

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANIEL PALACPAC, AGUSTIN PALACPAC, MARTIN PALACPAC,
PATRICIO PALACPAC, NARCISO PALACPAC, CANUTO TOLENTINO,
JOSE CORPUZ ALI...**

G.R. No. L-27822. February 28, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

For the deaths of Corporal Matias Bassig and Vicente Luis, a constabulary informer, as an aftermath of a tragic encounter in Baggao, Cagayan, on January 31, 1964, the origins of which appear to be shrouded in obscurity, notwithstanding the lengthy and exhaustive decision of Judge Lauro S. Esteban, dated June 2, 1967, Daniel Palacpac, Agustin Palacpac, Martin Palacpac, Patricio Palacpac, Narciso Palacpac, Canuto Tolentino, Jose Corpuz, and Leopoldo Palad, were prosecuted for and convicted of the crime of murder.[1] Meted out two life sentences, all of the accused except Daniel and Narciso Palacpac appealed. Subsequently, there was a withdrawal thereof by Martin and Patricio Palacpac. What remains to be decided before us then is the culpability, if any, of Agustin Palacpac, a son of Daniel and a brother of all the other accused with the same surname, as well as of the criminal liability incurred, again if shown, of Canuto Tolentino, Jose Corpuz and Leopoldo Palad. It is the contention of their counsel de oficio, Attorney Gaudioso Antaran, that Agustin Palacpac, even if the findings of the trial court were to be accepted in their entirety, should not be held guilty of murder, but at most of homicide, premeditation, conspiracy and treachery, not being legally imputable to him. As to the other three appellants, it is asserted that they are entitled to acquittal, the constitutional presumption of innocence not having been overcome.[2] A careful review of the voluminous evidence, with particular emphasis on the crucial circumstance that the affray took place near the house of Agustin Palacpac, located in a different barrio, some distance away, from that of his father and brothers, and, what is more, on the very ninth day of the prayers offered for the soul of his deceased daughter, when he was not shown to have had any contact with the constabulary party to which the two deceased belonged, negates the conclusion that he could be held liable for murder. His participation, as maintained by counsel de oficio, could at the most entail a conviction for homicide. The role he played in the fatal encounter could not have been due to a preconceived plan carried out with alevosia. Nor could it rationally yield the conclusion that there was a conspiracy of which he was a member. Likewise, in the absence of moral certainty as to the criminal liability of the other three appellants, they are entitled to acquittal, as prayed for, their guilt not having been shown beyond reasonable doubt. That is to accord deference to their constitutional right requiring that degree of proof before their presumed innocence could be overcome.

How did the trial court weigh the diametrically-opposed testimony of both prosecution and defense? This portion of the appealed decision supplies the answer: "The Court believes, as proven by competent evidence, that when Sgt. Manuel Agustin, Cpl. Matias Bassig, Wenceslao Barit, and Vicente Luis coming from Remus, were returning to Tuguegarao, and as they were passing by the house of Agustin Palacpac, they were seen at a distance of around 70 to 80 meters by Rufino Palacpac. Because the four were in unkempt condition, perhaps, wearing their hair

