?

A: My son Roberto Ancheta.

Q: And next to Ricardo is who?

A: On my right side because on the left side was only Ricardo, on my right side was my daughter Editha.

Q: And next to Editha?

A: My wife.

Q: And next to Rosita your wife?

A: Zitha Ancheta.

Q: And next to Zitha?

A: No more. Roberto Ancheta was behind her mother.

Q: And how about Erlinda where was she?

A: Erlinda was behind my daughter Editha Ancheta.

Q: Was your head towards the window or away from the window? In other words, was the position of your head nearer towards the window where there were the alleged assailants or further from the window?

A: My head was nearer the window.

Q: All of you together with your wife had your heads nearer the window?

A: Facing the assailants.

Q: When you laid flat on the floor you slowly move one by one and lay on the ground, is that correct?

A: Yes, Sir.

Q: Together with your family?

A: Yes, Sir.

Q: There was no commotion whatsoever in the house?

A: The only commotion was when we were lying flat.

Q: Was Ricardo also lying parallel to you on the left side?

A: For the first time yes, but after the three shots he covered me up above my head.

Q: He went towards your head?

A: Yes, Sir.

Q: I noticed in the picture Exhibit "F" several chairs including the stools on the corner were all tumbled down. Will you look at this picture and tell us whether you will agree with me that those stools and chairs are all tumbled down, referring to Exhibit "F"?

A: Yes, Sir.

Q: And the assailants never entered your house, is that correct?

A: No, Sir."

(TSN, Vol. 1, pp. 105-108.)

After Janul had taken three wild shots at Roberto, Jakaria grabbed the carbine from him. What transpired at this point was narrated by Gonzalo as follows:

"ATTY. AVENA:

Q: After that what took place if anything took place?

A: That was the time when Jakaria Gandao took hold of the carbine by saying something and that was the time when I was under the table just three meters away from the muzzle of the gun which was pointed to us and I said, "Jakarta, parang mo nang awa, wala kaming kasalanan sa inyo, wag ninyo kaming patayin" (Jakaria, please have mercy on us, we have no fault, don't kill us), but the answer was a burst of fire.

Q: How about your wife did you notice if she was talking on that moment?

A: We were pleading together with my children also.

Q: And when you were doing that what did Jakaria Gandao do if he did anything?

A: Nobody talked among their group but there was already burst of fire.

Q: How many burst of fire did you notice Jakaria Gandao fired?

A: Three burst of fire.

Q: After that what happened to you and your family?

A: I noticed that my son Ricardo Ancheta who was directly over my head was already bleeding profusely and

my daughter Editha Ancheta beside me and my wife were already dead. So I stood up and grabbed my revolver placed two meters away from me on the table and jumped over the same window and fired at the fleeing assailants. That was the time when I saw that they were six.

Q: Where were all these four accused and two companions fleeing when you fired at them?

A: They were fleeing towards the west that was on the road going to the house of Abo Gandao. I have seen them going towards that direction.

Q: Were the three burst of gunshots fired by Jakaria Gandao successive?

A: Rapid fire.

Q: After you have shot at those six persons what did you do if you did anything?

A: I missed them but my daughter Linda Ancheta who followed me outside of the window also told me, "don't follow Daddy" and after that Linda went back but I went around our house to verify whether there were somebody else around but I found nobody was left so I entered the main door of our house.

Q: What did you do after that?

A: I gathered my surviving children and Linda Ancheta my daughter tore a shirt and bound our wounds together with Roberto Ancheta and me. After that, I mean about five minutes after, I decided to evacuate my family for fear of another attack. We then proceeded . . .

(TSN, Vol. 1, pp. 14 - 17.)

Thus, they went to the house of one of Avena's tenants, Eliseo Sincua, whom Gonzalo consulted for advice. He told Eliseo that they were shot by the accused, (referring to Janul Gandao as the one with curly hair). After a brief talk, they decided that Gonzalo and the children should evacuate to the place of Etong Bañaga.

