

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DIONISIO DELA CRUZ, ALIAS “DISIONG”, ALIAS
“TILAY” AND JULIO DELA CRUZ, ALIAS
“LALONG”, DEFENDANTS AND APPELLANTS.**

G.R. No. L-45214. January 29, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

Dionisio dela Cruz and Julio dela Cruz, father and son, respectively, appeal from the decision of the Court of First Instance of Pangasinan, Third Judicial District, Branch XI, convicting both of the crime of double murder.

In the morning of 18 April 1975, by a saltbed situated along a creek in Barrio Lawis, Labrador, Pangasinan, lying just a few meters away from their hut, the contorted bodies of the spouses Meliton and Emilia Abobon were found, victims of a brutal slaying. The autopsy conducted by the Labrador Municipal Health Officer yielded the following findings on the extent of the injuries sustained by the deceased:

"Meliton Abobon

Head —

- (1) Deep incised wound beginning from the left ear up to the nose.
- (2) Deep incised wound beginning from back of the neck up to left ear.
- (3) Deep incised wound back of the neck.
- (4) Incised deep wound from left ear to the neck.

Shoulder —

- (1) Deep incised wound of the Anterior right shoulder.
- (2) Deep incised wound lower right shoulder.(3) Deep punctured wound anterior shoulder.

Mrs. Emilia Quejado Abobon

- (1)Very deep incised wound of the neck.
- (2) Punctured wound right side of the chest.
- (3) Incised deep wound at the back." (Exhibits "A" and "A-1")

The investigation that followed produced three main suspects, namely the accused Dionisio dela Cruz and Julio dela Cruz, and one John Doe (a stranger whose identity could not then be ascertained and who even now remains unidentified and at large). On 28 April 1975, warrants for the arrest of the two identified suspects were issued, and Dionisio was arrested the following day. Julio, on the other hand, accompanied by his lawyer, surrendered himself

to the Labrador police authorities on 24 May 1975.

On 10 June 1975, a "Petition to Bail" was filed with Branch XI of the Court of First Instance of Lingayen. The court, through Judge Romeo D. Magat, denied this petition on 23 June 1975. Upon motion for reconsideration, and upon re-raffle of the case to Branch I of the same court, Judge Willelmo C. Fortun set the bail application for hearing.

In the meantime, an Information was filed on 30 June 1975 charging the accused with double murder:

"That on or about the 17[th] day of April, 1975, at night in barrio Lawis, municipality of Labrador, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Dionisio dela Cruz, alias "Disiong" alias "Tilay", and Julio dela Cruz, alias "Lalong", together and in connivance with one whose identity has not as yet been fully ascertained, conspiring together and mutually helping one another, armed with boloes and with intent to kill, with treachery and evident premeditation, did then and there, wilfully, and unlawfully and feloniously attack, assault and hack Meliton Abobon and Emilia Abobon thereby inflicting upon them multiple fatal wounds and injuries which caused their death as a consequence."

Upon request of counsel for the defense, the proceedings on the hearing on the petition for bail were consolidated with and treated as part of the trial on the merits.

At this hearing on 21 August 1975, the prosecution presented Abraham Malong and Rebecca Acosta, both residents of Barrio Lawis and neighbors of the deceased spouses.

Briefly, Malong's testimony disclosed that at around seven o'clock in the evening of 17 April 1975, he noticed that Meliton and Emilia Abobon were at their hut situated along the northern bank of the Lawis Creek cooking salt (i.e., evaporating sea water), an activity which the couple regularly carried out at least once every week. Sometime between ten o'clock and midnight of that same evening, while he was on his way back to his hut, Malong heard a man's agonizing voice scream "Oh my lord, they are killing us" coming from the direction of where the Abobons were cooking salt. He proceeded towards the source of the screams, taking care to conceal himself, until he was approximately 25 to 30 meters away from the Abobon hut, where he saw the whole incident take place. Malong from his hiding place watched in horror as the bolo-wielding trio of Dionisio, Julio and their unidentified companion assaulted and hacked away at the defenseless couple and, after their deadly mission had been accomplished, fled toward the northeast in the general direction of the accused's hut. Malong was so filled with fear by what he had just witnessed that, except for his wife, he told no one else about it until after the passage of ten days. During this period, he stayed home, feeling ill. More importantly, Malong testified that he recognized both accused as two of the assailants because it was a bright and moonlit night and their faces were further illuminated by the light from a lamp hanging outside the deceased's hut and from the flames heating the ovens (kawa) used by the luckless spouses in cooking salt.[1]

