

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENGRACIO VALERIANO Y TUMAHIG, MACARIO E. ACABAL @
“MOMONG,” JUANITO RISMUNDO, ABUNDIO NAHID AND JOHN DOES, ACCUSED, MACARIO E....**

G.R. Nos. 103604-05. September 23, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In two separate informations dated 28 February 1981 and filed with the then Court of First Instance, now Regional Trial Court, of Negros Oriental, Engracio Valeriano, Juanito Rismundo, Macario Acabal, Abundio Nahid and several John Does were charged with the crimes of Murder and Frustrated Murder. The accusatory portion in the information for murder,[1] docketed as Criminal Case No. 4585, reads as follows:

"That sometime in the evening of the 28th of January, 1980, at Nagbinlod, Municipality of Sta. Catalina, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, including several 'John Does', conspiring and confederating with one another, with intent to kill, and with treachery and evident premeditation and being then armed with bolos and 'pinuti', did then and there willfully, unlawfully and feloniously attack, assault and use personal violence on the person of one Rizalina Apatan Silvano while the latter was about to leave her house and inflicting upon her injuries, to wit: 'right leg amputated below the knee; left leg hacked behind the knee; abdomen hacked with viscerae evacerated,' and did then and there set the house on fire while the aforementioned Rizalina Apatan Silvano was inside said house trying to escape therefrom, and allowing her to be burned inside said house which was burned to the ground, thereby causing upon said Rizalina Apatan Silvano her death and burning her beyond recognition.

That the crime was committed with attendant aggravating circumstances of nighttime, by a band, by means of fire, craft [,] fraud or disguise employed; and that means have been employed which brought added ignominy to the natural effects of their acts.

Contrary to Article 248 in relation to Article 14 of the Revised Penal Code."

The information for frustrated murder,[2] docketed as Criminal Case No. 4584, alleged that in the evening of the 28th of January 1980 -- immediately after the commission of the murder charged in Criminal Case No. 4585 -- the accused hacked and struck Wilson Silvano, son of the victim in the murder case, with bladed weapons such as bolos and pinuti thereby inflicting upon him multiple hack wounds which would have produced the crime of murder were it not for the timely and able medical assistance given to him. It further alleged that the crime was committed with the qualifying circumstance of alevosia or treachery and the aggravating circumstances of nighttime, by a band, with the aid of armed men or persons who insure or afford impunity, and that craft, fraud or disguise were employed.

At the arraignment, all the accused, except the John Does who remained unidentified and at large, pleaded not

guilty in both cases.[3] Thereafter, upon agreement of the parties, joint trial was ordered by the trial court.[4]

Trial on the merits was conducted by Branch 37 of the court a quo presided over by Judge Temistocles B. Diez. But on 16 May 1987, a fire gutted the building where Branch 37 was located and the records of these two cases were burned. The records were subsequently reconstituted upon petition of the prosecuting fiscal.[5] The testimonies of the witnesses were retaken, however, before it could commence, accused Engracio Valeriano jumped bail and the warrant for his arrest issued on 16 November 1987 was returned unserved because he could not be found.[6] An alias warrant for his arrest was issued on 26 June 1989,[7] but he remains at large up to the present.

The evidence for the prosecution, as disclosed by the testimonies of its witnesses, is as follows:

Antonio Silvano, then the barangay captain of Barangay Nagbinlud, Sta. Catalina, Negros Oriental, testified that at about 8:30 o'clock in the evening of 28 January 1980, or two nights before the 30 January 1980 local election, three men entered his yard. He recognized these men as Juanito Rismundo, his neighbor since 1964, Engracio Valeriano, also another neighbor, and Macario Acabal, his sub-barangay captain.[8] The three men called him, but he did not answer. Instead, his wife, Rizalina, did and she told them that he was attending a meeting "in the town." They did not believe her and replied that they just saw Antonio enter the house. Juanito asked her whether they (Antonio and Rizalina) were selling their votes because they will buy them but Rizalina answered in the negative. Juanito then said, "You choose, if you want something to happen to you or not [sic]." Another man, Abundio Nahid, asked Antonio to come down because they have something to tell him. As Antonio was about to kick the door open, he saw the men outside his house increasing in number and were armed with bladed weapons (pinuti). When he turned around, Antonio smelled gasoline and he saw Abundio Nahid set fire to his store located at the right side of his house.[9] He and his wife Rizalina escaped to the roof of the kitchen while the other members of their family who were in that house -- their son Elmer Silvano and eldest daughter Celsita Legaspina with her two children -- escaped towards the sugarcane field which was about thirty meters away. When Rizalina fell from the roof to the floor, Macario Acabal, Juanito Rismundo and Engracio Valeriano hacked her. Each of them delivered a single blow with Abundio Nahid hitting her four times.[10]