From the house of Etong Bañaga, Gonzalo and the children were brought to St. Elizabeth hospital at Dadiangas, arriving thereat at around 10:00 o'clock of the same evening.

A portion of Erlinda's testimony should be mentioned at this point. She said that upon arrival at the house of Eliseo Sincua, she and the other children went upstairs and talked with the wife of Eliseo. She told Mrs. Sincua that her family was shot by her neighbors mentioning the names of the accused and referring to Janul Gandao with curly hair as the cousin of Jakaria Gandao. Erlinda also stated that on their way to Etong Bañaga, they passed by the house of "Big Boy" Manansala; and that her father became unconscious before reaching the Banaga house. Erlinda further said that she revealed to "Big Boy" Manansala and Etong Bañaga what she had disclosed to Mrs. Sincua.

At the emergency ward of St. Elizabeth Hospital, Gonzalo, Erlinda and Roberto were treated by Dr. Jesus Veneracion who later testified that their wounds (See: Exhibits "D," "K", "L", supra) were not necessarily fatal. He also stated, among other things, that Gonzalo was conscious at the time he operated on him. In answer to the question on whether Gonzalo was intoxicated, Dr. Veneracion replied that if Gonzalo was drunk such fact would have been reflected on Exhibit "D" because he was very particular about the smell of liquor on his patients. (There is no mention in Exh. "D" whether Gonzalo was intoxicated). On Roberto, Dr. Veneracion said that he had an x-ray taken of Roberto's wounds because there were three slugs embedded in his body.

After treatment, the three were brought to a ward wherein a Muslim patient was confined. At around 3:00 o'clock (in the morning of July 18, 1970), some members of General Santos City Police and Philippine Constabulary soldiers of the 453rd PC Company (whose names Gonzalo could not recall) arrived at the ward. When questioned about the identity of the culprits, Gonzalo asked for a piece of paper and a ball pen, and wrote the names of Jakaria Gandao, Abdul Gandao, Abo Gandao and a person he described as the cousin of Jakaria with a curly hair. He gave the list to a soldier (who turned out to be C2C Rodolfo Domingo). Gonzalo explained that he was afraid

to mention the names of the assailants, in the presence of the Muslim patient in the ward, because the culprits were themselves Muslims.

A little later, Lt. Mangundaya Macaantal of the 453rd PC Company arrived and asked Gonzalo to identify the malefactors. Gonzalo replied that he had already listed their names and had handed the list to a policeman. The list was handed to Lt. Macaantal. Thereafter, the law enforcers left. When they returned at around 4:00 o'clock (of the same morning of July 18, 1970), they brought with them several suspects: Omal Gandao, Amsa Tunis, Judin Gandao, Jakaria Gandao, Janul Gandao and Abo Gandao. By then Gonzalo, Erlinda and Roberto had been transferred from the ward to a private room upon their request.

In Gonzalo's own words, he identified the accused inside the private room in the following manner:

"ATTY. AVENA:

Q: After the PC soldiers, the Lieutenant and the policemen left what happened?

A: We were transferred to a private room which we requested and at around four o'clock, more or less, in the same dawn P.C. soldiers arrived and brought the assailants inside our room one by one for identification.

Q: Aside from the assailants were there other persons who were brought along by the authorities for identification?

A: Yes, Sir.

Q: What took place when these people arrived there in your private room in the hospital?

A: First they brought in Omal Gandao.

Q: When Omal Gandao was brought in what did you do if you did anything?

A: I made a sign that he is not one of the assailants.

Q: How is this Omal Gandao related to Abo Gandao?

A: He is the brother I think.

Q: Who was brought next to Omal Gandao in your private room for identification?

A: Amsa Tunis.

Q: When Amsa Tunis was brought inside your private room for identification what did you do?

A: I made a sign that he is not one of the assailants.

Q: Do you know if Amsa Tunis has any relation with Abo Gandao and the other accused?

A: He is the nephew of Abo Gandao.

Q: And how is he related, if you know, to Jakaria Gandao, Abdul Gandao and Janul Gandao?

