

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO APOSAGA AND CONSTANCIO MONTE, ACCUSED-APPELLANTS.

G.R. No. L-32477. October 30, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Automatic review of the decision dated April 28, 1969 of the Court of First Instance of South Cotabato, Branch I, in Criminal Case No. 1625 for murder, imposing the death penalty on accused-appellants Francisco Aposaga and Constancio Monte for the murder of Atty. Jose Barranda.

The victim, who was popularly called "Attorney", was a law practitioner in Cotabato and Agusan. At the time of his death, he lived in his 36-hectare farm at Palkan, Polomolok, South Cotabato, with his common-law wife Gloria Salongcong and their four children namely, Ruth, Samuel, Ester and Jose, Jr. Gloria had four other children by a previous liaison, namely, Fe, Noe, Felomena and Fely, all surnamed Cabrera, who were likewise staying with the couple at their house on the said farm. In the same barrio live the two accused-appellants as well as Sotera Salongcong Resaba, a sister of Gloria, whose house near the highway is about 1/2 kilometers away from the Barrandas'; Jesus Francisco, an ousted ex-tenant of "Attorney" and a nephew of Gloria and Sotera, whose house is also along the highway; and Doroteo Estorque, father of the common-law wife of accused-appellant Aposaga.

Monte was recruited by the deceased from his former employment as security guard of Lianga Industries, Inc. in Tumbis, Barobo, Surigao del Sur, to be the administrator of his farm. He arrived in Polomolok with his family in July, 1965 and stayed in a house owned by the Barrandas near their own.

From the house of the Barrandas there were three then as now possible routes to the provincial highway, one passing through the house of Sotera and Jesus on the General Santos side, another through the house of Aposaga and Estorque on the Marbel side, and the third was a short cut through a small road, to the highway.

The deceased was last seen alive in the morning of December 13, 1965. He had summoned Monte to their house at about six o'clock that morning, and they conferred about the farm. Afterwards, Monte had breakfast with "Attorney's" family before leaving the house. "Attorney" also left shortly thereafter to go to Dadiangas, taking the second route (Marbel side) described above. Gloria Salongcong also left the house one minute later for Dadiangas, taking the first route on the General Santos side, to pass by the house of her sister Sotera to fetch her daughter Fe, who was then staying with Sotera, to bring her to Dadiangas for her medical examination.

While walking on the trail to the highway, Atty. Barranda was chased by 3 men armed with bolos or knives, who acted concertedly in hacking or stabbing the victim to death. His lifeless body was later buried inside a dry well, while his portfolio and personal papers were buried around 300 meters away from the body.

Nothing was mentioned or heard about the death of Atty. Barranda until on January 20, 1966, Pio Francisco came to Barrio Palkan to barter fish and visit his son Jesus. The latter told his father that he could hardly sleep at night

because he was being "abused" or "raided" by Aposaga, Monte and alias Calbo, and that these three had killed the attorney. Pio verified the matter from Sotera Salongcong, who confirmed the killing of the deceased. He decided to report to the authorities, but waited for the picture of accused Aposaga in the possession of Gloria Salongcong before he made a report.

Pio first mentioned the matter to a Sgt. Edoria of the Philippine Constabulary when he saw him in front of their house on January 30, 1966 or 48 days thereafter. Sgt. Edoria immediately brought him, together with Felomena Cabrera, to the office of Sgt. Ricardo Vargas of the 101st PC Company. They showed Sgt. Vargas a newspaper clipping about a certain Francisco Lozada, who was wanted by the authorities with a prize of P10,000.00 on his head for a series of robbery and murder cases. After being told that the wanted man was in barrio Palkan, Sgt. Vargas lost no time in going to the said barrio, together with other PC soldiers. When they reached the said barrio, Felomena pointed to them the house of Aposaga. But when he confronted Aposaga, he found out that his name was Francisco Aposaga and not Francisco Lozada, and that his physical features did not tally with the description in the newspaper clipping. He therefore returned to headquarters without making an arrest.

At noon of the same day, Felomena Cabrera came to see him again, this time with Jesus Francisco, informing him that Aposaga was the killer of Atty. Barranda. It was only then that he learned of the murder of Atty. Barranda. He therefore returned to Palkan with 2 other PC officers to conduct an investigation. When they arrived there, Aposaga was no longer in his house, having left for Norala to harvest palay, according to his wife. Nevertheless, he proceeded with his investigation.

On February 1, 1966 he took the statements of Constancio Monte (Exh. "K", pp. 19-20, Folder of Exh., Vol. I) and his wife, Bienvenida Ferrer Monte (Exh. "M", pp. 24-25, Folder of Exh., Vol. I), both pointing to Aposaga and Calbo as the killers, and of Noe Cabrera (Exh. "I", p. 1, Folder of Exh., Vol. II), naming Aposaga, Monte and Calbo as the culprits. Thereafter he filed a motion to exhume the body of the deceased (Exh. "D", p. 10, Folder of Exh., Vol. I).

The examination was conducted on February 2, 1966 in the presence of Dr. Teodoro J. Reyes, municipal health officer of Polomolok, the PC provincial commander, the chief of police, and members of the Rural Health Unit of Polomolok. They found the already decomposing body of Atty. Barranda, which was identified through the identifying information furnished by his wife, like the dentures, the clothes he was wearing, his height and built, as well as the I.D. and personal papers in his wallet and other things found on his body. After the exhumation, they also unearthed the valise or portfolio of the deceased which was buried about 300 meters away from the body and 15 meters from the house of Jesus Francisco. The spot was pointed to them by Jesus Francisco himself who admittedly buried the same. The valise contained the raincoat and other personal things of the deceased. They also recovered a cellophane bag containing some legal documents and land titles purportedly removed from the bag of the deceased. On the basis of the above, a criminal complaint dated February 1, 1966 was filed against Francisco Aposaga, alias Calbo, alias Pedoy, Sotera Salongcong and Constancio Monte (p. 5, CFI rec.).

