

on March 19, 1976, at around 7:00 o'clock P.M., with the help of the appellant, she gave birth to a live baby girl named Mary Morales inside their house in Barrio Maluanluan. About an hour later, the appellant took the baby from the mother, brought her out of the house, and buried her alive near their house (Answer to Questions Nos. 4, 5, 6, 8, and 11, Affidavit of Manuel Morales, Record, p. 13; pp. 3-4, 8, tsn, April 20, 1976; pp. 5-8, tsn, April 30, 1976). To cover the place where he buried the baby, the appellant built a fire over it (p. 14, tsn, April 21, 1976; Answer to Question No. 4, Affidavit of Delfin Dris, Record, p. 15). "At about 7:00 P.M. of the following day, Jesus Aytona, an uncle of Maria Morales went to the office of Orlando Lara, the Station Commander of Pola, Oriental Mindoro and reported to him that as per information his niece delivered a baby but that the latter could not be found. Then Lara, together with some members of the police, proceeded to Barrio Maluanluan. A neighbor of the appellant, Delfin Dris, reported to Lara that in the night of March 19, 1976, he heard the crying of a baby but that later it stopped (pp. 12-13, tsn, April 21, 1976). "In the morning of the next day, Lara invited the appellant to the station to which the latter agreed (p. 14, tsn, *ibid*). Thereafter, Lara returned to the scene of the crime and investigated the matter. With the help of Dris, Lara found the baby buried a foot deep in a place about 15 meters from the appellant's house (pp. 14-16, tsn, *ibid*). "Lara then summoned the help of Dra. Alamar who conducted an autopsy on the body of the baby. He also ordered a sergeant to fetch the appellant so that the latter could identify the body of the baby (p. 15, tsn, April 21, 1976). "Appellant arrived and then identified the body of the baby as his daughter by Maria Morales, his own daughter, whom he buried alive to cover the shame of his family because of what he did to the latter (pp. 17-18, tsn, *ibid*). Pictures were also taken at the scene of the crime (pp. 13-21, tsn, April 21, 1976; Exhibits 'C' and 'D'). "The 'Post Mortem Findings' on baby Mary Morales stated: 'I. EXTERNAL FINDINGS: a) A dead new born baby girl with the placenta still attached was dug up approximately 100 meters away from the residence of Manuel Morales under a banana tree. b) Purplish black cynosis of the face, neck and all parts of the body were clearly observed. c) At the early stage of decomposition, there is still the evidence of the caput succedaneum and the baby is covered with vernix casciosa. The head is covered with fine lanuge hair and the nails projected from the fingers. d) CHEST—There is arching of the chest. II. INTERNAL FINDINGS: a) Lungs filled the thoracic cavity and overlaps the heart. Edges are rounded and vermillion red (pinkish mottled color) in color. It crepitates on pressure: On section it exudes froth. A piece of the lungs floated on water showing that air had probably entered in the lungs air sacs. It is spongy. It weighs more or less 900 gms. b) Stomach and intestines—contains mucus and air bubbles and saliva. III. CONCLUSION: MOST PROBABLY CARDIO-RESPIRATORY FAILURE DUE TO ASPHYXIATION CAUSED THE DEATH OF THE CHILD". (Exhibit 'A', Record, p. 9). "Thereafter, the appellant was brought back to the municipal building where he executed an affidavit admitting that he buried his baby daughter alive (pp. 19, 21-22, tsn, April 21, 1976; Exhibit 'E', Record, p. 13). "On August 22 and 23, 1976, the affidavit of Maria Morales, declaring, among others, that on March 19, 1976 she gave birth to a live baby girl whom the appellant took away from her and whom she was not able to see thereafter, and that of Delfin Dris about the hearing of the crying of a newly born baby in the house of the appellant on the evening of March 19, 1976 were taken by the police, respectively (pp. 25-26, tsn, April 21, 1976; Exhibits 'F' and 'G', Record, pp. 14-15)."[5] In this appeal, de officio counsel maintains: "I. The Court erred in finding that the accused mercilessly killed the baby girl Mary Morales by burying her alive. "II. The Court erred in giving credit to the testimony of Dr. Mercedes Alamar, that the baby girl when buried was still alive. "III. The Court erred in not appreciating the unstable mind of the accused, which fact could have been favorably interpreted in his favor. "IV. The Court erred in imposing the capital punishment of death." We are far from persuaded. That the accused had killed baby Mary Morales by burying her alive is admitted by him in his extrajudicial confession, given two days after the incident, or on March 21, 1976, as follows: "3. T— Ikaw ay naririto ngayon sa aming Tanggapan at iniimbestigahan sa isang kaso na naganap sa Maluanluan, Pola, Silangang Mindoro, nalalaman mo ba kung ano ang nagawa mong kasalanan? S— Opo, nabuntisan ko po iyong aking anak na si MARIA MORALES at noong ito'y umanak ay ibinaon ko iyong bata. "4. T— Kailan naman nanganak itong si Maria? S— Noon pong ika-19 ng Marso, 1976, humigit kumulang sa ika-7:00 ng gabi. "5. T— Kailan mo naman ibinaon ang nasabing bata? S— Noon din pong gabing iyon, humigit kumulang sa ika-8:00 ng gabi. "6. T— Noon bagang ibaon mo ang naging anak nitong si Maria ay patay na ito? S— Buhay pa po ang bata. "7. T— Anong tauhin itong anak na ito ni Maria? S— Babae po."[6] On the witness stand, the accused also admitted:

"Q Likewise, stated in that information is the allegation that after your daughter Maria Morales have delivered that baby daughter of whom you are the father and finding that she was delivered alive, you buried your own daughter to hide your wrongdoing, is that true or untrue? A That is true, sir." [7] Orlando Lara, the Station Commander of Pola Oriental Mindoro, who investigated the case, also testified that the accused admitted that he buried his child while still alive. Lara testified as follows: "Q After Manuel Morales, the accused, had identified the child as his, did you ask Manuel Morales in your capacity as investigator, who buried that child? A I asked him and he told me that he was the one who buried the child, sir. Q Did you ask him why he buried the child? A He told me that to evade the shame of his family, he does not like that the baby live, sir. Q Did you ask Manuel Morales if he buried the child already dead or still alive? A He told me that when he buried the child, the latter was still alive, sir." [8] In addition to Lara's foregoing corroborative testimony, Dr. Mercedes Alamar, the medico-legal officer, declared: "Q In your autopsy findings, can you determine or were you able to determine that at the time of burial of the child she was still alive? A There were evidence that the baby was alive when she was buried. In the first place in the 'External Findings' there is one stated there that there is arching of the chest and arching of the chest means that respiration had been established. In the 'Internal Findings' 'Lungs filled the thoracic cavity and overlaps the heart'—showing also that respiration had been established. Edges are rounded and vermillion red (pinkish mottled color) in color. It shows again that the lungs had expanded. It crepitates on pressure, it shows again that there is presence of air in the lungs. On section it exudes froth. This is also an evidence that there had been a respiration. A piece of lung was floated on water showing that air had probably entered in the lungs air sacs. That the lungs when floated on water show that air entered the lungs. Stomach and intestines contains mucus and air bubbles and saliva. These are all evidence that respiration had been established before the baby's death and that the baby was still alive when she was buried." [9] The sworn statement of Maria Morales further disclosed that the baby girl she delivered on that night of March 19, 1976, without her father calling a "hilot" despite her request, was "buhay po at mabilog at malakas ang uha na malusog . . ."; that her father, the accused, took away said baby from her; and that, thereafter, she was not able to see her baby anymore. [10] There is not the shadow of a doubt, therefore, that the infant girl, who was subsequently called Mary Morales, was buried alive by the accused, her father, approximately one hour after her birth. With the exception of evident premeditation, the lower Court correctly appreciated, for having been proven at the trial although not alleged in the Information, [11] the aggravating circumstances of advantage taken of superior strength and nocturnity. Evident premeditation, however, has not been sufficiently established. There is no evidence of planning on the part of the accused to kill his infant daughter. It is not enough that premeditation be surmised; the criminal intent must be evidenced by notorious outward acts evincing the determination to commit the crime. [12] There should be evidence of a sufficient lapse of time between the determination and execution to allow him to reflect on the result of his act. [13] Such evidence is wanting herein. The baby was born about 7:00 o'clock in the evening and was buried alive about 8:00 o'clock that same night. Where the accused had only about an hour or half an hour for meditation and reflection, there is no evident premeditation. [14] But the accused took advantage of his superior strength when he took the infant from her mother immediately after her birth, naked, placenta and all, and subsequently buried the baby alive. Nighttime was likewise properly appreciated for although, subjectively, it was not purposely sought, objectively, it was a circumstance that facilitated the commission of the crime and which the accused took advantage of for purpose of impunity. [15] He could not have buried the infant with facility and with minimum fear of detection had it not been for the cover of night. The accused's testimony that he had suffered a mental blackout and did not know what he was doing at the time he buried his daughter, which condition, it is alleged, should have impelled the lower Court to order his confinement in a hospital for treatment and for determination of whether or not he was insane, is untenable. The act of the accused in refusing to call a "hilot" to help his daughter deliver, and his insistence to act as such himself, betrays a conscious and deliberate intent to hide the fact of birth from other eyes. The act of the accused in building a fire over the grave where he buried his infant daughter in order to camouflage it and to deflect it from suspicion belies his protestations that he had suffered a mental blackout at the time. On the contrary, they show deliberateness and full possession of his mental faculties to prevent discovery of a dastardly crime. It is more likely that the accused was wavering between remorse of conscience and a lurking desire to disown the crime and go scot-free if it could be proven that the child had been born dead and lifeless. Besides, the law presumes every man to be sane. [16] When a defendant

