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Makasiar, Antonio, Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, De Castro and Melencio-Herrera, JJ., concur.

Fernando, C.J., while concurring in the result, I feel that I should make of record my lack of conformity to the view expressed by the ponente on the subject of confessions.

Teehankee, J., I vote for affirmance of the death penalty.

Barredo, J., in view of the long detention of appellant since his conviction by the trial court, I vote for life imprisonment.

EN BANC

[G.R. No. L-32518. November 7, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **PROTACIO MAAGAD**, *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER THE EXPLICIT AND POSITIVE IDENTIFICATION BY WITNESSES.**— Considering that this Court has ruled time and again that a defense of alibi must be looked upon with suspicion, it is obvious that it cannot prevail over the explicit and positive identification made by Dionisia Sing and Tita Sing who, without hesitation, pointed to him as one of the robbers.

2. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; BAND AND DWELLING APPRECIATED IN CASE AT BAR.**— The killing of Francisco Sing was done by reason of and on the occasion of a robbery perpetrated by four armed men in the house of Francisco Sing. There is, therefore, present the aggravating circumstances of by a band and dwelling.

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APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Eulogio Raquel-Santos and Solicitor Demetrio G. Demetria for plaintiff-appellee.

Ponciano M. Mortera for defendant-appellant.

D E C I S I O N

***PER CURIAM*:**

AUTOMATIC REVIEW of the decision of the Circuit Criminal Court of the 15th Judicial District, finding the accused Protacio Maagad guilty of the crime of Robbery with Homicide, as defined and penalized under Article 294, par. 1, of the Revised Penal Code and sentencing him to suffer the supreme penalty of DEATH; to pay the heirs of Francisco Sing the amount of ₱12,000.00; to pay jointly and severally with his co-accused Pablito Denurog the amounts of ₱260.00 to Tita Sing, ₱35.00 to Tan Pao Sing, ₱140.00 to Nelfa Sing, and ₱140.00 to Dionisia Sing; and to pay one half (½) of the costs.

It is not disputed that at about 5:30 o'clock in the afternoon of February 19, 1969, while Dionisia Sing and her husband, Francisco Sing, were in the ground floor of their house located at Barrio Lurogan, Valencia, Bukidnon, four (4) men armed with firearms came towards them shouting: "Civilians do not come near because we are PC Rangers, we are after the Chinese only."[1] When they were sufficiently near, one of the armed men, the fat one, ordered them: "Do not move as we are PC Rangers," while his companions went up to the house of Francisco Sing, firing shots into the air as they went. The fat man then grabbed Francisco Sing by this undershirt, "on the neckside" and brought him a few meters away from his house towards the nearby bodega owned by one Vicente Lim. The man holding Francisco Sing demanded: "Where is your money?" and Francisco Sing replied: "I have no money." When Francisco Sing answered

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[1] t.s.n., p. 12.

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that he had no money, he was slapped and kicked on the back and then shot.[2] Upon seeing her husband shot, Dionisia Sing ran upstairs. There she encountered one of the armed men who kicked her at the back and ordered her to lie flat face towards the floor. Her trunk was ransacked and her clothes were scattered on the floor. Her money amounting to ₱60.00 and her wrist watch valued at ₱30.00 were taken by them. While she was lying on the floor, she heard the men demanding money from Tita Sing and Tan Pao Sing in the other room.[3]

Tita Sing, the sister of Francisco Sing, who was cooking supper at the kitchen when the armed men arrived, went upstairs, upon hearing a shot, thinking that the children of Dionisia Sing were playing with a toy gun. Upon reaching the second floor, she was met by an armed man who ordered her to lie flat, face downward. She obeyed him because the armed man kicked her on the back. She was then brought to a bedroom where she and her mother, Tan Pao Sing, were divested of their money, necklaces, earrings and watch, at gun point. After an hour, the arms of Tita Sing and her mother were tied behind their backs and they were brought downstairs. Later, Tita Sing was brought by the armed men to the house of Adolfo Pechora, about 30 meters away. The four armed men then went upstairs leaving Tita Sing in the yard. She managed to untie herself and flee to a nearby creek, where she hid until the robbers left. When she returned to their house at about 8:00 o'clock p.m. she saw her brother, Francisco Sing, already dead and her other brothers and sisters crying.[4] Later, policemen from Valencia, Bukidnon, arrived at Barrio Lurogan to investigate the crime.[5]

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[2] "Donato Abejuela, The Provincial Sanitary Inspector stationed at Valencia, Bukidnon, stated that Francisco Sing sustained the following lesion: "Gunshot wound at the back, left side, entrance ½ inch. wide without an exit."

