

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVELINO PISALVO Y SAPIGAO AND ANDRES BALATCHICA, DEFENDANTS-APPELLANTS.*G.R. No. L-32886. October 23, 1981*

Ponente: MAKASIAR, J.

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This is an appeal from the decision of the Court of First Instance of Pangasinan, Branch V, in Criminal Case No. 1748 which found appellants guilty of murder and sentenced them to death penalty.

From the records, it appears that on or about 10:30 in the night of November 16, 1969, one Narciso Orines, a resident of Barrio Carusocan Sur, Asingan, Pangasinan, was shot to death in front of the house of Benito Florendo in Barrio Piaz, Villasis, Pangasinan (pp. 65-67, t.s.n., Vol. I). Lt. Alberto Ordoñez, Cpl. Hilario Caliboso and Pat. Leonardo Abriam of the Police Department of Villasis, to whom Benito Florendo reported the shooting incident, arrived at the scene of the crime (pp. 11 & 24, t.s.n., Vol. I). The police officers found the body of the victim lying face up at the rear side of a Mercedes Benz cargo truck parked in front of the house of Florendo (pp. 12, 26 & 73, t.s.n., Vol. I). They recovered a set of seven [7] empty shells of caliber .45 about five or six meters from the body, six [6] empty cartridges of caliber .45 near the body and a garand slug embedded in the wooden post of the cargo truck (pp. 12-16, 29, 30 & 35, t.s.n., Vol. I). Orines died from two gunshot wounds described as follows:

"External Findings:

"1. Gunshot wd. perforating at left arm. POE, Circular 7 mm. in dia-meter, at the lateral portion of arm, 3½ cms. above from the line of the elbow traversing the skin and muscle, POX, lacerated wd. 2 cms. long at the posterior portion of left arm, 3½ cms. above elbow.

"2. Gunshot wd. oval, POE, 1.3 cm. in diameter at the back, 2 cms. to the left from the midspine at level of 9th left posterior rib. Wd. directed medially and upwards POX, 3 x 2 cms. at the 3rd rt. ICS along the rt. mid clavicular line.

"Internal Findings:

"1. Whole right lung lacerated.

"2. 8th and 9th left posterior ribs fractured at its vertebral ends" (p. 116, CFI rec.).

On November 26, 1969, Chief of Police Rafael Bascos filed a complaint for murder with the Municipal Court of Villasis against accused-appellants, docketed as Criminal Case No. 1748 (Exh. "F", p. 1, CFI rec.). Said complaint was supported by a certificate of death (Exh. "B", p. 2, CFI rec.) and affidavits of: Aniceta Iglesias Orines dated November 24, 1969 (Exh. "H", p. 3, CFI rec.), and another dated November 26, 1969 (Exh. "2"- "2-a", pp. 6 & 7, CFI rec.); Basilio Orines dated November 30, 1969 (Exh. "G", p. 4, CFI rec.); and Hilario L. Caliboso dated November 26, 1969 (p. 5, CFI rec.).

On the same day, Judge Guillermo Manantan, finding that the crime charged has been committed and that the two accused are probably guilty thereof, directed the issuance of a warrant of arrest for the apprehension of said accused, fixing a bond of Thirty Thousand Pesos (P30,000.00) for the temporary release of the accused (p. 8, CFI rec.). The warrant of arrest that was actually issued fixed the bail at Forty Thousand Pesos (P40,000.00) each (p. 9, CFI rec.).

Thinking that the bail fixed was still P30,000.00 for each of them, accused thru counsel, petitioned the municipal court on January 21, 1970 for the reduction of aforesaid amount to P20,000.00 (p. 10, CFI rec.).

In an order dated January 23, 1970, the said court denied the petition for reduction of bail bond and affirmed that the original bail is P40,000.00 each and that the said amount had already been reduced to P30,000.00 (p. 12, CFI rec.).

On February 3, 1970, accused Balatchica, thru counsel Dominador Sison, filed a motion praying that the municipal judge of Binalonan or Urdaneta, Pangasinan be authorized to determine the solvency of the bondsmen and receive the bail since "after effort has been exerted by his family, bondsmen could only be found at Binalonan and Asingan, Pangasinan," and "in order to avoid unnecessary expenses on the part of the accused, considering his financial status" (p. 46, CFI rec.).

