

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANSUETO JAMERO, ET AL., DEFENDANTS, MANSUETO JAMERO,
RODRIGO HONORICO LOPEZ, JULIAN PABICON AND JOEL
BINGCANG, DEFENDANTS...**

G.R. No. L-19852. July 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

On appeal from the decision of the Court of First Instance Of Negros Occidental in its Criminal Case 6527, entitled "People of the Philippines versus Mansueto Jamero, Julian Pabicon, Rodrigo Honorio Lopez & Rudy Lopez, Joel Bingcang, Florentino Vasquez, Jr. @ Junior Vasquez, Jesus Vasquez @ Susing Vasquez, Pedro Arana, Oscar Ramirez, John Doe and Richard Doe", wherein accused Mansueto Jamero, Julian Pabicon, Rodrigo Honorio Lopez @ Rudy Lopez and Joel Bingcang were found guilty of the crime of murder for the killing of Ernesto Piccio, in the night of July 19, 1958, and were sentenced to death; their co-accused, Jesus Vasquez @ Susing Vasquez, Florentino Vasquez, Jr. @ Junior Vasquez, Pedro Arana and Oscar Ramirez were acquitted on reasonable doubt.

Our own examination of the record revealed the following broad outlines of the facts of the case which appear to be indubitable. The details shall be discussed as we review the evidence.

The victim, Ernesto Piccio, was a law practitioner and politician in the province of Negros Occidental during his lifetime. At the time of his death in 1958, he was incumbent councilor in the municipality of Sagay, said province, having been elected to the position in the local election of 1955. He had a residence at Nueva St., Bacolod City, and maintained a law office in the South-ern Motors Building, also in Bacolod City.

At about 5:30 o'clock in the afternoon of July 19, 1958, Ernesto Piccio left his residence in Bacolod City, bound for Sagay, Negros Occidental. He rode in his jeep which was loaded with cans of paint, plants, and some small boxes. That was the last time that his wife Anita Cuaycong, saw Ernesto Piccio alive, for on the following day, it was the lifeless body of her husband that was taken back to Bacolod City; it was found by an old woman lying inside a sugarcane field at Barrio Tinampaan, Cadiz, Negros Occidental, some meters from the right shoulder of the road leading to Sagay.

Two days after the discovery of the body of Ernesto Piccio, or on July 22, 1958, to be precise, it was autopsied by Major Antonio U. Briones of the Medico-Legal Branch, Philippine Constabulary. His findings and remarks, as appear from his necropsy report dated July 24, 1958, were as follows:

"II. POSTMORTEM FINDINGS:

Multiple stab wounds as follows:

1. Stab wound, measuring 1.8 cm. on the inner canthus of the right eye entering the soft tissues without injuring

the eyeball and entering the sphenomaxillary fissure of the lower orbital surface and is directed inward, downward and slightly toward the right to a depth of 4.8 cm. reaching the base of the maxillary antrum without puncturing it.

2. A stab wound, 2.7 cm. in length and with a depth of 2.6 cm. situated midway between the center of the bridge of the nose and the inner canthus of the right eye, directed downward and slightly lateral to the right.

3. Stab wound, 1.7 cm. in length and with a depth of 2.5 cm. on the inner canthus of the left eye, directed inward and downward.

4. A stab wound, 1.7 cm. in length on the lower palpebral folds of the left eye directed inward and downward puncturing the eyeball and chipping off a piece of bone of the lower rim of the socket to a depth of 2.5 cm.

5. A stab wound, 3 cm. in length running obliquely across the nose cutting off the ligament and destroying the nasal septum.

6. A small stab wound, 0.7 cm. involving the whole thickness of the soft tissue on the upper temporal region and chipping off superficially a piece of bone fragment about 1.5 cm. in diameter.

7. A stab wound, 1.6 cm. in length on the left lower temporal region about 2.4 cm. posterior to the lateral end of the left eyebrow, directed inward to a depth of about 3.9 cm. without entering the skull.

8. A stab wound, 1.7 cm. in length, on the lower temporal region posterior to the entrance of wound No. 7, and about 4.6 cm. anterior to the left auricle, penetrating the skull and dura sheath, injuring the brain tissue with a moderate amount of hemorrhage on the surface of the temporal lobe of the brain.

9. A stab wound, on the interior aspect of the right shoulder vertical in disposition, directed inward the left and slightly posteriorward penetrating the 2nd intercostal space, entering thoracic cavity and puncturing the surface of the apex of the right lung to about 1.0 cm. Total depth of this wound was approximately 7 cm.

10. A slight subaponeurotic contusion about 4 x 5 cm. on the occipital region.

11. Subdural and meningial hemorrhage over an area about 3 x 6 cm. on the frontal aspect of both hemisphere with an area of brain laceration about 2 x 1 cm. superimposed on this sites. Hemorrhage in the falx cerebri and interhemispheric fissure was also found.

REMARKS:

The various multiple stab wounds were inflicted antemortem causing profuse hemorrhage. They must have been due to a long, sharp pointed and bladed weapon inflicted with a varying degree of force from moderate to heavy.

The subaponeurotic contusion at the back of the head must have been due to a blunt force with a wide striking surface and the contrecoup lesions in the frontal aspect of both hemispheres must have been the result of the traumatic force applied with a moderate to heavy degree at the back of the head.

Stab wound No. 4 penetrated the eyeball with the extrusion of the aqueous and vitreous humor.

The multiple stab wounds were sutured from previous examination.

The length of the wound in the right shoulder was extended and modified by suturing, hence its actual length could not be measured definitely.

There were multiple abrasive marks all over the face more on the right side, and mostly in horizontal disposition all postmortem in nature. Minor post mortem scratches were also noted in the left chest and external aspect of the

left arm.

Multiple postmortem abrasive marks were found in the palm and dorsum of the left hand. A postmortem scratch was noted on the dorsal aspect of the lower third right hand, measuring 4 x 2 cm. Another postmortem abrasion 0.4 x 0.3 cm was noted on the left knee.

CAUSE OF DEATH:

Brain concussion, intracranial hemorrhage and shock, secondary to profuse hemorrhage."

After months of investigation, a Special Prosecutor from the Department of Justice filed on May 9, 1959, an Information for Murder in the Court of First Instance of Negros Occidental against the accused aforementioned including Inocencio Retirado, to wit:

"The undersigned Special Prosecutor accuses MANSUETO JAMERO, JULIAN PASION, JOEL BINGCANG, JESUS VASQUEZ @ Susing Vasquez, FLORENTINO VASQUEZ, Jr. & Junior Vasquez, RODRIGO HONORIO LOPEZ @ Rudy Lopez, OSCAR RAMIREZ, PEDRO ARANA, INOCENCIO RETIRADO, JOHN DOE and RICHARD DOE, of the crime of 'Murder' committed as follows:

"That on or about the 19th day of July, 1958, in the Municipality of Cadiz, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other with evident premeditation and treachery, did then and there wilfully, unlawfully, and feloniously with intent to kill, assault, attack and stab with blunt instruments and sharp pointed weapons one ERNESTO PICCIO on different parts of his body, thereby inflicting upon him mortal wounds which caused his death immediately thereafter.

"That there are present in the commission of the crime, the following aggravating circumstances, to wit.

"1. Nighttime which was purposely sought by the accused to facilitate its commission and to avoid being identified;

"2. Use of superior strength - in that all the accused, some of whom were armed with blunt instruments and pointed weapons, jointly took part in the commission of the crime against the victim who was then unarmed;

"3. Use of motor vehicle - in that the accused purposely rode with the victim with their deliberate intent to facilitate the commission of the crime;

"4. Uninhabited place - in that the accused deliberately committed the crime in an uninhabited place to insure the commission thereof and for the purpose of impunity;

"5. Graft and trickery was employed; and

"6. Cruelty - in that the wrong done in the commission of the crime was deliberately augmented by extricating the right eye of the victim which was not necessary for its commission.

"CONTRARY TO LAW."

On May 13, 1959, the prosecution filed a motion for the discharge of accused Inocencio Retirado from the Information so that he could be utilized as state witness. To the said motion, the different counsels for all the remaining accused (except John Doe and Richard Doe), filed their oppositions. Hearing was had on the said motion and the oppositions thereto on May 18, 1959, after which the motion was granted by the court a quo in its order bearing the same date. The dispositive part of that order reads:

"WHEREFORE, finding the motion of Special Prosecutor Enrique A. Agana for the discharge of Innocencio Retirado to be utilized as a State witness to be well founded, the same is hereby granted and the accused, Innocencio Retirado, is hereby ordered discharged. So ordered."

This order precipitated the filing a petition for certiorari with preliminary injunction with this Court by remaining accused on the issue as to whether or not accused Inocencio Retirado, who had allegedly been con-victed for malicious mischief, could be discharged as state witness. The said petition, G. R. No. L-15552 (Mansueto Jamero, et al., vs. Hon. Jose F. Fernandez, etc., et al.), however, was dismissed by this Court for lack of merit in its Resolution of June 25, 1959. Meanwhile, the remaining accused (except John Doe and Richard Doe) were arraigned on May 23, 1959. All pleaded "not guilty" to the charge for murder. Thereafter, they stood trial.

The witnesses who testified for the People at the trial were: (1) Antonio U. Briones physician and chief, Medico-Legal Section, PC; (2) Inocencio Retirado, a buy and sell broker in Fabrica, Sagay, Negros Occidental, who was originally included in the Information but later dis-charged upon motion of the prosecution to become State witness; (3) Nepomuceno Fabros, a Notary Public in Sagay, Negros Occidental; (4) Juan de la Peña, a policemen in Victorias, Negros Occidental; (5) Arsenio Gapana, businessman in Lagasan, Cadiz, Negros Occidental; (6) Pedro Velasco, Jr., a student, Bacolod City; (7) Pedro Galon, PC, San Carlos, Negros Occidental; (8) Teodulo Galo, employee, Malabon, Rizal (formerly security guard, Lopez Sugar Central in Sagay, Negros Occidental); (9) Anita Cuayong Vda. de Piccio, widow of the victim Ernesto Piccio; (10) Emilia Villaluna attendant to Mrs. Piccio; (11) Anunciacion Placencia, housekeeper, Hacienda Canaan, Cadiz, Negros Occidenta; (12) Gorgonio Drillon, J.P. Sagay, Negros Oc-cidental; (14) Arturo Piccio, brother of the victim(15) Fernando Canlas, merchant, Sagay, Negros Occidental; (16) Rodolfo Monillo, employee, Southern Motors Co., Bacolod City; (17) Manuel Soriano, lawyer, Iloilo City; (18)Quen-tin Katalbas, mayor, Sagay, Negros Occidental; (19) Ino-cencio Adrias, mayor, Siniloan, Laguna (formerly CIS agent); (20) Crispin Garcia, captain, PC; (21) Leonardo No-ot, PAL employee, Bacolod City; and (23) Emilio Loga, farmer, Sagay, Negros Occidental. Stripped of unessen-tial details, they testified as follows:

Witness Teodulo Galo declared that in 1949, he was a security guard at the Lopez Sugar Central Sagay, Negros Occidental, the manager of the company, Eduar-do Lopez, called down Rodrigo Honorio Lopez (one of herein accused) to explain why he manhandled Arturo Piccio, bro-ther of the victim Ernesto Piccio, daring the absence of the said manager. Rodrigo Honorio Lopez (Rudy Lopez, for short), was castigated and almost knelt before Arturo Pic-cio as he apologized to him. Attorney Ernesto Piccio learned about the manhandling of his brother; and the following day, he came to the Lopez Sugar Central hunting for Rudy Lopez. Atty. Ernesto Piccio was only pacified upon promise of the Manager that he would oast Rudy Lopez from his job.

Witness Nepomuceno Fabros testified that in the local elections of 1955, the Nacionalista Party in Sagay, Negros Occidental was divided into three (3) factions, namely the Quentin Katalbas, Amalio Cuevas, and the Jesus Vasquez political aggrupations. In the last faction, ac-cused Jesus Vasquez was candidate for Mayor, and in his ticket were accused Rodrigo Honorio Lopez who ran for vice Mayor, and the accused Oscar Florentino Vas quez, Jr., and Pedro Arana who all ran for councilor. The witness, along with accused Julian Pabicon, Mansueto Jamero and Jose Bingcang, rallied behind that faction of Jesus Vasquez. The deceased Ernesto Piccio was a candi-date for councilor of the Liberal Party in that election, but his name was also carried as a guest candidate of the Nacionalista Party in the tickets of the factions headed by Quentin Katalbas and Amalio Cuevas. Witness acted as legal adviser to the faction headed by accused Jesus Vasquez appearing in its behalf in inclusion and exclusion, proceedings in Sagay, Negros Occidental, and helping in all matters that needed legal advice, for he was a law graduate.

During that political campaign, according to witness Teodulo Galo, the rivalry between the faction headed by

accused Jesus Vasquez and the faction of Quentin Katalbas and the deceased Ernesto Piccio, became so bitter that in their speeches, accused Rudy Lopez, Mansueto Jamero and Joel Bingcang hurled personal insults at Ernesto Piccio, calling him "Spaniard, pig", while the deceased in his speeches referred to accused Rudy Lopez as "a waste matter of the Lopezes", and called the others "gago" (dumb). At one instance in that campaign, the deceased and the witness, who were together on their way from Bacolod City to Sagay, were stalled on the way because accused Lopez, together with accused Jamero and Bingcang had parked their truck in the middle of the road and did not move aside until Atty. Piccio bluntly addressed accused Lopez, "what is this, pare?" On another occasion, Piccio was riding home to Sagay when, upon passing a store in front of the Lopez Sugar Central, accused Lopez and Jamero shouted at him, "kastila, pig". Piccio stopped and demanded an explanation of the insult and accused Lopez met him with a dare, "so what". That incident would have resulted in fistfights had others not intervened.