[3] t.s.n., pp. 112-116.

[4] t.s.n., pp. 69-81.

[5] t.s.n., p. 122.

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On February 21, 1969, Dionisia Sing was brought by PC soldiers to Don Carlos, Bukidnon to look for the malefactors. Not finding them there, they proceeded to Masimag, Bukidnon arriving thereat at noontime. There she saw one of the robbers and pointed him out to the PC saying "That's the man who killed my husband. I cannot be mistaken." So, the PC arrested him. The man was Protacio Maagad.[6] As a result, a criminal complaint for Robbery in Band with Homicide was filed against Protacio Maagad and three John Does.[7]

On April 23, 1969, one Pablito Denurog, an escaped convict,[8] who had been apprehended in Cotabato City in connection with the hold-up of a cinema owner in that city, executed a sworn statement, wherein he admitted the robbery and killing of a Chinaman in Lurogan, Valencia, Bukidnon on February 19, 1969. He named his companions as one "Boy" whose surname he did not know; "Andres," whose surname he also did not know; Emeliano Peryante; Ceferino Gamba *alias* "Cefring Waray" who did not go with them to the house of the Chinaman, but who hid at the back of the house on the sloping portion of the lot because he did not want to be seen, being well known to the people living at Lurogan; and "Natong Tejada" of Binggo and Bangka Mayor, Poblacion, Valencia, Bukidnon, who drove the jeep they used in going to Barrio Lurogan. The criminal complaint was consequently amended, naming the John Does.[9] On May 8, 1969, however, Natong Tejada as excluded from the complaint,[10] upon motion of the Chief of Police of Valencia, Bukidnon, there being no sufficient evidence to warrant his prosecution.[11] The complaint was so amended.[12] Thereafter

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[6] t.s.n., pp. 123-128.

[7] Original Record, p. 3.

[8] t.s.n., p. 3.

[9] Original Record, p. 46.

[10] *Id.*, p. 54.

[11] *Id.*, p. 53.

[12] *Id.*, p. 55.

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an information was filed against Protacio Maagad, Pablito Denurog, and Ceferino Gamba charging them with the crime of Robbery in Band with Homicide committed as follows:

"That on or about the 19th day of February 1969, in the afternoon, at barrio Lurogan, municipality of Valencia, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with others who are still at large, armed with assorted weapons, conspiring together and mutually helping one another, with intent to rob and with violence against and intimidation of person, did then and there wilfully, unlawfully and criminally, at gun point ordered the occupants of the house of Francisco Sing to lay flat on the floor and take, steal and carry away the following:

1. Cash money in the amount of ₱60.00 from Mrs. Dionisia Sing.
2. Cash money in the amount of ₱200.00 from Miss Tita Sing and Mrs. Tan Pao Vda. de Sing.
3. Cash money in the amount of ₱300.00 from Eduardo Sing including one wrist watch, one ring and two chinese Gold Necklace worth ₱500.00 more or less.

to their damage and prejudice in the aggregate amount of ₱1,060.00, value of the cash and jewelry stolen.

That by reason on the occasion of the robbery, accused Protacio Maagad with intent to kill, did then and there willfully, unlawfully and criminally fire and shoot Francisco Sing, resulting in the death of the latter.

The crime was committed with the use of a motor vehicle and at the dwelling of the offended party."

