

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NAZARITO AQUINO, ROMEO CASIMINA AND PEDRO CASIMINA, ACCUSED-APPELLANTS.

G.R. No. L-36020. October 30, 1979

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Pedro Casimina, his son, Romeo Casimina and Nazarito Aquino were accused of murder alleged to have been committed as follows:

"That on or about November 4, 1970, in the afternoon, in Barrio Bangilan, Municipality of Kabacan, Province of Cotabato, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, conspiring, confederating and mutually helping and aiding one another, with treachery and evident premeditation, and with deliberate intent to take the life of Benigno Pascua, suddenly, unexpectedly and treacherously, attack, assault and shoot the latter with said gun, hitting him in the left abdomen, thereby inflicting upon said Benigno Pascua mortal wound which immediately cause his death."

The Court of First Instance of Cotabato, Branch III, found them guilty and sentenced them thus:

"WHEREFORE, and in view of all the foregoing, the Court hereby finds, each of the accused, Pedro Casimina, Romeo Casimina and Nazarito Aquino, guilty beyond reasonable doubt as co-principals in the crime of murder, and in accordance with Article 248 of the Revised Penal Code, in relation to paragraph 1 of Article 64 of the same Penal Code, there being neither mitigating nor aggravating circumstance, the Court hereby sentences each of the accused to each suffer the penalty of reclusion perpetua or life imprisonment, with all the accessory penalties provided by law. They are further sentenced to jointly and severally indemnify the heirs of the victim, Benigno Pascua, in the sum of P12,000.00 Philippine Currency in concept of moral and exemplary damages, without any subsidiary imprisonment in case of insolvency; and to pay the cost proportionately; that is, each of them should pay one-third (1/3) of the costs."

All three have appealed their conviction but in a resolution of November 27, 1978, we allowed the withdrawal of the appeal of Nazarito Aquino, upon his own motion. Thus this decision concerns Pedro and Romeo Casimina only.

In the afternoon of November 4, 1970, Benigno Pascua, the deceased, accompanied by his eight-year old son Benigno, Jr. took part in a "pintakasi" at the farm of Perfecto Regoyal in Barrio Bangilan, Kabacan, Cotabato. A "pintakasi" is a customary farm undertaking whereby the barrio farm hands collectively plow the farm of another in consideration for an agreed share in the harvest.

The farmers were plowing a clearing, bounded on the west and south by cornstalks as tall as men of ordinary height. On the southern edge of the clearing, but before the cornfield were tall cogon grasses or talahib. A depression filled with water was situated at the western side of the clearing, about twenty meters from the cornfield to the south.

At about 3:00 o'clock, Benigno Pascua took his carabao to the depression and started to bathe it. Beside him was Martin Goleng, barely three meters away. Somewhere behind Benigno Pascua were Pacifico Narvas who was about forty meters away and Romulo Pascua, some thirty meters away. Meanwhile, Benigno, Jr. was busy cutting grasses inside the cornfield at the western side of the clearing, upon instruction of his father.

Suddenly, successive gunshots shattered the quiet of the countryside. Benigno Pascua was fired upon from the direction of the cornfield in the south. A bullet found its mark on his left abdomen and the penetrating wound caused his almost instantaneous death.

The police officers of Kabacan, who went to the scene in the evening, recovered three empty cartridge shells, said to have been fired from a .30 caliber Garand rifle. Based on their investigation, the police arrested Nazarito Aquino and Romeo Casimina, the following morning. A charge for murder was filed against them and a certain "John Doe" in the Municipal Court of Kabacan. The murder charge was later amended upon the arrest of Pedro Casimina on November 15, 1970, including him as defendant. All three accused waived their right to the second stage of the preliminary investigation so the case was elevated to the Court of First Instance.

At the trial, Martin Goleng who at the time of the shooting was nearest to the victim, testified that he heard three gunshots but he was not able to ascertain the direction from where they fired, because he dropped to the ground upon hearing the first shot, and ran for his safety after the last shot.

