

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BUENAVENTURA ABAD, DEFENDANT AND APPELLANT.

G.R. No. 49200. October 30, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

Seven persons, including appellant Buenaventura Abad, an attorney-at-law, were prosecuted for the murder of Pascual Tante, Jr., committed in the sitio of Tutubaon, barrio of San Antonio, Palauig, Zambales, on January 25, 1944.

For the purpose of using him as witness against his co-accused, the information against Burgos Gamboa was dismissed. After trial, the lower court acquitted accused Martin Abad, Pedro Abad, Federico Ponce and Jose Navarro, but found Buenaventura Abad guilty and sentenced him to reclusion perpetua to indemnify the heirs of the victim in the sum of P2,000, and to pay costs.

Buenaventura Abad appealed. She Solicitor General recommends that we sentence him with the penalty of death.

When the trial of the case began on April 26, 1944, the fiscal asked for the dismissal of the information against Burgos Gamboa alleging, among other things, that said accused would be used as one of the witnesses for the prosecution, that his testimony "is of supreme necessity to prove prosecution's case," and that "there is no other direct evidence in prosecution's hands unless the testimony of said Burgos Gamboa is used."

Overruling strong opposition from the defense, the lower court ordered the dismissal of the case against Gamboa to be effective as soon as the fiscal shall have reiterated the motion in writing.

The oral evidence in this case comprises 884 pages of transcript of stenographic notes. Both appellant and appellee filed briefs in which the evidence is amply and ably discussed.

The following summary of the testimonies of the nine (9) witnesses who testified for the prosecution is made to help us in explaining our conclusion as to whether or not the prosecution was able to prove appellant's guilt.

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Julian Paguyo, 40 years of age, physician, testified that he had occasion to examine the dead body of Pascual Tante, jr., when he was called to see the case on the night of the 25th of January, 1944. He identified Exhibit A as the questionnaire put on him by the justice of the peace concerning his findings, and Exhibit B as the death certificate he issued. He went to the house of Pascual Tante, jr., after 9 o'clock at night, and after an examination of the dead body of the deceased, he found two wounds, one in the abdomen and the other on the back, the former at the level of the umbilicus. One of the lumbar vertebrae was destroyed, the spinal cord ruptured, as was some branch of the abdominal aorta, the latter causing hemorrhage. In his opinion, the immediate cause of death was severe hemorrhage. The wounds had been caused by a firearm more powerful than an ordinary revolver. They could have been caused by a rifle bullet, caliber 30. The shot could not have been fired close to the body, because

he found no powder burns on it.

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Ramon S. Seville, 42 years of age, Mayor of Palauig, testified that on the night of January 25th a neighborhood leader reported to him that there was a shooting affray in Tutubaon. Accompanied by a police guard, physician Paguyo, the chief of police and two policemen, and the president of the district neighborhood association, at around 9 to 10 p.m., he rushed to the house of Salvador Tante where he found dead Pascual Tante, jr., 18 to 19 years old. The witness tried to question the deceased's father, Salvador Tante, but the latter just answered: "Never mind me. I know them. They are only using their mask. I know the suspects." The witness was able to talk that night with attorney Abad, who could not tell of any traces of the assailants. "I observed him that he was sorry."

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Burgos Gamboa, 23 years of age, single, farmer, detained in the provincial jail, testified that on Tuesday morning, January 25, 1944, he was in Danacbañgal. At 7 p. m. he went to Bañgan to carry some "baito" bamboos. On his way to barrio San Juan, seven persons Buenaventura, Abad, Federico Ponce, Jose Navarosa, Martin Abad, and Pedro Abad, besides two other unknown persons met him. Buenaventura Abad stopped him and told him to follow them. "Buenaventura Abad asked me 'Are you going with us or not?'" and thumping his right foot on the ground he said 'Will you come or not?', and I, fearing that they might kill me, followed." Martin Abad and Jose Navarosa were carrying rifles. Then all of them went to the house of Pascual Tante, jr., passing along the banks of the Tutubaon brook. On arriving at the house of Pascual, located eight nbrazasn from the provincial road, Buenaventura Abad bade "Good, evening." Primitiva Araña peeped through the window, bringing a lamp. Buenaventura talked in Tagalog, saying "Magandang gabi po." On seeing the lamp on the window, Buenaventura ordered in Tagalog, "Do not bring out that lamp. After that, Buenaventura went up the balcony, knocked at the door, and asked that it be opened. It was not opened. Federico Ponce and Martin Abad went to the door on the western side. She witness did not hear any voice from inside the house, but only the noise of chairs being pushed. Pascual asked: "Ano po ba ang gusto ninyo? Gusto ba ninyo ang palay, bigas, kuarta, o ana pa dian?" Buenaventura aswered: "We want nothing except that we want to get inside." Federico Ponce tried to go up. Buenaventura counted "Isa, dalawa, tatlo," and there came out the report of a gun from the place where Federico Ponce and Martin Abad were. "I saw a woman jumping through that opening where Federico Ponce and Martin Abad fired the shot." Martin Abad was the one who fired. After the jumping of the woman, Buenaventura went down through the balcony. "I heard Martin Abad exclaiming "Tama!" After the shooting, the witness heard somebody fell and the exclamation "Ay!" The rifle which was fired was being held by Martin Abad and Jose Navarosa. Buenaventura was wearing gray polo shirt and khaki pants. Immediately after, "We went home, each one following the other. I went to sitio Bañgan to bring the 'baito' which I had promised to bring to said place." The witness went to the house of Rufino Amog. Then he went to the house of Vicente Arca to get the cigarette that he asked me to get." Buenaventura was on the night in question talking in Tagalog and "disguising his voice, making it of big sound, but it could be recognized." The faces of the assailants "were painted black." After the incident, Buenaventura met the witness at the house of Juan Gamboa, aunt of witness, and said to him that for God's sake, "don't say anything about this matter; otherwise, you will be responsible." The witness knew who was shot in the house of Pascual "because I heard the voice of a man, and I do not know of any other man in that house except Pascual Tante, jr." Not one of the assailants was able to enter the house. The witness did not report to the authorities what happened. "How can I do it, sir; I was being shadowed. I see all their faces. They used to meet each other."