On February 14, 1966, after more statements were taken, the complaint was amended (p. 4, CFI, rec.), such that the name of alias Calbo was indicated as Alfredo Villanueva, that of alias Pedoy as Jesus Francisco, and Gloria Salongcong was included among the accused. Of the six accused named in the amended complaint (Aposaga, Monte, Villanueva, alias Calbo, Francisco, alias Pedoy, Sotera Salongcong and Gloria Salongcong), Villanueva remained at large and never faced trial; Gloria Salongcong was ordered excluded from the complaint on June 10, 1966 for insufficiency of evidence (p. 29, CFI rec.); and Jesus Francisco alias Pedoy was likewise dropped from the complaint on January 10, 1967 upon motion of his counsel (pp. 45-48, CFI rec.) for the purpose of utilizing him as a state witness (p. 54, CFI rec.); and Sotera Salongcong was also excluded from the complaint upon her own motion (pp. 50-51, CFI rec.) on January 27, 1967. The warrant issued for Gloria Salongcong was therefore

recalled, while Francisco and Sotera, who had been under detention, were ordered released. On August 4, 1967, Jesus Francisco was ordered re-included in the complaint and a new warrant issued for his arrest (p. 76, CFI rec.). Yet, despite his appearance in court as a witness for the prosecution, he was never re-arrested. Thus, only Aposaga and Monte faced trial after they waived their right to the second stage of the preliminary investigation (p. 79, CFI rec.), and an information was filed against them on April 24, 1968 (p. 81, CFI rec.).

After trial, the trial court in its decision (pp. 136-179, CFI rec.) dated April 28, 1969, found the two accused guilty of murder and sentenced them to the supreme penalty of death and to indemnify the heirs of the deceased in the amount of P12,000.00 as well as to pay the costs.

The trial court noted that the evidence for the prosecution suffered from many flaws and some inconsistencies (p. 31, rec.). Nevertheless, it gave credence to the testimonies of two alleged eyewitnesses and other corroborative witnesses for the state.

Noe Cabrera, 13 years old, student, and a resident of Pag-asa, General Santos City, testified that at about six o'clock in the morning of December 13, 1965, while he was riding his carabao, he saw his stepfather, Atty. Barranda, walking towards the highway. Paran (Francisco Aposaga) and Calbo (Alfredo or Jessie Villanueva) ran after him. All at once Paran hacked him in the neck while Calbo thrust his knife at the victim. The deceased ("Attorney") was trying to parry their blows with the sweater he was carrying. Then Constancio Monte arrived and also hacked the victim. When the victim stumbled and fell, Monte rode on him and thrust his knife through the victim's stomach. He was just about 25 meters away from them. Later, the two dragged the victim's body to the cogonal area, after which they approached the witness (Noe), and Paran threatened him that if he should squeal, he and his mother, sisters and brothers were going to be killed. Monte got the bag carried by the deceased and they left towards the direction of the highway. The witness went home to eat. His mother was not in the house yet, having left earlier for Dadiangas.

When his mother arrived home in the afternoon, she asked him if he had seen his stepfather, to which he answered no. She therefore asked him to accompany her in looking around for the victim. They went to the house of Dorot (Doroteo Estorque) where they saw Dorot, Monte, Paran and Calbo, the wife of Monte, and others, drinking. His mother made several inquiries about his stepfather.

The wife of Dorot said that Attorney rode a yellow bus going to Marbel. Dorot and his son Vicente also gave the same information. She asked other persons, who gave negative information. When they went home, Monte and his wife came also. His mother told them that she was going to San Francisco (Agusan) to look for Attorney. But Monte advised her not to go any more because there were three persons who came to fetch him to go to Davao. Noe went downstairs. Monte followed him to borrow his sledge, which he lent to him. Afterwards, he brought his horse to Crossing Palkan to drink. When he was returning home, he saw Vicente, Calbo and Paran. Vicente was riding the carabao while Calbo and Paran were following the sledge, where the body of their stepfather was loaded. They were going towards barrio Palkan. He let his horse run and headed for home. He did not tell his mother or his brothers and sisters about the attack on his stepfather because he was afraid. It was only when he was brought to the PC headquarters in Dadiangas that he talked of the incident for there he was no longer afraid (pp. 5-63, TSN).

Felomena Cabrera, 16 years old, student and residing at Pag-asa, Lagao, General Santos City, testified that she was living with her mother, step-father (the victim brothers and sisters at their house in crossing Palkan on December 13, 1965. In the morning of the said date, her stepfather summoned Monte to their house, and the two talked for sometime. Thereafter, Monte ate breakfast with them before returning to his house. When he had gone, Attorney prepared to leave for Dadiangas. He left via their kitchen towards the west to the national highway. One

minute later, her mother also left, leaving her to care for her younger brother. She cooked soup rice. While cooking, she went to the balcony to get her younger brother. From there she saw Monte running towards the direction of Attorney. She followed him with her eyes, and saw him hacking her stepfather with two others, namely, Aposaga and alias Calbo. She went to the house of Monte and asked Monte's wife, Bienvenida, why they killed Attorney. Bienvenida answered "because the Attorney is a bad man". The two of them went down towards the road. They met Monte who warned them not to reveal, otherwise they will kill first Felomena's mother. She just went home and fed her younger brother.

