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an indication of acquiescence in the sale, or his awareness that the execution sale was valid and legally unassailable. To allow him to turn back on his manifest conformity to the levy and sale on execution of his properties, after petitioners have bought the property as the highest bidder during the auction sale, would be patently unjust to the said petitioners, who had every reason to rely on the presumed regularity of the proceedings as official acts of both the judge and his own court officer, the sheriff.

WHEREFORE the decision appealed from is hereby reversed. The notice of levy and the sale of the properties in question, both registered and unregistered in favor of the petitioners are hereby declared valid. No pronouncement as to cost.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

Teehankee, Acting C.J. (*Chairman*), in the result.

EN BANC

[G.R. No. L-35278. October 23, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONIDES QUINTO,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY; WHERE CONSPIRACY IS ABSENT, EACH OF THE ACCUSED IS RESPONSIBLE ONLY FOR THE CONSEQUENCES OF HIS OWN ACT.— In the absence of conspiracy, it is necessary to prove who shot and killed the victim, as mere presence of the accused at the scene of the crime, in the company of others,

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among whom could have been the culprits, does not establish criminal liability. It is settled that where conspiracy is absent, each of the accused is responsible only for the consequences of his own act.

2. **ID.; ID.; PROOF BEYOND REASONABLE DOUBT; REQUIRES MORAL CERTAINLY.**— Proof beyond reasonable doubt requires moral certainty — a certainty that satisfies the reason and conscience of those who are to act upon it.

3. **ID.; ID.; REASONABLE DOUBT; DEFINITION.**— Reasonable doubt, on the other hand, is that "doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest easy upon the certainty of guilt."

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Cesar R. Jacinto for defendant-appellant.

D E C I S I O N

ANTONIO, *J.*:

Appeal from the decision of the Circuit Criminal Court, Seventh Judicial District, in Criminal Case No. CCC-VII-953-Rizal, the dispositive portion of which reads as follows:

"WHEREFORE, finding the accused Leonides Quinto, GUILTY, beyond reasonable doubt of the crime of Murder as defined under Article 248 of the Revised Penal Code, as charged in the Information, the Court hereby sentences him to suffer the penalty of DEATH; to indemnify the heirs of the deceased Patrolman Jaime Butawan, the amount of ₱12,000.00; to pay the amount of ₱10,000.00 as moral damages and another ₱10,000.00 as exemplary damages; and to pay the costs."

The Information in the foregoing criminal case accuses appellant Leonides Quinto and four (4) other unknown persons of having committed the crime of Murder in the following manner:

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"That on or about the 1st day of May, 1971, in the Municipality of Makati, Province of Rizal and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, at nighttime, a circumstance deliberately sought by the accused to facilitate the commission of the offense, with treachery, taking advantage of superior strength, with insult to the public authorities and by the use of motor vehicle, did then and there willfully, unlawfully and feloniously attack, assault and shoot with guns Patrolman Jaime Butawan, hitting and inflicting upon the vital parts of his body mortal gunshot wounds which caused his untimely death."

Upon arraignment, Leonides Quinto pleaded not guilty.

To prove the guilt of the accused, the prosecution presented the testimonies of four (4) witnesses, namely, Caridad Pasco, the alleged eyewitness, Mariano Cueva, Jr., NBI Medico-Legal Officer, Rodino Hidalgo, a taxi driver and Juanita *Vda. de* Butawan, widow of the deceased Pat. Jaime Butawan.

Caridad Pasco, the lone eyewitness, testified that on May 1, 1971 while she was working at the Topside Cafe at Buendia corner Superhighway, Makati, Rizal, she saw Leonides Quinto at about 8:00 o'clock in the evening, with around ten (10) companions who arrived therein in a taxicab. At the time, Leonides Quinto was dressed in short pants and polo shirt, and two of his companions were wearing fatigue uniforms and the rest were in civilian clothes. Leonides Quinto was then carrying a small or short firearm while his companions had armalites. When she asked one of the companions of the accused where they came from, he replied that they came from the highway where they slaughtered a dog for "*pulutan.*" Quinto and his companions later left the Topside Cafe but returned at around 11:30 P.M. When they returned they were already drunk and they danced with the girls in the Topside Cafe. As this was going on, Patrolmen Liberato Fernandez and Jaime Butawan arrived in a jeep. Pat. Butawan accosted the persons in civilian clothes who were carrying armalites. One of the companions of Quinto who had been talking with her went out and handed a piece of paper to Pat. Fernandez. Shortly thereafter, Quinto, armed as aforesaid

