

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AURELIO SABATER, TRANQUILINO SABATER, VICTORINO CUENCA
AND ESTANITO CRISOSTOMO, ACCUSED, VICTORINO CUENCA AND
ESTANITO CRI...**

G.R. No. L-38169. February 23, 1978

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/bf3c2115f899/>

AQUINO, J.:

This is a murder case. According to the evidence of the prosecution, at around eight o'clock in the evening of December 16, 1964 Maximo Papa, a twenty-five year old jeepney driver, and his seven-year old son, Maximo Papa, Jr., residing at the corner of Rodriguez Avenue and General Lacuna Street, Bangkal, Makati, Rizal, stepped out of their house in order to buy food.

Upon reaching the street, father and son encountered Aurelio Sabater, Tranquilino Sabater, Victorino Cuenca and Estanito Crisostomo. The four were apparently waiting for Maximo Papa. They dragged him to a nearby warehouse of the Gilman Enterprises located at the corner of Rodriguez Avenue and General Vicente Lim Street. Thereafter, a gunshot was heard from the warehouse. Maximo Papa was seen running out of the warehouse followed by the four malefactors.

Maximo Papa fell on the ground near the street corner. Cuenca shot him four or five times. Cuenca and Aurelio Sabater fled in the direction of General Vicente Lim Street. Tranquilino Sabater and Estanito Crisostomo reentered the warehouse.

The Makati policemen brought Maximo's body to the morgue. The medico-legal officer of the National Bureau of Investigation (NBI), who conducted an autopsy, found that the victim sustained six entrance gunshot wounds. The bullets injured his vital organs, such as the brain, heart and liver. The wounds caused his death (Exh. B).

The tragic occurrence was witnessed by the victim's son and wife. Mrs. Papa, who had been informed by a person named Pol, the owner of the jeepney being driven by her husband, that some persons were mad at her husband, had followed him at a distance after he had gone out of the house. She had some premonition that something might happen to him. She had known the accused for more than twelve years because they were her neighbors. Her statement was taken by the police on January 8, 1964 (should be 1965) (Exh. A).

On January 8, 1965 the police filed a complaint for murder against the four accused in the municipal court of Makati. They could not be apprehended. It was only almost eight years after the killing or, on November 15, 1972, when Cuenca surrendered voluntarily. Two days later, Crisostomo also surrendered. On December 8, 1972 the fiscal filed an information for murder against Cuenca and Crisostomo in the Court of First Instance of Rizal, Pasig Branch. The Sabater brothers have not been arrested.

After trial, the lower court convicted Cuenca and Crisostomo of murder, sentenced each of them to "life imprisonment" and ordered them to indemnify the heirs of the victim in the sum of P15,000. The accused

appealed to this Court.

They contend that the trial court erred in giving credence to the evidence for the prosecution and in not upholding their defense of alibi.

Cuenca, a 43-year old mechanic, residing at 3422 General Vicente Lim Street, Bangkal, Makati, testified that on December 16, 1964 (when the killing was perpetrated), he was in his house because he had to repair the jeepney of Poe Caballero, a resident of Las Piñas, Rizal. He said that he heard the gunshots. He learned that a driver named Susing was shot. Caballero corroborated Cuenca's testimony.

The alibi of Crisostomo, a 41-year old fisherman allegedly residing at Bay, Laguna, is that he knew nothing about the shooting of Papa because he was in his residence when Papa was shot. He admitted that Tranquilino Sabater and Aurelio Sabater are his mother's brothers. Cuenca testified that Crisostomo was his friend and that on some occasions they were together (28-29 tsn, April 12, 1973).

The defense through Cirilo Nonato, a 42-year old mason residing in Bangkal, tried to prove that Papa was shot by Aurelio Sabater. The trial court did not believe Nonato's testimony because he never reported to the police that Papa was shot by Aurelio Sabater. Nonato admitted that he was a friend of the accused. Since Aurelio Sabater was killed later by Makati policemen, it would seem that the defense found it convenient to make a dead man responsible for the killing of Papa.