When her mother arrived home that afternoon, she (mother) asked if the Attorney had returned home, to which she answered in the negative. Her mother then asked Noe to accompany her in looking for the Attorney. The two went out and were away for more than an hour, while she stayed in the house to take care of her younger brother.

Drawing a sketch, the witness explained the relative position of their house with those of Dorot (D. Estorque), Sotera and Monte, and the national highway, as well as the three (3) possible routes from their house to the highway (pp. 65-84, TSN).

On cross-examination, the witness indicated on the sketch prepared by her, the specific spot where she saw her stepfather being hacked, and where she first saw Monte running. She also described the attacks on her stepfather - how Aposaga hacked him first while he was walking, followed by the thrusting by Monte. She averred that when she later talked with her brother Noe, they agreed not to tell anyone about what they saw; otherwise they will all be killed starting with their mother (pp. 85-135, TSN).

Dr. Teodoro Reyes, 51 years old, Municipal Health Officer of Polomolok, South Cotabato, testified that he has been the Municipal Health Officer of Polomolok for more than 10 years. On February 2, 1966, he was fetched by a policeman of Polomolok to exhume the body of Atty. Jose Barranda. He went to a field about 500 meters north of the residence of Atty. Barranda, together with a few policemen and PC soldiers. They found the already decomposing body buried in a well 5 feet deep and about 3 meters in diameter, covered with blood-stained newspapers, a jacket and soil about one foot deep. He established the identity of the cadaver as that of Atty. Barranda from the description furnished by Mrs. Barranda (Gloria Salongcong). Besides, he knew Atty. Barranda when he was still alive as he had been handling cases in Polomolok. When he examined the body, he found 4 fatal wounds, 3 of which were caused by sharp-bladed instruments and one by mauling. His findings are embodied in his medico-legal post-mortem certificate (pp. 2-4, Folder of Exhibits, Vol. I), as follows:

"DIRECT CAUSES OF DEATH OF THE DECEASED:

"Under this, are other pertinent findings on this cadaver and its clothings which have bearings on the injuries sustained or direct causes of death: Premise or statement of the General Condition of the Cadaver during time of examination: The cadaver although in a state of much decay, there are still some or big portions of the skin left specially on the chest, back and abdomen; big portions of muscles much softened and some parts melting; big portions of abdominal viscerae are inside and soft; and semi-melted. So also is the condition in the chest.

"(a) One stab wound of the right chest, entering into the interspace between the 5th and 6th costal cartilage. This stab wound coincides with the cut through the polo shirt of the cadaver and that of his camiseta T-shirt he was wearing. The cut is about four (4) cm. wide, going inside the chest to a depth of at least five (5) inches. The direction is towards the back. The medial edge of the wound is 2-1/2 cm. lateral to the right lateral border of the xyphoid. The width of the cut is parallel to the direction of the rib. Wide area of old blood stain can be seen on the clothing over the chest, also some part of the upper abdomen. This is a fatal wound.

"(b) A big cross-wise cut of the left upper abdomen, with a length of about five (5) inches, as can be seen on the intact part of skin of the cadaver, and cut portions of loops of intestine inside. The medial edge of this cut

or wound starts from about the middle portion of the front part of the abdomen going lateralwards to the left to a length of about five (5) inches. This is a fatal wound.

Remarks: There is no evidence of cut on the clothing, for we found that all the clothings on the left side of the body were lifted or raised that might have escaped the cutting.

"(c) Fracture of the left part of the skull:

Description is divided into the upper portion of the skull and that of the lower mandible or jaw. Upper portion of the skull:

There is a rounded depressed fracture of the bone beneath the left upper gum, about a ten centavo coin size. Its medial border is about 1-1/2 inches distant from the center of the upper gum. Also, the zygomatic process of the left temporal bone is broken (fractured) and detached. That completely broken piece is still attached only by a ligament.

Lower portion of the skull or lower jaw: The neck of the head (the posterior elevation for articulation) of the left mandible or left side of the lower jaw is completely fractured, and the head por-tion is missing. The fractured head is missing.

The picture taken for this is herewith attached. The back part of this picture is marked 'C'.

Remarks: I honestly believe the deceased was mauled on the left face so hard that caused the fatal fracture. The rounded depressed fracture is most probably due to the elevated portion or the nail of the hard object used for mauling. This is fatal. The brain cannot escape big injury.

"(d) A big cut on the apple green jacket the cadaver is covered (with) [picture taken of said jacket herewith attached. The back part of the picture is marked 'D'].

Description:

There is about 6-1/2 inch cut of the right shoulder of this jacket going medial-ward and more on its back portion. The inner shirts on this part are stained with old blood stains. The jacket is somewhat loose for the cadaver.

Remarks:

I strongly and sincerely believe that this cut involved the lower part and the base of the right side of the neck. It is a big cut. This is a fatal wound.

With the big cut on the jacket the cadaver is covered on its right shoulder area and reaching up to the base of the right side of the collar, with the corresponding cuts on the inner shirts the cadaver is wearing, but no evidence of cut could be found on the bones – as scapula and right clavicle, simply means that the big cut involved only the muscles, big blood vessels and vital nerves of the right side of the lower part of the neck and shoulder area near that side of the neck -- in short, the soft tissues were cut, without cutting the bones (called the hard tissue).

"Conclusion: (a) With all honesty and sincerity, it is very definite that the cadaver now exhumed is Atty. JOSE BARRANDA'S.

(b) The causes of death are mentioned under the item DIRECT CAUSES OF DEATH OF THE DECEASED.

(c) The causes of death are purely foul play or murder. All the cuts are due to sharp-bladed instruments; the fracture on the face due to blunt hard object with hard projection on it.

"xx xx xx."