On election day, as related by the same witness, the deceased went to the precinct located at the Eusebio Memorial School and chanced to meet there the accused Lopez, Jamero and Pabicon. Lopez addressed Piccio to look inside and see the many "zeros" he made in that precinct, to which remark Piccio countered that it did not matter, for in Sagay, they will let him (Lopez) "eat mud" also. These remarks precipitated a discussion which developed into a near-fight. They were pacified, nevertheless, by a policeman nearby.

Witness Nepomuceno Fabros narrated further that in that local election, accused Jesus Vasquez lost to Quentin Katalbas in the mayoralty race. The victim, Ernesto Piccio came out as No.1 councilor, although accused Rudy Lopez and Oscar Ramirez also won as vice mayor and councilor, respectively. A victory ball was held in January of the following year in honor of governor-elect Valeriano Gatuslao, whom not only the accused in this case but also the victim, Ernesto Piccio had supported in that local election. There was a heated altercation that developed between the late Atty. Piccio and accused Oscar Ramirez in that victory ball; and accused Rudy Lopez, seeing that his political ally was out-smarted in the altercation, intervened to such an extent that his bodyguards, one of whom was accused Mansueto Jamero, and the bodyguard of Atty. Piccio, Constancio Tan, soon alerted in preparation for the defense of their respective masters. There were Constabulary soldiers and members of Sagay Police Department around, however, who pacified the protagonists and prevented the near-shooting. Nevertheless, sometime thereafter, Constancio Tan was manhandled by Rudy Lopez, Mansueto Jamero and Sotero Mosqueda, who inflicted upon the former, bodily harm resulting in the filing of a physical injury case against them. Accused Rudy Lopez and his group also filed a counter-charge against Constancio Tan as a result of that incident, but both cases were later dismissed. This testimony of Fabros regarding the incident that victory ball was substantially corroborated in by witness Teodulo Gala who declared that he remembered accused Oscar Ramirez and the late Atty. Piccio had a discussion then; that Rudy Lopez approached and the bodyguard of Atty. Piccio, Constancio Tan also approached; that a short time later, accused Rudy Lopez and Mansueto Jamero, along with other security guards of the Lopez Central were inflicting fist blows upon Constancio Tan; and that they were all arrested after that and brought to the municipal building.

Fabros also mentioned a case for physical injuries and another one for slander filed against the accused Oscar Ramirez by Hernani Serafin and by Delia Lamela in the Justice of the Peace Court of Sagay. Atty. Piccio intervened in these cases for the complainants. Still another case was filed by Letty Balison for acts of lasciviousness (abuse of honor) against accused Rudy Lopez who, according to witness Fabros, enlisted his help. He (Fabros) and accused Mansueto Jamero then took the complainant, Letty Balison, to Bacolod City where she was fixed by accused Rudy Lopez by giving her cash and other considerations, behind the back of Atty. Piccio who had instigated the filing of the case.

The same witness declared further that in the later part of 1957, accused Rudy Lopez was summarily dismissed by the Lopez Sugar Central at Sagay on petition of the Sagay Sugar Planters Association. Aside from the fact that

Atty. Piccio was a member of the Board of Directors of that association, there were additional reasons for accused Rudy Lopez and Mansueto Jamero to suspect that Atty. Piccio had something to do with their dismissal from the Central Lopez, for in the resulting labor case subsequently initiated by the more than 100 laborers of the company who were dismissed with accused Rudy Lopez and Mansueto Jamero, Atty. Piccio stood by the Company against the interests of the laborers; and when violence erupted during one of the hearings of that labor case wherein one Elias Lirio sustained physical injuries, Atty. Piccio instigated the filing of the corresponding criminal complaint in the fiscal's office against accused Rudy Lopez and his followers.

Manuel O. Soriano, a lawyer of the Lopez Sugar Central, confirmed the testimony of Fabros that accused Rudy Lopez was dismissed by the Company upon complaint, not only of the Board of Directors of the Sagay Sugar Planters Association of which the late Atty. Piccio was a member, but also of other planters who were not members of that association. He declared that as a result of that dismissal, accused Rudy Lopez lost a yearly income of P12, 400.00 representing a monthly salary of P200.00 as a warehouseman in the Central and the amount of about P10, 000.00 annually derived by him as a contractor in charge of the "pakyaw" for hauling sugar.

Deprived of that means of livelihood, accused Rudy Lopez and his group, according to Fabros, conceived of a plan by which they could assume the mayorship of Sagay. The plan was to file a trumped-up administrative complaint against Mayor Quentin Katalbas and work for his suspension. Part of that conceived plot was the proposed appointment of accused Jesus Vasquez to the position of Chief of Police of Sagay as soon as accused Rudy Lopez shall have wrested the position of Mayor from Katalbas. The existence of such a plan was, likewise, testified to by witness Inecencio Retirado who said that in connection therewith, he was summoned to the house of Teodoro Lopez in Bacolod City by accused Rudy Lopez thru a person named Tiroc. In said house on that occasion, he met accused Rudy Lopez, Junior Vasquez, Pabicon and Jamero, along with other people. Fabros was there, preparing the affidavits of witnesses to be used in substantiating the trumped-up administrative charge against Mayor Katalbas. He (Retirado) and two others were later made to sign those affidavits. That scheme failed, however, according to Fabros, because the late Atty. Piccio interceded in behalf of Mayor Katalbas and made the necessary representations with the Provincial Governor of Negros Occidental.

Fabros also recalled that in the month of February, 1958, he dropped at the house of Jesus Vasquez in Bacolod City where he saw accused Rudy Lopez, Junior Vasquez, Mansueto Jamero, Julian Pabicon and Jesus Vasquez in a sort of meeting or conference. He did not consider seriously then what he heard during that meeting; but later he considered significant, because he remembered that while there he heard Junior Vasquez said, "if Piccio is alive, we can not do anything, we had better kill him." That statement was addressed to accused Jesus Vasquez, Mansueto Jamero, Julian Pabicon and Rudy Lopez; and it was the latter who replied: "just take it easy, because we are not yet the king of the Provincial Jail." He heard Jesus Vasquez comment: "Just take it easy boys." That meeting was followed by another occasion in March, 1958, where he met the same group of Rudy Lopez, Junior Vasquez, Mansueto Jamero, Julian Pabicon and Jesus Vasquez in the house of the latter. There was talk there regarding the political activities of the group and in those conversations, he heard them expressing words of anger against Atty. Piccio. Rudy Lopez said: "that this Atty. Piccio is only our barrier as in all troubles we have had, he always stands and identifies himself with the opposite side." Jesus 'Vasquez' comment then was to the effect that he considered Atty. Piccio a smart guy and "we must do something about it." To that comment, Junior Vasquez answered: "Just tell us what to do." And accused Mansueto Jamero and Julian Pabicon said that they were just waiting for his words. There was still another meeting in April by the same group in the house of Jesus Vasquez, where there was talk against Atty. Piccio in ordinary conversation. Accused Rudy Lopez was heard to comment that the late Atty. Piccio was always the stumbling block in their political activities.

State witness Inocencio Retirado declared that there were at least five (5) occasions wherein statements

regarding the plan to kill Atty. Piccio were made by the accused in his presence. Thus, he testified that on the occasion when he was called to the house of Teodoro Lopez to sign the affidavit prepared by Fabros, he heard the conversation between Junior Vasquez and Rudy Lopez in the presence of Pabicon, Jamero, Tiroc, Fabros, Padernal and the two sons of Teodoro Lopez, Teddy, and Toto. Substantially, Junior Vasquez said: "that if they can not have Mayor Katal-bas suspended, there is a more powerful man in Sagay in the person of Atty. Piccio who always frustrates whatever things they do in Sagay"; and in effect, the answer of Rudy Lopez was: "Since we cannot do anything, it is necessary to liquidate one of them, and the first one we are going to liquidate is Atty. Piccio, so that there will be no more powerful man in Sagay."

Then one afternoon in the month of April, 1958, accused Oscar Ramirez and Pedro Arana told this witness that they would go to the house of Jesus Vasquez the following morning. He went with them as they told him and had lunch in the house of Jesus Vasquez. In the evening of that same day, he was feted in a night club at the Shopping Center owned and operated by the Vas-quez brothers. He dined and drank at the place. Accused Junior Vasquez, Mansueto Jamero, Julian Pabicon, Rudy Lopez and Jesus Vasquez, were all there, although the last two left ahead before 2:00 a. m. It was at about that time, when the customers of the nightclub were gone, that Retirado sat at a table with accused Junior Vasquez, Mansueto Jamero, and Julian Pabicon. As they drank, Junior Vasquez asked: "When are we going to do this? Who among you will volunteer?" It was then that accused Mansueto Jamero and Julian Pabicon voiced their willingness to do the job provided their respective families would be supported; and Junior Vasquez gave them assurance: "It is arranged if that is your problem, go ahead, it is alright."

The same group of Jesus Vasquez, Junior Vasquez, Julian Pabicon, Mansueto Jamero, Oscar Ramirez, Pedro Arana, Rudy Lopez and Retirado met in the months of May and June in the same house of Jesus Vasquez. In these meetings, the plan to kill Atty. Piccio was discussed; and as usual, there were talks about politics and expressions of anger and hatred against Atty. Piccio. Invariably repeated also in said meetings were the assurances that the families of accused Mansueto Jamero and Julian Pabicon would be taken care of by the Vasquez brothers should they be discovered.

Meetings were more frequent in the month of July, 1958. At that accused Rudy Lopez had already been appointed warden of the Provincial Jail of Negros Occidental. According to witness Fabros, a meeting was held in the house of Jesus Vasquez in the second week of that month where accused Rudy Lopez made the following announcement: "Are you now ready? Now that I am the warden of the Provincial Jail, I think we can carry out our plans." Accused Junior Vasquez together with accused Mansueto Jamero and Julian Pabicon simultaneously replied: "Just decide when."

Continuing his testimony, witness Inocencio Retirado declared that there was another meeting held in the second week of July, 1958, in the house of Jesus Vasquez in front of the Provincial Jail. Those present in that meeting were he and accused Jesus Vasquez, Junior Vasquez, Pedro Arana, Oscar Ramirez, Julian Pabicon, Mansueto Jamero, and Rudy Lopez. Before the meeting broke up, accused Rudy Lopez instructed accused Mansueto Jamero and Julian Pabicon, along with the witness to report again at the house of Jesus Vasquez for final briefing in the morning of July 19, 1958. In the afternoon of July 18, 1958, accused Pedro Arana (Tatay Pandoy to the witness) also told Retirado to go to the house of accused Jesus Vasquez the following morning. Pedro Arana was with accused Oscar Ramirez at the time.

In the morning of July 19, 1958, at about 10:00 of 11:00 o'clock, accused Pedro Arana and Oscar Ramirez, together with Retirado, arrived at the house of Jesus Vasquez, Julian Pabicon, Mansueto Jamero and Rudy Lopez. About ten (10) minutes later, accused Joel Bingcang also appeared at the house. He addressed accused Rudy Lopez: "I was sent hereby my employer." Lopez and Bingcang retired to a farther place wherein they engaged in conversation not heard by the others for about five minutes. He left the house after that conversation; but before

leaving, he uttered: "I am leaving now, I am going to wait in that place at Tinampaan." After the departure of Joel Bingcang, accused Rudy Lopez again reiterated his idea that they can not do anything in Sagay insofar as politics is concerned unless they kill Atty. Piccio. There was unanimous agreement among those present as to the idea. Accused Junior Vasquez again gave the assurance of financial assistance to the families of the appointed hatchmen. He even remarked: "It is harder to kill a chicken than to kill him." Accused Rudy Lopez informed the group then that at about 5:00 o'clock that afternoon, Atty. Piccio will be going home to Sagay. He instructed accused Mansueto Jamero and Julian Pabicon to wait at the place of Southern Motors Building where Atty. Piccio would start, while Retirado was advised to wait at the place of Ramos Machine Shop where Atty. Piccio would pass. From these assigned places, the three would hitch for a ride with Atty. Piccio to Sagay. Definite instructions were given to use a hunting knife or any other weapon which does not explode in killing Atty. Piccio so that the people in the nearby house may not hear; and to use their revolvers only should Atty. Piccio put up a fight, for the latter had a .38 caliber pistol. They were made to understand that after the mission shall have been accomplished, the body of Atty. Piccio would be dumped in the sugar cane fields and his jeep taken to Pandanan where it would be abandoned. At this juncture, witness manifested that he would not participate in the actual killing, but accused Junior Vasquez warned him that since he had been present in planning the killing from the very beginning, he would be the one to be killed if he would not agree. Retirado was consoled by accused Pedro Arena who promised that they would take care of him as they would follow them in another car; and was, therefore, prevailed upon to go.

According to witness Emilia Villaluna, attendant in the Piccio home, somebody called by phone at about 5:30 o'clock in the afternoon of that day, July 19, 1958. He was riding in his jeep which was loaded with cans of paint, some plants and small boxes.

Continuing his testimony, Retirado declared that in the afternoon of that day, he waited at the Ramos Machine Shop as previously agreed upon in their morning conference. When he saw Atty. Piccio's jeep coming near, he stopped him. He requested, and was allowed, to take a ride with him. Accused Mansueto Jamero and Julian Pabicon were already there; Jamero was seated in the front seat, beside Atty. Piccio who was driving; Pabicon was seated at the back, just behind Atty. Piccio. Retirado also took his seat at the back, behind Jamero. At Ginhalaran, Atty. Piccio stopped his jeep and got down to inquire from a nearby flower pot manufacturer as to the price of a flower pot. That was the precise time that accused Julian Pabicon pushed aside the flower pots loaded in the jeep from the place where the jack (Exh. B) and a tire wrench (Exh. C) were. Pabicon placed the objects near him and made a motion to Retirado to use one of them. That was also the time, while the jeep was parked at Ginhalaran that the car supposed to follow them, passed by and signalled that they were going ahead.

