

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
TOMAS CARAOS, PASCUAL BIHIS, FLORENCIO BIHIS, MARTIN
MARANAN, PEDRO ARRIOLA AND ANTONIO DAÑO, DEFENDANTS
AND APPELLANTS.**

G.R. No. L-1845. December 21, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

The six appellants are charged with the crime of robbery in band with homicide committed in barrio Subic, Lemery, Batangas, on December 3, 1945. All of them were found by the lower court guilty of robbery with homicide and appealed.

The records of this case is one of the most voluminous. Many witnesses testified both for the prosecution and for the defense and the whole transcript of the of the stenographic notes is spread on more than 1,000 pages.

For a clear idea of the effect of the testimonies, hereunder is given the substance of the declarations of the witnesses:

PROSECUTION

- Ignacia Sangalang, 59, married, Bihis, Taal.—Elpidio Promentela is her son. (3). His business was to buy and sell horses. At 7tOO a.m. on December 1, 1945, he left home with P4,000 to buy horses in Bayuyungan, Talisay. The witness gave him P4,000 and also P18 for expenses, and he brought with him a watch and a ring valued respectively at P150 and P60. He promised to return on December 3, 1945, but he never returned. (5). S&e learned from his companions Antonio Vitas and Galicano Abanico that he was killed. (6). Elpidio was 30 years old, single. lie started in the business since he was 13. (7). Pascual Bihis and Florencio Bihis knew that Elpidio v:as engaged in the horse business. They knew him since before the war. (18).

- Antonino Lontoc, 43, married, president of the 9th Sanitary Division, Lemery.—He made a post-mortem examination of the body of Elpidio Promentela. (19). Exhibit A is his report of it. Elpidio died due to internal hemorrhage, shock, and cerebral hemorrhage, as a result of bullet wounds. (20). There were three wounds, one in the head and two in the body. The bullets were fired at close range, as there were burns in the body. (21). There were contusions in the body which might have been caused by the deceased's fall. (22).

- Armando Valdes, 28, married, lieutenant, MPC, Sta. Rita, Batangas.—He had an opportunity of investigating the case on January 4, 1946. When accused Dominador Cagitla, Urbano Dano and Pedro Arriola escaped from the jail, the warrant of arrest Exhibit B was already in his office when he arrived there. Accused Tomas Caraos, Martin Maranan and Pedro Arriola and Antonio Dano were arrested on August 16, 1946. (27). Dominador Cagitla, Pedro Arriola and Antonio Daño escaped from jail on February 12, 1946. They were rearrested on August 16, 1946. (28).

- Antonio Vitas, 40, married, manufacturer of sawali, Bull, Taal.—During the first week of December, 1946, he saw Elpidio Promentela in a wedding celebration in barrio Binibiloan, Lemery. It was a Sunday, December 2, 1945. (31). Among those present were Tomas Caraos, Pascual Bihis, Antonio Dano, Pedro Arriola, Dominador Cagitla, Martin Maranan, and Florencio Bihis. Elpidio arrived at 2:30 p.m. (32). The accused arrived at 8:30 a.m. on Monday, December 3, 1945. They came together. The witness was the cook. On Monday morning, he saw Elpidio in the house. (33). He saw him before the arrival of the accused. The accused drank wine. Pascual Bihis was always telling his companions: "You son of a bitch; I will shoot you if you do not obey me." The witness heard it twice. All the accused were armed with .45-caliber revolvers. (34). The deceased, the witness and the accused left at 2:30 p.m. on December 3. The deceased was carrying money, a ring and a watch. (35). The bride and the bridegroom also left. All went to the shore, including Galicano Abanico and the accused and many others. (36). As no banca was found, Elpidio invited the witness to go home on foot, and they left the shore with Galicano Abanico at 3:30 in the afternoon. (37). The accused remained. When the witness, Elpidio and Galicano Abanico arrived at a place of barrio Subic, 8 persons overtook them. Guillermo Atienza who was ahead aiming his revolver at the trio saidt "Do not go ahead, otherwise you will die." At that moment Elpidio was surrounded by Tomas Caraos, Antonio Dario, Pedro Arriola, Florencio Bihis, Martin Maranan, and Dominador Cagitla. (38). The witness ran because he heard a shot. At a distance of about 30 meters he turned his face and he saw that the malefactors were searching the garments of Elpidio. In all, three shots were fired. The first one was fired by Pascual Bihis. "We went to the barrio lieutenant to report the incident." (39). Because they had to walk on water reaching their breasts, Elpidio had to undress and remain in drawers and undershirt. He had his khaki dress rolled and he had in it his P4,000, the watch and the ring. The witness asked him, concerning his money "Compadre, why are you carrying much money?" "Ah, it is because I wanted to buy horses, but I failed to buy." The deceased took the money from a pocket and placed it in one fold of his pant which he rolled. The money was mapped in paper. (40). The witness saw the money before it was wrapped. They had to undress from the shore because they had to walk through water. (41). At the time the deceased took his money and v/rapped it in paper, the accused were present. After the deceased fell down, the bundle of his dress was searched by Pascual Bihis, Tonia Caraos, Dominador Cagitla and Guillermo Atienza. (43). All the accused made the search. (43). After the search the witness and his companions were pursued by the accused and they had to run. The place was uninhabited. There was no house. (44). The place was somewhat hilly, there were many trees, and the way was zigzagging. The accused had their revolvers unholstered. (45). The next day the witness reported the case to the Justice of the peace of Lemery. The teniente del barrio went with the witness to see the cadaver at about 10:00 p.m. The barrio lieutenant searched the body and he did not find anything. (46). The money, the watch and the ring were gone. (47). Before coming home the witness went to the house of the deceased and reported to his parents that their son: was killed. He was accompanied by Galicano Abanico, They arrived at the house at 4 o'clock in the morning. (48). When the witness saw the cadaver, it carried only the drawers Exhibit C-4. It was to uncled in the right ear and in the abdominal region. (49).