According to the doctor, the wound described in para-graph (a) was a thrust wound inflicted while the victim was standing in front of the assailant (p. 219, TSN); the one under paragraph (b) could have been inflicted while the victim was lying down; the other one under paragraph (c) could have been caused by mauling while the victim was lying down; and the wound in paragraph (d) was inflicted while the victim was standing, with the assailant at the back of the deceased, probably ahead of the other wounds (p. 222, TSN).

Sgt. Ricardo Vargas of the Philippine Constabulary assigned to the 27th Traffic Team, 45 years old, and residing at Cotabato City, declared (pp. 262-320, TSN) that in 1966 he was assigned to the 101st PC Company at General Santos, Cotabato, having been transferred thereto since December 1, 1965. He did not know the accused before, and he met them only on January 30, 1966. He first met Francisco Aposaga on said date when Felomena Cabrera came to his office with Pio Francisco and Sgt. Edoria to report the presence in their barrio of a certain Francisco Lozada who was wanted by the police with a prize of P10,000.00 on his head for a series of robbery and murder cases. After being shown a newspaper clipping with a picture and description of Lozada, he went to Palkan, Polomolok, South Cotabato with 2 other PC soldiers to verify the report. The house of Aposaga was pointed to them by Felomena when they were about 300 meters therefrom. Proceeding to said house, they called for Francisco Lozada, but it was Francisco Aposaga who came and identified himself as Aposaga, not Lozada. When Sgt. Vargas compared the photo and description of Lozada from the newspaper clipping to the person of Aposaga, the description did not tally, as there was no mole, scar or tattoos at the back of his body. As a result, they returned to the PC headquarters without making an arrest.

After lunch on the same day, Felomena Cabrera showed up again at the PC headquarters with Jesus Francisco, the son of Pio. Jesus was asking him why he released Aposaga when he was the killer of Atty. Barranda. That was the only time he learned of the death of Atty. Barranda. He lost no time in returning to Palkan. But when he arrived there, Aposaga was no longer in his house. His wife informed him that Aposaga went to Norala to harvest palay. He (Sgt. Vargas) proceeded to the house of Monte, who informed him that Aposaga killed Attorney in the morning of December 13 (1965). Sgt. Vargas invited Monte and his wife to the headquarters for investigation. While there, they gave corroborative statements to the effect that Aposaga and a companion known as Calbo hacked and killed Atty. Barranda upon inducement by Sotera Salongcong who paid them P200.00 (Exhs. "K" and "L", pp. 19-21, Folder of Exh. Vol. I). He also took the statements of Noe and Felomena Cabrera, then filed a motion to exhume the body, which was actually done by the municipal health officer in his presence as well as in the presence of their commanding officer, Capt. Adriano Bulatao, the Polomolok chief of police and some other persons.

Jesus Francisco, 36 years old, farmer and resident of Marbel Crossing, Tampacan, Tupi, South Cotabato, declared that on December 13, 1965 he was in his house near Crossing Awais in Polomolok, South Cotabato. Constancio Monte passed by his house that morning, then left in the direction going to Sulit. At about 6:30 a.m., he went to his sanguta (where tuba is extracted). He met Sotera Salongcong, who was going to Dadiangas. She gave him P200.00 from Francisco Mendez, telling him to deliver it to Aposaga, which he did at the latter's house at about 8:00 or 9:00 o'clock. Aposaga was then with Constancio Monte and Wilfredo Villanueva, alias Calbo. After that he saw these three again at about 11:00 a.m. near their house which was near his sanguta. The three told him that Atty. Barranda was already dead, and gave him the bag of the Attorney with instructions to bury it. In the bag was a cellophane folder containing papers and documents. He buried the bag in the land of Cestua, and kept the papers in the cellophane under a banana tree. These he did because the trio told him he will be killed if he didn't, which made him afraid. When he asked them why they killed the Attorney, their answer was "Don't talk". He did not report the matter to the authorities because they had been threatening him with death if he did so (pp. 322-350, TSN).

The statement of accused-appellant Monte (Exh. "K", pp. 17-18, Folder of Exhibits, Vol. I) on February 1, 1966, may be summarized as follows: that he has been a tenant of Atty. Barranda since July 1965; that sometime in the morning of December 13, 1965, Atty. Barranda was hacked and killed by Francisco Aposaga and a companion known to him only as Calbo; that Aposaga told him they were given P200 by "Suterania" (Sotera) Salongcong; that the latter hired them to kill Barranda because he had raped Fe Cabrera; that Fe Cabrera confirmed this raping to him; that the cadaver of Atty. Barranda was thrown into a deep Japanese dug-out somewhere in the farmlot of Alfredo Acejo; that Aposaga used a bolo while Calbo used a knife (flamingo); that at the time of the killing, Barranda was carrying a leather bag (portfolio) containing land titles and records of cases he was handling; that the said bag was given to "Pedoy", a nephew of Suterania (Sotera) Salongcong; and that the said bag was buried while the contents were wrapped in cellophane and covered by banana leaves among banana plants near the house of Pedoy.

These allegations were mostly reiterated by Monte in Exhibit "L" (pp. 21-23, Folder of Exh., Vol. I). In addition, he stated that the killing was plotted by his family, as he accidentally learned when he overheard a conversation between Gloria and Suterania (Sotera) Salongcong where the latter was saying "If in case somebody went up the house Gloria and the children will just go upstairs and they will not be disturbed because the purpose is just Atty. Barranda" (sic).

