

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUIS DELMENDO Y BAL-OT AND FLORENTINO DELMENDO Y IPAC, DEFENDANTS-APPELLANTS.

G.R. No. L-32146. November 23, 1981

Ponente: GUERRERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d0ba5aff70ee/>

GUERRERO, J.:

This is a case where the accused, Luis Delmendo y Bal-ot and Florentino Delmendo y Ipac, having volunteered to donate their blood to save the life of one, Alfredo Buccat, who had been earlier shot in his house in the evening of February 26, 1969 and in fact, the accused Luis Delmendo did donate 250 cc. of his blood, were later charged with the murder of said Alfredo Buccat upon the affidavits of the widow, Magdalena Buccat, and her son, Elpidio Buccat, who were both present at the commission of the crime, which affidavits were given to the police authorities on March 14, 1969 or 16 days after the shooting of Alfredo Buccat.

The information against the two accused-appellants charges ?

"That on or about the 26th day of February, 1969, at about 7:30 in the evening, in barrio Agtupal, Municipality of Bacnotan, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused namely, LUIS DELMENDO and FLORENTINO DELMENDO, conspiring together and mutually aiding one another, with intent to kill and with treachery and evident pre-meditation did then and there willfully, unlawfully and feloniously shoot one ALFREDO BUCCAT inflicting upon said offended party. Alfredo Buccat the following wounds:

'Gunshot wound entering left anterior chest at 1st interspace, mid-clavicular line, going thru and shattering manu-brium sterni, going thru right internal mammary vessels, thru right upper lobe of right lung including its deep vessels, out thru right axilla and thru pos-terior aspect of right upper arm.'

which caused the death of the said Alfredo Buccat.

That the following aggravating cir-cumstances were attendant in the commission of the offense:

1. That the crime was committed in the nighttime.
2. That the crime is committed in the dwelling place of the offended party.

CONTRARY TO Article 248 of the Revised Penal Code."

The accused-appellants pleaded not guilty, hence, the case proceeded to trial. Upon completion thereof, the trial court convicted the two accused in its decision promulgated May 4, 1970, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered finding the accused LUIS DELMENDO and FLO-RENTINO DELMENDO guilty beyond reasonable doubt of the crime of Murder as charged qualified by treachery. The court consi-ders the mitigating circumstance of drun-keness in favor of the accused to offset the aggravating circumstance of dwelling, and hereby sentences each one of them to suffer LIFE IMPRISONMENT, to

indemnify the heirs of the deceased in the amount of P12,000.00 plus moral damages of P5,000.00 and exemplary damages of P3,000.00 without subsidiary imprisonment in case of insolvency, plus the accessory penalties provided for by law, and to pay the costs."

The two accused appealed the decision of conviction but the records were erroneously transmitted to the Court of Appeals. On June 17, 1970, the same were forwarded to this Court.

In assailing the decision under review, the accused-appellants submit the following assignment of errors:

1. The trial court erred in finding that "at a distance of about nine meters Luis fired at the deceased." (p. 20, Decision.)
2. The trial court erred in concluding that "the identity of Luis as the gun wielder was corroborated by the findings of Col. Minardo Finones, Chief of the P.C. Central Laboratory showing that Luis Delmendo was positive for powder burns." (p. 21, Decision.)
3. The trial court erred in holding that "with the positive identification of both accused, the defense of alibi interposed by the accused, inherently weak as it is, all the more becomes even weaker and is not worthy of credit." (p. 22, Decision.)
4. The trial court erred in finding that "Florentino Delmendo conspired with Luis Delmendo to commit the offense." (p. 23, Decision.)
5. The trial court erred in convicting defendants-appellants of the crime of murder qualified by treachery, in sentencing each one of them to suffer life imprisonment, to indemnify the heirs of the deceased in the amount of P12,000.00 plus moral damages of P5,000.00 and exemplary damages of P3,000.00, instead of acquitting them upon the ground of reasonable doubt. (p. 25, Decision.) (Brief for Defendants-Appellants, pp. 1-3).

The crucial issue in the case at bar is the identities of the assailants who shot the victim, Alfredo Buccat, in his house in Barrio Agtupal, Municipality of Bacnotan, La Union in the evening of February 26, 1969. The wife of the deceased and his son, Magdalena Buccat and Elpidio Buccat, respectively, point to the two defendant-appellants as the malefactors. Both accused, however, stoutly denied the accusation against them.

The version of the prosecution may be narrated in the following recital, quoting the People's Brief, pp. 2-4, to wit:

"At about 10:00 o'clock in the morning of February 26, 1969, the appellant Florentino Delmendo arrived at the house of the spouses Alfredo and Magdalena Buccat in barrio Agtupal, Bacnotan, La Union, while it was being repaired (pp. 90, 91, 104, 161, t.s.n.). After helping in the work and drinking basi that was served by Magdalena to the workers, at about 12:00 o'clock noon, Florentino left only to return at about 1:00 o'clock in the afternoon of the same day (pp. 105, 106, t.s.n.). Not long after Florentino arrived, he had a quarrel with his brother Federico and they almost bled each other but the proverbial cooler heads intervened to pacify them (pp. 106, 107, 108, 109, t.s.n.). After they had been pacified, Magdalena advised Federico to go home to avoid further trouble (pp. 107, 108, 109, t.s.n.). Soon thereafter Florentino left, sore at her for sending his brother home, otherwise he would have killed him (pp. 106, 108, t.s.n.). Later on he returned with his co-appellant Luis Delmendo (p. 106, t.s.n.).

Upon seeing the two appellants, Alfredo, who was in the yard talking with Cipriano Delarna and Eniong Oredena, told his son Elpidio not to bring out basi any-more because the 'drunks are here again,' referring to the appellants (pp. 83, 91, 92, 110, 148, 158, 169, 170, t.s.n.), whereupon Cipriano and Eniong left while father and son ascended their house for supper (pp. 82, 83, 148, 149, t.s.n.). While Alfredo and his family were having supper, the appellants went up to the house (pp. 83, 94, 152, t.s.n.). Luis sat on the window sill east of the dining table where the Buccats were eating, his feet dangling out of the window, while Florentino stood beside him (pp. 83, 93, 152, 166, t.s.n.). A while thereafter, Florentino vomited, causing the spouses to

complain of the appellants' bad manners, especially at a time that they were eating (pp. 84, 85, 152, 153, 157, t.s.n.). Luis stood up and whis-pered something to Florentino (pp. 84, 85, 153, 168, t.s.n.). Afterwards they left east-ward following the pathway to their houses (pp. 85, 95, t.s.n.).

Later on the appellants returned as the Buccat family had just finished supper and while in the yard at a distance of about nine meters, appellant Luis fired several times at Alfredo from behind (pp. 75, 76, 78, 81, 95, 117, 118, 154, 155, 170, 173, 174, t.s.n.). Alfredo slumped and fell down to the floor (pp. 97, 119, t.s.n.). Magdalena and her son Elpidio ran to the kitchen and screamed for help as they saw the appellants fleeing northward (pp. 81, 96, 119, 156, 174, t.s.n.).

