

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MOISES PANGANIBAN, PEDRO BASIT, PEDRO SUAREZ, AND VICENTE
SUAREZ, DEFENDANTS, MOISES PANGANIBAN,
DEFENDANT-APPELLANT.**

G.R. Nos. L-33822-23. November 22, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an automatic review of the joint decision of the Court of First Instance of Camarines Sur in Criminal Cases Nos. L-437, L-438 and L-439, finding defendant-appellant Moises Panganiban guilty of Murder as charged in three (3) separate informations against him and three (3) other accused, and sentencing him, as follows:

"1. In Criminal Case No. L-437, finding the accused Moises Panganiban guilty, beyond reasonable doubt, of the crime charged and, therefore, sentences him to suffer the penalty of RECLUSION PERPETUA, with the accessories of the law, to indemnify the heirs of Generoso Panganiban in the amount of P12,000.00, without any subsidiary liability. He should, however, be credited with the entire period of his temporary detention having manifested formally his willingness to abide by the rules applicable to convicted prisoners, and to pay the proportionate costs;

"2. In Criminal Case No. L-438, finding the accused Moises Panganiban guilty, beyond reasonable doubt, of the crime charged and, therefore, sentences him to suffer the supreme penalty of DEATH by electrocution as prescribed by law, to indemnify the heirs of Victoria Panganiban in the sum of P12,000.00, without any subsidiary liability, and to pay the proportionate costs; and

"3. In Criminal Case No. L-439, finding the accused Moises Panganiban guilty, beyond reasonable doubt, of the crime charged and, therefore, sentences him to suffer the supreme penalty of DEATH by electrocution, as well as to indemnify the heirs of Anatolia Gunda Panganiban in the sum of P12,000.00, without any subsidiary liability, plus the proportionate costs."

The three (3) informations for murder were filed against the appellant Moises Panganiban and three other accused namely, Pedro Basit, Pedro Suarez and Vicente Suarez, the first one of which, docketed as Criminal Case No. L-437, alleging as follows:

"That on or about the 5th day of May, 1965, in the sitio of Kabayagasan, barrio of Port Junction, municipality of Ragay, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring and confederating together and mutually helping one another, with evident premeditation and treachery, taking advantage of nighttime to better accomplish their purpose and their superior strength, after bringing one Generoso Panganiban to the coconut plantation, did then and there wilfully, unlawfully and feloniously attack, assault, and hack with a bolo the said Generoso Panganiban on the neck, which directly caused the death of the said Generoso Panganiban."

Under date of September 12, 1966, the prosecution filed a motion to split the information into three which the

court a quo granted in an order dated September 21, 1966. Accordingly, for the death of Victoria Gunda Panganiban on the same day, a second information was filed and docketed as Criminal Case No. L-438, charging the same accused Pedro Basit, Pedro Suarez, Vicente Suarez and Moises Panganiban with murder, committed allegedly as follows:

"That on or about the 5th day of May, 1965, in the sitio Kabaya-gasan, barrio of Port Junction, municipality of Ragay, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, con-spiring together and mutually help-ing one another, with evident pre-meditation and treachery, taking advantage of nighttime to better accomplish their purpose and their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and hack with a bolo one Victoria Panganiban on the different parts of her body which directly caused her death x x x."

And for the death of Anatalia Panganiban, also on the same day, the third information was filed and docketed as Criminal Case No. L-439, charging the same accused Pedro Basit, Pedro Suarez, Vicente Suarez and Moises Panganiban with Murder, committed as follows:

"That on or about the 5th day of May, 1965, in the sitio Kabayagasan, barrio of Port Junction, municipality of Ragay, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring and confederating together and mutually helping one another, with evident premeditation and treachery, taking advantage of nighttime to better accomplish their purpose and their superior strength, did then and there wil-fully, unlawfully and feloniously attack, assault and hack with a bolo one Anatalia Panganiban on the different parts of her neck which directly caused her death x x."

After conducting the preliminary investigation on June 29, 1965 and on August 31, 1965, the Municipal Judge of Ragay, Camarines Sur, issued the following Order, dated September 30, 1965:

"A preliminary investigation had been conducted in the above-entitled case. The court finds and so hold that a prima facie case exist against accused, Pedro Basit and Pedro Suarez. There exists no prima facie case against accused, Vicente Suarez and Moises Panganiban.

"WHEREFORE, it appearing that there exist no prima facie case against Moises Panganiban and Vicente Suarez the case against them is, as hereby, it is ordered dismissed and they are hereby ordered released from temporary detention.

"Considering that there exist a prima facie case against Pedro Basit and Pedro Suarez, the said accused are hereby ordered remanded to the Court of First Instance to-gether with the records for trial on the merit as the law directs x x" (p. 70, Criminal Case Wrapper, Vol. I, Criminal Case No. L-437).

Accordingly, the Municipal Court of Ragay, Camarines Sur, forwarded the case against Pedro Basit and Pedro Suarez to the Court of First Instance. Not content with the dismissal of the case as against Vicente Suarez and Moises Panganiban, the Provincial Fiscal of Camarines Sur conducted on December 17, 1965 another preliminary investigation against the said accused. Finding the existence of a prima facie case against them, the Provincial Fiscal filed the informations herein-above quoted.

During the pendency of these cases in the Court a quo, the accused Pedro Basit and Pedro Suarez escaped from detention and since then up to the present they are still at large. The other accused Vicente Suarez allegedly died on February 24, 1966 (p. 56, t.s.n., Sept. 2, 1970).

Defendant-appellant Moises Panganiban is the only accused who remains in the custody of the law, and on his own motion, the trial court granted him a separate trial.

The records show that the victims -- Generoso Panganiban and Victoria Gunda Panganiban -- were husband and wife, while Anatalia Panganiban was their 13-year-old daughter (p. 12, t.s.n., Apr. 23, 1970; Exh. C, p. 65, rec.,

Vol. I).

