I

Lucio Libarnes, petitioner vs. The Hon. Executive Secretary, et al., respondents, G.R. No. L-21505, Oct. 24, 1963, Concepcion, J.:

1. PUBLIC OFFICERS; REMOVAL OR SUSPENSION; CHIEF OF POLICE OF ZAMBOANGA CITY; CANNOT BE REMOVED OR SUSPENDED EXCEPT FOR CAUSE.—It is conceded that the Chief of Police of Zamboanga City is a member of our civil service system (Section 5, Republic Act No. 2260). Hence, he cannot be "removed or suspended except for cause as provided by law and after due process" (Sec. 33, Republic Act No. 2260).
2. ID.; ID.; CASE COMPARED WITH CASES OF LACSON VS. ROMERO AND DE LOS SANTOS VS. MALLARE.—It cannot be denied that the attempt to terminate the services of plaintiff herein, as de jure holder of the office of Chief of Police of Zamboanga City, entailed his removal therefrom. even more than the attempt to transfer the provincial fiscal of Negros Oriental and the City Engineer of Baguio City without their consent was held in Lacson vs. Romero (47 Off. Gaz. 1778) and De los Santos vs. Mallare (87 Phil. 289) to constitute illegal removal from their respective offices.
3. ID.; ID.; POWER OF PRESIDENT TO REMOVE CHIEF OF POLICE OF ZAMBOANGA CITY AT PLEASURE UNDER SEC. 34, COMMONWEALTH ACT 39 ELIMINATED BY SEC. 5, REP. ACT 2259.—Defendants argue that the provision of Section 5 of Republic Act No. 2259 is inapplicable to the case at bar because plaintiff herein has not been removed from office, his term of office having merely expired when the President terminated his services. Suffice it to say, that this attempt to terminate plaintiff's services was predicated upon said Section 34 of Commonwealth Act No. 39, pursuant to which the Executive may "remove at pleasure" the Chief of Police of Zamboanga City, and that this is the reason why section 5 of Republic Act No. 2289 speaks, also, of removal to indicate that it seeks to withdraw or eliminate precisely such power to "remove at pleasure" under Commonwealth Act No. 39, among other pertinent legislations.
4. ID.; ID.; STATUTORY CONSTRUCTION; REPEAL; WHEN MAY A SPECIAL LAW BE REPEALED OR AMENDED BY SUBSEQUENT GENERAL LAW.—The question whether or not a special law has been repealed or amended by one or more subsequent general laws is dependent mainly upon the intent of Congress in enacting the latter. The discussions on the floor of Congress show beyond doubt that its members intended to amend or repeal all provisions of special laws inconsistent with the provisions of Republic Act No. 2259, except those which are expressly excluded from the operation thereof. In fact, the explanatory note to Senate Bill No. 2, which, upon approval; became Republic Act No. 2259, specifically mentions Zamboanga City, among others that had been considered by the authors of

(Continued next page)

SETTLEMENT . . . (Continued from page 364)

perience to show that this is not necessarily so. We have had a number of past instances of fact finding with recommendations forming the basis of settlement.[70] There is a clear distinction to be made. The wage settlement proposed with regularity by a government agency is a far greater intrusion by the government than is the recommendation of an ad hoc fact-finding board or board of arbitration which has been chosen to bring about settlement of one particular dispute. Insofar as the independent board can approximate the settlement that the parties themselves would have reached if the strike had been allowed to run its course, the settlement has no more effect upon the economy than would the settlement of the parties themselves. Of course, just what the settlement of the parties would have been can never be known exactly. But there is enough experience with collective bargaining settlements and voluntary arbitrations of wage disputes to know that, given the facts, the economic pattern which should be followed can be ascertained.[71]

Collective Bargaining

Is Absolute Requisite

The key to the resolution of the emergency dispute problem is therefore revealed. The matter of pressure in settlements by governmental intervention through emergency-dispute processes will not disrupt the role of collective bargaining so long as the settlements brought about follow collective bargaining patterns rather than establish them. The maintaining and strengthening of effective collective bargaining then becomes the absolute requisite to the keeping of emergency procedures in narrow bounds. If the basic labor-cost decisions in the American economy are made by collective bargaining, we have little to fear from the occasional emergency settlement dictated by ad hoc governmental intervention. The dictated settlements can follow the pattern established by bargaining.

So it is that the newly awakened emphasis on improving collective bargaining is as significant a part of the solution to the emergency strike problem as are the techniques for dealing with such strikes. Governmental intervention in emergency work stoppages need not bring about governmental management of the economic bargains in our society if collective bargaining is strengthened to maintain its proper role in making these economic decisions.

We must endeavor to reach this balanced approach. Realistically speaking, we cannot continue to hold a false belief that the right to strike is unlimited. We cannot insist that all bargains must be made through the collective bargaining process. We can and must make every effort to hone the keen edge of collective bargaining so that it is an effective tool in all but the very hardest of cases. But we must be courageous enough to handle the hardest cases another way.

The alternative is facing the resolution of each crisis after the crisis occurs. Drastic measures which will destroy the process of collective bargaining seem the inevitable outgrowth of such a passive approach when the spectrum of the kinds of crisis which can arise is viewed. Advance preparation for emergencies by creating the structures to meet them is needed to preserve our economic freedom. Freedom does not flourish in chaos, but in enlightened order.

70. See note 41, supra for citations to the fact-finding-with-recommendations experience under the Railway Labor Act. In the 1949 steel pension dispute, President Truman bypassed the Taft-Hartley provisions and appointed a fact-finding board empowered to recommend. The dispute was settled in close compliance with the recommendations. The Board report is printed in 13 L.A. (BNA) 46 (1949). A recent example of the fact-finding board empowered to recommend terms is the Missile Sites Labor Commission, see note 44, supra.

71. There is extensive literature on wage patterns. E.g., BERNSTEIN, ARBITRATION OF WAGES (1954); NEW CONCEPTS IN WAGE DETERMINATION (Taylor and Pierson, eds 1957).

the bill in drafting the same. Similarly, Section 1 of Republic Act No. 2259 makes reference to "all chartered cities in the Philippines", whereas Section 8 excludes from the operation of the Act "the cities of Manila, Cavite, Trece Martires and Tagaytay," and Section 4 contains a proviso exclusively for the City of Baguio, thus showing clearly that all cities not particularly excepted from the provisions of said Act — including, therefore, the City of Zamboanga— are subject thereto.

5. ID.; ID.; RULING IN CASE OF FERNANDEZ VS. LEDESMA NOT IN POINT.—The case of Fernandez vs. Ledesma, L-18878 (March 30, 1963), relied upon by the defendants herein, is not in point, the termination of the services of the officer involved in the Fernandez case having taken place on April 28, 1959, or **prior** to the approval of Republic Act No. 2259, on June 19, 1959, whereas plaintiff herein was advised of the attempt to terminate his services on May 23, 1963, or almost four (4) years after said legislation had become effective.

6. CONSTITUTIONAL LAW; BILL; SUBJECT SHOULD BE EMBRACED IN TITLE OF A BILL; PURPOSE OF; EXCEPTION.—It is contended that the provision in Section 5 of Republic Act No. 2259, to the effect that "all other officials now appointed by the President of the Philippines may not be removed from office except for cause" is a rider violative of the constitutional injunction that "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill", that of Republic Act No. 2259, being: "AN ACT MAKING ELECTIVE THE OFFICES OF MAYOR, VICE-MAYOR AND COUNCILORS IN CHARTERED CITIES, REGULATING THE ELECTION IN SUCH CITIES AND FIXING THE SALARIES AND TENURE OF SUCH OFFICES".—It is claimed that the contents of Section 5 of Republic Act No. 2259 are alien to the subject of this title and that consequently said provision is unconstitutional. This pretense is untenable. As stated in the explanatory note to the aforementioned Senate Bill No. 2, the purpose thereof is to establish "uniformity in the number of city officials, in the manner in which they are to be chosen, in the extent of their powers, duties and functions", as well as "equality in the rights and privileges enjoyed by the residents of said cities, particularly the right to choose the officials who should be at the helm of their respective city governments". Obviously, the matter of the conditions under which local officials appointed by the President may be removed from office not only is germane to such purpose, but, also, forms an essential part thereof. "One purpose of the constitutional directive that the subject of a bill should be embraced in its title is to appraise the legislators of the purpose, the nature and scope of its provisions, and prevent the enactment into law of matters which have not received the notice, action and study of the legislators or of the public." (Inchong vs. Fernandez, G.R. No. L-7995, May 31, 1957). In the case at bar, the provisions of Section 5 of Republic Act No. 2259 was debated upon on the floor of Congress, whose members were actually aware of its existence.

DECISION

This is an original petition for quo warranto and injunction, with preliminary injunction and/or mandatory injunction.