Antonio Vitas, after having been recalled to the witness stand, testified that he arrived at the wedding house in Bilibinuang before Elpidio Promentilla. He arrived at 2:30 in the afternoon of Sunday. (1001). There Elpidio said to him that he came from barrio Bayuyungan, Talisay, and that he came to buy horses. (1004). Upon seeing him carrying much money, including bank notes of P20 and P50, he asked him why he was carrying such money, and the deceased answered that he was about to buy horses but he was not able to do so. (1005). The witness asked him how much he was carrying and the deceased said he was carrying P4,000. (1006). The witness knows Jose Atienza of barrio Bolbok. (1013). When the witness and his companion, Galicano Abanico, ran away because of the shooting, they found Jose Atienza on the way and the latter asked them what happened and "we told him that these malefactors killed Elpidio Promentilla." (1014). When the witness went to the barrio lieutenant to report the killing, Juan Garcia was not with him. (1016). The witness and his companion did not find the barrio lieutenant but the assistant barrio lieutenant, Avelino Panganiban, to whom they reported that they were held up by eight persons, not by two. (1016). When the witness returned from Taal with MPs, they found accused Dominador Cagitla, Pedro Arriola and Antonio Daño standing before a house. (1030). They were questioned by the MPs, and Pedro Arriola said that he was in the place "because his companions ordered him to watch and kill us so that we cannot report the incident to the authorities." Antonio Daño said nothing. (1031). Dominador Cagitla said that he was a rower. Pedro Arriola himself accompanied the MPs to the place of the cadaver. (1032). Arriola said that they killed Elpidio but he did not state the motive for the killing. (1034). When the witness returned to the place of the incident with the assistant barrio lieutenant, they did not see any money, watch, or ring. (1039). The assistant barrio lieutenant examined the body of the deceased. (1040). At first Pedro Arriola said to the MPs that he was a rower, "but I said that no and that they were companions of the individuals who held up Elpidio Promentilla. After other questions, he said the truth that they were in the place because their companions ordered them to watch us and kill us so that we cannot report the incident to the authorities. The MPs asked about his arms and Pedro Arriola answered that Pascual had taken them." (1041). The witness has known Pascual Bihis for more than a year. (1044). He is the cousin of Florencio Bihis. He has known Tomas Caraos for more than 10 years. There was no personal resentment between him and Tomas Caraos. (1045). When the MPs went to the place of the incident with Pedro Arriola and the witness, Dominador Cagitla and Antonio Daño were left under guard in San Nicolas. (1053). They went to the place at 9:30 a.m. (1055). When Pedro Arriola was asked by the MPs where his companions were, he said that they were in the north and he referred to Pascual Bihis, Tomas Caraos and Florencio Bihis. (1064).

- Agapito Tirones, 25, single, merchant, Banadero, Tanauan, Batangas.—He knows accused Martin Maranan as one of those who held him up. He filed a complaint against Maranan and his companions in Talisay. (1065). While the case was pending in Talisay, Gaudencio Bihis, a relative of Pascual and Florencio Bihis, "told me that I should consider settling the case amicably because his men mistook me for Elpidio Promentilla, whom they wanted to waylay." (1066). Gaudencio approached the witness twice some two weeks after he filed the complaint. He said "I should pardon those who waylaid me because they received information to the effect that Elpidio Promentilla was already murdered. (1067). The witness was held up by Martin Maranan on November 13, 1945. (1068). Gaudencio Bihis told the witness that he was the one who induced the killing of Elpidio Promentilla. (1071).

- Juanito S. Atienza, 39, married, chief of police, Lemery.—He got accused Pedro Arriola, Antonio Daño and Dominador Cagitla on December 4, 1945. They were brought by American IPs and Taal policemen. (1073). They

escaped from jail on February 10, 1946, and Dominador Cagitla is still at large. (1074). The provost marshal told the rlrss that tbs six accused surerdcared. (1076).

- Consorcio Noche, 33, married, merchant, Taal.—On December 4, 1945, he was a policeman of Taal. (1084). At 8 o'clock in the morning of Tuesday, December 4, 1945, he was called by his chief, Antonio Casanova, Sr., and "instructed me to go with Antonio Vitas to barrio San Nicolas, where, according to him the three companions of the persons who held them up where then." The witness went with policeman Vicente Leharzo, two Filipino MPs and five American MPs "because, according to Antonio Vitas, those were armed bandits and because we were two only, we were afraid that we cannot tackle them and because according to Vitas, one of his companions was killed." (1085). They found behind a store in barrio San Nicolas Antonio Dario, Pedro Arriola and Dominador Cagitla, who were pointed out by Antonio Vitas. (1086). The three were investigated by the MPs and asked if it was true that they were companions of those who held up Elpidio Promentilla, Galicano Abanico and Antonio Vitas. At first they denied, but after several questions "Pedro Arriola confessed that they were companions of those who held up Elpidio Promentilla." (1087). The three were asked by the MPs why they were in the place and "they answered saying that they were ordered by theiT five companions to watch Antonio Vitas and companions and to kill them if they so see them." Their five companions Were Pascual Bihis, Tomas Caraos, Martin Maranan, Florencio Bihis and Guillermo Atienza. They were instructed to watch and kill Antonio Vitas and Galicano Abanico. (1088). The witness knows the five accused. He knows Pascual Bihis and Tomas Caraos because they were already jailed in Taal. The MPs requested Pedro Arriola to lead them to the place of the incident. The witness and Vicente Leharzo remained to watch Antonio Daño and Dominador Cagitla until they were taken to the municipal building of Taal. (1089). When the three accused were found by the MPs, Antonio Daño had in his possession a pen-knife (1092). The three accused, when asked about their arras, said that they were taken by their companions who were at the other side of the river. (1093). They said that their companions had taken their revolvers. (1094). When Pedro Arriola admitted his participation in the killing, no duress was used by the MPs. It was Antonio Vitas who raised his voice when the accused denied at first. Pedro Arriola is the only one who confessed. (1098). Antonio Dano and Dominador Cagitla did not confess. (1099) .