On cross-examination, Antonio Silvano admitted that, as barangay captain of Nagbinlud, Sta. Catalina, and as trusted man of Mrs. Clotilde Carballo in whose land his house is built, he supported the latter as the official candidate of the KBL for Mayor of Sta. Catalina, as well as the other candidates of her party for the local election of 30 January 1980, including Lorenzo Teves, the KBL's candidate for Governor of the Province of Negros Oriental. On the other hand, the accused supported and campaigned hard for Mrs. Carballo's opponent, a certain Jose Napigkit who was a candidate of the Pusyon Bisaya and who eventually won in the election. In his barrio, Mrs. Carballo lost heavily to Napigkit.[11] He further admitted that although he first reported the incident to the Philippine Constabulary (PC) which investigated him, he cannot remember if he was made to sign anything by the PC investigator. On 15 February 1980, he was again investigated but this time in the office of Governor Teves. There, he was made to subscribe and swear to an affidavit[12] that, as admitted by the prosecuting fiscal, was made the basis for the filing of the information. No statement by the PC was presented to the fiscal.[13]

Visitacion Silvano, wife of Wilson who is the son of Antonio and Rizalina, testified that she heard the shouts for help of her mother-in-law[14] so she woke up Wilson. He then went down the house and turned on the headlights of the truck parked in front of their house facing his parents' house which was located three kilometers away. He ran towards the burning house of his parents but before he reached it, he was met by Engracio Valeriano and the latter hacked him. When he ran away, Engracio's companions, Juanito Rismundo, Macario Acabal and Abundio Nahid, chased him until he reached the sugarcane fields.[15] Visitacion stayed in her house and saw Engracio Valeriano hack her husband. She also saw the other accused-appellants in the vicinity of the house of her

parents-in-law.[16]

Dr. Avelino Torres, Chief of Hospital of Bayawan District Hospital, examined the body of Rizalina Silvano at 1:00 o'clock in the early morning of 29 January 1980 and was presented as a witness for the prosecution. According to him, the body was burned and charred beyond recognition but the parts thereof were still intact. It was still warm and smelt of freshly burned flesh.[17] He found the following "evidence of hacking:"

- "(1) right leg amputated below the knee;
- (2) left leg hacked behind the knee;
- (3) abdomen hacked with viscerae eviscerated."[18]

He concluded that the wounds were inflicted before the body was burned.[19] He also examined Wilson Silvano at about 1:30 o'clock that same morning and found seven hack wounds on Wilson. He testified at the trial that without medical attention, Wilson could have bled to death.[20]

Atty. Castulo Caballes, then the Clerk of Court of the Court of First Instance of Negros Oriental, stated in court that on 7 February 1980, he was fetched from his house by someone from the office of Governor Lorenzo Teves and was asked to assist the Governor in taking the affidavit of Juanito Rismundo.[21] After the latter "admitted that that was his affidavit," he "subscribed to him the oath and so [he] signed as a notary public." [22] In this affidavit, Rismundo implicated Jose Napigkit as having ordered the kidnapping and killing of KBL leaders and the burning of their houses.

Also on 7 February 1980, according to Atty. Elson Bustamante, then Assistant Provincial Attorney, he was called by Governor Teves to assist in the taking of the statements also of Juanito Rismundo. The Governor himself propounded the questions to Juanito who was accompanied by the son of Mrs. Carballo and a PC soldier named Lodove. Bustamante heard Mrs. Carballo's son tell the Governor that Juanito went to their (Carballos') house and "confessed" to a certain incident which happened in Sta. Catalina on 28 January 1980, and since there were PC soldiers still assigned to the Carballos' residence at that time, they brought Juanito to Governor Teves, the Provincial Chairman of the KBL.[23]

Another prosecution witness, Jufelinito Pareja, then Provincial Fiscal of Negros Oriental, told the court that on 18 February 1980, accused Macario Acabal was brought to his office. Acabal subscribed and swore to a statement before him. The latter first read it to Acabal and after ascertaining that Acabal voluntarily executed the statement, he administered the oath to said affiant.[24] This sworn statement also implicated Jose Napigkit.