Plaintiff Lucio Libarnes was, on January 29, 1959 nominated by the President of the Philippines for the office of Chief of Police of Zamboanga City. The nomination having been confirmed by the Commission on Appointments on February 25, 1959, Libarnes assumed the aforementioned office on March 11, 1959, and continued discharging the duties of said office ever since. On May 16, 1963, the new Executive designated defendant Miguel Apostol as Acting Chief of Police of Zamboanga City. On May 18, 1963, Apostol took his oath of office as such acting chief of police before the Speaker of the House of Representatives, in Manila, and soon thereafter, or on May 23, 1963, defendant Tomas Ferrer, as City Mayor of Zamboanga, transmitted to Libarnes a letter of the Acting Assistant Executive Secretary, Office of the President, Malacañan, dated May 16, 1963, informing him (Libarnes) that "under the provisions of Section 34 of the Charter of Zamboanga City, as amended, the President" had terminated his "services as Chief of Police of said City effective immediately and x x x designated Major Miguel Apostol" in his stead and stating that it would "be appreciated if" he (Libarnes) could "turn over the office in question to Major Apostol upon receipt" of said communications. Mayor Ferrer, furthermore, requested Libarnes to turn over his "property responsibility" with the property custodian of the police department. In a memorandum of the same date (May 23, 1963) Mayor Ferrer, likewise, informed all members of the police force of Zamboanga City of the appointment of Apostol and oath taken by him as acting head of said force, and requested them to "take orders from the new Chief of Police." However, Libarnes refused to turn over his office to Apostol— who tried to take possession thereof—as well as his (Libarnes') property responsibility, and, soon thereafter, or, on July 5, 1963, he (Libarnes) initiated the present action for the purpose of nullifying the aforementioned designation of Apostol as Acting Chief of Police of Zamboanga City and of restraining him, as well as its mayor, the Executive Secretary and their subordinates, assistants or persons acting under them, or for or in their behalf, from molesting Libarnes in the possession of the office in question or in the exercise and enjoyment of the functions and prerogatives thereof. Plaintiff's complaint is anchored upon the theory that, under the provisions of Section 5 of Republic Act No. 2259 and of the Civil Service Law (Republic Act No. 2260), he is entitled to hold said office until removed for cause, which is not claimed to exist in his case, and "after due process", which, he asserts, has been denied him.

Upon the other hand, defendants maintain that the disputed designation of defendant Apostol is perfectly valid because, as Chief of Police of Zamboanga City, plaintiff held said office at the pleasure of the President, pursuant to Section 34 of the Charter of said City, or Commonwealth Act No. 39, reading:

> **"Appointment and removal of officials and employees —Compensation.**—The President shall appoint, with the consent of the Commission on Appointments of the National Assembly, the Judges of the Municipal Court, the city treasurer, the city engineer, the city assessor, the city attorney, **the chief of police** and the other heads of the city departments as may be created from time to time, and he may removed at pleasure any of the said appointive officials, except the judges of the Municipal Court, who may be removed only according to law."

and that this provision has not been amended by said Republic Acts Nos. 2259 and 2260.

Defendants' contention cannot be upheld, for said Section 34 of Commonwealth Act No. 39 is inconsistent with Section 5 of Republic Act No. 2259, which provides:

> "The incumbent appointive City Mayors, Vice-Mayors and Councilors, unless sooner removed or suspended for cause, shall continue in office until their successors shall have been elected in the next general elections for local officials and shall have qualified. Incumbent appointive

city secretaries shall, unless sooner removed or suspended for cause, continue in office until as elective city council or municipal board shall have been elected and qualified; thereafter the city secretary shall be elected by majority vote of the elective city council or municipal board. All other city officials now appointed by the President of the Philippines may not be removed from office except for cause."

and Section 9 of said Republic Act No. 2259 expressly repeals "all acts or parts of acts x x x inconsistent with the provisions" thereof.

It is conceded that the Chief of Police of Zamboanga City is a member of our civil service system (Section 5, Republic Act No. 2260). Hence, he cannot be "removed or suspended except for cause, as provided by law and after due process" (Section 33, Republic Act No. 2260). It cannot be denied that the attempt to terminate the services of plaintiff herein, as de jure holder of said office, entailed his removal therefrom, even more than the attempt to transfer the provincial fiscal of Negros Oriental and the City Engineer of Baguio without their consent was held in Lacson vs. Romero (47 Off. Gaz., 1778) and De los Santos vs. Mallare (87 Phil. 289) to constitute an illegal removal from their respective offices.

Defendants argue that the above quoted provision in Section 5 of Republic Act No. 2259 is inapplicable to the case at bar because plaintiff herein has not been removed from office, his term of office having merely expired when the President terminated his services. Suffice it to say that this attempt to terminate plaintiff's services was predicated upon said Section 34 of Commonwealth Act No. 39, pursuant to which the Executive may "remove at pleasure" the Chief of Police of Zamboanga City, and that this is the reason why Section 5 of Republic Act No. 2259 speaks, also, of removal to indicate that it seeks to withdraw or eliminate precisely such power to "remove to pleasure" under Commonwealth Act No. 39, among other pertinent legislations.

Again, the question whether or not a special law has been repealed or amended by one or more subsequent general laws is dependent mainly upon the intent of Congress in enacting the latter. The discussions on the floor of Congress show beyond doubt that its members intended to amend or repeal all provisions of special laws inconsistent with the provisions of Republic Act No. 2259, except those which are expressly excluded from the operation thereof. In fact, the explanatory note to Senate Bill No. 2, which, upon, approval, became Republic Act No. 2259, specifically mentions Zamboanga City, among others that had been considered by the authors of the bill in drafting the same. Similarly, Section 1 of Republic Act No. 2259 makes reference to "all chartered cities in the Philippines," whereas Section 8 excludes from the operation of the Act "the cities of Manila, Cavite, Trece Martires and Tagaytay," and Section 4 contains a proviso exclusively for the City of Baguio, thus showing clearly that all cities not particularly excepted from the provisions of said Act—including, therefore, the City of Zamboanga—are subject thereto.

The case of Fernandez vs. Ledesma, L-18878 (March 30, 1963), relied upon by the defendant herein, is not in point, the termination of the services of the officer involved in the Fernandez case having taken place on April 28, 1959, or prior to the approval of Republic Act No. 2259, on June 19, 1959, whereas plaintiff herein was advised of the attempt to terminate his services on May 23, 1963, or almost four (4) years after said legislation had become effective.

It is next urged, however, that the provision in Section 5 of Republic Act No. 2259, to the effect that "all other officials now appointed by the President of the Philippines may not be removed from office except for cause" is a rider violative of the constitutional injunction that "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill", that of Republic Act No. 2259, being:

"AN ACT MAKING ELECTIVE THE OFFICES OF MAYOR, VICE-MAYOR AND COUNCILORS IN CHARTERED CITIES, REGULATING THE ELECTION IN SUCH CITIES AND FIXING THE SALARIES AND TENURE OF SUCH OFFICES."

It is claimed that the contents of the aforementioned provision are alien to the subject of this title and that consequently said provision is unconstitutional. This pretense is untenable. As stated in the explanatory note to the aforementioned Senate Bill No. 2, the purpose thereof is to establish "uniformity in the number of city officials, in the manner in which they are to be chosen, in the extent of their powers, duties and functions", as well as "equality in the rights and privileges enjoyed by the residents of said cities, particularly the right to choose the officials who should be at the helm of their respective city governments". Obviously, the matter of the conditions under which local officials appointed by the President may be removed from office not only is germane to such purpose, but, also, forms an essential part thereof.

Furthermore, as stated in Inchong vs. Fernandez, G. R. No. L-1995 (May 31, 1957):

"One purpose of the constitutional directive that the subject of a bill should be embraced in its title is to apprise the legislators of the purpose, the nature and scope of its provisions, and prevent the enactment into law of its matters which have not received the notice, action and study of the legislators or of the public. In the case at bar it cannot be claimed that the legislators have not been apprised of the nature of the law, especially the nationalization and prohibition provisions. The legislators took active interest in the discussion of the law x x x."

In the case at bar, the provision in question was, similarly, debated upon on the floor of Congress, whose members were, therefore, actually aware of its existence.

WHEREFORE, we hold that said provision in Section 5 of Republic Act No. 2259 is constitutional and valid; that as Chief of Police of Zamboanga City, plaintiff Libarnes is entitled to the benefits of the aforementioned provision; and that, pursuant thereto and to Section 32 of Republic Act No. 2260, he no longer holds the office at the pleasure of the Executive, and may be removed therefrom only "for cause as provided by law and after due process," and, accordingly, judgment is hereby rendered declaring that plaintiff Lucio C. Libarnes is still the de jure Chief of Police of Zamboanga City, and that, as such, he is entitled to continue holding said office and discharging the powers and duties thereof, and, consequently, enjoining the defendants herein, as well as their subordinates or persons acting in their behalf, to refrain from molesting the plaintiff, or otherwise interfering in the possession of said office, and in the discharge of the powers and duties attached thereto, with costs against said defendants.

IT IS SO ORDERED.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concurred.