The records likewise show that the prosecution utilized six (6) witnesses, namely:

1. Ernesto Catapang, husband of Lydia Panganiban, sister of the deceased Generoso Panganiban;
2. Miguel Gunda, a brother of Victoria Gunda-Panganiban, wife of Generoso;
3. Dr. Guillermo Abogado, Municipal Health Officer, Ragay, Camarines Sur, who examined the cadavers of the three (3) victims;
4. Loreto Panganiban, a son of Generoso Panganiban and Victoria Gunda-Panganiban;
5. Eufrazio Panganiban, a brother of Generoso Panganiban; and
6. Damaso Gunda, a brother of the deceased Victoria Gunda-Panganiban.

However, in finding the appellant guilty beyond reasonable doubt, the trial court almost wholly relied on the uncorroborated testimony of Ernesto Catapang (hereinafter referred to as Cata-pang). He is supposedly the only eyewitness to the killing of Victoria Gunda Panganiban and her, daughter, Anatalia Panganiban. Catapang's testimony becomes, therefore, crucial and decisive. Upon it, the liberty and life of Moises Panganiban, the appellant herein, rest. Hence, his entire testimony should be scrutinized with a "sharp judicial eye."

What is Catapang's story? Among other things, Catapang testified that at about 7:40 o'clock in the evening of May 5, 1965, he went to Generoso Panganiban (hereinafter referred to as Generoso), his neighbor whose house was about 100 meters from his house, to borrow a guitar. After he had borrowed the guitar, he went home. On his way, he met four (4) persons, namely: Pedro Basit, Pedro Suarez, Moises Panganiban (hereinafter referred to as the appellant), and Vicente Suarez, who asked him to go back with them to the house of Generoso, to which he acceded. While they were near-ing the house of Generoso, Vicente Suarez led the way and as they were about five (5) meters from the stairs of Generoso's house, Vicente Suarez told him to call Generoso, which he did by saying: "Ka Oros," but Generoso did not answer. So appellant called: "Oros, Oros" ('X' in Exh. 3, p. 199, rec.; pp. 6-7, t.s.n., May 21, 1970). This time, Generoso answered and immediately proceeded to go down from his house with his jacket (p. 2, Exh. 4, pp. 4, 5, Vol. I, rec.); and, as Generoso was going down the stairs, appellant told him to leave, which he did, and then he proceeded on his way to his house. After that, the five men, including Generoso -- who did not talk to him nor did he talk to them -- left and went towards a coconut plantation about 150 meters away from the house of Generoso (pp. 33-35, t.s.n., May 20, 1970).

Because he became suspicious when he was told to leave, instead of proceeding home, Catapang hid behind some banana plants (banana grove) about 20 to 30 meters from the house of Generoso. From there he saw the five persons all heading towards the coconut plantation (p. 35, t.s.n., May 20, 1970; 'Banana Grove' in Exh. 3, p. 199, Vol. I, rec.).

When he could no longer see them, he walked back to the house of Generoso to inform Victoria Gunda, wife of Generoso, that Generoso was brought to the coconut plantation (p. 10, t.s.n., April 22, 1970; p. 35, t.s.n., May 20, 1970). He was not able to do so, however, because while he was about 3 meters from the stairs of Generoso's house, he saw at a distance of about 10 meters appellant and the three other accused -- without Generoso -- -going back to Generoso's house. So he hid under Generoso's house (p. 11, t.s.n., April 22, 1970; pp. 36-38, t.s.n., May 20, 1970).

While he was thus hiding under Generoso's house, all the four accused, including appellant, went up the house. Thereafter, he heard somebody shout -- a voice of a woman -- "Aroy" (p. 12, t.s.n., April 22, 1970; pp. 38-39, t.s.n., May 20, 1970). Thereupon, he left his hiding place and peeped through a hole (word "hole" in sketch Exh.

3-A, reverse side of page 199, Vol. I, rec.) in the northeastern portion of the wall of Generoso's house, from where he saw the accused Pedro Basit hacking Anastacia Panganiban with a bolo, in the sala of the house, hitting the latter on her right neck towards the left nipple, and Pedro Suarez clubbing Victoria Gunda on her head and thereafter hacking her on the neck with a bolo, also in the sala of the house; while the other two companions, appellant and Vicente Suarez, each holding a bolo, were standing near the door of the house acting as guards. Appellant and Vicente Suarez did not, however, take part in the hacking of the two women (p. 13, t.s.n., April 22, 1970; pp. 41-43, t.s.n., May 20, 1970; letter 'd' in Exh. 3, p. 199, Vol. I, rec.; and letters 'e', 'f', 'g', 'h', and 'i' in sketch Exh. 3-A, reverse side of p. 199, Vol. I, rec.).

After seeing all these horrible events, Catapang hurriedly left the place and proceeded to his home. He went up his house and hung the guitar he borrowed earlier from Generoso, and then went down and hid in a pile of cogon grass, near his house, which was intended for roofing (p. 13, t.s.n., April 22, 1970; p. 55, t.s.n., May 21, 1970). While he was hiding in the pile of cogon grass, he saw the four (4) accused, including the appellant herein, approaching. Upon arriving in front of his house, they called for him, but he did not respond. Thereupon, with the aid of a flashlight, they went up his house. Not finding him, they left. He remained in hiding in the pile of cogon grass until early the next morning of May 6, 1965. As he went out of his hiding place, he heard Loreto Panganiban, son of Generoso, shouting. He went to the place where Loreto was and there he saw Generoso dead, with wounds in his body and with his neck almost severed from the body (pp. 13-15, t.s.n., April 22, 1970).

To prove the motive behind the crime, the State presented Loreto Panganiban, son of Generoso and Victoria, and brother of Anatolia Panganiban. Among other things, this witness testified that about a week before May 5, 1965, appellant came to their place at Port Junction and asked his father to redeem a plow, which was earlier lost by his father, for the sum of P50.00. His father refused, saying: "Why should I redeem, since the plow is mine," and adding that he would bring the matter to the attention of the PC. Appellant never-theless promised to produce the plow within one week but he failed to make good his promise (pp. 3-4, t.s.n., June 9, 1970). Then, in the afternoon of May 5, 1965, while he and his father were plowing their land in barrio Luhung, Ragay, Camarines Sur, the accused Pedro Basit and Pedro Suarez came and asked his father whether it was true that he suspected both of them of having stolen his plow. His father replied in the affirmative and, after that, Pedro Basit and Pedro Suarez said: "You (will) have your day" (pp. 4-6, t.s.n., June 9, 1970).