Benigno Pascua, Jr. the eight-year old star witness of the prosecution testified in a different tone. It was his incriminating testimony corroborated by those of Pacifico Narvas and Romulo Pascua, younger brother of the deceased, which resulted in the conviction by the trial court.

Benigno, Jr. testified that he went with his father to the "pintakasi" that fateful afternoon. He was cutting grasses in the cornfield, west of the clearing, when he heard six gun-shots. He declared that "Manong Itong" referring to Nazarito Aquino and "Manong Pat-ti" referring to Romeo Casimina and a third person whom he did not recognize shot his father. He said that a long gun was used in the shooting.

The records include a sworn statement taken by Chief of Police Arellano Banaynal on November 4, 1970, which purportedly signed by Benigno Pascua, Jr. It stated in substance that while Benigno, Jr. was gathering grasses inside the cornfield, he saw three persons aiming a gun at his father. "Itong Aquino" aimed and fired a gun at his father, once, and then fired at Boy Gadia and companions. "Itong Aquino" was accompanied by "Pat-ti Casimina" and third person whom he did not recognize.

Pacifico Narvas who was about forty meters away from the deceased testified in the light of his sworn statement of November 16, 1970. He said that when he heard four gunshots, he hid behind his carabao. He was then facing the southern cornfield and he ascertained that the gunshots were fired from that direction. After the firing, he heard somebody shout that three men were running away from the southern cornfield. Thereupon he climbed a tree and saw the said three men. He recognized the two of them as Nazarito Aquino and Pedro Casimina, from a distance of some eighty meters but he did not recognize the third person. He also saw a gun, as the three ran away.

Romulo Pascua who was about thirty meters away from the deceased who was his older brother, testified that he did not see the person or persons who shot his brother. But he saw three persons in the direction from where the shots were fired as they ran outside the adjacent cornfield to the south. Like Pacifico Narvas, he recognized only two of them, namely: Nazarito Aquino and Pedro Casimina, but not the third one who turned out to be Romeo Casimina. He executed a sworn statement on November 16, 1970, substantially reciting the foregoing.

Pacifico Narvas and Romulo Pascua further testified that they had known the three accused for a long time because they were from the same barrio.

The trial court found vendetta as the motive for the killing, on Pacifico Narvas' testimony that there had been a misunderstanding between the deceased Benigno Pascua on one hand, and the Casiminas and Aquino on the other. The misunderstanding, it is said, arose in connection with two separate criminal cases involving a son of Pedro Casimina, Francisco Casimina and a certain Federico Aquino. In the first case, Francisco Casimina and Federico Aquino were charged and convicted for theft of large cattle (carabao) on a complaint brought by the deceased Benigno Pascua and Ricardo Pascua. The second case was for the murder of Ricardo Pascua, for which Francisco Casimina and Federico Aquino were also convicted. The carabao in the theft case belonged to the deceased Benigno Pascua. To the murder case, Ricardo Pascua, the victim, was a brother of Benigno.

This review hinges on the credibility of the prosecution's witnesses. The appellants impugn the trial court's reliance on the testimony of Benigno Pascua, Jr., particularly, on grounds of incompetency and unreliability; and, in giving credence to the testimonies of Pacifico Narvas and Romulo Pascua on ground of improbability of their account. They likewise assail the trial court's appreciation of motive against the accused. They maintain that the defense witnesses are more credible.

We find the appellants' exception to the competency and reliability of Benigno, Jr., well taken. Under the Rules of Court, the competency of a child-witness to testify depends not only on age but also on intelligence, the capacity to receive correct impression of facts respecting which he is examined, or of relating them truly. [Rules of Court, Rule 130, Sec. 19 (c)].