II

People of the Philippines, plaintiff-appellee vs. Pascual Curiano, et al., defendants-appellants, G.R. Nos. L-15256 and L-15257, October 31, 1963, Barrera, J.:

1. CRIMINAL PROCEDURE; NEW TRIAL; RETRACTIONS OF WITNESSES; WHEN NOT GROUNDS FOR NEW TRIAL. —Evidence which merely seeks to impeach the evidence upon which the conviction was based (U.S. v. Smith, 8 Phil. 674; U.S. v. Valdez, 30 Phil. 290; U.S. v. Lee, 38 Phil. 466; U.S. v. Singuimoto, 3 Phil. 176), or retraction of witnesses (People v. Olfindo, 47 Phil. 1; U.S. v. Dacir, 26 Phil. 503; People v. Follantes, 64 Phil. 527), will not constitute grounds for new trial, unless it is shown that there is no evidence sustaining the judgment of conviction except the testimony of the retracting witness (U.S. v. Dacir, supra; People v. Gallemos, 61 Phil. 884; People v. Cu Unjieng, 61 Phil. 906.

2. ID.; ID. ID.; ID.; REASON FOR THE RULE.—The reason for this rule is that if new trial should be granted at every instance where an interested party succeeds in inducing some of the witnesses to vary their testimony outside of court after trial, there would be no end to every litigation (Reyes v. People, 71 Phil. 598).

3. ID.; ID.; AFFIDAVIT OF A PERSON CONVICTED OF A CRIME EXECUTED SUBSEQUENT TO CONVICTION; WHEN NOT GROUND FOR NEW TRIAL.—It has been held that an affidavit, which a person convicted of a crime (as in the instant case) executed subsequent to his conviction, to the effect that another person, also convicted of criminal participation in the same offense, did not actually take part therein, furnishes no ground for a new trial (U.S. v. Smith, 8 Phil. 674).

4. ID.; ID.; WITNESSES; RETRACTIONS; WHEN PRESENTATION THEREOF NOT GROUND FOR NEW TRIAL.— It is unnecessary to grant a new trial when there is no assurance that the witness to be introduced could not have been presented at the original hearing; and his testimony will not materially improve defendant's position (People v. Torres, 73 Phil. 107).

5. ID.; ID.; ID.; TESTIMONIES TAKEN BEFORE COURTS OF JUSTICE; DANGEROUS RULE TO REJECT THEM UPON RETRACTIONS OF WITNESSES.—In People v. Ubina (G. R. No. L-6969, prom. August 31, 1955), it was held that "it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses."

6. ID.; ID.; AFFIDAVITS OF RETRACTIONS OF WITNESSES; PREPARED FOR MONEY CONSIDERATION; NOT GROUND FOR NEW TRIAL.—The Supreme Court has consistently refused to entertain motions for new trial based on improbability of the alleged new versions of the commission of the crime, and the easiness and facility with which such affidavits are obtained (People v. Monadi, G.R. Nos. L-3770-71, pro. September 27, 1955 ;People v. Aguipo, G. R. No. L-12655, prom. June 30, 1960), and the probability of their being repudiated later (People v. Galamiton, G. R. No. L-6302, prom. August 25, 1954). It is likewise not improbable that such schemes are conceived and carried out for a consideration, usually monetary (People v. Francisco, G.R. No. L-5900, prom. May 14, 1954). There is, therefore, no reason for acceding to appellants' motion for new trial.

7. ID.; CRIMINAL EVIDENCE; **ALIBI**; REQUISITE FOR ADMISSIBILITY AS EVIDENCE.—In the long line of cases, it had been held that in order to establish an **alibi**, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place. (People v. Alban, G. R. No. L-15203, prom. March 29, 1961, citing People v. Oxiles, 20 Phil. 587; People v. Palamos, 49 Phil. 601; People v. Resabal, 50 Phil. 80; People v. Niem, 75 Phil. 668.)

8. ID.; ID., WITNESSES; CREDIBILITY; FINDINGS OF TRIAL COURT NOT DISTURBED BY APPELLATE COURTS; EXCEPTIONS.—Where the appeal merely involves the credibility of the various witnesses, the rule is well-established that appellate courts will not generally disturb the findings of the trial court, as the latter is in a better position to decide the question, having seen and heard the witnesses themselves and observed their behavior and manner of testifying during the trial, except when it is shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case (People vs. Alban, G. R. No. L-15203, March 29, 1961, citing People vs. Berganio, G.R. No. L-10121, prom. January 22, 1957). The trial court in the case at bar has made a complete and through analysis of the various testemonies which we found to be properly and well-supported by the evidence adduced.

9. ID.; ID.; **ALIBI**; WHEN **ALIBI** IS OVERCOME BY IDENTIFICATION OF ACCUSED BY AN EYEWITNESS.— The **alibi** of the appellants cannot overcome the testimony of a wtness and eyewitness to the bloody incident who testified in a clear, credible, straightforward, and convincing manner and who positively indentified appellants as the perpetrators of the crimes in question.

10. CRIMINAL LAW; MURDER; AGGRAVATING CIRCUMSTANCE; SUDDEN AND UN-EXPECTED ATTACK OF VICTIMS.—There was treachery, which qualified the killing of the four victims, to murder, as the attack was so sudden and unexpected, thereby insuring the accomplishment of the crimes, without risk to appellants arising from the defense which they (victims) might have offered (People v. Alban, supra, citing People v. Godines Martinez, G.R. No. L-12268, prom. November 28, 1959; People v. Ambahang, G. R. No. L-12907, prom. May 30, 1960).

11. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; ACCUSED ALL ARMED WITH DEADLY WEAPONS AND SUPERIOR IN NUMBERS.—Abuse of superior strength was also attendant, it appearing that appellants, aside from being all armed with deadly weapons, were decidedly superior in number- [8 in all] in relation to the number of the assaulted parties [only 3 and a boy of 2 years] (U.S. v. Tandoc, 40 Phil. 954; People v. Caroz, 68 Phil. 521).

12. ID.; ID.; KILLING IN DWELLING OF VICTIMS.—The circumstance of dwelling may, further, be considered as to the killing of Daniel Errabo, Engracia Salazar, and Mario Errabo, as it occurred in their dwelling place (the hut) or on the ground thereof (U.S. v. Macariñas, 40 Phil. 1).

13. ID.; ID.; NIGHTTIME ABSORBED IN TREACHERY.—The aggravating circumstance of nighttime, although present, may not be taken into account, inasmuch as it is absorbed in treachery (People v. Balagtas, 68 Phil. 675).

14. ID.; ID.; CRUELTY; NUMBER OF WOUNDS FOUND UPON CORPSE; WHEN CONSIDERED AS AGGRAVATING CIRCUMSTANCE OF CRUELTY.—Neither may the circumstance of cruelty as found by the trial court be considered, be-

cause there is no showing that the other wounds found on the bodies of the victims were inflicted unnecessarily while they were still alive in order to prolong their physical suffering. The number of wounds found upon the corpse does not, by itself alone, justify the acceptance of the circumstance of cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victims (People v. Aguinaldo, 55 Phil. 610; See also People v. Dayug, 49 Phil. 423; People v. Daquiña, 60 Phil. 279).

15. ID.; ID.; LACK OF PROVOCATION; NOT AGGRAVATING CIRCUMSTANCE ENUMERATED BY THE REVISED PENAL CODE.—The circumstance of lack of provocation was incorrectly considered by the trial court as aggravating in the killing of the Errabos; the same is not one of the aggravating circumstances enumerated in the Revised Penal Code.

DECISION

Pascual Curano alias Paping, Candido Violante, Francisco Tafalla, Marcelo Tafalla, Santos Tafalla, Herminigildo Tafalla, Olimpio Tafalla, and Pamfilo Balasbas, were charged in the Court of First Instance of Samar with the crimes of murder (Crim. Case No. 4535),[1] for the killing of Rafael Yboa and multiple murder (Crim. Case No. 4565)[2] for the killing of Daniel Errabo, Engracia Salazar, and Mario Errabo. On arraignment, they pleaded not guilty and, upon motion of the Provincial Fiscal consented to by defense counsel, the cases were jointly tried in said court. After trial, defendants were found guilty of the crimes of murder and multiple murder as charged and, considering the presence of four (4) aggravating circumstances in the murder case and five (5) aggravating circumstances in the triple murder case, without any mitigating circumstance in either of the two cases, were sentenced each to the maximum penalty of death, with the accessory penalties inherent in said crimes, and to pay indemnity (jointly and severally) in the sum of ₱5,000.00 to the heirs of Rafael Yboa, ₱5,000.00 to the heirs of Daniel Errabo, ₱5,000.00 to the heirs of Engracia Salazar, and ₱5,000.00 to the heirs of Mario Errabo, and to pay the corresponding costs.

Both cases are now before us for review, in accordance with Section 9, Rule 118 of the Rules of Court.

Pending appeal in this Court, counsel for appellants submitted a motion for new trial, based on newly-discovered evidence, consisting of the affidavits of (1) appellant Herminigildo Tafalla, to the effect that only he and three others who are still at large, namely, Sebastian Loyo, Rodolfo Catalan, and Jose Catalan, were the real authors of the murder [Annexes A and A-17; Remedios Rojas, Herminigildo's common-law wife, corroborating to a substantial degree said affidavit of appellant Herminigildo Tafalla [Annexes B and B-17; (3) Andres Caber, to the effect that said Rodolfo Catalan told him and several others that only he [Rodolfo], his brother Jose Catalan, Sebastian Loyo, and appellant Hermenigildo Tafalla committed the murders [Annexes C and C1]; (4) Cornelia Chan, wife of accused Francisco Tafalla, to the same effect substantially as the affidavit of Andres Caber [Annexes D and D-1]; (5) Floro Opiniano, relating how his cousins Jose and Rodolfo Catalan came to him in Ormoc City looking for jobs, and how seeing them restless, asked Rodolfo what the matter was, and the latter confided that he and Hermenegildo Tafalla participated in the killing of Rafael Yboa [Annex E]; and (6) appellant Santos Tafalla, to the effect that it was not true, as he was wrongfully advised to state in court, that he saw that Olimpio, Lucilo and Hermenigildo Tafalla sailing in a banca towards the scene of the crime [Annexes F and F-1]. Action on said motion for new trial was deferred by resolution of this Court on July 13, 1959.