In his order of February 4, 1970, the municipal judge of Villasis authorized the municipal judge of Urdaneta to determine the solvency of the bondsmen and accept the bail bond of accused Balatchica subject to the former's approval (p. 47, CFI rec.).

On February 5, 1970, both accused posted their respective bails for P30,000.00 consisting of real property; and the court ordered their release on same date (pp. 13, 45, 48 & 70, CFI rec.).

On March 23, 1970, the municipal court of Villasis forwarded this case to the Court of First Instance of Pangasinan at Urdaneta with the information that the two accused had waived their rights to the second stage of preliminary investigation (p. 75, CFI rec.).

Asst. Provincial Fiscal Proculo Viernes filed the information for murder dated May 28, 1970 on June 3, 1970 before Branch V of the aforementioned Court of First Instance (pp. 77 & 78, CFI rec.).

Upon arraignment on June 24, 1970, both accused entered a plea of not guilty (p. 94, CFI rec.).

For the prosecution, this case was handled by Asst. Provincial Fiscal Proculo Viernes assisted by Atty. Alfonso Bince, Jr. as private prosecutor; and for the defense, Atty. Antonio Belen pursued the case.

The trial court heard the case on July 9, August 10, August 13, and August 26, all in 1970.

The prosecution presented these witnesses: Dr. Filomena S. Lopez, 51 years old, married, municipal health officer of Villasis, Pangasinan and resident of said municipality; Cpl. Hilario Caliboso, 40, married, member of the police department of Villasis and a resident therein; Rafael Bascos, 59, married, Chief of Police of Villasis and also a resident of said municipality; Basilio Orines, 55, married, farmer and resident of Barrio Carosucan Sur, Asingan, Pangasinan; Aniceta Iglesias Orines, 30, widow of the victim, housekeeper, also a resident of Barrio Carosucan Sur, Asingan; and Cecilio Torralba, 58, married, barrio captain of Carosucan Sur and residing in said barrio. As rebuttal witnesses, the prosecution presented Osmundo dela Cruz, 43, married, Chief of Police of Asingan and a resident therein; and Chief of Police Rafael Bascos of Villasis.

The witnesses for the defense were Samuel Pisalvo, 25 years old, brother of accused Pisalvo, farmer and resident of Carosucan Sur, Asingan, Pangasinan; Avelino Pisalvo, 36, accused, married, farmer, also of Barrio Carosucan Sur; Apolonia Balatchica, 46, single, sister of accused Andres Balatchica, employee and resident of No. 61 K-3,

Kamuning, Quezon City; Andres Balatchica, 43, accused, married, farmer, also residing in Barrio Carosucan Sur; Mrs. Purisima T. Dumaul, widow, Chief of the Forensic Chemistry Division of the NBI and resident of 1242 Makata, Manila.

Finally, on August 31, 1970, the lower court handed down its decision, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing considerations, the Court finds and so holds the accused Ave-lino Pisalvo y Sapigao and Andres Balatchica, alias Inciong, guilty beyond reasonable doubt, as co-principals, of the crime of Murder, as charged, and there being present the generic aggravating circumstances of evident premeditation, nighttime and abuse of superior strength, with-out any mitigating circumstance to offset any one or all of them, here-by sentences them to die in the elec-tric chair, to indemnify the heirs of the victim Narciso Orines the sum of P12,000.00 and the further sums of P10,000.00 as moral damages, P10,000.00 as exemplary damages, P500.00 as actual damages, and to pay the costs" (pp. 177 and 178, CFI rec.; pp. 46-47, rec.).

The accused-appellants now allege that the trial court erred in giving credence to the testi-monies of Aniceta I. Orines, Basilio Orines, Chief of Police Rafael Bascos of Villasis, Cpl. Hilario Caliboso and Police Chief Osmundo dela Cruz of Asingan; in discrediting barrio captain Cecilio Torralba; in resolving against Avelino Pisalvo the negative result of his paraffin test; in generalizing that flight, for want of bail, indicates a guilty conscience; in unwarrantedly determining credibility exclusively on the basis of demeanor and appearance of witnesses; in considering the evidence for the defense too lightly and in belittling their defense of alibi; in finding the accused guilty beyond reason-able doubt; and, in denying the accused a new trial.

