

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERMINIGILDO PASCUAL ALIS GILDO, CEFERINO PASCUAL ALIAS
EFREN, AND LEONARDO CABIGTING ALIAS ADONG,
DEFENDANTS-APPELLANT.**

G.R. No. L-29893. February 23, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

Herminigildo Pascual, Ceferino Pascual and Leonardo Cabigting appealed from the decision of the Court of First Instance of Nueva Ecija, Guimba Branch, convicting each of them of three murders, imposing on each of them three sentences of reclusion perpetua, and ordering them to pay solidarily an indemnity of six thousand pesos (P6,000) to each set of heirs of the three victims, Pilar Sebastian-de la Cruz, Cesario de la Cruz and Priscilla de la Cruz (Criminal Case No. 258-G). The judgment of conviction was based on the following evidence of the prosecution:

Shortly before midnight in the evening of March 9, 1966, the spouses Anastacio de la Cruz and Pilar Sebastian (both 47 years old) with their two children, Cesario and Priscilla, and their grandchild Pacing, were riding in a tilbury or calesin on their way home to Sitio Bardias, Barrio Villarosa, Licab, Nueva Ecija. They had watched a movie in the poblacion of Licab. It was a bright moonlit night.

When they were at a distance of about seven meters from the bridge at Sitio Bardias, Anastacio saw a group of seven persons standing in a row on one side of the bridge. He recognized among them Herminigildo Pascual, Ceferino Pascual and Leonardo Cabigting who, like him were residents of Sitio Bardias.

Unaware of the group's homicidal intentions, Anastacio continued driving his tilbury. As the tilbury was crossing the bridge, the seven persons simultaneously fired their firearms upon Anastacio and his family and fled after the fusillade. His wife, children and grandchild screamed. He was hit on the left thigh. He fell on the ground and crawled on the shoulder of the road.

As he became weak, he stopped crawling and remained prostrate on the ground, groaning because of pain. At about one o'clock in the morning, Mayor Tomas P. Villaroman arrived at the scene of the ambushade together with the chief of police and some policemen. They found the two children, Cesario and Priscilla, dead inside the calesin.

Anastacio recounted to the mayor how he and his family were assaulted by Adong Cabigting, 34, the Pascual brothers, Gildo, 30 and Efren, 29, and their four companions. He was placed in a jeep and brought to the municipal building where his statement was taken. He said in his statement: "Kame po ay pinagbabaril ng pitong (7) lalaki at ang tatlo ay sina Efren Pascual, Gildo Pascual at Adong Cabigting x x x sa pagbaba ng tulay ng Bardias, Villarosa, Licab, Nueva Ecija sa palagay ko ay bandang alas 12:00 ng hating gabe" (Exh. A).

Pilar Sebastian, who was covered with blood, went to the municipal building accompanied by Hermogenes Felipe

and Federico Labrador, and reported the ambushade to the chief of police. Then, she was brought to the provincial hospital where, in the early morning of March 10, she thumbmarked a dying declaration taken by Patrolman Celso Santos. In her antemortem statement, she pointed to Efren (Ceferino Pascual) as one of the assailants (Exh. B). Pilar died at ten-thirty-five in the morning of March 12.

The necropsy reports disclosed that Cesario, nine years old, sustained a gunshot wound on the left side of the neck. The bullet fractured his cervical vertebra and destroyed his spinal cord. Priscilla, twelve years old, suffered a mortal gunshot wound in the head. Pilar died because of the gunshot wound in the left parietal region which injured her brain.

The motive for the attempt on the life of Anastacio de la Cruz was the desire of Ceferino Pascual to supplant the former as overseer of the hacienda of Rosario C. Gatmaitan (41-44 tsn Nov. 23, 1966). As overseer, Anastacio received one hundred cavans of palay as compensation (7-8 tsn March 12, 1968).

On March 10, 1966 or the day following the ambushade a complaint for murder was filed in the municipal court against Cabigting, the Pascual brothers and their four unidentified companions. The trio, who were all farmers, were arrested on that date and confined in the municipal jail. Their four companions were never arrested. The herein three accused waived the second stage of the preliminary investigation. On August 15, 1966 the fiscal filed against them an information for triple murder.