When arraigned, the accused Protacio Maagad and Ceferino Gamba pleaded not guilty to the charge.[13] The accused Pablito Denurog, upon the other hand, pleaded guilty. The sentence, however, was reserved until after the trial of the case. A counsel *de oficio* was appointed for him and he was ordered to appear at the trial.[14]

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[13] *Id.*, p. 73.

[14] t.s.n., pp. 2-4; See also Original Record, p. 120.

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After the prosecution had rested its case, the accused Ceferino Gamba filed a demurrer to the evidence on the ground that there was no sufficient evidence presented to prove his participation in the crime committed,[15] and on April 24, 1970, the trial court dismissed the case against him, with prejudice.[16]

The accused Protacio Maagad thereafter presented evidence in his defense. He denied having committed the crime for which he is charged. According to him, he was in the rice mill of Pedro Loyloy, at Calubihon, Don Carlos, Bukidnon, at about 4:00 o'clock in the afternoon of February 19, 1969, to have his palay milled. He went home after his palay was milled arriving thereat at about 5:00 o'clock p.m. When he arrived at his house, he saw Jose Cantillo waiting for him because the latter wanted to buy his pigs. They were not able to consummate the sale because he wanted to consult his wife first. He advised Jose Cantillo to come back the next day. Jose Cantillo did return the next day and did buy his two pigs.

On February 21, 1969, he was in the market place of Masimag (now called Barrio New Nonongan) selling some commodities. At noontime of the same day, while he was in the store waiting for transportation in order to go home, two PC jeeps arrived. PC Sgt. Tihon approached him and told him that the PC captain was calling for him (accused). So, he went to the PC captain, who ordered him to raise his hands, and poked a pistol at him. Then he was handcuffed. Capt. Reyes did not allow him to talk as he (Capt. Reyes) wanted to ask him something. He asked Capt. Reyes why he was arrested and the latter drew out his dagger and slapped his shoulder with it. The accused thought that Capt. Reyes would stab him. He was then brought to Lurogan, Valencia, Bukidnon where he was ordered to identify the dead Chinaman. According to the accused, "When we were inside the house, I told everybody that I did not know or recognize the dead Chinese and I even told the dead man that if you have a soul you must let your relatives know if I am the one who

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[15] Original Record, p. 151.

[16] *Id.*, p. 153.

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killed you. Then, the relatives of the dead man placed the dead person before me and since there is nothing they could do, the persons outside shouted: "Whom shall we help those from here or those not from here." Then the PC brought him to Malaybalay.[17] Pedro Loyloy was presented to corroborate the testimony of the accused that he was in the rice mill having his rice milled at 4:30 o'clock at 5:00 o'clock in the afternoon of February 19, 1969.[18] The booklet of duplicate receipts[19] was introduced to support his testimony. Jose Cantillo was also presented to lend credence to the testimony of the accused.[20] Mayor Teodulo Palma of Don Carlos, Bukidnon, Carlito de Asis, barrio captain of Masimag, Don Carlos, Bukidnon and Matias Mahinay, barrio councilman of the same barrio and Crispin Dalaquit, barrio captain of Calubihon, Don Carlos, Bukidnon, all attested to the good moral character and conduct of the accused Protacio Maagad.[21] Pat. Felix Asingan and Pat. Olezario Paredes, both policemen of Valencia, Bukidnon, disputed the testimony of Conrado Maagad, stating that they saw the latter at the police check point near the public market of Valencia, Bukidnon, waiting for transportation between 5:30 o'clock to 6:00 o'clock in the afternoon of February 19, 1969.[22] Pat. Paredes further testified that he investigated the robbery that same evening in Lurogan and asked Dionisia Sing and Tita Sing if they recognized the persons who robbed them and they replied that they could not recognize the robbers. Pat. Felipe Munalem of Valencia, Bukidnon also testified that he investigated the robbery and asked the people at Lurogan if they had witnessed its commission and they answered that they could not recognize any of the robbers.[23] He also stated that he investigated Dionisia

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[17] t.s.n., pp. 335-342.

[18] t.s.n., pp. 285-288.

[19] Exhibit 7.

[20] t.s.n., pp. 305-322.

[21] t.s.n., pp. 322-333.