The determination of whether a child-witness has the required degree of intelligence, rests primarily with the trial court. The trial judge may resort to any examination which will tend to disclose the child-witness' capacity and intelligence as well as his understanding of the obligation of an oath under which he testifies. As many of these matters cannot be photographed in the record, the decision of the trial judge will not be disturbed on review, unless from that which is preserved it is clear that such decision was erroneous. (U.S. vs. Buncad, 25 Phil. 530).

However, a close and careful examination of the testimony of Benigno, Jr., does not show that at the time he testified, he could be deemed a child of average intelligence, i.e., capable of giving responsive answers to the peripheral questions or capable of recollecting occurrences and relating such recollections. He could not tell in what municipality, the barrio of Bangilan is, nor the name of his province. He said that he was in Grade II, but he did not know the name of his teacher. It turned out that he was out of school, as he later testified. He could not tell when his father was shot. He said his father was still alive on Christmas (of 1970), when in fact, his father was shot the preceeding November. He did not know what All Saints Day is, nor the names of the months of the year.

When cross-examined in connection with his sworn statement which apparently formed the basis of his testimony, he denied having signed the same. The sworn statement was in the usual typewritten question-and-answer form bearing his alleged signature and dated November 4, 1970. He could not recall whether he was asked to sign the statement. According to him, he was taken by Police Chief Arellano Banaynal to the latter's office. But the police chief did not talk to him at all. He only saw Banaynal writing in longhand on a piece of paper, for about an hour. He slept at the house of the police chief that evening and several more times. He could not say how many more times, but he said the police chief told him a lot of things during those times. When asked what the police chief had told him, he answered, he could not remember.

If there was anything elicited from the young Benigno and which he gave out in an apparently straightforward manner, it was his testimony that they (referring to Nazarito Aquino and Romeo Casimina and Pedro Casimina whom he did not recognize at the time) shot his father. But the truthfulness of this testimony had been placed in serious doubt in the cross examination so ably propounded by the appellants' counsel, thus:

"ATTY. MASUKAT:

Q Now, you stated that you heard gunshots, is that correct?

A Yes, sir.

Q At the time you first heard the gunshots, you were busy cutting grasses?

A Yes, sir.

Q In what direction were you facing to when you heard the first shot?

A I was facing south.

Q From the place where you were cutting grasses, could you see your father bathing your carabao?

A Yes, sir.

Q Is it not a fact that in the place where you were cutting grasses were tall corn plants?

A Yes, there were high corn plants.

Q And it was inside that high corn plants where you were cutting grasses, is that correct?

A Yes, sir.

Q Before you heard the first gunfire, you did not notice the presence of persons aside from your father in the cornfield, is that correct?

A None, sir.

Q In fact you only knew that there were persons inside the cornfield at the time you first heard the gunshot, is that also correct?

A Yes, sir.

Q And because you heard the first gunshot, you sought cover on the ground?

A Yes, sir.

Q When you sought cover on the ground, your face was toward the ground, is that correct?

A Yes, sir.

Q You remained in that position all the time during the firing up to the last time you heard the gunfire, is that correct?

A Yes, sir.

Q And because you were lying flat on the ground you could not see from what direction the firing came from, is that correct?

A Yes, sir.

Q Much less you could not identify the persons who made the firing because you were facing the ground?

A Yes, sir. " (pp. 9-10, TSN, June 22, 1971)

The prosecution tried to salvage the testimony of Benigno, Jr., on the following re-direct examination:

"FISCAL COSTELO:

Q You stated in the direct examination that you recognized Itong, Pat-ti and one companion who shot your

father; in the cross you stated that when the shooting took place you lay flat on the ground, will you explain to the Court how you were able to identify these persons that shot your father when you were then lying flat on the ground?

COURT:

Reform the question. He was not able to identify all. He identified only two.

FISCAL COSTELO:

Q In the direct-examination you stated that Pat-ti and Itong shot your father and that they had one companion with them; in the cross-examination you said that you lay flat on the ground; now, will you explain how you were able to identify Pat-ti and Itong as the persons who shot your father and that they had one companion?

A When there was already an explosion I already recognized them.