The other prosecution witnesses were:

- (1) Gloria Salongcong, the common-law wife of the deceased who narrated that the latter failed to appear at their appointed meeting in Dadiangas on December 13, 1965, and that she and her son Noe went out to look for him upon her return to Palkan in the afternoon of the same day (pp. 137-173, TSN).
- (2) PIO FRANCISCO, who learned of the slaying of the deceased from his son Jesus on January 20, 1966, and who first brought it to the attention of the authorities on January 30, 1966 (pp. 187-205, TSN).
- (3) Epifanio Doria, the PC sergeant who was first told by Pio Francisco about the killing, and who brought him to the PC headquarters for the actual reporting (pp. 178-187, TSN).
- (4) Sotera Salongcong, who narrated that a certain Francisco Mendez gave her P200 for delivery to accused Aposaga without explaining what the money was for, and who delivered it to Aposaga through Jesus Francisco without her asking for what purpose it was (pp. 230-260, TSN).

The theory of the defense is that the charge is a frame-up on the part of the victim's family, whose members plotted his murder, with Jesus Francisco as the mastermind and alias Calbo the lone hatchetman. Testifying on their own behalf, both accused-appellants denied knowledge of and participation in the commission of the crime, and maintained that they never knew of the death of the deceased until investigations were already under way some two to four months thereafter.

The testimony of accused-appellant Aposaga, 27 years old, farmer and resident of Palkan, Polomolok, South Cotabato, dealt mainly in explaining about his sudden departure from Palkan on January 30, 1966, the date the PC went to his house. He narrated that when Sgt. Vargas came to his house (the date of which he could not remember), he was looking for Francisco Lozada. He informed Vargas that his name was Francisco Aposaga and not Lozada. Vargas examined his body and was convinced that he was a different person. So Vargas left, but not before he told him that he was going to Iloilo for a vacation. He proceeded to Norala (South Cotabato) that same afternoon. When he reached Norala, his aunt told him that his mother was sick so he should proceed to Iloilo. Because of such information, he left Norala hurriedly, taking MV Legaspi at Cotabato City and disembarking in Iloilo. He learned of the murder of Barranda 3 or 4 months later when his wife wrote him informing that he was

wanted for the murder. He then went to the PC in Iloilo, request-ing for an escort to Mindanao as he was afraid he might be killed. But the PC in Iloilo could not provide him with any escort, so he stayed in Iloilo. He visited the PC in Iloilo for about 5 times, until the PC from Polomolok came to get him. He admitted having been a tenant of the deceased, but denied participation in his killing. He also denied having received P200.00 from Jesus Francisco. He did not know the person of alias Calbo.

On cross-examination, he stated that he threw away the letter of his wife when he went to the PC because he did not think it was important. He did not know what was the company or organizational unit of the PC he visited in Iloilo, nor the name of its commanding officer. He stayed in Iloilo for 8 to 10 months.

His cousin, a certain Jose, who is married to his first cousin Clomia Viana, fetched him at Palkan because his mother was ill. He had to go to Norala, however, to inquire from his aunt, Paz Aposaga, how serious his mother was. His aunt told him in tears to go home to Iloilo because his mother was serious, per information of the same Jose. He never received any letter from his parents, brother or sister or any relative from Iloilo asking him to go home (pp. 440-462, TSN).

Defense witness Doroteo Estorque, father of the common-law wife of Aposaga, 58 years old, farmer, and resident of Crossing Palkan, Polomolok, South Cotabato, declared that on December 13, 1965, he and Aposaga were plowing in the farm lot of the deceased from 6:00 A.M. to 5:30 P.M., stopping only for breakfast and lunch. There was no unusual incident that transpired on said date, except that in the morning he heard someone call "wait, wait" and saw Gloria Salongcong coming down their house. At that time Aposaga was 30 meters behind him, also plowing. The place where they were plowing was about 150 meters from the house of Barranda. He did not see Atty. Barranda that morning. He only learned about his death through the PC. He knows that Atty. Barranda and Gloria Salongcong usually quarrelled about Gloria's children because the place he is working is near their house. On cross-examination, he admitted having subscribed to an affidavit (Exh. "J", p. 16, Folder of Exhibits, Vol. I) wherein he had stated that he could not see Aposaga because of the tall talahibs, but he explained that such answer was wrong and his real answer was, "I cannot see him when he was covered by talahibs but if we will be out from the talahibs I can see him" (p. 386, TSN).

Vicente Estorque, 20, married, son of Doroteo and brother-in-law of Aposaga and likewise residing at Crossing Palkan, Polomolok, South Cotabato, corroborated his father's testimony about the whereabouts of Aposaga on December 13, 1965. He testified that on that day, he had been plowing from 10:00 A.M. with his father and brother-in-law Aposaga. In the afternoon he plowed from 2:00 to 5:00 P.M. Afterwards he met Vicente or Jesus Francisco (Pedoy) on his way home. Francisco borrowed his sledge, so he had to carry his plow on his shoulder because he lent his sledge to Francisco. The sledge was returned two hours later with bloodstains and with its bamboo breast missing. He could not, however, recover the missing part because Francisco had been avoiding him. On questioning by the court, he stated that they did not go back to plow in that field any more (p. 407, TSN); in fact, that land was never planted because Aposaga left for Panay (p. 409, TSN).

Accused-appellant Constancio Monte, 38 years old, farmer and resident of Crossing Palkan, Polomolok, South Cotabato, testified (pp. 463-525, TSN), that he met Atty. Barranda when the latter was a lawyer of Lianga Industry in San Francisco, Agusan, where he used to work as guard of its bulldozer department. In July of 1965, Atty. Barranda convinced him to go with him to Palkan, South Cotabato, to be the overseer of his 36-hectare farm, as a condition of which he need not give any share of the harvest to Barranda as landowner but only to his wife, Gloria Salongcong. In addition, he (Monte) will get 25% of the proceeds of the 18-hectare land in Matatum which was planted to potatoes and cabbage, plus P5.00 monthly per head of the carabaos, horses and cattle he was supposed to care for. When he arrived with his family in Palkan in the same month, Atty. Barranda called for Sotera Salongcong and Jesus Francisco, his erstwhile tenants, and told them that it was their last day as Monte

was taking over. Atty. Barranda instructed him (Monte) to get the carabao and plow from Jesus Francisco.