From Ginhalaran, Piccio drove his jeep with his three chance-passengers towards Sagay. He made another short stop at the outskirts of Silay and had a short conversation with the driver of a pick-up truck. This pick-up truck appears to be the same pick-up ridden by Pedro Velasco, Jr., who testified that he saw Atty. Piccio with three other men in his jeep at Silay in the afternoon of July 19, 1958, as he (Piccio) talked with their driver. Said witness, a 12-year old student, declared that he recognized the men with Atty. Piccio at the time, but he failed to identify said men from among the people in the court-room where all the accused were present after two attempts he made by walking around the courtroom.

Atty. Piccio made a third stop on their way to Sagay at the town of Victorias. Here, he talked with a local policeman and inquired about the whereabouts of his friend, Sgt. de la Peña. He was corroborated on this point by the testimony of Patrolman Juan dela Peña then; and that he told him that he could be found further down the way.

Retirado failed to notice the car that was supposed to follow them at Crossing Bombahan where it was agreed it

would park and flash some signals with its lights, i. e., if its lights were bright, they would mean signs of danger and they should not proceed with the killing of Atty. Piccio, and in the absence of said lights, the understanding was that the plan to liquidate him should be carried on. At some point after Crossing Bombahan, however, Retirado noticed the car already following them, its "lights being put out and put on again."

At some distance from Km. Post 64 at Tinampaan, Cadiz, Negros Occidental, accused Mansueto Jamero requested Atty. Piccio to stop the jeep because he wanted to urinate. He reiterated his request when they were just a few meters from a big tree on the side of the road. Atty. Piccio stopped the jeep and accused Jamero got down. He did not leave the jeep however; one of his feet remained on the running board. At that precise time, accused Joel Bingcang appeared from behind the big tree. Upon seeing him, Atty. Piccio engaged him conversation and asked: "Why are you here?" Bingcang answered: "I am waiting for a bus." Atty. Piccio pressed his question: "Why are you here?" And Bingcang explained that he was there to visit a relative. While thus engaged in conversation, accused Julian Pabicon lifted the jack (Exh. B) and pounded it upon Atty. Piccio, hitting him at the back portion of the head. Atty. Piccio stopped forward, swayed to the right, then to the left, in a staggering position; and at that juncture, accused Jamero stabbed him three or two times. He did not see clearly whether Jamero stabbed Atty. Piccio on the right side, on the arm or shoulder, for he was terrified. He immediately fled from the place. He ran and hid in the near-by coconut grove and sugarcane fields some two hundred (200) meters from the place where his companions were. He remained in hiding there for sometime until he heard the sound of a coming vehicle. With the fear that his companions might now be after his own life, Retirado tried to ascertain first whether or not the coming vehicle was Atty. Piccio's jeep; and only after he had assured himself by the presence of lights at the top of the vehicle that it was not the one but a passenger truck, did he come out of his hiding place to stop it. He boarded the bus and got off at Fabrica, reaching his house at about 3:00 o'clock in the morning. By his own estimate, that incident near the big tree at Tinampaan must have occurred between 7:00 to 8:00 o'clock in the evening.

Another witness, Arsenio Gepana declared that at about that time between 7:00 to 8:00 in the evening of July 19, 1958, while he was seated on a bench by the right side of the road going to Sagay near the bridge at Lagas-an, Cadiz, Negros Occidental, he noted an on-coming jeep swerve to the side of the road where he was; and he recognized it to be the jeep of Atty. Piccio; he figured that Atty. Piccio must be drunk. It came so close to him that it would have crushed his feet had he not moved them aside on time. There was a passenger bus on the opposite side of the road at the time which stopped to unload some passengers, and there was another cargo truck coming from the same direction opposite that of Atty. Piccio's jeep, and the latter had to stop for a moment to give way to the on-coming vehicle. As the jeep made that brief stop in front of him Gepana was able to ascertain that it was not Atty. Piccio but accused Josel Bingcang who was driving, with accused Mansueto Jamero and Julian Pabicon with him. After that brief stop the jeep proceeded on its way and turned left towards Pandanan upon reaching the crossing nearby. Arsenio Gepana said he was sure it was the jeep of Atty. Piccio he saw that evening because he had seen the jeep many times before.

Anunciacion Placencia, a 51-year old woman from Sitio Canaan, Cadiz, Negros Occidental, testified that on July 23, 1958, at about 9:00 o'clock in the morning, she and a companion Teresita, were on their way to Crossing, Maingoy, in the same municipality when she noted stains of blood on the roadside near a big tree at Tinampaan. She looked around and saw not far from the place, the lifeless body of a man lying face downward inside the nearby sugarcane field on the right side of the road going north. She and Teresita hurriedly left the place upon seeing the body and continued their way to Crossing Maningoy. They informed the policeman there about their discovery, and the said policeman took them along with him in going back to the place at Tinampaan. Upon seeing the body, the policeman recognized it to be that of Atty. Piccio.

A photographer from the place, Carlos Serafin, was then engaged to take pictures of the dead man and the said photographer later identified two of the pictures (Exh. F and F-I) he had taken of the late Atty. Piccio on that occasion. Arturo Piccio, brother of the victim, also identified said pictures to be those of his brother. He likewise identified a jacket (Exh. H), a pair of pants (Exh. I), a polo shirt (Exh. J) and a belt (Exh. K) to be those worn by Atty. Piccio in the afternoon of July 19, 1958, when he saw his remains loaded in a truck at Silay City.

The same day, July 20, 1958, the jeep of Atty. Piccio was found abandoned a few meters from the shoulder of the road between Barrios Lagas-an and Tiglawigan, Cadiz, Negros Occidental. The same photographer who took the pictures of the body of Atty. Piccio at Barrio Tinampaan, also took several pictures of the said jeep on that day, and he later identified exhibits 4-PJL 5-PJL, 6- PJL and 7-PJL to be the pictures of the jeep he had taken. The PC soldier who was assigned to guard the jeep at the place where it was discovered, also identified Exh. 5-PJL as a picture of the Jeep he guarded on that day.

Dr. Antonio Briones testified that he autopsied the body of Atty. Ernesto Piccio at a funeral parlor in Bacolod City on July 22, 1958. He declared that the stab wounds he described on Items Nos. 1 to 9 of his necropsy report (Exh. A) were caused by a sharp pointed instrument. Item No. 10 must have been caused by a blunt object whose striking surface was applied with such force that caused the countrecoup lesion in the frontal aspect; that Item No. 11 was the injury in the brain caused by the impact on the occipital region which cause concussions and intracranial hemorrhage. Death, according to him, ensued due to shock, secondary to hemorrhage. He said, however, that the multiple stab wounds he had earlier described were inflicted ante-mortem.

Inocencio Retirado declared further that the day immediately following the night of the incident in Tinampaan, he had thought of giving up himself to the authority. But he desired to surrender to agents coming from Manila and not to the authorities in Negros, because he entertained fears that, should he surrender to them, his companions in the commission of the crime may kidnap him while detained in the province. He testified that he had the feeling all along that his companions might do him harm, but he admitted that although they met several times after the death of Atty. Piccio in cockpits and other places, they never discussed with him about the killing of the victim, much less inflicted any harm upon his person. He said that he had some difficulty in getting in touch with the agents from Manila assigned to investigate the case and was able to see the CIS agents only in February, 1959, in Hacienda Magdalena. Thereafter, he was placed in protective custody of the PC at Camp Crame, Quezon City. He admitted further that since then, he had been receiving a P90-monthly allowance from the PC who were also kind enough to allow him to leave the Camp and engage in the buying and selling of hogs, which enabled him to sustain his family consisting of his wife and seven (7) children.

Patrolman Juan de la Peña declared further that at about 10:00 o'clock in the morning of July 20, 1958, he heard the news that Atty. Piccio had died the night before. That same day, he informed Sgt. de la Peña that he had seen Atty. Piccio with three (3) men in his jeep as they passed by on the night of July 19, 1958. He admitted that he only revealed the identities and the names of Atty. Piccio's companions five (5) days after the killing when CIS agent Adrias came to him and investigated him.

Arsenio Gepaña also revealed that as early as August 9, 1958, he had been investigated by the CIS agents. He was hiding in a coconut grove near his house when they first came, for he did not want to get involved in the case. The agents, however, were insistent and took his statement just the same which they later asked him to sign. In that statement, he readily identified accused Joel Bingcang and Mansueto Jamero as among those he saw inside the jeep of Atty. Piccio in the evening of July 19, 1958, but he was not able to identify or give the name of accused Julian Pabicon then because he forgot his name. He said that on September 24, 1958, the CIS agents again asked him questions about the incident and again he was made to sign the statement taken. At that time, he already remembered the name of accused Julian Pabicon, but still, he did not mention his name in his second affidavit.

because soon after, he signed his first affidavit, Julian Pabicon accosted him and argued with him, trying to convince him to see the Governor of the province on some important matter, that is why kept silent about it in order to avoid further troubles. That, according to him, was the very same reason why he did not mention the name of Julian Pabicon during the preliminary investigation. But after sometime, he realized that he should testify for the sake of justice; and after he was given personal security, he identified accused Julian Pabicon during the trial.

For their defenses, all the accused separately denied the truth of the testimony of prosecution witness Inocencio Retirado to the effect that they held several meetings during the period from February to July 1958, wherein they invariably voiced their hatred for Atty. Piccio and plotted to eliminate him from the political scene in Sagay by killing him; all claimed ignorance of the circumstances surrounding the death of Atty. Piccio on the night of July 19, 1958. More specifically, each of the accused explained his whereabouts on that particular date.

Accused Mansueto Jamero and Julian Pabicon offered a common alibi - they testified that they were both in Manila during the period from July 15 to 23, 1958. They maintained that they could not have been in Negros Occidental in the evening of July 15, 1958, the day Atty. Piccio was allegedly killed in barrio Tinampaan, Cadiz, Negros Occidental. Their testimonies in court described in detail their trip from Bacolod City to Manila on July 15, 1958, their return trip from Manila to Negros Occidental on July 23, 1958, and the various activities they had in Manila and its suburbs during the intervening period. They were substantially corroborated in all material details by the testimonies of their companions in that trip, namely: Asst. Provincial Warden Severino Remo, and Provincial Guards Anastacio Caceres and Ernesto Ocana who all testified in court. This is the they altogether told in court:

On July 14, 1958, at about 5:00 o'clock in the afternoon, Asst. Provincial Warden Severino Remo together with Mansueto Jamero and Julian Pabicon (accused), Anastacio Caceres, Ernesto Ocana and Panchito Guanzon, all provincial, guards of Negros Occidental, escorted 27 insane prisoners, in compliance with the orders of Governor Valeriano Gatuslao to transfer the said prisoners from the provincial jail of Negros Occidental to the Psychopathic Hospital in Mandaluyong, Rizal. The prisoners were first taken to the port of Pulupandan from Bacolod City in a truck. They reached Pulupandan at about 6:00 o'clock that same afternoon. At Pulupandan, the 27 prisoners were taken on board the "SS El Cano" which took them along with the Asst. warden and provincial guards escorting them in the early morning of July 15, 1958, to the port of Iloilo which they reached at about 5:00 o'clock a.m. The "El Cano" then left the port of Iloilo around 4:00 o'clock in the afternoon of the same with the insane prisoners and their escorts on board. It arrived in Manila in the afternoon of July 16, 1958. The truck of the Psychopathic Hospital (National Mental Hospital), the guards were expecting to be at the pier area when they landed to ferry the prisoners to Mandaluyong, Rizal, was not around then, and Asst. Warden Remo had to fetch the same from Mandaluyong, leaving accused Jamero and Pabicon, along with provincial guards Ocana, Caceres and Guanzon behind to guard the prisoners. Remo did not find the truck of the National Mental Hospital in Mandaluyong, however, for after he left the pier area the said truck arrived and Jamero, Pabicon, Caceres, Ocana and Guanzon loaded the insane prisoners on the truck without wanting for Remo anymore. They arrived at the National Mental Hospital at about 8:00 o'clock in the evening where they found Asst. warden Remo waiting for them. It took the guards several hours before they were able to leave the place, for aside from the fact that the 27 insane prisoners had to be individually interviewed by the admitting physicians of the hospital and the provincial guards had to act as interpreters, one of the prisoners named Cadangdang Jalandon had a small child whom the hospital authorities refused to admit. They were lucky they found a couple willing to take custody of the child in the persons of spouses Francisco and Felicisima Dacumos. They left the National Mental Hospital at about 3:00 o'clock already in the early hours of July 17, 1958. They proceeded to their boarding house at the Clover building on Echague, Sta. Cruz, Manila, in two taxis, reaching the place around 4:00 a.m., where they slept in a

corridor till morning after which they were given definite room assignments. Asst. Warden Remo did not stay in the place, however, for he went to his boarding house at 1620 Kansas Avenue, Manila.

After breakfast that morning, July 17, 1958, accused Jamero and Pabicon, together with Ocana and Caceres went to the Philamlife Compound in Quezon City to make a report of their arrival to Governor Valeriano Gatuslao, who was then staying in the residence of his brother Congressman Agustin Gatuslao at 62 South Maya, Quezon City preparatory to his scheduled travel abroad. Provincial Guard Panchito Guanzon was left behind at Clover building to look for someone to buy his fighting cock. Asst. Warden Remo was also at the Philamlife Compound that morning for the purpose of reporting to the Governor, and he met Jamero, Pabicon, Caceres and Ocana there. After reporting to the Governor, accused Jamero and Pabicon, together with Ocana and Caceres left the place at about 10:00 o'clock that morning and went to Polo, Bulacan, to deliver two (2) fighting cocks, the gift of accused Rudy Lopez to Governor Gatuslao's in-law, Mayor Ignacio Santiago of said municipality. They arrived at Polo around 11:00 am. They took lunch with Mayor Santiago who also gave them some drinks. He, likewise, took along the said provincial guards in his car and drove around the town with them. Jamero, Pabicon, Caceres and Ocana left Polo that afternoon when it was already about 4:00 or 5:00 o'clock, reaching their boarding house at Clover around 6:00 o'clock.