Q How were you able to recognize them?

A When they did not yet shoot and they were still standing I was able to recognize them already.

Q In the cross-examination you also stated that Chief Banaynal let you point to the accused, will you explain whether at that time you pointed to the accused you already told the police about the persons who you said shot your father?

A They are the ones, sir.

Q What do you mean when you say "they are the ones

(No answer yet)

FISCAL COSTELO:

I reform that.

Q Who are the persons referred to by you when you said "they are the ones"?

A They are the ones, sir.

Q The point is when you pointed to Itong and Pat-ti as two of the persons who shot your father, have you told him before that they were the ones who shot your father?

ATTY. MASUKAT:

Vague, Your Honor.

COURT:

Sustained." (pp. 14-15, TSN, June 22, 1971)

But, still the prosecution failed to explain how Benigno, Jr. was able to see and recognize the assailants under the circumstances. He was cutting grasses inside the cornfield at the western side of the clearing. The assailants were inside the cornfield at the southern side. Thus, between them were clusters of fruit-bearing cornstalks with wide leaves as could be expected in fully grown cornstalks. The young Benigno could not have seen through the maze of cornstalks. In fact, when he heard the first shot, he said, he dropped to the ground, flat on his stomach and with his face close to the ground. There is therefore no basis in his claim in the re-direct examination that when there was an explosion he had already recognized the assailants of his father.

Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in

itself such as the common experience and observation of mankind can approve as probable under the circumstances.

The young Benigno appears to have been coached on what to say by the chief of police. It does not appear that he had previously told the police chief that he saw the three accused shoot his father. What transpired in the evening he was investigated in the office of the chief of police, and when he slept at the latter's house, is self revealing:

"ATTY. MASUKAT: (Defense)

Q Chief Banaynal picked you up from your house in Bangilan and took you to Kabacan in his office in the evening a day after the death of your father?

A Yes, sir.

Q You proceeded to the same office in Kabacan that same night?

A Yes, sir.

Q And on the same evening you were investigated by the chief of police of Kabacan?

A Yes, sir.

Q Was that investigation reduced to writing?

A Yes, sir.

Q Did you understand the contents of that statement you gave to Chief Banaynal when he investigated you that evening?

A Yes, sir.

Q Aside from you and Chief Banaynal, were there other persons in his office when he was investigating you?

A None, sir.

Q You were only 2 with Chief Banaynal?

A Yes.

Q Your mother did not accompany you to the chief of police that evening?

A No, sir.

Q Even your sister did not accompany you?

A No.

Q When you reached the office of the chief of police that evening, what did the chief of police do?

A He did not converse with me.

Q Have you seen Chief Banaynal writing or typing something on a piece of paper?

A He was writing, sir.

Q While he was writing, was he asking questions to you or not?

A No, sir.

Q How long had Chief Banaynal been writing?

A Long, sir.

Q Do you know how long an hour is?

A It was perhaps an hour.

Q During all the time that Chief Banaynal was writing, he was not asking you anything, is that correct?

A Yes, sir.

Q Writing with his hand or he was using typewriter?

A In longhand, sir.

Q After writing for almost an hour, what else did he do?

A No more, sir.

Q Do you know how a typewriter looks like?

A I know, sir.

Q From the place where you are, will you go outside and point to us how a typewriter looks?

COURT:

It's all right. Anyway he said he knows."

(pp. 10-11, TSN, June 22, 1971)

"x x x x x x x x

Q The first night when you slept in his house in Kabacan, did you have a talk with him in connection with the case of your father?

A Yes, sir.

Q What did Chief Banaynal tell you?

A I forgot already.

Q Is it not a fact that what you have stated here is what Chief Banaynal told you what to tell when you slept with him?

A Another, sir.

Q What was that another?

A What he told me were different ones.

Q What were those different ones you are referring to?

A I forgot."