- Galicano Abanico, 29, widower, sawali manufacturer, barrio Buli, Taal.—On the morning of December 2, he left barrio Bull to attend a wedding at barrio Bilibinuang, Lemery. He was accompanied by Antonio Vitas and some neighbors of Cultihan. They arrived at Bilibinuang at about 2 in the afternoon. (1100). Elpidio Promentilla arrived at the wedding at about 2:30 in the afternoon. (1101). Eight men, among whom were the six accused, were continuously drinking wine at the wedding. (1102). The eight were Pedro Arriola, Antonio Dano, Martin Maranan, Tomas Caraos, Pascual Bihis, Florencio Bihis, Dominador Cagitla and Guillermo Atienza. Guillermo Atienza was killed, and another is at large in the mountain. (1103). Pascual said to the group: "If you son of a bitch don't obey, I'll kill you by shooting." The witness left the place at about 2 o'clock in the afternoon of December 3. (1104). He was accompanied by Antonio Vitas, Elpidio Promentilla and others. They went to the shore of Bilibinuang to look for a boat. Because they found none, he, Antonio Vitas and Elpidio Promentilla agreed to go walking to Subic. (1105). Before starting, they took off their pants and shirts, as they had to walk by the beach for they did not want their clothes to be wet. After taking off his pants, Elpidio took from his drawers

the money and placed it in a fold of his pants. They were held up by eight men. (1106). One of the eight went ahead with a .45-caliber revolver in his hand saying "Don't go ahead because you will die." The seven others had also their .45-caliber revolvers unholstered. Then a shot was heard "and Antonio Vitas and I ran away." Three shots in all were fired. When the first shot was fired, the witness' group was about four meters from the eight assailants. (1107). While the witness and Antonio Vitas were running, they heard two other shots. At about 30 meters, when they looked back they saw that Elpidio Pomentilla was dead. The assailants were searching a bundle of Elpidio Pomentilla. There were no other persons in the place. There was no house. The witness pointed accused Pascual Bihis, Tomas Caraos, Antonio Daño, Florencio Bihis, Pedro Arriola and Martin Maranan among the eight who held them up. (1108). Before the incident the witness knew already Pascual Bihis, Tomas Caraos and Antonio Dano. The assailants who were absent from the court were Guillerrao Atienza and Dominador Cagitla. He and Antonio Vitas reported the killing to the barrio lieutenant, saying that they were held up by those eight men. They were accompanied by the barrio lieutenant to the place of the killing. The barrio lieutenant searched the body of Elpidio Pomentilla. There was no money, ring or watch. (1110). During the wedding the witness saw Elpidio carrying a watch and a ring. He was carrying them when they were walking by the beach, (1111). The witness and Antonio Vitas advised Elpidio's parents about the killing. (1112). Elpidio's mother swooned. When the witness and Antonio Vitas and many others intended to go to the place of the killing on December 4 to recover the cadaver, they saw in San Nicolas accused Pedro Arriola, Antonio Dano and Dominador Cagitla. (1113). Upon seeing them, Antonio Vitas ordered the truck to turn back to call the authorities, and Antonio Vitas returned with MPs and policemen from Taal. (1114). The witness professes the Roman Catholic Apostolic religion. When a person dies he is dead. He does not believe in another life because none of those who died has returned. (1118). When the MPs asked Pedro Arriola, Antonio Dano and Dominador Cagitla why they were in the place, the first said that it was because Pascual Bihis ordered them to watch Antonio Vitas and the witness and kill them so that they cannot denounce the killing of Elpidio Pomentilla. (1131). Arriola said that their companions were at the north side of the river. (1132). He said that their arms were taken by Pascual. (1133).

- Sotero Pomentilla, 35, married, merchant, Batangas.— He is the brother of the deceased Elpidio, who on December 14, 1945 was barrio lieutenant of barrio Bihis, Taal. (56). He was a horse merchant, and used to buy race horses. He left home on December 1, 1945. (59). He went to barrio Bayuyungan, Talisay, carrying with him P4,000 to buy horses besides money for expenses. He carried a ring and a watch. The witness helped in arranging the money before his brother left. (58). His brother never returned. He died. (59). The deceased was accompanied by Antonio Vitas and Galicano Abanico. (61). Upon hearing of the death of his brother he took a cart to recover the cadaver. (62). He was accompanied by Antonio Vitas and Galicano Abanico and others. (63). Pedro Arriola, Antonio Daño and Dominador Cagitla, were investigated by Filipino and American IIs. There were five Americans and two Filipinos. (64). Pedro Arriola told the truth, that they were eight, mentioning Florencio Bihis, Pascual Bihis, Tomas Caraos, Guillermo Atienza, and Martin Maranan. He said that the three were in sitio San Nicolas, because they received order from their companions to pursue and kill the companions of the deceased so that they could not be witnesses. (65). The three accused escaped from jail. (69). The witness, through the mediation of Gaudencio Bihis, was able to convince accused Pascual Bihis, Martin Maranan, Pedro Arriola, Antonio Dano, and Tomas Caraos to come with him to the IIs, after a promise that they would not be maltreated. (69-70). When the accused were arrested, Attorney Atienza intervened to settle the case. Attorney Atienza is a near relative of some of the accused. (71). While detained, Florencio Bihis wrote to Gaudencio Bihis the letter

Exhibit B which has fallen into the hands of the MPs. (72). When Pedro Arriola was investigated by the MPs the witness v/as present. (85). He said that he was in San Nicolas because he and two companions received orders to kill Antonio Vitas and Galicano Abanico so that the two would not reveal the killing to the relatives of the deceased. Arriola said that they were eight. (85). Dominador Cagitla and Antonio Daiio were present when Arriola admitted their mission to kill G-alicano Abanico and Antonio Vitas. (86). They did not admit or deny what Arriola said. (87). Pascual Bihis, Francisco Bihis and Gaudencio Bihis are distant relatives of the witness. (92). When counsel for the accused attempted to settle the case, the witness proposed a settlement in the amount of P4,000, in order to induce Gaudencio Bihis who was still at large, to surrender to the authorities, as witness1 life was in danger. (93). He was being offered the sum of P1,000.00, although he was not asking for it. (96). The witness asked why was he to accept P1,000, when the money lost was P4,000.