The stricken victim was rushed to the Lorma Hospital in San Fernando, La Union (p. 86, t.s.n.), where he was attended to by Dr. Rufino Macagba, Jr., director of the hospital (pp. 40, 41, t.s.n.), but expired at about 11:20 o'clock in the evening due to severe loss of blood caused by the gun-shot wound sustained on the chest (pp. 40, 41, 42, 43, 44, 45, t.s.n.; Exhs. "F" and "G")."

The principal witnesses for the prosecution are Magdalena Buccat, the widow, and Elpidio Buccat, son of the victim. The testimony of the widow, lifted from the decision of the trial court, is as follows:

"MAGDALENA BUCCAT, widow of the deceased, testified that in the evening of February 26, 1969, she was at home and that right after supper with her deceased husband and their two children Elpidio and Gloria, and an aunt of her husband, they tarried awhile on the table where they ate. That was on the cemented ground floor of their two-storey house.

While thus lingering after supper at seven o'clock that evening she saw the accused Luis Delmendo with Florentino Del-mendo at their yard. Then she saw Luis fire at her husband who, upon being hit, collapsed to the floor from the chair where he was seated. Immediately she ran for help towards the kitchen door where she again saw accused Luis and Florentino running towards the north.

She did not know who finally brought her husband to the Lorma Hospital at San Fernando, La Union, but when she followed to the hos-pital at 10 o'clock that evening her husband was already dead.

On cross-examination, she disclosed that that same night a policeman by the name of Espejo came to investigate. She admitted that she did not tell anyone who the assailant of her husband was except to her son Elpidio who likewise saw the assailant. But she said it was probable that she told policeman Espejo that night. She also admitted that she advised her son Elpidio not to tell anyone as yet who the assailant was because, according to her, she was still afraid 'they might come back for us!' Asked the distance between the assailant to her husband when shot, she dis-closed that the assailant was about six meters (nine meters by actual measurement).

That she recognized Luis fire at that distance as he was illuminated by the kero-sene lamp near the window and that it was a clear night with the moon shining at one o'clock high."

The material testimony of the son Elpidio is like-wise recited in the trial court's decision, and We quote:

"ELPIDIO BUCCAT, 19, son of the victim, testified that x x x.

After the Buccat family had finished their supper, the victim rested for a while on the same chair by the dining table but had changed his original sitting position such that his back was turned against the dining table. Witness on the other hand remained seated by the table facing west in his original position now tinkering with the picture frame. He was reaching for the picture frame when he saw both accused suddenly appear at the western window of the dining room. He saw Luis Delmendo aim and fire at his father. At this precise moment, Florentino was about one meter behind Luis Delmendo. After the gun fired, witness ran to the kitchen and out of the house to report the shooting to a neighbor, Herminio Marquez.

Witness Elpidio Buccat did not reveal the identities of the assailants of his father that same night except to his mother who advised him not to reveal their identities yet to anybody for fear of reprisal."

Corporal Modesto Espejo of the Bacnotan Police Force was the first police authority who, upon learning of the incident about 8:00 o'clock that evening, proceeded immediately to the scene at Barrio Agtipal with Patrolman Partible and two enlisted PC men assigned to Bacnotan. We also quote hereunder Cpl. Espejo's testimony as cited in the decision:

"Upon their arrival, the deceased was no longer there. He learned he was brought to the Lorma Hospital at San Fernando by men from barrio Agtipal. He interrogated the widow and their son and one Tinoy Delmendo (He was not sure of the surname), but did not reduce them in writing because he turned over the investigation to Sgt. Camilo Marquez. He gathered by his routine police investigation that same evening that the deceased was shot in his house at barrio Agtipal. He recovered six empty shells west of the house on the ground under the window, and a slug inside the house embedded in a window frame east of the house.

Later he made a verbal report to the chief of police to whom he also turned over the six empty shells (Exh. D) and one slug (Exh. E). At the municipal building a guard informed him that the suspects were also at the hospital. He transmitted the information to Pat. Marquez who was then at the hospital."

The evidence for the prosecution further show that the accused Luis Delmendo and Florentino Delmendo were subjected to paraffin tests at the Provincial Constabulary Headquarters in San Fernando, La Union where they were taken by Sgt. Camilo Marquez of the Police Force at the time said accused Luis Delmendo and Florentino Delmendo were at the Lorma Hospital in San Fernando, La Union where the two had gone to volunteer with other barriomates to donate blood to the wounded Alfredo Buccat. Paraffin casts of both hands of Luis Delmendo, Florentino Delmendo and Fernando Ganiola were taken by Staff Sgt. Godoy on 27 February 1969, 0830H. The chemistry report No. C-91-69 marked Exhibit "B" contained the following findings: "1. Luis Delmendo - Both hands gave POSITIVE result to the test for the presence of gunpowder residue (Nitrates); and 2. Fernando Ganiola and Florentino Delmendo - NEGATIVE to the test for the presence of gunpowder residue (Nitrates)."

The trial court further summarized the testimony of Sgt. Camilo Marquez, who took over the investigation of the case from Cpl. Modesto Espejo. Sgt. Marquez admitted that the deceased Alfredo Buccat was his second cousin and, therefore, a close relative of the aggrieved family. According to the decision, p. 5; Records, p. 169.

"He tried to talk to the widow and son but they could not give him some enlightenment as they had not then recovered their composure and were hysterical. Others he interviewed refused to talk 'probably because they did not have knowledge of the crime.' Thereafter, however, he tried to find clues, and on March 17, 1969, he obtained a written statement of one Cipriano Delarna."

It is a fact that it was only on March 14, 1969 or after 16 days from the day of the shooting incident that the widow, Magdalena, and her son, Elpidio, both went to the office of the Chief of Police of Bacnotan, La Union and there and then, they gave their written statements about the shooting, identifying the accused, Luis Delmendo and Florentino Delmendo, as the assailants who shot Alfredo Buccat. Their affidavits were subscribed and sworn to before Municipal Atty. and Special Counsel Eufemio R. Molina on March 19, 1969.

We come now to defense.

The version of the defense as maintained in their Brief, pp. 10-11, is that "Between 4:30 and 5:00 o'clock in the afternoon, on Feb. 26, 1969, Florentino was called by Luis to repair the latter's bicycle. They then proceeded to the house of Pedro Valmonte to borrow his tools. After repairing the bicycle for more than one hour, both proceeded to the store of Magdalena Buccat, widow of the deceased Alfredo Buccat, where they drank gin and coca-cola. While thus drinking, Florentino Almodovar came along, and Luis invited him to drink with them. The

three drank in the store for about 30 minutes. After drinking, all three proceeded east towards the house of barrio captain Revelino Balen to fix the schedule of workers in a road construction project in the barrio, but upon passing the house of a certain Antonio Corpuz, Florentino Almodovar stayed behind, while Florentino and Luis went on their way to the house of said barrio captain. After having stayed in the house of the barrio captain for about 30 minutes, he accompanied Luis to his house for the purpose of borrowing rice. From the house of Luis, Florentino went home. (pp. 282-303, TSN, March 4, 1970)."

Testifying for the defense, Revelino Balen, the barrio captain of Agtupal, Bacnotan, La Union, declared that between the hours of 7:00 and 8:00 in the evening of February 26, 1969 he was working in his flue-curing barn in Agtupal when he heard gun reports from a northerly direction. He proceeded northward to investigate the cause of the gunfire when he met children who were running southward and reporting, "Tata Pidong was shot." He then proceeded to the house of Alfredo Buccat, the victim, and found his bleeding body inside the kitchen. There were many people near the crime scene. He called for a tri-cycle to bring the victim to the hospital. On the way to the Lorma Hospital, he asked the victim who shot him, but the latter answered "I do not know." He saw both accused at the hospital but did not know their purpose in going there.