(p. 14. TSN, June 22, 1971)

And yet, he admitted that he was told by the police chief to point an accusing finger at Romeo Casimina and Nazarito Aquino during the confrontation on November 5, at the police chief's office:

"ATTY. MASUKAT:

Q Did not Chief Banaynal tell you to point to Itong Aquino and Romeo Casimina alias Pat-ti?

A He told me.

ATTY. MASUKAT:

That is all for the witness, Your Honor." (p. 14, TSN, June 22, 1971)

The point is even made clearer by the prosecution in the re-direct examination:

"FISCAL COSTELO:

Q In the cross-examination you also stated that Chief Banaynal let you point to the accused, will you explain whether at that time you pointed to the accused you already told the police about the persons who you said shot your father?

A They are the ones, sir.

Q What do you mean when you say "they are the ones"?

(No answer yet)

FISCAL COSTELO:

I reform that.

Q Who are the persons referred to by you when you said "they are, the ones"?

A They are the ones sir.

Q The point is when you pointed to Itong and Pat-ti as two of the persons who shot your father, have you told him before that they were the ones who shot your father?

ATTY. MASUKAT: Vague, Your Honor.

COURT:

Sustained.

FISCAL COSTELO:

Q When did the Chief of Police tell you to point to these persons?

A It has been a long time.

Q Where were they when you pointed to them?

COURT:

Reform the question.

FISCAL COSTELO:

Q Where were you told by the chief of police to point to the accused?

A I was at the door of the room, sir.

Q What room was it?

A A room in the municipal building.

Q Were Pat-ti and Itong present when the chief of police told you?

A They were present.

Q How far were Itong and Pat-ti from you when the chief of police told you to point?

A From here to the bench. (Witness points to a distance of about 6 meters).

Q Did you point to Itong and Pat-ti, as told by the chief of police?

A Yes, sir.

Q Before pointing to Itong and Pat-ti, were you asked before that by the chief of police as to who killed your father?

A No, sir.

Q You said that you were investigated by Chief Banaynal, is that correct?

A Yes, sir.

Q When Chief Banaynal asked you questions, did he ask you who killed your father?

A No, sir."

(pp. 15-16, TSN, June 22, 1971)

This coincides with the testimony of Nazarito Aquino and Romeo Casimina on the said confrontation. Nazarito Aquino declared in his direct examination:

"ATTY. MASUKAT: (Defense)

x x x x x x x x

Q Now, when you were already inside the office of the Chief of Police, what, if any, did the Chief of Police do or ask you?

A Nothing, sir.

Q How about the son of the deceased Benigno Pascua, Jr., what did you observe, if any?

A I observed something.

Q What did you observed something?

A At that time, Chief Banaynal was holding the shoulders of Benigno Pascua, Jr., and they together went out; as soon as they reached the door of the office, Chief Banaynal asked Benigno Pascua who among us shot his father but the boy remained silent. Then the Chief of Police told the boy, "you talk", and again the Chief said, "talk!".

Q How many times did Chief of Police Banaynal tell Benigno Pascua, Jr. to talk?

A Four times, sir.

Q On the fourth time, did Benigno Pascua talk?

A Yes, sir.

Q What did Benigno Pascua, Jr. tell the Chief of Police?

A After Chief Banaynal inquired from Benigno Pascua who killed his father, Benigno Pascua, Jr. answered "Aquino killed my father. "

COURT:

Make of record that when the witness was answering the last question, he was pointing with his right hand extended.

ATTY. MASUKAT:

Q Before Benigno Pascua, Jr. uttered any word, and pointed to you, did you hear the Chief of Police tell anything to the son of the deceased Benigno Pascua, Jr ?

FISCAL COSTELO:

Leading, Your Honor.

COURT:

Reform.

ATTY. MASUKAT:

Q Before Benigno Pascua, Jr. utter any word, do you know if the Chief of Police said anything to Benigno Pascua, Jr.?

FISCAL COSTELO:

Still leading, Your Honor.

COURT:

Same resolution.