DEFENSE

- Jose Atienza, 29, married, farmer, Bolbok, Taal.—On December 2, 1945, he attended the wedding of his cousin Marcelino Maala in Lemery. He left the place of Biliblnoang, Lemery on December 3, 1945 at four o'clock in the afternoon. His companions were Antonio Vitas, Galicano Abanico, Juan Garcia, Elpidio Promentilla, Angel Semaña, and they intended to return home by land. (105-106). They arrived at barrio Subic at six. He saw when Elpidio Promentilla was killed by several individuals. He knows accused Florencio Bihis, Pascual Bihis and Tomas Caraos. Neither they nor the three he does not know were in the group of persons who killed Elpidio Promentilla. (107). Those who killed Elpidio were two, Guillermo Atienza and another unknown to the witness. At the time, Elpidio was accompanied, not only by Antonio Vitas and Galicano Abanico but by the witness, Juan Garcia and Angel Semana. (108). It is a lie that the six accused and Guillermo Atienza and Dominador Cagitla each carried a .45-caliber revolver. The witness was with Antonio Vitas and Galicano Abanico when the latter reported the killing to the barrio lieutenant. Besides the witness, Juan Garcia and Angel Semana also went with them. The person to whom they reported is Avelino Panganiban. (109). They told him that two persons held up and killed Elpidio. (110). It is not true that Antonio Vitas and Galicano Abanico returned to the place of the killing, because all of them went home from the house of the barrio lieutenant. The witness saw the six accused at the wedding. They were left in the house of the wedding when the witness and his companions left the place. (112). It is not true, as testified by Antonio Vitas and Galicano Abanico, that the men who killed Elpidio Promentilla searched his body and took away from him a watch, a ring and P4,000. (113). When the witness went to attend the wedding, he went with many companions, but he does not remember the name of anyone. Some of them were his neighbors. (114). He remembers only Angel Semaña, Juan Garcia and Galicano Abanico. He was the only one who came from barrio Bolbok, the others came from other barrios. (115). He does not know the name of the bride. Her nickname is Juling. When Elpidio Promentilla was held up by Guillermo Atienza, the witness was with him. (117). The witness, Galicano Abanico, Antonio Vitas and Juan Garcia were all at the side of Elpidio. Guillermo Atienza and his companions stopped them. Three shots were fired, two of them aimed at Elpidio. (118). When the first shot was fired, the witness was ten meters away from Elpidio. Galicano Abanico and Antonio Vitas were standing. Then they ran. At a distance of twenty meters they stopped and they saw that the shots were fired against Elpidio. (119). When they were held up, the witness was in a group with Juan Garcia, Antonio Vitas, Elpidio Promentilla and others who were at his side. (120). The witness had not seen Elpidio carrying money, a watch or a ring. (122). The witness knows the accused Martin Maranan. (123). Although the witness knows the parents of Elpidio, the Chief of Police and the mayor of Lemery, he did not report to any of them the killing, as "my companions were already free." He revealed it only to members of his family. (125). When they were held up, their assailants ordered them: "You go. Leave Elpidio here. If you don't go, even you

will die." (131). After denying at first that he had talked with defense counsel, he admitted that he had talked with him. (134). He did not reveal the killing to Juan Garcia or to Angel Sernana(135). When he reported the killing to the barrio lieutenant, he did not mention the surname of Guillermo Atienza. (139). He knows Guillermo Atienza by his face alone. (145). When the first shot' was fired by Guilleiuno Atienza the latter was ten meters from the witness. (153). The first shot was fired in the air. (155).

- Juan Garcia, 38, married, carpenter, barrio Cultihan, Taal.— Marcelino Maala was married on January 3 of last year (1946). He rendered help at the wedding. (160). He arrived at the place of the wedding on Sunday at two o'clock in the afternoon. He was accompanied by Angel Semaña. There were about 30 persons, among whom were men and women. (161). The accused were present. (162). When he left the place his companions were Angel Semana ind Jose Atienza. (163). They met on the way Antonio Vitas. (The witness hesitated for a length of time before telling names.) In his group, they were only three, himself, Jose Atienza and Angel Seraana. (164). When they met Antonio Vitas in barrio Subic, he had two companions,fone of whom was Elpidio. He does not know the name of the other. (165). When they met Antonio Vitas and his companion they met about 30 persons. (166). He cannot mention their names. (167). They met also two persons in barrio Subic. (169). Then in his group there were only 6 persons. There were 30 when they were near the house of the wedding. (170). They were held up by two unknown persons. (171). That was the first and the last time he saw them. Then the two persons ordered the group to go away, and they went away. (172). Those who went away were the witness, Angel Semaña, Jose Atienza, Antonio Vitas and another. Elpidio was left. They went to a distance of 10 meters. When a shot was fired they stopped. They were 40 meters away when Sloidio was shot. (173). Elpidio was killed. They went to the house of the barrio lieutenant. Because he was absent, they went to the assistant barrio lieutenant. (174). Antonio Vitas reported that Elpidio was killed by two persons. Jose Atienza did not say anything. (175). Those who held up Elpidio were not among the accused. (178). His wife is Julia Semaña, sister of Angel Semaña. (191). The two persons who held up Elpidio searched his body. The witness does not know if they were able to get anything.(196) When Antonio Vitas went to the house of the assistant barrio lieutenant, the witness and his companions were somewhat far from the ground of the house. They did not ro up the house. (210). Asked to explain why he testified at first that he heard Antonio Vitas say to the assistant barrio lieutenant that two persons killed the deceased, the witness answered; "We were too far when all of us were going jointly." The trial court warned him not to continue lying. (211). He does not remember whether he has already testified at the previous day that one of the assailants of Elpidio was present at the wedding. After repeated questions that he failed to answer, whether said assailant was present at the wedding, the witness finally answered:"I saw him there once." (212). (lie testified that he did not see at the wedding any of the assailants.) (211).

- Juanito Atienza, 40, married, Chief of Police of Lemery.—He did not receive any written report about the killing of Elpidio Promentilla, as stated by Avelino Panganiban, assistant barrio lieutenant. (217).

- Graciano Alcantara, 50, widower, farmer, barrio Subic, Lemery.—He remembers that an extraordinary incident took place one Ifonday in December, 1945, but he does not know the date. (219). It is true, as testified by Avelino Panganiban that he prepared a written report addressed to the Chief of Police of Lemery. He had a report by Avelino Panganiban. (221). He gave it to Juan Martinez to be delivered to the Chief of Police. Martinez reported to him that he delivered it, (222).