This Court finds the entire case wholly and solely dependent on the credibility of the testimony of the victim's widow, Aniceta Orines, the lone principal witness for the prosecution, who was presented as an eyewitness to the crime. The testimonies of all the other prosecution witnesses were presented merely to corroborate the testimony of aforementioned widow. Hence, this Court does not intend to inquire or look into each of the assignment of errors as alleged by appellants but will review the lower court decision which is primarily based on the widow's testimony. It now becomes evident that Aniceta Orines' testimony is decisive and crucial in the determination of the guilt of the accused.

Let Us now consider Aniceta Orines' version of the alleged murder of her husband. She stated that both accused are uncles of her slain husband and they are her neighbors in Carusocan Sur, Asingan; that on November 4, 1969, the accused threatened to kill the victim when the latter failed to bring out a lost gun which the former wanted to get from him; that their house was fired at by the accused on the night of November 6 and at noon of November 13, 1969, and these alleged firings were not reported to the police; that at about 10:00 to 10:30 on the night of November 16, 1969, they (she and deceased) were loading their belongings into a big truck owned by a certain Benito Florendo and parked in front of said owner's house facing the road; that they were bound for Diffun, Nueva Vizcaya that same night because of the threat hurled by the accused; that while they were loading the said belongings into the cargo truck, she heard gunshots from the rear side of the truck; that her husband was going up the big truck when he was shot and fell with his face upward; that she tried to look at the direction from where the gunshots came and saw the two accused-appellants; that she was one and a half meters from the truck and one meter from the victim at the time of the firing; that the place was lighted for there was an electric bulb from the nearby house which reflected light and the truck was lighted; that after the shooting, she looked at her husband who lay face up and was already dead; that when she saw her husband was dead, she proceeded to the house where her children were (pp. 65-73, Vol. I, t.s.n. dated August 10, 1970).

Upon her cross-examination, however, Aniceta declared that at the time she allegedly saw the accused, they were

holding guns and they were actually firing at him and that was the time she was hearing the shots (p. 77, t.s.n. of August 10, 1970, Vol. I); that at the time the accused were firing at her husband, they were near a big tree (p. 80, t.s.n., Aug. 10, 1970); that she was about one and a half meters from the truck at the time of the firing (pp. 80-81, t.s.n., Aug. 10, 1970); that she did not become scared when she heard the first shot; she even looked at the direction where she heard the gunshot (p. 81, t.s.n., Aug. 10, 1970); that she did not run towards the Florendo house at the time of the incident (p. 81, t.s.n., Aug. 10, 1970); and at the time she ran inside the house, she only came out after everything was silent and peaceful (pp. 81--82, t.s.n., Aug. 10, 1970).

In her earlier statements before the Chief of Police (taken on November 16, 1969 when the events were still fresh in her mind), she positively declared thus:

"Q - What did you do when you heard those shots fired?

"A - I looked from the direction where the shots which I think originated after which I ran inside the house to seek cover or for safety measure.

"Q - What have you noticed from the direction which you knew the shots came from if any?

"A - Yes sir, after hearing some shots fired, I saw Avelino Pisalvo and Andres Balatchica alias Inciong holding their guns aimed to the direction where my husband was.

"Q - How did you see them?

"A - I saw by the light of a kerosene lamp lighted which was placed on the ground and by the light coming from a bulb which was lighted while we were loading, as we requested Mr. Benito Florendo to put on the light on the truck while we were loading, and further there was moonlight already at the time.

"Q - Is it not a fact that there were bushes between the house of Mr. Benito Florendo and another house where the assailants of your husband were?

"A - Yes sir, but the leave of the bushes (santal) were high up to their head but they were in stooping position when they were firing at my husband and there were no leaves which cover them (Exh. "H", p. 3, CFI rec.).

xx xx xx

"Q - Where was Jesus Castillo at that instant?

"A - He ran to the house first ahead of me" (Underlining supplied).

Then ten [10] days after the alleged killing, or on November 26, 1969, Aniceta gave the following answers to questions during the preliminary investigation conducted by the municipal judge:

"Q - Do you have any personal knowledge of the death of your late husband, the deceased Narciso Orines whom you alleged to have been killed and murdered on the night of November 16, 1969, at the barrio of Piaza, Villa-sis, Pangasinan?