long, their clothes soiled with dust and sweat, and having bruted it about that they were companions of Intong Brillantes, then the most notorious and infamous bandit roaming the region and around Gattaran, near Baggao, Rufino Palacpac, his brothers and the people gathered in the house and premises of Agustin Palacpac, after a hurried consultation, and hoping to gain pecuniarily or otherwise, by the death of those four whom they thought to be really of the Brillantes gang, for whose head P1,000.00 was offered, and further seeing the chance to surprise the four, pretended to invite them to enter and attend the celebration and partake of the preparation. The four unaware of the trap, and honestly hoping to eat something substantial after days of lean victuals, accepted the invitation. When all of the four were already entered, all the accused, with many more, all armed with boloes, sprang to attack. They attacked, first, Vicente Luis who was nearest the gate and the hindmost, to prevent possible escape by all, and also to ensure the possession of the carbine which Rufino and his brothers must have known to be in a 'bayong' being then carried by Vicente Luis. Those were the reasons they attacked the latter first. It was fully proven that Vicente Luis was hacked by Daniel Palacpac, Agustin Palacpac, Patricio Palacpac and Martin Palacpac, while Cpl. Bassig was hacked at the nape, left side, by Rufino Palacpac when Cpl. Bassig was about to go to Vicente Luis to get the Carbine. Then Cpl. Bassig who was on the left of Sgt. Manuel Agustin and next to Vicente Luis drew his revolver, Cal. 38, and fired successive shots at Rufino, hitting the latter, first, on his right thigh and, as Rufino turned around to his left, next on the back, right side below the shoulder, the bullet going to the left below the left shoulder, where it was extracted. That it was Cpl. Bassig who shot him can be concluded by the declaration of Sgt. Agustin; Wenceslao Barit and even the declaration of Rufino Palacpac. Patricio Palacpac was also hit when Cpl. Bassig fired other shots. * * * The wounds of Vicente Luis, all located on his head and thorax * * * attest to the rash and heavy attack made on him. Even when he was already lying prostrate on the ground, helpless and defenseless, Vicente Luis was mercilessly hacked, and almost cut to pieces. * * * The declaration of Sgt. Agustin and that of Wenceslao Barit who corroborated fully on these matters are positive, clear and unmistakable."[3]

Then came this portion of the decision: "The aggression was begun by the accused because they had the greater motive as above indicated, and the four agents of the law would not have started the trouble because it was part of their mission to be friendly, not arrogant, with the people, from whom they had been expecting to gather information about the whereabouts of Intong Brillantes, for if they started the trouble they would have been prepared with their more powerful arms, seeing their numerical inferiority compared with the many people under the house of Agustin Palacpac and under the mango tree. Being PC soldiers, Sgt. Agustin and Cpl. Bassig would be cautious, alert and fully prepared for any emergency, if they had thought of creating trouble. But they were not prepared; their arms were tucked under their clothes, and the carbine was in the bayong, so they are caught without their arms in their hands. * * * There is also sufficient room for the basis of the conclusion that Cpl. Bassig, Sgt. Agustin and Wenceslao Barit were able to escape from the yard of Agustin Palacpac although Cpl. Bassig, was already hacked at the left side of his neck, for the reason that the attackers were not able to follow up immediately the initial attack after Cpl. Bassig had shot at Rufino Palacpac and Patricio Palacpac, coupled with the aiming or pointing of the gun by Sgt. Manuel Agustin. * * * The fall of Rufino Palacpac on the ground contributed to the confusion of his father and brothers and others and the confusion allowed the three to gain a distance of five hundred meters before Agustin Palacpac, Patricio Palacpac, Leopoldo Palad, Canuto Tolentino, Jose Corpuz, and Martin Palacpac, and Daniel Palacpac began the chase. Cpl. Bassig being already hampered and weakened by his wound, and Manuel Agustin as well as Wenceslao Barit who were also handicapped by the presence of Cpl. Bassig whom they could not just leave to his fate, were not able to move fast, not until Cpl. Bassig and Sgt. Agustin reached the bank of the river, and Wenceslao Barit left the two and made good his escape in a different route. * * * The subsequent shot was fired at Bassig when he was really lying down already and believing that Cpl. Bassig was already dead they left him alone. It was after this that the accused brought Rufino to the clinic of Dr. Herrero. That all these facts have been proven by evidence is no longer a matter to be doubted,

for the testimony of Wenceslao Barit, Sgt. Agustin and Genoveva Baculi fully support the facts which have been above related."[4]

What is readily noticeable in the above appraisal of the evidence by the trial court is the acceptance, well-nigh complete, of the version of the prosecution and the rejection, vigorously phrased, of the defense offered by the accused. It does not admit of doubt that the trial judge did make the attempt to scrutinize the conflicting versions of the prosecution and the defense on what transpired, as testified to by a number of witnesses, fourteen for the former and thirteen for the latter. He wrote a one hundred twenty-one-page decision. The impression cannot be resisted however that the witnesses for the prosecution were given the compliment of being accorded full credence. What they testified to was believed as the gospel truth. Moreover, where there was something quite lacking, speculation was indulged in. There is need then, it would seem, for a greater degree of objectivity in ascertaining what really happened, at least insofar as the appellants are concerned.