Loreto Panganiban further testified that aside from the two incidents narrated above; there was a grudge between the appellant, on one hand, and his parents, on the other; because David Panga-niban, a brother of appellant, raped his mother Victoria Gunda sometime in 1965, although the act of David was later forgiven and the case never reached the court (pp. 9-10, t.s.n., June 9, 1970).

In his defense, appellant denied participation in the crime imputed to him and put up the defense of alibi. Among other things, the appellant testi-fied that he and Generoso were first cousins, their fathers being brothers. He declared that at about 7:00 o'clock in the morning of May 5, 1965, he left his house at Port Junction, Ragay, Camarines Sur, and proceeded to the law office of Atty. Pedro Ser-vano in Naga City to get from the latter certain documents pertaining to the land of his parents and to bring the sum of P200.00 due to Atty. Servano for legal services rendered to his (appellant's) father. After delivering the money to, and receiv-ing the land title from, Atty. Servano at about 1:00 o'clock in the afternoon of the same day, he strolled around the city. At about 8:00 o'clock in the evening he went to the railroad station of Naga City, and at about 10:00 o'clock in the evening, he boarded an express train for Manila, stopping at Tagkawayan, Quezon, from where he could take a rail-bus the following morning for Port Junction. He passed the night of May 5, 1965 in the Tagkawayan railroad station and when a railbus from Hondagua, Quezon, arrived at about 4:00 o'clock in the morning of May 6, 1965, he boarded it; but the railbus left Tagkawayan bound for Naga, passing Port Junction, at about 5:30 o'clock already in the

morning of the same day. Arriving at Port Junction an hour later, he disembarked and proceeded to his home. Arriving home, his wife told him that Generoso, his wife Victoria and their daughter Anatalia "were already dead" (pp. 17-22, 28, 29, 38, 40, 42, t.s.n., Sept. 2, 1970). Being a close relative of Generoso, he went to the place of the latter. Arriving there, he saw Generoso, Anatalia and Victoria dead. He remained in the house of the dead couple and their daughter until they were buried on May 7, 1965, and during that period he helped in preparing the food for the visitors. He further testified that in the house of Generoso, he also saw his cousins, Marcial and Eufracio, both brothers of Generoso, and his uncle Diego Panganiban, who is also an uncle of Generoso, Deogracias Panganiban and Ernesto Catapang. He concluded his direct testimony by stating that his father Macario Panganiban, his wife and family were also in the house of the victims on that day and that Ernesto Catapang also helped them on that occasion (pp. 22-25, t.s.n., Sept. 2, 1970).

Appellant further testified that after the Municipal Court of Ragay, Camarines Sur, dismissed the case against him, he and his family moved their residence, in January, 1966, from Port Junction, Ragay, Camarines Sur, to Guinayangan, Quezon, where he was arrested by the PC on February 12, 1968 after residing there for about two years. He also testified that when he left Port Junction to reside in Guinayangan, Quezon, he told Diego Panganiban, his uncle and also an uncle of Generoso, Eufracio, a brother of Generoso, and of course his father, Macario Panganiban, about the transfer of his residence (pp. 43-44, 46, 47, t.s.n., Sept. 2, 1970). Notwithstanding the transfer of his residence in 1966, he returned to Port Junction about two (2) times -- the first in May, 1966 when he visited and stayed with his father for two days and got some seedlings, and the second, sometime in the year 1967. He categorically declared also that when he was still residing in Port Junction and even after he had transferred his residence to Guinayangan, Quezon, he never received any sub-poena, whether through a policeman or from anyone else, from the Provincial Fiscal of Camarines Sur. Neither did his father, much less any other person, tell him about the existence of a warrant for his arrest the second time that he visited his father in the year 1967. However, sometime before January, 1966, one Gavino Balmes told him that he would have a trial, so he went to his lawyer, Atty. Pedro Servano, who accompanied him to Fiscal Bolaños of the Office of the Provincial Fiscal of Camarines Sur (pp. 49, 50-51, 54, 57, 58-59, t.s.n., Sept. 2, 1970).

Appellant also testified that the other accused -- Vicente Suarez, Pedro Basit and Pedro Suarez -- were also in the house of Generoso at about 2:00 o'clock in the afternoon of May 6, 1965 (pp. 110-111, Sept. 3, 1970 t.s.n.). He concluded his testimony by flatly denying having received any subpoena issued by the Office of the Provincial Fiscal of Camarines Sur (Exhs. D, E and F, which were later on withdrawn by the prosecution), for him to appear before the investigating fiscal on July 19 and 20, 1966. According to him, no policeman ever came to him to deliver such sub-poena; besides at that time he was already residing in Guinayangan, Quezon. He likewise denied having signed such subpoena or the return thereof (pp. 89-93, t.s.n., Sept 3, 1970).

Appellant, thru counsel, assigned five (5) errors as having been committed by the court a quo. These errors may, however, be boiled down to one single proposition: Has the prosecution proved its case against the appellant beyond reasonable doubt? For this purpose, We have meticulously scrutinized and examined the records with painstaking care. Indeed, We are unable to shake off nagging doubts on the veracity of Catapang's testimony, more particularly on the following:

1. On direct examination, Catapang declared:

"FISCAL:

Q - When you heard that shout, what did you do?

A - From under the house I went out and peeped thru a hole in the wall of the house, sir.

Q - And what did you see?

A - While I was peeping at (thru) the wall of the house, I saw Pedro Basit hack with a bolo Anatalia Panganiban which (while) Pedro Suarez was clubbing Victoria Gunda and the two of them were at the door of the house acting as guard, sir." (Pp. 11-12, t.s.n., April 22, 1970).

On cross-examination, however, Catapang declared:

"ATTY. SURTIDA:

Q - What were they doing when you peeped thru the hole?

