

People of the Philippines vs. Aquilino Pacala and Tranquilino Pacala Jr., alias Chacoy
G.R. No. L-26647, August 15, 1974
58 SCRA 370

FACTS:

A farmer was killed by a group of armed men near his hut located about 130 meters away from the seashore. His son who was with him was able to run and hide. He recognized the five assailants and saw how his father was hacked several times with a bolo. Afterwards, the five men left the victim and proceeded in the direction of the hut. When he was certain that the assailants had already left the place, he assisted his father and shouted for help. When the barrio captain arrived and attended to his father, he then proceeded to their hut and discovered that their transistor radio and a wooden trunk containing cash were missing.

During the trial another farmer confirmed the presence of the assailants at the scene of the incident during that fateful night. When he was fishing in the sea near the area, he saw the assailants aboard a boat pass by and land on the shore. He observed them moving towards the direction of the hut of the victim.

The victim's son executed before the Municipal Judge an affidavit narrating the incident and also testified during the trial.

ISSUES:

Is the son credible as witness when there are inconsistencies in his testimony?

RULING:

The Court held that minor inconsistencies do not affect the credibility of the witness. The inconsistencies referred to by the appellants are minor details, and the rule is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony.

The alleged contradiction between the affidavit ex parte and testimony during the trial was ore apparent than real. It should be noted that affidavit ex parte is often incomplete and will not compare with testimony on the witness stand. An affidavit, "being taken ex-parte is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject.

NOTES:

Element of robbery in robbery with homicide must be conclusively proved

It is well-settled that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide.

Alibi is a question of fact best determined by the trial court.

We have declared in an earlier case that whether or not the defense of alibi has been established is a question of fact. By its very nature, alibi is established by the testimony of witnesses who confirm the presence of the accused at some place so far removed from the scene of the crime as to cast reasonable doubt on his actual participation in the offense charged. "As a consequence, the credibility of an alibi depends so much on, and may very well be equated with, the credibility of the witnesses who seek to establish it. On that account, therefore, and in that respect, the relative weight which the trial magistrate assigns to the testimony of said witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted."

Motive is not essential to conviction for murder where identity of the assailant is established. -

it must be said that motive is unessential to conviction in murder cases when, as in the instant case, there is no doubt as to the identity of the culprits. Despite the absence of proof of motive, the accused may be found guilty of murder.

Right to preliminary investigation deemed waived if not timely raised.

-Inasmuch as the settled doctrine in this jurisdiction is that the right to the preliminary investigation itself must be asserted or invoked before the plea, otherwise, it is deemed waived, it stands to reason that the absence of the certification is nothing but evidence of a fact, and if the omission of the fact itself to be certified is waived, if not properly raised before the accused enters his plea, why should the omission merely of the certification be given more importance than the absence of the fact itself to be certified to?"

[G.R. No. L-26647, August 15, 1974]

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs.
AQUILINO PACALA and TRANQUILINO PACALA, JR. alias
CHACOY, defendants-appellants.**

D E C I S I O N

ANTONIO, J.:

Automatic Review of the Death Penalty imposed by the Court of First Instance of Samar, Branch I, 13th Judicial District, upon Cipriano Saberon, Patricio Pacala and Aquilino Pacala, and appeal of the sentence of reclusion perpetua imposed by the same court upon Tranquilino Pacala, Jr., for the death of Jose Bacsal, in Criminal Case No. 6897, for Robbery with Homicide.

During the pendency of this appeal, appellants Cipriano Saberon and Patricio Pacala died in the New Bilibid Prisons, Muntinlupa, Rizal, the former as an aftermath of a riot committed in prison and the latter as a consequence of sickness, and the cases against them were dismissed on February 13, 1969 and October 15, 1972, respectively.

This decision is, therefore, confined to the appeal of Aquilino Pacala and Tranquilino Pacala, Jr., the only two remaining appellants in the case.