Pedro Valmonte, barrio councilman of Agtupal, also testified for the defense, saying that between 7:00 and 8:00 p.m. on the date of the incident, he heard gun reports and when he heard the sound of a horn giving the alarm, he proceeded to the house of the victim which was rumored to be the source of the gun reports. He came upon the victim loaded into a tricycle for the purpose of rushing him to a hospital. He also stated that he inquired from Magdalena Buccat and her son Elpidio Buccat if they knew the assailants and they replied in the negative. He asked Magdalena where the assailant was at the time he fired at the victim and Magdalena pointed to the southeastern part of her house saying, "That is the place where the flash of light came from." Valmonte also declared that he searched for evidence particularly empty shells to help authorities solve the crime but he could not find any at the place pointed to by the widow. He, however, found six empty shells about a meter below the window west of the house and he covered them with a wash basin to avoid them being touched by anyone.

This witness further testified that he campaigned for blood-donors willing to give their blood for the victim, and two caretela loads of people responded to the request for blood, he accompanying them up to the national road where they were later on transported to the Lorma Hospital where the victim was taken. He also said that both accused, Luis Delmendo and Florentino Delmendo, were among those who volunteered to donate their blood to the victim.

As to the fact of the blood donation given by the accused Luis Delmendo, the records disclosed that in truth and in fact, said accused donated 250 cc. of his blood type "B" to the victim, Alfredo Buccat, on February 26, 1969 as shown in the certificate issued by Nora Zafra, medical technologist of the Lorma Hospital. (Exh. "1").

The trial court in convicting the two accused, reached such conclusion on the following rationale:

"That Luis Delmendo fired the gun that killed the deceased; that Florentino Delmendo was near and in company with Luis; and that both of them were positively identified by the witnesses Magdalena Buccat and Elpidio Buccat, the court has no valid reason to doubt. At a distance of about nine meters at night one can easily be identified by the light of a kerosene lamp (such as that used by the family of the deceased) especially if the party is well-known to the identifier. Both the accused and the witnesses are barriomates and are well known to each other. Furthermore, the identity of Luis as the gun wielder was corroborated by the findings of Col. Minardo Fiñones, chief of the P.C. Central Laboratory showing that Luis Delmendo was positive for powder burns.

The testimonies of Magdalena and Elpidio, even if they are the widow and son, respectively, of the deceased corroborate each other in all respects. They have been shown not to be perjured and no motive or reason was

ever faintly suggested why they will perjure their testimonies. Indeed, the accused himself admitted that before the incident, they were in the best of terms with the deceased. Aside from these, the testimony of Magdalena and Elpidio of the shooting as well as the place where Luis fired from was further substantiated by the testimony of police Corporal Modesto Espejo who testified that he recovered six empty shells thereat plus a slug embedded on the frame of the eastern window of the ground floor of the victim's house." (Decision, pp. 21--22; Records, pp. 185-186).

Assailing the above decision, the main thrust of the defense is that the testimonies of the widow, Magdalena, and her son, Elpidio, relative to the identity of the malefactors cannot be believed and relied upon because there are compelling reasons why their declarations cannot be given full faith and credence. And these are: (1) The three kerosene lamps were all inside the house as testified to by Mrs. Buccat. It must have been dark outside considering that it was already between 7:00 and 8:00 o'clock in the evening, hence, it was quite difficult for her to recognize persons outside of her house at the time of the incident; (2) While she testified that she saw one of the malefactors aim his gun to her husband, she did not even warn her husband of the danger to his life; she did not shout a warning at all. This is an unnatural behavior of a wife witnessing the danger to her husband. Had she really seen the accused Luis Delmendo aim his gun at the deceased husband of Mrs. Buccat, the latter would have certainly shouted a warning to him as a natural and instinctive reaction; (3) Her testimony on cross-examination that despite the time of the night (between 7:00 to 8:00 o'clock) she was even able to recognize the color of the shirts of the appellants, i.e., Luis was wearing light brown shirt while Florentino was wearing a red-dish shirt (p. 136, TSN, October 16, 1969), are exaggerations in an attempt to appear credible, only to unmask her incredibility. It is unbelievable to recognize with accuracy the color of a shirt at that time of the night especially when the color of the shirt is dark. It is next to impossible since any colored object on a dark night without the aid of artificial light would appear to be black to the naked eye. And since the alleged assailants were some nine meters away from the victim (p. 7, Decision) and therefore even further away from Mrs. Buccat, an accurate identification cannot be relied upon; (4) When Mrs. Buccat was investigated by the police immediately after the shooting, she did not mention the names of the assailants of her husband to the police investigator, her reason being: "I did not then mention because I was then crying." (p. 139, TSN, Oct. 16, 1969). The defense argues that her reason for not divulging the assailants of her husband on the night she was investigated is flimsy for even if she was crying, it was easy for her to mention the names of the assailants, but she did not. It would have been more natural for her to mention the names of the assailants in the course of her investigation even if not asked or prodded to do so. It was only on March 14, 1969, or more than two weeks after the incident, that she divulged the names of her husband's assailants allegedly because it was only then that she "had composed" herself. Thus, she testified:

"CROSS-EXAMINATION

BY ATTORNEY GUALBERTO:

Q - The first time you ever gave your statement about who killed your husband was March 14, 1969, which is found on your statement on page 34 of the record of the case?

A - Yes, your Honor.

Q - That was the only time when you divulged the identities of the alleged assailant of your husband to peace officers?

A - Yes, sir.

Q - That was also the only time when you mentioned about the incident surrounding the circumstances surrounding the incident?

A - Yes, Your Honor. (p. 141, TSN, October 16, 1969)

Required to explain the rather unreasonable delay in divulging the identities of the assailants of her husband, Mrs. Buccat testifying on redirect examination declared:

"REDIRECT EXAMINATION

BY ATTORNEY CACANINDIN:

Q - Why did it take you until March 14, to go to the police officers and give your written statement?

A - At the time of the week few days after the incident, I had not yet composed myself. On March 14, when I had composed myself, I went to the authorities to give my statement. (p. 142, TSN, October 16, 1969.)"

According to the defense, the other alleged eye-witness to the incident, Elpidio Buccat, son of the deceased Alfredo Buccat, must also suffer the same fate. His testimony cannot be given faith and credence for like her mother, his declarations cannot be believed. While he allegedly witnessed the whole incident, he refrained from divulging to the authorities the identities of his father's assailants allegedly because he was advised by her mother not to do so for fear of their lives. Thus, he declared:

"CROSS-EXAMINATION

BY ATTORNEY CARIASO:

Q - When you saw them (appellants), did you not go to the police authority and tell the authorities to arrest them as they are the assailants of your father?

A - Not yet, sir.

Q - Why?

A - I was advised by my mother not to make a report to the authorities yet for fear of our lives.

Q - When were you advised by your mother?

A - The following day, Sir, after the incident. (pp. 181-182, TSN, October 23, 1969.)"