These affidavits, we now find, are without merit. Appellant Herminigildo Tafalla's affidavit is, evidently, a last-minute attempt to save the lives of his co-appellants, most important of whom are his brothers Francisco, Olimpio, and Lucilo Tafalla, who with him have been sentenced to death for the commission of the gruesome crimes at bar. Likewise, since the crimes could not have been committed by only one person as observed by the trial court, it has been deemed expedient to implicate the Catalan brothers (Jose and Rodolfo) who, anyway, could not be apprehended since their whereabouts are unknown. Appellant Herminigildo Tafalla, also, had to implicate Sebastian Loyo, who according to witness Sgt. Primitivo Gonzales, has been of so much help in the solution of the cases. It is to be noted that the conviction of the other appellants had not been based on appellant Herminigildo Tafalla's testimony, since the latter had all along relied on an alibi. It is, therefore, now too late for him to present for the first time a different theory of the said cases. Besides, the story of these affiants can not be considered as newly discovered evidence because it appears from the affidavits that as early as June, 1957, or only over a month after the incident, the admission of the Catalans was already known to the wives of two of the accused, but nothing has been done to present the evidence to the court until long after the conviction of the appellants. In fact the motion for new trial was only filed here in this Court.

Evidence which merely seeks to impeach the evidence upon which the conviction was based (U.S. v. Smith, 9 Phil. 674; U.S. v. Valdez, 30 Phil. 290; U.S. v. Lee, 38 Phil. 466; U.S. v. Singuimoto, 3 Phil. 176), or retractions of witnesses (People v. Olfindo, 47 Phil. 1; U.S. v. Dacir, 26 Phil. 503; People v. Follantes, 64 Phil. 527), will not constitute grounds for new trial, unless it is shown that there is no evidence sustaining the judgment of conviction except the testimony of the retracting witness) U.S. v. Dacir, supra; People v. Gallemos, 61 Phil. 684; People v. Cu Unjieng, 61 Phil 906). The reason for this rule is that if new trial should be granted at every instance where an interested party succeeds in inducing some of the witnesses to vary their testimony outside of court after trial, there would be no end to every litigation (Reyes v. People, 71 Phil. 598). It has been held that an affidavit, which a person convicted of a crime as in the instant case) executed subsequent to his conviction, to the effect that another person, also convicted of criminal participation in the same offense, did not actually take part therein, furnishes no ground for a new trial (U.S. v. Smith, 8 Phil. 674). And, it is unnecessary to grant a new trial when there is no assurance that the witness to be introduced could not have been presented at the original hearing; and his testimony will not materially improve defendant's position (People v. Torres, 73 Phil. 107.) In People v. Farol (G. R. Nos. L-9424, prom. May 30, 1956), we declared:

> "x x x resort to the use of affidavits of recantation x x x is becoming rather common. Appellate courts must therefore be wary of accepting such affidavits at their face value, always bearing in mind that the testimony which they purport to vary or contradict was taken in an open and free trial in the court of justice and under conditions calculated to discourage and forestall falsehood, these conditions being as pointed out in the case of U.S. v. Dacir (26 Phil. 507) that such testimony 'is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course of a solemn trial in an open court; that the witness is subject to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his atti-

[1]G.R. No. L-15256.
[2]G.R. No. L-15257.

tude of mind towards the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the intention of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness. Unless there be special circumstances which, coupled with the retraction of the witness, really raise a doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to a criminal litigation and the administration of justice would be at the mercy of criminals and the unscrupulous. x x x."

In People v. Ubiña (G. R. No. L-6969, prom. August 31, 1955), we said that "it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses". We have consistently refused to entertain motions for new trial based on improbability of the alleged new versions of the commission of the crime, and the easiness and facility with which such affidavits are obtained (People v. Monadi, G. R. Nos. L-3770-71, prom. September 27, 1955; People v. Aguipo, G. R. No. L-12655, prom. June 30, 1960), and the probability of their being repudiated later (People v. Galamitan, G. R. No. L-6302, prom. August 25, 1954). It is likewise not improbable that such schemes are conceived and carried out for a consideration, usually monetary (People v. Francisco, G. R. No. L-5900, prom. May 14, 1954). There is, therefore, no reason for acceding to appellants' motion for new trial.

Coming now to the merits of the cases, according to the evidence for the prosecution, and as found by the trial court, in the early morning of April 30, 1957, Rafael Yboa (of Barrio Mercedes, Catbalogan, Samar) and his wife Juanita Yboa went to Sition Cagutsan, Bario Mahacob, Tarangan, Samar; where they have a big parcel of land. At said sitio, the only dwelling place was the little shabby hut, where their tenant Daniel Errabo lived with his wife Engracia Salazar and their two-year old son Mario Errabo. Rafael Yboa and Juanita Yboa arrived at the hut at around 10:00 o'clock in the morning. Said hut, which was partly walled by roughly woven coconut leaves, measured 10 feet on the frontage, by about 6 feet wide, with a floor made of course bamboo splits 15 inches above the ground. It had a very low roof made of nipa. It was erected near the still standing posts of a destroyed house of Rafael Yboa (Exh. NN). It was only 85 feet away from the shoreline. (Exh. MM).

Rafael Yboa and his wife went to Sitio Cagutsan that day to verify the information given by Daniel Errabo that appellant herein Pascual Curiano had been cutting some trees for posts from Rafael Yboa's land in Sitio Talabon not far from Sitio Cagutsan, which property was the subject of a pending litigation between Rafael Yboa and appellant Pascual Curiano Rafael Yboa, his wife, and Daniel Errabo proceeded to the land at Sitio Talabon where they found some trees already cut. But only the stumps were there; the trunks were already carried away. Having been told by Daniel Errabo that appellant Herminigildo Tafalla also cut some trees, they hastened to said appellant's house at Sitio Sogod, a place very near and adjoining Sitio Cagutsan. They found on the yard of appellant Herminigildo Tafalla's house some split wood intended for firewood. Rafael Yboa confronted said appellant, who angrily retorted saying "These splits of wood are not from your land but from our land."

From the house of appellant Herminigildo Tafalla at Sitio Sogod, the trio proceeded to Barrio Mahacob, one kilometer away, to report to the barrio lieutenant about the cutting of the trees. Rafael Yboa requested the latter to admonish appellant Pascual Curiano to stop cutting the trees in the land while the litigation was pending. The time was about 4:00 o'clock in the afternoon. Leaving Barrio Mahacob at dusk, the trio proceeded to Sitio Cagutsan.

Sitio Cagutsan is a short and narrow tongue of land extending northward to the sea. From the shore on the West where the hut was located to the opposite shore on the East, is a trail 138 regular paces long (Exh. MM). The nearest dwelling place to that hut is another hut in the adjoining sitio, with a distance of more than 100 meters, which is covered by tall trees and thick shrubs growing wild. The way from the one place to the other is along the seashore. Said way is reached by the water during high tide.

At around 8:000 o'clock in the evening of the same day (April 30, 1957) while Rafael Yboa, Juanita Yboa, Daniel Errabo, and Engracia Salazar were taking their supper inside the hut, appellants Francisco Tafalla, Pamfilo Balasbas, and Candido Violante, stealthily approached the hut, snatched the basket which was by the door, and ran away with it. Daniel Errabo ran after them, but was not able to overtake them. The basket contained some rice and tobacco and the eyeglasses of Rafael Yboa.