It is undisputed that on the evening of November 17, 1964, Jose Bacsal was killed by a group of armed men near his hut in Sitio Binotong, of Barrio Guintarcan, of the town of Villareal, Province of Samar. Binotong is adjacent to Sitio Burabod, and both are situated along the coast, and are accessible either by sea or land. The deceased was a farmer of some substance who had just had his old house demolished for the purpose of building on the same site a bigger one of stronger materials. In the meantime a small hut with roof and with the floor a meter above the ground, without walls, was constructed nearby where the deceased and his son stayed to guard the construction materials piled near the place and to supervise the construction of the house. The hut was about 130 meters from the seashore.

Roque Bacsal, 25 years of age, fisherman, son of the deceased, recounting the incident, testified that at about 7:30 o'clock on the evening of November 17, 1964, he and his father were in the aforesaid hut listening over the radio, when they noticed the presence of five men who immediately surrounded the hut. As the moon was very bright, he was able to recognize the five men as the brothers Patricio Pacala, Aquilino Pacala, Francisco Pacala and Tranquilino Pacala, Jr., who were his former classmates, and their uncle, Cipriano Saberon. When Cipriano Saberon fired his pistol, he and his father immediately jumped from the hut into the ground and ran. He himself ran to the trail leading to Burabod and hid behind some tall grasses and bushes about sixty meters from the hut. When he heard his father shouting for help, he made his way through the bushes and saw, a few meters away, his father, Jose Bacsal, being held by Cipriano Saberon. As he was thus being held, Patricio Pacala stabbed Jose Bacsal on the right side below his armpit. After Bacsal was wounded, Cipriano Saberon released his hold. When the victim started to run,

however, Francisco Pacala went after him and slashed him on the back with his bolo. At this juncture, the accused, including the two appellants, surrounded the wounded Jose Bacsal. Appellant Aquilino Pacala was holding a firearm pointed forward. Appellant Tranquilino Pacala, Jr., who is also known by the name of Ambrosio alias Chacoy, was holding a bolo. Although the deceased was already prostrate on the ground, Tranquilino Pacala, Jr., apparently in response to the orders of Cipriano Saberon, who told his companions, "Finish him so he won't speak," repeatedly bled the victim on the forehead. Afterwards, the five men left the victim and proceeded in the direction of the hut. When he was certain that the assailants had already left the place, Roque Bacsal approached his father and tried to assist him. The victim was groaning with pain. In the meantime, in response to shouts for help, the barrio captain, Victoriano Fortaleza, arrived at the scene of the incident. As the barrio captain attended to the needs of the wounded man, Roque proceeded to their hut. According to him, that was the time he discovered that his transistor radio, worth P130.00, which he had left on the floor, and the wooden trunk, where their clothing and cash in the amount of P1,700.00 were kept, were already missing.

Teresa Ocenar Bacsal, wife of the deceased and mother of Roque, also testified that they counted the money earlier that day, with the intention of using it for the purchase of galvanized iron sheets for the roofing of their house; and that she and Roque had intended to take the bus for Catbalogan the next day to buy iron sheets.

Victoriano Fortaleza, barrio captain of Burabod, Villareal, Samar, confirmed the fact that he went to the aid of the Bacsal's when he heard their shouts for help. Thus, he declared, on the evening of November 17, 1964, while he was relaxing in the balcony of his house to enjoy the bright moonlight, he heard shouts for help emanating from the direction of the hut of the Bacsals. But before he could reach the hut, he found on the way Jose Bacsal, seriously wounded and lying on the ground about twenty (20) brazas from the schoolhouse. Upon hearing Jose Bacsal faintly utter, "I'll die," he asked him who wounded him. The latter could only say "Patricio and Francisco" before he died. Fortaleza then proceeded to the town of Villareal to report the incident to the municipal authorities. In view of this information, the police of Villareal got the body of the deceased and brought it to the poblacion for autopsy.