In the morning of July 18, 1958, accused Pabicon, together with Caceres and Ocana again left their boarding house to see the Governor at Philamlife Compound. They borrowed P10.00 each from the Governor, who later left in his car taking along with him Caceres and Ocana; accused Pabicon was left behind because the car was already full, and he had to return to their boarding house alone. Jamero and Guanzon also followed their companions to the Philamlife Compound that morning, but they did not catch up with the group - Ocana and Caceres had left with the Governor in his car then, while Pabicon had gone home alone to the Clover boarding house. So, Jamero and Guanzon did not stay long at Philamlife Compound and decided to go to Malacañan to visit Jamero's brother-in-law there, after which they returned to their boarding house. Meanwhile, Pabicon found himself alone in the boarding house upon his return from Philamlife Compound; he went out and loitered around the place. Jamero and Guanzon were already there when he returned later in the afternoon, and still later, Ocana and Caceres also returned to the place after their trip to the PNB and other government offices in the company of Governor Gatuslao. They all slept in their boarding house that evening after supper.

The following day, July 19, 1958 Pabicon, Ocana and Caceres again went to see the Governor at Philamlife Compound, arriving there between the hours of 8:00 and 9:00 in the morning. Jamero and Guanzon stayed behind at Clover and played mahjong with their landlady, Mrs. Narcisa Vilches, and another student boarder. In that particular occasion at Phil-Am Compound, Pabicon, Ocana and Caceres saw and met Congressman Gatuslao and his wife, Governor Gatuslao and Mrs. Gatuslao, Deputy Governor Agustin Segovia of Negros Occidental, Asst. Provincial Treasurer Aniano Norboneta who was scheduled to leave the airport for Negros that afternoon, while Pabicon, Ocana and Caceres walked the distance from Quiapo to their boarding house at Clover in Echague. They found Jamero and Guanzon still there, for they stopped the mahjong game at about 3:00 o'clock in the afternoon. And remembering that Pabicon, Ocana and Caceres had obtained a loan of P10.00 each from the Governor the day previous, Jamero and Guanzon went to Phil-Am Compound to borrow P10.00 each also. The Governor obliged, after which Jamero and Guanzon returned to the Clover.

At about 7:00 or 8:00 o'clock in the evening of that day, Pabicon, Jamero, Ocana, Caceres and Guanzon were invited to a party in Sta. Mesa, Manila, by a Visayan student boarder at Clover. They went with some 20 other students boarding at Clover, returning to the boarding house around 11:30. They tarried a while near the Dencia Restaurant and played the pin ball machines. They met there Amado Torres of the Bacolod Police Department, and they talked about their respective missions. After Torres was gone, they slept at about 12:00 o'clock.

In the morning of Sunday, July 20, 1958, Pabicon, Ocana and Caceres attended mass at Quiapo, while Jamero went to the Phil-Am Compound. Guanzon stayed at the board-ing house. From Phil-Am Compound, Jamero proceeded to the North Harbor to fix his ticket for the return trip to Neg-ros Occidental. Upon return to the Clover from the church, Ocana and Caceres, likewise, went to the North harbor for the same purpose. Pabicon did the same sometime later. They had to make arrangement with the steamship company be-cause the return tickets they secured in Negros Occidental before their departure for Manila were on the steamship "Jolo" which was scheduled to leave the North Harbor for Negros on that day, and they could not as yet leave be-cause they still had some unfinished business - to secure a prisoner at Muntinlupa upon orders of the Governor, in compliance with the order of the Municipal Court of Baco-lod City. They had their tickets changed for the "SS Basilan" which was scheduled to leave Manila for Negros Occidental on July 23, 1958.

In the afternoon of that same day, Remo arrived at the Clover boarding house and invited Pabicon, Ocana and Caceres to walk wit him along the Dewey Boulevard. As they strolled along, a candid photographer took their pic-tures and gave Pabicon two receipts (Exhibits 24-PJL and 24-PJL-1). Pabicon did not get the pictures later however. When they returned to the Clover boarding house after hours of walking, they found Jamero and Guanzon there still playing mahjong.

In the morning of July 21, 1958, Pabicon and Jamero went to Malacañan to meet Remo there as previously arrang-ed by Pabicon and Remo during the stroll at the Luneta the other day. They deposited their firearms at Gate 4 in the Palace and proceeded to the Local Government Section. There, they signed their names on the " visitors book" at the table of a certain Mr. Villanueva. Remo arrived later and presented the Governors order authorizing their trip to Manila; Mr. Villanueva prepared the necessary "certifi-cate of appearance" of Remo and the five provincial guards with him in the trip which was later signed by Secretary Sofronio Quimson. The said certificate was marked as Ex-hibit 29-PJL-2, while the page of the visitors book where-on the names of Pabicon and Jamero appear was marked as Exhibit 28-PJL.

From Malacañan, Remo, Jamero and Pabicon went to Muntinlupa to get an inmate there, Pableo Bolinas, whose appearance was needed in the Municipal Court of Bacolod City. They failed to secure the said prisoner, however, because the Prison's Superintendent required them to pro-duce a subpoena signed by a Judge of the Court of First Instance, so, they returned to Manila empty-handed.

Meanwhile, Ocana and Caceres went to Phil-Am Com-pound that same morning. They failed to see the Governor on that occasion. Knowing that Jamero and Pabicon had gone to Malacañan earlier, they went to the place upon their return to the Clover boarding house. Guanzon joined them this time. But upon reaching Gate 4 of Malacañan, they saw the names of Jamero and Pabicon already written in the log book there and upon inquiry from the guard, learned that they had left. Knowing also that Jamero and Pabicon were to go to Muntinlupa to get priso-ner Pableo Bolinas after their trip to Malacañan, Ocana, Caceres and Guanzon followed them to Muntinlupa but again, upon inquiry from the guard, they were informed that cer-tain provincial guards from Negros Occidental had left earlier, so, they also returned to Manila, arriving at Clover boarding house about past noon. They did not leave the boarding house after that.

In the morning of July 22, 1958, Pabicon, Jamero, Ocana, Caceres and Guanzon went to the Phil-Am Compound to bid Governor Gatuslao good-by. They stayed there until about 2:00 o'clock in the afternoon, when they returned to Clover boarding house. Then they started preparing for their return trip to Negros Occidental. They actually left Manila on board the "Basilan" at around 2:00 or 3:00 o'clock in the morning of July 23, 1958, and reached Pulu-pandan, Negros Occidental, the following day. Shortly after their arrival, they prepared the corresponding vou-chers and attached thereto the necessary supporting papers in order to obtain reimbursements for their travelling ex-penses during their stay in Manila. Said papers were pro-duced from the Provincial

Treasurer's Office and/or the Provincial Auditor's Office of Negros Occidental during the trial and marked as exhibits. A PAL passenger mani-fest for July 19, 1953, from Manila to Bacolod City (Exh. 5I-PJL) was, likewise, identified and presented in evi-dence to show that accused Jamero and Pabicon did not re-turn by plane to Negros on that day which was within the period of their stay in Manila from July 16 to 23, 1958, as their names do not appear in said passenger manifest.

The above declarations of accused Mansueto Jamero and Julian Pabicon, along with those of Asst. Provincial Warden Severino Remo and provincial guards Anastacio Ca-ceres and Ernesto Ocana were further corroborated by the testimony of Governor Valeriano Gatuslao who said that in the morning of July 17, 1958, accused Jamero and Pabicon, along with Reno, Ocana, and Caceres visited him at the house of his brother, congressman Gatuslao, at the Phil-Am Compound and reported that they have delivered the 27 insane prisoners to the National Mental Hospital; that after said report, Pabicon, Jamero, Ocana and Caceres went to Polo, Bulacan to deliver certain fighting cocks to Mayor Ignacio Santiago, his son-in-law; that in the morning of July 18, 1938, Pabicon, Ocana and Caceres again visited him and he took along Ocana and Caceres with him to the PNB; that he loaned the three guards P10.00 each that day; that in the morning of July 19, 1958, the three guards visited him again, and he remembered having sent a letter addressed to Mr. Mariano Yagore of the PNB branch at Bacolod City to Asst. Provincial Treasurer Narboneta at the airport thru Segovia who left the Phil-Am Compound at about 1:00 that afternoon with Pabicon, Remo, Ocana and Caceres; that in the afternoon of that day, Ja-mero and Guanzon also came to see him to borrow P10.00 each; that he did not see any of the guards on Sunday, July 20, 1958; that in the afternoon of July 21, Remo reported to him that Pabicon, Jamero and he, had gone to Muntinlupa that day to get prisoner Pableo Bolinas but were not able to secure his release; and that in the morning of July 22, 1958 accused Jamero and Pabicon, along with Ocana, Caceres and Guanzon informed him that they were going to leave for Negros on board the "Basilan"; while Remo told him that he would leave by plane.

The Governor declared further that upon learning about the death of Atty. Ernesto Piccio in the newspapers, he called up the Provincial Commander of Negros Occiden-tal and ordered him to make the necessary investigation. The said Provincial Commander informed him later upon his return from abroad in March, 1959, that provincial guards Mansueto Jamero and Julian Pabicon were among those sus-pected as having something to do with the killing. He later recalled, however, that Pabicon and Jamero were a-mong the provincial guards he sent to Manila at the time Atty. Piccio was killed; that is why he had to speak to Gen. Campo about the matter, in one of his trips to Manila. He was advised to send the said guards over to Manila for investigation; and upon his return to Negros Occidental, he instructed Pabicon, Jamero, Remo, Ocana, Caceres and Guanzon to present themselves at Camp Crame. For reasons of economy, he made the instruction on the occasion of the delivery of a group of prisoners by the same group to Muntinlupa.

Mrs. Narciso Vilches, operator of the Clover board-ing house, also confirmed the Statements of Jamero and Pabicon that they were in Manila at the time of the death of Atty. Ernesto Piccio. She declared that between July 16 and 22, 1958, she saw Pabicon and Jamero in her board-ing house together with Guanzon, Ocana and Caceres. She remembered specially Ocana who was nicknamed "Cabatsoy"; and Caceres who was always singing. She testified further that she was investigated several times by the CIS agents at Camp Crame in the months of April and May, 1959. She signed several statements in connection with the said investigations, one of which was the statement (Exh. P) wherein she appears to have stated that "she did not re-member having seen accused Jamero and Pabicon in the evening of July 19, 1958." She explained that, that statement there, was not actually made by her; that it was placed in the statement by Capt. Yapdiangco of the CIS; and that the truth of the matter was that said accused, Jamero and Pabicon, were there at her boarding house at Clover building on Exhague St. She explained further that she was beguiled into signing the document by Capt. Yapdiangco of the CIS who told her that such statement was necessary in order that neither the family of the late Atty. Piccio nor accused Jamero and

Pabicon would have any grudge against her.

For his defense, accused Rodrigo Honorio Lopez @ Rudy Lopez denied the statements of prosecution witnesses Inocencio Retirado and Nepomuceno Fabros regarding his alleged involvement in the plot to kill Atty. Piccio during the various meetings mentioned by them. He, likewise, denied that he followed the jeep of Atty. Piccio in the afternoon of July 19, 1958, much less gave the alleged signals to Pabicon, Jamero and Retirado to go on with the killing of Atty. Piccio by putting the lights of his car "out and on". He never went to Crossing Bombahan, and his car was parked at his place of residence the whole afternoon of that day. Although he was Provincial Warden at the time, he had no hand in the selection of the provincial guards who escorted the 27 insane prisoners from Negros Occidental to Manila during the period that Atty. Piccio was killed. He merely approved the list of guards to accompany the prisoners that was submitted to him.

Rudy Lopez further testified that he really called Atty. Piccio "Spaniard" during the 1955 election political rallies. He, furthermore, admitted that he was really accused in a case involving the incident between his group and Constancio Tan, but that it was he himself who had the case settled between them without the intervention of Atty. Piccio. He denies the statements of the witnesses for the prosecution that Atty. Piccio was instrumental in his separation from Lopez Sugar Central, for it was the Manager Mr. Arthur Cooper who had a grudge against him after the 1957 election because Cooper supported a candidate opposed to the one he supported who won in that election. In that case against him filed against him by Letty Balison, he heard rumors that it was filed at the instigation of Atty. Piccio, but when he asked him (Piccio) if there was truth in it, Atty. Piccio denied having anything to do with that case. Moreover, after the 1957 election, he completely lost interest in politics and left Sagay to reside in Bacolod City. Apart from politics also, accused Rudy Lopez testified that he and Atty. Piccio were good friends: they were compadres; were "poker pals" in Sagay, and used to take refreshments during session of the Municipal Council of Sagay. He also recalled that Atty. Piccio acted as guarantor when he first acquired a truck from the Southern Motors, and later, he was able to trade-in his old panel, with a new truck from, the Southern Motors with his aid also.

Regarding the alleged meetings in the house of accused Jesus Vasquez in the months of May and June, 1958, wherein, according to prosecution witness Retirado, he participated in plotting the killing of Atty. Piccio, accused Rudy Lopez testified that in those months he was not in Negros because he attended the in-service training of Provincial Wardens in Muntinlupa, Rizal. He produced a copy of the Graduation Program of that training (Exh. 52-PJL-1) wherein his name appears, and the picture taken on that occasion (Exhs. 52-PJL-2 & 52-PJL-3) wherein he also appears. He admitted, however, that the said in-service training was during the period from May 16 to June 5 or 6, 1958.