On cross-examination, the witness testified that the five accused were watching him,, going around his house, for more than two weeks before he made the statement Exhibit C, although no one except Buenaventura told him

anything. In the first investigation made by the authorities, he did not implicate any one of the accused. He did so only in the second investigation. It was during the first investigation made by the authorities when they confiscated 130 rounds of ammunition in Gamboa's possession. Gamboa made the statement Exhibit C after the constabulary men had confiscated from him the 130 rounds of ammunition. The night of the crime was dark. When the lamp held by the woman was brought inside the house its light went off. The lamp was lighted again. Gamboa was wearing short pants of maong and white shirt. He was dirty, and he was carrying a bundle of "baito" bamboos. He is a bosom friend of Buenaventura. On going to the house of Paseual, Gamboa left the bundle of "baito" bamboos near the road. None of the assailants told Gamboa that they were proposing to do that night. They did not promise him any compensation for accompanying them nor for keeping silent as to the incident. Buenaventura ordered Martin Abad, "Martin Ibad, shoot,"

At this juncture the defense protested against the fiscal's moving his head while Gamboa was being cross-examined, and the court said: "It is probable that the fiscal has moved his head, but the court is not sure about his bad intention. The Court has observed that the fiscal has that bad habit, but he should try to avoid it. From now on, the witness must not look at the fiscal while he is testifying."

At the time Gamboa made the statement Exhibit C, he had been under investigation for four days by the constabulary. He signed Exhibit C only on the fourth day.

"Q. Did the constabulary take four days to investigate you because you limited yourself to telling what you say in this affidavit until you signed it? A. Yes, sir.

"Q. And your refusal to sign that affidavit lasted three days? A. Yes, sir." (T.s.n., p. 99.)

The witness has a brother named Espiritu Gamboa, who was engaged in smoking mango trees. The witness helped him in smoking the mango trees of Salvador Tante, and he was receiving his part of the product. Before the occurrence of the incident in question, the witness had been tending the five mango trees of Salvador located in the same yard where the house in which the crime was committed was built. He was very familiar with the deceased who was his intimate friend. He was also very familiar with Salvador. He was also familiar with the two dogs which were always tied in the balcony of the house. Both were very fierce and barked at any person appearing there. The spotted one was always tied to the balcony, but the red one was at times tied and at times loose. The witness went to the house sometimes daily and sometimes once every two days. He knew Salvador Tante very intimately in the same way as he knew the deceased.

The witness knew what a rifle bullet is. When he had the 130 rounds of ammunition in Lagunao, he heard that anyone found holding or possessing a bullet would be killed by the Japanese; so that, for fear, he brought them to a hill in Babo, where they could not be found, the place being an isolated one. He had the ammunition in his possession for one year. He did not sign any statement or affidavit concerning the ammunition. He was not yet accused for the illegal possession of it. Federico Ponce was the only one who tried to climb the house, but the witness admitted having stated in Exhibit C that there were two assailants who tried to climb up, the witness explaining the discrepancy by alleging his lack of command of Tagalog, the language he used in testifying in court. The house has wooden flooring and walls. The windows were made of wood and shell. There were many houses at the place where the assailants forced the witness to follow them. No lights were seen in them. It was 7 p.m. The witness was able to deliver the "baito" bamboos to Rufino Amog between 8 and 9 o'clock p.m. A woman who jumped through the door after the shooting went to the west. But she stopped for a while to look at Martin Abad and Federico Ponce who were three meters away from her. On the occasion of his signing his statement Exhibit C, the fiscal showed to him the sketch of the house where the crime was committed.

"Q. The question is this. This morning you said that the Fiscal showed to you a certain sketch of the house in

questions: was that time after or before you signed Exhibit C, your affidavit, before the Fiscal? A. I have signed.

"The court (addressing the witness):

"Q. Which was first, the showing to you of the sketch or your signing the affidavit? A. I signed first.

"Q. After you have signed that (affidavit), then the Fiscal showed you a sketch?

"Fiscal: It is already answered.

"The Court: You may answer.

"(The witness starts to think.)

"A. The sketch was shown to me first. (Then after thinking.) Ah, I am sure that I signed first before he showed to me the sketch." (T.s.n., pp. 139-140.)

Asked to explain the discrepancy between his affidavit, wherein he says that once near Tante's house, Attorney Abad called up "Tao po," while in his testimony he said that the first words uttered by Attorney Abad were "Magandang gabi," the witness said that Attorney Abad uttered "Tao po," and he explained that he could not think well because he was dizzy. The assailants met the witness at dusk.