At the trial, the three accused denied any complicity in the perpetration of the killings. Herminigildo Pascual's alibi is that he was in the house of his brother, Ceferino, in Sitio Bardias on the night of March 9, 1966 and up to seven o'clock in the morning of the following day. Ceferino and Cabigting claimed that in the evening of that day, they, like Anastacio de la Cruz, watched a movie, and that at around midnight they were in their respective homes.

Herminigildo testified that in the evening of March 9, 1966 he was awakened from his sleep by the barking of dogs when his brother Ceferino and other persons arrived from the moviehouse at midnight. When he went back to sleep, he was again disturbed by the barking of dogs. He looked out to investigate and saw policemen calling for his brother Ceferino.

He heard the policemen telling his brother and Cabigting that they were being summoned by the mayor. At seven o'clock the following morning, when his brother and Leonardo did not return, Herminigildo went to his own house at Barrio San Cristobal. He left his house to look for his lawyer. Along the way, he met a policeman who told him to proceed to the municipal building because the mayor wanted to talk with him. The mayor asked him about the ambushade. He denied that he was one of those who ambushed the De la Cruz family.

Herminigildo said that Anastacio de la Cruz implicated him in the shooting because he was one of the prosecution witnesses in the case for robbery in band wherein Anastacio was one of the accused and because Rosario C. Gatmaitan, the owner of the land of which Anastacio was the overseer, used to go to Herminigildo's place instead of going to Anastacio's house. Mrs. Gatmaitan requested him and Ceferino to administer her land. Anastacio allegedly warned Herminigildo that the latter would pay for having deprived Anastacio of his job.

Ceferino Pascual testified that he was one of the four persons nicknamed Efren in the Barrios of Villarosa and Bambancag. He declared that between eight and nine o'clock in the evening of March 9, 1966, he was riding in a cart on his way to the poblacion of Licab to see a Tagalog movie. His companions were Leonardo Cabigting, Avelino Cabigting, Herminia Gaspar, Carmelita Gaspar, Maria Manasan and some children. It took them more or less an hour to cover the three-kilometer distance from Barrio Bardias to the town.

They went home between eleven and twelve o'clock and reached Cabigting's house in Barrio Bardias at midnight.

After unhitching the carabao from the cart, he and his wife went home.

About a half hour later, policemen came to their house and told them that the mayor wanted to tell them something. He went with the policemen to the municipal building. The mayor asked him and Cabigting about the ambushade.

In the evening of March 10, he and Cabigting were taken to the Constabulary camp at Guimba, Nueva Ecija. At one o'clock in the afternoon of March 11, he was subjected to a paraffin test together with Cabigting and Herminigildo.

Ceferino further testified that Anastacio was removed as overseer by Mrs. Gatmaitan after the threshing in January, 1966. He and his brother succeeded Anastacio as overseer. While they were threshing palay at Bulawid, Anastacio allegedly warned them not to interfere in the administration of Mrs. Gatmaitan's land.

Like his brother Herminigildo, Ceferino denied having taken part in the ambush of the De la Cruz family. He averred that Anastacio implicated him because the latter resented his removal as overseer of Mrs. Gatmaitan's hacienda.

Cabigting corroborated Ceferino's story that with ten companions they were watching a movie in the evening of March 9, 1966 and that they reached Sitio Bardias at midnight and immediately thereafter, they went to bed.

Cabigting said that at around one o'clock policemen came and told him that he was wanted by the mayor. Together with Ceferino, he went with the policemen to the municipal building, arriving there at one-thirty. The mayor showed them the bodies of two dead children. Then they were taken to the office of the chief of police where the mayor investigated them.

He said that when he denied involvement in the killing of the two children, the mayor got angry and two policemen boxed him in the abdomen and on the sides of his body. He was maltreated for two hours. He allegedly lost consciousness.

At seven o'clock in the morning, policemen took him to the house of the mayor. The latter asked him to testify against Ceferino and Herminigildo. He refused because he allegedly did not know anything about the killings.

From the mayor's house, he was taken back to the municipal building. He stayed there until eight o'clock in the evening when the Constabulary soldiers took him and the Pascual brothers to Guimba.