Accused Joel Bingcang offered his own alibi - he was in Ajuy, Iloilo, on July 19, 1958. He testified that on July 18, 1958, he took a motor boat at Manapla, Negros Occidental to Culaso, Ajuy Iloilo. He went to the place upon instructions of Mr. Eduardo Ledesma, the administrator of Mr. Ramon Lacson, for the purpose of looking into the possibility of acquiring cattle from the place for breeding purposes. In the evening of July 18, 1958, he slept in the house of Mayor Jose Roxas of Ajuy. The following morning, July 19, 1958, he met a local tough guy by the name of Conrado Anigon who asked him money for drinks. The guy got rough with him in front of many people when he denied his request which left him no alternative - a fight between them ensued. Anigon was rendered unconscious in that fight, while his right hand got sprained in that encounter. As a result, he and Anigon were arrested at about 11:00 or 12:00 o'clock in the morning and placed in jail. He was released only at about 3:00 or 10:00 o'clock in the evening of that day after. Anigon expressed his desire not to file any complaint against him.

In the course of his testimony, a written certification of the Chief of Police of Ajuy, Iloilo, relative to the detention of Joel Bingcang in the municipal jail thereat on July 19, 1958, was presented and marked as Exh.

3-Bingcang. A photostat copy of the corresponding page of the Police Blotter of Ajuy wherein an entry appears to the effect that "at about 11:00 am. July 19, 1958, Joel Bingcang and Conrado Anigon were arrested and lodged in jail for fighting each other by Sgt. Luis Celis", and that "at about 8:00 p.m. July 19, 1958, Joel Bingcang and Conrado Anigon were released was also presented later marked as Exh. 4-Bingcang.

Joel Bingcang also made a blanket denial of the testimony of Inocencio Retirado regarding his alleged participation in the killing of Atty. Piccio on the night of July 19, 1958. He admitted that he acted as toastmaster in one of the political meetings of accused Rudy Lopez in the 1955 campaign and said "Do not vote for a Spaniard", but declared that he and Atty. Piccio were friends after 1955. They used to greet each other. Atty. Piccio even invited him once to join him in going to the boxing bout which he did not accept.

For his defense, accused Florentino Vasquez, Jr. @ Jr. Vasquez denied all the allegations of Retirado and Fabros that he was present during the various meetings mentioned by them wherein he and the other accused discussed the plot to kill Atty. Piccio. He testified that during the lifetime of Atty. Piccio, they were good friends. They were together in the Sugar Planters Association; they campaigned together for Congressman Jose Puey against Ramon Lacson in the 1953 election. Although they belonged to different factions in the 1955 election, still they were friends. There were times when Atty. Piccio took him home at Hacienda Bulanon in his (Piccio) car or jeep. He recalled that they were once together in a dance at Para-iso, Fabrica, when the toughies there began harassing Atty. Piccio; he at once approached him and took him to a lighted place, away from the toughies. Atty. Piccio had also invited him to his farmhouse near Hacienda Conchita and showed him his fighting cocks, house and plants about three weeks or a month before his death. There, they had occasion to talk about politics, and he recalled that Atty. Piccio asked him whether or not Rudy Lopez or his brother Jesus Vasquez were intending to run for Mayor in 1959. He assured him then that neither of them was intending to run for the position. Atty. Piccio even asked him to make comment in his chances of winning should he decide to run for Mayor. He added that Atty. Piccio and his younger brother Antonio were very good friends and were always together.

He declared further that he knows Retirado and Fabros. They were introduced to him by accused Pedro Arana during the 1955 election campaign. They once had occasion to come to his house in March, 1958, seeking his help in getting employment for them either in the Office of Governor Gatuslao or Congressman Gatuslao. He frankly told them, nevertheless, that there were no available positions, therefor which reads they both got mad at him. He denied the allegation that the plan was to have him appointed Chief of Police should their plot to secure the suspension of Mayor Katalbas materialize, for he knew he was not qualified for the job, not only because of his size (5'2") but also for the reasons that he was not a civil service eligible, not a guerilla, never been employed before, and not physically fit for the job as even during his high school days, he had always been exempted from military training due to his enlarged heart.

He also admitted in the course of his testimony that he volunteered to help the PC solve the mysterious killing of Atty. Piccio; but that was not for the purpose of misleading the PC investigators. He offered his help because he was a friend of Atty. Piccio and he knew the places where he went before he died.

Accused Jesus Vasquez testified that he and Atty. Piccio were close to each other as early as 1937 when they were still students in Manila. They were together in one political group in 1953 - they both supported Jose Puey against Ramon Lacson. They belonged to different factions in the political fight in Sagay in 1955, but they were, nonetheless, together in their support for the candidacy of Governor Valeriano Gatuslao in that election. In 1957, Atty. Piccio supported the candidacy of Jose Puey while he supported his opponent, Gustilo. He also recalled that in 1953 or 1954, Atty. Piccio was his guarantor when he bought a truck from the Southern Motors. -

Jesus Vasquez declared further that in the afternoon of July 19, 1958, at about 5:00 o'clock, he was talking with

Salvador Escalante and Mr. Hollero in his house in front of the Provincial Jail when Atty. Piccio passed by in his jeep. Atty. Piccio stopped for sometime and conversed with him - he was inviting him to join him in seeing the boxing bout in Fabrica. He told him, he would join if he could wait because he had to take a bath first, to which Atty. Piccio replied: "Compadre, I am sorry, I am in a hurry."

Atty. Piccio and he were good friends. He would often pass by his house and watch at he train his fighting cocks. He also remembered that about three months before his death, he gave him (Piccio) two chico seedlings.

Regarding the testimonies of Retirado and Fabros, relative to his alleged participation in the planning of the killing of Atty. Piccio in the various, meetings allegedly held in his house, accused Jesus Vasquez denied his involvement therein. He denied that any such meetings were ever held in his house. He remembered that sometime in March, 1958, Retirado and Fabros came to his house and had a conversation with his brother, Jr. Vasquez. As he was then reading in the sala, he heard the requests of Retirado and Fabros seeking the help of his brother to find work for them. He knew his brother had told them that there was no work available for them, and he noticed that both Retirado and Fabros got disgusted with his brother.

Salvador Escalante corroborated the testimony of Jesus Vasquez that they were conversing in the house of the latter in the afternoon of July 19, 1958, when the jeep of Atty. Piccio passed by and Atty. Piccio backed his jeep and invited Jesus Vasquez to join him in seeing the boxing bout at Fabrica. He further testified that he had seen Atty. Piccio passed by the house of Jesus Vasquez several times before, and recalled that at one time Atty. Piccio even went up the house and talked with Jesus Vasquez in the balcony.

For his part, accused Pedro Arana had another alibi to offer. He declared that he was in the farm on July 19, 1958. He was there at Sitio Cabungahan, about 27 kms. from his house in Fabrica, Sagay. He went there at about 7:00 o'clock in the morning and reached the place at about 9:00. He stayed in the place for about three hours only and had to go home to Fabrica at about 1:00 p.m. because a farm hand, Venancio Soledad had sought him there trying to collect his wages for plowing his fields. They left the farm together and reached Fabrica at about 5:00 o'clock in the afternoon. He did not leave his house after that and stayed there till the following morning.

Accused Pedro Arana declared further that he had nothing to do with the killing of Atty. Piccio on that day. He denies the statement of Retirado that he attended several meetings in the house of Jesus Vasquez wherein the plot to kill Atty. Piccio was hatched. He also denied the claim of Retirado that they were relatives, although he admitted that Retirado called him Tatay Pendoy. He, further, admitted that at one time, he and his wife approached Atty. Piccio in his office at the Southern Motors Building and solicited his help in order that the Southern Motors should not proceed in foreclosing the mortgage of a truck he acquired from the company through another person, but he denied the testimony of a prosecution witness to the effect that his wife cried when Atty. Piccio told them that there was nothing he could do as he was only following the orders of the Company. He declared finally that he entertained no resentment against Atty. Piccio after that incident.

Corroborating Pedro Arana's testimony, Venancio Soledad declared that he did seek out Pedro Arana in his farm on July 19, 1958, to collect his unpaid wages for plowing his fields because he failed to find him in his house in Fabrica and he was badly in need of money on that day. Asked why he specially remembered that occasion to be on July 19, 1958, Venancio Soledad explained that he remembered the day because it was the time his brother got married, the very reason why he got short of funds and had to collect from Pedro Arana. Asked by the court why he thought of collecting on the very day of the wedding, Venancio Soledad explained further that he only realized they were short of money on the day of the wedding, that is why he had to go and see Pedro Arana early in the morning even if in so doing, he missed the wedding ceremony of his brother.

Finally, accused Oscar Ramirez declared that he was in his place of work, at the Insular Lumber Company, in the

morning of July 19, 1958. Office hours on that day was up to 12:00 noon and he had his dinner at home. He never left the house after that except at about 7:30 in the evening when he went to Fabrica to witness the boxing bout. He went home only after the boxing bout was over at about 11:30 or 12:00 midnight. Like his co-accused, Ramirez denied any complicity in the plot to kill Atty. Piccio allegedly discussed in the various meetings men-tioned by Retirado. He also denied the claim of Retirado that they are relatives. He admitted that in the inaugu-ral ball in honor of Governor Gatuslao, Atty. Piccio and he had an altercation or discussion, but explained that they were both tipsy then and Atty. Piccio did not make anything out of it. He did not file any case against him, for they were good friends. Atty. Piccio, as a mat-ter of fact, placed his arms around him after the inci-dent. Regarding the case of physical injuries and slan-der filed against him by Hernani Serafin and Delia Lamela, Ramirez declared that he filed counter charges against them also. It was on that occasion that Retirado offered himself to be his witness to which he consented; but Retirado was not able to testify in court because both cases were dismissed later. After that incident, however, Retirado began molesting him by asking loans in money, rice and other things which he denied. That was the time he knew Retirado was not a reliable witness, because he told him: "You deny my requests now that I am so hard-up, but during the time of your case, I even, volunteered to testi-fy for you even if I was not present during the incident." He learned later that Retirado was not really present dur-ing the incident involved in the cases aforesaid.

Atty. Ernesto Pilla testified in this connection that he knew Retirado to be a professional witness. He was known in the community where he lives as a "procurador special". He testified further that on the night of July 19, 1958, he saw Inocencio Retirado in the boxing bout at Fabrica at about 9:30 in the evening.

Accused Oscar Ramirez concluded his testimony by declaring that he abandoned politics shortly after his election as councilor of Sagay together with Atty. Piccio in the 1955 election; that he attended sessions of the municipal council only from January to October, 1956, after which he completely lost interest in the same and devoted full time to his work as an employee in the In-sular Lumber Company.

In rebuttal, the prosecution presented the testimony of CIS agent Inocencio Adrias, Amado Torres of the Bacolod Police Department, Leonardo Boot of the PAL Office at Bacolod City, and a former Chief of Police of Sagay, Negros Occidental.

Agent Adrias of the CIS testified to rebut the tes-timony of Mrs. Narcisa Vilches of the defense to the ef-fect that she only consented to the statement in her af-fidavit at Camp Crame that she did not remember having seen accused Mansueto Jamero and Julian Pabicon at her boarding house on July 19, 1958, at the insistence of Capt. Yapdiangco of the CIS who explained to her that such state-ment had to be placed in order that neither the family of Atty. Piccio nor the accused Mansueto Jamero and Julian Pabicon will have no resentment against her; although in truth and in fact, she did not make any statement of that sort because she was sure that they were there in her boarding house on said date. Contrary to such statement of Mrs. Vilches, CIS Agent Adrias declared that he was present during the times that Mrs. Vilches testified at Camp Crame and at no instance during the whole proceed-ing there, did Capt. Yapdiangco ever make such an insi-nuation. He declared that all the answers appearing in the affidavit of Mrs. Vilches were given by her personally; that Mrs. Vilches read the statement herself after the same was prepared; and that she signed it voluntarily thereafter. Capt. Yapdiangco, on the other hand, did not testify as to the circumstances surrounding the taking of the statement of Mrs. Narcisa Vilches in question as the prosecution had earlier manifested that it was not putting the said captain on the witness stand to testify, and in consequence of which manifestation, Capt. Yapdiang-co was never excluded from the courtroom during all the time that the other witnesses for the prosecution were testifying. Agent Adrias also testified that he investigated accused Joel Bingcang before the Justice of the Peace of Sagay on July 27, 1958, in connection with the killing of Atty. Piccio on July 19, 1958, but that Joel Bingcang refused to sign the said statement later.

Witness Amado Torres of the Bacolod City Police Department testified to disprove the claim of accused Man-sueto Jamero and Julian Pabicon that they met him in the evening of July 19, 1958, in Manila. He declared that he really saw them one evening playing the pin ball machines in the vicinity of Dencia's Restaurant; but that was on the night of July 20, not on July 19, 1958, as claimed by them. He maintained that he was positive about the date, because it was a Sunday, and earlier in the morning of that day, he had gone to church and heard mass.

The local PAL agent in Bacolod City, Leonardo Boot, declared that as station agent of the Philippine Airlines, he knew for a fact that in 1958, there were two regular flights between Bacolod City and Manila, one in the morning and one in the afternoon. He testified that the re-gular flying hours or time between the two places was only two hours. Apparently, this testimony was presented to counteract the effect of the passenger manifest of the PAL trip from Manila to Bacolod on July 19, 1958, purport-ing to show that the names of accused Mansueto Jamero and Julian Pabicon were not among those listed in said pass-enger manifest.

The former Chief of Police of Sagay, Emilio Loga, declared that in the morning of July 20, 1958, which was a Sunday, he met accused Mansueto Jamero in front of the Jet Department Store in Bacolod City.