At around 11:00 o'clock that night, the inmates of the hut stopped conversing, put out the lights, and prepared to retire. Rafael Yboa was seated on the floor with his back against the north wall of the hut (point 6 on Exh. G). Juanita Yboa was also in that position on his left, while Daniel Errabo and Engracia Salazar were leaning against the other wall. Only the little boy Mario Errabo was lying on the floor. Suddenly, Juanita Yboa observed light-beams from flashlights, and heard repressed voices from the nearby beach. After calling the attention of her husband, she and Engracia peeped through the holes or slits in the walls and observed the approaching group of people, eight in number. As they came nearer they were flashing their flashlights and from these light beams as well as the glow of the many lights from the several fishing boats along the beach, Juanita recognized the appellants who were all residents in the place, headed by accused Curiano who was bearing a firearm. As they got at a short distance from the hut, Curiano fired his gun, hitting Rafael Yboa who was then in a kneeling position reaching for matches in thee pockets of his trousers perched on the wall. Appellants Candido Violante, Santos Tafalla, and Pamfilo Balasbas, stood behind appellant Pascual Curiano. Rafael Yboa fell to the floor. Juanita Yboa jumped out of the hut, ran a short distance and bid. Daniel Errabo, Engracia Salazar, and Mario Errabo, also jumped out of the hut, but appellants caught up with them. From her hiding place, Juanita Yboa heard Daniel Errabo and Engracia Zalazar crying aloud thus "Aroy, Paping (referring to appellant Pascual Curiano), please do not kill us because we have not committed any fault", and saw appellant Pascual Curiano standing by with the butt of his rifle (Exh. 3) resting on the ground, while the latter's companions, including appellants Olimpio Tafalla and Herminigildo Tafalla (who earlier were left at the seashore, but by now had joined their companions), hacked and stabbed to death with their boloes Daniel Errabo, Engracia Salazar, and their two-year old son Mario Errabo behind the hut, near the tamarind tree. Juanita Yboa

then heard appellant Pascual Curiano directing his companions to look for and kill her, whereupon, appellants Santos Tafalla; Olimpio Tafalla, and Francisco Tafalla searched the vicinity with their flashlights, but failed to locate her. Moments later, Juanita Yboa saw appellants dragging the bodies of the victims to the beach. Juanita Yboa thereafter crawled from her hiding place until she reached the opposite shore, following the shore line northward and, upon reaching the point, crossed to the islet called Moropuro (Exh. MM) and there hid about the cemetery until dawn. From that point of Sitio Cagutsan to the islet Moropuro is about 200 meters. The water was shallow. From Moropuro, she retraced her steps to Sitio Cagutsan from where she hiked to Barrio Mahayag, went to the house of her son Severino Yboa, and informed him of the tragic incident. Juanita and Severino Yboa hurried to Catbalogan and immediately reported the gory incident she had witnessed to the Philippine Constabulary authorities.

A Constabulary patrol was dispatched to Sitio Cagutsan that same day (May 1, 1957) to investigate. Arriving at the scene of the crime, they made the sketch (Exh. G), found the slug (Exh. I at point 7), the empty shell (Exh. I-1 at point 8), blood stains, and the traces on the ground to the seashore, left by the bodies of the victims (Rafael Yboa, Daniel Errabo, Engracia Salazar, and Mario Errabo) as they were dragged by appellants to the beach (Exh. G).

Three days after the killing, or on May 3, 1957, at around 12:00 o'clock noon, the bodies of the victims were found floating on the sea, about 200 brazas from Cagutsan beach. Rafael Yboa's neck was tied to a rope the other end of which weighted with stone. About 100 brazas from Rafael Yboa's body, were the bodies of Daniel Errabo, his wife Engracia Salazar, and their two-year old son Mario Errabo, joined together by a piece of rope tied around their stomachs and necks, while the other end was tied to four big stones. It appears that after the victims were killed and their bodies dragged to the beach, they were loaded on a banca, tied to heavy stones to constitute as sinkers, and cast into the sea away from the beach for the purpose of concealment. But the sinkers could not hold the bodies at the bottom of the sea after the process of putrefaction had started. For the formation of gas brought about by the decay of the bodies, caused them to swell, making them more buoyant. Hence, their coming to the surface and their recovery.

On May 3 and 4, 1957, a post-mortem examination of the cadavers was performed by Dr. Tomas O. Ricalde, municipal health officer of Catbalogan, Samar. He made the corresponding reports of his findings, drew the sketches showing the location of the wounds sustained by each of the victims, and issued their respective death certificates. His findings are as follows:

(1) Rafael Yboa: 72 years old, in advance state of decomposition, with the following wounds:

1. Wound, gunshot, left midclavicular region; about 1/2 inch below the left nipple.
2. Wounds, gunshot, 7 in number located closed to each other at the region of the right breast and epigastric region.
3. Wound, stabbed, penetrating, epigastric region.
4. Wound, stabbed, penetrating, right iliac region.
5. Wound, gunshot (point of exit), right scapular region.
6. Wound, gunshot (point of exit), left lumbar region.

Cause of death: Shock due to severe hemorrhage, secondary to the above-mentioned wounds. (Exh. A).

(2) Daniel Errabo: 30 years old, in advanced state of decomposition, with the following wounds:

1. Wounds, 16 in number, stabbed scattered at the posterior portion of the body.
2. Wound, stabbed, penetrating, left supra-clavicular region.
3. Wound, stabbed, penetrating, one inch to the right of the right nipple.
4. Wound, stabbed, penetrating, right hypochondriac region.
5. Wound, stabbed, penetrating, right iliac region.
6. Wound, stabbed, left wrist, dorsal surface.
7. Wound, stabbed, right wrist, ventral surface.

Cause of death: Shock due to severe hemorrhage due to above wounds. (Exh. B)

(3) Engracia Salazar: 25 years old, in advanced state of decomposition, with the following wounds:

1. Wound, stabbed, penetrating, left lumbar region.
2. Wounds, stabbed, penetrating, 6 in number, located at the right iliac and lumbar region.

Caused of death: Shock due to severe hemorrhage due to above wounds. (Exh. C)

(4) Mario Errabo: 2 years old, in advanced state of decomposition, with the following wounds:

1. Wound, stabbed, left upper arm cutting the humerus and almost severing the left arm.
2. Wound, stabbed, right hypochondriac region, penetrating the liver.

Caused of death: Shock due to severe hemorrhage due to due to above-mentioned wounds. (Exh. D)

Appellants Pascual Curiano, Herminigildo Tafalla, Santos Tafalla, Francisco Tafalla, Candido Violante, and Pamfilo Balasbas were arrested on May 1, 1957, after Juanita Yboa narrated the incident. Appellants Olimpio Tafalla and Marcelo Tafalla were arrested on May 4, 1957.

Sometime prior to the date of the killing, there existed serious land troubles between the deceased Rafael Yboa and appellants, as disclosed by the following complaints which were filed in court: On January 21, 1955, a complaint for theft of bamboos was filed by the deceased Rafael Yboa against appellants Pascual Curiano and three (3) others in the Justice of the Peace Court of Tarangan, Samar (Exh. FF). On April 1, 1955, a complaint for forcible entry and detainer was filed by the deceased Rafael Yboa against appellant Pascual Curiano in the Justice of the Peace Court of Tarangnan, Samar (Exh. DD-1). On February 23, 1956, complaint for theft (cutting of timber trees) was filed by the deceased Rafael Yboa against appellant Pascual Curiano and seven (7) others in the Justice of the Peace Court of Tarangnan, Samar (Exhs. GG and GG-1). On the same date, a complaint for theft of bamboo post and firewood was filed by the deceased Rafael Yboa against appellants Pascual Curiano and Candido Violante and one Mateo Balasbas in the Justice of the Peace Court of Tarangnan, Samar (Exhs. HH and HH-1). On March 16, 1957, a complaint for theft was filed by the deceased Rafael Yboa against appellant Pamfilo Balasbas and one Rufino Versoza in the Justice of the Peace Court of Tarangnan, Samar (Exhs. JJ and JJ-1). Lastly, on April, 1957, the deceased Rafael Yboa filed a complaint for theft (cutting of timber trees) against appellants Pamfilo Balasbas and Candido Violante, and one Lucio Balasbas in the Justice of the Peace Court of Tarangnan, Samar (Exhs. II and II-1).

On the other hand, appellant Pascual Curiano and two others as plaintiffs, filed on March 2, 1950, a complaint against the deceased Rafael Yboa as defendant, which was docketed as Civil Case No. 4512 of the Court of First Instance of Samar,

involving the piece of land which is the subject matter of the forcible entry and detainer case (Exh. EE) aforementioned.

Appellants' defense is **alibi**, to wit:

Pascual Curiano in the evening of April 30, 1957, rode in a motor boat to a fish corral out in the sea of Mahocob, Tarangnan, Samar, about 2 kilometers from Sitio Cagutsan. After dropping the net at about 9:00 o'clock in the evening, he and his companions in the motor boat, as well as the men who were in charge of the fish corral, went to sleep until 5:00 o'clock of the following morning. Then they loaded 4 **canastas** of fish in the boat, proceeded to another fish corral in Calbo, where they loaded another 3 **canastas** of fish, after which, they sailed for Catbalogan, where they sold all the fish to one Vicente Alabat for ₱60.00. As witnesses he presented Jorge Cortan, Maximo Latoja, Jaime Acain, and Vicente Alabat. Their narrative follows: Appellant Pascual Curiano and Sgt. Acain of the PC stationed at Catbalogan, Samar, were co-owners of the fish corral, the motorboat, and the fish business which was then managed by appellant Pascual Curiano. The fish corral was about 2 kilometers from Sitio Cagutsan. To that fish corral went Jorge Cortan and his 7 helpers, leaving Barrio Silanga on a big banca (sampan) on the night of April 30, 1957. Upon reaching it at about 9 p.m., they dropped the net to catch fish. Shortly after, the motorboat manned by appellant Pascual Curiano, Maximo Latoja, Jaime Acain and one Julian arrived. It was moored to the fish corral and the crew went to sleep. Cortan slept soundly and woke up at 5 a.m. May 1, 1957. Latoja woke up at about 12 p.m. midnight and Jaime Acain at about 2 a.m. and the last two, to urinate. Both Latoja and Acain saw appellant Pascual Curiano sleeping at the time each stood up to urinate. Both returned to sleep after urinating and woke up at about 5 a.m. May 1, 1957. After loading the catch in that fish corral (4 canastas) and buying 3 canastas of fish in Talbo, they sailed to Catbalogan arriving at 7 a.m. and sold their load of fish to one Vicente Alabat for ₱60.00.