The defense considers the foregoing testimony as valueless for two reasons: First, because on the night of the incident immediately after his father was shot, the police investigators were already in their house conducting an on-the-spot investigation. So he could have informed them of the identities of his father's assailants right then and there, since there was yet no instructions from his mother not to divulge the names of the malefactors, if it is true that it was the following day of the incident that his mother advised him not to give the authorities the identities of the assailants. Second, because his testimony on this point is in direct contradiction with his mother's testimony to the effect that immediately after the body of her husband was brought to the hospital, she told Elpidio of the identity of the assailants at the same time telling him "not to talk as yet about the matter," to wit:

"CROSS-EXAMINATION

BY ATTY. CARIASO

Q - Aside from Espejo, did you ever tell any other person especially members of your household about the identity of the assailants of your husband?

A - None, sir.

COURT:

You did not tell anybody, or you do not remember having told anybody?

A - It was to Elpidio, my son, whom I told, sir, that 'You will not talk as yet about the matter.'

Q - When did you tell Elpidio?

A - When the body of my husband was already brought to the hospital. (p. 99, TSN, October 15, 1969.)"

The testimony of Elpidio that his mother told him not to reveal the identity of the assailants to the police authorities is a lie because the body of the deceased was brought to the hospital on the same night of the incident. And since the testimony is false, the defense argues that his whole testimony should be dis-regarded under the principle of *falsus in uno falsus omnibus*, false in one, false in all, under "the cardinal rule which has served in all ages, and has been applied to all conditions of men, that a witness wilfully falsifying the truth in one particular, when upon oath, ought never to be believed upon the strength of his own testimony, whatever he may assert." (U.S. vs. Osgood, 27 Fed. Case No. 15971-a, p. 364).

The defense maintains that the trial court erred in concluding that "the identity of Luis as the gun wielder was corroborated by the findings of Col. Minardo Fiñones, Chief of the P.C. Central Laboratory, showing that Luis Delmendo was positive for powder burns." (p. 21, Decision). It is contended that the findings of the laboratory that both hands of Luis Delmendo were positive for powder burns is not conclusive that he fired the gun in the light of the admission of Col. Fiñones that there is such a thing as "false negative," that is if he did not fire a gun but found positive for nitrates (p. 10, TSN, Sept. 23, 1969); that it is possible that a person who did not fire a gun could be found positive for powder burns; that "even a mere handling, for one occasion, of fertilizer could produce nitrates on one's hand" (pp. 11-12, TSN, Sept. 23, 1969). In short, Col. Fiñones admitted that (1) one who works in a laboratory and handles nitrates will have nitrates in his hands (p. 7, TSN, Sept. 23, 1969); (2) even smoking could produce nitrates (p. 11, Id.); (3) even urinating also produces nitrates (p. 11, Id.); and (4) handling of fertilizer also produces nitrates. (p. 13, Id.).

The defense further contends that although Col. Fiñones testified that nitrates from gun powder is fine and thin, whereas other nitrates give lighter color and bigger smell, he admitted that this is not conclusive (p. 12, TSN, Sept. 23, 1969). This means that although thin and fine nitrates were found in the hands of Luis Delmendo, such fact is not conclusive that he fired a gun.

It is not disputed that accused Luis Delmendo was at the time of the incident an employee of the Filipinas Magnetite Corporation, FILMAG for short, working under Engineer Daniel P. Cafuir, Chemical Engineer, in the Assay Department of said firm (pp. 330-331, TSN, March 5, 1970). Luis was then a laboratory technician in said firm, assisting the firm's chemist in "the analysis of elements, iron concentrate and copper ores"; that he used to handle chemicals and although he was equipped with gloves to prevent him from contamination, he had been working without gloves, reason for which the firm used to reprimand him. (p. 332, TSN, Id.) Engineer Cafuir likewise declared that: "The chemicals most often used in the laboratory are acid solvents like hydrochloric acid, sulphuric acid, nitrate acid, perchloric acid, nitric acid, potassium dichromate, chemicals which pertain to other analysis of different elements -- ammonium nitrate, potassium iodine, sodium thiasulphate." (pp. 336-337, TSN, March 5, 1970).

In convicting the two accused for the murder of the victim in this case, the conviction must be based on evidence that is clear, positive and strong creating a moral certainty as to the guilt of the accused. The charge against them must be proved beyond reasonable doubt. Since the two alleged eyewitnesses to the commission of the crime are the widow and son of the victim, their testimonies pointing to the accused as the perpetrators must be subjected to a rigid test which should demonstrate beyond cavil their truthfulness, honesty and rectitude as actual eyewitnesses to the perpetration of the criminal act. There must never be any shadow of doubt, any cloud of

suspicion or deception to conceal the facts and disguise the truth. The first, if not the basic foundation upon which the prosecution builds its case against the accused is proof beyond reason-able doubt that it is the said accused who committed the crime charged. In other words, the identity of the accused is the first duty of the prosecution.

As earlier indicated, the widow, Magdalena, and her son, Elpidio, both point the accusing finger to the two accused as the assailants. Yet, the evidence clearly show that it took them 16 days after the commission of the crime to lay the blame upon both accused for the first time when on March 14, 1969, these alleged eye-witnesses went to the police department in the townhall to make their written statements and accuse the two defendants, although police investigators (one of them the police sergeant who was their close relative) had gone to the house of the victim and the witnesses to conduct an on-the-spot investigation that very night when the shooting occurred on February 26, 1969. The credibility of their testimonies are, therefore, seriously attacked.

What is the rule in criminal law jurisprudence in similar or analogous cases where there is delay or failure to identify the accused at the earliest opportunity? In the following cases, the Supreme Court has uniformly held that such an identification is an after-thought designed to implicate the accused and cannot be the basis of conviction. Thus -

In *People vs. Baquiran*, 20 SCRA 451, 456-458, the Supreme Court said:

"The widow's behavior after the incident was even more puzzling and leads us to the conclusion that she did not at all recognize her husband's assassin and that her subsequent identification of the appellant was an after-thought born of a prejudiced mind. She re-lated that when she reported the murder to the PC detachment at Tumauni around one o'clock in the morning of April 30, 1959, she told Sgt. Venturina that it was Fulgencio Baquiran who shot her husband. But Sgt. Venturina denied this and testified that she refused and would not talk about the matter. Mateo Forto who, she admitted, was present when she made the report to Sgt. Venturina, confirmed the sergeant's testimony and added that she said that she was not able to recog-nize any of the killers. Forto also dis-closed that on the way to Tumauni, he ques-tioned Juanita as to the identity of her husband's assailants and that the widow replied that she was not able to recognize them be-cause they had the brim of their caps tilted downwards. Bernardo Gumatay, chief of police of Tumauni, testified similarly. When he investigated the widow at the scene of the crime, the latter revealed that she could not recognize the malefactors because it was dark. Upon his return to Tumauni, Gumatay entered the result of the evening's investigation in the police blotter under date of April 30, 1959 (Exh. 3). Dr. Laman, who overheard the conversation between Gumatay and the widow, corroborates the former's testi-mony. These witnesses have not been shown by the prosecution to have any inordinate inte-rest in the acquittal of the accused. No one is a relative or barrio-mate of the appellant. They are disinterested persons and the record does not indicate any reason for us to dis-believe their testimonies or to suspect their motives.