A - I saw Pedro Basit hacking with a bolo Victoria Gunda.

Q - And who hacked Anatalia?

A - Pedro Suarez."

(Pp. 41, 42, t.s.n., May 20, 1970).

The foregoing testimonies are clearly contra-dictory to each other. On direct examination, Cata-pang declared that it was Pedro Basit who hacked Anatalia Panganiban, while Pedro Suarez was the one who clubbed Victoria Gunda. However, on cross-examination, he declared that it was Pedro Basit who hacked Victoria Gunda and Pedro Suarez was the one who hacked Anatalia.

2. Again, before Judge Huertas of Ragay, Cama-rines Sur, Catapang declared:

"Q - What did you see when you were observing Vicente Suarez, Pedro Suarez, Pedro Basit and Moises Panganiban from behind the banana trees?

A - I saw these people, Vicente Suarez, Pedro Suarez Pedro Basit and Moises Panganiban bring Generoso towards the coconut groves which is about 50 meters from the place where I was hiding. (P. 2, Declaration given by Ernesto Catapang during the preliminary investigation conducted by Judge Huertas on May 18, 1965; Exh. 4, p. 5, Vol. I, rec.).

However, before the trial court five (5) years later, Catapang testified:

"Q - This coconut plantation accord-ing to this sketch (Exh. 3) is 150 meters from the house of Generoso Panganiban?

A - It is more or less, sir.

xx xx xx

Q - So in going to the house of Generoso Panganiban from your hiding place (banana groves) you walked only a distance of about 20 meters?

A - Yes, sir" (Exh. 3, p. 199, Vol. I, rec., p. 35, t.s.n., May 20, 1970).

The aforequoted declarations -- one before Judge Huertas and the other before the trial Judge -- are not only contradictory to, but also inconsistent with each other. In 1965, Catapang approximated the distance of the coconut plantation from the place where he hid behind banana plants to be 50 meters. Five years later, Catapang approximated the same coconut plantation to be 150 meters from the house of Generoso. The place where he hid behind some banana plants was about 20 meters from the house of Generoso which, according to the sketch marked Exhibit "3", is towards the northeastern part of Generoso's house; and the coconut plantation is towards the northwestern part of the same house. On the basis of Catapang's testimony in 1965, in relation to his testimony in 1970, it would seem then that the distance between the coconut planta-tion and the house of Generoso is only 30 meters, not 150 meters as shown in the sketch (Exh. 3).

3. At the preliminary investigation before Municipal Judge Huertas, Catapang declared:

"Q - What did you see if any when you peeped through the wall of the house of Generoso Panganiban?

A - When I peeped through the nipa walling of the house, I saw Pedro Basit hack with a bolo Anatalia Panganiban and Pedro Suarez club Victoria Gunda, the wife of Generoso Pangani-ban, first then hack her with a bolo.

Q - What did you do afterwards if any?

A - I ran away and returned home.

Q - What did you do if any when you returned home?

A - When I returned home, I did not go up the house but hid myself behind the cogon near our house" (p. 3, Exh. 4; p. 6, Vol. I, rec.; underlining supplied).

However, at the trial, this witness testified:

"Q - After seeing all these things, what did you do?

A - I went home, sir.

Q - What did you do upon arriving home?

A - After I went up our house went down again, sir.

Q - Where did you go?

A - I hid myself in a cogon grass which was intended to be used as roofing, sir. (P. 13, ts.n., April 22, 1970; underscoring supplied).

xx xx xx xx

ATTY SURTIDA:

Q - And I would please remind you that neither did Mr. Bolaños ask you that question. In the affidavit you made before Mr. Bolaños you were not asked whether you went up the house but voluntarily you stated that you went down from your house.

A - Yes, sir, because I hung the guitar" (p. 55, t.s.n., May 21, 1970).

If the contradiction in the evidence for the prosecution consisted of discrepancies in the testimony of one witness and that of another, such contradictions could possibly be ignored; because not all persons who witnessed an incident are impressed in the same manner. But in the case at bar, We are dealing with glaring material self-contradictions of one and the same witness. The foregoing contradictions, placed in proper focus, certainly put Catapang's testimony on very shaky grounds.

4. Furthermore, Catapang's testimony is inherently improbable. The records bear this out --

"Q - Now, while you were going home, what happened?

A - I met four persons, namely: Pedro Basit, Pedro Suarez, Moises Panganiban and Vicente Suarez, sir.

xx xx xx

Q - Now, when you met them, what happened?

A - They asked me to go back with them to the house of Generoso Panganiban, sir.

Q - Did you go with them?

A - Yes, sir.

Q - Now, were you able to go back together with the accused to the house of Generoso Panganiban?

A - Yes, sir, and that was the time when I met them.

Q - Now when you arrived again in the house of Generoso Panganiban, what happened?

A - While we were nearing the house of Generoso Panganiban, the three accused remained near the house of Generoso Panga-niban and I was told by Vicente Suarez to call for Generoso Panganiban and Moises Panganiban accompanied me, sir.

Q - So, who were the three accused who remained near the house of Generoso Panganiban?

A - Vicente Suarez, Pedro Basit and Pedra Suarez, sir.

Q - Now, according to you, Moises Panganiban accompanied you, where did the two of you go?

A - In front of the stairs of the house of Generoso Panganiban, sir.

Q - Upon arriving there, what did you and Moises Panganiban do?

A - He caused me to call Generoso Panganiban and later he called him also, sir.

Q - Did you call for Generoso Panganiban?

A - Yes, sir.

xx xx xx

Q - Now, was there any answer from Generoso Panganiban when you called for him?

A - No, sir, he did not answer our calls.

Q - What happened after you called for Generoso Panganiban?

A - Moises Panganiban called him, sir.

Q - And after he was called by Moises Panganiban, what happened?

A - He answered the call and went outside the house, sir."

(Pp. 4, 5-7, t.s.n., April 22, 1970).