The alibi of appellant Pascual Curiano deserves no credit. As observed by the trial court:

"x x x the alibi of Pascual Curiano has all the aspects of fabrication. It has all the characteristics of a story designed to fit the intended purpose of showing the whereabouts of the defendant to be in a place other then that where the crime was committed at the time of its commission. The uniformity of the declarations (of his witnesses), the lack of documentary record, and the omission of the necessary witnesses prove it to be made-up story.

"It is strange that in spite of more than one and a half years that had elapsed, the witnesses could be so accurate not only as to the different hours of their movement, but also as to the quantity and the quality of the fishes which were alleged to have been taken by them from two different fish corrals. As was said above, such uniformity even in the details given by the several witnesses, connotes an agreement among them on the story they would tell the Court.

"If it were true that Curiano had fish corral and was engaged in the business of selling fish on April 30, 1957, he should have exhibited a license for the said fish corral, or a license for the business he claims to have had. Such documents cannot be fabricated. If he had them he would have shown them. By not showing them, the inference is that he had no business on April 30, 1957. It might be that he had it another time: and the story now given could have referred to that other time.

"No one of the seven men alleged to have been with Jorge Cortan was presented to testify. It was not shown that they could not be available. Since an alibi needs all the possible evidence because it can easily be fabricated, those men should not have been omitted. Again, it can be said that from their omission logically arises the inference that if they testified they would have told that the fish corral they served with Jorge Cortan was one in business before April 30, 1957.

"Even conceding that at that time Curiano had a fish corral and arrived thereat at nine o'clock that evening of April 30, 1957, slept in the motorboat at ten o'clock and was found by Cortan. Acain and Latoja to be still there when they woke up at five o'clock the following morning, still the alibi is imperfect. The witnesses said to have slept at ten o'clock and Cortan claimed to have woke up at five o'clock in the morning; Latoja woke up at twelve midnight, stood up to urinate, saw Curiano, slept again, and woke up at five o'clock in the morning; and Acain woke up at two o'clock to urinate, saw Curiano slept again, and woke up also at five in the morning. The declarations of Latoja that he woke up and saw Curiano when he urinated at twelve o'clock and that of Acain at two o'clock are declarations without any support to keep them upright as a good and credible proof. Both are without corroboration. Each stands by itself. How and why could they remember that they urinated at those hours? That they saw Curiano? Could it not be another? The evidence adduced had no answer to these questions. It is believed that in an alibi, these points are relevant indeed. Only their declarations that they woke up at five o'clock in the morning have some color of proof; each corroborated the other. Such being the case, they slept from ten to five o'clock or for seven hours. **Considering the distance of the fish corral to the scene of the crime, even a period of two hours was sufficient for one to go from the fish corral and return to it after the assault.** His companions could have done the disposal of the bodies." (Emphasis supplied, pages 49-52).

Candido Violante and Pamafilo Balasbas loaded 260 bundles of firewoods in their banca in the afternoon of April 29, 1957 and sailed for Catbalogan at about 3 a.m. April 30 to sell those firewood. They failed to sell them to one Marcelino Tuazon of Catbalogan as the latter had plenty of them in stock. So, they carried and peddled them around the town and were able to dispose of 100 bundles on the same day April 30. In the evening, until the morning (May 1), appellant Pamfilo Balasbas and his wife slept in the kitchen of Marcelino Tuazon's house at Catbalogan, while appellant Candido Violante slept in the banca to watch the remaining firewood. On May 1, 1957, they sold the remaining 160 bundles of firewood, after which, they went shopping and left Catbalogan at 7 a.m. of the same day, reaching their house at noontime.

As witnesses they presented Marcelino Tuazon, Encarnacion Bolos, and Porfiria Bellasana. Their narrative follows: Appellants Candido Violante and Pamfilo Balasbas were together in Catbalogan, Samar, from the morning of April 30, to the morning of May 1, 1957. Violante and Balasbas had 260 bundles of firewood in the yard of their houses at Sitio Dalongdong, Mahacob, Tarangnan, Samar, to be brought to Catbalogan. They loaded them in the banca in the afternoon of April 29, 1957. At about 3 a.m. April 30, Violante and Balasbas sailed for Catbalogan. Porfiria Bellasana, wife of Villante, went with them. They arrived at Catbalogan at 8:00 a.m. that morning and docked near the house of Marcelino Tuazon, a firewood dealer at Catbalogan. The latter did not buy the

firewood as he had still some in stock. Violante and Balasbas then peddled them around the town and then went to the market the whole day until all of the firewood were sold. In the meantime, Porfiria Bellasana went to a photographer to have her picture taken (Exh. 8-a) and then proceeded to the Justice of the Peace Court for the contract Exhibit 6 which she made with a recruiter of an employment agency. Violante, Balasbas and Porfiria ate their 3 meals that day at the house of Tuazon. After taking their supper at 7 p.m., Violante and his wife Porfiria slept in the kitchen of Tuazon's house and Balasbas slept in the banca. They left Catbalogan at 7 a.m. May 1, 1957 and reached their homes in Dalongdong at noon. Porfiria Bellasana took that trip to Catbalogan to make the necessary arrangement with the recruiter about the employment of her cousin Engracia Cabarles. On that trip, Engracia was in another boat with Peling, Cleto and Filomena. The banca where Engracia and other companions boarded and that where Porfiria, Violante, and Balasbas were, sailed together from Dalongdong until Catbalogan. The two vessels were side by side and only about 5 meters apart during the whole trip.

Also, the alibi of appellants Candido Violante and Pamfilo Balasbas is unconvincing. We agree with the following observation of the trial court:

"The story is faulty. The declaration of the witnesses show that the story is fabricated. It has the following flaws and cracks:

"1. Marcelino Tuazon lied throughout his declaration. He claims to be engaged in business dealing in firewood. x x x But he had no license for that business x x x nor kept any record of his transactions. x x x In all his answers, in the direct as well as the cross-examination, he could not give dates, much less hours, when he purchased firewood from several dealers. But yet he could give not only the date, April 30, 1957, but also the hours; and further, the movements of Violante and Balasbas even if he did not buy firewood from them. And no reasons were shown for so remembering that particular date, the hours and their movements.

"2. If it were true that they were at Tuazon's house during the whole night of April 30-May 1, 1957, Violante, Balasbas, and/or Porfiria could have told the constables who held the first two that afternoon for the murder that took place in Cagutsan. None of them told the soldiers. Not even when they were kept in the Constabulary barracks whch was only a few meters to the house of Tuazon. Even Tuazon was not informed of their arrest by any one of them although they could do so had they wanted to. They could not make that information because it did not happen. They had to fabricate an alibi, the only feasible defense in these case. Tuazon was the only stranger available for the fabricated story. Encarnacion Bolos and Perfiria Bellasana are the wives of the two accused.

"3. Why Engracia Cabarles and/or any of her companions in the other banca (Feling, Cleto, Filomena) were not called to testify, was not shown; they knew them; and they know where they were at the time of the trial of the case. x x x Porfiria Bellasana who was used to make trips to Catbalogan without her husband was alleged to have a trip with him for the first time only that day; and for a purpose which had no concern with him x x x Porfiria accompanied her cousin Engracia to Catbalogan. She was her guardian; and she expected money from the transaction she was to have with Peling. x x x Peling was interested in her recruitment work. Porfiria was interested in the money she could get out of the deal. Peling hired Cleto to bring them to Catbalogan. Filomena, the wife of Cleto, accompanied her husband. So in the early morning of April 30, 1957, Cleto and the four women (Porfiria Vellasana, Engracia, Peling, and Filomena) in one banca, left Dalongdong for Catbalogan on April 30, 1957, when the contract Exhibit G was executed. Engracia, Peling, Filomena and Cleto would have thus testified if called to the witness stand. Hence, their omission.

"4. Porfiria's declaration about the picture-taking she and Engracia had on April 30, 1957, proved her to be lying. x x x The figure on the right of the picture marked Exhibit 8-A is that of Porfiria, and that on the left marked Exhibit 8-B is that of Engracia. Porfiria referred to this picture when she declared that she and Engracia posed for it before the photographer. The figure below Porfiria's figure (Exh. 8-A) is the head of a woman. It is clear that the picture was not posed by Porfiria and Engracia alone as claimed by Porfiria in her declaration, but one taken from a group picture of at least three women.

"That declaration of Porfiria about she and Engracia only posing on April 30, 1957, is of substance as it affect the date which is relevant to the issue. It is therefore a material declaration; one which tries to make evident a point of consequence. Having lied, and knowingly, on a material point, she made her whole testimony incredible. (Falsus, in uno, falsus in omnibus).

"Our experience shows that several persons witnessing an incident and later give a decription of it, they will surely differ widely as to details or collateral matters while agreeing on the particular thing which is the incident itself. But in this alibi of Violante and Balasbas, we have the declarations of all the witnesses agree on all the details and regarding the movements of the persons concerned and the time when such movements were alleged to have taken place; and, in spite of the lapse of one year and seven months. Such a perfect narration connotes an agreement among the witnesses of the story to be told; a fabrication of the alleged alibi." (Emphasis supplied; pages 40-41, Decision.)