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Primitiva Araña, 26 years old, single, testified that, as she used to do, on Tuesday, January 25, 1944, she went to the house of Salvador Tante at Tutubaon. On the night of that day she was in the house with Genoveva Tante, Pascual Tante and a child. "We were taking our supper. After supper, I began frying fish. Pascual Tante, jr., went down and then went up the house where we were sleeping. When he was already upstairs, while I was cooking fish, Pasoual Tante, jr., called, 'Mama, come because there is a centipede in my bed.' Genoveva Tante answered, 'Wait because your aunt Primitiva has not finished cooking the fish.' I stored the fish. We went down, Genoveva Tanta and myself. We went up to the dormitory, myself carrying a lamp. Then someone gave a greeting, saying, 'Tao po.' It was between 9 and 10 o'clock p.m. I peeped out of the window with the lamp and Pascual Tante asked, 'Who are you and what do you want?' One voice said, 'Open the door.' And Pascual Tante answered, 'I can not open.' I can not open if you do not tell me your names.' Again, the voice said, 'Take out the light!' I took out the lamp. Pascual Tante, jr., closed the window. In closing it he touched my hand and the light was put off." Through the window the witness saw two persons: Buenaventura Abad and Burgos Gamboa. Genoveva Tante ordered the witness to pick up a match. Upon delivering it to Genoveva, the witness told her, "Kaka, don't you recognize them? Don't you recognize the voice? That is Bueno," referring to Buenaventura Abad. They were knocking at the door saying, "Buksan ninyo ang pinto." Pascual Tante, jr., said, "I can not open the door. Do you want palay, rice, money or any other thing?" The visitors answered that they did not want them. They insisted that the door be opened. One of them said, "If you do not open the door, you will die!" Genoveva Tante went to the west of the house near the door where she hid herself to watch and see those persons who were trying to climb up the house. Pascual Tante, jr., was at her back. Then Pascual Tante, jr., said: "Get away, mama, I will take care. I will stay there." Genoveva Tante said: "Leave me alone, son, because I would not allow them." Paseual insisted in taking the place of Genoveva, pulling a ohair and pushing another with his feet. "It was heard, 'Isa, dalawa, tatlo!'" One said: "A rifle is needed here." Then came a gun report. Pascual Tante, jr., was hit and he fell down, addressing his mother Genoveva Tante: "Ay, mama, I will die!" Genoveva put a pillow under his head. Genoveva jumped out through the door at the west. Pascual called, "Come here, mama" referring to witness "to massage me." The witness began massaging Pascual's back. Paseual exclaimed: "Nanay, why did Kaka Bueno do this to me, when I did not cause him any harm! Nanay, please tell papa and nana Babit to sell the property that belongs to me from

the participation of Cristita Tante to compensate for my lost life." Then Salvador Tante, father of the deceased, and Genoveva arrived. Pascual said: "Papa, I have been shot." Salvador said: "Why, son, what is your fault?" Pascual said: "Nothing, Papa. I have no fault Papa, if you really love me, give me a kiss." After he was given the kiss, Pascual said: "Really, Papa, you love me much." Salvador said: "Whom else should I love when you are my only son?" The witness did not reveal to Salvador what she discovered that night nor her conversation with the deceased because she was afraid that Salvador might begin killing."

"Q. Do you know if Buenaventura Abad went to the house of your sister (Miquias Araña) sometime after the commission of the crime? A. No, sir.

"The Court (addressing the witness):

"Q. Don't you know, or what? A. Yes, sir, he went."

Genoveva Tante did not tell Salvador what Primitiva said to her as to the identity of Buenaventura Abad and Burgos Gamboa, and Pascual did not tell his father that he was shot by said two persons. Salvador was not apprised that night of the names of the assassins. Mayor Sevilla went that night to the house. He did not question the witness. He questioned Salvador and Genoveva. "He said that she did not come to know" the persons responsible for the death of Pascual. When Genoveva jumped out of the house, the malefactors had not yet left the place. The assailants repeated many times; "Open the door because otherwise you will die!"

Requested to repeat the very words uttered by one of the assailants, Primitiva Araña said the following words in Zambal: "Abrian mo yoy polta. No cay mo yo abrian ay matica mo." (Open the door because if you don't, you will die.) Requested to reproduce what Pascual answered, she uttered in Zambal: "Cayco maari abrian no caymoyo ibalita a ñgalan mo yo" (I will not open until you tell me your names).

The witness admitted that she was not called to testify in the investigation of the case in Palauig. The only one who appeared to testify was Genoveva Tante. The witness was present when Genoveva testified before the justice of the peace that she had not been able to recognize anyone of the accused and that she did not know anything as to who the authors of the crime were. But the witness did not offer herself to testify before the justice of the peace what she testified at the trial in this case, notwithstanding the fact that she knew that the authorities were working to discover the authors of the crime and that she loved her deceased nephew much. The witness knew Martin Abad since childhood, but she cannot recognize his voice; whereas she knew the voice of Buenaventura Abad and could recognize it even if disguised.