The very decision itself makes clear that there was nothing inevitable about the tragedy. While it made mention of a possible motive for the melee, the element of choice and caprice could not be ruled out. As therein pointed out, sometime in January 1964, a constabulary patrol composed of Sergeant Manuel Agustin, Corporal Matias Bassig, and two informers, Wenceslao Barit and Vicente Luis, was formed to track down and locate the whereabouts of one Intong Brillantes, a bandit chieftain, "then the terror in the northeastern part of Cagayan." [5] It was assumed he was in the mountainous regions of Gattaran and Baggao. The patrol was impressed with the need for complete secrecy. The men composing it had to wear civilian clothes. They were even told "they could pretend to be members of the Brillantes gang." [6] After which, the appealed decision went on to state: "On January 29, 1964, their mission brought them to the remote barrio of Sinaga, otherwise known as Agaman, near the boundary of Gattaran, where they might inquire among the rural people there as to where they could find the hideout of Intong or Faustino Brillantes. Among the people that they contacted was the family of the accused Daniel Palacpac. The patrol was not known to the family of Palacpac, at least, that was to be gathered from the evidence. Having obtained no satisfactory information, the four agents of the law were return-ing to Tuguegarao, sometime in the morning of January 31, 1964. They happened to pass, along the road, in front of the house of one of the sons of Daniel Palacpac — Agustin Palacpac. At that time there was some sort of preparation in the house of Agustin Palacpac, and it can be admitted that the preparation was about a 9th day celebration of the death of the child of Agustin Palacpac." [7]

The very decision then does give rise to the thought that a cruel and perverse fate, by an act of whim or caprice, pointed the finger of doom at the two victims with Daniel Palacpac and some of his sons as the unwitting instruments of that foul and grisly deed. For it does seem strange, almost unaccountable, why in the short span of two days, January 29 and January 31, 1964, two groups composed of people who, previous to such occasion apparently were not even aware of the existence of the other, could, on the evening of the twenty-ninth, meet for the first time with the amenities being observed, and, what is more, the constabulary patrol being fed, no acrimony marring such occasion, and thereafter in less than two days engage in a fatal encounter. As far as appellant Agustin Palacpac is concerned, does it not seem almost unbelievable that such grim event would take place in the yard of his house? There is no showing that before that time, he had knowledge that his father and two of his brothers had made the acquaintance of the constabulary men. Should not the lower court have taken into consideration that tragedy struck at a most unlikely time, on the occasion of the ninth day of prayers for the soul of a departed daughter, and in an unlikely place, Agustin's dwelling being located in a different barrio rather far from that of his father, who along with two of his sons had to ride on horseback to be present at such solemn occasion? Moreover, who would have thought that the two deceased and their two companions would pick on that particular route on their way back to Tuguegarao? It is under such circumstance that their counsel de oficio would assert that he could not have been guilty of murder, absent the element of conspiracy and premeditation or

alevosia impossible to be shown. The three other appellants, Canuto Tolentino, Jose Corpuz and Leopoldo Palad, being the comparative strangers that they are, as will hereafter be shown, had even less reason to be implicated in the crimes for which the other Palacpac were convicted. There is merit therefore in their plea for acquittal.