Olimpio Tafalla and Marcelo Tafalla attended a meeting held in the house of Councilor Joaquin Nanaunag at Barrio Mahacob, Tarangnan, Samar, from 8 to 12 p.m. April 30, 1957, after which. they went home and slept till the next morning May 1, 1957.

As witnesses, appellants presented Joaquin Nabaunag, Leoncio Beato, and Paciencia Molito, whose story follows: Nabaunag was the municipal councilor for Barrio Mahacob; Beato was the assistant barrio lieutenant of Mahacob; and Paciencia Molito is the wife of appellant Olimpio Tafalla. On April 30, 1957, from 1 to 4 p.m., the councilors of Tarangnan were at Mahacob and had its session attended by many residents of the barrio including women and, among those who attended, were appellants Olimpio Tafalla and Marcelo Tafalla. Thereafter, the residents of the barrio returned to their homes; after the merienda, the visitors left Mahacob. Then at about 8 p.m., Nabaunag called the officials of the barrio to his house to talk about means to be used in gathering funds needed to defray the expenses for the transportation of a driller to Mahacob. Among those present thereat were appellants Olimpio Tafalla and Marcelo Tafalla. The last persons to leave the house at around 12 p.m., midnight, were five, including appellants Olimpio Tafalla and Marcelo Tafalla.

Likewise, appellants' alibi is unworthy of belief. We concur with the following findings of the trial court:

"x x x x there is nothing in the testimony of the witnesses to show they could not have been mistaken about the time. Could the meeting referred to not have been some time before April 30, 1957? What categorical proof was shown that it was on that day and not on another? Could it have been that the municipal council did not hold any session in Mahacob? Or if it had, was it not on a day other than April 30, 1957? The human memory is short. A meeting must have some minutes. It may be argued that the alleged meeting from eight o'clock to midnight was one without need of any written reminder. But there was an alleged session of the municipal council. It must not be without minutes. Since the testimony of the witnesses was intended to show that the alleged meeting of the barrio residents followed a session of the municipal council, proof of such council session should be produced for precision as to time to avoid uncertainty.

"And the unreliability of the memory of the witnesses is shown by the discrepancy of their testimony about the date when the constables went to Mahacob to arrest Olimpio Tafalla and Lucilo (Marcelo) Tafalla. While Olimpio Tafalla said that he was taken by the soldiers on May 4 (p. 414, t.s.sn.) and Lucilo on May 11 (p. 439, t.s.n.), the municipal councilor Joaquin Nabaunag said that they were on May 1; and he was present when they were so taken (p. 349, t.s.n.)." (Pages 53-54, Decision).

Santos Tafalla attended the same meeting aforementioned from 6 to 10 p.m. on April 30, 1957.

As witnesses, he presented his father-in-law Elias Magallanes, whose narrative is as follows: After taking supper in the night of April 30, 1957, appellant Santo Tafalla went to attend the meeting in the house of councilor Nabaunag.

On this **alibi** of appellant Santos Tafalla, the trial court aptly observed:

"With respect to his going to the house of the councilor that evening of April 30, 1957, Santos Tafalla contradicted his father-in-law who said that he (Santos) went after taking supper.x x x But yet none of those four persons he mentioned was called to testify to his alibi; and no reason was shown for that omission. It can be said that if called, they would belie him.

"Then he went on in his direct testimony that he went home from the house of Councilor Nabaunag at about ten o'clock that evening, and before going up the house he stopped to urinate. x x x Still in direct examination, Santos Tafalla admitted having executed the affidavit Exhibit U (translation Exh. U-1).

"Santos Tafalla who knew the commission of the crime is now excusing himself by throwing the blame to some of his co-defendants. But his alibi is indeed very poor. Since an alibi can easily be fabricated, it should have a strong support in the way of all available proofs. Failure to present such proofs without justifiable excuse, makes this kind of defense suspicious. In an alibi, the testimony of disinterested persons is the most needed. Elias Magallanes is certainly a person who is very much interested in the liberty of Santos Tafalla. Circumstances make him so." (Pages 45-48, Decision.)

Francisco Tafalla went home to Barrio Mahacob, Tarangnan, Samar, at 7 p.m. on April 30, 1957, took supper, and went to sleep until 8 p.m. the following day May 1, 1957.

As witnesses, he presented his wife Cornelia Chan, Aniceto Camas, and Dolores Aquil, whose narrative is to this effect: Cornelia Chan, wife of appellant Francisco Tafalla went to get Dolores Aquil at 7 p.m. on April 30, 1957, and brought her to their house because her grandmother was complaining of severe stomach pain. At that hour, Dolores entered the house, administered to the sick woman, and she saw Francisco Tafalla sleeping thereat. Aniceto Camas stated that the stains in the trousers (Exh. V) of appellant Francisco Tafalla was caused by chicken blood.

We agree with the observation of the trial court as to the incredibility of appellant Francisco Tafalla's **alibi**, to wit:

"How the trousers Exhibit 'V' of Francisco Tafalla happened to be stained with blood as narrated by him and Aniceto Camas is somewhat unusual; some happening that does not run parallel to the ordinary way of man's behavior. It is much of a coincidence that Francisco Tafalla would cut the neck of a dying and beaten chicken and splashed his trousers with blood only several hours before the blood of four persons (the victims) was split. However, he was not picked because his pair of trousers had bloodstains. The trousers were found to have the stains after he was pointed out to be one of the assailants. x x x

"Granting that Dolores went to Francisco's house for the sick woman, could if not be that she went on a night other than the night of April 30? It could have been possible. For with respect to dates, both Cornelia and Dolores were not attentively particular. Neither could tell the date when their patient died. In fact Dolores even went to admit repeatedly that it was on March 30 and not on April 30, when she went to Francisco's house to administer to the sick woman (p. 331, t.s.n.) which she repeated after she tried to show that she knew to remember dates (p. 337, t.s.sn.).

"And on May 1, when the constables went to take along Francisco Tafalla for the murders committed the previous night, both Cornelia and Dolores were there face to face with the constables. Dolores did not say anything; and Cornelia did not make any move to make known to the arresting soldiers the presence of her husband and Dolores in the house that evening. Cornelia persisted on being evasive in her answers until the last moment she was on the witness chair." (Pages 55-57, Decision.)

Lastly, **Herminigildo** Tafalla went home from his farm, slept beside his wife and children in their house at Sitio Sogod, Tarangnan, Samar, from 8 p.m. April 30, to 6 a.m. May 1, 1957. In the afternoon of the latter date (May 1) he was arrested by soldiers.

He did not present any witness to support his alibi, and we are with the trial court that said alibi should not be believed.

Apart from the trial court's observations above-quoted regarding the incredibility of appellants' **alibi** in this case, we note from a cursory examination of the map (Exh. OO) showing the relative distances between the scene of the crimes at bar in Sitio Cagutsan and the sea near Barrio Mahacob, Tarangnan, Samar, where appellant Pascual Curiano allegedly was, and Barrio Mahacob, where appellants Olimpio, Marcelo, Santos, and Francisco Tafalla allegedly were at the time of the commission of said crimes, will clearly show that it has not even established by said appellants' **alibis** that it was physically impossible for for them to be present in nearby Sitio Cagutsan. In a long line of cases, it had been held that in order to establish an **alibi**, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time, that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place. (People v. Alban, G. R. No. L-15203, prom. March 29, 1961, citing People v. Oxiles, 20 Phil. 587;

People v. Palamos, 49 Phil. 601; People v. Resabal, 50 Phil. 780; People v. Niem, 75 Phil. 668.)

The appeal presents no issues of law. It merely involves the credibility of the various witnesses, and the rule is well-established that when the issue involves credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, as the latter is in a better position to decide the question, having been and heard the witnesses themselves and observed their behavior and manner of testifying during the trial, except when it is shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case (People v. Alban, supra, citing People v. Berganio, G. R. No. L-10121, prom. January 22, 1957). The trial court in the case before us has made a complete and thorough analysis of the various testimonies, which we find to be properly and well-supported by the evidence adduced.

Said alibi of appellants, to our mind, cannot overcome the testimony of Juanita Yboa, wife of the deceased Rafael Yboa an eyewitness to the bloody incident, who testified in a clear, credible, straightforward, and convincing manner and who positively identified appellants as the perpetrators of the crimes in question. On this point, the trial court observed:

> "The direct evidence come only from the widow of the deceased Rafael Yboa (Juanita de Yboa), the lone survivor in the group. **Considering her intelligence, her opportunity of knowing the fact, her memory, the heart-rending ordeal she passed, the probabilities and improbabilities of her testimony, the character of her testimony, the long hours of taxing and confusing cross-examination, and her way of answering the question and general behavior while testifying, the Court finds no reason to doubt her declaration.** x x x
>
> Juanita de Yboa recognized six of the accused immediately preceding the fatal moment. When she heard low voices and saw light-beams from flashlights on the beach immediately in front of the hut, she looked through the holes of of the wall of the roughly woven coconut leaves. She recognized the six men approaching the hut from the beach to be Pascual Curiano, Francisco Tafalla and Pamfilo Balasbas, Lucilo (Marcelo) Tafalla, Santos Tafalla, and Candido Violante. Pascual Curiano was holding the rifle that fired at her husband. At the time she was hiding in the bushes, she saw Olimpio Tafalla stab Engracia Salazar and Herminigildo Tafalla stabbed Daniel Errabo.
>
> **"The Court went to the scene of the crime after the testimony of Juanita de Yboa. From the observation of the Court about the make of the hut and the field around, the declaration of Juanita was possible."** (Emphasis supplied, Pages 58-59, Decision.)