As already stated, the foregoing testimony is inherently improbable especially if viewed in the light of ordinary human experience. Appellant is a first cousin of the victim, Generoso. The three other accused Pedro Basit, Pedro Suarez and Vicente Suarez knew where the house of Generoso was. There is, therefore, no reason for the three other accused, if appellant was already with them, to need the presence of Catapang whose only role apparently was to call for Generoso Panganiban. Moreover, appellant would have objected to the presence of Catapang who was personally close to him -- appellant being a first cousin of Catapang's wife.

It is hard to believe that the appellant and, for that matter, all of the other accused who were all bent on killing their victims, would ask Cata-pang to go with them to the prospective scene of the crime, witness its execution, thereby securing a wit-ness against all of them.

Human experience shows that persons who plan to commit a crime so serious like murder, plan and execute it

with utmost secrecy, avoiding any risk that would lead to their recognition and subsequent apprehension.

5. The natural reaction of one who witnesses a crime and recognizes the offender is to reveal it to the kins of the victims or the authorities at the earliest opportunity. Did Catapang, who claims to have seen appellant in the company of the three other accused on the night of the gruesome murders, reveal what he saw and witnessed to the authorities or to any of the relatives of the victims at the earliest opportunity? Let us examine the record.

"Q - All right, your answer is not responsive, but we will leave it at that. We will now go to other points. In this sketch, Exhibit 3, there are several other houses around the house of Generoso Panganiban. Besides the house you were occupying, you have the house of Diego Panganiban. How far is this house of Diego Panganiban from the house of Generoso?

A - About one hundred meters, more or less.

Q - In other words, the distance is about the same as the distance from your house to the house of Generoso Panganiban?

A - That is, possible.

COURT:

Q - Is there no house nearer the house of Generoso than your house and the house of Diego Panganiban?

A - There is, your honor, that house of Horacio Panganiban.

Q - What is the relation of Horacio Panganiban to Generoso Panganiban?

A - They are brothers, your honor.

ATTY. SURTIDA:

Q - And the house of Horacio is how far from the house of Generoso?

A - About 80 meters, more or less.

Q - On the sketch you have also indicated the house of Marcial Panganiban, what relation has Marcial Panganiban, to Generoso Panganiban?

A - They are also brothers.

Q - And how far is Marcial's house from Generoso's house?

A - About 100 meters, more or less.

Q - So it is clear then that there are houses of the kins of Generoso Panganiban near his house. Now my question is, you stated before that you went back to your house because you were afraid, why did you not go to seek protection and to denounce what you have seen either to the house of Marcial or to the house of Horacio and why you preferred to go to your house where you had no companion?

A - It did not occur to me, but what occurred to me was to go to my house because I thought of my animals.

Q - On the following day, May 6, did you go to the house of Marcial Panganiban?

A - No sir, I did not.

Q - And neither did you go to the house of Horacio Panganiban?

A - What I remember is we took our lunch in the house of Horacio on May 6.

Q - So on the following day, May 6, you did not tell Marcial Panganiban of the occurrence in the night of May 5?

A - Yes, I did not.

Q - And neither have you told Horacio Panganiban of what you have seen in the night of May 5?

A - Yes, I did not also.

COURT:

Q - But why did you take your lunch in the house of Horacio on the following day and that was May 6?

A - Because it was in that house where we ate our lunch after we dressed the cadavers because it was in that house where the cadavers were dressed.

Q - It is not a fact that in the dressing of the cadavers Moises Panganiban was present and in fact did help also and also his father, the father of Moises?

A - I cannot remember whether Moises Panganiban was present when the cadavers were dressed.

Q - Please make an effort. Try to remember because that is important. That point is important. I have the information that Moises helped in the dressing of the cadavers of the victims including his father. Now since according to you you also helped, can you not remember if Moises was there?

A - What I remember is that when we got bamboos for the purpose of carrying the cadavers, Moises Panganiban was with me.

COURT:

Q - That was on May 6, 1965, was it not?

A - I do not know whether that was May 6 because the cadavers were embalmed.

ATTY. SURTIDA:

Q - Then whom can you remember now, can you mention some names of those persons present and helped in the dressing of the cadavers?

A - They were Diego Panganiban, Damaso Gunda, Miguel Gunda, myself and Dr. Abogado, but I cannot remember the others who helped that time also.

COURT:

Q - But did Moises Panganiban actually help in the carry-ing of the cadavers because according to you he helped in getting bamboos?

A - Going where, your honor?

Q - To any place.

A - Yes, he did, your honor.

Q - He helped in carrying the cadavers to what place?

A - In bringing the cadavers inside the house of Victoria Gunda because the cadavers were brought outside the house when the same were autopsied by the doctor.

COURT:

Q - Whose cadaver did he help in bringing to the house of Victoria Gunda?

A - I cannot remember who among the cadavers were carried that he helped in going up the house of Victoria Gunda.

Q - Now from your testimony there is no question that Moises Panganiban was present when the cadavers of Victoria Gunda, Anatalia Panganiban and Generoso Panganiban were autopsied by Dr. Abogado, is that correct?

A - He was there, your honor". (pp. 57-60, t.s.n., May 21, 1970).

Continuing, Catapang further declared:

"Q - How did it happen that the authorities came to know that you saw the occurrence when you have not told anybody? You did not even tell the kins of the deceased?

A - I was taken by the PC and brought to Catabangan.

COURT:

Q - Your answer did not answer the question at all. The Court directs that the question be repeated and for the witness to answer.

A - What happened was this, your honor: On May 6, the follow-ing day, I was being questioned by the PC but I did not reveal that I saw the incident. The following day, I was again investigated and later on I was brought to Catabangan because according to the PC I must have known what had happened in that incident because I was there in that place when the incident took place. I only did not reveal right away because I was afraid that I might be killed" (pp. 61-62, t.s.n., May 21, 1970; underlining supplied).