in a criminal case interposes the defense of mental incapacity, the burden of establishing that fact rests upon him.[17] With two aggravating circumstances and only one mitigating circumstance of plea of guilty, the imposition of capital punishment is inescapable[18] for this heinous, outrageous and cruel crime without parallel in Philippine jurisprudence. WHEREFORE, except with respect to the finding by the lower Court of evident premeditation, the judgment in Criminal Case No. P-904 is hereby affirmed. Costs against the accused Manuel Morales y Alas. SO ORDERED. Makasiar, Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur. Fernando, C.J. and Teehankee, J., took no part. Aquino, J., is on leave. Abad Santos, J., see separate opinion. [1] p. 1, Original Records, CFI - Branch II - Oriental Mindoro. [2] p. 7, *ibid.* [3] T.s.n., April 20, 1976, p. 4. [4] pp. 32-33, Rollo. [5] pp. 4-8, Appellee's Brief, p. 72, Rollo. [6] Questions and Answers Nos. 3 to 7, Exhibit "E". [7] T.s.n., April 30, 1976, p. 6. [8] T.s.n., April 21, 1976, pp. 17-18. [9] *Ibid.*, pp. 7-8. [10] Exhibit "F", p. 14, Original Records. [11] *People vs. Navarro*, 12 SCRA 530 (1964); *People vs. Jovellano*, 56 SCRA 157 (1974); *People vs. Angeles*, 92 SCRA 434 (1979); *People vs. Bautista*, 28 SCRA 185 (1969); *People vs. Aleta*, 72 SCRA 544 (1976); *People vs. Cananowa*, 92 SCRA 427 (1979). [12] *People vs. Ordiales*, 42 SCRA 238 (1971). [13] *People vs. Casiguran*, 94 SCRA 244 (1979). [14] *People vs. Pantoja*, 25 SCRA 468 (1968). [15] *People vs. Garcia y Cabarse*, 94 SCRA 17 (1979); *People vs. Galapia*, 84 SCRA 526 (1978); *People vs. Undong*, 66 SCRA 386 (1975); *U.S. vs. Billedo*, 32 Phil. 574 (1915); *People vs. Matbagon*, 60 Phil. 887 (1934). [16] *People vs. Bascos*, 44 Phil. 204 (1922). [17] *Ibid.* [18] Article 255, in relation to Article 64, Revised Penal Code. DISSENTING OPINION IN PART ABAD SANTOS, J.

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PER CURIAM:

The criminal perversity exhibited in these charges for Infanticide and Rape, which were jointly tried, argues strongly against the abolition of capital punishment from our statute books.