A: He is the cousin of Jakaria Gandao and Abdul Gandao.

Q: After Amsa Tunis who was brought in next for identification?

A: Abdul Gandao.

Q: When Abdul Gandao was brought inside your private room for identification what happened?

A: I pointed to him that he is one of the assailants.

Q: And who was brought in next for identification after Abdul Gandao?

A: Abo Gandao.

Q: And when Abo Gandao was brought inside your private room in the hospital what happened?

A: I pointed to him as one of the assailants.

Q: Who was the next person brought in for identification in your private room after Abo Gandao?

A: Jakaria Gandao.

Q: And when Jakaria Gandao was brought in your private room for identification what happened?

A: I pointed at him as one of the assailants and I cried by saying, "Jak, nag makaawa pa kami sa inyo pinatay mo parin ang familia ko."

"INTERPRETER:

Meaning, "Jak, we pleaded to you but you still killed my family."

"ATTY AVENA:

Q: And after you said that who was brought in next to Jakaria Gandao?

A: Janul Gandao.

Q: What happened when Janul Gandao was brought in your private room for identification?

A: I pointed to him as one of the assailants and my daughter Linda pointed at him crying." (TSN, Vol. 1, pp. 44 - 48.)

It appears that at around 10:00 o'clock in the same evening of July 17, 1970, the members of General Santos City Police composed of Patrolmen Romeo Garcia, Gregorio Dayupay, Ricaredo Oclarit and Minia Saway, investigated the scene of the shooting at Amao. Patrolman Garcia testified that they found the dead bodies of Rosita, Editha and Ricardo Ancheta on the ground floor of the house, of which, pictures (Exhibit "G", "F" and "E") were taken showing them sprawled near and under the Anchetas' dining table. They also found three empty .32 cal. shells (Exhibits "Q-5", "Q-6", and "Q-7") on the table; thirteen empty .30 cal. cartridges (Exhibit "Q-8" to "Q-20") outside the house, near the window (Exhibit "H", picture of the window on the ground floor of Gonzalo's house); and one slug (Exhibit "Q-3") near the head of Rosita, of which caliber, Patrolman Garcia could not tell.

Constable Rodolfo Domingo of 453rd PC Company, was with the group of policemen who went to Amao, though according to him, he just stayed outside the house of Gonzalo while the policemen conducted their investigation inside. Later, his superior officers Lt. Mangundaya Macaantal and Lt. Sambitory Saripada and some enlisted men arrived. Parenthetically, the police force of General Santos City was under PC control at that time.

Domingo went with the group of Lt. Macaantal to the nearby houses of Jakaria Gandao and Abo Gandao, Lt. Macaantal separately asked Jakaria and Abo about the shooting incident. The two informed Lt. Macaantal that they did not know about it because they were already asleep; Jakaria adding that: "I am not the one who killed." According to Domingo he noticed that Jakaria's hands were trembling and in an attempt to light a cigarette, Jakaria burned his lips. Lt. Macaantal told the two to report to his office in the morning of July 18, 1970. However, Abo Gandao and his male relatives were arrested by the group of Lt. Macaantal at around 3:00 o'clock in the morning of July 18, 1970, and were brought directly to St. Elizabeth Hospital about an hour later.

Domingo further stated that he was at the hospital when earlier, Gonzalo Ancheta listed the names of the suspect on a piece of paper. He said that he was the one who received the list of suspects from Gonzalo Ancheta and that he handed it to Lt. Macaantal upon the latter's arrival at the hospital.

Corroborating the testimony of Gonzalo as to the confrontation with the accused at the private room of St. Elizabeth Hospital, Domingo added that Gonzalo identified the accused by signs (nodding of the head) according to the instruction given by Patrolman Berame, which was approved by Lt. Macaantal.

After the confrontation with the accused, Gonzalo and Erlinda executed their statements (Exhibits "A" and "J" respectively) before Patrolman Laurencio Alamin in the morning of July 18, 1970. Roberto executed his statement (Exh. "M") in the evening. The three named Abo Gandao, Jakaria Gandao, Abdul Gandao and referred to Janul

Gandao, the curly-haired cousin of Jakaria as the malefactors.