The natural reaction of one who wit-nesses a crime and recognizes the offender is to reveal it to the authorities at the earliest opportunity. Juanita Marilao did report the crime to the Constabulary but she did not reveal the identity of the assailant although it was inquired into three times or more. It taxes credulity that Juanita made no effort to expose the appellant then. Her silence casts serious doubt on her subsequent identification of the appellant. Had she really recognized the appellant, as the prosecution contended, she would have immediately and spontaneous-ly revealed his identity upon reporting the crime as would be expected according to the natural course of things. The argument that she was still in a state of shock after the incident and that she was afraid of re-prisal from the assailants who were still at learge is not supported by the evidence on record. The fact that she was able to seek out Ocampo and Forto to help her go to Tumauni on the night of the murder does not show a confused and disorganized mind. If she were afraid of reprisal, wouldn't it be more in consonance with common experience for her to have revealed the identity of the accused that he might safely be put behind bars? As it were, the accused was not ordered arrested until May 3, 1959 after Sgt. Venturina filed a complaint the day before. This is in itself significant for it lends support to the declarations of Celedonia and Fulgencio that the identification of the latter as the alleged assailant took place on May 1, 1959 and not on

April 30 as asserted by both Juanita and Venturina. As previously mentioned, Juanita testified that she identified the accused as the murderer of her husband during the first hours of the morning of April 30, 1959 when she reported her husband's death to the PC de-tachment at Tumauni. This was denied and contradicted by Sgt. Venturina who asserted that the identification was made during the confrontation between the widow and the appellant in the morning of April 30 around nine or ten o'clock in the morning. Cele-donia, who was investigated together with her mother as Venturina himself admitted, testified that the investigation took place on May 1, 1959 and that the accused was not present at all. This corroborates Baquiran's statements to the same effect. For more than twenty-four hours then no word was received from the widow as to the identity of her husband's killers. This despite the fact that after her husband's burial on April 30, she decided to spend the rest of the day and night in Tumauni. If Sgt. Venturina filed the complaint only on May 2, 1959, it could have been due to the fact that the widow made her identification only the day before, May 1, 1959. By then, she had had more than ample time for reflection and what was merely a suspicion deepened into a conviction. She admitted on cross-examination that she was not able to identify her husband's killer although she suspected somebody. Thus:

'Q - You want to make this Honorable Court understand that the Chief of Police, together with his two policemen, Domingo and Taguba, went to that place where your husband was shot and killed without interrogating or making investigation regarding the assailant?

'A - He asked me, sir.

'Q - And there you told him that you were not able to identify the person who shot and killed your husband, although you suspected somebody?

'A - Yes, sir.' (t.s.n. 71).

She repeated her suspicions later to Chief of Police Gumatay after the burial of her husband, mentioning the name of Baquiran as the suspect. Needless to say, suspicion is no identification. And the fact that she merely had suspicions is an indication that at the time her husband was shot, she was not able to make a positive identification of the assailant."

In *People vs. Bulawin*, 29 SCRA 710, 714-715, 719-720, where the witness did not mention the incident to the people in his own house and where an investigation was then being conducted by the Constabulary, the Supreme Court said -

"Soon after the incident, people went to the place where Jimenez fell. Amongst them were Governor Ali Dimaporo, Vice-Governor Arsenio Quibranza, Mayor Apolonio Yap and many others. Witness Autor, however, testified that he communicated to nobody, although 'Mr. Quibranza, Dimaporo and his leaders were still there,' and left for home without even extending a helping hand to the victim. Autor said that he did not mention the incident to the people in his own house. These circumstances suggest a substantial amount of improbability.

Of interest is Author's declaration that the only person to whom he ever mentioned what he saw was a brother of the victim. And this, he did in the morning following the incident. It would seem odd then that the brother of the victim did not inform the authorities about it. The record does not so indicate. No one appeared to have ever thought at that time of taking Author's statements, certainly very important to this case. For, he was, as already stated, allegedly the sole eyewitness to the crime. Well it is to remember that an investigation was then being conducted by the Constabulary. Appellant and a number of witnesses were in the barracks located in the same town of Salvador. (pp. 714-715)

3. There is a dearth of autoptic or demonstrative evidence which would positively connect appellant with the crime. Nothing in the record shows that the officers even made any effort to locate the alleged pistol used by appellant. Nor is there evidence that appellant has had one. In the morning of September 23, 1963, Sgt.

Aniceto Dacalos, in the presence of Sgt. Sarbida, pointed at appellant as the owner of a big hat which was apparently left at the scene of the crime. Appellant denied this. Even that hat was not exhibited in court. Or, its whereabouts accounted for." (p. 720)

In *People vs. Cunanan*, 19 SCRA 769, where the witness revealed the identity of the accused seven days after the shooting of the victim and his reason was that every member of the family of the deceased was very angry and he was afraid to reveal the identity of the culprit sooner as "something also untoward would even happen," and "(t)he situation might be aggravated," (p. 775) the Supreme Court, thru Justice Sanchez, held:

"7. The natural reaction of one who witnesses a crime is to reveal it to the authorities unless, of course, he is the author thereof. It defies credulity that not one or two but five such witnesses made no effort to expose Cunanan if they really knew that he was the author thereof. This stultified silence casts grave doubts as to their veracity.

In the end, we have here a specific case where evidence of identification is thoroughly unreliable. Reason: No valid explanation was given why the People's witnesses did not report the identity of appellant Nicolas Cunanan to the authorities during a long period of time."

In *People vs. Roxas*, 73 SCRA 583, where the two witnesses gave their statements after the wake, or a delay of five days from the shooting of the deceased because their deceased uncle was a bachelor, without any family to attend to his burial, the Supreme Court, speaking thru Justice Antonio, ruled:

"Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness, if such delay is satisfactorily explained." (p. 590)

In *People vs. Aquino*, 93 SCRA 772, where the witnesses reported 12 days after the shooting, it was therein held with Justice Abad Santos as ponente that:

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

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

x x x.

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

Reviewing and putting altogether what happened immediately before, during and after the shooting incident, We find many facts and circumstances that are not very clear nor do they logically and naturally arise from an

assumption that Magdalena and Elpidio actually saw and identified the accused Luis and Florentino Delmendo shoot the deceased Alfredo Buccat at the time and place charged. First, when the police went to the scene of the crime in the evening of February 26, 1969 in the very house of the victim to investigate the shooting, Magdalena Buccat did not identify the two accused as the persons who shot her husband. Her testimony on this point is vague and uncertain, if not vacillating, as shown in the transcript of the stenographic notes during the trial on October 15, 1969, excerpts of which follow:

"Q - Did you ever tell anyone that night that you recognized the person who shot your husband?

A - None, sir.

Q - When was the first time that you ever told anybody that you recognized the assailants of your husband?

A - Maybe it was to Itong Espejo whom I told, sir.

Q - And you told Espejo on that same night of the incident?

A - Yes, sir.

Q - Did you not say a while ago that you never told anyone the identity of the assailants of your husband that night?

A - I cannot remember if I told that to Itong Espejo, but maybe I told it, sir, because he talked to me that night.

Q - But did you not state a while ago that you do not even remember whether he investigated you that time?

ATTY. CACANINDIN:

There is a lot of difference between investigation and talking.