In Criminal Case No. 905 filed on April 1, 1976 before the former Court of First Instance of Oriental Mindoro, Branch II, the accused was charged with the rape of his own daughter, with the Information alleging:

"That sometime in the month of December, 1974, at around 12:00 o'clock midnight, in the Barrio of Maluanluan, Municipality of Pola, Province of Oriental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, thru force and intimidation, did then and there wilfully, unlawfully and feloniously lay and have carnal knowledge with his own 14 year old daughter Maria Morales against the will or consent of the latter.

"CONTARY TO Article 335 of the Revised Penal Code.

Pinamalayan, Or. Mindoro, April 1, 1976." [1]

In another Information filed in Criminal Case No. 904 against the same accused on the same date and before the same Court, he was charged with Infanticide committed as follows:

"That on or about the 19th day of March, 1976, at around 8:00 o'clock in the evening, in the barrio of Maluanluan, Municipality of Pola, Province of Oriental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, motivated with his diabolical desire to conceal the offense of rape he had committed against Maria Morales, his very own daughter, did then and there wilfully, unlawfully and feloniously bury alive a baby girl, christened Mary Morales y Morales, a child born out of his carnal relationship with Maria Morales, who then was only an hour old from birth, as a result of which caused the former her unexpected and untimely demise.

"CONTRARY TO Article 255 of the Revised Penal Code.

Pinamalayan, Or. Mindoro, April 1, 1976."[2]

The accused pleaded guilty to both charges upon arraignment. Notwithstanding, the lower Court followed the proper and prudent course and ordered the taking of the accused's testimony pursuant to the doctrines enunciated by this Court.

Considering that the accused then gave conflicting testimonies as to whether or not the baby was still alive when he buried her,[3] the lower Court substituted pleas of not guilty in both cases and set them jointly for trial. At the trial, the accused again admitted the commission of the charges as alleged in the Information as well as the contents of his extrajudicial confession (Exhibit "E").

After hearing, the Trial Court rendered a joint Decision, with the following decretal portion:

"WHEREFORE, the Court finds accused Manuel Morales y Alas guilty beyond reasonable doubt of the crime of rape as defined and penalized in Article 335 of the Revised Penal Code in the information filed by the Provincial Fiscal under Criminal Case No. P-905 and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to indemnify Maria Morales, the offended party in the amount of P10,000.00. Said accused is also found guilty beyond reasonable doubt of the crime of infanticide in Criminal Case No. P-904, as defined and penalized in Article 255 of the Revised Penal Code, with evident premeditation and qualified by the use of superior strength of the accused and by nocturnity, with only one mitigating circumstance which is his plea of guilty, and is hereby sentenced to suffer the capital punishment of DEATH and to indemnify the heirs of the victim Mary Morales y Morales the sum of P12,000.00, without subsidiary imprisonment in case of insolvency in view of the nature of the principal penalty. The said accused is condemned likewise to pay the costs in both cases.

.....

"IT IS SO ORDERED."[4]

The accused did not appeal from the conviction for Rape. It is the imposition of the death penalty in the Infanticide case that is now before us on automatic review.

We quote the evidence for the prosecution from the People's Brief:

"Sometime in the month of December, 1974, at around midnight at Maluanluan, Pola, Oriental Mindoro, accused-appellant Manuel Morales, through force and intimidation, was able to have carnal knowledge of his unmarried daughter Maria Morales. Thereafter, the appellant repeated his misdeeds several times (p. 5, tsn, April 30, 1976; Answer to Question No. 3, Affidavit of Maria Morales, Record, p. 14). Consequently, Maria Morales got pregnant and on March 19, 1976, at around 7:00 o'clock P.M., with the help of the appellant, she gave birth to a live baby girl named Mary Morales inside their house in Barrio Maluanluan. About an hour later, the appellant took the baby from the mother, brought her out of the house, and buried her alive near their house (Answer to Questions Nos. 4, 5, 6, 8, and 11, Affidavit of Manuel Morales, Record, p. 13; pp. 3-4, 8, tsn, April 20, 1976; pp. 5-8, tsn, April 30, 1976). To cover the place where he buried the baby, the appellant built a fire over it (p. 14, tsn, April 21, 1976; Answer to Question No. 4, Affidavit of Delfin Dris, Record, p. 15).