At about 11:00 o'clock that morning of July 18, 1970, Janul was brought back to the hospital. Gonzalo and Roberto identified him as the one with the curly hair who shot at them. Erlinda cried upon seeing him.

On the other hand, the accused disowned the crimes imputed on them. They premised their defense on a common alibi and on the theory that Gonzalo Ancheta himself, in one of his drunken spells, shot his own Wife and two children, and inflicted upon himself a gunshot wound on one of his thighs.

The combined testimonies of the accused, supported by Barsilasio Miranda and Elpidio Pamposa, purport to show that: At about 8:00 o'clock in the evening of July 17, 1970, Abo Gandao (accused) was in front of his house, conversing with Barsilasio Miranda. Barsilasio was complaining about Abo's carabaos that destroyed his cornfield. Abo promised to pay for the damage caused by his carabaos after he shall have seen the extent the following day. Their conversation was interrupted by series of gun shots which they heard coming from the direction of the house of Gonzalo Ancheta about 80 to 100 meters away. Between successive shots, they heard cries of children: "Tama na Tatang, tama na Tatang, " answered with a man's voice: "Papatayin ko kayong lahat." More shots and finally, silence.

Abo recognized the man's voice as that of Gonzalo Ancheta. Gonzalo must have been drunk again, so thought Abo, as it was his habit to fire his gun whenever he came home drunk. So Abo told Barsilasio.

Abdul and Janul were upstairs, together with Judin Gandao, Omal Gandao, Amsa Tunis and other members of the household of Abo Gandao, when they heard the shots and the shouts. They peeped through the window towards the direction of Gonzalo's house but saw nothing through the moonlit night.

Meanwhile, Elpidio Pamposa, a guard at a nearby fishpond, arrived. He was followed shortly by Jakaria who came from his house (about 50 meters from Abo's house). The two were apparently attracted by the gun reports and the cries they claimed they heard. Hence, they came to ask Abo about them. Abo told them that it was probably because Gonzalo Ancheta was again, drunk as it was customary for him to fire his gun whenever he was drunk.

According to Abo, Abdul and Janul, they went to sleep after Barsilasio and Elpidio had left. Jakaria went back to his own house and slept too. At about 12:00 o'clock (of the same evening), they were awakened by some PC soldiers (the group of Lt. Macaantal and Lt. Saripada), who asked them about the shooting incident at their neighbor's house. They told the soldiers that aside from having heard shots and children's cries for help, they knew nothing of the incident. They were, however, told to report to the PC Headquarters the following morning.

Three hours later (at about 3:00 o'clock in the early morning of July 18, 1970), the four accused, and Judin Gandao, Omal Gandao and Amsa Tunis were arrested by the PC soldiers, and brought to St. Elizabeth Hospital.

One by one, they were made to enter the room where the Anchetas were confined. Abo Gandao and his two sons, Abdul and Jakaria said that they were merely asked whether they knew the wounded Anchetas. They replied in the affirmative for the Anchetas were their neighbors. Jakaria vehemently denied that he was pinpointed by Gonzalo Ancheta or that the latter pleaded that his family should not be killed. For his part, Janul stated that when asked if he knew the Anchetas, he replied in the negative. Janul added that Gonzalo Ancheta identified him as one of the assailants by nodding his head. Roberto Ancheta also nodded his head, but only after receiving a sign of approval from Gonzalo. But, Erlinda turned her face away from him. Janul further stated that he had no idea that he was the one referred to as the curly-haired cousin of Jakaria.

From the hospital the accused and their relatives were brought to the police headquarters for investigation. Abo,

Abdul and Jakaria executed their respective statements (These statements were not however presented by the defense). During their detention, the accused learned that Omal Gandao, Judin Gandao and Amsa Tunis were released in the afternoon of July 18, 1970. Meanwhile, according to Janul (referred to in the affidavits of the victims as the curly-haired cousin of Jakaria), he was brought again to the hospital in the afternoon of July 18 for identification, but the victims were unable to identify him.