"A - xx xx xx

At around 10:30 o'clock on the said night of November 16, 1969, after my deceased husband and one, Jesus Castillo, were through loading the truck of Benito Florendo with our personal belongings as we were then supposed to start for Diffun, Nueva Vizcaya early the following morning, my deceased husband was entering the said truck of Benito Florendo when he was shot and fired upon, the first fire shot was very strong, then followed by several fire shots but not as strong as the first shot. My late husband, the deceased Narciso Orines was hit by the fire shots and fell down from the truck. I looked at the direction from where the fireshots came and there I saw Avelino Pisalvo and Andres Balatchica holding long firearms and were already getting away

after they saw my husband fell down dead.

xx xx xx

"Q - How were you able to recog-nize these two persons who fired and shot your husband when it was nighttime?

"A -There was a kerosene lamp at the back of the truck and that the truck was also lighted inside with the battery light of the truck so that it was very bright near the truck and besides that it was also moon-light so I was able to recognize Avelino Pisalvo and Andres Balat-chica as the one who fired the fire shots killing my husband.

xx xx xx

"Q - How far were you from your husband when he was fired upon?

"A - Around one [1] meter sir" (Exh. "2", pp. 6-7, CFI rec.; underlining supplied).

However, on August 10, 1970, Aniceta thus testi-fied on direct examination:

"Q - What did you do when you heard this gunshot and your husband was shot?

"A - I tried to look at the direction from where the gunshot came.

"Q - What did you see where the shot came from?

"A - I saw it because I was a little bit facing towards them.

xx xx xx

"Q - How did you see these two accused shoot your husband?

"A - The place was lighted for there was an electric bulb from the nearby house which reflected light and the truck was lighted.

"Q - You said that there were lights that is why you saw the person of the accused. Can you tell this Honorable Court how many lights were there at that time?

"A - There were two lights.

"Q - Where was one light situated?

"A - On the side of the house.

"Q - How about the second light?

"A - Just behind us, sir" (pp. 72-73, Vol. I, t.s.n. dated July 9, 1970; underlining supplied).

Confirming the darkness at the scene of the crime, witness police corporal Caliboso thus testified on cross-examination:

"Q - When you went there to inves-tigate, you brought with you your flashlight and used it in conducting the investiga-tion?

"A - None, sir, but we borrowed flashlight.

"Q - You used flashlight because in the place it was dark?

"A - Yes, sir" (p. 22, t.s.n. of July 9, 1970, Vol. I).

The prosecution failed to present evidence which would definitely show the distance between Florendo's house (alleged to have been lighted) and the cargo truck from which the victim was fired at. Witness Caliboso earlier testified on direct examination:

"Q - Did you find out if there was any house near the body of the victim Narciso Orines?

"A - Yes, sir, there was.

"Q - Did you inquire whose house was that?

"A - Yes, sir.

"Q - Whose house was that?

"A - Benito Florendo, sir.

xx xx xx

"Q - Aside from the house of Mr. Florendo which was near the body of the victim, what else did you find within the premises if any?" (pp. 16-17, Vol. I, t.s.n. of July 9, 1970).

Relative to the position of the victim when he was shot, witness Dr. Filomena Sibayan Lopez gave the following clarificatory statements upon her cross-examination:

"Q - Doctor, from this medical certificate you testified to that in wound No. 1, the point of entrance is lower than the exit, is it not?

"A - No, sir. I said the same level as the point of entrance.

"Q - So when you said the same level as the entrance, the relative position of the assailant when this wound No. 1 was inflicted is the same level with the deceased, is it not?

"A - It could be possible because it is straight.

"Q - And the entrance of wound No. 1 is in front of the left arm?

"A - Yes, in the lateral side" (p. 9, Vol. I, t.s.n. of July 9, 1970).

Aniceta's declaration as to the victim's position at the time of the shooting patently contradicts the aforequoted expert testimony indicating the straight trajectory of the bullet. She stated thus on direct examination:

"Q - What was your husband doing when you heard this gunshot from the rear side of the truck?

"A - He was going up the big truck [witness demonstrating with her two hands raised] (p. 72, Vol. I, t.s.n., July 9, 1970).