Q - Aside from Espejo, did you ever tell any other person especially members of your household about the identity of the assailants of your husband?

A - None, sir.

THE COURT:

You did not tell anybody, or you do not remember having told anybody?

A - It was to Elpidio, my son, whom I told, sir, that 'You will not talk as yet about the matter.'

Q - When did you tell Elpidio?

A - When the body of my husband was already brought to the hospital."

(t.s.n., pp. 98-99, October 15, 1969)

In the latter part of her cross-examination, the same witness, Magdalena Buccat, admitted that she did not tell Cpl. Modesto Espejo of the Bacnotan Police Force who was the first police investigator of the case who arrived soon after the shooting incident, who killed her husband because she was then crying, as indicated in the following excerpts of her testimony during the trial of the case on October 16, 1969, to wit:

"Q - Madame Witness, were you not investigated immediately after the incident?

A - I am not sure if I was investigated. I cannot remember. Maybe I was investigated by Itong Espejo.

Q - You were also investigated by the PC?

A - No, sir.

Q - There were no investigator, any agency, except Itong Espejo, who came to your house. Is that right?

A - Maybe he came with a companion, but I am not sure if they asked questions from me. I was then crying.

Q - That is why you did not tell Itong who killed your husband?

A - I did not then mention because I was then crying."

(t.s.n., pp. 138-139, October 16, 1969)

We have also the testimony of Sgt. Camilo Marquez, a second cousin of the deceased Alfredo Buccat, who declared that "upon going to Agtibal from the hospital, he had occasion to talk to Magdalena Arellano, widow of the deceased Alfredo Buccat, but he was not able to talk to her because she was hysterical and was continuously crying." (t.s.n., p.55, September 23, 1969). The sergeant was also asked this question: "Q- In other words, you tried with desperate efforts from February 26, 1969 up to March 14, 1969, to talk with the widow and the children and yet was unable to make them talk?" and his answer was: "A- They were all hysterical." (t.s.n., p. 59, Sept. 23, 1969).

This testimony of Sgt. Marquez must be believed in full because he is a close relative of the deceased and it is but a normal and natural reaction of the widow, shocked by the shooting of her husband, rendering her speechless or unable to talk. But when the police accompanied by P.C. soldiers and later followed by Sgt. Marquez, all of whom would provide protection and security to the aggrieved family, it became the duty of the widow to reveal the identities of the assailants, even in confidence to the sergeant as a close relative if she really knew said assailants. But the widow did not, and from this omission or failure to reveal the identities of the perpetrators, We can only conclude that in truth she was not able to identify the killers of her husband. Her reason that she was crying and was hysterical, that she was not composed and that she was afraid of their lives can no longer be justified in the light of the long delay of 16 days when she finally went to the townhall to give her statement to the police. Her explanation is no longer valid to excuse the lateness of her accusation against the accused after more than two weeks had passed. Indeed, "this stultified silence casts grave doubts as to their veracity." (People vs. Bulawin, 29 SCRA 710).

Second, the testimony of Elpidio, 19-year old son of the deceased, who claims to have seen the two accused shoot his father, is likewise doubtful. It is even con-tradictory for, according to Elpidio, the first time he told anyone about the identity of the assailants of his father was when he told his mother and that was when she asked him if he saw Florentino and Luis Delmendo shoot his father. His mother allegedly asked the ques-tion that same evening of the shooting which was Februa-ry 26, 1969, after the father was already in the hospital. (t.s.n., pp. 177-178, Hearing of Oct. 23, 1969). Yet, according to Elpidio himself on cross-examination, it was on the following day after the incident that he was advised by his mother not to make a report to the authorities for fear of their lives. (t.s.n., pp. 181-182, Hearing on Oct. 23, 1969). Contrary-wise, Magdalena told her son Elpidio not to talk as yet about the mat-ter when the body of her husband was already brought to the hospital (which was in the evening of February 26, 1969). (t.s.n., p. 99, Hearing of Oct. 15, 1969).

Following the testimony of Elpidio, he declared that after the shooting of his father, he ran out of the kitchen door and sought help in the neighboring house of Herminio Marquez, ten meters away from their own house, telling Herminio that his father had been shot. Herminio Marquez is the brother of Sgt. Camilo Marquez, the second police investigator of the incident and admittedly a second cousin of the victim, Alfredo Buccat. This Herminio, being a close neighbor, is also a close relative of the aggrieved family. Now, when Elpidio on the witness stand was asked: "Q - Did Her-minio Marquez ask you the identity of the persons who shot your father when you came

to him?" Elpidio's answer was: "A - No, sir." Then followed this question: "Q - And you did not volunteer to tell him?" "A - No, sir." (t.s.n., p. 177, October 23, 1969).

This failure of Elpidio to inform even their neighbor Herminio Marquez, who is also a second cousin of his father, being the brother of police investigator Sgt. Camilo Marquez, which would have been a very logical and natural particular to disclose in Elpidio's report or account of what had happened to his father as stated by him to Herminio as the former sought for help, must cast grave doubts as to the credibility of Elpidio's testimony that he saw and identified the two accused as the assailants of his father.

Third, the lapse of 16 days during which time Magdalena and Elpidio did not go to the police to give their statements or affidavits also engenders grave doubts that the two alleged eyewitnesses actually saw the two accused in the act of shooting the victim. Claiming that they volunteered to go to the Presidencia to be investigated in connection with the incident and that they were not summoned. Magdalena explained that after the incident she had not yet composed herself and it was only on March 14, 1969 that she had composed herself.

Such explanation or reason is weak, if not sham, considering that the usual mourning period had already elapsed. She may be the aggrieved widow but certainly, her grief cannot be so protracted as to be neglectful to seek immediate justice with the help of the police. That the witnesses procrastinated or delayed in going to the police authorities strongly indicates the conclusion that they did not actually see the assailants or they were not sure and positive as to their identities.

Fourth, the circumstances of time and place further engender serious misgivings that the two eyewitnesses, Magdalena and Elpidio, clearly saw the faces of the assailants. The time of the shooting was between 7:00 and 8:00 o'clock in the evening of February 26, 1969. Three (3) small kerosene lamps were lighted because it was already nighttime and supper had already been partaken by the Buccat family. The two alleged eyewitnesses were inside the house, on the ground floor and without any premonition whatsoever of the coming danger. The assailants were outside the house, some nine meters away from the place where Magdalena was. She declared that she saw the assailants only through the window, the dimensions being 1 meter and 33 cms. It may be true that the moon was shining at one o'clock position and it was only a half-moon, but considering the distance and the conditions of the night, common experience show that it would be physically difficult to immediately accustom the eyes to an object, more so a person, standing outside in the premises of the yard.

That Magdalena could identify the color of the assailants' shirts and that Elpidio could identify the color of their pants which must have been hidden by the lower portion of the window through which they were sighted, appears to be an exaggeration, if not imagination to lend credence to their identification. These and other details which the witnesses recalled and what each did after the shooting to prove their memory do not, however, impress Us in the face of the indisputable fact that the witnesses delayed unreasonably in accusing the two assailants to the police.