Accused-appellants put up the defense of alibi. They allege that they were in different places when the incident in question occurred. Macario Acabal was in sitio Canggabok, Nagbinlud, Sta. Catalina, attending the wake for deceased barangay captain Filomeno Cumahig.[25] On 29 January 1980, he was arrested by military men in the house of his aunt at the breakwater of Poblacion Sta. Catalina. One of them struck him three times on his left and right chest with an armalite rifle. Thereafter, he was loaded into a pick-up truck owned by Mrs. Clotilde Carballo and taken to her house. On 7 February 1980, he was brought to Bayawan and was again manhandled, causing injuries to him which required treatment at the Bayawan District Hospital, as certified by Dr. Torres. From the hospital, he was brought to the municipal jail of Bayawan and then to the Provincial Jail in Dumaguete City. Later, he was taken to the office of the Governor and was forced to sign an affidavit (Exhibit "F"). Prior to 28 January 1989, he did not know the other accused in this case.[26]

Juanito Rismundo was in Sitio Dinapo, Bgy. Alangilan, Sta. Catalina, graining corn in the house of Alfreda Ortega.[27] On 6 February 1980, he met a PC soldier named Boy Gudobe (Lodove), who was then stationed in Bgy. Kawitan, Sta. Catalina, accompanied by Diosdado Silvano, grandson of Antonio Silvano, at the Sta. Catalina

market. Gudobe allegedly hit him and, together with Diosdado and a Boy Carballo, the son of Mrs. Clotilde Carballo, brought him to the Capitol Building in Dumaguete City. While there, he averred that he was forced by a lawyer to sign an affidavit (Exhibit "D") in the office of the Governor after he was struck with the handle of a revolver at the back of his head.[28]

Abundio Nahid was in his house in Sugong Milagros, Sta. Catalina, Negros Oriental, about 20 kilometers from Nagbinlud. He charged that Wilson Silvano testified against him because the Silvanos supported Mrs. Carballo of the KBL while he led the supporters of Mrs. Carballo's opponent Jose Napigkit of the Pusyon Bisaya.[29]

The prosecution presented on rebuttal Mrs. Clotilde Carballo and Fiscal Wilfredo Salmin. The former testified that on 7 February 1980 accused Juanita Rismundo voluntarily surrendered to her at her residence in Sta. Catalina and told her that he wanted to see the Governor. She then asked her son to bring Juanita to Dumaguete City.[30]

Fiscal Wilfredo Salmin belied the claim of Acabal that he (Salmin) went to the Provincial Jail on 10 February 1980 and forced Acabal to sign a document. He alleged that on 16 February 1980, not on 10 February 1980 as claimed by Acabal, Acabal came to his office at the Provincial Attorney's Office and executed a sworn statement, but Acabal did not sign the same upon the advice of Atty. Geminiano Eleccion.[31]

After the completion of the re-taking of the testimonies of the witnesses in Branch 37, Criminal Cases Nos. 4584 and 4585 were re-raffled to Branch 33 of the trial court, then presided over by Judge Pacifico S. Bulado.[32]

The decision[33] of the trial court, per Judge Pacifico S. Bulado, dated 31 October 1991 but promulgated on 20 December 1991, contained no specific dispositive portion. Its rulings are found in the last two paragraphs which read as follows:

"The elements of murder in this case, Criminal Case No. 4585 for the killing of Rizalina Apatan-Silvano having been proved by the prosecution beyond doubt, the accused JUANITO RISMUNDO, MACARIO ACABAL and ABUNDIO NAHID, considering the attendant qualifying aggravating circumstances of nighttime, use of fire by burning the house of victim Rizalina Apatan-Silvano in order to forcibly drive her out of her house and hack her to death, the abuse of superior strength, the penalty impossible [sic] here will be in its maximum degree, that is Reclusion perpetua taking into account Article 248 of the Revised Penal Code, the penalty now for murder is Reclusion Temporal to Reclusion Perpetua, and for all the accused to indemnify the heirs of the victim the sum of Thirty Thousand (P30,000.00) Pesos since this case occurred [sic] in 1980. For the wounding of the victim Wilson A. Silvano, this Court believes that simple frustrated homicide only is committed by the accused Engracio Valeriano only. But since the person who actually inflicted the injuries of victim Wilson Silvano, accused Engracio Valeriano only is nowhere to be found, hence, not brought to the bar of justice, he being a fugitive or at large, no penalty could be imposed on him since he is beyond the jurisdiction of this court to reach. All the other two (2) accused, JUANITO RISMUNDO and ABUNDIO NAHID are hereby ordered and declared absolved from any criminal responsibility from frustrated homicide.