All the accused disclaimed any motive for shooting the Anchetas. According to them, their relationship with the Anchetas was cordial, even friendly, and that they entertained no grudge against them. While admitting previous dealings with Atty. Avena, the owner of the land supervised by Gonzalo Ancheta, the accused denied any ill feelings toward Atty. Avena and Gonzalo's predecessors on the plantation. They denied the existence of a land conflict between them and Avena although the latter had filed an action against Abo and Jakaria for the recovery of possession of a parcel of land in the same court on November 23, 1970.

The defense presented as their witness, Lt. Mangundaya Macaantal, who testified that in the evening of July 17, 1970, upon receipt of a report of a massacre in Amao, he, Lt. Saripada and their men investigated the shooting incident. Lt. Saripada inspected the house of Gonzalo Ancheta while he proceeded to the neighboring houses. He went to the houses of Jakaria Gandao, Abo Gandao and a non-Moslem family. In answer to his questions, Jakaria and Abo told him that they heard gun reports and cries of children - "Tama na po Tatay, Tay tama na po." The two told him that they did not know who had fired the gunshots.

When he returned to the house of Gonzalo Ancheta, he and his men brought Gonzalo, Erlinda and Roberto Ancheta to the hospital. At the hospital he asked Gonzalo who his suspects were, to which Gonzalo replied - "Mr. Gandao family." Hence, they went back to Amao and arrested the accused. They brought Abo, Abdul, Jakaria and Janul to the hospital for identification. But he said that it was only Jakaria who was pinpointed by Gonzalo Ancheta as the assailant.

Lt. Macaantal denied having received a list of suspects from Constable Rodolfo Domingo, at the hospital. But he admitted that he approved Patrolman Angel Berame's instruction to the Anchetas not to talk upon seeing the suspects. Later, he stated that he told Gonzalo not to talk but to just give a signal.

The defense presented Inding Laganari, wife of Abo Gandao, and Aida Panaligan, wife of Jakaria Gandao, as witnesses but when it became evident that their testimony was hearsay and the trial court so ruled, an offer of proof was made instead. According to the defense both of them would have said that Erlinda Ancheta had told Mrs. Eliseo Sincua, the wife of Avena's tenant, that it was Gonzalo Ancheta who shot his wife and children because he got angry with his son Ricardo who disappeared and returned only in the afternoon of that day. It should be stated, however, that Mrs. Sincua was not presented as witness by the accused.

On the foregoing evidence, the trial court held that the guilt of the accused had been proved beyond reasonable doubt. It disregarded the alibi of the accused and their claim that Gonzalo Ancheta had shot the members of his own family, and thereafter shot himself in order to impute his evil deed upon the accused.

Contending that the evidence of the prosecution is inherently weak, and insisting on their alibi and their theory of the crime, the accused have appealed to this Court.

During the pendency of this case, Jakaria Gandao manifested his desire to withdraw his appeal. He, however, changed his mind later, and requested that his manifestation be disregarded.

This appeal hinges solely on the question of credibility of the contending witnesses, with respect to which the determination of the court a quo is seldom disturbed on appeal unless it is shown that material circumstances had been disregarded, or that there had been gross misapprehension of facts by the trial court. In the instant case, none

of the exceptions has been shown.

For instance, the appellants point to the fact that Gonzalo was not killed and that he sustained a single gunshot wound on his right thigh. It is argued that if Gonzalo was indeed the target of the assailants, then his body must have been riddled with bullets. In this connection, it is said that the presence of extensive abrasions and contusions around the entry wound of Gonzalo, is an indication that either his gunshot wound was self-inflicted (with his own .32 cal. revolver), or that Roberto shot him point-blank upon his order. With respect to the other victims, it is contended that the location of their wounds on the left sides of their bodies belie the testimony that the victims were shot by the accused. It is argued that if it was true as Gonzalo had testified that he and the members of his family were shot as they lay prone under the dining table, directly facing the assailants on the open window, then the victims must have been wounded on the front portions of their bodies. The appellants claim that the location of the wounds of the other victims shows that Gonzalo who was with them on the dining table, shot them.