With the foregoing evidence, the Court of First Instance of Negros Occidental, the Hon. Judge Jose F. Fernandez, presiding, handed down the decision in this case dated January 27, 1962, the dispositive portion of which reads:

"WHEREFORE, the Court hereby finds and so declares that the following accused are guilty beyond reasonable doubt of the crime of murder, under Art. 248, R.P.C., to be applied in its maximum degree, (Art. 64, R.P.C.) and they are hereby sentenced, each, to suffer the extreme penalty of death:

1. RODRIGO HONORIO LOPEZ,
2. MANSUETO JAMERO,
3. JULIAN PABICON, and
4. JOEL BINGCANG

"With respect to the accused Je-sus Vasquez, Florentino Vasquez, Jr., Pedro Arana and Oscar Ramirez, the evidence shows that these four ac-cused were present in those seven meetings held during the period from February to July 19, 1958, and that they were vocal about the liquidation of Atty. Piccio who was the stumbling block to their political ascendancy in Sagay. The accused Florentino Vasquez, Jr., in particular, even went to the ex-tent of promising support to the families of Jamero and Pabicon if something happened to them. Jesus Vasquez on his part was not only vocal about his desire to eliminate Atty. Piccio, but the four meetings, including the last one on July 19, 1958, were held in his house in front of the provincial jail in Ba-colod City. These four accused shouted for the blood of Atty. Pic-cio, but they did not have the nerve to commit the crime. Like the mul-titude in the Roman Coliseum of old, they seem to be mere "spectators", instead of "gladiators".

"The four accused above-men-tioned discussed the murder of Atty. Piccio in the seven meetings during the period from February to July 19, 1958, and they proposed the same to be committed by Pabicon, Jamero, and Retirado. Hence, it is quite clear that they conspired together and con-nived with each other in the murder of Atty. Piccio. However, the evidence does not clearly show that they actually shared in the decision of Rodrigo Lopez on the execution of the crime of murder on the morning of July 19, 1958. Conspiracy and propo-sal to commit a crime without a defi-nite decision having been reached by the conspirators to commit it, is not punishable, except in certain cases specified by law, but murder is not one of them.

"Hence, the following accused namely: JESUS VASQUEZ, FLORENTINO VASQUEZ, Jr., PEDRO ARANA and OSCAR RAMIRES are hereby apprised of the gravity and irreparable consequences of their highly condemnable act which, although not punishable is nonethe-less reprehensible, and they are hereby acquitted

on reasonable doubt only.

"In the interest of justice, this Court will recommend a punitive legis-lation for conspiracy and proposal to commit murder.

"SO ORDERED."

Accused Mansueto Jamero, Julian Pabicon, Rodrigo Ho-norio Lopez @ Rudy Lopez and Joel Bingcang who now stand convicted and sentenced to death, have appealed.

Appellants have taken the position that it was error on the part of the lower court in ordering the discharge of Inocencio Retirado from the Information in order to make him state witness. It is pointed out that the attitude of the court, during the hearing on the motion of the prosecution to discharge the said witness and the opposition they filed thereto, had misled them into believing that it was not necessary for them to prove that then accused Inocencio Retirado is the same "Cresencio Retirado" who was convicted of the crime of malicious mischief in Criminal Case No. 470 the Justice of the Peace Court of Sagay, Negros Occidental, due to the comment of the trial court that "what is more important is the answer to the question as to whether the crime of malicious mischief involves moral turpitude". And it is contended that the said order of discharge was a clear violation of the pro-visions of the Rules of Court regarding the discharge of an accused to be utilized as state witness, not only for the reason that the crime of malicious mischief of which Retirado was previously convicted involves moral turpitude, but also because among the accused, Retirado appears to be one of the most guilty of the crime charged, and his testimony was not corroborated.

Appellants' position is not entirely correct. It is true that during the hearing on the motion to discharge Inocencio Retirado from the Information, the trial court appears to have made the comment pointed to above by herein appellants, which could really have misled the defense into believing that the court a quo did not deem it necessary for them to prove that accused Inocencio Retirado and the "Cresencio Retirado" convicted of malicious mischief in the Justice of the Peace Court of Sagay were one and the same person; but that alone is no cause for lament for, even were We to assume that the defense then could have successfully proven that Inocencio Retirado was the one previously convicted of malicious mischief by the Justice of the Peace Court, still the question that would ultimately arise, and We agree with the court below that this is more important, is the determination of the issue whether or not the crime of malicious mischief involves moral turpitude. Moral turpitude has been described as an act of baseness, vileness and depravity in the private and social duty which a man owes to his fellowmen or to society in general[1] done, out of a spirit of cruelty, hostility or revenge,[2] but there is also authority to the effect that an act is not so done when it is prompted by the sudden resentment of an injury calculated in no slight degree to awaken passion.[3] In the light of these authorities, We have searched the re-cord of the case in an effort to ascertain the gravity of the nature of the crime of malicious mischief allegedly com-mitted by Retirado, but We found the evidence wanting in this respect. What appears to have been established by the defense were the facts that Cresencio Retirado was convict-ed of the crime of malicious mischief by the Justice of the Peace Court of Sagay, Negros Occidental, and that the said accused was therein sentenced to five (5) days imprisonment. In the absence, therefore, of any evidence to show the gra-vity and the nature of the malicious mischief committed, We are constrained to declare that We are not in a position to say whether or not the previous conviction referred to, assuming Cresencio Retirado and Inocencio Retirado are one and the same person, proves that Retirado had displayed the baseness, the vileness and the depravity which constitute moral turpitude. And considering that under paragraph 3 of Article 329 of the Revised Penal Code, any deliberate act (not constituting arson or other crimes involving destruction) causing damage to the property of another, may consti-tute the crime of malicious mischief, We should not make haste in declaring that such crime involves moral turpitude without determining, at least, the value of the property destroyed and/or the circumstances under which the act of destroying was

committed. Moreover, it appears that after the lower court issued the order of discharge complained of, the defense ventilated before this Court the issue as to whether, or not the crime of malicious mischief involves moral turpitude by questioning the legality of the said order in a petition for certiorari and prohibition. The fact that this Court did not give due course to their petition (Jamero, et al. vs. Judge Enriquez, et al., L-15552) should have been sufficient warning that the theory advanced by them is not meritorious.

Anent the charge that Retirado should not have been discharged as state witness because he was one of the most guilty of the accused, suffice it to say that the evidence shows that he played only a minor role in the killing of Atty. Ernesto Piccio - that of acting as a lookout for the car supposed to follow the victim's jeep and give out the go-signal for the killers to proceed. Aside from the fact that he did not lay a hand upon the victim, he appears to have been a very reluctant actor because he did not have the nerve to kill a fellowman, as shown by the circumstances of his fleeing and leaving his companions behind at the scene of the crime immediately after he witnessed the horrible attack upon the victim, and subsequently, giving himself up to the authorities and confessing his participation therein.

The claim of herein appellants that the testimony of Retirado was not corroborated by other witnesses, should also be denied. It is true that as to the actual act of killing the victim, the testimony of Retirado was without corroboration; but it was precisely because of that circumstance that the prosecution had to ask for his discharge as state witness. There was no other direct evidence available to the prosecution, and, therefore, there was absolute necessity for his testimony. At any rate, Retirado's testimony regarding the motive behind the killing of Atty. Piccio, and the identity of the persons seen riding his jeep in that fateful afternoon of July 19, 1958, immediately before and after the killing, appears to have been substantially corroborated by other witnesses. It should also be borne in mind that this Court has time and again declared that even if the discharged witness should lack some of the qualifications enumerated by section 9, Rule 119 of the Rules of Court, his testimony will not, for that reason alone, be discarded or disregarded.[4] In the discharge of a co-defendant, the court may reasonably be expected to err; but such error in discharging an accused has been held not to be a reversible one.[5] This, is upon the principle that such error of the court does not affect the competency and the quality of the testimony of the discharged defendant.[6]

Other assigned errors deal with the credibility of the principal witnesses for the prosecution. Appellants took pains to point out various alleged discrepancies and contradictions in the testimonies of Inocencio Retirado, Nopomuceno Fabros, Arsenio Gepana, Juan de la Peña and Teodulo Galo, both at the trial and during the preliminary investigation of the case, and upon which they now lay much stress in assailing the various claims of herein appellants in this regard.

Appellants maintain that Inocencio Retirado is unbelievable and unreliable because he has a faulty memory; he is known as a "procurador especial" in the locality where he resides; he has been receiving a monthly allowance of P90.00 from Camp Crame where he has been staying under protective custody while this case was being tried in the lower court, and had even been granted the special privileges of engaging in the buy and sell of hogs during the period of his stay there. In support of the claim that witness has a poor memory, it is pointed out that Retirado, during the trial, was not even sure whether his real name is "Inocencio" or "Cresencio"; he could not remember whether he was previously convicted of malicious mischief in the Justice of the Peace Court of Sagay as "Inocencio", or under the name of "Cresencio"; he could not even recall then his own date of birth, or that of his youngest child; while he claimed to remember the exact date of the killing of Atty. Piccio on July 19, 1958, and the circumstances that took place months before that date; has failed to remember the date when he testified during the preliminary investigation of this case; he was not even sure of the distance of the jeep of the victim from the big tree at Tinampaan, when Jamero allegedly asked Atty. Piccio to stop his jeep because he (Jamero)

wanted to urinate. Moreover, appellants insist that Retirado could not have been in the "inner cabal" of the accused who allegedly planned the killing of Piccio, because there is no that he had shown unflinching loyalty to the group to make him an indispensable ally in the plot, consider that his only previous association with them was in 1955 when the accused appointed him as "election watcher" in the local election of that year.

These allegations should be denied. It is not surprising that a poor man like Retirado would forget the matters pointed out above by herein appellants. This witness admitted that he was not really sure of his real name, because since childhood, some of his relatives called him "Inocencio", while others called him "Cresencio". As to the number of meetings wherein the plot to kill Atty. Piccio was discussed in his presence, Retirado explained that there were really about 7 or more meetings in all, but he considered the four (4) meetings in April, May, June and July he had mentioned, as the most important ones. With respect to the distance of the jeep of Atty. Piccio from the big tree at Tinampaan when Jamero asked Atty. Piccio to stop because he wanted to urinate, We believe the witness has also explained that Jamero repeated the request about three times before the vehicle finally came to a stop; and since the jeep was then running, naturally, there were several distances involved. It is true that the witness forgot the date of the preliminary investigation, but this is not incompatible with the fact that he very well remembered the date of the killing of Atty. Piccio, not only because he was a party to the plot to eliminate the victim, but also for the reason that it is seldom in the life of a man that he should actually witness the killing of a fellow human being. He may not be called a "paid witness" either, for the amount given him during his stay under protective custody was such a pittance which could not have impelled him to testify falsely against herein appellants, Retirado is a family man, and such must be the reason why in spite of the fact that Retirado was then under protective custody, he was granted the privilege to engage in some kind of work, like buying and selling of hogs, in order to enable him to support his family. It is also true, as claimed by herein appellants, that Retirado did not originally belong to the inner circle of the accused, but the fact stands out in the record that some months before the killing of Atty. Piccio, the accused had tried to avail of the service of Retirado in connection with their attempt to wrest the mayoralty of Sagay from Katalbas by filing an administrative charge against him; and it was during this latter association of theirs that Retirado came to know about the plot to eliminate Atty. Piccio from the political scene of Sagay, and soon became a party to the conspiracy to kill him. In fact, there is evidence showing that this witness showed reluctance in joining the "hatchetmen" who were assigned to undertake the job, but because he had been in the conspiracy all along, the others in the cabal had to cajole and threaten him, finally assigning him the minor role of acting as a mere lookout for the car that followed the victim's jeep on that fateful night of the killing and gave the signal to its "chance passengers" to proceed in the commission of the crime.

Other alleged contradictions and inconsistencies in the testimony of Retirado are as follows: Retirado declared in court that Pabicon and Junior Vasquez were present at the meeting in the night club in the month of April, 1958, a fact he never mentioned during the preliminary investigation of the case; in his testimony, Retirado mentioned about the presence of Rudy Lopez in the said night club, contrary to his previous declaration in the preliminary investigation that Lopez was not there; during the preliminary investigation, this witness declared that it was Pabicon and "a provincial guard" who agreed to kill Atty. Piccio for a consideration, while at the trial, he declared that it was Pabicon and Jamero who promised to undertake the said job; in court, Retirado declared that nobody made mention of the name of Atty. Piccio from the time of arrival at the night club until all the participants departed, whereas, at the preliminary investigation, he said that Piccio's name was mentioned by Junior Vasquez in connection with election matters and the proposal to kill Atty. Piccio; at the trial, this witness declared that Jamero and Pabicon left the night club ahead of the others at about 2:00 a.m., contrary to his declaration during the preliminary investigation that he, Jamero, the provincial guard and Junior Vasquez continued drinking in the night club until 4:00 a.m.; earlier in his testimony, Retirado declared that the fourth and final meeting was held in the morning of July 19, 1958, only to state later that the 4th meeting was really held

in the second week of July, 1958; in court, Retirado testified that Jesus Vasquez, Junior Vasquez, Araña, Ramirez, Pabicon, Jamero, Lopez and he were the ones present in the said meet-ing, whereas, in the preliminary investigation of the case, he did not mention Pabicon but instead mentioned "two pro-vincial guards" in addition to the rest in the group; Re-tirado declared earlier at the trial that he went to Baco-lod City in the morning of July 19, 1958, because in a pre-vious meeting held the day before, Jamero, Pabicon and he were instructed by Rudy Lopez to come back that morning for final instructions, contrary to his declaration later that he went to Bacolod City that morning because in the afternoon of July 18, 1958, Pedro Araña, who was then with Ramirez, instructed him to see Junior Vasquez at the house of the latter the following morning; at one instance in his testimony, Retirado said that Jamero, Pabicon and he were instructed by Rudy Lopez to wait at certain assigned places before 5:00 p.m., July 19, 1958, only to state later on that there was no definite time given, the instruction being, for them to take a ride with Atty. Piccio in the jeep of the latter who would be leaving his place of work at 5:00 o'clock in the afternoon, and it was up for them to use their heads so that they could ride with him; he declared earlier that Lopez and Bingcang talked for about 5 minutes, only to declare later on that he was not sure how long they talked with each other; in his direct exa-mination, Retirado declared that as soon as he saw the jeep of Atty. Piccio pass by the Ramos Machine Shop where he was waiting, he hailed it, whereupon, Atty. Piccio asked him if he (Retirado) wanted to ride with him going home to Sagay, which is contrary to his statement under cross examination, that it was he who asked Atty. Piccio if he could take a ride with him in going home to Sagay; he declared during the preliminary investigation that whey Atty. Picco saw Bingcang come from behind the big tree at Tinampaan, Piccio asked Bingcang why the lat-ter was there, while at the trial, he declared that it was Bingcang who asked Atty. Piccio where the latter was going; Retirado declared under direct examination that he could not ascertain then whether it was a "jack" or a "tire wrench" with which Pabicon hit the head of Atty. Piccio because it was dark, whereas under cross examina-tion, the same witness stated that he already knew then with which object Pabicon hit the victim, only that he was not sure then whether the said object was the one called the "jack" or the "tire wrench"; under direct examination, Retirado declared that the instruction given by Rudy Lopez was "not to use a revolver or any weapon that explodes" in killing Atty. Piccio, bet under cross examination, he declared that the instruction was "to find a means of how to kill Piccio by using a revolver"; Retirado declared that when Jamero struck at the victim, Jamero's right foot was on the running board while his left foot was on the ground, but when he was later asked to demonstrate the position of Jamero as he saw him thrust at Piccio, he showed that it was the left foot of Jamero which was on the rennin, board while his right foot was the one on the ground; earlier in his statement, Retirado declared that after running away from the scene of the crime, he stayed in hiding "for a while" at a cer-tain place, only to state later on that he hid in the said place for about 4 or 5 hours; that place where he stayed in hiding was first described by Retirado as a "coconut plantation", but later, Retirado described the said place as a "sugar cane field; and while Retirado first declared that Rudy Lopez instructed Jamero to look for a hunting knife to be used in the killing, he said later on that there was no such instruction given.