After the crime, Buenaventura Abad came to the house. He was seen there by Mayor Seville. The witness did not pay attention whether Buenaventura Abad had his face painted in black or had shown marks that it was painted black. Buenaventura was the first person to appear at the scene of the crime. She witness could not say who arrived after him. She stated that she was investigated about the crime the next day by Lieutenant Dimain of the Constabulary, but she did not say anything about what she knew regarding the crime. At the investigation conducted by Lieutenant Dimain, which was held in the house of the deceased, many persons were present. When she saw Burgos Gamboa on the occasion of the crime, Gamboa was wearing a hat and his face was not painted; but she was not able to pay attention whether Buenaventura Abad was wearing a hat or not, or whether or not he had his face painted. She recognized him by the height and size of his body. She did not see his face. She was unable to pay attention to his clothes. When, after the crime, Buenaventura Abad arrived at the house with Celestino Abad, Pascual Tante, jr., was still alive and able to talk. The witness and Salvador Tante were near Pascual. Buenaventura went near the feet of Pascual. When Pascual died, he was washed with hot water by, among others, Celestino Abad. The witness could not remember if Buenaventura helped, Buenaventura helped in stuffing the wound of the deceased with an athlete's cap and an old shirt and bandaged it with a cloth known as

"pototan." Buenaventura stayed in the house for the remainder of the night. The witness was afraid to reveal to Salvador the names of the assailants, because Salvador was "hotheaded and is of aggressive temperament."

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Genoveva, Tante, 44 years of age, single, testified that she is a sister of the father of Pascual Tante, jr., and of the mother of Buenaventura Abad. In the night of January 25, 1944, she was in their house at Tutubaon with Primitiva Araña, Pascual Tante, Jr., and the three-year old child named Filomeno Tante, son of her nephew Hipolito Tante. "We were in the house where we were eating. Primitiva was cooking fish. After cooking that fish, she kept them. We went down and proceeded to the house where we were sleeping. While we were thus going out, somebody on the ground called, 'Tao po.' I did not mind that but I proceeded on my way. I sat on top of a trunk, unmindful of that one calling downstairs. I could hear the calling from downstairs, but I did not mind it because I did not think that there was anything wrong. Then the lamp was put out. When the lamp was put out, somebody was trying to pound at the door, for which Pascual Tante, jr., asked who they were. I then ordered Primitiva Araña to get the match. I lighted the lamp and placed it on top of the chairs and went out. At the moment when I went to get the match from Primitiva Araña, she whispered to me, 'That is Bueno.' I told her, 'Never mind. Let it go.' Then I got two bolos from the bed, but the words 'Buksan ang pinto.' was continuous, accompanied by potoadings at the door. I was holding one bolo and Pascual Tante, jr., was holding another bolo; and then he asked them what was it that they wanted, whether they wanted palay, rice, money or anything else. When he asked those questions, he told me also, 'Go and get money.' While I was thus holding the money, Pascual Tante, jr., again asked: 'Sabihin na ninyo kung gusto ninyo nang palay, kuarta, bigas o anuman at ibibigay ko sa inyo.' Then somebody answered, 'We don't need rice or any of those things. What we want is that you open the door!' And then Pascual Tante, jr., answered, 'I cannot open the door if you don't give me your names.' I placed myself beside the open door, Pascual Tante, jr., followed me to where I was, saying: 'Get out mama.' When he was at my side one voice said: 'Give me that revolver,' and Pascual Tante, jr., answered, 'I don't have revolver,' twisting his hand which was carrying something, a long bolo. One of them tried to climb. But Pascual Tante pushed one of the chairs and kicked another. At that moment I heard a sound similar to the trigger click of a rifle, but I did not hear the report; but a while later, there was a report and Pascual Tante fell down on the floor, exclaiming, 'Ay, nanay!' I went to his succor. I rested his head on a pillow. Then I called Primitiva Araña to watch Pascual Tante. I went out through the door to ask help and see the leader of the neighborhood for his help. I was afraid that they would shoot all of us for which reason I escaped. I was not able to get help. Upon arriving at the provincial road to the west, I saw a person whom I called. Without knowing him, I called him 'Salvador!' Upon hearing me, he answered, 'What is it, what happened?' I told him, 'Hurry up, your son has been shot! And it is possible that you will not reach him still alive.' We went home, running."

The witness had made her will instituting Pascual Tante, jr., as her universal heir. Her brother Salvador and sisters Rita and Ines knew about the will, so did Buenaventura Abad. "One day Buenaventura Abad came to my house. His mother requested me a portion of those lands to cultivate. I answered them that I could not give them lands in the name of my father but all those which are under my care. Then Buenaventura said: 'What then do you want? Do you want to be the only heir of the lands left to us by our grandfather?' I answered that my father did not leave those properties for me alone but for all of us. How, as my brother Salvador Tante has a hot temperament, I requested Attorney Ortega to take care of our participation in our properties. And when my brother and myself had arrived at an agreement, Buenaventura Abad and Attorney Ortega came to our house. Buenaventura Abad gave me time until the last day of January to vacate the place. The place referred to is the house at Tutubaon. On January 22 I ordered the house to be taken from Tutubaon in view of the order of Abad. And on Tuesday, January 25, Pascual Tante was shot."

The witness testified before justice of the peace Arbizo concerning this case. She did not reveal to the justice of the peace that Primitiva Araña, when delivering the match, told her: "Don't you know? That is Bueno," and that she answered her, "Let them." Her explanation was: "Why should I reveal it when my brother wanted to inter his son that same night? My brother wanted to inter his son that same night and then look for the killers." She did not even reveal to her brother Salvador that Primitiva told her that Bueno was among the assailants "because after all Totoy was shot and died. It was possible that my brother would begin, to get hot and kill other persons, and that I do not want to happen."