The bail bond put up by the three accused, namely: Juanito Rismundo, Macario Acabal and Abundio Nahid are hereby ordered cancelled and let a warrant of arrest be issued for their immediate confinement." [34]

The trial court rejected the defense of alibi because "[i]t was not shown by plausible and convincing evidence x x x that it was physically impossible for them to go to the scene of the crime and to return to the place of residence (People vs. Solis, 182 SCRA 182)." Upon the other hand, it ruled that "the prosecution witnesses x x x clearly, positively identified them as the culprits, they being neighbors for a long time and co-worker." [35]

Immediately after the promulgation of the decision, counsel for the accused manifested in open court their intention to appeal the decision. On the same day, counsel for accused Abundio Nahid filed a notice of appeal

with a motion for the immediate release of his client, which was opposed by the prosecution. The court a quo denied the motion also on the same day.[36]

On 31 December 1991, all the convicted accused filed a motion for the reconsideration of the denial of the motion for immediate release. The later motion was denied on 3 January 1992. A day earlier or on 2 January 1992, accused Macario Acabal and Juanito Rismundo had filed their notice of appeal.[37]

The records of both cases were transmitted to us and we accepted the appeal on 26 February 1992.

The accused-appellants raise in their Brief[38] the following assignment of errors:

"I. THAT THE HONORABLE LOWER COURT ERRED IN CANCELLING THE BAIL BONDS OF ACCUSED-APPELLANTS AND ORDERING THEIR IMMEDIATE ARRESTS WHEN THE ONLY PENALTY IMPOSED BY IT FOR ALL THE ACCUSED IS "TO INDEMNIFY THE HEIRS OF THE VICTIM THE SUM OF THIRTY THOUSAND (P30,000.00) PESOS.

II. THE HONORABLE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED AND PUNISHED UNDER ARTICLE 248 OF THE REVISED PENAL CODE.

III. THE HONORABLE COURT GRAVELY ERRED IN FINDING THAT THE PROSECUTION WITNESSES (ANTONIO SILVANO, WILSON SILVANO, AND VISITACION SILVANO), HUSBAND AND CHILDREN, RESPECTIVELY, OF THE DECEASED RIZALINA APATAN-SILVANO, HAVE POSITIVELY IDENTIFIED THE ACCUSED AS THE CULPRITS WHEN ONLY ANTONIO SILVANO TESTIFIED AS TO WHO ALLEGEDLY KILLED HIS WIFE, AND WHILE OTHER TWO (2) WITNESSES ONLY TESTIFIED AS TO THE WOUNDING OF WILSON SILVANO BY ENGRACIO VALERIANO AND ALL THESE WITNESSES WERE VERY VOCAL IN THEIR SILENCE AS TO THE IDENTITIES OF THE ACCUSED FOR A LONG TIME.

IV. AND, THAT THE HONORABLE LOWER COURT GRAVELY ERRED IN NOT ACQUITTING ALL THE ACCUSED FOR INSUFFICIENCY OF EVIDENCE AND/OR AT LEAST ON THE HYPOTHESIS OF REASONABLE DOUBT."

In support of the first assigned error, they claim that: (a) the trial court could not have ordered the cancellation of their bail bonds and their arrest and immediate confinement because the only penalty it imposed on them was "to indemnify the heirs of the victim the sum of thirty thousand (P30,000.00) pesos" without imposing any sentence; it merely suggested that "x x x the penalty impossible [sic] here will be in its maximum degree, that is reclusion perpetua x x x"; and (b) since they already perfected their appeal immediately after the promulgation of the sentence, the trial court lost jurisdiction over the case and could not validly cancel their bail bonds and order their arrest.[39]

In its Brief,[40] the Appellee asserts that the judgment appealed from is valid and enforceable. Although the word "impossible" [sic] is "imprecise," it is clear that what the judge actually meant was that the penalty of reclusion perpetua was what the law allowed or mandated him to impose. As to the grant of bail, since they committed a capital offense and the court had already found that the evidence of their guilt is strong, the accused-appellants should not be entitled to bail.