A searching analysis of the foregoing testimony of Catapang shows that, contrary to the usual pattern of human behavior and the normal reaction of man in times of stress, this star witness for the prosecution did not report the killing of his brother-in-law, the latter's wife and daughter to the PC at the earliest opportunity. According to the record, the PC finally came up with a complaint before the Municipal Court of Ragay, Camarines Sur, only on May 18, 1965, or thirteen (13) days after the incident happened (p. 1, Vol. I, rec.). Evidently, it was only on that day that Catapang revealed the identity of the alleged killers. It taxes credulity that Catapang made no effort to expose the accused either on May 6 or May 7, 1965 when, according to him, he saw the brothers of Generoso on those days in the house of the victims and that Sgt. Gonzalez of the PC first questioned him on May 6 and 7, 1965 on what he knew of the killing (p. 62, t.s.n., May 21, 1970). Catapang's silence for about thirteen (13) days casts serious doubt on his subsequent identification of the appellant and the three other accused. Had he really recognized the appellant and the three other accused as the per-petrators of the crime, he would have spontaneously reported the crime and revealed the identity of the killers at the earliest opportunity, as would be expected according to the natural reaction of man under such circumstances, especially when the murdered victims were his close relatives and neighbors.

Catapang's claim that he was afraid that he might be killed is not supported by the evidence of record. He was not threatened by any of the killers, If he were afraid of reprisal, he would have avoided going with the appellant to a place about 150 to 200 meters away from the house of Generoso for the purpose of getting bamboos with which to carry the remains of the victims. Moreover, if he were afraid, he would not have gone home after witnessing the gruesome murders; instead, he would have instinctively dashed off to the barrio captain or any other authority, or to one of the brothers of Generoso, like Horacio Panganiban, whose house was only 80 meters away from the place where the incident happened, and there sought refuge and told everything he witnessed.

Besides, would it not be more in consonance with common experience for Catapang to have at least whispered to

Sgt. Gonzalez of the PC, or to any one of the brothers of Generoso, like Marcial or Horacio, when he saw them the day after the murder -- on May 6, 1965 -- in the house of the victims, that the real culprits were the appellant and the three other accused, especially considering that on that day, as the records show, all the accused were present in the house of the victims? (Pp. 110-111, t.s.n., Sept. 3, 1970). In this way, the culprits could have been easily and safely held in prison or detained in the con-stabulary barracks and thus prevent them from frustrating justice by flight. As it were, the accused were not ordered arrested until May 18, 1965 (p. 11, Vol. I, rec.), when Sgt. Gonzalez of the PC filed the corresponding criminal complaint before the Municipal Court of Ragay, Camarines Sur (p. 1, Vol. 1, rec.).

6. Another fact of substance and value which was not fully appreciated by the trial court in favor of the appellant is the presence -- on May 6 and 7, 1965 -- of the appellant in the house of the victims after the incident on May 5, 1965, which fact stands uncontradicted. The records show that appellant on those two days was in the house of the victims and helped prepare the food for the visitors and in getting the bamboos with which to carry the remains of the victims. If the appellant were one of the authors of the heinous crime or that he had in some way participated therein as a co-conspirator, as the State would want this Court to believe, it strikes Us as rather highly improbable and contrary to the natural instinct of man for self-preservation for the appellant too have the temerity and the bold-ness to expose himself to the danger of being the object of vengeance from the relatives of the victims, who were practically all present with Catapang during the autopsy, dressing and burying the remains of the victims. Apropos is that biblical passage which runs: "The wicked fleeth even when no man pursueth, but the righteous are bold as a lion."

One reason why the trial court did not appreciate appellant's presence in the house of the victims on May 6 and 7, 1965, as compatible with his innocence, is appellant's disappearing act during the period of reinvestigation of the case by the Office of the Provincial Fiscal of Camarines Sur until he was arrested in February, 1968. The records show that the failure of the appellant to appear before the Office of the Provincial Fiscal of Camarines Sur during the reinvestigation, following the dismissal by the municipal judge who conducted the first preliminary investigation of the case against him and Vicente Suarez, was because he transferred his residence from Port Junction, Ragay, Camarines Sur to Guina-yangan, Quezon. He did not know of the second reinvestigation conducted on December 17, 1965 by the Office of the Provincial Fiscal of Camarines Sur after the case was dismissed, as to him, by the Municipal Court of Ragay, Camarines Sur. As a matter of fact, he did not receive any subpoena from the said office, much less was he informed by his father, or by any of the relatives of Generoso, who knew of the transfer of his residence. In short, he did not attempt to elude justice when he transferred his residence because he even visited Port Junction, his former residence, twice after he left Camarines Sur -- once in May 1966, when he visited and stayed with his father for two days, and then again sometime in the year 1967. He learned of the reinvestigation and the subsequent filing of the information against him only when he was arrested in February, 1968 -- about three years after -- by the PC and since then he has remained under the custody of the law.

WE find the explanation of the appellant credible. Hence, the delay in the trial of this case before the trial court cannot, and should not, be attributed to him, as the court *a quo* insinuates in its decision.

7. Catapang's testimony is not only contrary to common experience and observation of man, but it is also inherently improbable. This witness testified on the location of the house of Generoso, in relation to the other houses belonging to his relatives in the same barrio. Aided by Exhibit "3", he testified that Generoso's house was located along the barrio road leading to Port Junction. North of Generoso's house, about 100 meters away, was Catapang's house; to the south was the house of Horacio Panganiban, a brother of Generoso; somewhere on the east was the house of Diego Panganiban, an uncle of Generoso; and somewhere on the west was the house of

Marcial Panganiban, another brother of Generoso. The stairs of Generoso's house is represented by letter "b" of Exhibit "3", facing the road to Port Junction. Catapang claims that when the four accused came back from the coconut plantation -- without Generoso -- he saw them at point "c" in the sketch Exhibit "3", which is a distance of about 10 meters from where he was at point "b" in the same exhibit. He went under the house and hid himself at point "d" from where he saw the accused Pedro Basit and Pedro Suarez hack Victoria Gunda and Anatalia Panganiban, through a hole in the wall of the house, represented by the word "hole" in Exhibit "3-A".