In the month of December, Fe Cabrera informed him that she was raped by Atty. Barranda. Sometime later, while he was under the Barrandas' house to fetch the cow, he overheard a conversation among Jesus Francisco, Sotera Salongcong and Gloria Salongcong, wherein Sotera was saying, "We better have Attorney killed x x x so that we can revenge of what he has done to your child who was being raped" (sic).

Early one morning, about the second week of December, 1965 (he could not exactly remember the date), Barranda called for him to instruct him to take care of the carabaos and cows because he was leaving for Agusan to become a judge. After their talk, he took breakfast with the Barranda family. Thereafter, he brought the children Ruth, Fely, Samuel and Noe to his house upon instruction of Atty. Barranda. He went to the toril with Noe to tie the carabao. While there, Noe told him that Atty. Barranda was leaving. At the same instance he heard someone shouting, "wait for me", and saw Jesus Francisco running, followed by Calbo. He did not know who Calbo was, but Noe told him that he is from Polo-molok. However, he did not know what transpired afterwards as he did not look anymore. From the toril, he could see Aposaga plowing with Doroteo Estorque. He stayed in the toril for about 30 minutes.

Monte admitted having gone to the PC headquarters for investigation and having executed an affidavit (Exh. "K", p. 19, Folder of Exhibits, Vol. I); but when he appeared before Judge Mirabueno (municipal court of Polomolok), he was made to sign by Sgt. Vargas although he told the judge that there was an error. The error was that when he mentioned the name "Francisco" as the person who hacked and killed the deceased, he meant Jesus Francisco and not Francisco Aposaga. However, since he had no lawyer then, he did not know how to go about the correction. It was only when Francisco Aposaga, who is his friend, contacted his lawyer that he was accommodated in his defense by Atty. Velarde, as he had no money. As for the second affidavit which he executed one week after (Exh. "L", p. 21, Folder of Exhibits, Vol. I), he was made to sign the same without appearing before Judge Mirabueno.

On cross-examination, he maintained that he did not know who is Pedoy whose name is mentioned in his affidavit as the nephew of Sotera Salongcong to whom the killers gave the bag of Atty. Barranda. He denied having been asked the question and having given the answers found in his affidavits referring to Aposaga. He did not know what he was signing as he does not know how to read.

Against this background, the trial court promulgated its aforementioned decision on April 28, 1969 and denied the defense's motion for reconsideration and new trial on May 31, 1969 (p. 200, CFI rec.).

Hence, this appeal.

Appellants now raise only one issue -- that the prosecution failed to prove their guilt beyond reasonable doubt. They try to discredit the testimonies of the prosecution witnesses, particularly those of the two eyewitnesses which, they claim, are "corrupt, bias, unreliable and incompetent because of their inherent improbabilities" (p. 86, rec.), as shown by the following circumstances:

A. As to Noe Cabrera

1. If Noe really witnessed the murder of his stepfather, why did he not shout for help (pp. 32-33, TSN)? Why did he not tell his mother about it when the latter arrived home from Dadiangas and was asking about the victim (p. 35, TSN)? Why did he have to go with his mother around the barrio to look for his stepfather if he knew — after having witnessed the killing -- that his stepfather was dead (pp. 15-18, TSN)?
2. If he were really threatened by the culprits (p. 10, TSN) so as to produce fear in him, why did he have to go

riding his horse by himself that evening of the incident. (p. 20, TSN)? Why did he consent to sleep in the house of Monte after the PC arrived to conduct the investigation (p. 23, TSN)? Why did he continue to visit the houses of Monte and Aposaga after December 13, 1965 (pp. 163--164, TSN)?

B. As to Felomena Cabrera

1. How could Felomena have witnessed the murder of her stepfather from the kitchen of their house when, according to the PC investigator, Sgt. Vargas, the place of the incident was not visible from the kitchen or balcony of the Barranda house because it was covered by banana hills, talahibs and calamansi trees (pp. 301-302, TSN)?
2. Why did she not secretly tell her mother about the incident (p. 72, TSN)?
3. Why was her first report to the PC not about the murder of her stepfather but about the presence of a certain wanted man in their barrio (p. 264, TSN)? Why did it take her 48 days to make such report?

WE find the above observations insufficient to warrant the exculpation of the appellants. While it is true that the testimonies of the two eyewitnesses may have suffered flaws and inconsistencies, the same refer only to minor details which are not sufficient to destroy their credibility. Their actions after witnessing the commission of the crime (i.e., not shouting or running for help, not reporting earlier, etc.), do not indicate that they were not present when the killing of their stepfather took place. Likewise, the testimony of the PC investigator that the place of the incident is not visible from the kitchen of the victim's house, because of the presence of banana hills, talahibs and calamansi trees, cannot overcome the positive assertion of Felomena that she saw her stepfather killed, especially so since the investigation took place about 50 days after the incident and conditions obtaining them may be different from those at the time of the offense.

A closer scrutiny of their testimonies shows convincingly that they had indeed witnessed the commission of the crime. The only doubtful portion is their allegation that they were threatened with death -- with their mother the first to be killed -- against revealing it. Because, even if there were such a threat, they could have secretly revealed it to their mother who would certainly take steps to protect them. Besides, if the danger of the threat was real to them, they should have stopped going to the houses, of the accused, instead of maintaining normal relations with them after the incident; Felomena should not have gone to the PC headquarters twice on January 30, 1966; and Noe should not have slept in the house of Monte after his family had gone to Dadiangas to make the report.