We find that the decision substantially complies with the Rules of Court on judgments as it did sentence the accused-appellants to reclusion perpetua. A judgment of conviction shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission, if there are any; (b) the participation of the accused in the commission of the offense, whether as principal, accomplice or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the

civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.[41] As we earlier observed, the challenged decision does not contain the usual dispositive portion. The last two paragraphs of the decision merely embody its conclusions that: (1) the appellants are guilty of murder, and (2) taking into account the "attendant qualifying aggravating circumstances of nighttime, use of fire by burning the house of the victim, x x x the abuse of superior strength," "the penalty imposable x x x will be in its maximum degree, that is reclusion perpetua" considering that, "the penalty now for murder is reclusion temporal to reclusion perpetua." While the decision leaves much to be desired, it nevertheless contains the court's findings of facts, the law applicable to the set of facts and what it believes to be the imposable penalty under the law, that is, reclusion perpetua which is actually the penalty imposed on the accused-appellants. It is obvious that they clearly understood that they were found guilty beyond reasonable doubt of the crime of murder and were sentenced to suffer the penalty of reclusion perpetua in Criminal Case No. 4585. Were it otherwise, they would not have declared in open court their intention to appeal immediately after the promulgation of the decision and would not have subsequently filed their written notice of appeal.

Accused-appellants contend that the trial court did not impose any sentence and so cannot cancel anymore their bail bonds and direct their arrest and immediate commitment because it already lost jurisdiction over their persons when they perfected their appeal.

In connection with Section 3, Rule 114 of the Revised Rules of Court on bail, we ruled in *People vs. Cortez*[42] that:

"x x x an accused who is charged with a capital offense or an offense punishable by reclusion perpetua, and is thereafter convicted of the offense charged, shall no longer be entitled to bail as a matter of right even if he appeals the case to this Court since his conviction clearly imports that the evidence of his guilt of the offense charged is strong."

We have already said that the decision did impose the penalty of reclusion perpetua. Since the order cancelling their bail bonds and directing their arrest is contained in the decision itself, it is apparent that their abovementioned contention is highly illogical. At the time the order in question was made, the trial court still had jurisdiction over the persons of the accused-appellants. For too obvious reasons, their notices of appeal which they claim have put an end to the trial court's jurisdiction over them could not have been filed before the promulgation of the decision. The order is therefore valid and enforceable. Also, it may be recalled that the accused-appellants had earlier raised this issue before us in a petition for habeas corpus dated 16 January 1992 and docketed as G.R. Nos. 103602-03. We dismissed that petition on 17 February 1992 for failure to comply with requirement no. (2) of Revised Circular No. 1-88 and Circular No. 28-91 on forum shopping.[43] Their motion for reconsideration was denied on 27 May 1993.

The trial court, however, erred in considering nighttime, use of fire and abuse of superior strength as "attendant qualifying aggravating circumstances." The information in Criminal Case No. 4585 alleged only treachery and evident premeditation as qualifying aggravating circumstances. Nighttime, band, use of fire, craft, fraud or disguise and ignominy were alleged as generic aggravating circumstances only. The trial court cannot elevate the status of any of the generic aggravating circumstances and consider them as qualifying circumstances for the crime of murder. Moreover, nighttime is not a qualifying circumstance under Article 248 of the Revised Penal Code.

It was likewise an error for the trial court to state that "the penalty now for murder is reclusion temporal to reclusion perpetua." The penalty for murder remains to be reclusion temporal maximum to death. But in view of

paragraph (1), Section 19, Article III of the Constitution prohibiting the imposition of the penalty of death, where death would have been the proper penalty in a case, the court must instead impose the penalty of reclusion perpetua.[44]

The trial court further erred in holding that no penalty could be imposed on accused Engracio Valeriano in Criminal Case No. 4584 because he "is nowhere to be found, hence, not brought to the bar of justice, he being a fugitive or at large." The court ignored the fact that Engracio jumped bail after he had been arraigned, just before the retaking of evidence commenced. Paragraph (2), Section 14, Article III of the Constitution permits trial in absentia after the accused has been arraigned provided he has been duly notified of the trial and his failure to appear thereat is unjustified. One who jumps bail can never offer a justifiable reason for his non-appearance during the trial. Accordingly, after the trial in absentia, the court can render judgment in the case[45] and promulgation may be made by simply recording the judgment in the criminal docket with a copy thereof served upon his counsel, provided that the notice requiring him to be present at the promulgation is served through his bondsmen or warden and counsel.[46]

Having disposed of the first issue raised by the accused-appellants, we now come to the second, third and fourth assigned errors which shall be discussed jointly, considering that they are interrelated and deal with the question of whether or not the guilt of the accused-appellants was proven beyond reasonable doubt.