As regards the testimony of Nepomuceno Fabros, appellants point out the following alleged contradict-ions: Describing the circumstances that took place in one of the meetings wherein the plot to kill Piccio was discussed, Fabros declared that he heard Rudy Lopez make the following remark: "Just take it easy, because we are not yet the king of the provincial jail", contrary to his previous declaration during the preliminary investi-gation that not only Lopez but all the others who were present in that meeting also made remarks of substan-tially the same import in "chorus"; in court, Fabros stated that Jesus Vasquez had also made the remark; "Just take it easy boys", which statement Fabros never attributed to Jesus Vasquez during the preliminary investigation; Fabros declared during the trial that Pabicon did rot say anything at the time, which is contrary to what he declared during the preliminary investigation that Pabicon joined in the "chorus"; in court, Fabros said that he did not hear Jamero say anything, whereas, in the pre-liminary investigation, Fabros stated that Jamero was one of those who joined in the

"chorus" also; Fabros said during the preliminary investigation of the case that he left the house of Jesus Vasquez after eating there, contrary to his declaration in court later on that he did not eat then in the house of Jesus Vasquez; Fabros declared earlier at the preliminary investigation that Jesus Vasquez was in the house when he came, contrary to his testimony in court later, that when, he arrived, Jesus Vasquez was outside the house in front of the Provincial Jail; he declared in court that Pabicon was present in that meeting, but when he testified in court later, he did not declare that Pabicon was also there; according to Fabros (when he testified during the preliminary investigation), after the meeting of the group sometime in the month of February, 1958, they met again for a second time in the month of July or August, which contradicts his later testimony in court that the second meeting in his presence was held in the month of March of that year; Fabros declared during the preliminary investigation that in that second meeting Rudy Lopez simply asked the group if they "were already decided", contrary to his declaration during the trial where he attributed certain statements to Lopez to the effect that Atty. Piccio had always stood by the opposite camp and caused all their troubles; in court, Fabros testified that Jesus Vasquez had referred to Atty. Piccio as "a smart guy" about whom "something must be done", which statement Fabros did not attribute to him during the preliminary investigation of the case; at the trial, Fabros maintained that Pabicon had said, "I am just waiting for your words", about which statement the said witness never mentioned at the preliminary investigation, and finally, according to Fabros, during the preliminary investigation, Jamero and Junior Vasquez "chorused" in saying "just say when", which statement Fabros never attributed to them during the trial.

Appellants allege further, in this connection, that the testimony of Nepomuceno Fabros did not corroborate the testimony of Inocencio Retirado. Specifically, they point out that Retirado did not testify about any meetings in the months of February and March which were, on the other hand, testified to by Fabros; that the meeting in the house of the father-in-law of Jesus Vasquez described by Retirado was not mentioned at all in the testimony of Fabros; that while Retirado made mention of a meeting at the night club in the month of April, the meeting in that month as testified to by Fabros was held in the house of Junior Vasquez; that while according to Retirado there were meetings in the month of May and June wherein he was present, Fabros made no mention of said meetings in his testimony; that while it may be deduced from the testimony of Retirado that the meeting in the second week of July was held on July 18, 1958, Fabros declared that the meeting in the second week of July he attended, took place a few days before July 10, 1958; that Fabros did not testify to the alleged meeting in the morning of July 19, 1958, which was testified to by Retirado; that in all the meetings testified to by Retirado, this witness never mentioned that Fabros was present, inasmuch the same way that in all the meetings attended by Fabros, the latter never made mention of Retirado as one of the conferees he saw; and that while Retirado claimed that in all the meetings he attended Oscar Ramirez and Pedro Araña were present, Fabros never made mention of their presence in all the meetings held in his presence.

With respect to the testimony of Arsenio Gepana, appellants point out the following alleged contradictions:

1. In the course of his testimony, Gepana declared that he first saw the jeep of Atty. Piccio when it stopped about two feet away from him; at another instance, he said that the jeep was still about ten meters away from him when he noticed it running parallel to the road; later he said that the jeep swerved towards him when it was about two meters away, the reason why he figured that Atty. Piccio must be drunk; whereas, in the preliminary investigation of the case, Gepana declared that even while the said jeep was still far, he already saw its flickering lights.
2. At the trial, Gepana testified that when the said jeep was approaching him, "the light was bright", contrary to his statement during the preliminary investigation that as the said jeep was nearing the place where he was sitting, its "light became darker".

3. During the preliminary investigation, Gepana said that the jeep of Atty. Piccio stopped near him because it had to give way to a passenger truck at the trial, on the other hand, he first said that he did not know why the said jeep stopped in front of him, only to explain later on that the jeep stopped because a passenger truck unloaded passengers on the opposite side of the road while another cargo truck passed by; and

4. At the trial, Gepana testified that when the jeep of Atty. Piccio stopped in front of him on the night of July 19, 1958, he readily recognized the persons riding the Piccio jeep to be the accused Joel Bingcang, Mansueto Jamero and Julian Pabicon, which is contrary to his testimony during the preliminary investigation that while he saw Joel Bingcang driving the said jeep with Mansueto Jamero seated beside him, he did not recognize the other fellow at the back seat because of the presence of plants and a box inside the vehicle.

Further, appellants would also assail the veracity of prosecution witness Juan de la Peña, not only because he admitted during the trial that he had been always present during the previous hearings of the case, but also for the reason that his testimony contradicts the other evidence on hand. Thus, it is pointed out: that while de la Peña claimed that he was not present in court when Retirado testified, and that it was Torres who was at the witness stand when he was present, the record shows that Torres testified only in rebuttal - long after de la Peña had testified; that while de la Peña had declared that when Atty. Piccio inquired from him where Sgt. de la Peña was, he gave the information that "he could be found farther down the road", Retirado on the other hand, declared that the answer given by de la Peña then was to the effect that he did not know where Sgt. de la Peña was at the time; that while de la Peña claimed to have seen Retirado riding the jeep of Atty. Piccio in the back seat that late afternoon of July 19, 1958, Retirado's testimony was to the effect that he was seated not in the back seat but at the right side behind Jamero who was seated in the front seat beside Atty. Piccio; that according to de la Peña what Piccio was wearing at the time of the killing was "similar to a barong", contrary to the testimony of Retirado that the victim was then wearing a "jacket"; and that while de la Peña said the rear of the Piccio jeep was open with a loose flap, Retirado, on the other hand, declared that the rear portion of the said jeep had a permanent covering at the back.

We have carefully examined all the foregoing alleged contradictions and inconsistencies in the testimonies of Retirado, Fabros, Gepana and de la Peña. Appellants have presented them in such a detailed manner and discussed them at length in their brief, that We had to read the voluminous record of the case with painstaking solicitude in our sincere desire to see if they are such as to affect the credibility of said witnesses. By and large, however, We find their testimonies reasonably credible. Aside from the fact that a good number of the alleged discrepancies were satisfactorily explained by said witnesses during the trial, We have also come to the conclusion, after our own examination of their respective declarations, both at the trial and during the preliminary investigation, that the alleged contradictions and inconsistencies pointed out by herein appellants as above set forth, refer merely to minor details in their testimonies which do not destroy the credibility and value of the main points they have testified to. Such inconsistencies on minor points are clearly the result of the imperfections of the human memory, for it is quite impossible for witnesses to remember and recall all the minor details of an occurrence long past. Contradictions on minor details on account of lapse of time, far from being evidence of falsehood, constitute a demonstration of good faith and a confirmation of the truth of the parties' participation. We note that the state witness, Inocencio Retirado, testified at various occasions during the long trial of this case with no brief period intervening in between. On those occasions, he was subjected to long and searching cross-examinations by the brilliant lawyers of the defense. So much so, that at one instance, Retirado obviously became groggy; but his good faith and sincerity was clearly evident from the fact that he withstood the ordeal without any apparent sign that he was lying. Retirado did not mention, except on one occasion, the presence of Fabros in the meetings held in his presence, but it appears that there were really several meetings held before the killing actually took place, and, incidentally, Retirado was not present in the few meetings that Fabros witnessed.

Such fact alone, however, does not justify a conclusion that their testimonies should be disregarded altogether. The same way may be said about the testimonies of the other witnesses as against whom We find nothing in the record to show that they might have had any motive to testify falsely against herein appellants. The trial court had given the testimonies of these witnesses full faith and credence, and We are satisfied, after our own review of their respective testimonies, that the said court did not err in giving weight to their declarations. Suffice it to say, in this connection, that the matter of assigning values to declarations at the witness stand is best and most competently performed by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false; and We really find no the cogent reason to disturb the conclusion of the court below as far as the credibility and veracity of these witnesses are concerned.

As regards the testimony of Teodulo Galo appellants merely contend that the incidents mentioned by this witness for the prosecution are too remote in time to constitute motives for the killing of Ernesto Piccio, pointing out that the incidents referred to took place more than two years before the death of the victim. It is, therefore, alleged that the lower court should not have given reliance upon his testimony out of proportion to its true worth. We are not impressed with this argument either. The incidents testified to by this witness were, of course, long past. But they appear to be sufficient reasons, when viewed in the light of other circumstances testified to by other witnesses, for the killing of the victim. At any rate, proof of motive is not even necessary here, where there is no doubt that herein appellants have caused the death of the victim.⁸

But it is claimed that insofar as appellant Joel Bingcang is concerned, the evidence does not warrant his convictions pointing out the fact that the only evidence of his participation were those testified to by witnesses Inocencio Retirado and Arsenio Gepana which may be summed up as follows that according to Retirado, about ten minutes after the start of the meeting in the morning of July 19, 1958, Joel Bingcang arrived and told appellant Rudy Lopez: "I was sent here by my employer"; that after some 4 to 5 minutes conversation between Bingcang and Lopez which Retirado did not hear because they retired to a place in the house a little farther away from the rest of the group in that meeting, Joel Bingcang started to leave, saying: "I'm leaving now, I'm going to wait in that place at Tinampaan"; that later Bingcang appeared from behind a big tree by the roadside at Tinampaan in the evening of July 19, 1958, as soon as Atty. Ernesto Piccio had stopped his jeep near the tree at the behest of appellant Mansueto Jamero who said he wanted to urinate; that a conversation then ensued between Bingcang and Atty. Piccio; and that it was at that precise moment when appellant Ju-lian Pabicon struck at the head of Atty. Piccio from behind with the jack, after which appellant Jamero stabbed the victim several times. Arsenio Gepana's testimony, on the other hand, was to the effect that in the same evening of July 19, 1958, he saw Joel Bingcang driving Piccio jeep down the bridge at Lagasan with appellants Jamero and Pabicon as passengers; and that at the crossing nearby, he saw them turn left towards Pandanan. From these testimonies, appellants argue that nowhere did Retirado even testify that Joel Bingcang ever touched or pinched the victim and should, therefore, had been acquitted by the trial court.

The claim should be denied. While there is no direct evidence showing that appellant Bingcang participated in the actual killing of the victim, the above circumstantial evidence shows beyond doubt that he was a party to the plot to kill Atty. Piccio in the evening of July 19, 1958. His promise to wait at the place in Tinampaan where the crime was committed; his subsequent appearance thereat when the Piccio jeep stopped at the place, in pursuance of that promise; his act of engaging the victim in conversation then and there which gave a chance to appellants Pabicon and Jamero to strike at the victim while the attention of the latter was distracted; and the circumstance that he was seen driving the victim's jeep with the principal actors in the killing (Jamero and Pabicon) as passengers immediately after the incident, show beyond a cavil of doubt that herein appellant Joel Bingcang was in the conspiracy to eliminate Atty. Ernesto Piccio; and he cannot now exculpate himself from liability by showing that

he never laid a hand upon the victim at the time of the killing. It is fundamental that in a conspiracy, the act of one is the act of the others, and all shall be liable for the crime committed.

Appellant Joel Bingcang would maintain, however, that at the precise time that Atty. Piccio was allegedly killed at Tinampaan, Cadiz, Negros Occidental, he was in jail at Ajuy, Iloilo, wherefrom he was released only at about 8:00 o'clock in the evening of that day. Consider-ing the distance between the two places, it is, therefore, suggested that he could not have been present and seen at the place of the killing in Negros Occidental that very same evening, at about the same time. Let us recall some of the testimony which has already been set forth above, and examine the strength of this alibi.