Leonardo said that Anastacio fingered him as one of the gunwielders because on December 5, 1965, he killed Anastacio's pigs which were destroying his palay crops. He admitted that he owned a .22 caliber rifle. He shot the pigs on December 5 with that rifle. He admitted that he did not complain to the Constabulary soldiers about the maltreatment which he allegedly received from the policemen of Licab.

The defense presented Eugenio B. Manalo, the head of the climatological section of the Weather Bureau, to prove that the illumination of the moon in the evening of March 9, 1966 was not sufficient for Anastacio to be able to recognize his family's assailants. Manalo presented the certificate of the director of the Weather Bureau that "at 12:00 o'clock midnight, March 9, 1966, the moon was 90 percent illuminated, full moon having occurred on March 7, 1966" (Exh. 2-Cabigting). He testified on the surface weather conditions at Cabanatuan City on March 9, 1966.

On cross-examination, Manalo admitted that when the moon is ninety percent illuminated, a person can recognize anyone familiar to him at a distance of five to six or ten meters.

The fact that the paraffin tests conducted on the accused had negative results was testified to by Teresita Festejo,

chief forensic chemist of the Constabulary Criminal Investigation Service Central Laboratory. She admitted that, if the accused had used nitrate solvents to wash their hands, the result of the tests would be negative; that other factors such as the weather or the use of cloth in firing the gun could wear off nitrate powder, and that she was not the one who took the casts when the paraffin tests were conducted.

Patrolman Victor Espiritu prepared the sketch of the place where the shooting happened (Exh. 8-Cabigting). He testified that five empty carbine shells were found at the scene of the crime.

Patrolman Rosendo de la Cruz testified that he fetched Cabigting and Ceferino Pascual from their respective houses early in the morning of March 10, 1966. It took him thirty minutes to call for each of them. Cabigting had his .22 caliber long rifle with him. He took the two accused to the municipal building.

The trial court did not give credence to the evidence of the defense. It found that the evidence of the prosecution established conclusively the guilt of the three accused.

In this appeal the accused contend that the lower court erred in not disregarding the dying declaration of Pilar Sebastian; in convicting the accused in spite of the fact that the paraffin tests to which they were subjected gave negative results; in giving credence to the evidence of the prosecution, and in not finding them guilty of homicide only.

The learned trial court in its forty-two page decision meticulously examined and weighed the conflicting evidence of the parties. We find no justification and compelling reasons for reversing its conclusions and rationalizations. Said the trial court:

"From the evidence narrated above, there is no question that on the night of March 9, 1966, between 11:00 and 12:00 o'clock, seven persons fired their guns at Anastacio de la Cruz and his family while these were crossing the bridge at Bardias, Villarosa, Licab in a tilburin and as a result Anastacio de la Cruz suffered gunshot wounds while his wife, Pilar Sebastian de la Cruz and his two children Cesario de la Cruz and Priscilla de la Cruz died of gunshot wounds. The question to be determined in view of the conflicting evidence presented by the prosecution and the defense is who fired at Anastacio de la Cruz and his family.

"While Pilar Sebastian de la Cruz was in the provincial hospital of Nueva Ecija after being brought there by Pat. Celso Santos of Licab, Nueva Ecija, and while she was being treated, Pat. Celso Santos took her affidavit, Exhibit B. In this affidavit, Pilar Sebastian made the following statement:

'T - Sabihin mo nga at isalaysay na buong linaw?

'S - Ng kami ay pauwi na sa tulay Bardias, Villarosa ay mayruon pong bumaril sa amin.

'T - Nakilala ba ninyo at ano ang pangalan?

'S - Efren ang pangalan, at taga ruon sa amin.

'T - Maliban kay Efren wala na ba kayong nakilala pa?

'S - Wala na po at sila'y nagtakbuhan.'

"From this statement, Pilar Sebastian pointed out to Efren as one of those who fired at her and her family on the night of March 9, 1966. This Exhibit B partakes of the nature of a dying declaration for when she gave this statement she was in a serious condition and at the point of death. As a matter of fact two days after or on March 12, 1966 at 10:35 A.M., Pilar Sebastian, died. In this statement she positively identified Efren as one of

those suspects and this Efren is no other than Ceferino Pascual, one of the accused, for according to her this Efren is living in her barrio.