For her part, Rebecca Acosta testified at the 21 August 1975 hearing that at approximately eleven o'clock of that fateful evening, she was asleep inside her hut when she was suddenly awakened by an "agonized voice" which twice screamed "Ay katawan ay", accompanied by the barking of dogs. She then got up and peered outside her window, and there she saw three men on the other side of the creek clad only in shorts (carsunsillo), and wielding boloes, hurriedly running away from the general area where the Abobon hut was situated. Although she was approximately 70 meters away, she asserted that she was able to identify positively Dionisio and Julio as two of the men she saw hurrying away, for the same reasons given by Malong — i.e., it was a bright and moonlit night, and a clear view was further afforded by the light from a nearby lamp and by the flames from the four ovens on which the spouses were cooking salt. She further testified that, as to the motive behind the slayings, father and son were driven by their vengeful desire to rid themselves of the Abobons whom they believed to be "witches" whose

"witchcraft" had brought about the death of Dionisio's son and the idiocy of his grandson.[2]

Describing the testimonies of the two prosecution witnesses as "incredible" and "unbelievable" and noting "inconsistencies" between their statements, Judge Fortun granted the petition for bail in a resolution issued on 25 August 1975. However, Norma Abobon, a daughter of the deceased, urged in a "Motion Ex-Parte for Inhibition" that Judge Fortun had prejudged the case and was hence not capable of rendering an impartial decision therein. Thereupon, Judge Fortun while rejecting Norma Abobon's assertion nevertheless inhibited himself and the case was once more re-raffled to the sala of Judge Magat.

Upon arraignment on 30 March 1976, both accused entered a plea of "not guilty" to the charge of double murder.

On 1 December 1976, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, with these considerations, judgment is hereby rendered finding both the accused, Dionisio dela Cruz and Julio dela Cruz, guilty beyond reasonable doubt of the crime of Double Murder as charged in the Information and are hereby sentenced to each suffer the penalty of reclusion perpetua for the death of Meliton Abobon, another penalty of reclusion perpetua for the death of Emilia Quijado-Abobon; to jointly and severally indemnify the heirs of Meliton Abobon in the amount of Twelve Thousand Pesos (P12,000.00) and another indemnification of Twelve Thousand Pesos (P12,000.00) to the heirs of Emilia Quijado-Abobon, with costs."

The accused filed with this Court a "Petition to Bail" pending appeal which was denied on 25 April 1977. Their "Motion for Reconsideration" was likewise denied on 3 June 1977.

The judgment of conviction being now before us on appeal, the accused assign the following errors:[3]

I"

JUDGE MAGAT OF THE LOWER COURT ERRED IN MISREPRESENTING THE PROSECUTION'S EVIDENCE BY MAKING IT APPEAR STRONG AND ON THE BASIS THEREOF, IN CONCLUDING THAT THE ACCUSED APPELLANTS KILLED THE SPOUSES ABOBON.

"II

JUDGE MAGAT OF THE LOWER COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF ALLEGED "EYE-WITNESSES" ABRAHAM MALONG AND ENRICO ACOSTA.

"III

JUDGE MAGAT OF THE LOWER COURT SERIOUSLY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANTS.

"IV

JUDGE MAGAT OF THE LOWER COURT GRAVELY ERRED IN CONVICTING, FOR ITS OWN SAKE, THE ACCUSED-APPELLANTS."

In their brief, appellants focus much attention on the separate testimonies of Abraham Malong and Enrico Acosta, presenting in lengthy excerpts several alleged inconsistencies in the effort to impeach the credibility of those witnesses.