Modesto Leyson, a 49-year old farmer living in Sitio Burabod, confirmed the presence of the Pacala brothers and Cipriano Saberon at the scene of the incident during the night in question. He declared that he knows Aquilino Pacala, Patricio Pacala and Tranquilino Pacala, who is also known as Ambrosio Pacala, since their childhood days, and that Tranquilino, Aquilino, Patricio and Francisco Pacala are all brothers of the full blood, while Cipriano Saberon is their uncle. On the evening of November 17, 1964, while he was fishing in the sea near Nabu-an Point of Barrio Burabod, of the town of Villareal, he saw Tranquilino Pacala, Aquilino Pacala, Patricio Pacala, Cipriano Saberon and Francisco Pacala aboard a banca pass by. He saw the Pacalas land on the shore and observed them moving towards the direction of the hut of Jose Bacsal. After a while, he heard two (2) gun reports. Upon hearing these, he decided to go home and report the matter to the barrio captain. The barrio captain then borrowed his motorboat and fetched the chief of police to investigate the incident. He explained that he was able to recognize the Pacalas and Cipriano Saberon because it was bright moonlight and they were only four (4) brazas from the outrigger of his boat when they passed him.

The post-mortem findings indicated that the cause of death was profuse internal hemorrhage as a result of several wounds inflicted upon the deceased Jose Bacsal,

to wit:

"HEAD: Face; conjunctiva and tongue pale.

Stab wound 1 inch wide, bony deep located at the right parietal region.

Stab wound 1 inch wide, bony deep located at the temporal region, right.

Contusion with Abrasion 1/2 inch at the back.

THORAX: Stab wound (front) exit 1 inch left chest 4 inches below the nipple; (back) right scapular region 1-1/2 inches 5 inches deep.

LUMBAR REGION: Stab wound 5 inches directed upward anteriorly and to the left.

EXTREMITIES: No sign of Physical Injuries.

INTERNAL FINDINGS: Abdominal cavity filled with blood (about 3 cups). The stomach was wounded through and through. Wounding of the abdominal aorta, lower portion of the left lung was wounded." (Exhibit "A".)

As a result of the investigation conducted by the chief of police of Villareal, a criminal complaint was filed by him in the Justice of the Peace Court of the said municipality on December 5, 1964 against Aquilino Pacala, Patricio Pacala, Francisco Pacala, Cipriano Saberon y Pacala and Ambrosio Pacala alias "Chacoy" for robbery with homicide.

After the accused had waived their right to the second stage of the preliminary investigation, the case was elevated to the Court of First Instance for trial. In the meantime, Francisco Pacala died. Consequently, only Patricio Pacala, Aquilino Pacala, Ambrosio Pacala alias Tranquilino, and Cipriano Saberon were charged for the crime by the Provincial Fiscal.

Patricio Pacala admitted having killed the deceased with the assistance of his brother Francisco Pacala, now also deceased. He testified that during the evening in question, there was a heavy rain with strong winds, consequently, he and his brother Francisco were constrained to seek shelter inside the hut of the deceased. When the deceased arrived, however, he became angry upon seeing them inside his hut, drew his bolo and chased Patricio and his brother away from the hut. He pursued the two until they reached their banca and, upon overtaking Patricio, the deceased Jose Bacsal stabbed Patricio on the back. In response to his shouts for help, his elder brother Francisco Pacala got hold of a paddle and hit Jose Bacsal with it, causing the latter to fall on top of a stone. After Bacsal had fallen, he (Patricio) got the bolo of the victim and used it to stab the victim. He claimed that the wounds on the head of Jose Bacsal might have been caused by the sharp rocks when Bacsal fell. He denied that his brothers Aquilino and Tranquilino and his uncle Cipriano Saberon participated in the commission of the crime. Patricio Pacala further declared that as a result of the incident, he and his brother Francisco did not continue anymore to Guintarcan to visit their mother as they had originally intended to do.

Both Aquilino and Tranquilino Pacala denied involvement in the crime in question and interposed the defense of alibi. According to Aquilino Pacala, he could not have been in Sitio Binotong of Barrio Guintarcan, Villareal, Samar, on the evening of November 17, 1964 because he was then residing with his wife at Barrio Bagakay, San Miguel, Leyte, his wife being a native of the place. After sawing logs in the concession of Diosdado Asoy, at 4:00 o'clock in the afternoon of that day, he remained in his house until the following morning. He stated that on December 17,

1964, he was arrested by the constabulary and detained, but he was not investigated. He admitted that Patricio Pacala, Francisco Pacala and Tranquilino Pacala are his brothers.