ATTY. MASUKAT:

Q What did the Chief of Police tell Benigno Pascua, Jr. before he pointed to you?

COURT:

No basis, reform the question.

Q Did the Chief of Police had any talk to Benigno Pascua, Jr. when they went out of his office?

A Yes, sir.

Q What did the Chief of Police tell Benigno Pascua, Jr. when they went out of your office?

A Chief Banaynal said: "the persons who killed your father are already here."

Q What else did the Chief of Police tell Benigno Pascua, Jr. if any aside from that?

A "Do not be scared if you point to them."

Q Aside from that, what else did the Chief of Police tell Benigno Pascua, Jr.?

A Those are the only statements.

Q And it was only after the Chief of Police made that assurance to Benigno Pascua, Jr., that Benigno Pascua, Jr. pointed to you, is that what you mean?

A Yes, sir.

Q And it was only after the third time asking Benigno Pascua, Jr. who killed your father that he pointed to you?

COURT:

There was nothing stated about the third time. Reform the question.

ATTY. MASUKAT:

Q On the fourth time that the Chief of Police asked Benigno Pascua, Jr. who killed his father, that was the time that Benigno Pascua pointed to you, is that correct?

A Yes, sir.

Q In what particular place in the office of the Chief of Police did Chief Banaynal bring Benigno Pascua, Jr.?

A Inside his office, sir. "

(pp. 16-17, TSN, January 11, 1972)

Romeo Casimina testified that:

"ATTY. MASUKAT: (Defense)

x x x x x x x x

Q After the boy was taken to your front by chief Banaynal, what else happened?

A Chief Banaynal told the boy that we were the ones who shot his father.

Q In what dialect did chief Banaynal told the boy that you were the ones who shot his father?

A Tagalog, sir.

Q How many times did chief Banaynal told Benigno Pascua, Jr. that you were the ones who killed his father?

A Four consecutive times.

Q After chief Banaynal told Benigno Pascua, Jr., that you were the ones who shot his father, what did the boy do?

A The boy was not saying anything. The boy was silent.

Q When the boy was silent, did you observe what chief Banaynal did to the boy?

A I know, sir.

Q Please inform the Hon. Court what Chief Banaynal asked the boy to do?

A He forced the boy to point at Nazarito Aquino as the person who shot his father.

Q Did not chief Banaynal also force the boy to point to you as one of those who shot his father?

A No, sir. It was only Nazarito Aquino.

Q How did chief Banaynal force Benigno Pascua, Jr. to point to Nazarito Aquino as the person who shot his father?

A He said: "Come on. You point to him as the one who shot your father."

Q How many times did chief Banaynal utter that word to Benigno Pascua, Jr. before he finally pointed to Nazarito Aquino?

A Four consecutive times.

Q And it was only after the 4th time that Benigno Pascua Jr. at the instance of the chief of police, pointed to the accused Nazarito Aquino, is that what you mean?

A Yes, sir.

Q You were not included as one of those pointed to by Benigno Pascua, Jr. as having shot his father?

A No, sir.

Q Now, after Benigno Pascua, Jr. was forced to point to Nazarito Aquino by the chief of police as the one who shot his father, what else did the chief of police told the boy?

A Chief Banaynal and the boy went back to his office."

(pp. 6-7, TSN, March 22, 1972)

Benigno even denied having signed the sworn statement wherein he stated that he saw the accused shoot his father:

"ATTY. MASUKAT:

Q Do you remember if Chief Banaynal had made you sign anything?

A Yes, sir.

Q That something chief Banaynal asked you to sign, was it typewritten or written in longhand?

A It was typewritten in . . . (withdrawn) In longhand, sir.

Q You are very sure of that?

A I know, sir.

Q Aside from that written in longhand which Chief Banaynal made you sign, have you not signed a typewritten paper?

A No, sir.

Q Now, you said you signed something written in longhand, were the contents of that read to you?

A No, sir.