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with a small gun, and his companions surrounded the two policemen. She heard a gun report and she lay flat on the floor face downwards because she was afraid. Thereafter, she heard successive shots and somebody shouted: "*Patay na 'yan!*" She admits that she did not see who uttered those words as she was lying face down on the floor. She heard someone say: "*May mga tao pa ba diyan?*" Afterwards, Leonides Quinto and his companions left the scene of the incident. When she stood up, she saw that she was alone in the Cafe. She noticed Pat. Butawan lying on the ground already dead. According to this witness, Pat. Fernandez was hit by a stray bullet.

On cross-examination, this witness admitted that she did not immediately go to the police station to report the incident but that certain policemen arrived at the scene and asked her what her name was; that Mrs. Rose Ortiz, the owner of the Topside Cafe, did not allow her to give a statement because according to the latter she would be the one to give a statement;. that however, witness and Mrs. Ortiz were invited to go to the police station where they stayed until the following morning; that she did not then give a statement, allegedly because Mrs. Ortiz still would not allow her to do so; and that she gave a statement to the police only on September 25, 1971 when she was accompanied by Mrs. Butawan.

Mariano B. Cueva, Jr., Medico-Legal Officer of the NBI, testified for the prosecution, thus: that he performed the *postmortem* examination on the body of Pat. Butawan and prepared the Necropsy Report (Exhibit "A"); that after the positive identification was made by the widow of the victim, photographs were taken by the NBI photographer (Exhibits "B", "B-1" to "B-3"); that from the size of the gunshot wounds, the bullets causing them could have been fired from Caliber .22 firearms, such as armalites; that they could have been caused by more than one person; and that the victim died of severe hemorrhage as a consequence of gunshot wounds on the chest, abdomen and left thigh.

Rodino Hidalgo, taxi driver, testified that between 12:00 midnight of April 30, 1971 and 1:00 o'clock A.M. of May 1,

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1971, he was driving his taxicab with Plate No. 65-79 Q.C.; that at the corner of Buendia and Superhighway, he picked up five (5) passengers; that before said passengers got in his cab, one of them boarded the same and pointed a gun at him; that thereafter the companions of the gun wielder, not less than four, arrived and got in the cab; that he was told by his passengers to drive fast toward Magallanes; that one of the passengers, who was in short pants, said: "*Kay Ablan tayo, pare*"; that he was made to stop in front of a gate; that the person in short pants again spoke and said: "*Tiyak na patay na iyon, pare,*" and the group alighted from the cab after paying the fare of ₱0.80; that thereafter he brought the cab to the garage and went to see his brother, Reynaldo Hidalgo, and he heard that a policeman had been killed; that they proceeded to a police precinct in Makati where he gave his statement. In open court, witness identified the accused as the person in short pants who boarded his taxicab.

On cross-examination, this witness stated that he could not remember the place where he took the accused and his companions; that he did not notice any confusion at the corner of Buendia and Superhighway and that he did not hear any shots; that from the time his passengers boarded the cab until they reached their destination, the light in his cab was off; and that he did not know to whom his passengers were referring when one of them said "*Tiyak na patay na iyon, pare.*"

Juanita *Vda. de* Butawan, widow of the victim, testified, among others, that she made the identification of her husband's body at the Funeraria Rizal.

The defense, on the other hand, presented the testimonies of Abraham Domingo, a Philippine Constabulary Officer with the rank of Captain, COSAC Battallion, Camp Crame, Quezon City and of the appellant, Leonides Quinto.

Abraham Domingo testified that from February 1, 1971 up to July 15, 1971, he was the Commanding Officer of the COSAC; that he knows the appellant who was one of the members of the First COSAC Company; that due to the fact that at that

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time, the COSAC was newly organized, they were short of firearms and he gave verbal orders to his supply officer not to issue firearms except for actual missions; that before a member could be issued a firearm, he had to have a mission order; that on March 5, 1971, Leonides Quinto asked him for permission to see one of his informers that night, and permission was granted but no mission order was given; and that no firearm was issued to the appellant because meeting an informer does not require the issuance of firearm. On cross-examination, this witness stated that Quinto told him that he was meeting an informer to secure more information on the purported smuggling of blue seal cigarettes.