These actions are inconsistent with the reality of the threat. It is easier to believe that they discussed the incident with their mother but had to deny it to protect her. The maxim "blood is thicker than water" must have prompted these two (2) eyewitnesses to insist that their mother did not know anything about it. Otherwise, the involvement of their mother and other close relatives will be an undeniable conclusion.

Besides, the trial court, while noting the same flaws and inconsistencies, gave credence to the testimonies of the said eyewitnesses who, despite their minority, the excitement generated by the court proceedings and the long and searching cross-examinations, firmly stuck to their testimonies which pointed to the appellants and a companion known as Calbo as the killers of their stepfather.

Time and time again WE have ruled that where the issue is credibility of the witnesses, appellate courts will generally not disturb the findings of the trial judge, who heard the witnesses themselves and observed their deportment and manner of testifying, unless he has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. This exception does not obtain here (*People vs. Laguisma*, 98 SCRA 69 [1980]; *People vs. de la Cruz*, 97 SCRA 386 [1980]; *People vs. Bautista y Aquino*, 92 SCRA 465, 472 [1979]).

Furthermore, no motive was shown why the two eyewitnesses should testify against them falsely; hence, they must be telling the truth (*People vs. Arevalo*, 92 SCRA 207 [1979]; *People vs. Lim*, 71 SCRA 249 [1976]).

The appellants likewise theorize that the prosecution witnesses Sotera Salongcong, Jesus Francisco and probably Gloria Salongcong must have plotted against the life of the deceased. Sotera and Jesus harbor resentment against the victim for having ousted them from their tenancy in favor of Monte. Besides, Sotera wanted to revenge the raping of her niece by the deceased. These are strong motives to do away with the victim, whereas the appellants have no motive to kill him.

In the case of *People vs. Veloso* (92 SCRA 515, 524 [1979]), WE held that motive, as distinguished from criminal intent, is not an essential element of a crime and hence, need not be proved for purposes of conviction. Motive is essential to conviction in murder cases only when there is doubt as to the identity of the culprit, something which does not obtain in this case (also *People vs. Verzo*, 21 SCRA 1403 [1967]; *People vs. Caggauan*, 94 Phil. 118 [1953]).

The defense vainly tried to utilize the apparent involvement of the prosecution witnesses Gloria and Sotera Salongcong and Jesus Francisco in claiming a frame-up and a scheme to lay the blame on the two (2) accused-appellants. While WE agree with the observation that these 3 witnesses are probably involved in various ways and degrees, and their exclusion from the charge is questionable, WE cannot find any reason to believe that the appellants are innocent as they pretend to be. As aptly held by the trial court, "that there were principals by induction in the commission of a crime who were not prosecuted is no legal impediment to a finding of guilt of the principals by direct participation for the same crime. x x x [T]he non-prosecution of Gloria and Sotera Salongcong in the case at bar did not make the indictees before us less guilty, much more, innocent as to be blessed with a judgment of acquittal" (pp. 52-53, rec.).

On the contrary, the guilt of both appellants appear to be a moral certainty, even without the testimonies of Gloria, Sotera and Jesus. Aside from the positive identification of the two eyewitnesses, the evidence even of the defense tend to establish the guilt of the appellants.

The tale woven by Aposaga about his sudden departure from Polomolok as soon as the authorities started the investigation, was not only uncorroborated but was also too improbable to believe. First, he said he told Vargas that he was going to Norala for a vacation. When Vargas returned after he had gone, his wife told Vargas that Aposaga went to Norala to harvest palay. When he reached Norala, his aunt told him to proceed to Iloilo because his mother was ill. But the source of his aunt's information was the same cousin who allegedly fetched him from Polomolok for the self-same reason -- the alleged illness of his mother. He allegedly stayed in Iloilo for about 8 to 10 months although according to the records, he was there for more than a year until the policemen from Polomolok came to arrest him. It should be pointed out that his sudden departure must have left his wife and child in Polomolok without any means of support, as the land he was plowing was never planted after he left (p. 409, TSN). All these could lead to but one conclusion -- that he had to flee and hide with his guilty conscience to avoid arrest. Flight and going into hiding indicate a guilty conscience (*People vs. Guevarra*, 94 SCRA 642 [1979]; *People vs. Moreno*, 85 SCRA 649 [1978]).

Defense witnesses Doroteo and Vicente Estorque, father and brother, respectively of Aposaga's common-law wife, tried to establish an alibi for Aposaga. Their testimonies, however, are inherently weak and doubtful in many substantial aspects, and appear to be nothing more than vain attempts to save a "family member" from conviction. For instance, they testified that Aposaga was plowing with them at the time of the incident. Doroteo, however, stated that when he heard the shout "wait, wait", Aposaga was 30 meters behind him although he could not see him as he was hidden by talahibs (p. 385, TSN; Exh. J-1). Vicente, on the other hand, plowed with

Aposaga and his father only from 10:00 to 10:30 that morning (p. 404, TSN), whereas the incident occurred between 6:00 and 7:00 A.M. Doroteo further declared that there was nothing unusual that happened on December 13, 1965, and he does not remember what day it was. Yet, he could recall at the witness stand four (4) years later that he saw Gloria Salongcong running at five o'clock that morning; what dress Gloria was wearing; what time they started plowing (6:00 A.M.); what time they left the farm; what time they took their meals; what they ate for breakfast and lunch and other minor details of daily life. Doroteo claimed that he does not know Calbo but he admitted seeing him in the house of Monte that fateful morning of December 13th (p. 394, TSN). He never tried to find out who uttered the words "wait, wait" (p. 394, TSN). He was surprised to learn of the death of the victim whom he had believed to be in Bislig (p. 386, TSN); but he never visited the remains after exhumation when he already knew he was dead (p. 379, TSN). Is this the natural reaction to a surprising death of a barrio-mate who owned the land he was plowing? Vicente's testimony likewise suffered from similar inconsistencies and improbabilities as to command little, if any, probative value. The testimonies of these defense witnesses are mere concoctions that cannot neutralize the positive identification of the appellants by the two prosecution witnesses.