It appears that in addition to his uncorroborated testimony in court regarding his alleged confinement in the municipal jail of Ajuy, Iloilo, from 11:00 or 12:00 o'clock in the morning to 8:00 or 10:00 o'clock in the evening of July 19, 1958, appellant Joel Bingcang also identified a document and the signature thereon of the Chief of Police of Ajuy who issued the same. This was accordingly marked as Exhibit 3-Bingcang. For convenience and ready reference, We shall herein set forth the full text of that exhibit:

"REPUBLIC OF THE PHILIPPINES

PROVINCE OF ILOILO

MUNICIPALITY OF AJUY

- o -

Office of the Chief of Police

TO WHOM IT MAY CONCERN:

This is to certify that on July 19, 1958, at or about 11:00 o'clock in the morning Joel Bingcang and Conrado Anigan were arrested and, lod-ged in jail;

That Joel Bingcang and Conrado Anigan were released from jail at a-bout 8:00 o'clock in the evening of the same day.

Ajuy, Iloilo, January 20, 1960.

(Sgd) SIMON SANTOYO

Chief of Police

Ajuy, Iloilo"

At the close of Joel Bingcang testimony, counsel for appellants Lopez, Jamero and Pabicon made the following manifestation: "If your Honor, please, on behalf of the accused Lopez, Jamero and Pabicon would like to make it of record that we are adopting as our own the evidence presented by the accused Joel Bingcang, but we would like to make a reservation to produce later on photostatic copies of the entries of the blotter in the municipality of Ajuy corresponding to Exhibit 3-Bingcang." When the de-fense made its offer of evidence later, the said photos-tatic copy of the Police Blotter of Ajuy, Iloilo for July 19, 1958 (Exhibit 4-Bingcang) was submitted and ad-mitted by the trial court, over the objection of the pro-secution on the ground that it was not duly identified. This exhibit, as earlier set forth, bears the following entries, among others:

"At or about 11:00 a.m. July 19, 1958, Joel Bingcang and Conrado Ani-gan were arrested and lodged in jail

for fighting each other by Sgt. Luis Celis.

X X X X

"At about 8:00 p.m. 19 July 1958, Joel Bingcang and Conrado Anigan were released."

On the dorsal side of the document (exhibit 4-Bing-cang) is a handwritten certification which reads:

"At the request of Atty. Al-berto M. K. Jamir, I cause the photostat of all the entries in the Police Blotter of the Municipality of Ajuy, Province of Iloilo, on July 19, 1958, to be taken. This photostat was taken under my direct-ion; I have compared it with the original appearing on the said blot-ter and I have found it to be an exact and correct reproduction thereof. The said blotter is under my custody and control.

"Done at Ajuy, Iloilo, this 2nd day of November, 1960.

s/ SIMON SANTOYO

w/ SIMON SANTOYO

Chief of Police

Ajuy, Iloilo"

After an examination of these documents, the question may be asked: What is the probative weight or value of these exhibits? There should be no question that Exhibit 3-Bingcang is not the certified copy of a public or official record spoken of in the law of evidence. If a mere certificate of the clerk or other custodian of a paper, as to the substance, contents, or legal effect of the docu-ment or as to the fact that the paper attached is an abs-tract or summary of the original is not admissible, being purely hearsay, because the power of the officer is limited to a certification that the paper is a true copy of another writing,⁹ then with more reason that Exhibit 3-Bingcang is not admissible for the said exhibit in itself does not show that the same was made with the aid of any memoran-dum or record. Definitely, therefore, Exhibit 3-Bingcang cannot have an probative weight. The same may be said of Exhibit 4-Bingcang. While the same purports to be a cer-tified copy of the police blotter of Ajuy, Iloilo, there is showing that the same was properly identified during the trial, and the objection of the prosecution to the admissibility of the document on that at ground should have been sustained. Where the law permits the use of a certified copy, it is incumbent upon the proponent to establish by competent proof that the paper offered by him is indeed the cer-tified copy allowed by the law. This is explained by a well-known authority on the law of evidence as follows, by way of example:

"Let it be settled that a custodian's certified copy is admissible and let the public document whose contents are to be proved be an order of survey by the court commissioners of highways and let a paper be offered purporting to be a certified copy, the county clerk, of the original warrant lawfully in his custody. Here it still remains to be ascertain-ed that the count clerk is in fact the lawful custodian of that class of documents, that the person J.S. is in fact the county and that the signature J.3. was in truth placed there by, the genuine J.S. (or if there is a seal, that the seal was genuinely his seal placed there by him)."10

Here, by the doctrine of judicial notice, the law fixing the custody of public records need not be evidenced; so with the incumbency of principal public officers as custodian of said records, which would probably include the case of the chief of police of a municipality. But when, as in this case, the document presented does not bear the seal of the office where it originated, the genuineness of the signature of the custodian cannot be pre-sumed. There must be some proof that the signature appearing on the document is that of the official legally autho-rized to issue the same. Herein appellants appear to have failed in this regard, for the alleged signature of the Chief of Police of Ajuy, Iloilo, appearing on the certifi-cation on the dorsal side of exhibit 4-Bingcang, was never

identified by anybody during the trial of the case. The prosecution was, therefore, right in objecting to the admissibility of said exhibit on that ground. There is, of course, the signature of the same official on Exhibit 3-Bingcang which was previously identified by appellant Bingcang himself; but the trial court had observed that the two signatures on the two documents were apparently made by different hands, which observation, We believe, coupled with the circumstance that the signature on one of them, was not properly identified, is not without reasonable basis. Hence, We have to declare that, in effect, the trial court did not err in refusing to give any probative weight to the said exhibit, although not on the ground of inadmissibility, but upon the suspicion that the same was "spurious". Moreover, alibi cannot be entertained when as in this case, the identification of the accused as one of the persons seen at the place or near the scene of the crime has been established by worthy witnesses. This is more so when there is nothing in the record to show any motive why the prosecution witnesses would impute to appellant the commission of so grave a wrong as the one imputed to him.¹¹

Appellants argue further that the lower court erred in convicting Mansueto Jamero and Julian Pabicon. It is noted, however, that the main ground relied upon by herein appellants in support of this proposition also hinges on their claim that the witnesses for the prosecution who had testified against them are not reliable, that is why they still insist that their guilt had not been proven beyond reasonable doubt. Having arrived earlier at the conclusion that the alleged inconsistencies and contradictions in the testimonies of the prosecution witnesses alluded to did not affect their veracity, We may now dispose of this argument without any lengthy discussion. For indeed, in the light of positive identification by witnesses, de la Peña and Gepana, of the presence of Jamero and Pabicon inside the Piccio jeep in the evening of July 19, 1958, coupled with the testimony of state witness Retirado that Jamero and Pabicon were the ones who actually took part in the killing of Atty. Piccio inside the said vehicle that evening, the evidence is sufficient to establish their guilt beyond reasonable doubt.

We agree, of course, with the claim of herein appellants that there is ample evidence for the defense tending to show that Jamero and Pabicon were in Manila with other provincial guards of Negros Occidental during the period from July 17 to 23, 1958; but these alibis of appellants Jamero and Pabicon are not air-tight and do not rule out nor overturn entirely the positive evidence for the prosecution that they were seen at and/or near the scene of the crime in Negros on the 19th and 20th of July, 1958, as testified to by prosecution witnesses. Inocencio Retirado, Arsenio Cepana, Juan de la Peña and Emilio Loga. Witnesses for the defense, including herein appellants, maintain that Jamero and Pabicon never returned to Negros on the day of the killing of Ernesto Piccio, and in further support of their claim, appellants have presented in evidence, the PAL Passengers Manifest for July 19, 1958, tending to show that Jamero and Pabicon did not return to Negros thru the PAL flight that left Manila for Bacolod City at 2:45 p.m. of that day. This is not conclusive proof, however, that it was impossible for them to have left Manila and return to Negros at anytime within the period of their sojourn in Manila, for there is evidence showing that at the time, there were two daily PAL flights from Manila to Bacolod City, one in the morning and one in the afternoon. The whereabouts of Jamero and Pabicon on July 19, 1958, had been testified to by a host of witnesses for the defense, but We are more inclined to believe that they were mistaken in their recollection of the presence of these appellants, in Manila on said date, as it appears that the party in Sta. Mesa, Manila, they claimed to have attended in the evening of that day was held on the 20th of that month and not on the 19th as claimed by them. This conclusion is supported by the testimony of Amado Torres, a policeman of Bacolod City, to the effect that he met appellant Jamero and Pabicon, along with other provincial guards of Negros Occidental near the Dencia Restaurant about midnight of July 20, 1958, a Sunday, and not on the 19th as alleged by herein appellants who maintain that they met the said policeman shortly after their return to their boarding house from the party in Sta. Mesa; and this is confirmed by the testimony of Mrs. Narcisa Vilches, a witness for the defense, who admitted during the trial that she had previously made a statement at Camp Crame where she stated that the party in Sta. Mesa, Manila, in honor of her nephew, and attended by appellants Jamero and Pabicon, was held on

July 20, 1958. The testimony of Mrs. Vilches in court, that she saw Jamero and Pabicon on July 19, 1958, also appears to be unreliable, as the same had been dis-credited by the statement she appears to have previously made at Camp Crame to the effect that she did not remember having seen Jamero and Pabicon at her boarding house on the said date, although she tried to explain during the trial that she only consented to the placing of such state-ment in her affidavit upon the suggestion of Capt. Yap-diangco of the CIS. There is also the testimony of former Governor Valeriano Gatuslao to reckon with, for the old man had testified that he saw Pabicon in the morning, and Jamero in the afternoon of July 19, 1958, in the house of his brother in Quezon City. But it is not unlikely that the Governor had mistaken other persons for Jamero and Pabicon, considering that he appears to have about 10 or more visitors in the said house on that day. The witness-es for the prosecution had good reasons to remember the night of July 19, 1958 - Retirado was a party to the crime, he could not have been mistaken; Patrolman de la Peña was investigated by the barely five days after the killing; While Gepana was called by the CIS agents some twenty days after the death of Ernesto Piccio, or on August 9, 1958 to be precise witnesses for the defense, on the other hand, have little or no reason at all to have that date etched in their minds, unless they were really parties to the crime, and it is more probable that they could have been mistaken as to the dates mentioned. With these in mind then, We are more inclined to disregard the claim of appellants that Jamero and Pabicon were in Manila on July 19, 1958, and could not have been at the scene of the killing of Atty. Piccio at Tinampaan, Cadiz, Negros Occi-dental on the same day. No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest all defenses, and that the same should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime. For it to pros-per, it is not enough to prove that defendant was somewhere else when the crime was committed, but must, likewise, de-monstrate that it was physically impossible for him to have been at the scene of the crime at the time.¹² Obviously the alibis of appellants Jamero and Pabicon do not meet this standard.

Regarding the conviction of Rodrigo Honorio Lopez, We do not find it necessary to dwell on the various points discussed in appellants brief seeking to overturn the finding of the court below, relative to his guilt. Our own examination of the evidence revealed that he had the great-est motive to eliminate the victim of the crime. He was the prime mover in the killing of Atty. Ernesto Piccio. There is abundant, evidence that he was present in the va-rious meetings held for the purpose of plotting and kill-ing; that it was he who gave the final instructions to the participants in the actual killing; and that he was in the car that followed the Piccio jeep in the afternoon of July 19, 1958 and gave the go signal for committing the crime later in the evening with the lights of the said car. He did not participate in the actual killing of the victim, but he is, no doubt, a principal by induction, and the acts of his co-conspirators in the actual killing were equally his.

Finally, We find the charge of herein appellants that they were convicted by the court below simply because "their counsel refused to worship at the shrine of the trial judge", to be quite unfair. We note that the trial judge, perhaps in his zealotry to dispose of the case with dispatch, had engaged the defense counsels in several lengthily discussions respecting questions of procedure, admissibility of evidence, propriety of the questions asked and related matters. But after We have read the whole record of the case and passed upon the various portions there wherein the said discussions were had, We find that the trial judge displayed no signs of resentment either in the course of, or after the lengthily discussions. And We can-not subscribe to the insinuation that the trial court had convicted herein appellants only because the presiding judge was "peevish" and "annoyed" by the various discussion aforementioned. Suffice it to say, that apart from the incidents alluded to above, all the accused in this, case may truly be said to have had their day in court, and We find nothing in the record to sustain any belief that said discussions, in one way or another, hampered or prevented defense in ventilating its cause. And above all else, we find sufficient evidence to sustain the conviction of herein appellants.

Whatever comment We would now make on the acquittal of the other accused in this case, would surely be

un-called for, for which reason We find it unnecessary to discuss the charge that the court below had used an uneven hand in handing down the decision appealed from.

Finding the judgment to be in accord with the law the evidence, the same should be affirmed; but for lack of the required number of votes, the death penalty cannot be imposed.

WHEREFORE, the death sentence imposed upon herein appellants by the lower court is hereby reduced to life imprisonment. No costs.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.
Concepcion, C.J, in the result.

[1] Moore vs. State, 67 So. 789.

[2] 54 CJS 935.

[3] Ibid.

[4] People v. De Leon, et al., L-13384, June 30, 1960, and cases therein cited.

[5] People v. Castañeda, 63 Phil. 480; People v. Ibali, L-3386-87, May 18, 1951, 88 Phil 724.

[6] See U.S. v. Abanzado, 37 Phil. 658; U.S. v. Alabot, 38 Phil. 698; People v. Bacsá, 55 Of. Gaz. 797; People v. Manigbas, L-10352-53, Sept. 30, 1960.

8 See People vs. McMann, 4 Phil; 661; People vs. Estrada, L-26103, January 17, 1968.

9 See, 20 Am. Jur. 877.

10 5 Wigmore sec. 1679.

11 People v. Teorino, L-18767, 18789-90, May 30, 1964; People v. Mesias, L-19250, August 30, 1963.

12 See People v. Estrada, L-26103, January 17, 1968, and cases therein cited.

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