Appellant Leonides Quinto testified in his behalf, stating that as member of the Intelligence Division of the Philippine Constabulary First COSAC Company, he is charged with the duty of apprehending smugglers. On April 30, 1971, at about 9:00 A.M., he met a certain informant by the name of "Boy" at Port Area, Manila who tipped him of the forthcoming landing of smuggled goods. As the information was incomplete, they agreed to meet again at the corner of Buendia Avenue and South Superhighway on the night of the same day. He reported the matter to Capt. Domingo who gave him verbal authority to proceed with his plan. He arrived unarmed at the meeting place at 11:15 P.M., instead of the agreed time which was 10:00 P.M. because he happened to fall asleep in his room at the camp.

He failed, however, to meet his informer. Upon reaching the Topside Kitchenette, he peeped inside. At the door two armed men in fatigue uniform carrying armalites collared him but when he identified himself as a PC sergeant, he was allowed to leave, after they identified themselves, saying that they were members of a task force. He then returned to his camp. At the time, he was unarmed and was wearing a checkered polo jack and a pair of green long pants.

He further denied that he entered the Topside Kitchenette at about 8:30 P.M. on April 30, 1971. He reiterated his claim

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that he neither shot nor participated in the shooting of the victim, Pat. Jaime Butawan.

The trial judge, however, gave more weight and credence to the testimony of Caridad Pasco rather than to those of the defense, and found appellant guilty beyond reasonable doubt of the crime of murder and imposed upon him the penalty of death. The trial judge said:

"* * * It was not established who fired the first shot but it is incontrovertible that accused Leonides Quinto fired his gun at the deceased, this much was testified to by eyewitness Caridad Pasco, who at the time was only two-arms length away from the door of the restaurant. Butawan, although wounded, was able to draw his gun before falling to the ground mortally wounded. Pat. Fernandez, seeing the unevenness of the fight, although already wounded, was able to run away. One of the accused was heard to say, '*Patay na iyan*,' referring to Pat. Jaime Butawan. Leonides Quinto said '*May mga tao pa ba diyan?*', apparently referring to Fernandez and other possible eyewitnesses to the cold-blooded killing of Butawan.

"When the group believed that there were no eyewitnesses to the killing, they then made good their escape.

"Conviction or acquittal of the accused hinges on whose witnesses are more credible and trustworthy, that of the prosecution or the defense. The prosecution's quest for conviction depends on the reliability of Caridad Pasco, who has positively identified the accused as having shot the victim in this case, plus the corroborative testimony of taxi driver Rodino Hidalgo. Against this prosecution evidence is the defense of denial and alibi interposed by the accused. Prosecution witness Caridad Pasco identified the accused as one among several persons who shot the victim in this case. The testimony of this witness appears to be voluntary and straightforward in character. So also, from the records no evil motive was presented by the defense to show cause why Pasco should falsely testify against Quinto. Adding strength to the cause of the prosecution is the corroborative testimony of Rodino Hidalgo that the accused in this case was among his passengers during that fateful evening of May 1, 1971 that flagged his cab at Buendia-Superhighway, Makati, Rizal, and that he overheard the accused Quinto whom he identified in court as having said, '*Tiyak na patay na iyan, pare.*'

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"On the defense of denial and alibi made by said accused, the same cannot be given much weight because it has not been established by sufficient and convincing evidence. It is undisputed that alibi or denial is the weakest of all defenses and that the same should not be given consideration if the identity of the accused has been established by a credible witness (*PP vs. Ubaldo, et al.*, L-19490, Aug. 26, 1968, pp. 144-175). So also, for this kind of defense to prosper, it is necessary that the one invoking it must show by clear and convincing evidence the physical impossibility on his part to commit the crime imputed against him (*PP vs. Condemena*, L-22426, May 29, 1968, pp. 388-400). In this particular case, the accused claimed that at the time of the commission of the crime he met his informer at the corner of Buendia and South Superhighway, this being the case, he has all the chances and time therefore to perpetrate the crime imputed against him. This story of his is a telltale version, a concocted scenario as a last ditch effort to evade criminal liability. The court is amused also to note that this alleged informer of his was not presented in court, if only to corroborate his story.