We hold that the appeal is devoid of merit. The appellants were positively identified by the victim's widow and son who made separate sketches of the scene of the crime which was well-lighted (Exh. X and Y). Those sketches gave verisimilitude to their testimonies. The widow testified that she was paralyzed (natigilan) with fear when she saw the killing of her husband being consummated in her presence. She could not do anything. Moreover, the accused went into hiding for nearly eight years to avoid being prosecuted. Flight is an indicium of guilt.

The appellants admitted that they were unaware of any reason why the victim's widow and son would frame them up. They argued that the wife was not an eyewitness because she testified that she was merely informed by a person named Pol that her husband was killed.

The fact is that the wife in her statement to the police three weeks after the killing declared that Pol had warned her that her husband might be liquidated and that she witnessed the killing because she followed her husband when the latter went out of their residence (Exh. A).

Appellants' assertion that Pol was their witness, Poe Caballero, is false because, as already stated, Pol was the victim's employer who had alerted Mrs. Papa to the contingency that her husband might be killed by his enemies (No. 8, Exh. A). Mrs. Papa told the police that five days before the shooting her husband had informed her that their neighbor, Tranquilino Sabater (the uncle of appellant Crisostomo), had harbored some resentment against Papa.

The appellants impugn the testimony of the victim's son on the ground that he was only seven years old when he witnessed the shooting, and that he testified eight years later or long after that extraordinary event. That contention is not valid.

The court in several cases had given credence to the testimony of children who had witnessed the killing of their parents. In the case of Maximo, Jr., the horrible manner in which his father was killed must have been indelibly engraved in his uncluttered memory so much so that the passage of time could not efface it. When he testified, he was already fifteen years old and a third year high school student. He was certainly a competent witness.

Cuenca's alibi is a glaringly feeble defense. His residence was only a short distance from the scene of the crime.

Mrs. Papa's allegation in her statement that Cuenca after the shooting fled in the direction of General Vicente Lim Street could mean that he went home since his residence was located on that street.

The trial court did not err in disbelieving Crisostomo's alibi for being uncorroborated and because he was indubitably identified by the victim's widow and son. His participation in the killing shows that he conspired with his uncles and with Cuenca, the gunwielder, in encompassing Papa's death.

It may be noted that Cuenca, Crisostomo and the three Sabater brothers (including Epifanio) were charged with murder in the Court of First Instance of Rizal, sala of Judge Pedro Navarro, in connection with the killing of Donato Sarte on January 5, 1965 (Exh. P, Criminal Case No. 14374). (The killing in the instant case was perpetrated on December 16, 1964). That other case was dismissed provisionally because the prosecution witnesses had "disappeared" (Exh. P-1).

In the instant case, the Makati municipal court issued on January 9, 1965 a warrant for the arrest of the Sabater brothers, Cuenca and Crisostomo. Cuenca and Crisostomo surrendered voluntarily to the municipal judge on November 15 and 17, 1972, respectively, or more than seven years after the issuance of the warrant of arrest.

Under those circumstances, voluntary surrender to the authorities cannot be considered mitigating. The surrender was not spontaneous. The appellants surrendered because after having been fugitives from justice for more than seven years, they found it impossible to live in hostility and resistance to the authorities, martial law having been declared (See *People vs. Sakam*, 61 Phil. 27; 49-51 tsn April 12, 1973). They wanted to avoid the fate of their comrade, Aurelio Sabater, who was killed in an encounter with Makati policemen.

Premeditation, treachery and abuse of superiority were alleged as qualifying circumstances in the information. Premeditation was not proven. But treachery and abuse of superiority attended the killing. The four assailants unexpectedly grabbed the unarmed victim and brought him to the warehouse so that they could kill him with impunity. They utilized their combined strength to overpower the helpless victim.

There being no generic mitigating and aggravating circumstances, the penalty of reclusion temporal maximum to death for murder should be imposed in its medium period, which is reclusion perpetua (Arts. 14[15 and 16], 64[1] and 248, Revised Penal Code.)

WHEREFORE, the lower court's judgment is affirmed with the slight modification that the penalty on each of the accused should be termed reclusion perpetua and that they are solidarily liable for the indemnity. Costs against the appellants.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.