The records further show the lackadaisical action of the police in apprehending and arresting the perpetrators. When Cpl. Modesto Espejo with Patrolman Partible and 2 P.C. soldiers repaired to the scene of the shooting right after the incident, no attempt was made to locate, search or recover the firearm used. Cpl. Espejo said he investigated the widow and the son (t.s.n., p. 27, Hearing of Sept. 23, 1969) although Elpidio, the son, said he was not investigated by Cpl. Espejo (t.s.n., p. 180, Hearing of Oct. 10, 1969) but Espejo did not take their statements in writing that night, or even after several days. He did not follow up his investigation because he rested. (t.s.n., p. 31, Sept. 23, 1969) and worse, he did not even place in the police blotter the report of his investigation as to who shot the victim. (t.s.n., p. 34, Sept. 23, 1969).

And Sgt. Camilo Marquez, a second cousin of the victim who took over the investigation from Cpl. Espejo, did

not interview the widow allegedly because she was crying. Yet, the police waited until March 14, 1969, 16 days after the shooting, to resume its investigation when the affidavits of the witnesses were taken, only to be subscribed and sworn to 5 days thereafter, on March 19, 1969. From this indecision and hesitancy, it can be reasonably inferred that the evidence then at hand was insufficient and doubtful to formally charge the accused.

Now, to the motive. Generally, proof of motive is unnecessary to pin a crime on the accused, if the evidence of identification is convincing; however, where the proof of identification is not convincing, then proof of motive is necessary. (People vs. Cunanan, L-17599, April 24, 1967, 19 SCRA 769; People vs. Portugueza, L-22604, July 31, 1967, 20 SCRA 901; People vs. Jamero, L-19852, July 29, 1968, 24 SCRA 206; People vs. Guardo, L-23541, August 30, 1968, 24 SCRA 851).

Motive to kill assumes pertinence only when there is doubt as to the identity of the culprit. (People vs. Sales, 44 SCRA 489; People vs. Basuel, 44 SCRA 207). Proof of motive is important in knowing the reasons for the commission of a criminal act. (People vs. Custodio, 47 SCRA 289). Absence of motive is important in determining the truth as between conflicting versions of the incident object of the accusation. (People vs. Boholst-Caballero, 61 SCRA 180; People vs. Beltran, 61 SCRA 246)

In the case at bar, the lack of sufficient motive for the two accused to shoot the victim is supportive of their defense of denial in the commission of the crime. According to the prosecution evidence, the motive to kill arose from the remarks of the victim referring to the two accused as "drunks" and We quote the testimony of the widow:

"Q - Do you know the reason why they shot your husband?

A - There is.

Q - What was that?

A - When the two accused were approaching our house, they were seen by my husband.

Q - What about when the two were arriving at your house?

A - My husband said, 'Do not bring out basi anymore because the drunks are here again.'

Q - He was addressing who when he said that?

A - To my son, Elpidio.

Q - And who were the drunks referred to by your husband who were arriving?

A - Luis and Tino, sir.

Q - For whom was that basi which Elpidio was trying to bring out?

A - My husband intended that basi for my kumpadre, Eniong Oredena and Cipriano de Larna. (pp. 81-82, Hearing of Oct. 15, 1969)

x x x

In another portion of the widow's testimony stating that the accused Florentino Delmendo was sore at her, she related that Florentino and his brother, Federico, had a quarrel at her house about 1:00 o'clock in the afternoon of February 26, 1969 wherein she interceded and pacified them, sending home Federico to stop the fight between the brothers. We quote her testimony:

"THE COURT: (Addressing Magdalena Buccat)

After you had pacified them, what happened?

A - Florentino got sore because I sent his brother home.

THE COURT:

Why did his brother Federico leave?

A - Because I pleaded to him that he would go home so that their fight would not go on.

THE COURT:

But he did not tell anything to you that he was sore at you? I refer to Florentino.

A - He did not do anything, Sir, but I saw him very sore at me." (t.s.n., pp. 107-108, Hearing, October 15, 1969)

Assuming that the deceased had referred to the accused as "drunks", assuming that Florentino was sore because Magdalena pacified the fight between the two brothers, Florentino and Federico, assuming further that Magdalena remarked about the bad manners of the two accused when Florentino vomitted, are these sufficient motives or reasons for the accused to murder the deceased, Alfredo Buccat? We do not believe so. We hold and rule that tested by the common experience and observation of mankind, the said evi-dence falls short, far and below that degree of probability logically and reasonably acceptable under the circumstances. For certainly, the role of Magdalena as a peacemaker bet-ween the fighting brothers, Florentino and Federico Del-mendo, was a good deed which normally deserves another in return, and not an act of murder of the husband who was not even present during the quarrel. Nor does the remark ut-tered by Alfredo Buccat referring to the two accused as "drunks" sufficiently prove the reason for the shooting, much less the comment on their bad manners. Indeed, the insufficiency of the motive, nay its improbability by normal standards, weakens the prosecution's identification of the accused. In fact, it strengthens the defense claim that the accused were not the assailants.

The last point is the defense of alibi set up by the accused. Alibi is a weak defense that cannot prevail over positive identification of the accused by eye-witnesses (People vs. Estrocada, 75 SCRA 295; People vs. Roncal, 79 SCRA 509). Alibi assumes importance where evidence for prosecution is weak and betrays lack of concreteness on question of whether or not the accused committed the crime charged. An accused cannot be con-victed on the basis of evidence which, independently of his alibi, is weak, uncorroborated, and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, there would be 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. (People vs. Lim, L-46890, Nov. 29, 1977, 80 SCRA 496). The same rule is reiterated in People vs. Dilao, L-43259, Oct. 23, 1980, 100 SCRA 358, 394.

Re-stated otherwise, the weakness of the defense of alibi does not relieve the prosecution of the required burden of proof. (People vs. Aquino, 93 SCRA 772; People vs. Salazar, 93 SCRA 796). And although alibi is the weakest defense that an accused can avail of, it acquires commensurate strength where no positive and proper identification has been made by the witnesses of the offender. The prosecution has the onus probandi in establishing the guilt of the accused and the weakness of the defense does not relieve it of this responsibility. (People vs. Cruz, L-24424, March 30, 1970, 32 SCRA 181).

Applying the above jurisprudential rules to the case at bar, it is at once discernible that the alibi of the two accused is so simple in their candidness in admitting that each of them were in their respective houses which are very near to the scene of the crime at the time of the shooting of the victim. The house of the accused Luis Delmendo is about 200 meters from the house of the victim (t.s.n., p. 413, hearing on March 5, 1970) and he (the accused) was about to eat his supper when he heard the gun volleys (t.s.n., p. 394, hearing, March 5, 1970). And with respect to the other accused Florentino Delmendo, his house is about 50 meters away from the house of Magdalena Buccat

(t.s.n., p. 310, hearing, March 4, 1970) and said accused was in the street north of his house when he came to know for the first time that Alfredo Buccat was shot (t.s.n., p. 319, hearing, March 4, 1970).

The above alibi is positively corroborated by wit-ness Florentino Almodovar who declared that he, together with the two accused, drank gin and coca-cola in the store of Magdalena Buccat that afternoon of February 26, 1969; that they walked to the house of Antonio Corpuz where Almodovar stayed behind while the two accused proceeded to the house of Barrio Captain Revelino Balen; that after 30 minutes, he saw the two accused leave the house, going northwards, after which he heard gun explosions, a successive volley of fires coming from the west. (t.s.n., pp. 259-263, March 4, 1970 hearing).