Of puzzling significance, too, is the fact that when Aniceta testified during the trial, she never mentioned nor did the fiscal bring out the presence of one Jesus Castillo at the time of the shooting. In her early statements before the Chief of Police (actually taken on November 17, 1969) and those taken by the municipal judge on November 24, 1969, she declared that Jesus Castillo was assisting her husband in loading their belongings and that the former ran to the house ahead of her when the shooting started. Why did the prosecution not present Jesus Castillo who was another witness to the alleged murder? His testimony would have been vital and crucial in confirming the story of Aniceta. Could it be possible that if made to testify, Castillo would have impugned or damaged the story which the prosecution tried to build up?

The foregoing manifestly reflects the uncertain and conflicting testimony of Aniceta, the lone eye-witness. Her

very own declarations reveal that what really happened was: While Aniceta, her late husband, and a certain Jesus Castillo were loading their belongings into the cargo truck, they were suddenly fired at. The night was dark and there was no moon. Only a kerosene lamp and a lighted bulb in the truck illuminated the place. Instinctively and impulsively, on hearing the gunshots and sensing real danger, she ran towards the house, sought cover, then came out when everything was already quiet.

As she aptly stated, she tried to look in the direction from where the firing came and since she was not certain of what she saw and considering the inadequate lighting, the distance of six to seven meters from her and the presence of santan bushes, she came out with different versions. She could not be consistent nor certain with her narrations. Upon hearing the firing, her natural impulse was to run to the nearest safe place which was Florendo's house where her children were. Her maternal instinct and her instinct for self-preservation told her to run for safety and be near her children. How then could she be definite as to what happened that night of the incident and how then could she positively identify the culprits?

Also, if, as she claimed, she was then barely one and one-half meters from the truck and one meter from the victim, why was she not hit by any of the thirteen shots fired by the alleged assailants? Was it sheer luck or simply because she instantly ran away from the target area or she was not anywhere near the truck or the victim? Only when the assault was over did she come out of the house and found her husband dead.

Another prosecution witness, Chief of Police Bascos, testified that in between the rear of the truck where the body of Orines lay and six to seven meters away where the empty shells were found, there stood a house and flowering bushes (p. 36, Vol. I, t.s.n. dated July 9, 1970). From where Aniceta stood, it was thus unbelievable for her to have positively identified the accused considering the pervading darkness, the distance of six to seven meters from where the alleged assailants fired the shots and the fact that her view was obstructed by Florendo's house and the santan bushes. Likewise incredible was her claim that she did not become scared upon hearing the gunshots. Being suddenly fired upon from a dark place, an average person would immediately duck and run for cover.

Initially, she alleged that there was moonlight on the night of November 16, 1969 when the alleged killing occurred. However, in her later statements, she already discarded the moonlight. Only the kerosene lamp and a bulb in the truck lighted the place. This was corroborated by Chief of Police Rafael Bascos when in answer to Fiscal Viernes' question, he categorically stated: "It was very dark but there was a kerosene lamp lighted" (p. 30, Vol. I, t.s.n. dated July 9, 1970). Even Cpl. Caliboso testified that when he arrived in Barrio Piaz to investigate the shooting, it was still dark (p. 15, Vol. I, t.s.n., July 9, 1970; underscoring supplied).

Witness Bascos thus confirmed:

"Q - In the place where these empty shells were found, when you conducted the investigation, which is six to seven meters away from the body, was dark, is it not?

"A - Yes, sir.

"Q - When you were informed that Pisalvo and Balatchica were suspected or when you were told rather by the wife that she saw Balatchica running from the crime scene, what did you do?

"A - I asked her if she will give me her statement that very night but she told me that because she was still upset she requested me that she will give her statement the following day" (p. 37, Vol. I, t.s.n., July 9, 1970).

Aniceta's testimony is cluttered with contradictions and so humanly unnatural and unrealistic that her credibility is heavily damaged. The testimony of the other prosecution witnesses are not supportive of her version of the story.