"At about 7:00 P.M. of the following day, Jesus Aytona, an uncle of Maria Morales went to the office of Orlando Lara, the Station Commander of Pola, Oriental Mindoro and reported to him that as per information his niece delivered a baby but that the latter could not be found. Then Lara, together with some members of the police, proceeded to Barrio Maluanluan. A neighbor of the appellant, Delfin Dris, reported to Lara that in the night of March 19, 1976, he heard the crying of a baby but that later it stopped (pp. 12-13, tsn, April 21, 1976).

"In the morning of the next day, Lara invited the appellant to the station to which the latter agreed (p. 14, tsn, *ibid*). Thereafter, Lara returned to the scene of the crime and investigated the matter. With the help of Dris,

Lara found the baby buried a foot deep in a place about 15 meters from the appellant's house (pp. 14-16, tsn, *ibid*).

"Lara then summoned the help of Dra. Alamar who conducted an autopsy on the body of the baby. He also ordered a sergeant to fetch the appellant so that the latter could identify the body of the baby (p. 15, tsn, April 21, 1976).

"Appellant arrived and then identified the body of the baby as his daughter by Maria Morales, his own daughter, whom he buried alive to cover the shame of his family because of what he did to the latter (pp. 17-18, tsn, *ibid*). Pictures were also taken at the scene of the crime (pp. 13-21, tsn, April 21, 1976; Exhibits 'C' and 'D').

"The 'Post Mortem Findings' on baby Mary Morales stated:

I. EXTERNAL FINDINGS:

a) A dead new born baby girl with the placenta still attached was dug up approximately 100 meters away from the residence of Manuel Morales under a banana tree.

b) Purplish black cyanosis of the face, neck and all parts of the body were clearly observed.

c) At the early stage of decomposition, there is still the evidence of the caput succedaneum and the baby is covered with vernix caseosa. The head is covered with fine lanugo hair and the nails projected from the fingers.

d) CHEST—There is arching of the chest.

II. INTERNAL FINDINGS:

a) Lungs filled the thoracic cavity and overlaps the heart. Edges are rounded and vermillion red (pinkish mottled color) in color. It crepitates on pressure: On section it exudes froth. A piece of the lungs floated on water showing that air had probably entered in the lungs air sacs. It is spongy. It weighs more or less 900 gms.

b) Stomach and intestines—contains mucus and air bubbles and saliva.

III. CONCLUSION:

MOST PROBABLY CARDIO-RESPIRATORY FAILURE DUE TO ASPHYXIATION CAUSED THE DEATH OF THE CHILD". (Exhibit 'A', Record, p. 9).

"Thereafter, the appellant was brought back to the municipal building where he executed an affidavit admitting that he buried his baby daughter alive (pp. 19, 21-22, tsn, April 21, 1976; Exhibit 'E', Record, p. 13).

"On August 22 and 23, 1976, the affidavit of Maria Morales, declaring, among others, that on March 19, 1976 she gave birth to a live baby girl whom the appellant took away from her and whom she was not able to see thereafter, and that of Delfin Dris about the hearing of the crying of a newly born baby in the house of the appellant on the evening of March 19, 1976 were taken by the police, respectively (pp. 25-26, tsn, April 21, 1976; Exhibits 'F' and 'G', Record, pp. 14-15)."[5]

In this appeal, *de officio* counsel maintains:

"I. The Court erred in finding that the accused mercilessly killed the baby girl Mary Morales by burying her alive.

"II. The Court erred in giving credit to the testimony of Dr. Mercedes Alamar, that the baby girl when buried was still alive.

"III. The Court erred in not appreciating the unstable mind of the accused, which fact could have been

favorably interpreted in his favor.

"IV. The Court erred in imposing the capital punishment of death."

We are far from persuaded.

That the accused had killed baby Mary Morales by burying her alive is admitted by him in his extrajudicial confession, given two days after the incident, or on March 21, 1976, as follows:

"3. T—

Ikaw ay naririto ngayon sa aming Tanggapan at iniimbestigahan sa isang kaso na naganap sa Maluanluan, Pola, Silangang Mindoro, nalalaman mo ba kung ano ang nagawa mong kasalanan?