1. The finding of guilt for murder of appellant Agustin Palacpac by the trial judge, erroneous from our point of view, could be attributed to his failure to consider carefully the previous antecedents of the bloody incident, unknown to this appellant, and the time and place of its occurrence that argue eloquently against his being involved in a conspiracy or his being justly chargeable with alevosia and evident premeditation. Had such thought been given to the matter, it is not likely that there would be a cavalier disregard of his testimony. It was fairly summarized in the decision thus: "The next witness the defense relies in support of their theory is Agustin Palacpac, 40 years old, driver of motor vehicle, resident of San Isidro, Baggao, Cagayan, who declared among other things, as follows: That he and his wife, Dolores Corpuz, were residing in Dabbac, San Isidro, on January 21, 1964. In the morning of that day he and his wife were preparing for the 9th day of celebration of the death of their daughter Eufemia. Among his helpers in the preparation were Leopoldo Palad, who came to his house accompanied by one of his children. Leopoldo Palad was helping in cooking the food for the celebration. Jose Corpuz, his brother-in-law, was also there to help buy spices at San Jose, Baggao; Canuto Tolentino also came to his house and helped cook pig's broth on the ground. His brother Martin Palacpac was also there helping in the construction of a shed. The morning of that day, his father, Daniel Palacpac, and his brother, Patricio Palacpac, arrived in his house to attend the 9th day celebration. He saw both of them. However, he did not see his brother Rufino, and he came to know that Rufino also attended after he was shot. The 9th day celebration consisted of a novena for the soul of his daughter. The prayer was to be led by Aquilino Pinpin. As an aside, he declared that he was formerly in the Philippine Scout of U. S. Army and served for 2 years, 11 months and 10 days, and was stationed in Clark Field. He was honorably discharged from the Philippine Scout. He exhibited his papers, showing his service and his honorable discharge * * *." [8]

After which came this portion of the decision: "When his father arrived, the prayer began in the upper part of his house. He was in the kitchen where Jose Corpuz, after delivering the spices he bought in San Jose told him he would go home because of toothache. After Jose Corpuz had gone home, and he was still in the kitchen he heard a gunshot. He went down-stairs and the people inside all left the house, scampering away. When he was downstairs he turned his face to the place where the gunshot came from. It was on the yard located between his house and that of Jose Corpuz. The yard was north of his house. As he came down he saw somebody and another one, sprawled on the ground. Later on, he saw that one of those sprawled was his brother, Rufino Palacpac, and the other one, the companion of the three persons. He saw one shooting and aiming his gun at one of the two struggling on the ground, but at that moment he did not yet know who were those grappling and rolling on the ground. He went near the person who was aiming his gun for he wanted to pacify, if possible, in order that the prayer might continue or go on. During the struggle, Rufino was on top. He heard again another gunshot. That was the second gunshot he heard and it came from one of the four strangers. He got near, he took hold of one of the strangers, the one who was aiming at the two struggling and rolling on the ground in order to prevent the said person from shooting. He was able to prevent the one aiming his gun from firing again. The gun was short and if shown to him he could identify it. He was able to prevent the man by deflecting with the right hand the direction of the gun. The gun fired towards the ground. And that was the third shot he heard. The man who fired the gun was in civilian clothes. When he deflected the man's hand the gun fell to the ground. Then he saw the two persons, one of whom was his brother, separate from each other. After the gun fell he picked up the gun and he fired it at the person who was aiming his gun at him. Later on he came to the Municipal Hall of Baggao where he came to know it was Manuel Agustin who aimed his gun, the same Manuel Agustin who testified in this case. After firing his gun at Manuel Agustin he returned to the two persons sprawled on the ground one of whom was

his brother. Patricio approached him and handed to him a carbine. One of the men sprawled on the ground was his own brother Rufino Palacpac. After firing his gun at Manuel Agustin, Manuel Agustin ran and stopped and aimed his gun at him again and fired. He was not hit. The gun he picked up was, perhaps, owned by one of the four persons. The gun he picked up was the same gun which is marked as Exhibit S. He fired only once because there was only one live bullet."[9]