A careful examination and scrutiny of Exhibits "3" and "3-A" (pp. 199, Vol. I, rec.), depicting the location of the house of Generoso in relation to the barrio road leading to Port Junction, shows that Catapang represented the "Room" as facing the road and the "Sala" behind the room, evidently to justify his claim that he saw the bololing and the hacking of the victims Victoria Gunda and Anatalia Panganiban at points marked "e", "f", "g", and "h" in Exhibit "3-A", through the hole on the rear wall of the house. According to him, it was also through the same "hole" that he saw appellant and the other accused Vicente Suarez at point "i" standing as guards, each holding a bolo in his hand. However, it is common observation and experience that in the provinces, especially in the barrios, people build their houses in such a way that the sala, if there is any, almost always faces the main door and the barrio road, and the room, if there is one, is located behind the sala or towards rear of the house away from the road. Hence, Exhibits "3" and "3-A" bear earmarks of fabrication.

On the other hand, the sketch, marked Exhibit "6" (p. 74-80, t.s.n., July 21, 1970), is more in consonance with common observation and experience.

8. One last fact of significance which was not considered by the court a quo. WE refer to the testimony of Loreto Panganiban, a son of Gene-roso and Victoria Gunda Panganiban and brother of Anatalia Panganiban at the preliminary investiga-tion conducted by Judge Huertas of Ragay, Camarines Sur, he declared:

"Q - When did you learn for the first time that your father, mother and sister are dead?

A - In the morning of May 6, 1965 at about 5:00 to 6:00 A.M..

Q - How did you happen to know they were dead?

A - When I went to see our cows at the plowed field under the coconut grove, at about 5:00 to 6:00 o'clock A.M. of May 6, 1965, I saw my father flat on his back with his neck almost cut.

Q - What about your mother and sister, when did you know for the first time that they are dead?

A - When I returned to the house at about 7:00 o'clock P.M. of May 6, 1965, I saw my mother and sister dead with wounds still lying on the hammock on the floor.

xx xx xx

Q - Where were you at about 7:40 P.M. of May 5, 1965?

A - I was at Port Junction witnessing the program at the school.

Q - When did you return to your house that night of May 5, 1965?

A - I returned more or less at 12:00 o'clock P.M.

Q - When you returned home, did you not know whether your parents and your sister Anatalia Panganiban are dead already?

A - No, sir.

Q - Why?

A - When I returned home, there was no light and I went to bed right away.

xx xx xx x"

(Pp. 1, 2, Declaration of Loreto Panganiban, given to Judge Huertas of Ragay, Camarines Sur on May 18, 1965; Exh. 5, p. 8, Vol. I, rec.; underlining supplied).

However, when this witness testified at the trial court five (5) years later, he stated:

"Q - On the night of May 5, 1965, do you know what happened to your parents and your sister Anatalia Panganiban?

A - I saw my father and my mother and my sister dead in the morning, sir.

COURT:

Q - Morning of what date?

A - May 6, 1965, your honor." (P. 6, t.s.n., June 9, 1970; underscoring supplied).

Analyzing the aforequoted declaration of Loreto on May 18, 1965 as against his testimony before the trial court of June 9, 1970, We find that the two sets of testimony suffer from the same vice as the testimony of Catapang, earlier discussed above, since they are contradictory to, and inconsistent with, each other. Before Judge Huertas of Ragay, Camarines Sur, this witness declared that he knew for the first time that his mother and sister were dead at about 7:00 o'clock P.M. of May 6, 1965, when he saw his mother and his sister dead with wounds still "lying on the hammock on the floor"; while before the trial court about five years later he declared that he saw his father, his mother and his sister dead in the morning of May 6, 1965. The two declarations, being contradictory to each other, one or the other must be incorrect. Hence, a doubt is cast upon the credibility of this witness. This is not to count the fact that he is a son of the victims Generoso and Victoria Gunda and a brother of the third victim, Anatalia Panganiban. Hence, the possibility of the existence of bias is not remote.

Besides, if it is true, as claimed by this witness, that he returned home at 12:00 midnight of May 5, 1965, and woke up between 5:00 and 6:00 o'clock in the morning of May 6, 1965, to tend to his cows in the field, it is almost unbelievable that he did not see his mother and his sister already dead in the sala of their house with bolo wounds in their necks measuring about six inches in length (Exhs. B and C, pp. 64-65, Vol. I, rec.).

Consequently, appellant's defense of alibi becomes significant since, as pointed out earlier, there is a total absence of positive and clear identification of the appellant as one of those responsible for the death of the victims. Of course, We have time and again stressed that alibi is the weakest of all defenses. It is easy to concoct, difficult to disprove (People vs. Cunanan, L-17599, April 24, 1967, 19 SCRA 769, 783, citing U.S. vs. Olais, 36 Phil. 828, 829; People vs. Pili, 51 Phil. 965, 966; People vs. Dizon, 76 Phil. 265, 272; People vs. Bautista, L-17772, Oct. 31, 1962, 6 SCRA 522, 529; People vs. Dayday, L-20806 & L-20807, Aug. 14, 1965, 14 SCRA 935, 942). Nonetheless, where, as in the case at bar, the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not appellant is the author of the crime charged, alibi as a defense assumes significance. As this Court, speaking through Mr. Justice J.B.L. Reyes, in People vs. Fraga, et al. (L-12005, Aug. 31, 1960, 109 Phil. 241, 250), pointed out: "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 an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong" (cited in People vs. Pampaluna, 96 SCRA 790, 815).

Criminal Case No. L-437 where accused-appellant was sentenced to life imprisonment (reclusion perpetua) by the trial court, should be deemed also included in this automatic review of the death penalty imposed on him in the

other two cases, L-438 and L-439, although accused-appellant did not expressly appeal his conviction in L-437.

Under the Judiciary Act, otherwise known as R.A. 296, as amended, "the Supreme Court shall have appellate jurisdiction in all criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices or accessories, or whether they have been tried jointly or separately" (par. 1, Sec. 17).

It should be noted that under the aforequoted provision, the Supreme Court has appellate jurisdiction over other offenses not so punished by death or life imprisonment, but arising "out of the same occurrence or committed by the accused on the same occasion, as that giving rise to the more serious offense," even if the accused is merely charged as an accomplice, or accessory and even when the cases are tried separately.