"Indeed, Ceferino Pascual admitted in cross-examination that of all Efrens mentioned by him, he is the only one living in Bardias, the barrio, which according to the evidence, is the same barrio of Pilar Sebastian. This Exhibit B, being a dying declaration, constitutes a strong evidence pointing to Ceferino Pascual as one of those who fired at Pilar Sebastian and her family, which gunshots led to the death of Pilar Sebastian and her two children, namely, Cesario de la Cruz and Priscilla de la Cruz. When Pilar Sebastian made this statement, she was conscious that she was about to meet her Creator as to banish from her mind any attempts to tell lies and her only comforting consideration then to enjoy peace and serenity of conscience was to tell the whole truth, for a dying person tells no lies.

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"This dying declaration identifying Efren as one of the accused is corroborated by the statement of Anastacio de la Cruz. The evidence shows that upon receiving the report of the ambush, Mayor Tomas Villaroman of Licab, together with the chief of police, Paterno Esguerra, and some policemen, proceeded to the place of the incident. Here they saw Anastacio de la Cruz in serious condition and writhing in pains. He was uttering groans and exclamations of pains. The mayor inquired from Anastacio de la Cruz what had happened and this answered that they had been ambushed and shot at by seven persons and stated that he recognized Efren Pascual, Adong Cabigting and Gildo Pascual as among the seven who had fired at them. This statement was given between 1:00 o'clock and 1:30 o'clock on the morning of March 10, 1966, or barely one hour after Anastacio de la Cruz and his family had been fired on. Such a statement given subsequent to a startling occurrence with respect to the circumstances of the incident can be given in evidence as part of the *res gestae* (Sec. 36, Rule 130, Rules of Court).

"When Anastacio de la Cruz was brought to the municipal building, this statement given by him was confirmed in an affidavit, Exhibit A, which the then chief of police took from Anastacio de la Cruz. In this statement Anastacio de la Cruz stated in part as follows:

'T- Nuong papauwi na kayo na galing sa panunuod ng sine dito sa bayan mayruon bang nangyare sainyo sa daan?

'S - Mayruon po.

'T - Ano ang nangyari sainyo?

'S - Kame po ay pinagbabaril ng pitong lalake at ang tatlo ay sina Efren Pascual, Gildo Pascual at Adong Cabigting.

'T - Saan at kailan naganap ang pagkakabaril sainyo?

'S - Sa pagbaba ng tulay ng Bardias, Villarosa, Licab, N. Ecija sa palagay ko ay bandang alas 12:00 ng hating gabe humigit kumulang iyan lang ang aking masasabe.'

"That this statement given by Anastacio de la Cruz immediately subsequent to their being fired at and while he was in a serious condition uttering groans of pains and barely one hour after the incident can be given in evidence as part of the *res gestae*. Thus, in a murder case, the outcries of the deceased naming the assailant is

considered as part of the *res gestae* (5 Moran, Comments on the Rules of Court, p. 333, *People vs. Cuevas* L-5844-45, May 30, 1955). These statements were made by Anastacio de la Cruz while his nervous excitement was still working on his mind and there was no opportunity or time for him to devise or contrive anything contrary to the real facts that occurred.

"In the present case, from the time that the incident occurred to the time that Anastacio de la Cruz made those statements to the mayor, no circumstances had intervened which might have removed from his mind the exciting influence of the startling occurrence and consequently he had no opportunity to deliberate and fabricate (5 Moran, Comments on the Rules of Court, p. 337).

"This statement of Anastacio de la Cruz as part of the *res gestae* has been reiterated by him in his testimony in open Court where he positively and clearly pointed to the accused Herminigildo Pascual, Ceferino Pascual and Leonardo Cabigting as among the seven who fired at them on that fatal night.

"From what has been said, the dying declaration of Pilar Sebastian identifying Efren or Ceferino Pascual and the spontaneous statement of Anastacio de la Cruz buttressed by his testimony in Court pointing to Ceferino Pascual, Herminigildo Pascual and Leonardo Cabigting as three of the seven who fired at them on the night of March 9, 1966, constitutes strong evidence of the participation of these three accused in the criminal act and, consequently, these three accused are among the seven who fired their guns that evening and, hence, are responsible for the death of Pilar Sebastian, Cesario de la Cruz and Priscilla de la Cruz.