Without according full acceptance to what was testified to by him, there is much to be said for the contention of his counsel de officio "that Agustin Palacpac could not be guilty of murder in the absence, * * * of clear, positive and independent evidence of premeditation, conspiracy and treachery." [10]

As to the conspiracy, it must be remembered that the codal provision requires "an agreement concerning the commission of a felony" by "two or more persons" who "decide to commit it." [11] The objective, according to the recent case of *People v. Pudpud*, [12] "on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their extent." [13] That is an indispensable requisite, stressed as early as 1909 by Justice Mapa in *United States v. Magcomot*, [14] characterized by "concurrence of wills" or "unity of action and purpose." [15] While such a "common accord" [16] may be perpetrated, there must be, in the relevant language of Chief Justice Bengzon, "a chain of circumstances" [17] yielding that legitimate inference and excluding any other view that would negate the even more fundamental postulate that a man's culpability is traceable to his act arising from a free exercise of will. Certainly, if it were not thus, conspiracy, contrary to settled doctrines, would be established lacking proof of "previous concert of criminal design." [18] How would such a primordial requirement be said to exist when clearly and indisputably appellant Agustin Palacpac had no inkling whatsoever that two days before, in a far-off barrio, the constabulary party of four met his father and two brothers and that on the fateful morning it would pass by his house on its way to Tuguegarao, at a time when all his attention was centered on the ninth-day of prayer being offered for the soul of a daughter? The thread of credibility was not only fragile; it had snapped.

Equally so, the circumstances of alevosia and evident premeditation cannot be imputed to appellant Agustin Palacpac. The doctrine uninterruptedly adhered to from 1903 is that for an offense to be considered as manifesting their presence, there must be in existence the same quantum of proof necessary to dispel any reasonable doubt. [19] As stated by Justice Torres in *United States v. Barbosa*, [20] "it must be borne in mind that the qualifying circumstances of a crime in its commission, in order to be considered, must be established by competent evidence as well as the crime to which they relate." [21] Justice Mapa in *United States v. Perdon*, [22] decided two years later, was even more emphatic. Thus: "The circumstances specifying an offense or aggravating the penalty thereof must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence according to law." [23] A little more reflection on the part of the trial judge ought to have convinced him that a father busy attending to what for almost all Filipinos is an occasion of deep significance, the saying of prayers, this time precisely on the ninth day, for the death of a daughter could not have entertained the thought of "employing means, methods, or forms in the execution [of a crime] which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." [24] It is highly unrealistic, contrary to Filipino mores for one to be so casual about the demise of an offspring that for the paltry sum of P1,000 to be divided among a numerous brood of relations, one could, while the sense of grief was still present and precisely when prayers are being said, be so casual about the matter as to plan a murder to avoid any risk, let alone to put an end to the lives of others. If appellant Agustin Palacpac were that kind of a man, then he had forfeited all claims to parenthood. He was justly meted out the penalty imposed. The record is barren of any proof that would have earned for him so execrable an indictment. There was no alevosia on his part.

Nor could there be evident premeditation either, for as was made clear in the leading case of *United States v. Gil*,^[25] a 1909 decision penned by Justice Mapa, for premeditation conocida to exist in a judicial sense, there is required that "full opportunity for meditation and reflection, * * * amply sufficient to allow [one's] conscience to overcome the resolution of his will (vencer las determinaciones de la voluntad) had he desired to hearken to its [warning] * * *."^[26] As was set forth in *People v. Torejas*:^[27] "In other words, this circumstance can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. There must be 'an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what they had planned to do, an interval long enough for [the] conscience and better judgment to overcome [the] evil desire and scheme.' Where 'there was no direct evidence of the planning or preparation' it cannot be said to exist 'since it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious untoward acts evincing determination to commit the crime. It is not 'premeditation' merely: it is 'evident premeditation'."^[28] The role that the law wisely attributes to conscience in the determination as to whether the circumstance exists should erase the slightest suspicion that appellant Agustin Palacpac at such a period and under such circumstances could have adhered with tenacity to the commission of such a nefarious act, even on the assumption that previously, contrary to the evidence, his father and his brothers had given him an inkling of what was being planned. As a matter of fact, were it not for the finding of conspiracy, which as had been shown did not exist, at least, as to appellant Agustin Palacpac, the trial court certainly would not have arrived at the untenable conclusion that as to him, alevosia and evident premeditation could be appreciated.