While the defense of alibi frequently deserves little consideration because it is easily fabricated, it is not always false and without merit (*People vs. Pulmones*, 61 Phil. 680) as in the case at hand, and when coupled with the improbabilities and uncertainties of the prosecution evidence, suffice to raise reasonable doubt as to their responsibility (*People vs. Bartolay*, 42 SCRA 1).

We have already ruled herein that the prosecution has not presented clear, positive and convincing evidence identifying the two accused as the actual assailants or perpetrators of the shooting of the victim, Alfredo Buccat. The basis of Our ruling have been laid down and explained and the inevitable end-result is that We must acquit the two accused not because their defense of alibi is weak, although such defense has acquired commensurate strength due to failure of positive and proper identification of the offenders by the witnesses, but on the ground that the prosecution has failed to discharge its responsibility of proving their guilt beyond reasonable doubt. For indeed, the duty of the prosecution to prove the guilt of the accused beyond peradventure of doubt is a primary one, and until and unless such duty has been performed, the constitutional presumption of innocence to which the accused is entitled must be upheld, whether his defense of alibi is weak or strong.

While the prosecution is not required to submit such a degree of proof as, excluding possibility of error, produces absolute certainty but only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind (Rule 133, Sec. 2, Rules of Court), in the case at bar, We are confronted with inculpatory facts and circumstances which are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with their guilt. In such a situation, as held by the Supreme Court in *People vs. Abana*, 76 Phil. 1; *People vs. Pacana*, 47 Phil. 48, 57; *People vs. Bautista*, 81 Phil. 78; *People vs. Parayno*, L-24804, July 5, 1968, 25 SCRA 3, the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.

We have analyzed and weighed the whole proof of the case at hand, the totality of all the facts and circumstances presented before Us, and after such careful analysis, review and appraisal. We find inability to let the mind rest easy upon the moral certainty of their guilt.

Thus, in *People vs. Gallora*, L-21740, Oct. 30, 1969, 29 SCRA 780, 786, where the circumstances are in some respects similar to the present case, the Supreme Court, speaking thru Justice Makalintal, said:

"The corroborated alibi of appellant; the fact that he did not hesitate to go with the municipal authorities to the scene of the crime; the failure of the two material witnesses for the prosecution to identify him when identification would have been most timely and in accord with natural human reaction; the absence of evidence concerning motivation; and the finding of the telltale handkerchief in the possession of another person - all these circumstances cannot but cast a grave doubt as to the guilt of appellant."

Indeed, the impartial and unbiased mind is not laid to rest easy upon the moral certainty of the accused being guilty in the light of the very singular fact that both accused, Luis and Florentino, immediately volunteered to be blood donors to save the life of the victim, Alfredo. The very evidence of the prosecution show that both accused

joined and rode with other volunteers in two caretelas to the town and then took a Thames transportation jitney to San Fernando town at the Lorma Hospital and there, Luis was tested as to the suitability of his blood type and accordingly, gave 250 cc. of his life blood, type "B" to the victim, which is attested by the certification of the Medical Technician, Nora Zafra, in Exhibit "1". According to the accused Luis, he donated blood because Alfredo Buccat was his uncle, the latter being a second cousin of Luis' father, and he had no misunderstanding with his uncle.

The trial court's holding that this sacrifice of blood donation made by the accused Luis Delmendo was possibly a manifestation of remorse on the part of the accused after their drunken state had subsided, is clearly a distortion for a drunken person cannot be accepted for blood transfusion or donation. Likewise, to hold that possibly the accused went with the crowd to the hospital to hide their responsibility for the crime is purely conjectural and speculative. The records do not disclose any reasonable basis, not an iota of proof for such a conclusion arrived at by the court a quo.

As to the P.C. findings in Exhibit "C" that the dorsal portion of both hands of the accused Luis Delmendo was found positive for gunpowder residue (nitrates), the same is, to Our mind, satisfactorily explained by the testimony of Luis who at the time was employed with Filipinas Magnetite Corporation (FILMAG) and his work was assisting the chemists in assaying or analyzing iron concentrates and copper ore from the black sands dugged out by FILMAG, using his hands, sometimes with gloves and other times without gloves, causing yellowish discoloration on the palm, fingers, fingertips and dorsal portion of both hands. The work involved the handling and mixing of chemicals such as ammonium nitrate, potassium nitrate, sodium nitrate and other reagents. The nature of Luis' work as a laboratory technician is corroborated by his immediate superior, Chemical Engineer Daniel P. Cafuir.

That the presence of gunpowder residue (nitrates) on both hands of the accused Luis do not conclusively prove that he had recently fired a gun is admitted by the P.C. expert, Col. Minardo Fiñones, who testified also for the defense. The most significant testimony of Col. Fiñones is that there is no difference in size between gunpowder residue and one caused by constant handling of chemicals (t.s.n., p. 359, March 5, 1970 Hearing) and that the continued handling of chemicals containing nitrates, potassium nitrate, sodium nitrate and ammonium nitrate will give characteristic color of blue specks on a person handling said chemicals (t.s.n., p. 362, March 5, 1970 Hearing); and that one who fired a gun may give a negative result and also one who did not actually fire a gun is negative for paraffin test because according to him, "there is a false positive and a false negative. False negative is when he fired a gun and is negative for paraffin test; and false positive when he never fired a gun but is positive for paraffin test. Why -- because he has been handling some chemicals like potassium nitrate and ammonium chloride, depending on the extent of contamination. Naturally when tested with dyphenyl-amin reagents, it will show characteristics of blue specks, and this is similar to gunpowder burns." (t.s.n., p. 354, March 5, 1970 Hearing)

In resume, where the evidence clearly and convincingly show that (1) the material witnesses of the prosecution, the widow and son of the deceased, failed to reveal and identify the assailants to the police and P.C. authorities at the earliest opportunity when they arrived to investigate the shooting soon thereafter, not even to the police sergeant, a close relative of the aggrieved family, who followed up the investigation; (2) that the son, reporting to and seeking help from an uncle living only 10 meters away from the scene of the crime, did not also disclose the assailants' identities; (3) that both material witnesses delayed unreasonably for 16 days after the shooting to go to the police department and make their sworn statement naming the two accused as the perpetrators; (4) that the circumstances of time (between 7:00 and 8:00 o'clock in the evening), of place (witnesses are under the house in the ground floor and looking through a small window out to the yard of the house located in the barrio), and of

distance (9 meters away) render accurate identification of perpetrators in a sudden and startling occurrence, difficult and unreliable; (5) the police made no effort to locate and search for the fatal weapon nor place in the police blotter the names of the suspects; (6) that the motive shown was flimsy, inoffensive and trivial, hence insufficient; and (7) both accused volunteered to donate their blood to the victim and in fact, one gave 250 cc. of his blood, type "B" to save him, the guilt of the two accused has not been proven beyond reasonable doubt, thus they are entitled to acquittal of the crime charged.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision appealed from is hereby REVERSED and SET ASIDE. The two accused are hereby ACQUITTED and they are ordered released and set free immediately, unless they are other-wise detained for some other lawful cause.

SO ORDERED.

Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.

Teehankee, Acting C.J., in the result.

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.