Moreover, it is a well-settled doctrine that for alibi to be acceptable, it must be shown that the place where the accused was alleged to be must be located at such a distance that it is well-nigh impossible for him to be at the scene of the crime when it was committed (People vs. Tirol, L-30538, January 31, 1981; People vs. de la Cruz, 97 SCRA 387 [1980]; People vs. Mercado 97 SCRA 232 [1980]; People vs. Angeles, 92 SCRA 432 [1979]). Such was not the situation in this case; for the place where Aposaga was allegedly plowing was only about 150 meters from the house of the victim (p. 368, TSN) and within hearing distance from the place of the incident. The place of the incident in turn was only 60 to 70 meters from the victim's house (p. 314, TSN). It was therefore very convenient for Aposaga to slip away from his plowing and participate in the murder of the deceased even if he actually plowed the farm in the morning of December 13, 1965.

Furthermore, Aposaga was named as a killer of the deceased in two sworn statements executed by his co-accused Monte (Exhs. "K" and "L"), which sworn statements were corroborated by his wife Bienvenida (Exh. "M"). Monte tried to retract these statements on the witness stand by explaining that when he said "Francisco" he meant Jesus Francisco, and not appellant Francisco Aposaga, and that the said affidavit was never read to him by Municipal Judge Narciso Mirabueno, before whom he signed and swore to it. The latter claim was belied by Judge Mirabueno who testified that he read the contents of all affidavits to the affiants and made sure they understood. He also asked searching questions to determine the truth of their statements (pp. 557-569, TSN). Since it has not been shown that the said judge has any interest in the case, it is not difficult to determine which of the two (2) testimonies deserves consideration.

As to the claim of mistaken identity of the person named "Francisco", it is obvious from the very substance of Monte's sworn statements that the "Francisco Aposaga" he named therein as a killer of the deceased was different and distinct from the "Jesus Francisco" (Pedoy) who buried the leather bag of the deceased. Besides, it is understandable that Monte will try his best to save his co-accused who had so gallantly provided him a defense counsel which he could not afford.

For his part, Monte tried to establish his innocence by pointing out that it was unnatural for him to kill Atty. Barranda after the latter had satisfactorily explained about the problems of his work and after they had breakfast together (p. 82, rec.). Besides, he had no motive to kill his employer and benefactor who had given him better opportunities and sufficient means to support his family by taking him as tenant and supervisor (pp. 89-90, rec.). Unfortunately, these allegations cannot overcome the incriminating testimonies of the two (2) eyewitnesses. Besides, even from his own testimony, the following circumstantial evidence appear to be inconsistent with his innocence:

1. Monte testified that he heard of a threat against the life of the deceased in a conversation among Gloria Salongcong, Sotera Salongcong and Jesus Francisco (p. 471, TSN). Yet, when he saw Jesus running after the deceased carrying a bolo, he did not even look to see what Jesus intended to do (pp. 485-486; 500-501, TSN).
2. He did not do anything about the disappearance of his employer for forty-eight (48) days, even though the last time he saw him (deceased) was when somebody (Jesus Francisco) was running after him (pp. 500-501, TSN).
3. If it were true that the deceased had told him he was going to Agusan to become a judge (p. 475, TSN), why did he not remind Gloria of such fact when Gloria came looking for her husband (p. 489, TSN)?
4. Although he saw Jesus running after the deceased that morning, he did not say so when Gloria asked him about the deceased; and when Gloria expressed the possibility that the deceased might have been waylaid, his answer was, "Nobody could do that because it is daytime" (p. 490, TSN).
5. Monte escaped from the municipal jail on July 9, 1966, allegedly because his wife was sick in San Francisco, Agusan. He explained that when he wired his wife to inform her that their hearing will be in May (1966), his father-in-law replied that she was sick (p. 524, TSN). If that were true and this allegation was never corroborated, his escape should have been timed around May, 1966, and not July of that year. The records do not disclose any hearing in July, 1966. Surely, it is more logical to conclude that Monte's flight, like that of his co-accused, indicated a guilty conscience.

All the above could lead but to one conclusion, that the guilt of the two (2) accused-appellants has been proven beyond reasonable doubt.

This case should, however, be further investigated to determine the participation of Sotera Salongcong, Jesus Francisco and Gloria Salongcong in the perpetration of the crime. Their own respective statements implicate themselves. Moreover, as pointed out by the appellants, these prosecution witnesses have strong motives to kill the deceased: Sotera and Jesus for their ouster from tenancy, and Gloria for the rape of her daughter Fe.

However, for lack of necessary votes, the death penalty cannot be imposed.

WHEREFORE, THE JUDGMENT APPEALED FROM IS HEREBY AFFIRMED, WITH THE MODIFICATION THAT APPELLANTS ARE HEREBY SENTENCED TO RECLUSION PERPETUA, WITH COSTS AGAINST THEM.

LET A COPY OF THIS DECISION BE FURNISHED THE MINISTER OF JUSTICE FOR FURTHER INVESTIGATION SO THAT OTHERS WHO APPEAR RESPONSIBLE FOR THE CRIME MAY BE DULY PROSECUTED.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

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