"Their denials are ineffective to overcome the evidence of the prosecution, particularly the positive testimony of Anastacio de la Cruz. Suprisingly, the conduct of these accused right after the shooting incident has been quite suspicious. The statement of the accused Ceferino Pascual and Leonardo Cabigting to the mayor of Licab that when they heard the gunshots they were about 200 meters from the pass has been contradicted by Herminia Gaspar and the wife of Ceferino Pascual who related to the mayor that when they heard the gunshots they were already at home. This contradiction is evidence that these accused were not telling the truth as to their whereabouts during the incident, for if they were really in the cart about 200 meters from the pass then their companions would say so. And according to Mayor Villaroman when Ceferino Pascual and Leonardo Cabigting were brought before him they showed nervousness and were acting suspiciously and refused to sign any statements on the pretext that they had their lawyers. The Court does not doubt the veracity of the testimony of the Mayor of Licab, who is a disinterested witness, and whose impartiality has not been placed in doubt.

"On the other hand, the excuse of Herminigildo Pascual that on the night of March 9, 1966, he slept in the house of his brother Ceferino Pascual is unbelievable, for, in the first place, when Patrolman Rosendo de la Cruz of Licab went to the house of Ceferino Pascual, it took him one-half hour calling for Ceferino before the latter would answer him. If Herminigildo Pascual were then in the house of Ceferino, Rosendo de la Cruz could not fail to notice his presence and would have reported this fact to the mayor. In the second place, it is strange why Herminigildo Pascual would not sleep in his house that night, leaving there alone his wife and his children without his company and protection from possible marauders. His excuse that he was then watching his carabaos is too flimsy, for he could have taken those animals to his own place of residence where he could guard them as well as his family.

"In the face of these considerations, the Court holds and declares that the denials of the accused are not worthy of credit.

"It has been contended that the dying declaration of Pilar Sebastian is a fabrication because from the time Pilar was admitted to the hospital to the time of her death, she was unconscious, and in support of this claim defense relies on the contents of Exhibit 5. In the first place, the contents of Exhibit 5 were prepared by another resident physician than Dr. Cesar Roxas. Consequently, Dr. Cesar Roxas is not competent to testify on the contents of this Exhibit 5. In the second place, this Exhibit 5 does not contain any statement that Pilar Sebastian at the time of her admission was in a state of coma. If she were really in such a condition, this document, which is a clinical history, would bear out such a statement.

"The mere fact that no such statement that Pilar Sebastian was in the state of coma appears in said document belies the statement of Dr. Cesar Roxas that from the time of her admission to her death, Pilar Sebastian was in such a state of coma. On the contrary, the evidence shows that even at 1:00 o'clock on the morning of March 10, 1966, Pilar Sebastian while alive was still with Hermogenes Felipe and Labrador in going to the municipal building of Licab. This is the testimony of Paterno Esguerra, the chief of police of Licab. Exhibit E shows that Pilar Sebastian died on March 12, 1966 at 10:35 o'clock in the morning or three (3) days after she had been shot. These circumstances show that Pilar Sebastian, far from being unconscious at the time of her admission to the hospital down to her death, could possibly have given a statement as she did to Pat. Santos and which statement appears in Exhibit B. The Court, therefore, rejects the testimony of Dr. Cesar Roxas that Pilar Sebastian from the time of her admission to her death two days thereafter was in the state of coma or unconscious, as not worthy of credit.

"The defense also claims that it would not be possible for Anastacio de la Cruz to identify the accused as the persons who fired at him and his family on the night in question because the moon then was partly covered with clouds and in support of this statement the defense relied on the testimony of meteorologist Eugenio Manalo, who stated, among other things, that at about 11:00 o'clock on the evening of March 9, 1966, 9/10 of the whole sky was covered with clouds, and, as such, the visibility of the moon was then reduced to about 10%.

"This statement was based only on mere conjectures on the part of the meteorologist because he was not then on the very place of the incident at Bardias, Villarosa, Licab, Nueva Ecija, while on the contrary the persons who were in that place, aside from Anastacio de la Cruz, such as the chief of police, Paterno Esguerra, declared that the night was then very clear because of the bright moonlight. Moreover, this testimony of Eugenio Manalo is contradicted and rendered ineffective by the certification of the Director of the Weather Bureau, Ramon Kintanar, who stated in Exhibit 2-Kabigting, that 'at 12:00 o'clock midnight, March 9, 1966, the moon was 90 per cent illuminated, Full Moon having occurred on March 7, 1966.'