When the witness made her will, no partition of the properties left by her father Pascual Tante, sr., has as yet been made. Said partition, as appears in Exhibit 2, was made in March, 1944. In said partition, the witness would only receive two parcels of land, consisting of an orchard and a piece of two balitas. She has the following nephews: Buenaventura Abad, Estelita Abad, Melquiades Abad, Asuncion Abad, Ludovino Abad, Bonifacio Abad, Pascual Tante, jr., Hipolito Tante, Eugenio Tante, Loreto Tante, Ricardo Tante, and Hermogenes Tante. Her brothers and sisters are Salvador, Severo, Ines and Rita Tante. Buenaventura did not talk with her about her will. After making her will Exhibit 3, Buenaventura Abad used to visit her house very often and had not shown anger. He even lived with them from January to April, 1943. At the time of the crime, the witness did not recognize Buenaventura because she did not peep out of the window, in the night in question Mayor Sevilla went to the house.

"Q. Mayor Sevilla had talked with the persons therein one by one concerning the shooting of Pascual Tante?

A. I did not pay attention whether he asked them one by one, but he asked me.

"Q. I note, Miss Witness, that when you testify about things concerning other persons in the house in question you say 'I do not know' or 'I did not pay attention' because you do not want to assume any obligation or entangle with anyone, is that true? A. Yes, sir.

"Q. But the truth is that Mayor Sevilla talked with the father of the deceased, that is, Salvador Tante that night?

A. I can not say because I did not pay attention to it.

"Q. Therefore, you know nothing of what Salvador Tante did, of what he said and of what your companion in the house did and said except what you yourself said and did? A. Yes, sir.

"Q. Is it not true that Pascual Tante, Jr., said to you "Why did Bueno do this to me when I did not do any evil to him? A. I was not already there when he might have said those words."

She saw Mayor Sevilla talking with Salvador Tante, but she did not hear what they had talked about. Salvador Tante did not ask her how the tragedy began, happened, and ended. Salvador neither asked Primitiva what happened in the house from the beginning up to the end. The witness admitted having stated in her affidavit Exhibit 4 the following words. "I did not attempt to show my head outside of our house because we were busy watching our doors, hence our failure to recognize any of them." Asked about the identity of Buenaventura, she answered: "That discovery did not come from us but it was told to us by another person. We did not mention his name because we never thought that he could be the one who would do it." (P. 262, t.s.n.)

"Q. Until the discovery came from the testimony of Burgos Gamboa? A. Yes, sir. (P. 263, t.s.n.)

Upon relighting the lamp, she placed it on top of a trunk. The reason why she did not recognize the persons who were outside was because they were not lighted by the lamp. The witness never told Lieutenant Dimain who the author of the crime was, nor did she tell it in the preliminary investigation before the justice of the peace of Palauig.

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Salvador Tante, 42 years of age, married, farmer, testified that when he returned to his residence coming from Iba,

between 9 and 10 o'clock in the night of January 25, 1944, he heard the sound of a gun. "I remembered to have met my sister, Genoveva Tante, at that time when I was going down a hill. She told me, 'Hurry up!' because my son was shot. I hurried walking. I arrived home. I saw my son fallen, bathed in blood. I approached him. When I arrived, my son asked me if I loved him. I told him, 'Yes, son, I love you.' He said, 'if you really love me, papa, then kiss me!' I kissed him on both cheeks. And I asked him, 'What happened?' And he told me he was shot. 'asked him if he resisted, and he said, 'Yes.' When he said that, I admired him. I told him in English: 'I honor you, my dear son, because you have done your duty towards your father.' (Witness weeps.) And I asked him, 'Do you know them?' He told me that he recognized Bueno, but in a low voice. (Witness weeps.) After telling me that, I told him, 'My son, I will leave you because I will look for them.' But my son said, 'Papa, please don't leave me. I am dying. Never mind, I do not know of anything wrong that I have done to them.' Then I kept calm. My son even told me that he offered them palay, rice, money or anything if they would only spare them, that is, they would not hurt them, that is why I supposed they were only after the life of my son. He told me that he had fifteen pesos in his pillow and that a certain Altares was owing him five pesos, and that he borrowed rattan from somebody and he told me to return them. And my son had P192, and this money I showed to the people at that time when I delivered the funeral oration in which I said, 'Gentlemen, this is the money my son was offering to those bad people who came at home, but they did not like to receive this money.' And in that funeral oration I said that those who killed my son I challenge them to take off their masks and face me personally because I was ready to face them, because after all I knew them." After conversing with his son, his brother-in-law Celestino Abad and his nephew Buenaventura Abad arrived.

"When they came, my son asked me who were they that had just arrived. I told him it was his tatang Celestino whom he called tatang. When he learned that it was his tatang Celestino, he wanted to turn on his side, but when he saw that Bueno was there, he buried his head in the pillow and he died. (Long pause.) When his tatang Celestino wanted to see him and having his face turned as if he wanted to see him (Celestino) but when he saw Bueno, his turned his face downward into the pillow and then he died." Buenaventura did nothing. "He never asked anything from his cousin. He was just there standing. He was doing nothing and he was still near the tip of the feet of my son." She witness did not know of any effort made or of any interest shown by Buenaventura in the investigation as to who were the perpetrators of the crime, adding, "I was banking on him, but my nephew has taken no interest in this investigation, knowing, as I do, that he has the necessary capacity." The next morning when the deceased was lying in state, Ines Tante was trying to eulogize him, but Salvador stopped her saying, "Please stop that! Because you have been the cause of the death of my son."