The foregoing arguments fail to take into account the manner by which the Anchetas were shot. It appears that after Jakaria had grabbed the carbine from Janul Gandao, the former fired indiscriminately at the Anchetas with three successive burst. It is probable that in-between the successive burst of gunshots, the victims who were lying prone under the table, moved and shifted their positions in a desperate attempt to escape the hail of bullets. Thus, they were wounded in the different parts of their bodies and in varying degrees of severity, as their respective medical certificates attest. It is not true, as the appellants contend, that the victims were wounded only on the left sides of their bodies. The medical certificates show that they sustained injuries on various parts of their bodies - shoulders, abdomen, left and right upper and lower extremities.

Similarly, the mere fact that Gonzalo was wounded only once, and that he had extensive abrasions and contusions around the entry wound, do not lend validity to the argument of the appellants. Gonzalo, Erlinda and Roberto, were simply fortunate for not having been mortally wounded in the indiscriminate shooting by Jakaria. And Zitha and Bonny were more fortunate because they were not even wounded at all. But, this certainly does not belie the fact that Rosita, Editha and Ricardo stopped bullets which caused their death, almost instantaneously. The appellants ignore the testimony of Dr. Veneracion attributing the abrasions and contusions either to a violent contact with a hard object or to a fall on a hard surface. It should be recalled that according to Gonzalo, he jumped thru the open window after the shooting and fired at the fleeing assailants. It is not improbable that Gonzalo's wounded right thigh bumped into a hard surface, thereby causing the contusions and abrasions. In this connection, it is important to note that Dr. Veneracion's findings do not include any sign of gun-powder burns around his entry wound.

The appellants contend also that the prosecution deliberately suppressed adverse evidence in that it did not present Lita Ancheta, (the niece of Gonzalo, who apparently was not also injured) and Eliseo Sincua as witnesses. According to the appellants, Lita was not presented because she might testify that Gonzalo himself was the culprit. And Eliseo was not presented because Gonzalo's testimony that he disclosed to Eliseo the identity of the assailants is a lie. The contention is baseless. In the first place, there is no proof that if presented, Lita and Eliseo would have testified as the appellants expected them to testify. Secondly, the testimony of the two are, with respect to the prosecution, merely corroborative. And, thirdly, these witnesses were similarly available to the accused, who could have called them to the witness stand to test the congruence of the pertinent assertions of Gonzalo Ancheta. Yet, they did not, for reasons of their own.

The appellants capitalize on the fact that the three slugs extracted from the body of Roberto were not brought to court. The insinuation is that the prosecution also suppressed the evidence because they are .32 cal. slugs fired from Gonzalo's own. 32 cal. revolver. The insinuation is purely speculative. There is no evidence that the said

slugs had been in the possession of the prosecution. It appears that these spent bullets were lost while in the possession of the staff of the hospital where the wounded victims were treated. At any rate, their non-presentment does not negate the fact, as testified by Dr. Veneracion indeed a disinterested witness, that the spent bullets were of two kinds: that kind ordinarily used by the natives (pellets) and possibly a .30 or .32 cal. bullet. Parenthetically, this led the trial court to conclude that aside from the .30 cal. carbine used by Jakaria and Janul, there was also a shotgun used by the two unknown companions of the appellants.

So inconsequential are the many other points raised by the appellants, that they hardly deserve to be discussed, except possibly the assertion that Gonzalo's so-called brazen lies are compounded by the testimony of Roberto that the accused entered the house, and Erlinda's testimony that she saw Janul enter and follow her brother, Roberto. It should be noted that Gonzalo's testimony on the matter is that the assailants did not enter the house. Suffice it to say that the inconsistency adverted to, does not affect the probative value accorded to the evidence of the prosecution considered in whole. Oftentimes, persons experiencing the same occurrence, perceive differently. And so it was with Gonzalo, Roberto and Erlinda who were not ordinary witnesses to these crimes but were themselves among the victims. Events must have happened so fast - the assailants suddenly showed up at the open window; the Anchetas scampered for cover under the table; Janul fired at Roberto; Jakaria grabbed the carbine from Janul, and fired three successive burst at the victims; and then the sight of the mother (Rosita), a daughter (Editha) and a son (Ricardo) sprawled, bloody and lifeless, on the ground - produced different imprints in the minds of those who survived. Hence, the differences as to their testimony, differences which do not however affect their testimony pointing to the accused as the particeps criminis.