- Gaudencio Bihis, 35, married, large cattle merchant, barrio Balakilong, Talisay.—He is the brother of accused Florencio Bihis and cousin of accused Pascual Bihis. He knows Guillermo Atienza. (239). He did not attend at the wedding of Marcelino Maala in barrio Bilibinoang, Lemery. He heard that Florencio and Pascual Bihis attended the wedding. He heard about the killing of Elpidio Promentilla one week later. (240). He made an investigation and as a result his brother and cousin were not responsible for the killing (241). He promised Sotero Promentilla to help him to see Guillermo Atienza, the one responsible for the killing. (243). He went to see Guillermo Atienza telling him that his wife was calling him. But he was not able to present him to Sotero Promentilla, (244). It is true that the witness intervened for the surrender of the accused to the Military Police. He did it at Sotero's initiative. (247). Sotero suggested the surrender to settle the case. Sotero did not ask any money. Sotero said that the case had to be tried in order that it can be dismissed. After the accused were surrendered to the MPC, Sotero asked the witness the payment of P1,5000, saying that the accused should indemnify what his brother lost. (248)). Severino Bihis, father of Pascual, alleged that he has no obligation to pay anything "because his son is innocent. (250). The witness offered to Sotero P100 to settle the case. Sotero rejected the offer.

- Severino Bihis, 56, married, farmer, barrio Balakilong, Talisay.—He is the father of Pascual Bihis. (290). His land can yield not less than P4,000 a year. (291). Pascual went along with bad persons. (292). When Pascual went to the wedding his companions were Pedro Arriola, Antonio Daño, Florencio Bihis, Martin Maranan. He did not see Guillermo Atienza and Donador Cagitla accompanying them. (296). Tones Caraos was present. (297). Pascual returned home at six o'clock in the afternoon of December 3, the day of the wedding. (293). There was nothing unusual in him. (299). Sotero Promentilla offered to settle the case with the payment to him of the amount of P1,500. The witness offered P100 because his son was innocent and, if he was not, the witness was willing to pay even P300 or P400. (304).

- Pedro Arriola 24, single, farmer, Balakilong, Talisay.—He was at Balakilong. Pascual Bihis requested him to bring him in a banca to attend a wedding at Balakilong. (331). The witness was helped in rowing his boat by Antonio Eao and Donador Cagitla. (332). They used rows and sails. The witness agreed to pay Antonio Daño and Donador Cagitla P10 each. (333). He agreed to carry Pascual Bihis free. They left Balakilong in the morning. The passengers were Pascual Bihis, Tomas Caraos, Martin Maranan, Florencio Bihis and Guillermo Atienza. (334). The four had to pay P25 each. They did not pay. They arrived at Binibinoan at midnight. (335). The boat was left at the shore. The witness did not make any acquaintance at the wedding house. He does not

know Antonio Vitas or Galicano Abanico. He does not know Elpidio Promentela. (337). He did not drink wine. After luach, they carried passengers to San Nicolas. (338). They carried seven passengers. (339). They returned to Binibinoan but they did not reach their destination because the boat needed repair, and they had to remain in San Nicolas. They remained in the boat to watch it. (340)? The next morning they were arrested. The MPs and policemen arrived. The witness does not know if Antonio Vitas was with them. He was told of no reason for his arrest. He does not remember if he was searched, because "upon being seen by the MPs we were maltreated." He does not remember having placed any finger mark on Exhibit "D". (343). His hand was pulled and his finger mark was placed on the document without knowing it. (34). He does not know anything about what is stated in Exhibit "D". "I have no knowledge of any affidavit made by me." (345). When they brought passengers to San Nicolas, Pascual Bihis and his five companions were left at the wedding house. (346). It is not true, as testified to by Antonio Vitas and Galicano Abanico that he was one of the eight persons who held up Elpidio Promentela and that he was among those carrying a .45 caliber revolver. He and his companions escaped from the municipal Jail, Lemery, because, although innocent, they were maltreated or tortured. (347). The witness is a caretaker of the land of Severino Bihis, father of Pascual. (348). He does not remember when he was arrested. In January, 1946 he was working. In the Christmas of 1945 he was already detained. He was never bailed. (350). He cannot explain his testimony that he was working in January, 1946. He bought his boat long ago from an unknown person. He does not remember the whereabouts of the sale document. He did not ask for the name of the seller. (351). He paid P150. He does not remember the month or the year of the sale. He does not remember if he bought it during the Japanese occupation. (352). He did not say anything in his direct testimony that he was to pay Dominador Cagitla and Antonio Dano P10 each. (359). "I said that I will pay \$10 to the two of them." (360). No one in their group in the wedding house drank wine. (363). He did not see the woman who was married. He did not see her face, as there were many persons. When they carried seven persons to San Nicolas, the bride remained in the wedding house. (365). The amount of P25 was collected by him in Balakilong. (369). He collected only P3 from each of the passengers he brought from Balakilong to Binibinoan or P15. (370). He cannot say whether the MPs asked him or not about the men that left the wedding house. (373). He cannot say whether he saw the cadaver, because when he was arrested by the MPs and other agents of authority, he lost consciousness. He cannot say whether he saw the cadaver because there was a crowd. He cannot say whether Elpidio Promentela is dead or not. (374). He was asked if he had an arm and he said no. He was asked who were their passengers in the banca and he said that they are Martin Maranan, Pascual Bihis, Florencio Bihis, Tomas Caraos and Guillermo Atienza. (375). After their escape, they surrendered voluntarily to the MPC. Sotero Promentela told him that he was to present them to MPC and that they would be released. (382). He has been working under Severino Bihis for more than ten years. (385).