This is not to say though that appellant Agustin Palacpac should be exonerated. Not even his counsel de oficio goes that far. As noted at the outset, he could not "possibly agree with the defense of [such] appellant * * * in the form of absolute alibi; that he could not have participated in the bloody encounter, * * *."^[29] As likewise referred to, he did likewise assert that in the absence of "clear, positive and independent evidence"^[30] of conspiracy and treachery, the most that he should be held liable for is homicide. Counsel de oficio is to be commended for such candor; fidelity to his obligation towards a court of justice requires that he should let truth prevail. He is not expected to accord complete and full acceptance of what was testified to by his client. Certainly, while it is unthinkable for appellant Agustin Palacpac to have really been involved in a conspiracy and to have had the evident premeditation of killing the constabulary patrol in a way that would avoid the risk of any defense, still it cannot be said, again, according to Filipino mores, that a son, seeing an encounter in which his father and his kin did run the danger of being fired upon would not have joined the fray in their defense. Is he however, liable for a double homicide or only for a single homicide? The very evidence for the prosecution would seem to imply that at the most, his culpability would lie only in relation to the death of Corporal Matias Bassig. There were only two eye witnesses, Sgt. Manuel Agustin and Wenceslao Barit, one of the two constabulary informers. The testimony on this point of the latter, as summarized in the decision, is to this effect: "In the bayong that Agustin handed to Vicente Luis were a folding carbine, jacket and pants. When Sgt. Agustin was entering the yard, Rufino Palacpac came down from the batalan, and went towards Sgt. Agustin. He, Cpl. Bassig and Vicente Luis followed Sgt. Agustin inside the yard. As they entered, he saw five persons going near Vicente Luis armed with bolos and immediately hacked Vicente Luis. These five persons came from the house of Jose Agustin Palacpac. He could recognize these five. (He identified the accused in the courtroom by pointing to each and everyone and Daniel, Martin Palacpac and Canuto Tolentino, Leopoldo Palad and Jose Corpuz)."^[31] The other eye witness, Sgt. Manuel Agustin, while perhaps in view of the confusion of the moment and with several Palacpacs among the accused, made mention of this appellant but did likewise emphasize "and with almost one blow from Daniel Palacpac, Vicente Luis fell to the ground."^[32] Certainly then, with such clear testimony on the part of the two eye witnesses, there is no justification for holding appellant Agustin Palacpac guilty of the crime of both Vicente Luis and Corporal Matias Bassig. It is only for the death of the latter that he had legally laid

himself upon for a judgment of conviction for homicide.