* * * * * * * * *

"Treachery qualifies the crime to murder. The prosecution also has successfully proven the generic circumstances of taking advantage of superior strength, with insult to the public authorities and use of motor vehicle. There being no mitigating circumstance to offset the aforesaid generic circumstances, the Court has no alternative except to impose the supreme penalty provided for by law.

"Everything considered, the Court gives more credence to the testimony of the prosecution witnesses, which are more believable, logical and more in the realm of possibility, rather than the testimony of the witnesses for the defense."

On appeal to this Court, appellant assails the credibility of the lone eyewitness, Caridad Pasco, on the ground that under the circumstances narrated by her, she could not have seen that it was the appellant who fired the shots at the victim. He likewise avers that the trial court committed an error in not having acquitted him on the ground of reasonable doubt, and in not having given credence to his defenses of alibi and denial.

Acting Solicitor General Hector C. Fule filed the brief for the People of the Philippines, recommending that the accused

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be acquitted on the ground that his guilt has not been proven beyond reasonable doubt. The Brief for the Appellee states, in part:

"Analyzing the above evidence, it is obvious that no witness other than Caridad Pasco implicated appellant in the crime charged. However, we find the testimony of this prosecution witness contradicted by her own sworn statement given to the Makati Police on September 24, 1971 and presented in this case as Exh. '1' for the defense, that she did not see who shot at Butawan. We quote:

'T. *Nakita mo ba kung sino ang bumaril kay Butawan?*
S. *Hindi po, pero nakita ko si LEONY QUINTO na tiningnan niya ang kanyang tauhan at pinaikutan na sina Butawan at Fernandez.*' (p. 166, rec.)

"If Caridad Pasco had in fact seen appellant fire at Butawan, as she insisted during the trial, there was no reason for her to answer in her statement just quoted that she did not see Butawan's gunman. On this score alone, Pasco's pretense of having identified appellant as the assailant must necessarily fall. Her explanation, when asked why she did not tell the police during the investigation that she saw Quinto shoot Butawan, that 'Because I forgot to tell that I saw him as the first one who shot Butawan' (p. 14, t.s.n., Dec. 20, 1971), appears puerile and incredible and thus reduces her to the category of a non-reliable, untrustworthy witness.

"Moreover, Pasco's narration in her said statement of the circumstances surrounding the shooting indubitably shows that she did not actually see appellant fire at the deceased. According to said statement, all she saw of appellant was that he went out of the Cafe with hand placed on his right waist and after he had gone out, she heard a shot and then a series of shots, whereupon she dropped to the floor inside the counter. Said narration reads as follows:

'* * *. *Pagkatapos noon ay may pumarang dyip at nakita ko na lang nakatayo sa harapan ng TOPSIDE si* BUTAWAN *at si* FERNANDEZ *at sinita niya iyong isa na naka sibilyan na may ARMALITE na nakatayo doon sa harapan ng TOPSIDE, maya-maya ay umalis iyong kausap ko at may inabot kay* FERNANDEZ *na kapirasong papel. Pagkatapos noon ay pinaligiran na nitong mga nakafatigue at iyong ibang nakasibilyan sina* BUTAWAN *at* FERNANDEZ *at sila po ay*

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nakorner na sa may pader sa tagiliran ng TOPSIDE. *Pagkatapos noon ay nakita ko na si LEONY QUINTO na lumabas at nakahawak sa kaniyang kanang baywang at nang nasa labas na si* LEONY *ay nakarinig ako ng isang putok at pagkatapos po noon ay sunod-sunod na putok na ang narinig ko at ang ginawa ko naman po ay dumapa ako sa loob ng counter. Pagkaraan ng putukan, siguro po mga singko minutos na ang nakakaraan ay narinig ko si* LEONY QUINTO *na nagsalita ng 'MAY MGA TAO BA PA DIVAN,' at pagkatapos po noon ay tumakbo na siya at may hawak-hawak pa siyang baril.*' (p. 166 rec.; Emphasis supplied)

"It thus becomes clear that Pasco's identification of appellant at the trial as the one who fired a shot at the deceased patrolman is but a product of her imagination. The action of appellant in going out of the Cafe with hand placed on his right waist, which Pasco claims in her above statement to have observed does not justify the inference that he was the one who fired the shot at the deceased, especially if we consider the fact that, as testified to by her, appellant's companions who were already outside the Cafe carried armalites.