"Such being the condition of the moon on the night of March 9, 1966, clear and radiant and 90 per cent illuminated, it was really possible for Anastacio de la Cruz and Pilar Sebastian to recognize the persons who ambushed them on that evening.

"It is likewise contended that in view of the negative findings of the paraffin tests taken on the accused, these

accused could not be the ones who fired guns on the night in question. The Court notes, however, that the one who applied the casts on the accused was not presented in Court so as to indicate whether in the application of the casts he committed mistake or not. The prosecution consequently was deprived of the opportunity to cross-examine him. The possibility, therefore, that the one who administered the casts might have committed mistake can not be excluded, as admitted by the forensic chemist Teresita Festejo.

"Moreover, the fact that no gunpowder residue or nitrates were found on the hands of the accused is not conclusive evidence that they did not fire the guns on the night of March 9, 1966, for, according to the forensic chemist, if the hands of the one who fired a gun are covered with gloves or clothes, no nitrate can be found on them. She also declared that if the suspect washes his hands with nitrate solution, nitrate will disappear and wear off: that weather conditions, use of gloves on the mechanism of the arms, wrong technique in the taking of the casts will not show the presence of nitrate powder; and that if there were strong winds which could carry away the powder, no traces of powder can be found on the hands of the one who fired the arm, or if the bolt mechanism of the firearm is tied, powder will not come out and the result will be negative of nitrate.

"In the present case, the probability that the accused might have made use of gloves or might have covered their hands with clothes so as to prevent the presence of gunpowder on their arms can not be discounted because these accused, from the observation of the Court, while they were on the witness stand, are capable of resorting to such ingenuity as they are highly intelligent. In fact, in not giving statements to the mayor after their apprehension, Ceferino Pascual and Leonardo Cabigting gave as reason that they had their lawyers while Herminigildo Pascual was on his way to see his lawyer when he was taken by the police on the morning of March 10, 1966.

"From these considerations, the Court has come to the conclusion that the paraffin tests conducted on the accused are not so reliable and do not exclude the probability that the accused really fired guns on the evening of March 9, 1966.

"It has been urged by the defense that as the wounds of Priscilla de la Cruz and Cesario de la Cruz are directed upwards, the testimony of Anastacio de la Cruz that when the three accused and the four others fired they were standing on the road and raised their guns to their shoulders is false, for in such a case the bullets would not assume an upward trajectory as indicated by the wounds but a horizontal direction and the point of entry of the wounds would be along the level of the point of exit. This contention of the defense is not supported by evidence, for Anastacio de la Cruz demonstrated in Court that when the accused fired they raised their guns to the line of their waists. He did not declare that they raised the guns to their shoulders.

"With the guns placed along the waist of the accused, necessarily their muzzles would be directed upward in order to hit the occupants of the tilburin, who must be at an elevation higher than the waist of the accused. Even a slight deflection upward of the muzzle of a gun will cause the bullet ejected therefrom to take an upward trajectory as to cause the entry of a wound produced thereby to be lower than the exit.

"Moreover, Cesario de la Cruz was not seated but was standing in front of Anastacio de la Cruz, thus he was indeed higher in elevation to the muzzles of the guns of the assailants, he being then aboard a tilburin. And if the gunwielders were really behind the talahib grasses and in a much lower position in the canal when they

fired the guns, then the grandchild of Anastacio de la Cruz, who was then on the floor of the tilburin, would have received the volleys of bullets but she was spared and was not hit by any bullet. This fact shows that the bullets came from the direction of the accused and their companions while on the side of the road as testified to by Anastacio de la Cruz.

"To bolster its theory that the assailants might have been in the canal, concealed by the talahib grass, the defense rhetorically asks why the spent shells were not found on the side of the road itself but behind the talahib grasses. This assumption of fact of the defense is belied by the evidence in the records, for the very exhibit of the defense, Exhibit 8-Kabigting, shows that two (2) spent shells were found on the road (Exhibit 8-A-Kabigting) while three (3), behind the talahib growth. This has been testified to by the defense witness Patrolman Victor Espiritu of Licab.