Q It was not interpreted to you before you affixed your signature therein?

A No, sir.

Q It was not interp. . . (withdrawn) There is here found in the records of this case a sworn statement taken in the office of the chief of police on November 4, 1970 and above the words Benigno Pascua, Jr. is a signature, do you recognize that signature?

A No, sir.

ATTY. MASUKAT:

I request that this sworn statement dated Nov. 4, 1970 be marked as Exhibit "1" for the defense, found on page

8 of the records.

COURT:

Mark it.

ATTY. MASUKAT:

Q When you said you cannot recognize this sig-nature, you mean this is not your signature?

A Not my signature.

ATTY. MASUKAT:

I request that this signature appearing above the typewritten words Benigno Pascua, Jr. be marked as Exhibit "1-A".

COURT:

Mark it."

(pp. 12-13, TSN, June 22, 1971)

Significantly, it is noted that while the sworn statement stated that Benigno Jr. was ten years old, he however said during the trial that he was eight years old. Likewise, Benigno purportedly stated therein, that when presented to him he could recognize and identify the third person whom he saw with Nazarito Aquino and Romeo Casimina. But, he failed to identify Pedro Casimina when the latter was presented to him in court.

Apparently, the prosecution tried to make up for the failure of young Benigno to identify Pedro Casimina, by presenting the other witnesses Pacifico Narvas and Romulo Pascua, who both testified that they recognized Nazarito Aquino and Pedro Casimina. Thus, Pacifico Narvas and Romulo Pascua claimed that they recognized Pedro Casimina and Nazarito Aquino at a distance of some eighty meters while the latter were running away from the southern cornfield, with only their backs visible to them. Under normal visibility conditions, recognition at a distance of eighty or even one hundred meters is probable, if the person whose back is towards the observer is sufficiently familiar to the observer and where the latter's line of sight towards such person is unobstructed.

This is not however the case, it appearing that these witnesses were on the clearing and the alleged assailants were running on the place beyond the clusters of fully grown corn-stalks to the south of the clearing. The maze of tall and leafy cornstalks must have impeded or obstructed the view of these witnesses positioned on the clearing, so as to prevent them from seeing, much more from recognizing the persons running beyond the cornstalks.

In fact, Pacifico Narvas had to say during the trial that he had to climb a tree in order to see those persons running beyond the southern cornfield. He testified that he did so, when he heard one of the farmers on the clearing shout that the assailants were running outside the cornfield. It, of course, taxes credulity how one of those farmers came to know that the culprits were running outside the cornfield when such farmer was himself on the same plane with the others on the clearing, at the other side of the cornfield. Suprisingly, the prosecution did not present that farmer who shouted that the culprits were running outside the cornfield. By itself, Narvas' act of climbing a tree after the last gun report, purposely to observe the fleeing assailants runs counter to usual human conduct and normal reaction in times of danger and stress. A person who is near another who has been shot will ordinarily scamper to safety and will not expose himself to the assailants.

On his part, Romulo Pascua testified on the unusual. It will be noted that he categorically stated that he did not see the person or persons who shot his brother. Yet he claimed that the accused were running outside the southern

cornfield. Romulo betrayed himself on cross-examination when he stated that while he saw them running, he did not however see their entire backs. But, still he was able to recognize them, because, according to him, he already knew their appearances.

If, indeed, these witnesses had recognized and identified the assailants, they would have reported the shooting and revealed the identity of the culprits, to the police authorities, at the earliest possible opportunity, as could ordinarily be expected of witnesses to a fatal shooting. But, not one of them did so.

The shooting was reported to the police by a certain Sulpicio Umiten, a public school teacher in Kabacan. When the police authorities arrived at the scene, Pacifico and Romulo claimed that they were among those questioned by the police. Yet none of them singled out and named the accused. They attempted to explain their inability to disclose the identity of assailants, by claiming that they were afraid because it was already getting dark, which explanation is too crude to be con-vincing. Romulo added a lame excuse, that questions asked of him did not extend to the identity of the culprits. Pacifico and Romulo testified that two days after the shooting they were investigated, and that they separately executed sworn statements wherein they named the accused. But surprisingly, their alleged sworn statements are both dated November. 16, 1970, or twelve days after the shooting.

