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Agrarian Reform is mandatory before trial, after trial the court's finding is definitive. Nonetheless it is manifest that the respondent acted in good faith; he did not intend to prejudice the landowner but acted cautiously to protect what he perceived to be the rights of the adversaries.

WHEREFORE, the charges against the respondent are hereby dismissed.

SO ORDERED.

Fernando, *C.J.*, *Teehankee*, *Makasiar*, *Concepcion Jr.*, *Melencio-Herrera*, *Plana*, *Relova*, *Gutierrez*, *Jr.*, *De la Fuente*, *Cuevas*, and *Alampay*, *JJ.*, concur.

Aquino and *Escolin*, *JJ.*, took no part.

SECOND DIVISION

[G.R. No. L-38012. June 19, 1985]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO BASELOY *alias* Tonying,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WITNESSES; TESTIMONY; NOT REHEARSED.—** Cipriano's testimony was not rehearsed. His version was not parroted. The crucial point is that he was present when Abrencio was killed. Although he did not see the actual shooting, he at least heard the gun report and he saw the killer immediately after he had fired at the victim.

2. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; NIGHTIME; WHEN ABSORBED IN TREACHERY.—** Appellant's counsel argues that the trial court erred in not holding that treachery absorbed nighttime. No such error was

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committed. The trial court held that nighttime was aggravating but it did not regard nocturnity as a distinct and separate circumstance from treachery. The trial court correctly held that the killing was murder qualified by treachery. Killing of a sleeping person *is an example par excellence of the existence of alevosia.*

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ramon T. Diaz for accused-appellant.

D E C I S I O N

AQUINO, *J.*:

Antonio Baseloy appealed from the decision of the Court of First Instance of Samar, convicting him of murder, sentencing him to *reclusion perpetua* and ordering him to pay the heirs of Romualdo Abrencio an indemnity of ₱12,000 (Criminal Case No. 403).

The prosecution's evidence discloses that at about ten o'clock in the evening of August 20, 1971, Romualdo Abrencio, 23, was sleeping on the passenger seats of his motorboat which was moored at the river bank near Severino Fevedal's house located in Barrio Peñaplata, Gandara, Samar. Ramon Cipriano, 13, his helper, was awakened by gunfire. Cipriano was on top of the hood of the engine of the motorboat. He looked around and saw Antonio Baseloy standing near the outrigger of the boat holding with his right hand a short object. He had known Baseloy as a policeman and bodyguard of the mayor.

Cipriano noticed that his employer, Abrencio, the owner of the boat, had fallen on the floor of the boat. Cipriano heard Baseloy telling his companion, Andres Bonado, that they should also kill the boy but Bonado dissuaded him. Baseloy untied the rope of the boat, thus allowing it to drift with the current. He and Bonado left afterwards. Cipriano was able to bring the

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boat back to its mooring. Finding that Abrencio was dead, having been shot in the head, Cipriano was apprehensive that Baseloy might return and kill him. So, he went home.

Fevedal was attracted by the gunfire. He looked out of the window of his house. He saw with his flashlight Baseloy and Bonado leaving the scene of the shooting.

The municipal health officer conducted an autopsy. He found that Abrencio has a through-and-through gunshot wound in the head. The bullet entered his right temple about two inches above and in front of the right ear and exited on the left temple in front of the left ear (Exh. B).

Motive for the killing was the elimination of Abrencio as a competitor of Bonado in the ferrying of passengers between Barrio Peñaplata and the *poblacion* of Gandara. Abrencio told his mother in the morning of the day when the killing was perpetrated that a man approached him in his motorboat and threatened him.

Baseloy testified that on the night of the killing he stayed in the house of Bonado at Peñaplata where he ate his supper and slept. He never left the house on that night. Bonado corroborated Baseloy's testimony. Baseloy declared that he used to be a policeman. In 1971 he was a casual employee in the mayor's office. It should he noted that Bonado's house was near the scene of the crime.

The trial court found that the testimony of Cipriano is sufficient to prove that Baseloy killed Abrencio.

Appellant's counsel contends that the trial court erred in convicting Baseloy of murder. He cites the inconsistencies and contradictions in Cipriano's declarations before the Constabulary investigator, Sergeant Pastor Legista, before the fiscal during the preliminary investigation and in court during the trial.

Such discrepancies are earmarks of verisimilitude. Cipriano's testimony was not rehearsed. His version was not parroted. The crucial point is that he was present when Abrencio was killed. Although he did not see the actual shooting, he at least

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heard the gun report and he saw the killer immediately after he had fired at the victim.

Appellant's counsel argues that the trial court erred in not holding that treachery absorbed nighttime. No such error was committed. The trial court held that nighttime was aggravating but it did not regard nocturnity as a distinct and separate circumstance from treachery.

The trial court correctly held that the killing was murder qualified by treachery. Killing of a sleeping person is *an example par excellence of the existence of alevosia*.

WHEREFORE, the trial court's judgment is affirmed with the modification that the indemnity is increased to ₱30,000. Costs *de oficio*.

SO ORDERED.

Makasiar (Chairman), *Concepcion Jr.*, *Abad Santos*, *Escolin*, and *Cuevas*, *JJ.*, concur.

SECOND DIVISION

[G.R. No. L-45824. June 19, 1985]

VOLKSCHEL LABOR UNION, *petitioner, vs.* **BUREAU OF LABOR RELATIONS, ASSOCIATED LABOR UNION FOR METAL WORKERS, DMG, INC., PEOPLE'S CAR, INC., KARBAYAN, INC., and RTC TRADING, INC.,** *respondents*.