With respect to Malong, appellants contend that several inconsistencies pervaded the separate statements which he gave on 21 August 1975 at the hearing of the petition for bail, and on 21 and 26 July 1976 at the regular trial,

the most notable of which were: (a) although Malong earlier claimed that he positioned himself in a place 25 to 30 meters away from where the killings took place, he later testified that he was just 7 to 8 meters away at his saltbed when he witnessed the incident; and (b) in his previous statement, he had claimed that Meliton Abobon was screaming "Oh my lord, they are killing us", however, a year later he changed this to "Dionisio dela Cruz and Julio dela Cruz are killing us" — a definitely more precise and incriminating version. Furthermore, since the incident supposedly took place at around midnight, and considering that he allegedly viewed the killings from "across a 4 to 5 meter creek along both sides of which grow all kinds of bushes and trees", the appellants urge that Malong could not have possibly seen, much less identified, them. Finally, drawing attention to the fact that the children of the slain spouses were close neighbors of Malong, and in view of his assertion that his alleged presence at the scene of the crime was neither noticed nor detected by the perpetrators thereof, appellants question why it took this witness all of ten days before he reported the killings to the authorities. Such silence, appellants claim, was "highly unnatural" and indicative of fabrication and falsity.

We are unable to agree with the accused-appellants' contentions.

A careful examination of the record discloses that the supposed "inconsistency" regarding the exact distance from which Malong viewed the killings is not properly attributed to the witness himself. In the first statement this witness gave on 27 April 1975 to Sgt. Romeo B. Colet of the Philippine Constabulary investigating unit, the following question-and-answer sequence is found:

"Q: How far were you at the time that you claimed to have seen and/or witnessed this incident?

"A: From this place where I am now standing up to that place where the post is standing. (Affiant pointing an approximate distance of about 25 to 30 meters.)"[4]

It thus appears that the approximation of "25 to 30 meters" was actually given by PC Sgt. Colet (or by some third person), and not by the witness, so that when Malong was later asked during the hearing on the petition for bail to estimate the distance from which he had witnessed the slaying, he simply repeated Sgt. Colet's (or the third person's) estimation of the same, which he must have presumed to be correct. The record also shows that at the trial on 21 July 1976 Malong was again asked to indicate the distance at which he viewed the killings by referring to an object some distance away, which was then estimated by the trial court and by both counsel for the prosecution and for the defense to be 7 to 8 meters away from the witness stand.[5] Thus, the "inconsistency" arose.

From the foregoing, it is far from clear that Malong was responsible for whatever discrepancy arose in respect of this particular matter. Being a simple farmer and saltmaker, he could not be expected to give an accurate quantitative statement of how far he was from the scene of the crime, and this is presumably why he was instead requested to relate this distance to an object visible to the witness which then became the basis of the second approximation. But regardless of which of the two divergent estimates was (or is) more accurate, one thing remained constant in Malong's mind and testimony — the fact that he saw Dionisio and Julio dela Cruz, along with their unidentified companion, hack to death Meliton and Emilia Abobon.

The discrepancy regarding exactly what Malong heard Meliton Abobon scream is immaterial as it refers only to a relatively minor detail. Again, what is important is that Malong steadfastly testified he had witnessed the actual commission of the crime that evening and made positive identification of the perpetrators thereof. Even if we were to accept his first version over the second, this fact will not change and his testimony on this point was not successfully controverted and rebutted.

The defense stresses heavily Malong's failure, for ten days after discovery of the crime, to report to anyone, save his wife, what he had seen. We do not believe that sinister implications must necessarily be drawn from such