"Other circumstances which nurture serious doubt on the opportunity of prosecution witness Caridad Pasco to positively identify the culprit in this case are the following:

"1. Pasco herself admitted that the shooting occurred outside the Topside Cafe while she was inside said establishment (pp. 17, 18, t.s.n., Dec. 20, 1971), and the record does not show how she was able to see what was happening outside from inside the Cafe where she was. Even assuming that she could see through the walling of the Cafe because of an open door or glass door or wall (which was not established), it was not shown that the place outside the Cafe was well lighted enough so as to enable her to fix the identities of the persons therein situated, it being already midnight at the time of the shooting.

"2. It taxes credulity that Pasco was able to determine that it was appellant who fired the first shot at Butawan when according to her, appellant's companions, who had armalite rifles in hand and who were then being accosted by the deceased policeman and his companion, also surrounded the two police officers. Any one of appellant's companions armed with armalite rifles could very well have fired at the deceased. This is apparent from the testimony of

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medico-legal officer Mariano Cueva to the effect that the two small bullets recovered in the body of the victim were of .22 caliber and possibly fired from an armalite firearm (pp. 23, 31, Dec. 20, 1971).

"3. It is surprising that although Caridad Pasco, together with the Cafe owner Rosie Ortiz, was brought to the police headquarters shortly after the shooting, where she was practically detained until the following morning and consequently interrogated, no statement was taken from her. This circumstance lends support to our belief that Pasco, from the very outset and even up to the time she executed Exhibit '1' four months later, could not really identify the assailant of Pat. Butawan, for which reason the police must have seen no useful purpose in taking down her statement. As to why she gave a statement to the police on September 24, 1971, or more than four months later, wherein she still stuck to her original non-identification of the murderer of Pat. Butawan, Pasco explained that she did so 'when Mrs. Butawan took me.' (p. 8, t.s.n., Dec. 20, 1971). It could be inferred from said answer, therefore, that Pasco executed her statement (Exhibit '1') just to accede to the request of the widow of the deceased, although she knew nothing about the identity of said deceased's killer."

Believing that "the evidence of the prosecution has failed to implant in the mind moral certainty that its witness Caridad Pasco had sufficient opportunity to see and recognize the assailant of Pat. Butawan and to positively identify him," the Acting Solicitor General recommended the acquittal of the accused.

We find that the evidence does not show to a degree beyond reasonable doubt the guilt of appellant.

It should be recalled that the shooting in this case took place *not inside but outside* of the Topside Cafe.[1] It is also important to note that *when the shooting took place*, Caridad Pasco, the only alleged eyewitness, by her own admission, was *inside the said Cafe*. The pertinent portions of her court testimony are quoted below:

"Q. This shooting incident happened outside of the Topside Cafe, is it not?
A. Right in front.

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[1] t.s.n., p. 17, Session of December 20, 1971.

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Q. And you were inside or outside?
A. I was inside.

Q. And so when you dropped to the floor, you did not see what was going on because of the wall?
A. After the shooting, I saw him when I went to the window."[2]

According to her, she dropped down and lay face down on hearing the first gunshot fired on the night in question. She remained lying face down during the successive shots which followed.

"Q. Then what happened?
A. After the letter was returned, I don't know what was that, there was one gunshot. So I lay face down because I was afraid then. Then there were successive shots at Butawan. After the shots somebody shouted, '*patay na iyan.*'

Q. Did you see who is that somebody who shouted?
A. I just heard it because I was lying down."[3]

By her admission also, Caridad Pasco did not see the armed group run away, much less did she see the vehicle they used, as she stood up *only after* they had fled from the scene of the crime.

"Q. Where did Quinto and his companions go?
A. I did not see them when they ran because I was lying down.

x x x x x x x x x

Q. Did you see them ride a vehicle?
A. I don't know what vehicle they rode.

Q. After Quinto and his group fled, what did you do?
A. I stood up. I was the only one in the Top Side Cafe."[4]

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[2] *Ibid.*, pp. 17-18.

[3] *Ibid.*, p. 6.

[4] *Ibid.*, pp. 6-7.

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"Q And so when you dropped to the floor, you did not see what was going on because of the wall?

A. After the shooting, I saw him when I went to the window."[5]

It is true that on cross-examination she testified that she saw appellant shoot the victim before she went down on the floor, but this statement appears to be only an afterthought.