It should be emphasized that the subject matter under automatic review in these cases, G.R. Nos. L-33822-23, is the joint decision of the trial court in the three criminal cases Nos. L-437, L-438 and L-439 against the same accused-appellant for the murder of the spouses and their 13-year-old daughter on the same night of May 5, 1965, and not three separate decisions.

It would be absurd to require accused-appellant, under the peculiar circumstances, to file a separate appeal in L-437 because the three criminal cases of which he was convicted by the trial court in a single decision are so intertwined with each other, the three cases having arisen on the same occasion.

It is therefore patent that criminal case No. L-437 is deemed ipso facto appealed together with the two death sentence cases (L-438 and L-439) notwithstanding the absence of an express appeal by the accused-appellant in said criminal case No. L-437. All the three criminal cases are necessarily involved in and affected by the discussion and the prayer (the Solicitor General prayed for the affirmance of the judgment of conviction by the trial court in the three criminal cases) in the briefs filed by the State, by the defense and Our review of the joint decision in these three cases which relate to the entire tragedy that resulted in three murders. The principal target was the deceased Generoso Panganiban, of whose murder appellant was sentenced by the trial court to only reclusion perpetua.

Moreover, the accused-appellant who is a mere farmer, must have assumed that when the clerk of court forwarded the cases to the Supreme Court on automatic review, all three cases (L-437, L-438 and L-439) were so forwarded, as in fact they were as shown by the endorsement or transmittal (pp. 80-83, rec.) of the transcript of the three cases by the branch clerk of court of the Court of First Instance of Camarines Sur to the Clerk of Court, Supreme Court.

Furthermore, it would be a burden too heavy if, under the circumstances of these cases, the accused-appellant had to file a separate petition for review in Criminal Case No. L-437.

Finally, rules of procedure should not be given a strict or rigid interpretation where, as in the case at bar, the life and liberty of an accused are at stake. The life and liberty of the accused-appellant should not be sacrificed at "the sophisticated altar of technicalities."

WHEREFORE, WE FIND THAT THE GUILT OF THE DEFENDANT-APPELLANT MOISES PANGANIBAN HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT. THE JUDGMENT APPEALED FROM IS, THEREFORE, REVERSED AND SET ASIDE, AND THE DEFENDANT-APPELLANT IS HEREBY ACQUITTED OF THE CHARGES AGAINST HIM IN ALL THE THREE CASES -- L-437, L-438 and L-439 -- AND HIS IMMEDIATE DISCHARGE FROM CUSTODY,

UNLESS HE IS HELD ON SOME OTHER VALID CHARGE, IS HEREBY ORDERED. NO COSTS.

SO ORDERED.

Fernando, C.J, Teehankee, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, and Escolin, JJ., concur.
Aquino, J., see dissent.

Abad Santos, Plana, Relova, and Gutierrez, Jr., JJ., join J. Aquino in his dissenting opinion.

People vs Panganiban : L-33822-23 : November 22, 1983 : J. Aquino : En Banc : Dissenting Opinion Clean 6 pt 6
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DISSENTING OPINION

AQUINO, J.:

I dissent. In the single decision, which Judge Augusto L. Valencia rendered in the three murder cases filed against Moises Panganiban (tried jointly), he sentenced Panganiban to reclusion perpetua in Criminal Case No. L-437, involving the killing of Generoso Panganiban, and to two death penalties in Criminal Cases Nos. L-438 and L-439 for the killing of Generoso's wife Victoria Gunda and his daughter Anatalia Panganiban.

Panganiban did not appeal from that decision. Only the two death penalties are under automatic review. The murder case wherein reclusion perpetua was imposed is not under auto-matic review. Thus, only two (2) cases are docketed in this Court. The third case, the reclusion perpetua case (Case No. L-437 in the lower court), was not docketed.

The branch clerk of court of the trial court in elevating the records to this Court said in his letter of transmittal that he was forwarding the records of Criminal Cases Nos. L-438 and L-439, where the death penalty was imposed. Hence, in this Court two docket numbers were given to the two cases, L-33822 and L-33823.

The branch clerk of court clarified in his letter of trans-mittal that he had to forward to this Court also the expediente' of Criminal Case No. L-437, the reclusion perpetua case, where "no appeal had been taken", because the papers pertinent to Cri-minal Cases Nos. L-438 and L-439 are attached to L-437 in view of the joint trial.

The statement in the dispositive part of the majority opinion that the whole judgment in the three cases rendered by Judge Valencia is set aside and that Panganiban "is hereby acquitted of the charges against him in all the three cases" is not well-taken.

We cannot set aside that portion of the judgment imposing reclusion perpetua because it is not under review. It has long become final and executory because there was no appeal from that portion of the judgment. It should have been appealed in order to be reviewed by this Court.

With respect to the death penalties imposed for the killing of Victoria Gunda and her daughter Anatalia (Cases Nos. L-438 and L-439), I am of the opinion that the guilt of Moises Panganiban, as co-conspirator in the killing of the two victims, was established beyond reasonable doubt by the testimony of Ernesto Catapang, 20. However, I vote for the imposition of reclusion perpetua, not death.

The four accused are related to each other. Moises Panga-niban was the son-in-law of Vicente Suarez who died

and was not tried. Pedro Suarez was Vicente's son. Pedro Basit and Moises Panganiban married sisters.

The motive for the killing was the loss of the plow of Gene-roso Panganiban which came into the possession of Vicente Suarez. Generoso threatened to report the loss of the plow to the Constabulary.

With respect to Moises' alibi, Judge Valencia found that the fact that Moises was in the law office of Pedro Servano at about noontime on May 5, 1965 did not preclude him from returning within seven hours to Sitio Kabayagasan, Barrio Port Junction, Ragay to help in the killing of the victims at seven o'clock in the evening of that day.

Judge Valencia noted that Moises' testimony that he was still in Naga City at eight o'clock in the evening of May 5, 1965 (or after the murders were committed) was not corroborated.

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