Of crucial importance is the fact that Gonzalo, Erlinda and Roberto recognized and identified the accused-appellants as four of the six culprits. Their respective statements (Exhibits "A", "J", "M"), taken at St. Elizabeth Hospital on July 18, 1970, a few hours after the accused and their other relatives were brought for confrontation, categorically named Abo, Abdul and Jakaria as the culprits, including a curly-haired member who turned out to be Janul. During the trial, these witnesses steadfastly pointed at the accused.

There could be no doubt, that Gonzalo recognized and identified the assailants, contrary to what the appellants would want Us to believe by saying that Gonzalo at first refused and was reluctant to identify the accused at St. Elizabeth Hospital. At the trial, Gonzalo himself admitted that he hesitated to name the assailants who were no other than his Muslim neighbors because of the presence of the Muslim patient in the hospital ward. To the appellants, the explanation was flimsy, in view of the presence of the police authorities at the ward. But not to Gonzalo who with his family migrated to the south and a few months thereafter, lost his wife and two children, in the senseless killing by his neighbors. In such a desperate situation it was not unnatural for Gonzalo to be afraid so that instead of uttering names he asked for a piece of paper and listed the names of the appellants.

The listing of the suspects' names by Gonzalo was confirmed by PC Rodolfo Domingo. And so, the appellants impugn Domingo's credibility, to the extent of contending that he was not among those who investigated the scene of the shooting in Amao. In this connection, Lt. Mangundayao Macaantal, who testified as witness for the defense, denied the prosecution's claim that the list was handed to him at the hospital.

It is sufficient to say that Rodolfo Domingo was a disinterested witness whose testimony withstood the test of lengthy cross-examination by the defense. On the other hand, Lt. Macaantal, as found by the trial court, turned out to be a hostile witness by reason of his cultural affinity with the accused. Nonetheless, it should be noted that even Lt. Macaantal actually corroborated some important points established by the prosecution through the testimony of Rodolfo Domingo, e.g., that Lt. Macaantal did not only approve of the manner by which Gonzalo Ancheta identified the accused, he actually instructed Gonzalo not to say a word at the confrontation, but just to give him a signal.

To be sure there are inconsistencies in the testimony of the prosecution witnesses. The crucial point, however, is that Gonzalo had categorically identified the accused during the confrontation at the private ward at St. Elizabeth Hospital in a manner that precludes doubt as to his capacity to recognize and identify the assailants. It will be recalled that there were seven suspects at the start. As though to test Gonzalo's accuracy of recognition, the seven suspects were made to enter the ward, one at a time. By nodding his head, Gonzalo singled each of the four accused out of the seven suspects who individually entered the ward. He broke down upon seeing Jakaria and cried: "Jak, nag makaawa pa kami sa iyo, pinatay mo pa rin ang pamilya ko." Of course, this was denied by Jakaria. But, no less than a defense witness, Lt. Macaantal confirmed that Jakaria was indeed pointed at by Gonzalo.