In the recent case of *People vs. Pampaluna, et al.* [L-33805-9, March 31, 1980], where the only woman-eyewitness' testimony was also impugned, this Court stated thus:

"As a consequence of Our finding that Besa's testimony does not deserve full faith and credit, appellants' defense of alibi assumes importance since there is a total absence of positive and clear proof that the appellants were the ones responsible for the crimes charged in the information which gave rise to the instant appeal. Of course, We have time and again stressed that alibi is the weakest of all defenses. It is easy to concoct, difficult to prove (*People vs. Cunanan*, L-17599, April 24, 1967, 19 SCRA 769, 783, citing *U.S. vs. Olais*, 36 Phil. 828; *People vs. Pili*, 51 Phil. 965; *People vs. Dizon*, 76 Phil. 265, 272; *People vs. Bautista*, L-17772, Oct. 31, 1962, 6 SCRA 522, 529; *People vs. Dayday*, L-20806 & L-20807, Aug. 14, 1965, 14 SCRA 935, 942). Nonetheless, where, as in the cases at bar, the evidence for the prosecution is inherently weak and betrays lack of concreteness on the question of whether or not appellants are the authors of the crimes charged, alibi as a defense becomes significant. It is noteworthy to reiterate here what former Justice J.B.L. Reyes, speaking for this Court in the case of *People vs. Fraga, et al.* (L-12005, Aug. 31, 1960, 109 Phil. 241, 250) said: 'The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong' (cited also in *People vs. Bulawin*, 29 SCRA 710, 722)."

Even as the prosecution tried to establish the motive for the killing, this alone cannot replace proof beyond reasonable doubt.

The widow of the victim claims that the two defendants who are uncles of the victim, threatened and attempted to kill him before the fatal night because the victim failed to bring to them a lost gun they wanted.

This Court has emphatically ruled that even when there exists an apparent motivation for the murder -- that the accused was impelled to instigate the crime as the victim was a brother of the then mayor, who presumably reneged on his promise to give way in the 1971 election for the position of mayor in favor of the accused -- there is still need for evidence, both competent and credible, to prove his guilt and that of his co-accused (*People vs. Roa*, L-35284, Jan. 17, 1975, 62 SCRA 51). The alleged failure of the victim to turn over a lost gun desired by the two appellants, is not a sufficient motive for them to kill their own nephew. It is unnatural for two uncles to accord more value to a gun than the life of their nephew. In that same *Roa* case, this Court further said in reversing the judgment of conviction:

"There is, in *People vs. Dramayo*, decided not too long ago, a restatement of what the constitutional presumption of innocence signifies: 'Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only is the requisite quantum of proof necessary for conviction be in existence. Their 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. Only if the judge below and appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. 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' (underscoring supplied).

Thus, again, in the recent case of *People vs. Aquino* (L-36020, Oct. 30, 1979, 93 SCRA 772), this Court reiterated that assuming *arguendo* that the accused had a very strong motive to eliminate Benigno Pascua, such motive

cannot take the place of proof beyond reasonable doubt, sufficient to over-throw the presumption of innocence. Proof beyond reasonable doubt is the mainstay of our accusatorial system of criminal justice. As previously enunciated in *People vs. Basuel* (L-2815, Oct. 31, 1972, 42 SCRA 207), only by proof beyond doubt which requires moral certainty a "certainty that convinces and satisfies the reason and conscience of those who are to act upon it" may the presumption of innocence be overcome. By reasonable doubt is meant "doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest easy upon the certainty of guilt."

In the instant case, the evidence for the prosecution indubitably and sadly falls short of that requisite sufficiency and certainty which can persuade the human mind to agree with the conclusion of guilt of the appellants.

WHEREFORE, THE GUILT OF THE ACCUSED NOT HAVING BEEN ESTABLISHED BEYOND REASONABLE DOUBT, THE JUDGMENT OF THE COURT A QUO IS HEREBY REVERSED AND SET ASIDE, THE DEFENDANTS-APPELLANTS, AVELINO PISALVO Y SAPIGAO AND ANDRES BALATCHICA, ARE HEREBY ACQUITTED OF THE CRIME CHARGED AGAINST THEM, AND THEIR RELEASE IS HEREBY ORDERED, UNLESS THEY ARE HELD ON SOME OTHER VALID CHARGE.

NO COST.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Barredo, J., votes with Mr. Justice Aquino.

Aquino, J., see dissent.

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DISSENTING OPINION

AQUINO, J.:

I dissent. The prosecution's evidence proves that on November 4, 1969 Avelino Pisalvo and Andres Balatchica went to the house of their "nephew", Narciso Orines, located in Barrio Carosucan Sur, Asingan, Pangasinan and asked him to give them his gun. Narciso said that he did not have the gun.