Needless to say, said testimony of Juanita Yboa regarding the incident is amply supported by "strong circumstantial proofs which took place before and after" the commission of the crimes. Said the trial court:

> **"That direct evidence is supported by strong circumstantial proofs which took place before and after the incident."**
>
> **"As was said above, the motive of the crime was resentment against Rafael Yboa who continuously annoyed, harassed and humiliated the defendants.** That resentment is briefly expressed by Pascual Curiano in paragraph 9 of his complaint Exhibit 'EE', to wit:
>
> '9. That every time the plaintiffs herein and their laborers are cutting lumber and gathering bamboos and forest products and firewood from the said land of Ramona Moreno, the herein defendant is continuously molesting them by filing either criminal or civil cases against the said plaintiffs particularly Pascual Curiano and his laborers.
>
> "Earlier on that fatal day, Rafael Yboa, Juanita and Daniel Errabo went to that part of the land to verify the report about the recent cutting of trees by Pascual Curiano; then they went to the house of Herminigildo Tafalla who was confronted thereat by Yboa about the pieces of trees on his yard and then they proceeded to the barrio to report to the barrio lieutenant about the recent cutting of trees. Yboa requested the barrio lieutenant to stop Curiano from further cutting any thing in the land until the termination of their litigation about the land pending in court.
>
> "And then at around eight o'clock that evening Sebastina Loyo saw the four accused (Pascual Curiano, Herminigildo Tafalla, Olimpio and Lucilo [Marcelo] Tafalla) pass by his house in Sogod walking toward Cagutsan. Herminigildo Tafalla was carrying a rifle. At about three o'clock following the time when they passed by his house, he met them again. This time it was on the beach. They were in a banca which docked in front of the house of Herminigildo Tafalla. Afraid of the threat of Pascual Curiano, he allowed the rifle to be left in his house. The presence of the rifle therein made him and his family move to Dalongdong.
>
> "On May 16, 1957, Herminigildo Tafalla revealed to Sergeant Gonzales that the gun was hidden in the house of Loyo. It was found in that house. The gun is now marked Exhibit 'E'.
>
> "A ballistic examination showed that the slug (Exh. 'I') and the empty shell (Exh. I-1) which were found about the scene of the incident, were fired from the rifle Exhibit 'E'.
>
> "On May 2, 1957, Olimpio Tafalla, referring to the blood-stains in the banca told Encarnacion Bolos to tell any one who might inquire about those blood-stains that a butchered pig was loaded in the banca.
>
> "The laboratory examination showed the stains to be 'positive for blood'.
>
> "It is important to note that Olimpio Tafalla was one of the four who was seen by Sebastian Loyo at about three o'clock boarded in a banca.
>
> "And Josef Nabaunag said so in Exhibit 'KK' that he saw Olimpio Tafalla at about two or three o'clock that morning sailing in the banca of Encarnacion Bolos.
>
> "Two events are noteworthy: (1) It was about eight o'clock that evening when Juanita saw Francisco Tafalla, Pamfilo Balasbas, and Candido Violante snatched the basket from the door of the hut; (2) it was also about that time when Sebastian Loyo saw Pascual Curiano, Herminigildo Tafalla, Olimpio Tafalla and Lucilo Tafalla passed by his house in Sogod walking towards Cagutsan. So that while some of the accused were on their way to Cagutsan the others were already there to perform some preliminaries for the main objective.
>
> "The examination about the presence of the blood stains on the trousers Exhibit 'U' of Candido Violante and on the trousers Exhibit 'V' of Francisco Tafalla, were silly.
>
> **"Against the strong and convincing proofs which clearly and directly point at the accused to be the perpetrators of the heinous and savage murders, the defendants put in several and separate alibi which were made incredible by the absurd stories told to support them.**

"By the evidence, there is no doubt in the mind of the Court that the defendants are guilty of the crimes they stand charged in both informations." (Emphasis supplied, Pages 59-62, Decision.)

There was conspiracy on the part of appellants in the commission of the crimes, which make each of them liable for the crimes committed and for as many victims killed. As pointed out by the trial court:

> The manner of the commission of the crime shows a concerted action by several persons who conspired and confederated together and helped each other in its execution.
>
> "That there was a previous planning about the execution of the crime, is clear enough. The perpetrators must have met that evening at a given place, and from there went together to the place where they knew their victims were to be found at the time. The act was impelled by revenge. Robbery could not have been the motive. There was nothing to take with intent to gain from the intended victims. Nothing of value would be kept in such a frail hut which was in an isolated place. x x x" (Pages 9-10, Decision.)

There was treachery, which qualified the killing of the four victims, to murder, as the attack was so sudden and unexpected, thereby insuring the accomplishment of the crimes, without risk to appellants arising from the defense which they (victims) might have offered (People v.Alban, **supra**, citing People v. Godinez Martinez, G.R. No. L-12268, Prom. November 28, 1959; People v. Ambahang, G. R. No. L-12907, prom. May 30, 1960). The trial court stated thus:

> "That the act was committed with treachery, cannot be doubted. The victims were surprised. They were not given the least warning. The attack was instantaneous. They were not afforded the least chance to escape. They fired at Rafael Yboa. When the other inmates jumped from the hut to escape, the offenders were around to meet and assault them at that time when they could not offer any resistance or defense. The offenders employed means which tended to insure the execution of the intended crime. x xx." (Page 11, Decision.)

There was evident premeditation in the commission of the crimes. According to the trial court:

> "x x x The pieces of rope and stones were objects which could not have been picked up anywhere at that time of the night and in that isolated place. The rope and the stones were in the banca before they went to the place of the incident. This was another part of the plan. The synchronized movements of the actors which made possible the successful termination of their acts from the killing so the disposal of the bodies, during such a brief period, must be the result of a pre-conceived plan. All the preparations to carry out the conceived plan could not have been effected in a short expanse of time. It could have taken at least hours, possibly days. In premeditation, there is no fixed period of time. The period of time necessary to justify the inference that there is known premeditation is a period sufficient in the judicial sense to give the accused full opportunity for meditation and reflection, and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to harken to its warnings. (U.S. v. Blanco, 18 Phil. 208.) x x x." (Pages 10-11, Decision.)

Abuse of superior strength was also attendant, it appearing that appellants, aside from being all armed with deadly weapons, were decidedly superior in number [8 in all] in relation to the number of the assaulted parties [only 3 and a boy of 2 years] (U.S. v. Tandoc, 40 Phil. 954; People v. Caroz, 68 Phil. 521).

The aggravating circumstance of uninhabited place attended the commission of the crimes. On this point, the trial court pointed out that—

> "Considering the trees that abound and the thick shrubbery which was growing between the place of the incident and the nearest house which was more than one hundred meters away, the circumstance of uninhabited place has to be taken into account as it was apparent that at such a place the victims did not have a chance of being seen and helped by another person." (Page 12, Decision.)

The circumstance of dwelling may, further, be considered as to the killing of Daniel Errabo, Engracia Salazar, and Mario Errabo, as it occurred in their dwelling place (the hut) or on the ground thereof (U.S. v. Macariñas, 40 Phil. 1).

The aggravating circumstance of nighttime, although present, may not be taken into account, inasmuch as it is absorbed in treachery (People v. Balagtas, 68 Phil. 675). Neither may we consider the circumstance of cruelty as found by the trial court, because there is no showing that the other wounds found on the bodies of the victims were inflicted unnecessarily while they were still alive in order to prolong their physical suffering. The number of wounds found upon the corpse does not, by itself alone, justify the acceptance of the circumstance of cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victims (People v. Aguinaldo, 55 Phil. 610; See also People v. Dayug, 49 Phil. 423; People v. Daquiña, 60 Phil. 279). Lastly, the circumstance of lack of provocation was incorrectly considered by the trial court as aggravating in the killing of the Errabos; the same is not one of the aggravating circumstances enumerated in the Revised Penal Code.

In the circumstances, we find each of the appellants guilty of four (4) crimes of murder in the two (2) cases reviewed. However in view of the lack of the required number of 8 votes, the death penalty imposed by the trial court upon each of the appellants is hereby reduced to life imprisonment for each of the four crimes committed, the maximum of which shall not exceed forty years. The indemnity adjudged by the trial court is, however, increased from ₱5,000.00 to ₱6,000.00.

Modified, as above indicated, the judgment of the trial court, is affirmed, with costs against the appellants.

SO ORDERED.

Bengzon, C.J., Bautista Angelo, Concepcion Reyes, Paredes, Dizon, Regala and Makalintal, JJ., concurred.