"I know well that Buenaventura Abad was the one who killed my son but nobody only could tell me for sure that he was the one."

On cross-examination the witness stated that he is a high school graduate, is a politician, having been elected mayor of Palauig; that he used to preach before protestant congregations. He has been a preacher for two years. He made a dramatic funeral oration at the funeral of the deceased. The witness was told by his son that he heard from the assailants a twang of speech resembling a Pangasinan. "The twang resembled that of a Pangasinense mixed with Ilocano; a Pangasinan talking in Ilocano." When the deceased told him that Buenaventura was among the assailants, Primitivo Araña was very near the witness, but he never informed the justice of the peace, at the inquest or investigation, that the deceased revealed to him that Buenaventura was among the assailants. Asked whether he revealed the fact to Lieutenant Dimain or to Mayor Sevilla, Salvador testified that said authorities did not make any inquiry nor investigation. Regarding the statement of the deceased as to the identity of Buenaventura among the assailants, the witness said: "I have kept that for myself as a secret. I have never told it to anybody." It was only in the court that he was telling for the first time, "now that there are testimonies and occurrences to corroborate what my son has said." He did not mention the fact to the fiscal. When Buenaventura

was already arrested, "it was then that my cousin Primitiva confided to me that she saw Bueno that night with Burgos." He only learned about it when he came to see the fiscal. On that occasion, "we went to see the fiscal. They told me everything." He was present when she testified before the fiscal, notwithstanding the revelation made by Primitiva to the fiscal, the witness insisted in keeping it a secret until the very moment of his testifying in court, "because I am ashamed."

Before the death of his son, the witness knew that Buenaventura Abad was able to file a complaint against him. Buenaventura wanted his house removed from the place, and on the night in question part of said house was already removed. The witness has grown in the place which has become dear to him; but he declared that he did not resent Buenaventura's asking the removal of the house from the place. He did not hate Buenaventura "because he is my carnal nephew." Referring to Buenaventura Abad, the witness said: "It would have been better if he came to me. As a matter of fact, even before the presentation of this case if he only came, I was ready for an arrangement." The witness said that he went to different barrios to find out who the companions of Buenaventura were, but he did not make any inquiry from the persons in his house. He employed many days in said inquiry in the barrios, in fact, until arrest was made; of the many persons from whom he tried to obtain information, he only could mention Paulino Mora and Pascual Mora. The witness was sure that when Buenaventura arrived at the house, he was seen by his dying son. Upon seeing Buenaventura, Pascual did not say anything.

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Felicitimo Ammay, 26 years of age, married, patrolman of the Constabulary, testified that on March 14, 1944, he went to the barrio of Sto. Niño, Palauig, to the house of Buenaventura Abad, accompanied by Lieutenant Bitanga, Corporal Peter, Patrolman Iglesias, and one policeman from Palauig, Apostol. Lieutenant Bitanga, asked permission to search the house which was granted by Attorney Abad. She witness stayed in the surroundings of the house. While he was at the back of the granary, he tried to dig at the three posts of the same. At the last post to the east, he found four bullets, two of which were intact and two with empty shells. One of the empty shells was Cal. 32, and the three remaining others were Cal. 30. "When I found those bullets, sir, I covered them, because it arose in my mind that the civilians might see those bullets. Then I called the policeman and asked for Lieutenant Bitanga * * * Then Corporal Peter was the one who dug the post and brought out those bullets." Lieutenant Bitanga asked Attorney Abad why there wers bullets there. Abad answered, "May be those are new." The granary had from 8 to 10 posts. Aside from the 3 above mentioned, the witness did not make any digging at the remaining others. North of the yard, there were bamboos and bushes, almost impassable without creeping, live cavans of rice were found under the grove of bamboos. In the yard there were pineapple plants. The place where the four bullets were found was sandy, and the witness dug it by his "bare hands because it is very soft." To make the excavation he made only about five motions of his hands. The bullets were found at a depth of four inches from the surface of the soil. When the witness and his companions went to Salasa in an army truck armed with rifles, they brought with them cal. 30 bullets, which were not as dirty as those found at the post of the granary. When they made the search, they brought with them their rifles and bullets cal. 30.

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Quintin Bitanga, 26 years of age, 3rd Lieutenant of the Bureau of Constabulary, testified that in March, 1944, he received instructions from his company commander Lieutenant Dimain, to go to Palauig and investigate the persons whose names appear in the list given to him. They were Bueno Abad, Pedro Abad, Martin Abad, Jose Navarosa and Federico Ponce. It was in the house of Celestino Abad where he requested permission from Attorney Abad, who was then in the house, to make a casual inspection for arms and ammunition. Attorney Abad gave the permission. "Patrolman Ammay met me at the stairs and told me to come with him to the camarín. I instructed Peter to see the ground and at the third post he found some bullets. There were three bullets, one empty

shell like that and one empty shell, caliber 32, pistol."

Asked as to the relation between those found with bullets Exhibit E-1 and E-4, and another empty shell of a smaller caliber, which was formerly identified by Ammay as the one found by him, Lieutenant Bitanga answered: "if these were the ammunition brought by Patrolman Iglesias, because I gave instruction to Patrolman Iglesias to deliver to the Provincial Fiscal the ammunition, this must be the same ammunition which we found in the ground of the camarin. They are of the same caliber, the same empty shell, the same green coloring on this copper metal top." The witness used to see bullets like them being used by the Constabulary. The witness asked Attorney Abad about the bullets, and the latter "told me the marks are quite fresh." The witness stated that they arrived at the house of Celestino Abad around 9:30 to 10, and left around 11 o'clock, having stayed for about one hour; while Ammay testified that they arrived at the place at 11 o'clock and left at 2 o'clock, having stayed for more than two hours.