At about two o'clock in the afternoon of November 13, 1969, while Basilio Orines, the father of Narciso, also a resident of Carosucan Sur, like Pisalvo and Balatchica, was in the house of Baltazar Sapigao, Basilio heard a gunshot which he surmised was fired in the vicinity of his house. He forthwith left Sapigao's house and went to his own house. About fifty meters from his house, he saw Pisalvo and Balatchica running and he followed them.

When Basilio reached the house of a certain Manalo, a former barrio captain, he met Pisalvo. 'Basilio asked Pisalvo about the gunshot. Pisalvo told Basilio to forgive him. Pisalvo said that he was going to kill Narciso, the son of Basilio, because he (Pisalvo) was' "fed up" with Narciso.

Basilio advised Piscalvo not to kill Narciso because they are relatives. On that occasion, Basilio also met Balatchica who was armed with a Garand rifle and pistolized carbine. Balatchica, like Piscalvo, told Basilio that they were "fed up" with Narciso.

After that confrontation with Piscalvo and Balatchica and convinced that they harbored a homicidal intention toward Narciso, Basilio advised Narciso to leave Asingan and evacuate to Diffun, Nueva Vizcaya.

On November 15, 1969, Narciso Orines, riding in a jeep, passed by Balatchica's house. The latter told him to get down from the jeep and challenged him to a fight.

The following day, or at about ten-thirty in the evening of November 16, Narciso and his wife Anecita Iglesia, were loading their personal effects in a truck in front of the house of Benito Florendo, in Barrio Piaz, Villasis, Pangasinan, about a kilometer away from Balatchica's house in Carosucan Sur, (Asingan and Villasis are neighboring towns).

The Orines spouses were going to Diffun to avoid trouble or a fatal encounter with Piscalvo and Balatchica who had threatened to liquidate Narciso. While Narciso was going up the rear of the truck, he was shot by Piscalvo and Balatchica. Narciso fell on the ground. He was dead.

He had a gunshot wound in the left arm and a fatal gunshot wound in the back. The bullet fractured his ribs and lacerated his right lung. Death was due to profuse hemorrhage.

The shooting was witnessed by Anecita Orines who was about one and a half meters from the truck. There were a lighted kerosene lamp in the rear of the truck and an electric bulb on its side. There was an electric light in Florendo's house.

Anecita went home after gazing at her husband who was sprawled on the ground. Florendo reported the killing to the police. The policemen found empty cartridges near the rear of the truck. Anecita told Patrolman Caliboso that she suspected Piscalvo and Balatchica as the killers of her husband. Caliboso informed the chief of police that the suspects were Piscalvo and Balatchica.

Anecita told the chief of police that she saw Piscalvo and Balatchica fleeing from the scene of the shooting and that the two had a serious misunderstanding with her husband.

The chief of police filed a murder charge in the municipal court against Piscalvo and Balatchica. On June 3, 1970, an assistant provincial fiscal filed an information for murder against the two suspects in the Court of First Instance of Pangasinan, Urdaneta Branch V.

After trial, Judge Vicente M. Santiago, Jr. in a decision dated August 31, 1970 convicted Piscalvo and Balatchica of murder qualified by treachery and aggravated by evident premeditation, nocturnity and abuse of superiority, sentenced the two to death and ordered them to pay an indemnity of P32, 500 to the heirs of Narciso Orines.

The trial court did not believe Piscalvo's alibi that at the time Orines was shot, he (Piscalvo) was in the house of Balatchica in Carosucan Sur and the alibi of Balatchica that he was in Quezon City from November 9, 1969 to February 4, 1970. The chief of police of Asingan testified that he saw Balatchica in Asingan on November 9, 11 and 15, 1969.

Piscalvo admitted that he had a little misunderstanding with Narciso Orines because the latter allegedly proposed to him that they commit robbery but he (Piscalvo) refused to join Narciso in that nefarious enterprise.

I agree with the trial court that the guilt of Piscalvo and Balatchica was proven beyond reasonable doubt.

However, in my opinion the imposable penalty is reclusion perpetua only. Treachery absorbs nocturnity and abuse

of superiority. Evident premeditation should not be considered aggravating because the time when the two culprits resolved to kill Orines was not indubitably established.

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