- Pascual Bihis, 24, married, merchant, barrio Balakilong, Talisay.— He attended the wedding party in Binibinoan on December 3, 1945. (387). He went in a group of eight. His companions were Pedro Arriola, Antonio Dano, Florencio Bihis, Tomas Caraos, Dominador Cagitla and Guillermo Atienza. (388). He heard that Elpidio Promentela is a relative. He saw him at the wedding party. (390). He saw him talking with Guillermo Atienza who addressed him: "That you are too traitor." Guillermo said that a horse he bought was bought by Elpidio by offering a high price. Elpidio said that he would buy even the crown of a king if offered to him and he has the money to buy it. (391). Guillermo was enraged and the witness intervened to appease both of them. Tomas Caraos also advised Guillermo to yield as no one of them was actually able to buy the horse. (392). Guillermo said that he was yielding for the sake of Caraos. It is true that the witness, as testified by Antonio Vitas and Galicano Abanico

said, "Son of a bitch are you not going to obey me." And he said it because Guillerccio Atienza was much enraged. Florencio Bihis also intervened, asking Guillermo Atienza to have patience as no one of them disbursed the money for the horse. (393). Guillermo Atienza left the wedding at two in the afternoon, accompanied by an unknown person. Before him, Pedro Arriola, Antonio Dano and Dominador Cagitla left. (394). The witness left the house in the company of Florencio Bihis, Martin Maranan and Tomas Caraos. They went walking except Caraos who boarded a boat. (396). The witness arrived home at six in the afternoon. It took him three hours. (397). It is not true that the witness with seven companions held up, killed, and robbed Elpidio Promentilla. The latter left the wedding party between one and two in the afternoon, but the witness did not see him leaving. (398). The witness admitted having been convicted of homicide. (400). He used to go along with Tomas Caraos many times. During the American occupation he never went along with him. (411). Before December 3, 1945, Guillermo Atienza used to go to the house of the witness. (409). For the trip to Binibinoan the witness paid Pedro Arriola P15. Although the current price for such a trip is from P25 to 30, the witness offered a certain amount to Pedro Arriola who would have agreed to take him gratuitously, because Arriola is his tenant. (411). Before boarding the boat, there was no agreement as to the specific amount to be paid. (412). The witness and some of his companions drank wine at the wedding party. There was not enough wine for them to get intoxicated, (416).

- Angel Semaña, 45, married," farmer, barrio Cultihan, Taal.— Marcelino Maala is his nephew. Marcelino married Julita Catina on December 3, 1945. (511). He attended the wedding which took place on Monday December 3, He went to the wedding since December 2. (512). He went to the wedding accompanied by his brother-in-law, Juan Garcia. (513). Among those they overtook on the way was Jose Atienza. (514). He knows accused Tomas Caraos and Pascual Bihis. They attended the wedding. (515). He saw the accused only on the day of the wedding. (516). He left the place of the wedding at 3:00 o'clock and his companions were Antonio Vitas, Galicano Abanico, Elpidio Promentilla, Jose Atienza and Juan Garcia. (517). They did not go to the shore but they passed by the shore. (519). The bridegroom took a boat to Cultihan. The bride remained in Bilibinuang. (520). When they arrived at barrio Subic they met two persons. (523). They asked Elpidio to wait. "The six of us stopped. One of the men talked with Elpidio and the other said to us to follow our way. We walked about ten meters and started to wait for our companion. (526). "The person who ordered us to continue, otherwise we would die, immediately fired a shot in the air." At about 30 meters we stopped again because we heard two shots. We saw our companions following. (525). We went running. We were five. We went to the barrio lieutenant." (526). The first one who reported the matter was Jose Atienza. Then Antonio Vitas said that their companion was shot by two persons." (527). Antonio said that one of the assailants was Mimo. (528). The witness saw Mimo at the wedding. (529). They did not return to the place of the shooting. (513). The assailants are not among the six accused. (531) The hold-up took place at 5:00 o'clock in the afternoon. (532). The witness did not testify before any authority of Taal or Lemery about the killing. (535).

- Avelino Panganiban, 40, married, barrio Subic, Lemery.—In the last part of 1945 he was the assistant barrio lieutenant. (596). One day, the date of which he does not remember, somebody reported to him that someone was shot. Five persons reported to him. He does not remember their names. (597). After he was subpoenaed, he happened to learn their names as Antonio, Galicano, Jose, Juan, and Angel. (598). Among those present in court

was a person he pointed and who answered that his name is Juan. The other said that his name is Angel. (599)» Antonio and Jose were the ones who talked to him. Antonio said that they were held up and that their companion, Elpidio Promentilla, was taken. (601). They said that they did not know the assailants, and that the assailants were two. The witness ordered them to go to town to report the matter and he went to the place of the shooting to see the cadaver. (602). The witness went to the place and he watched the cadaver. (604). They brought with them a written report made by Graciano Alcantara. The written report was ordered by the witness to be made. (605). The witness arrived at the place of the cadaver at about 7:00 o'clock at night. He left the place at 400 o'clock in the morning. He was accompanied by Councilor Ciriaco Desagun. (607). He heard that eight were accused long after six accused were detained. (612). He did not do anything about it because the accused are not his relatives or residents of his barrio. (613). He knows accused Pascual and Tomas. (614). He was called by the provincial fiscal to testify about the case. He did not see the provincial fiscal. "I don't like to be a witness because I do not want to be molested." (620).