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Constancio M. Leuterio, 38 years of age, Provincial Fiscal of Zambales, testified that bullets Exhibit E-1, E-2, E-3 and E-4 are the ones delivered to him by Pat. Iglesias as found in the premises of Attorney Buenaventura.

The above synthesizes the testimonies of the nine witnesses for the prosecution.

As the burden of proof as to the guilt of the accused must be borne by the prosecution, we must, before considering the evidence for the defense, determine first if the evidence of the prosecution has, at least, shown prima facie the guilt of the accused. If not, it is futile to waste time in considering the evidence presented by the defense. It is only when the prosecution has been able to present a prima facie case that it becomes necessary to examine the evidence of the defense to determine whether it can successfully neutralize the damaging effects of the evidence for the prosecution or prove exculpatory facts and circumstances that may exempt or justify the accused without which he is liable to suffer the penalty imposed by law.

The whole problem to be solved in this appeal is one of fact. It all boils down as to whether appellant, Attorney Buenaventura Abad, was one among the group of assailants who killed Pascual Tante, jr. The theory of the prosecution is that he was. The truth of that theory is now under test.

The theory of the prosecution is mainly based on the testimonies of the four star witnesses Burgos Gamboa, the co-accused who was blessed with an umerited absolution by the fiscal and by the lower court; Primitiva Araña and Genoveva Tante, aunts of the deceased; and Salvador Tante, the father.

Concerning the testimony of Burgos Gamboa, there are striking circumstances upon which our attention is focused with irrepressible intensity:

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The unravelled mystery as to the reasons and motives of the assailants in coercing and intimidating him to follow them to the house where they intended to commit, as in fact they did, the heinous crime of murder. According to Gamboa, all the assailants had their faces painted black, the evident purpose being to avoid detection and identification. With their faces painted black and in the darkness of the dusk, the assailants would have known with certainty that they could not have been recognized by Gamboa at the moment they met him, if they had allowed him to continue his way and bring the "baito" bamboos to its destination that night. If darkness makes the identification of undisguised persons difficult or even impossible, it is more so in the case of disguised persons. Painting the face black is undoubtedly one of the most effective means of disguise. If we have to believe Gamboa, the assailants, in compelling him to accompany them, had made of him an unwilling witness who, by closeness of

association, by personal contact, by conversation and other means of information, by his accompanying them to the house of the crime, could penetrate the shield of their disguise and identify them personally, all and each one of them. By making Gamboa a witness as to their identify, the assailants knowingly challenged or invited disaster. They painted their faces black for safety, as a protection against prosecution and punishment. By compelling Gamboa to join them, the assailants made the plunge into the abyss of suicide. The enigma of the two simultaneous and concomitant self-contradicting attitudes is distressingly beyond comprehension.

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Gamboa declared that he accompanied the assailants without his face being painted black, without using any disguise. All the assailants, without exception, had their faces painted black evidently for the purpose of avoiding recognition. In allowing Gamboa to accompany them undisguised, without his face being painted black, they themselves offered a strong clue by which they might be caught, a vital link of the chain which would finally bind them until their conviction and punishment. Although human conduct is not always consistent or logical, the opposing attitudes attributed to the assailants, if we have to accept the testimony of Gamboa, are not only inconsistent and illogical, but show a complete disruption of mental processes which are found only in paranoiac individuals.

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The apparent purposelessness of the company of Gamboa. The assailants had assembled with the object of committing murder. For that purpose, they armed themselves with rifles and disguised themselves by painting their faces black. All of them were acquainted with the enterprise to be accomplished. But Gamboa appeared to be more of an obstacle rather than a help to the effective accomplishment of the criminal plan. He was not informed, according to him, of what the assailants were intending to do. He did not carry any weapon with which, even knowing the plan of the assailants, he could help in carrying it out. His face was not painted black and he did not use any disguise to conceal his identity so as to evade detection and capture by the agents of the law. Being an unwilling companion and compelled by duress to accompany the assailants, should the latter encounter serious opposition in the execution of their plan, it was natural "to expect that Gamboa would align himself with the opposition to help defeat the assailants. If he is not courageous enough, he might, at least, keep himself neutral by going away from the scene of the struggle, and just make himself available as a witness against the male-factors.

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The long silence observed by Gamboa concerning the commission of the crime becomes more inexplicable when we consider the fact that, if his testimony were to be believed, he would have nothing to fear by denouncing the criminals to the authorities because, then, he would not be prosecuted with them, as he was intimidated and forced to follow the assailants in their criminal enterprise.

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The prosecution itself, in including Gamboa among those accused in the information as authors of the murder in question, appears not to put much reliance on his credibility as to his complete blamelessness for having followed and accompanied the assailants to the house where Pascual Tante, jr., was murdered.

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According to his testimony, he volunteered information to the authorities regarding his knowledge of the authors of the crime and how it was committed months after it was perpetrated, when he was arrested for illegal possession of 150 rounds of ammunition and while he was in detention. It was not shown, however, why he

should volunteer such information when said crime had nothing to do with the finding of the 130 rounds of ammunition in his possession for which he was not finally indicted. His volunteering the information appears to be more surprising and suspicious if we have to believe his allegation that the reason for his silence regarding the murder of Pascual Tante, jr., is the assailants' admonition to him not to talk about it, and for about two weeks before he volunteered the statement regarding the murder and its authors, he had been constantly shadowed by the assailants.