The accused-appellants contend that the trial court erred in relying on the testimonies of prosecution witnesses Antonio Silvano, Wilson Silvano and Visitacion Silvano and in concluding that they clearly and positively identified the accused-appellants as the culprits. According to them, only Antonio Silvano testified that he saw the accused burn his house, kill his wife Rizalina and drag her into the fire. Neither Visitacion Silvano nor Wilson Silvano testified that they saw what occurred in the elder Silvanos' house. But even the testimony of Antonio Silvano is not reliable because it lacks truthfulness and validity. They singled out his testimony that while the fire was raging, his wife told him to save himself as she will also save herself, then the direction of the wind changed and he jumped from the roof of the house into the bushes. They concluded that he could not have seen who killed his wife.[47] Also, the ruling that conclusions and findings of the lower court are entitled to great weight is not applicable in this case because the judge who heard the testimonies of the witnesses in its entirety was not the same judge who penned the decision. They further stressed the delay incurred by Antonio in reporting the crime to the authorities. The crime was committed on 28 January 1980 but he reported it to the Office of the Governor of Negros Oriental in Dumaguete City only on 18 February 1980 or some 21 days after its commission. Finally, they maintain that they have sufficiently established their defense of alibi.

On the other hand, the Appellee seeks the affirmance of the judgment convicting the accused. The Appellee reasons out that the accused-appellants were positively identified by prosecution witness Antonio Silvano; and that even while it is true that only Antonio Silvano saw the murderers, Visitacion and Wilson Silvano testified on the presence of the accused-appellants at the scene of the crime.

As the Appellee admits, however, the most damning testimony against the accused-appellants in this case is only that of Antonio Silvano who claimed that he actually saw them hack and kill his wife. To us, whether such testimony could be relied upon is altogether a different matter. Although it is a settled rule that the findings of the trial court on the credibility of witnesses should be given the highest respect because it had the advantage of observing the demeanor of the witnesses and can discern if such witnesses are telling the truth or lying through their teeth,[48] we cannot rely on that rule in this appeal because the judge who heard the testimonies of the witnesses was not the same judge who penned the decision. Judge Temistocles Diez of Branch 37 received and heard the testimonies of the witnesses but it was Judge Pacifico S. Bulado who rendered the decision. The latter had no opportunity to observe the witnesses' deportment and manner of testifying, which are important

considerations in assessing credibility.[49]

We have carefully read the transcripts of the testimony of Antonio Silvano. We cannot give him full faith and credit for the following reasons:

1. Although he testified on cross-examination that he first reported the incident to and was investigated by the PC, it is clear to this Court that it was only on 15 February 1980, or on the eighteenth day after the incident that he was investigated at the office of the Governor. Being the barangay captain of Nagbinlud, the owner of a house that was intentionally set on fire, the father of the man who was hacked several times and almost died, and the husband of the murder victim whose body was charred beyond recognition, the compelling call of duty and the mournful cry for justice cannot tolerate any delay in reporting the incident to the proper authorities. The prosecution was hard put for an explanation for this delay; it did not even attempt to make any. If Antonio Silvano could offer no explanation therefor, it could only mean that he was either unable to identify the real perpetrators of the crime against his family or he was afraid to do so. For whichever reason, such failure only bolsters the claim of the defense that the crime was committed by the "Salvatore" group whose operations Antonio admitted he was very much aware of, thus:

"Q As such barangay captain you remember that in the month of January, 1980 there was such a group of armed men referred to or commonly called as Salvatore, is that correct that used to roam around in the interior part of Sta. Catalina?

A Yes, that is true.

Q And this group of men used to plunder or steal from houses, kill certain persons and burn also houses, is that correct?

A Yes, that is true.

Q And this group of men known as 'Salvatore' continued to exist even after January 1980?

A That was only up to 1980.

Q Yes, but after January 1980 this 'Salvatore' group continued to exist for sometime up to or beyond the year 1980, is that correct?

A They were only about 2 weeks because they were arrested by the authorities.

Q That is two weeks after January 28, 1980?