S—

Opo, nabuntisan ko po iyong aking anak na si MARIA MORALES at noong ito'y umanak ay ibinaon ko iyong bata.

"4. T— Kailan naman nanganak itong si Maria?

S—

Noon pong ika-19 ng Marso, 1976, humigit kumulang sa ika-7:00 ng gabi.

"5. T— Kailan mo naman ibinaon ang nasabing bata?

S—

Noon din pong gabing iyon, humigit kumulang sa ika-8:00 ng gabi.

"6. T—

Noon bagang ibaon mo ang naging anak nitong si Maria ay patay na ito?

S— Buhay pa po ang bata.

"7. T— Anong tauhin itong anak na ito ni Maria?

S— Babae po."[6]

On the witness stand, the accused also admitted:

"Q

Likewise, stated in that information is the allegation that after your daughter Maria Morales have delivered that baby daughter of whom you are the father and finding that she was delivered alive, you buried your own daughter to hide your wrongdoing, is that true or untrue?

A That is true, sir."[7]

Orlando Lara, the Station Commander of Pola Oriental Mindoro, who investigated the case, also testified that the

accused admitted that he buried his child while still alive. Lara testified as follows:

"Q

After Manuel Morales, the accused, had identified the child as his, did you ask Manuel Morales in your capacity as investigator, who buried that child?

A

I asked him and he told me that he was the one who buried the child, sir.

Q Did you ask him why he buried the child?

A

He told me that to evade the shame of his family, he does not like that the baby live, sir.

Q

Did you ask Manuel Morales if he buried the child already dead or still alive?

A

He told me that when he buried the child, the latter was still alive, sir."[8]

In addition to Lara's foregoing corroborative testimony, Dr. Mercedes Alamar, the medico-legal officer, declared:

"Q

In your autopsy findings, can you determine or were you able to determine that at the time of burial of the child she was still alive?

A

There were evidence that the baby was alive when she was buried. In the first place in the 'External Findings' there is one stated there that there is arching of the chest and arching of the chest means that respiration had been established. In the 'Internal Findings' 'Lungs filled the thoracic cavity and overlaps the heart'—showing also that respiration had been established. Edges are rounded and vermillion red (pinkish mottled color) in color. It shows again that the lungs had expanded. It crepitates on pressure, it shows again that there is presence of air in the lungs. On section it exudes froth. This is also an evidence that there had been a respiration. A piece of lung was floated on water showing that air had probably entered in the lungs air sacs. That the lungs when floated on water show that air entered the lungs. Stomach and intestines contains mucus and air bubbles and saliva. These are all evidence that respiration had been established before the baby's death and that the baby was still alive when she was buried."[9]

The sworn statement of Maria Morales further disclosed that the baby girl she delivered on that night of March 19, 1976, without her father calling a "hilot" despite her request, was "buhay po at mabilog at malakas ang uha na malusog . . ."; that her father, the accused, took away said baby from her; and that, thereafter, she was not able to see her baby anymore.[10]

There is not the shadow of a doubt, therefore, that the infant girl, who was subsequently called Mary Morales, was buried alive by the accused, her father, approximately one hour after her birth.

With the exception of evident premeditation, the lower Court correctly appreciated, for having been proven at the trial although not alleged in the Information,[11] the aggravating circumstances of advantage taken of superior strength and nocturnity.

Evident premeditation, however, has not been sufficiently established. There is no evidence of planning on the part of the accused to kill his infant daughter. It is not enough that premeditation be surmised; the criminal intent must be evidenced by notorious outward acts evincing the determination to commit the crime.[12] There should be evidence of a sufficient lapse of time between the determination and execution to allow him to reflect on the result of his act.[13] Such evidence is wanting herein. The baby was born about 7:00 o'clock in the evening and was buried alive about 8:00 o'clock that same night. Where the accused had only about an hour or half an hour for meditation and reflection, there is no evident premeditation.[14]

But the accused took advantage of his superior strength when he took the infant from her mother immediately after her birth, naked, placenta and all, and subsequently buried the baby alive. Nighttime was likewise properly appreciated for although, subjectively, it was not purposely sought, objectively, it was a circumstance that facilitated the commission of the crime and which the accused took advantage of for purpose of impunity.[15] He could not have buried the infant with facility and with minimum fear of detection had it not been for the cover of night.