In her sworn declaration given before the Fiscal on September 25, 1971, some three months before she testified in this case, Caridad Pasco declared positively that she did not see the person who shot at the deceased. Thus, she stated unequivocably and in no uncertain terms, *viz.*: "*Hindi ko nakita nang barilin sina Butawan at Fernandez.*"[6] Indeed, how could Caridad Pasco have seen the appellant shoot the deceased on the night in question when, according to her own admissions, she was inside the Topside Cafe, and on hearing the first shot fired, she dropped down on the floor, lay face down, was lying down during the successive shots which followed as she was afraid, and stood *up only after* the armed group had fled from the scene of the crime for which reason she did not see them run away nor the vehicle they took in their flight? It is important to note that this sworn statement of September 25, 1971 was the first declaration regarding the incident of May 1, 1971. Caridad Pasco, together with Rose Ortiz, owner of Topside Cafe, was taken to the municipal building of Makati for investigation. They stayed there until the following morning, but Caridad Pasco did not give any statement allegedly because Ortiz did not allow her to do so, saying that she would be the one to give the statement.

It is significant that in the instant case, there is no evidence tending to show conspiracy. In the absence of conspiracy, it is necessary to prove who shot and killed the victim, as mere presence of the accused at the scene of the crime, in the company of others, among whom could have been the culprits, does not establish criminal liability. It is settled that where conspiracy

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[5] *Ibid.*, p. 18.

[6] Exhibit "1"; t.s.n., p. 13, Session of December 20, 1971.

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is absent, each of the accused is responsible only for the consequences of his own act.[7] In the instant case, the nature and extent of appellant's participation, if any, in the acts leading to the commission of the felony has not been established by the evidence for the prosecution.

Considering the foregoing, even the testimony of the taxi driver to the effect that appellant was among those who boarded his cab under highly suspicious circumstances does not shed light on the question of whether or not appellant was one of those who shot and killed the victim.

It cannot even be definitely concluded from this witness' testimony in open court and his statement before the police that it was appellant who pointed a gun at him while riding his cab. Thus, when he was asked how many minutes appellant pointed the gun at him, he answered, "I just felt that the gun was poked."[8] In his statement (Exhibit "D"), he said that he just felt something poked at his nape and he heard his passengers on the back seat cocking their guns. Moreover, in this same statement, he claimed to have seen three long firearms carried by three of the men, but no mention at all was made of a short firearm which, according to witness Caridad Pasco, was the type of weapon wielded by herein appellant.

Proof beyond reasonable doubt requires moral certainty — a certainty that satisfies the reason and conscience of those who are to act upon it.[9] Reasonable doubt, on the other hand, is that "doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest easy upon the certainty of guilt."[10]

An examination of the evidence on record in this case fails to convince this Court that the guilt of appellant Leonides Quinto

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[7] *People v. Cajandab*, L-29598, July 26, 1973, 52 SCRA 161.

[8] t.s.n., p. 39, Session of December 20, 1971.

[9] *People v. Lavarias*, L-24339, June 29, 1968, 23 SCRA 1301.

[10] *People v. Alipis*, L-17214, June 21, 1965, 14 SCRA 297.

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has been proven beyond reasonable doubt. In view of this, the accused must be acquitted of the crime charged.

WHEREFORE, the judgment appealed from is REVERSED, and accused LEONIDES QUINTO is hereby ACQUITTED of the crime of which he is charged. He is ordered immediately released from detention, unless otherwise held for some other lawful cause.

SO ORDERED.

Fernando (C.J.), Barredo, Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, De Castro, and *Melencio-Herrera JJ.*, concur.

Teehankee, Makasiar, and *Abad Santos, JJ.*, took no part.

FIRST DIVISION

[G.R. No. L-40880. October 23, 1979]

ASUNCION CRUZ, ANGEL ANDAN, ALBERTO ANDAN, CESAR ANDAN, ROMAN ANDAN and MARINA ANDAN, *petitioners, vs.* **HON. COURT OF APPEALS, CATALINA ARCEO and ILDEFONSO SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE; EFFECT OF ABSENCE THEREOF TO PROVE ORAL LEASE AGREEMENT.— The records further disclose that petitioners' counsel, at the trial of the case, objected to the introduction of parol evidence to prove the oral lease agreement which the trial court sustained. Hence, there being no parol evidence to prove the oral, lease agreement, the ruling of the appellate court upholding the lease agreement was without legal or factual basis. We hold that there is no competent proof of such oral lease.