A Yes."[50]

Furthermore, it is doubtful whether Antonio did report the incident to the PC as no PC personnel corroborated him thereon and according to him, he did not sign any statement during the said investigation, which is unusual. The fiscal himself admitted in open court that no statement taken by the PC was submitted to his office.[51] If indeed Antonio was investigated by the PC, the investigator should have formally taken his statement in view of its importance. As no such statement was proved to exist, it is logical to presume that Antonio did not or could not disclose to the investigator the names of the perpetrators.

2. Antonio admitted on cross-examination that he had no quarrel and misunderstanding[52] or grudges[53] whatsoever with the accused-appellants. If that were so, it is odd that he could not explain why he, a barangay captain who was expected to attend to the requests and problems of his constituents, deliberately chose not to respond to the alleged call of the accused-appellants on the night of the incident and instead allowed his wife to lie to them by saying that he was attending a meeting. Again, the only plausible explanation for his behavior was that

the men who came belonged to the "Salvatore" group and this terrified him, for he knew that the group had been roaming around, killing people and burning houses in his area.

3. Also, on cross-examination, Antonio affirmed as true the contents of his sworn statement^[54] taken two weeks after the incident. In it, he failed to state the fact that he witnessed the killing of his wife and to identify her killers.^[55] Since his sworn statement was precisely taken to obtain from him vital facts relative to the incident, more specifically on the killing of his wife, and considering that he had already stated therein that he saw the accused-appellants, it is contrary to human nature and inconsistent with experience for him to fail to identify them as the killers of his wife, if such is the fact. It has been said that where the omission in the affidavit refers to a very important detail such that the affiant would not have failed to mention it, the omission could affect the affiant's credibility.^[56] Verily, it was obvious from his answer to Question No. 16 of the investigator that he had no opportunity to identify the killers:

"Q Question No. 16, 'Q-What else did you do?', and you answered, 'A-My wife told me to just save myself because she will also save herself. Thereafter the wind changed it(s) course and (the) fire grew big and because of this, I had the occasion to jumped (sic) from our house and thereafter I ran towards the bushes.' x x x.

A Yes, sir, that is true.

Q How far is that bush to which you ran from your house which was burning?

A It is about thirty (30) meters because it is a sugarcane field."^[57]

4. Antonio categorically declared that Engracio Valeriano, Juanito Rismundo and Macario Acabal each hacked her once hitting her on the forehead, right leg and left arm, respectively, while Abundio Nahid hacked her four times, hitting her at the forehead, left arm, right leg and stomach.^[58] In other words, from his testimony, his wife sustained seven wounds. Yet, the medical evidence belies this. Per the findings of Dr. Avelino Torres,^[59] there were only three "evidence" of hacking, viz.: at the right leg, left leg and abdomen.

5. Nowhere in his sworn statement did Antonio mention the name of accused-appellant Abundio Nahid. If in fact he saw the latter who he claimed in his direct testimony hacked his wife four times, Nahid's name would have occupied a prominent place in his sworn statement.

The testimony of the other witnesses for the prosecution likewise do not provide sufficient proof of the accused-appellants' guilt. Visitacion Silvano's testimony that she saw and identified the accused-appellants at the scene of the crime taxes the imagination. It was humanly impossible for her to see the accused-appellants even if she were aided by the light from the truck as she herself said that she was then in her house, three kilometers away from the house of her parents-in-law. Wilson Silvano did not testify at all that he saw the persons who hacked and killed his mother.

In conclusion, because of reasonable doubt as to their guilt, the accused-appellants must be acquitted. Every accused is presumed innocent until the contrary is proved; that presumption is solemnly guaranteed by the Bill of Rights. The contrary requires proof beyond reasonable doubt, or that degree of proof which produces conviction in an unprejudiced mind. Short of this, it is not only the right of the accused to be freed; it is even the constitutional duty of the court to acquit him.^[60] Accordingly, unless the prosecution discharges its burden of proving the guilt of the accused-appellants beyond reasonable doubt, they need not even offer evidence in their behalf.^[61] The weakness of their defense of alibi thus becomes irrelevant.

WHEREFORE, the challenged Decision of Branch 33 of the Regional Trial Court of Negros Oriental in Criminal Case No. 4585 is hereby REVERSED. Accused-appellants MACARIO ACABAL, JUANITO RISMUNDO and ABUNDIO NAHID are ACQUITTED on ground of reasonable doubt, and their immediate release from

confinement is hereby ordered, unless other lawful and valid grounds exist for their further detention.