In fact Romeo Casimina and Nazarito Aquino were arrested in the morning of November 5, without any warrant of arrest. The same is true with Pedro Casimina, who was arrested on November 15. Apparently, they were arrested on mere suspicion gathered by the police from the onlookers who could not name the assailants and who merely theorized that because of a previous grudge between the accused and the deceased, the former must have been the assailants.

On the main, all that the prosecution had proved was the fact of death of Benigno Pascua, but it failed to prove by outright, convincing and conclusive evidence that such death was caused by the accused. The evidence for the prosecution does not even show that attempts were made to recover the Garand rifle allegedly used in the shooting, or that any of the accused was in possession of a rifle at the time of the shooting. It does not even appear that formal and thorough investigation was made of the accused, more particularly of Pedro Casimina who appears to have been hastily included in the murder charge.

The imputation of motive on the part of the accused has not made the case any stronger for the prosecution. The trial court's conclusion thereon is not warranted by its findings. In the theft case, the carabao stolen, belonged to the Pascuas, and in the murder case, the victim was a brother of Benigno Pascua, the victim in this case. Should there be an ax to grind, as between the Pascuas and the accused, the same would reasonably be found on the part of the Pascuas, considering that in both cases they were the aggrieved parties.

Assuming arguendo that the accused had a very strong motive to eliminate Benigno Pascua, such motive cannot take the place of proof beyond reasonable doubt, sufficient to over-throw the presumption of innocence.

Proof beyond reasonable doubt is the mainstay of our accusatorial system of criminal justice. As reiterated in *People vs. Basuel*, No. L-2815, October 31, 1972, 42 SCRA 207, only by proof beyond reasonable doubt which requires moral certainty a "certainty that convinces and satisfies the reason and conscience of those who are to act upon it" may the presumption of innocence be overcome.

By reasonable doubt is meant "doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest easy upon the cer-tainty of guilt." (*People vs. Alipio*, No. L-17214, June 12, 1965, 14 SCRA 297)

Our minds cannot rest easy upon the certainty of guilt of the accused in the light of the evidence for the prosecution.

The accused offered the defense of alibi which by reason of the proximity of the place where they were supposed to be to the place where the shooting occurred is indeed a weak defense. But the weakness of the defense does not relieve the prosecution of the required burden of proof.

The accused need not prove their innocence, because that is presumed. In *People vs. Fraga*, (109 Phil. 241, 250) this Court through Mr. Justice J. B. L. Reyes, spoke thus: "An accused cannot be convicted on the basis of evidence which independently of his alibi is weak, uncorroborated and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise we will see the absurdity of the accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong."

WHEREFORE, we find that the guilt of Pedro and Romeo Casimina has not been proved beyond reasonable doubt and accordingly the sentence against them is hereby reversed, with costs de oficio.

SO ORDERED.

Barredo, (Chairman), Antonio, Concepcion, Jr., and Santos, JJ., concur.
Aquino, J., concur on a separate opinion.

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CONCURRING AND DISSENTING OPINION

AQUINO, J.:

I concur in the view that the evidence is not sufficient for the conviction of Romeo Casimina. Hence, he should be acquitted.

I dissent as to the exoneration of Romeo's father, Pedro Casimina, who is also the father of Francisco Casimina and is a relative of Nazarito Aquino. Francisco was convicted of having stolen the carabao of the deceased Benigno Pascua and of having murdered Ricardo Pascua, a brother of Benigno.

Eyewitnesses Pacifico Narvas and Romulo Pascua identified Pedro Casimina as one of the three assailants who shot Benigno. Pedro's complicity in the killing of Benigno was established to a moral certainty.

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