failure on the part of Malong. We tend to believe that his silence for ten days is not an unexpected reaction to the outrage which had taken place and which Malong was unfortunate enough to have witnessed. Simply put, Malong was frightened out of his wits. Barrio Lawis is a small place where everyone knows everyone else. Once he reported what he had seen, the accused-appellants would sooner or later learn from whence the report came. Malong admitted in open court that he was not a particularly brave man, an admission not frequently made in today's world. Thus, keeping in mind Malong's humble position in life, it is not difficult to see why it took time before he was able to gather his wits together and take his courage in hand and to report what he had witnessed to the authorities. At the very least, an ordinary human being who had witnessed the bloody slaying of the Abobons would have been as horrified and as apprehensive as Malong evidently was. Not a few might well have gotten ill over or become much disturbed by such a heinous murder and the implicit possibility of reprisal (from the unidentified third man, if not from the accused) that a formal report to the municipal authorities would commonly raise for one living, as Malong lived, in a small and remote barrio. Finally, it may be noted that Malong, like most of the other witnesses, is not a highly educated person. It is doubtful whether he fully understood all the questions asked of him; he was candid enough to admit that he had not.[6]

In their defense, all that the appellants offered was the bare assertion that they were in their hut sleeping while the Abobons were attacked and slain. On their defense of alibi, it should suffice to note that appellants' hut was only 150 to 200 meters away from the saltbed where the Abobons were boloed to death, a distance easily covered within minutes even by a leisurely walk. Given these circumstances, the appellants' defense of alibi can scarcely be given much weight. "Alibi is one of the weakest defenses that can be resorted to by an accused", this Court has held,[7] and "as a minimum requirement for the theory of alibi to be accepted, the accused must also demonstrate that it was physically impossible for him to be in the scene of the crime".[8] "It is a well-settled rule," this Court has also said, "that against the positive identification of the accused, alibi is unavailing".[9] Where, as here, the tendered alibi is sought to be established exclusively by testimony of the accused themselves, especial caution must be exercised in accepting it.[10]

Another principal prosecution witness, Enrico Acosta, a stepson of Meliton Abobon, testified that sometime before midnight of 17 April 1975, he was awakened by the barking of dogs and unusual activity outside his hut, which is situated some eight to ten meters away from where Meliton and Emilia were cooking salt. Having been awakened, Enrico peeped through the walls of his nipa hut and saw both Dionisio and Julio dela Cruz, together with a man he had not seen before, hurriedly running away from the area where the couple were cooking salt towards the northeast, in the general direction of their own hut. Like Malong and Rebecca Acosta, Enrico testified that he was able to discern the faces of the accused because it was a moonlit night, and their figures were illuminated by the fire from the oven of the deceased and the light from a kerosene lamp hanging outside the latter's hut.

In seeking to refute Enrico Acosta's testimony, the defense calls our attention in their brief to the statements given by his wife, Rebecca Acosta, at the hearing of the "Petition to Bail" on 21 August 1975. There Rebecca had stated that her husband, Enrico, was asleep when she had been awakened by the barking of dogs and that Enrico was not awakened by the barking and the agonized screams.[11]

It may be noted at the outset that the defense refrained from presenting Rebecca Acosta /as a witness, albeit a hostile one, for the accused after Enrico Acosta had given his testimony. The defense also refrained both from recalling Rebecca Acosta for further cross-examination after Enrico's testimony, and from cross examining Enrico on the basis of Rebecca's statements during the hearing of the petition for bail. We can only assume that the defense did not consider Rebecca's testimony concerning her husband being "fast asleep" as important and material as it now contends it is. What appears to us as important is that Enrico and Rebecca Acosta had each

positively identified the accused Dionisio and Julio dela Cruz, along with a yet unidentified third person, fleeing from the direction of the scene of the killings towards the accused's hut. Equally important is the fact that the testimony of Enrico as well as that of Rebecca corroborated the eye-witness testimony of Malong on the identity of the accused as the slayers of the Abobon spouses. In other words, if one must choose between the testimony of one and that of the other, the testimony of either Enrico or Rebecca was sufficient corroboration of the testimony given by Malong. We tend to believe that both Enrico and Rebecca were awakened (though not necessarily at the same time) by the howling of the dogs and the screams of agony and peered fearfully at the men hurrying away. We are left to speculate why Rebecca stated that Enrico was not awakened by the noise. But it is not necessary to rest our conclusion on this point upon speculation. The trial judge found the testimony of Enrico Acosta to be worthy of credence. We do not believe that Rebecca's statement that Enrico was fast asleep is sufficient, by itself and in the circumstances of this case, to overthrow the trial court's finding on this point.