The trial court is directed to render judgment against accused-appellant ENGRACIO VALERIANO in Criminal Case No. 4584.

No costs.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.
Griño-Aquino, J., on leave.

[1] Original Records (OR), 2.

[2] OR, 38-39.

[3] OR, 281-283; 285.

[4] Id., 280.

[5] Id., 35.

[6] Id., 57, with annotation of the serving officer at the back.

[7] Id., 276.

[8] TSN, 4 March 1988, 12-13.

[9] Id., 5-7.

[10] TSN, 4 March 1988, 9.

[11] TSN, 5 May 1988, 4-7.

[12] Exhibit "1"-Nahid; TSN, 4 March 1988, 24.

[13] TSN, 5 May 1988, 11-12.

[14] TSN, 17 October 1988, 4.

[15] TSN, 9 September 1988, 17-19.

[16] TSN, 17 October 1988, 4.

[17] TSN, 9 September 1988, 4.

[18] Exhibit "A"; OR, 229.

[19] TSN, 9 September 1988, 10.

[20] Id., 8.

[21] OR, 233-237. The affidavit is marked as Exhibit "D" and is in the Cebuano dialect. Its English translation is marked as Exhibit "E" (Id., 238-241).

[22] TSN, 24 November 1988, 6.

[23] TSN, 24 November 1988, 27.

[24] TSN, 9 January 1989, 4-11. The sworn statement is marked as Exhibit "F" (OR, 242-247) and is in the Cebuano dialect. Its English translation is marked as Exhibit "G" (Id., 247? 251).

[25] TSN, 9 June 1989, afternoon session, 6-7.

[26] TSN, 9 June 1989, morning session, 24-29; afternoon session, 7-8.

[27] TSN, 19 June 1989, morning session, 28-32.

[28] Id., 24-25; 32-37; afternoon session, 37-41.

[29] Id., afternoon session, 5-6.

[30] TSN, 27 June 1989, 5-8.

[31] Id., 11-14.

[32] OR, 287.

[33] Id., 296-312; Rollo, 27-43.

[34] OR, 311-312; Rollo, 42-43.

[35] OR, 310.

[36] OR, 313; 318-319; 321-322.

[37] Id., 323; 324-327; 332.

[38] Rollo, 67, et seq.

[39] Rollo, 81-83.

[40] Id., 126, et seq.

[41] Section 2, Rule 120, Revised Rules of Court, as amended.

[42] G.R. No. 92560, 15 October 1991, Minute Resolution. See also Administrative Circular No. 2-92 issued on 20 January 1992; *People vs. Fortes*, G.R. Nos. 90643 and 91155, 25 June 1993.

[43] See Rollo of G.R. Nos. 103602-03.

[44] *People vs. Muñoz*, 170 SCRA 107 [1989]; *People vs. Barba*, 203 SCRA 436 [1991].

[45] *People vs. Salas*, 143 SCRA 163 [1986]; *Gimenez vs. Nazareno*, 160 SCRA 1 [1988]; *People vs. Mapalao*, 197 SCRA 79 [1991].

[46] Third paragraph, Section 6, Rule 120, Revised Rules of Court, as amended.

[47] Appellant's Brief; Rollo, 88.

[48] *People vs. Santito, Jr.*, 201 SCRA 87 [1991]; *People vs. Garcia*, 209 SCRA 164 [1992].

[49] *People vs. Escalante*, 131 SCRA 237 [1984]; *People vs. Villapaña*, 161 SCRA 72 [1988]; *People vs. Capilitan*, 182 SCRA 313 [1990]; *People vs. Pido*, 200 SCRA 45 [1991].

[50] TSN, 5 May 1988, 3-4.

[51] Id., 9; 11-12.

[52] TSN, 5 May 1988, 6.

[53] TSN, 6 June 1988, 4.

[54] Exhibit "1"-Nahid; TSN, 4 March 1988, afternoon session, 14-24.

[55] Id., 15-24.

[56] People vs. Dumpe, 183 SCRA 547 [1990], citing People vs. Anggot, 105 SCRA 168 [1981].

[57] TSN, 4 March 1988, 20.

[58] Id., 9-11.

[59] TSN, 9 September 1988, 4-5; Exhibit "A"; OR, 229.

[60] People vs. Pido, 200 SCRA 45 [1991].

[61] People vs. Garcia, 215 SCRA 349 [1992].

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