Tranquilino Pacala, 18 years of age, also testified that on the night of November 17, 1964 he was in Catbalogan, as he had been living there since the month of October, 1964 up to December, 1964, when he was arrested by the constabulary authorities. On that date (November 17, 1964), he was in the house of Didang Villanueva in Catbalogan, Samar. He claimed that he had to leave Villareal, Samar, because he could not find any work there. Upon his arrival in Catbalogan sometime in October, 1964, he was allegedly employed as a pedicab driver.

Julita Solayco also testified in support of the alibi of Cipriano Saberon.

Cipriano Saberon, however, did not take the witness stand.

On the basis of the foregoing evidence, the trial court convicted the appellants for the crime of robbery with homicide and imposed upon them the penalties aforesated.

Appellants contend in this appeal that (1) the commission of the crime of robbery was not sufficiently proven; (2) the testimonies of Roque Bacsal and Modesto Leyson are not entitled to credence because they are either contradictory, uncorroborated or improbable; and (3) the proceedings before the trial court are null and void in view of the absence of any certification in the information that a preliminary investigation was conducted by the Provincial Fiscal.

1. In connection with the robbery aspect of the crime charged, two things must be borne in mind: first, that there were no eyewitnesses to the alleged robbery; and second, that none of the things allegedly stolen, namely, the transistor radio and the trunk purportedly containing the sum of P1,700.00 was ever recovered. If there was, therefore, any evidence to support the charge of robbery, the same was entirely circumstantial in character.

Roque Bacsal testified that the five accused surrounded the hut, and after Saberon fired his pistol, he and his father jumped from the hut into the ground and ran to a place about sixty meters away where his father was overtaken and attacked by said accused, and, afterwards, the latter left and proceeded towards the direction of the hut. Roque then went to the succor of his father and tried to assist him until Victoriano Fortaleza, the barrio captain, arrived. It was only after the arrival of the barrio captain that Roque was able to return to their hut, and discovered that the radio and the trunk where the money was kept were missing.

It is evident from the foregoing that no iota of evidence had been presented showing that appellants and their companions knew of the existence of the money in the amount of P1,700.00, or of the place where it was allegedly kept, much less is there any positive proof that when they went to the place of the victim their intention was to rob the latter. It would seem, therefore, that the trial court's conclusion that it has been "established beyond peradventure of doubt that, taking advantage of the night, five men decided to rob the deceased whom they knew to have some money in the trunk. . . .," is based on a mere inference, or conjecture and not upon positive evidence. It is well-settled that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a

robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide.¹

2. In contrast to the paucity of proof on the commission of the robbery is the clear and positive identification of appellants as among the group of five men who attacked the deceased Jose Bacsal.

Modesto Leyson had known the five accused for a long time because they were from Guintarcan, while he was from Burabod, which are separated by a distance of only about one kilometer. It is not disputed that on the night of November 17, 1964, he was fishing in his boat at Point Nabu-an, Burabod, Villareal, Samar, about 100 meters away from Jose Bacsal's hut. He testified that the five accused, who were aboard another boat, passed by his boat, and it was from a distance of about four (4) brazas that he was able to recognize them as the moon was then bright at that time. He also declared that he saw the five disembark from the boat and head in the direction of the hut of Jose Bacsal; and, shortly thereafter, he heard two gun reports coming from that direction.

The other witness, Roque Bacsal, had known four of the accused the Pacala brothers for a long time, for they were once his classmates. He positively identified the appellants as among those who attacked his father.

No improper motive has been shown why either of these two prosecution witnesses would falsely implicate any of the appellants in the commission of the crime. In fact, appellant Pacala candidly admitted on the witness stand that he does not know whether or not Modesto Leyson and Roque Bacsal had entertained any ill-will against him.

Appellants attempt to impugn the credibility of Roque Bacsal by citing certain alleged inconsistencies in his testimony. Those inconsistencies refer to minor details, and the rule is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony.