Regarding the other assigned errors, appellants aver the following: (a) although there is no evidence on record to show that Judge Magat had in fact conducted an ocular inspection of the scene of the crime, he described the area as "open country",^[12] quite contrary to the scene depicted by the several picture exhibits (Exhibits "4" and series, to "8" and series) submitted in evidence by the defense, which "clearly show the thick foliage in the area along the creek where the crime was allegedly committed ... along which grow all kinds of trees including acacia trees"^[13]; (b) since it was consistently alleged that the killings took place sometime around midnight, "it cannot be bright since there is no evidence that it was a moonlit night"^[14]; (c) the oven fire "could not have sufficiently illumined the place to permit positive identification"^[15] of the defendants, or anyone else for that matter, as the culprits; and (d) the supposed motive of the accused was simply "provided"^[16] for by Judge Magat, who had already prejudged the case and was "bent [on] convict[ing]"^[17] the accused.

Exhibit "4" and Exhibit "7" do suggest that "thick foliage" and "all kinds of trees" abound in the fishpond area where the deceased's hut was located. However, the plants and trees referred to in said photographs have not been shown to pose any obstruction to Malong's line of vision between the place from where he claims he viewed the killings and the spot where the Abobons were slain. In fact, Exhibit "5", a picture of the scene of the crime which was evidently taken from the general direction and area from where Malong said he had situated himself, and Exhibit "6", which shows from the obverse side the scene depicted in Exhibit "5", indicate that a clear and unobstructed view was afforded Malong, such that recognition and identification of the defendants as the assailants of the couple were quite possible, as was precisely done by Malong.

In respect of the testimony of the prosecution witnesses that the fatal night was a "bright and moonlit night", the defense presented as its witness Mrs. Elvira Vinluan, the Officer-in-Charge of the PAGASA Weather Bureau at Dagupan City. Unfortunately, the testimony of this witness on direct examination was neither informative nor supportive of the appellants' case.

On the other hand, upon cross-examination, Mrs. Vinluan testified that as far as Dagupan City was concerned, as per the Bureau's three-hourly observation check on the tragic evening of 17 April 1975, the condition of the sky at ten minutes before eleven o'clock was clear, with the moon and the stars shining brightly. Although she did state that weather conditions in Labrador could have been different, she did not deny the possibility that the conditions therein could have in fact been similar, if not identical to those prevailing in Dagupan City. Mrs. Vinluan also could not state with certainty whether at that particular time the moon was high enough over Labrador to escape being covered by the mountains in the area (which mountains, it may be noted, are located south of the part of Barrio Lawis where the killings took place). However, she agreed that from an area removed from the mountains, (e.g., by the beach) the moon would still be visible. Furthermore, when asked whether at ten o'clock that evening the moon would have been "a little bit higher" in the sky, she answered, "It would be logical.", implying that

better visibility could have been afforded at such time.[18]

On the question of the sufficiency of the light produced by the oven flames, appellants presented no evidence whatsoever to show that the ovens were not actually lit or, if lit, produced light too dim or insufficient for Malong and Enrico and/or Rebecca Acosta to see and identify the two defendants. In fact, they did not deny or contest the statement given by Rebecca Acosta that four ovens, and not just one, were utilized by the Abobons that night in cooking salt.[19]

Mindful of the circumstances enumerated above, the trial court summed up:

"...In fact, the night was bright, there was even the fire that came from the ovens of the Abobons and that of Abraham Malong. So that, the accused could not have been mistakenly identified by Abraham Malong and Enrico Acosta." [20]

We see no reason to disturb these findings of the trial court.