The identity of the accused as the perpetrators of the crimes was positively and convincingly established. Consequently, motive for the shooting has thereby become academic, although this case is not exactly wanting in proof of motive. It appears that even before Gonzalo became the overseer of Atty. Avena, there had been incidents between the Gandaos and Gonzalo's predecessors in the plantation that kindled animosity on the part of the Gandaos against those in the plantation. For instance, Abo had a quarrel with Guillermo Miana (former overseer) on Abo's claim that Miana cheated him on the price of copra; after Abo had sold his house at the plantation to Atty. Avena, Abo was prohibited to pasture his animals on the plantation and to enter it without the written consent of its owner; Abo once objected to the spraying of Endrin at the plantation opposite his house outside the fence because of the effect on his fowls; and his wife once had an altercation with Warlito Ancheta (another overseer), over the latter's attempt to implicate the Gandaos in the stealing of copra from the plantation by scattering empty sacks of copra around Abo's house. Then on April 18, 1969, Gonzalo came to Amao as overseer of the plantation. Sometime in October, 1969, Gonzalo shot the dog of Abo as it chased his daughter, Editha. Just two days before the shooting incident, Ricardo Ancheta was irked by the arrogance of Abdul, Janul Gandao and Amsa Tunis while his sister Erlinda was washing clothes on the river. Ricardo struck the ground with his bolo, at the same time telling Erlinda "If I could not hold my temper, I will kill these people." The Gandaos eventually gave way to their accumulated animosity at those in the plantation by striking upon the Ancheta family in the evening of July 17, 1970.

The appellants cannot insist on their alibi because they had been positively identified as the assailants. More so, when it is considered that the proximity of their place to the scene of the crimes does not really preclude the possibility of their presence thereat at the time of the shooting.

That the alibi was actually an afterthought is the fact that the statements of Abo, Abdul and Jakaria (executed shortly after their arrest), do not at all mention that at the time of the shooting, Abo was conversing with Barsiliso Miranda at his (Abo) yard, and that Elpidio Pamposa and Jakaria arrived during the conversation, to inquire about the shots they allegedly heard.

Finally, the appellants contend that Gonzalo had reason to impute the crimes on them. The reason adverted to is linked with the appellants' theory of the crime, i.e., Gonzalo had cast on them his own crimes to save himself.

Appellants' theory, however, finds no support in evidence. Certainly not in their offer of proof, which by any standard constitutes hearsay evidence, and therefore, worthless, even if allowed to remain on record.

That the appellants' theory has no basis, is explained in the decision appealed from, thus:

"The theory of the defense that it was Gonzalo Ancheta himself who murdered his wife and two minor children and seriously injured his son Roberto, daughter Erlinda including himself, being mainly based on conjectures, unsupported by any iota of evidence, is so preposterous and ridiculous as to merit judicial belief. None of the injuries sustained by the three deceased, namely, Rosita Ancheta, Ricardo Ancheta and Editha Ancheta nor

those of Roberto, Erlinda and Gonzalo were shown to be caused by a .32 caliber pistol admittedly possessed by Gonzalo Ancheta. Further, the entry of the wound of Gonzalo Ancheta, according to the testimony of Dr. Jesus Veneracion is below the point of exit. In short, the trajectory of the bullet was from down to up (tsn., pp. 364-365.). He further declared that the distance between the victim and assailant was approximately two (2) meters (tsn., p. 383). These cannot be self inflicted wounds under ordinary circumstances. Besides, the medical findings that the injuries of Roberto were caused by carbine slugs and another by a shotgun slug precludes any idea of a fratricidal killing. Far more important is the fact that there was no reason or reasons even alluded to why Gonzalo Ancheta would kill the immediate members of his own family and seriously injure himself."

By way of resume then. The evidence for the prosecution had established that in the evening of July 17, 1970, Jakaria Gandao, Janul Gandao, Abo Gandao and Abdul Gandao showed up at the window of the ground floor of the Anchetas' house; that Janul Gandao fired his carbine at Roberto Ancheta but missed; that Jakaria Gandao grabbed the carbine from Janul, and opened fire at the Anchetas; and, that Rosita, Editha and Ricardo were killed and Gonzalo, Erlinda and Roberto were wounded. The alibi and the theory of the appellants that it was Gonzalo who shot the members of his family while he was drunk are not credible. The guilt of the appellants has been proved beyond reasonable doubt.

WHEREFORE, the penalties imposed being in accordance with law and the evidence, the judgment of the court a quo is hereby affirmed in toto. Costs against the appellants.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

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