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The fact is that, considering all the circumstances narrated by Gamboa, he rather appears to be a planted witness, purposely made to meet the assailants and to accompany them until the murder was consummated in order that he may be used as a personal and ocular witness against the accused.

A further analysis of Gamboa's testimony will undoubtedly reveal additional circumstances analogous to those above-mentioned, all tending to cast serious doubts upon his credibility. Indeed, with those already mentioned, we have more than enough to sustain the conclusion that Gamboa's testimony is a dangerous ground for jeopardizing the life or liberty of an accused person. Said testimony can not serve as a basis to convict an accused beyond all reasonable doubt.

Primitiva Araña is the next witness whose testimony we are going to test in the crucible of credibility.

She pretended having identified accused Buenaventura Abad among the assailants without seeing his face, which, according to Gamboa, was painted black, but only by a fleeting glimpse at the height and size of the person she saw in a dark night, lighted by a lamp she was holding, the flame of which was so weak as to be put out by the mere touch of her hand by Pascual Tante, jr.

The inverisimilitude of her pretension appears to us self-evident, and her conduct after the crime was committed, on the basis of her own testimony, makes the same completely unreliable. If she was able, under the circumstances stated by her, to identify Buenaventura Abad as one of the assailants, and she loved much her nephew, the deceased Pascual Tante, jr., it is strange that she was unable to give a satisfactory explanation of her repeated omissions in revealing the fact (a) to Salvador Tante, when the latter arrived at the house after the shooting of his son; (b) to Mayor Sevilla, who came to the house on the very night of the crime, for purposes of investigation; (c) to the chief of police and other peace officers, who came in the company of Mayor Sevilla; (d) to Lieutenant Dimain, when he arrived at the house to look for the authors of the crimes and (e) to the justice of the peace of Palauig, during the preliminary investigation in which Genoveva Tante, as the lone witness, testified that she was not able to recognize any one of the accused and did not know anything as to who the authors of the crime were. She testified that after the crime was committed, Buenaventura Abad came to the house with Celestino Abad, that Buenaventura even went near the feet of Pascual while the latter was still alive, and that the appellant was seen there by Mayor Sevilla. Why did she not denounce Buenaventura Abad right then and there to Mayor Sevilla or to any of the law officers accompanying him as among the authors of the crime? Primitiva Araña did not even attempt to offer any explanation for such omission. No other alternative is open to us but to discard her testimony.

Genoveva Tante, with her testimony, fared no better. Like Primitiva, she also incurred many omissions which belie her testimony against appellant. She informed neither her brother Salvador Tante, nor Mayor Sevilla, nor the peace officers accompanying said mayor, nor Lieutenant Dimain, nor justice of the peace Arbiso, that Buenaventura was among the assailants, or that Primitiva Araña told her that, "that is Bueno," referring to one of the assailants.

The testimony given by Salvador Tante about the ante mortem statement of Pascual is incredible. Salvador said that when his deceased son told him that Buenaventura was among the assailants, Primitiva Araña was very near; but Primitiva who, by reason of her alleged nearness, should have heard what Pascual said, failed to corroborate Salvador. This man, described by his sister Genoveva as one of "hot temperament" and by Primitiva as "hotheaded and is of aggressive temperament," failed to perform what naturally must be expected of him, when, after Pascual's revelation, the very Buenaventura Abad arrived at the house and placed himself at the feet of Pascual and remained therein until the next morning, during which time several competent authorities arrived at the house for the purpose of investigating the crime and knowing who the authors thereof were. Primitiva Araña and Genoveva Tante tried to make us believe that Salvador, because of his temperament, would, upon learning who the authors of the murder were, start a spree of "killings." But Salvador did not kill Buenaventura, did not do him any harm, did not scold him, did not make any remonstrance, did not denounce him to the several authorities who came to the house to investigate the crime and who had seen Buenaventura therein.

An analysis of the testimonies of Primitiva Araña, Genoveva Tante and Salvador Tante only confirms the statement, given by Genoveva in an unguarded moment during her cross-examination, to the effect that the discovery of the identity of Buenaventura "did not come from us but it was told to us by another person," and that the discovery "came from the testimony of Burgos Gamboa," adding that "she never thought that he could be the one who would do it."

Upon the conclusions we have arrived at, it is unnecessary to discuss the testimonies of the remaining witnesses for the prosecution or the evidence presented by the defense, much less if we take into consideration that, besides failing to prove appellant's guilt or to shake down his defense of alibi, the evidence of the prosecution itself has shown, after the crime was committed, a conduct on the part of Buenaventura Abad incompatible with his guilt but rather fits in the pattern of the theory of his innocence. If not the first, he was among the first ones who arrived at the house where the murder was committed, placed himself at the feet of the victim, who was still alive, and, according to Mayor Sevilla, appeared to be sorry. He even helped in bandaging the wounds of the cadaver, and remained in the house until the next morning, facing nonchalantly all the other relatives of the deceased and not evading any of the authorities and law officers who came to investigate the crime and the authors of the same.

The accused is acquitted of all criminal responsibility, with costs de oficio, and it is ordered that he be immediately released from confinement.

Moran, C. J., Paras, Feria, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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