Coming now to the motive for the commission by the defendants of the crime charged, the same was not plucked out of thin air, as it were, by the trial judge. The trial court's finding on the motive for the crime rests on separate statements given by five witnesses (Enrico Acosta, Rebecca Acosta, Rogelio Abobon, Norma Abobon, and Santiago Resoso[21] all of whom testified that both Dionisio and Julio dela Cruz resented the Abobons, especially Emilia Abobon, for having allegedly caused the death of Dionisio's son and the feeble-mindedness of Julio's only son, through sorcery and witchcraft. In fact, both Enrico Acosta and Rogelio Abobon testified that in the afternoon of 17 April 1975 and on the previous day they had been approached separately by the accused and warned that "something would happen" to Meliton and Emilia Abobon if they did not cease their practice of "witchcraft". [22] The defendants denied having made such ominous threats. [23] The trial court was unable to accord substantive weight to such denials, in the face of the mutually corroborative and supportive testimony of the prosecution witnesses. We find no reversible error on the part of the trial court on this point.

Turning finally to the circumstances attending the commission of the offense charged, treachery, having been alleged and proved, qualified the killing of the unfortunate spouses as murder. The circumstances of abuse of superior strength and nocturnity which were also proven at the trial, are absorbed in treachery. [24] Evident premeditation, which was also alleged in the Information, might have been taken into account as a generic aggravating circumstance had it been clearly proven. The trial court, however, did not make a specific finding of evident premeditation, correctly, in our view, since the evidence of record would not support such a finding.

So far as concerns Dionisio dela Cruz, there being no mitigating nor aggravating circumstance properly appreciable, the penalty of reclusion perpetua for each murder committed was correctly imposed.

In the case of Julio dela Cruz, however, the mitigating circumstance of voluntary surrender should have been appreciated in his favor by the trial court. The evidence of record shows that the accused Julio dela Cruz, after the funeral of the Abobon spouses in Labrador, Pangasinan, left Labrador and returned to San Miguel, Pasig, Rizal, where he had a job. The trial court construed the departure of Julio as a "flight to Pasig, Rizal — to evade the strong arm of the law which, by then, was catching up on him. Otherwise, he could (sic) not have brought along his family with him." [25] The trial court did not indicate why the return of Julio to Pasig, Rizal, constituted flight from justice. The court also failed to indicate why it regarded Julio's bringing along his family with him to where he had been earning his livelihood as indicative of an intent to evade the law. In any case, approximately four weeks later, having come to learn of the issuance of the warrant for the arrest of both his father and himself, Julio came back to Labrador, Pangasinan and, accompanied by his lawyer, went to the Labrador police authorities and presented himself. There is no evidence in the record to show that Julio dela Cruz, before returning to Labrador, had actually been served with a copy of the warrant for his arrest, or that such warrant had been returned unserved

for failure to locate him. In *People versus Braña*,^[26] the Court held that the fact that the surrender is effected sometime after issuance of the warrant of arrest does not detract from the voluntary character of the surrender, in the absence of proof to the contrary. The decision of the trial court went on to say that

"Even if Julio dela Cruz were to [be] liberally considered as having legally surrendered, yet, his penalty remains the same as that of his co-accused, Dionisio dela Cruz, there being fully established conspiracy."^[27]

Here, the trial court is in error. The fact that conspiracy is established does not mean that the penalty imposed upon one must be imposed upon the rest of the conspirators. Proof of conspiracy does not prevent the appreciation of a mitigating circumstance exclusively in respect of the co-conspirator to whom such circumstance may relate^[28]. Thus, appreciating in favor of Julio dela Cruz the mitigating circumstance of voluntary surrender without any generic aggravating circumstance to offset it, the correct penalty imposable upon him is the minimum period of the penalty for murder: i.e., reclusion temporal in its maximum period, for each murder.^[29]

WHEREFORE, except for the penalty applicable to Julio dela Cruz which, applying the Indeterminate Sentence Law, we hereby modify to an indeterminate penalty of from ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, for each murder, and the further modification that the indemnity to be paid is increased to P60,000.00 (P30,000.00 to the heirs of Meliton Abobon and another P30,000.00 to the heirs of Emilia Quejado Abobon) the judgment appealed from is AFFIRMED.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, and Gancayco, JJ., concur.