- Antonio Dano, 23, married, farmer, barrio Balakilong, Talisay. He was a member of the crew of a banca which left Balakilong for Bilibinuang to attend a wedding. (646). He rendered service only at one time at the request of Pedro Arriola. Dominador Cagitla and he would have to be paid P10.00. (647). The passengers were Pascual Bihis, Tomas Caraos, Florencio Bihis and Martin Aranan. Only four. They were to leave at dawn. He slept at home from Sunday afternoon to Monday morning. (6M-8). At dawn on Sunday he went to the house of Pascual Dihls accompanied by Pedro Arriola. There Tomas Caraos and Dominador Cagitla arrived. The passengers were only four. (649). They were Pascual Bihis, Tomas Caraos, Florencio Bihis and Martin Maranan. At the beach, Guillermo Atienza joined them. "There were five passengers but when we were about to leave the beach of Balakilong Guillermo Atienza arrived. (650). They were eight in all who alighted from the banca to attend the wedding at Bilibinuang, where they ate. Shortly after eating "we left that house." (651). He left with Pedro Arriola and Dominador Cagitla. The five passengers remained in the house of the wedding. Afterwards some passengers came requesting that they be taken to a certain place. They were seven. Four women and three men. (652). They wanted to be taken to San Nicolas at 3:00 o'clock in the afternoon. After the passengers had disembarked and paid "we left the place. P20.00 was given to me by the passengers. (653). We were not able to reach barrio Bilibinuang because our banca sank. Some parts of the banca were destroyed." The banca was completely submerged. "Even the banca was submerged we remained sitting inside the banca." The water reached their waist. (654). The banca was pushed by the wind to the beach." They reached the beach late at night. The banca was not in a condition to be paddled. We took the banca to the shore," and they slept in the banca. The next day they went to the store. (655). They bought bread and that morning the MPs arrived. "Upon seeing me, I was maltreated by them. They arrested me. They searched my body." He cannot tell whether his companions were searched. (656). A hunting knife was taken from his possession. He told the MPs that he had no firearm. He did not know anything about the death of Elpidio Promentilla. (657). It is not true that he is one of the persons who surrounded Elpidio Promentilla in the afternoon of December 3, 1945. At that time "we were already in the barrio of San Nicolas. (661). He does not know Elpidio Promentilla. (662). He does not remember the time when he went to the wedding party at Bilibinuang. (663). He has known Pedro Arriola and Pascual Bihis since childhood. (664). After he escaped from the municipal jail of Lemery, he and Cagitla were paid P9.00, P4.50 each, by Pedro Arriola. (668).

- Tomas Caraos, 27, married, merchant, barrio Cultihan, Taal.—He was one of the passengers of Pedro Arriola's banca one Monday in December, 1945, to attend a wedding in Bilibinuang. (697). He was invited by the father of the bridegroom and by Pascual Bihis. (699). They were eight in all including the crew. They reached Bilibinuang at 1:00 o'clock. (701). He met among his acquaintances at the wedding party Dominador Gunabac, Aguido Maaya, Pedring, Antonio and Elpidio Promentilla. (702). He knows Antonio Vitas. He was also there. He knows Galicano Abanico. He knows Juan Garcia, He was there. The same with Angel Semana and Jose Atienza. (703). "Among us there were really drinking wine." There were many people drinking wine. We drank little amount of wine only." (704). They drank coconut wine after dinner. He drank about one third of a little glass. (705). It is customary to offer wine in a wedding party. (706). Elpidio Promentilla and Guillermo Atienza "were talking in loud voices. (707). It was about a horse owned by one from Bayuyungan. That was already agreed to be sold to Guillermo Atienza but Elpidio Promentilla bought it for a higher price." (709). Guillermo Atienza got mad. Elpidio told Guillermo Atienza that even if the sale was already agreed upon between him and the owner of the horse, inasmuch as his money was still at home, he was willing to give the horse to Guillermo at the same price. Guillermo was still mad and told Elpidio Promentilla, "You are a traitor." Elpidio got mad also and said "Why do you get mad for that horse when I am offering you the same price that I bought from the owner?" (710). Pascual Bihis intervened and tried to appease them. The witness also tried to pacify Guillermo Atienza, but "I noticed that Guillermo Atienza got mad also to me. He told me that I am meddling with them." (711)« It is not true that Pascual Bihis said that he was to shoot those who did not obey him. (712). Those who were drinking wine were Pascual Bihis, Florencio Bihis, Martin Maranan, "and myself." There were many persons drinking including Elpidio Promentilla. (713). After the heated discussion, Guillermo and Elpidio stopped. They were appeased. (714). "They separated in good terms." (715)As to the testimony of Antonio Vitas that the witness was among the eight persons who held up, killed and robbed Elpidio Promentilla in the afternoon of December 3, "I don't have any knowledge about that." He was not among those who killed Elpidio Promentilla. He left the wedding party at 3:00 o'clock in the afternoon. (717). "I went to the beach together with the bride." He boarded "the same banca where the bride boarded. They went to see his place at barrio Cultihan. (718). In the banca there were more than twenty persons. Only the bride rode in the banca. The bridegroom remained. (719). After boarding the banca he saw his companions Pascual Bihis, Florencio Bihis and Martin Maranan. "They wanted to go with me to the beach." (722). After embarking on the bank he did not meet again that same afternoon or during the night his four companions. (723). Antonio Vitas testified against the witness because the latter and Major Pedro Gahol fired once again the Japanese. (724). The witness did not know if they hit the Japanese. On the following day the Japanese forces raided the barrio of I teg on and the daughter of Antonio Vitas was taken by the Japanese, and since then Antonio threatened the witness that someday "you will pay for this." (725). The Japanese was shot because he used to commandeer everything. "During the Japanese time we often killed the Japanese in our place." (726).

- Florencio Bihis, 27, single, farmer, barrio Balakilong, Talisay.He was among those who attended the wedding party in Bilibinuang on December 3, 1945. He was invited by Pascual Bihis. (804). He is his first cousin. He saw Elpidio Promentilla at the wedding party when dancing was going on. He saw him when the dance was over. (810). He was talking with Guillermo Atienza. They were quarrelling. "When I arrived the two were already appeased. (811). Guillermo Atienza was the one who first left the house. He left alone. (812). One hour had elapsed before Elpidio left the house. (814). The witness left the wedding party at 300 in the afternoon. His companions were Pascual Bihis, Martin Maranan and Tomas Caraos. (815). Tomas Caraos boarded the banca in

which the bride went to San Nicolas. The witness went alone with Martin Maranan and Pascual Bihis. (816). They returned to Balakilong by walking. (817). It is not true that he was one of the eight persons who killed and robbed Elpidio Proraentilla. He learned that he was included in the complaint for the death of Elpidio Promentilla two days after the wedding. (818). The witness is lame because he was among those who were held up in barrio Kiling, Tallsay, while they went to Rosario to get Guillermo Atienza. He went with Gaudencio Bihis, Pascual Bihis and Martin Maranan. (820).