The accused's testimony that he had suffered a mental blackout and did not know what he was doing at the time he buried his daughter, which condition, it is alleged, should have impelled the lower Court to order his confinement in a hospital for treatment and for determination of whether or not he was insane, is untenable. The act of the accused in refusing to call a "hilot" to help his daughter deliver, and his insistence to act as such himself, betrays a conscious and deliberate intent to hide the fact of birth from other eyes. The act of the accused in building a fire over the grave where he buried his infant daughter in order to camouflage it and to deflect it from suspicion belies his protestations that he had suffered a mental blackout at the time. On the contrary, they show deliberateness and full possession of his mental faculties to prevent discovery of a dastardly crime. It is more likely that the accused was wavering between remorse of conscience and a lurking desire to disown the crime and go scot-free if it could be proven that the child had been born dead and lifeless. Besides, the law presumes every man to be sane.[16] When a defendant in a criminal case interposes the defense of mental incapacity, the burden of establishing that fact rests upon him.[17]

With two aggravating circumstances and only one mitigating circumstance of plea of guilty, the imposition of capital punishment is inescapable[18] for this heinous, outrageous and cruel crime without parallel in Philippine jurisprudence.

WHEREFORE, except with respect to the finding by the lower Court of evident premeditation, the judgment in Criminal Case No. P-904 is hereby affirmed.

Costs against the accused Manuel Morales y Alas.

SO ORDERED.

Makasiar, Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Fernando, C.J. and Teehankee, J., took no part.

Aquino, J., is on leave.

Abad Santos, J., see separate opinion.

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- [1] p. 1, Original Records, CFI - Branch II - Oriental Mindoro.
- [2] p. 7, *ibid.*
- [3] T.s.n., April 20, 1976, p. 4.
- [4] pp. 32-33, Rollo.
- [5] pp. 4-8, Appellee's Brief, p. 72, Rollo.
- [6] Questions and Answers Nos. 3 to 7, Exhibit "E".
- [7] T.s.n., April 30, 1976, p. 6.
- [8] T.s.n., April 21, 1976, pp. 17-18.
- [9] *Ibid.*, pp. 7-8.
- [10] Exhibit "F", p. 14, Original Records.
- [11] *People vs. Navarro*, 12 SCRA 530 (1964); *People vs. Jovellano*, 56 SCRA 157 (1974); *People vs. Angeles*, 92 SCRA 434 (1979); *People vs. Bautista*, 28 SCRA 185 (1969); *People vs. Aleta*, 72 SCRA 544 (1976); *People vs. Cananowa*, 92 SCRA 427 (1979).
- [12] *People vs. Ordiales*, 42 SCRA 238 (1971).
- [13] *People vs. Casiguran*, 94 SCRA 244 (1979).
- [14] *People vs. Pantoja*, 25 SCRA 468 (1968).
- [15] *People vs. Garcia y Cabarse*, 94 SCRA 17 (1979); *People vs. Galapia*, 84 SCRA 526 (1978); *People vs. Undong*, 66 SCRA 386 (1975); *U.S. vs. Billedo*, 32 Phil. 574 (1915); *People vs. Matbagon*, 60 Phil. 887 (1934).
- [16] *People vs. Bascos*, 44 Phil. 204 (1922).
- [17] *Ibid.*
- [18] Article 255, in relation to Article 64, Revised Penal Code.
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DISSENTING OPINION IN PART

ABAD SANTOS, J.:

I do not believe that nocturnity should be appreciated against the appellant. That the killing of the infant took place at night was merely incidental; night-time was not purposely chosen to facilitate the commission of the crime. For it must be remembered that the infant was born on March 19, 1976, at 7:00 o'clock in the evening and she was killed one hour later. With superiority cancelled by the plea of guilty, the appropriate penalty is reclusion perpetua. The crime committed by the appellant is repulsive but he should be punished according to law.

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