"The defense further contends that Anastacio de la Cruz in pointing at Ceferino Pascual and Herminigildo Pascual was moved by revenge because these two brothers incurred the ire and jealousy of Anastacio de la Cruz when the owner of the hacienda of which Anastacio de la Cruz is the overseer showed more predilection to these two brothers instead of Anastacio de la Cruz for, according to them, Mrs. Rosario Gatmaitan, instead of passing by Anastacio de la Cruz in going to her hacienda, passed by them and this conduct or show of preference by Mrs. Rosario Gatmaitan in favor of these two brothers aroused the hatred of Anastacio de la Cruz to these two accused. And, in addition, that Anastacio de la Cruz entertained hatred toward Herminigildo Pascual because this acted as witness in a case of robbery in band against Anastacio de la Cruz and others in criminal case No. 156 of the Justice of the Peace Court of Licab, Nueva Ecija, Exhibit 7-H-Pascual.

"If this pretension were to be accepted that Anastacio de la Cruz simply was moved by the impulse of hatred in pointing at Herminigildo Pascual as among those who had fired at him, because this had acted as witness against him in a certain criminal case, then Anastacio de la Cruz, with more reasons, would have pointed also as one of the suspects, Antero Vicente, the very complainant in said criminal case No. 156, for Antero Vicente was the very instigator of the complaint charging him with others with the crime of robbery in band. If he really had the intention to fabricate and falsify that very evening, there was nothing that could prevent Anastacio de la Cruz from mentioning as one of the suspects Antero Vicente. That he did not do this shows that he was really relating the true facts that transpired that evening and that Herminigildo Pascual and the other accused were the ones responsible for the shooting.

"If the contest between Anastacio de la Cruz, on one hand, and the brothers Herminigildo Pascual and Ceferino Pascual, on the other, for the overseership of the estate of Mrs. Rosario Gatmaitan could be considered motive at all in this incident, such motive would have been more powerful on the part of the accused Herminigildo Pascual and Ceferino Pascual to do away with Anastacio de la Cruz. Indeed Anastacio de la Cruz declared that on the evening of January 10, 1966, Ceferino Pascual approached him while he was supervising the threshing of palay at the hacienda of Mrs. Gatmaitan and warned him not to continue as overseer otherwise his life would be in danger.

"Ceferino Pascual in his testimony admitted that if he would become the overseer in place of Anastacio de la Cruz, he would earn 100 cavans of palay every year more or less. This statement is quite revealing of the motive of the accused. In order to earn this boon of 100 cavans of palay every year as overseer of a great estate it is not improbable for these two brothers to stake their lives. And to achieve this goal, the overseership of the

hacienda of Mrs. Rosario Gatmaitan, they might have contrived of eliminating Anastacio de la Cruz by killing him, as they did in the night in question.

"The motive alleged by Leonardo Cabigting that Anastacio de la Cruz implicated him in this case because this got mad at him after the former had killed the pig of the latter is so flimsy as not to merit any serious attention, for so light a pretext, it is inconceivable that a man would go to the extent of implicating Leonardo Cabigting in the serious offense of triple murder. Furthermore, Anastacio de la Cruz declared that he did not resent the shooting of his pig by Leonardo Cabigting as his son and Leonardo spoke to each other."

The appellants are guilty of three separate crimes of murder. The offenses are not complex because they were not the product of a single act but of several gunshots. The sudden and unexpected assault perpetrated by the seven malefactors insured the killing of the three defenseless victims. Hence, the killings should be regarded as murder qualified by treachery (Art. 14[16], Revised Penal Code).

As no generic mitigating nor aggravating circumstances were proven, the penalty of reclusion perpetua was correctly imposed by the lower court (Arts. 64[1] and 248, Revised Penal Code).

WHEREFORE, the judgment of the trial court is affirmed with the modification that the appellants should pay solidarily an indemnity of twelve thousand pesos (P12,000) to each set of heirs of the three victims. In the service of the penalties, the forty-year limit fixed in article 70 of the Revised Penal Code should be observed. Costs against appellants.

SO ORDERED.

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

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