On the alleged contradictions between the affidavit of Roque Bacsal (Exh. "1") executed before the Municipal Judge of Villareal, Samar, on December 5, 1964, and his testimony in court, it must be noted that the alleged contradictions are more apparent than real. It is true that in the aforementioned affidavit Roque Bacsal declared, among others, as follows: ". . . I notice (sic) that some of these (sic) five person (sic) run (sic) after my father and when my father was over taken they stab (sic) my father. My father shouted for help calling me but because I was afraid of being killed I did not show up. When I notice (sic) that this (sic) persons were gone I tried to look for my father and I found him laying (sic) down wounded. I cried and a few minutes the barrio captain Victoriano Portalisa (sic) arrived and my father was investigated. . . ." The aforementioned statement is not in any way inconsistent with his testimony that he and his father jumped from the hut, hid at a place 30 meters from the hut, and upon hearing the voice of his father shouting for help, he looked through the tall grasses and saw Cipriano Saberon and Patricio Pacala holding his

¹ U.S. v. Baguiao, et al., 4 Phil., 110; U.S. v. Alasaas, 40 Phil., 878; People v. Cha and Milagrosa, 45 Phil., 137; People v. Barruga, 61 Phil., 318; People v. Labita, L-8481, September 15, 1956.

father from behind while the other accused were stabbing him. It is a matter of judicial experience that an affidavit, being taken ex-parte, is often incomplete. An affidavit, "being taken ex-parte is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject."²

As against their positive identification, appellants interpose the defense of alibi. We have declared in an earlier case³ that whether or not the defense of alibi has been established is a question of fact. By its very nature, alibi is established by the testimony of witnesses who confirm the presence of the accused at some place so far removed from the scene of the crime as to cast reasonable doubt on his actual participation in the offense charged. "As a consequence, the credibility of an alibi depends so much on, and may very well be equated with, the credibility of the witnesses who seek to establish it. On that account, therefore, and in that respect, the relative weight which the trial magistrate assigns to the testimony of said witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted." The trial court flatly rejected the defense of alibi put up by the appellants and gave sound reasons in support of its action.

Appellant Aquilino Pacala's testimony to the effect that on the date in question, November 17, 1964, he was in Bagakay, San Miguel, Leyte, sawing logs in the forest, and not in Guintarcan, Villareal, Samar, stands uncorroborated. According to him, his mother-in-law and his wife were then living with him in Bagakay. They had neighbors. He had a partner in the log-sawing undertaking. Every now and then he delivered sawn lumber to his employer in Barugo, Leyte. Consequently, as aptly observed by the court below, this appellant's testimony could easily have been corroborated by any of these persons were it true; yet none of them was called in court although it would have been of the greatest import to the appellant.

On his part, appellant Tranquilino Pacala declared that at the time of the incident he was at Patag District, Catbalogan, Samar, in the house of Jaime and Didang Villanueva. He was driving a tricycle belonging to one Clara de la Peña. He stated that Didang's cousin, Tony Nacionales, had informed him that the Villanuevas left Catbalogan for Manila sometime ago, and he, the appellant, did not know where to reach them. Assuming this to be true, appellant could have asked someone in Catbalogan to attest to his presence therein on the day in question. There was the tricycle owner. There could be neighbors and acquaintances who might remember. According to this appellant, the Villanueva spouses were still in Catbalogan when he was arrested in connection with the case; yet, knowing how vitally important to him were these spouses if it were true that he was staying in their house on the night in question, he did not even exert any effort to contact them, much less did he request that they be subpoenaed to testify in his behalf.

Added to the utter absence of corroboration of the appellants' testimony on alibi is, of course, the more important consideration that, as already stated above, these appellants, together with the other accused, were clearly and positively identified by two witnesses of the prosecution. Well-settled is the rule that defense of alibi cannot prevail over the positive identification by witnesses.

² Moore on Facts, 1094-1095, cited in *People v. Tan, et al.*, 89 Phil., 337, 341.

³ *People v. Contante*, L-14639, December 28, 1964, 12 SCRA 653, 660.