2. Counsel de oficio, in his second assignment of error would seek the acquittal of appellants Canuto Tolentino, Jose Corpuz and Leopoldo Palad. In thus making such a plea, he is on solid ground. The trial court, in its carefully drafted one hundred twenty-one-page decision, did make this admission: "While it is true that the participation of the accused Canuto Tolentino, Leopoldo Palad and Jose Corpuz was not clearly shown by testimonial witnesses for the prosecution except by general statements or declarations of Sgt. Manuel Agustin, these are equally responsible for the killing of Vicente Luis, if not in the actual killing of Cpl. Bassig, for the reason that they took part in the conspiracy with their co-accused in the attack of the four agents of the law in the yard of Agustin Palacpac. As such conspirators they share and partake in the criminal responsibility, equally with their co-accused Daniel Palacpac, Rufino Palacpac, Patricio Palacpac, Martin Palacpac, and Agustin Palacpac, so that the penalty that should be imposed on these should be the same penalty to be imposed on their co-accused." [33] Absent the conspiracy, and in this case certainly if Agustin Palacpac could not be found to have been one of the conspirators, much less could these three appellants, who happened to have attended the ninth day of prayer, be considered as such. Moreover, with the trial judge having been impressed with the fact that their participation was not clearly shown by testimonial witnesses for the prosecution except by general statements or declarations of Sgt. Manuel Agustin, a finding of their guilt suffers from the corrosion of substantial legal error. To accept such a view would be to render nugatory the constitutional right of the accused being presumed "to be innocent until the contrary is proved." [34] As was set forth in the relative recent decision of *People v. Dramayo*: [35] "It is to be admitted that the starting point is the presumption of innocence. So it must be, according to the Constitution. That is a right safeguarded both appellants. Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. * * * [Guilt] must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. * * * It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act, but that it amounted to a crime. What is required then is moral certainty." [36]

It is difficult to explain and legally impossible to justify how the trial judge after admitting "that the participation of the accused Canuto Tolentino, Leopoldo Palad and Jose Corpuz was not clearly shown by testimonial witnesses for the prosecution * * * [37] could have found them guilty, and as co-principals yet. How could there be in his mind that moral certainty, the existence of which is indispensable? If there is any explanation at all, for justification there is none, it must have been the confessions extracted from the accused. Instead of viewing them askance, with the three appellants testifying to the usual method by which they were obtained, frowned upon by law and conscience, he gave them credence. He appeared to have ignored the circumstances indicative of their being extorted by force and thus devoid of any probative value. This Court, in *People v. Urro*, [38] through Justice Teehankee, spelled out what is expected of lower courts: "In any case, the most painstaking scrutiny must be resorted to by the trial courts in weighing evidence relating to alleged voluntary confessions of the accused, and the courts should be slow to accept such confessions unless they are corroborated by other testimony." [39] Precisely here, the corroboration was lacking. The trial judge in the previous excerpt cited expressly conceded the unsatisfactory character of the testimony. The repudiation of involuntary confessions is equally a dearly cherished principle of English and American law. [40] It would seem then that the trial judge had a different norm. As a matter of fact, while to be commended for his diligence in minutely going over the voluminous evidence, he was not discriminating enough in his analysis of the conflicting versions of the prosecution and the defense. His

lengthy and exhaustive decision, while in many respects a model of what industry and conscientiousness may produce, hardly meets the test of open-mindedness where the claims, at least of these four appellants, were concerned. This appears clearly to be one situation that calls to mind Bultmann's dictum that laws, penal statutes not excluded, should be applied *secundum caritatem et secundum rationem*.

WHEREFORE, the decision of the lower court of June 2, 1967 is modified in the sense that appellant Agustin Palacpac is convicted of the crime of homicide as co-principal in the killing of Corporal Matias Bassig and without mitigating or aggravating circumstances attendant to the commission thereof, he is sentenced to the in-determinate penalty of six years and one day of prision mayor to twelve years and one day of reclusion temporal. The other appellants, Canuto Tolentino, Jose Corpuz and Leopoldo Palad are hereby acquitted, their guilt not having been shown beyond reasonable doubt. In all other respects, the decision of June 2, 1967 is affirmed. No costs in this appeal.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Teehankee, and Esguerra, JJ., concur.
Barredo and Makasiar, JJ., did not take part.
Antonio, J., in the result.

[1] One of the sons of Daniel Palacpac, Rufino Palacpac, was even more involved in the affray, but as the gunshot wound he received took about a year to cure, he was granted a separate trial.

[2] According to Art. III, Section 1, par. 17 of the Constitution: "In all criminal prosecutions the accused shall be presumed innocent until the contrary is proved. * * *."

[3] Decision of the Trial Court, Appendix A to Brief for Appellants, 82-84.