[1] Transcript of Stenographic Notes (TSN), 21 August 1975, pp. 125-163, Original Exhibits for the Defense.

[2] *Id.*, pp. 4-123.

[3] Brief for Accused-Appellants, p. 180, Rollo.

[4] Sworn Statement of Abraham Malong, p. 26, Original Records.

[5] Original TSN, 21 July 1976, p. 118.

[6] Original TSN, 26 July 1976, pp. 166 and 169.

[7] *People v. Lumantas*, 28 SCRA 764 (1969).

[8] *People v. Dondoy*, G.R. No. 63728, 15 September 1986; *People v. Bihasa*, 130 SCRA 62 (1984); *People v. Sambangan*, 125 SCRA 726 (1983); *People v. Munoz*, 107 SCRA 313 (1981); and *People v. Alcantara*, 33 SCRA 812 (1970).

[9] *People v. Terrobias*, 103 SCRA 321 (1981); *People v. Legones*, 69 SCRA 210 (1976); *People v. Cariño*, 55 SCRA 516 (1974); and *People v. Bagasala*, 39 SCRA 236 (1971).

[10] *People v. Brioso*, 37 SCRA 336 (1971); *People v. Cabanit*, 139 SCRA 94 (1985); *People v. Bagiscan*, 6 SCRA 400 (1962).

[11] TSN, 21 August 1975, pp. 10-11, Original Exhibits for the Defense.

[12] Brief for Accused-Appellants, p. 226, Rollo.

[13]Id., p. 227, Rollo.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Id., p. 226, Rollo.

[18] Original TSN, 26 October 1976, pp. 357-360.

[19] TSN, 21 August 1975, p. 27, Original Exhibits for the Defense.

[20]Decision, p. 13, Rollo.

[21] Enrico Acosta: Original TSN, 20 July 1976, pp. 31-33 and 37-39; Rebecca Acosta: TSN, 21 August 1975, pp. 62-63, Original Exhibits for the Defense; Rogelio Abobon: Original TSN, 21 July 1976, pp. 73-77; Norma Abobon: Sworn Statement, 19 April 1975, p. 14, Original Records; Santiago Resoso: Sworn Statement, 28 April 1975, p. 24, Original Records.

[22] Ibid.

[23] Original TSN, 29 September 1976 pp. 267-269; and 11 October 1976, pp. 329-331.

[24] People v. Dueño, 90 SCRA 23 (1979).

[25] Decision, p. 7, Criminal Case no. L-1007, Rollo, p. 85.

[26] 30 SCRA 308 (1969). See also People v. Diva, 23 SCRA 332 (1968) and People v. Valera, 5 SCRA 910 (1962).

[27] Italics supplied; Decision, p. 7, Criminal Case No. L-1007, Rollo, p. 85.

[28] People vs. Valdellon, 46 Phil. 245 (1924). See in this connection, Article 62 (3), Revised Penal Code.

[29] We cannot condone by passing sub silentio the extravagant language used by counsel for the defense in referring to the trial judge (Judge Romeo D. Magat) and the manner in which the latter heard and decided the case. Defense counsel described Judge Magat as rationalizing "a judgment he knew to be wrong" (Appellants' Brief, p. 3). Judge Magat is further accused of convicting "for its (sic) own sake, the accused-appellants" (Appellants' Brief, p. 7) and as "misrepresenting the evidence of the prosecution by making it appear strong" (Appellants' Brief, p. 9). Further down, defense counsel refers to Judge Magat as "a judge bent to convict" (Appellants' Brief, p. 54). Finally, defense counsel charges Judge Magat with convicting the appellants to "satisfy (his) personal whims and caprices" (Appellants' Brief, p. 60). The language used by defense counsel goes beyond the merely vigorous or exuberant expressions which, in a passionately fought courtroom battle, may well be overlooked. We refer here to language used in a brief which is presumably written after careful thought. Judging from the appellants' brief and from the record of this case, the statements of defense counsel against Judge Magat were made without basis and hence deplorable. Epithets, whether directed at the judge or at the witnesses, have no place in proceedings, oral or written, before our courts.

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