The killing of Jose Bacsal is murder in view of the qualifying circumstance of aid of armed men. Appellant Tranquilino Pacala, however, must be credited with one mitigating circumstance, i.e., that he was less than eighteen years of age at the time of the commission of the offense.⁴

In passing, it must be said that motive is unessential to conviction in murder cases when, as in the instant case, there is no doubt as the identity of the culprits.⁵ Despite the absence of proof of motive, the accused may be found guilty of murder.⁶

3.The appellants' contention that the proceedings in the court below, as well as the judgment rendered by it, are null and void by reason of the absence in the information of a certification by the provincial fiscal that a preliminary investigation was conducted by him, is untenable.

It appears from the record that the criminal complaint against the accused was filed with the Justice of the Peace Court of Villareal, Samar, on December 5, 1964, and it was only after the aforesaid court had conducted the requisite preliminary examination that it issued the corresponding warrant of arrest. On January 14, 1965, after the herein appellants were arrested and delivered to the court, they expressly waived their right to the second stage of the preliminary investigation.⁷

As We held in *People v. Marquez*,⁸ what is not allowed under Section 14 of Rule 112, Revised Rules of Court, is the "filing of the information without a preliminary investigation having been previously conducted, and the injunction that there should be a certification is only a consequence of the requirement that a preliminary investigation should first be conducted. Logically, therefore, inasmuch as the settled doctrine in this jurisdiction is that the right to the preliminary investigation itself must be asserted or invoked before the plea, otherwise, it is deemed waived, it stands to reason that the absence of the certification is nothing but evidence of a fact, and if the omission of the fact itself to be certified is waived, if not properly raised before the accused enters his plea, why should the omission merely of the certification be given more importance than the absence of the fact itself to be certified to?"

In the case at bar, the accused not only expressly waived their right to preliminary investigation but they also never raised the issue of lack of certification by the fiscal at any stage of the proceedings before the trial court, except in this appeal. There is no question that the right to preliminary investigation is a personal right conferred by law and may be waived. Where appellant had waived the preliminary investigation in the trial court and failed to raise in issue the alleged absence of a valid preliminary investigation at any stage of the proceedings before the said court, the said question may not be raised on appeal for the first time.⁹

WHEREFORE, the two appellants are declared guilty of murder, and the judgment of the lower court is accordingly modified. Aquilino Pacala is sentenced to suffer reclusion perpetua; and Tranquilino Pacala, Jr. is sentenced to suffer the penalty of

⁴ Article 13, par. 2, Revised Penal Code.

⁵ *People v. Villalba*, L-17243, August 23, 1966, 17 SCRA 948, 953.

⁶ *People v. Antonio, et al.*, L-25845, August 25, 1970, 34 SCRA 401, 411-12.

⁷ Page 16 of the record.

⁸ L-23654, March 28, 1969, 27 SCRA 808, 813.

⁹ *People v. Baluran, et al.*, L-28582, March 25, 1970, 32 SCRA 71,79.

ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. The appellants are ordered to pay the heirs of the deceased, jointly and severally, the sum of P12,000.00 as civil indemnity, and the costs.

Makalintal, C.J., Zaldivar, Castro, Fernando, Teehankee, Esguerra, Fernandez and Aquino, JJ., concur.

Barredo, J., took no part.

Makasiar, J., concurs in the result.

Muñoz Palma, J., concurs in the result only, because while she believes that the crime committed is robbery with homicide punishable by reclusion perpetua to death, nevertheless the resulting penalty will be the same as that imposed above.

Judgment modified.

Notes. –

Self-contradictions of witness at trial.

Immaterial discrepancies in the statements of witnesses do not affect their credibility, unless there is something to show that they originate in wilful falsehood. If there are conflicts in the statements of witnesses, it is the duty of the court to reconcile them if it can be done, for the law presumes every witness has sworn the truth. But if the conflicts can not be reconciled, the court must adopt the testimony it believes to be true. *U.S. vs. Lesada*, 18 Phil. 90. But when a witness makes two statements in one case, and these statements incur the gravest contradictions, the court can not accept either the first or the second statements as proof. Such witness by his own act of giving false testimony impeaches his own testimony and the court is compelled to exclude it from all considerations. *U.S. vs. Pala*, 19 Phil. 190; *U.S. vs. Ramirez*, 4 Phil. 549; *Yutuk vs. Manila Electric Co.*, L-13016, May 31, 1961, 2 SCRA 337.