[4] *Ibid*, 84-85.

[5] *Ibid*, 40.

[6] *Ibid*, 41.

[7] *Ibid*.

[8] Decision, Appendix to Brief for the Defendants-Appellants, 36.

[9] *Ibid*, 36-38.

[10] Brief for Appellants, 12.

[11] Art. 8, Revised Penal Code, Act No. 3815 (1932).

[12] G.R. No. L-26731, June 30, 1971, 39 SCRA 618.

[13] *Ibid*, 624.

[14] 13 Phil. 386.

[15] *Ibid*, 389.

[16] *People v. Tiongson*, G.R. No. L-9866-7, Nov. 28, 1964, 12 SCRA 402.

[17] *People v. Villanueva*, G.R. No. L-12687, July 31, 1962, 5 SCRA 672.

[18] *People v. Magcamit*, G.R. No. L-25555, March 28, 1969, 27 SCRA 450.

[19] Cf. *People v. Torejas*, G.R. No. L-29935, Jan. 31, 1972, 43 SCRA 158.

[20] 1 Phil. 741 (1903).

[21] *Ibid*, 746.

[22] 4 Phil. 141 (1905).

[23] *Ibid*, 143.

[24] Art. 14, Sec. 16, Revised Penal Code, Act 3815 (1932).

[25] 13 Phil. 530.

[26] *Ibid*, 547. The *Gil* decision was cited with approval in *United States v. Blanco*, 18 Phil. 206 (1911); *United States v. Kadayum*, 23 Phil. 1 (1912); *United States v. Gamao*, 23 Phil. 81 (1912); *United States v. Buncad*, 25 Phil. 530 (1913); *United States v. Jamad*, 37 Phil. 305 (1917); *People v. Gonzales*, 76 Phil. 473 (1946); *People v. Monroy*, 104 Phil. 759 (1958); *People v. Hanasan*, G.R. No. L-25989, Sept. 30, 1969, 29 SCRA 534. Without referring to the case by name, the doctrine was followed in *People v. Parayno*, G.R. No. L-24804, July 5, 1968, 24 SCRA 3; *People v. Pantoja*, G.R. No. L-18793, Oct. 11, 1968, 25 SCRA 468; *People v. Mongaya*, G.R. No. L-23708, Oct. 31, 1968, 25 SCRA 921; *People v. Ompad*, G.R. No. L-23513, Jan. 31, 1969, 26 SCRA 750.

[27] G.R. No. L-29935, Jan. 31, 1972, 43 SCRA 158.

[28] *Ibid*, 169, citing *People v. Gonzales*, 76 Phil. 473 (1946); *People v. Mendoza*, 91 Phil. 58 (1952); *People v. Mendoza*, 100 Phil. 811 (1957).

[29] Brief for Defendants-Appellants, 12.

[30] *Ibid*.

[31] *Ibid*, Decision of the Lower Court, 12.

[32] *Ibid*, 3.

[33] *Ibid*, 86-87.

[34] According to Section 1, paragraph 17 of Article III of the Constitution: "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, * * *."

[35] G.R. No. L-21325, October 29, 1971, 42 SCRA 59.

[36] *Ibid*, 63-64.

[37] Decision of the Trial Court, Appendix A to Brief for Defendants-Appellants, 86.

[38] G.R. No. L-28405, April 27, 1972, 44 SCRA 473.

[39] *Ibid*, 484.

[40] Cf. 3 *Wigmore on Evidence*, 3rd ed., Section 815 (1940); 2 *Wharton, Criminal Evidence*, 11th ed. Section 591 (1935); *Brown v. Mississippi*, 297 US 278; *Chambers v. Florida*, 309 US 227 (1940); *Murphy v. Waterfront Commission*, 378 US 52 (1964); *Miranda v. Arizona*, 384 US 436 (1966); *Spervack v. Klein*, 385 US 511 (1967); *Re Gault* US 1 (1967).

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