- Martin Maranan, 26, married, farmer, barrio Santa Cruz, Rosario.—He attended the wedding party in Bilibinuang on December 3, 1945 having been invited by Pascual Bihis. They were seven in all who started from the house of Pascual Antonio Dano, Pedro Arriola, Florencio Bihis, Pascual Bihis, Tomas Caraos, Dominador Cagitla and the witness. The banca was managed by Pedro Arriola, Antonio Daño and Dominador Gagitla. At the beach Btiillermo Atienza joined them. (896). "We left the wedding party at about 3:00 o'clock with Florencio Bihis and Pascual Bihis. (897). Tomas Caraos went with the bride to Cultihan. (898). We went hiking with Pascual and Florencio Bihis to Balakilong which they reached at about 6s00 o'clock. It is not true that he was one of those who killed Elpidio Promentilla. (899).

- Ciriaco Laurel, 58, married, mayor of Talisay.—He is mayor since June 24, 1946. Gaudencio Bihis went to see him telling him that his brothers Florencio Bihis and Pascual Bihis and Martin Maranan were accused of robbery with homicide and went"to see Velociano Laurel, the son of the witness. (917). Gaudencio Bihis told the chief of police that his brother and his cousin are not the ones who committed the robbery and wanted to take Maximo, Geronimo or Guillermo Atienza from Talisay to be arrested and the chief of police answered "You bring him here." But Maximo was not brought because he was killed in Kiling, Talisay. (972).

- Luis Atienza Bihis, 57, married, attorney-at-law, 389 Dapitan, Manila.—"Before appearing as counsel for the defense in this case, Gaudencio Bihis who is my relative went to me requesting me to help him in preparing the necessary documents for settling amicably the case between his brother Florencio Bihis, accused, Pascual Bihis and others also accused in this present case on the one hand, and on the other part, the relative of the deceased Elpidio Promentilla. I told Gaudencio Bihis that no settlement could be made judicially in any criminal case because the government is the aggrieved party and the accused are the ones opposed to the government interest. Gaudencio Bihis requested me to accompany him to Taal. When he saw in Taal Sotero Promentilla, he asked him, if he wanted the case to be amicably settled and Sotero replied in the affirmative. Sotero said that his father wanted some sort of consolation. Severino Bihis protested against being compelled to pay a single centavo. Gaudencio said that if it is a matter of P1,000.00 his uncle can make some effort. Severino said that if his son is guilty, he would be willing to give not only P1,500.00 but even P10,000.00 by selling or mortgaging his property. He was willing to give a contribution of P100.00. Nothing clear was done. The next day, the witness said that it was possible for him to convince his uncle to give P1,000.00, but Sotero said that as these people are now in jail

his father was asking P2,000.00. (989-995).

After a careful and thorough analysis of the testimonies of all the witnesses both for the prosecution and for the defense, the conclusion is inevitable that it has been proved beyond all reasonable doubt that on December 1, 1945, Elpidio Promentela or Promentilla left his home with 14,000, as capital to buy horses, and another amount for expenses. He carried with him a watch and a ring valued respectively at P60.00 and P150.00. On December 3, 1945, he attended a wedding party in barrio Binibiloan, Lemery. All the accused also attended it, where they had been drinking. All of them were armed with .45 caliber revolvers. At the time, accused Pascual Bihis told his companions that he would shoot them if they did not obey him. In the afternoon the party broke out. The people went to the shore to take boats to their respective destinations. Because they were not able to get a banca, Elpidio and his companions, Antonio Vitas and Galicano Abanico, started home by walking, but not without taking off first their pants, to avoid being wet, as they had to pass through water. In undressing to remain in drawers and undershirt, Elpidio took his big roll of money and rolled it in the folds of his pants. He did it in the presence of the crowd gathered in the place, among them the accused. When the deceased and his companions arrived at a place at barrio Subic, eight persons, including Guillermo Atienza and the six appellants, overtook them and killed Elpidio. When the latter's companions returned to the scene with the assistant barrio lieutenant, they denounced the killing and no money was found. The watch and ring of Elpidio also disappeared. The appellants had been seen by Elpidio's companions searching the body of Elpidio immediately after killing him by shooting.

Appellants do not dispute the robbery and the killing of Elpidio. They even proved by their witnesses that, as a matter of fact, Elpidio was killed in barrio Subic on December 3, 1945. They also agreed that Guillermo Atienza was one of the killers. They contend, however, that they took no part in the killing, because at the time three of them were sitting in a damaged and half-wrecked banca, covered with water up to their waist, while the remaining others went walking in another way to their homes, and that the killing was effected by only two persons, Guillermo Atienza and an unknown and unidentified person.

The evidence offered by the defense appears to from be unconvincing and has not detracted any force from the unbiased, positive, and forthright testimonies of Vitas and Abanico, who had actually witnessed the perpetration of the crime. The fact that the witnesses for the defense joined Guillermo Atienza with an unknown person as one of the killers of the deceased has not much weight considering that Guillermo Atienza is already dead, and to point him as one of the killers may give some color of veracity to said witnesses' declarations that they had also seen the killing.

Aside from the many contradictions among the witnesses for the defense, the theory of the prosecution appears to be corroborated by the admissions made by Pedro Arriola the next day after that of the crime when he was investigated, and by some incidents at the wedding party. While some witnesses for the defense said that the accused did not drink wine at the wedding party, others said that they did. While some denied that Pascual Bihis uttered any menacing words against those who would not obey him, others said that he did.

Appellants tried to convey the idea that Guillermo Atienza killed Elpidio as a reprisal because of a conflict between them in the buying of a horse. But according to the same appellants, the difference was amicably patched up, as Elpidio allowed Guillermo Atienza to have the horse and the settlement took place hours before the killing.

Appellants are guilty of robbery with homicide.

The trial court sentenced them to reclusion perpetua and to indemnify the heirs of the offended party in the sum of P2,000.00 without subsidiary imprisonment in case of insolvency, to return to said heirs P4,000.00, the ring worth P160.00 and the watch valued at P60.00, or in its default to pay them the amount of P4,220.00, also without subsidiary imprisonment in case of insolvency, and to pay the costs of the proceedings.

The Solicitor General recommends that the amount of 14,220.00 be reduced to 14,210.00 and that the indemnity of P4,000.00 be increased to P6,000.00 in consonance with the doctrine laid down in *People vs. Amansec* (L-927, March 11, 1948)[1].

The recommendations are well taken. The appealed decision is affirmed, modified as recommended, with costs against appellants.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

[1]

80 Phil., 424.

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