[22] t.s.n., pp. 197-198; 257-261.

[23] *Id.*, p. 218.

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Sing who told him that she could not see the robbers who killed her husband because she was made to lie flat on the floor upstairs face downwards, in the sala.[24] He further stated that he investigated Pablito Denurog at Cotabato City and the latter absolved Protacio Maagad from the commission of the crime, stating: "x x x That man that was arrested by Captain Reyes PC whom they arrested at Masinag, Don Carlos, Bukidnon, while I was still at Don Carlos, Bukidnon, has no participation whatsoever regarding the incident about the robbery of the chinese at Lurogan, Valencia, Bukidnon, because those names I had mentioned above, were my only companions during that time."[25]

Upon the circumstances, the trial court found the accused Pablito Denurog guilty of the crime of simple robbery by a band under Article 294, par. 5, of the Revised Penal Code, since he was not physically present at the killing as to prevent its commission and sentenced him to suffer an indeterminate penalty of from 4 years and 2 months of *prision correccional*, as minimum to 10 years of *prision mayor*, as maximum, and to pay one-half of the costs. He was further ordered to pay, jointly and severally, with Protacio Maagad, the amounts of ₱260.00 to Tita Sing; ₱235.00 to Tan Pao Sing; ₱140.00 to Nelfa Sing and ₱140.00 to Dionisia Sing. He did not appeal from the decision so that the judgment is final and executory as to him.[26]

The accused, Protacio Maagad, upon the other hand, was found guilty of the crime of robbery with homicide. The dispositive portion of the decision reads, as follows:

"WHEREFORE, this Court finds the accused Protacio Maagad guilty beyond a reasonable doubt of the crime of Robbery with Homicide and there being present the aggravating circumstances of by a band and dwelling without any mitigating circumstance to offset them,

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[24] *Id.*, p. 222.

[25] *Id.*, pp. 226-229.

[26] Decision, p. 46.

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hereby sentences said accused Protacio Maagad under Article 294, paragraph 1, of the Revised Penal Code, to the supreme penalty of death and to pay ½ of the costs, and pursuant to the ruling of the Supreme Court in the case of *People vs. Pantoja*, L-18793, October 11, 1968, this Court further sentences Protacio Maagad to pay the heirs of his victim Francisco Sing in the amount of ₱12,000.00. He is further sentenced jointly and severally together with Pablito Denurog to pay the amount of ₱260.00 to Tita Sing, ₱235.00 to Tan Pao Sing, mother of Tita Sing, ₱140.00 to Nelfa Sing, sister of Tita Sing and ₱140.00 to Dionisia Sing in payment of the cash and valuables which Pablito Denurog and Protacio Maagad and their two companions had taken from the above occupants of the house and dwelling of Francisco Sing.

SO ORDERED."

Counsel for the accused disputes the findings of the trial court, alleging that the testimony of the prosecution witnesses regarding the identity of Protacio Maagad as one of the robbers and the one who shot the victim, Francisco Sing, is not fully positive and conclusive as held by the trial court.

We have examined the records of the case with minute care and find no reason or motive to set aside the findings of the trial court. Protacio Maagad was positively identified by Dionisia Sing. She declared, as follows:

"Q After your husband answered he has no money, what happened next?
A The one holding my husband slapped and kicked him on the back.

Q What else did he do to your husband?
A And he shot my husband.

COURT:

Q You mean to say that your husband was shot in your presence?
A Yes, sir.

ATTY. AZURA:

Q After your husband was shot, what did you do?
A I ran away.

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Q Where did you run?
A Upstairs.

Q What happened while you were upstairs?
A I was followed by another person and I was kicked.

Q Where were you hit?
A At my back.

Q You said you saw the four person approached you and your husband, if you could see them again, could you identify those four persons?
A I could recognize them, if I could see them.

Q That one who held the undershirt of your husband, could you identify him?
A Yes I could recognize him.

Q If he is present in Court now, could you point to him? (Witness was requested to go down the witness stand by the Honorable Judge to point to the person who kicked and shot her husband).
A He is here (witness pointing to the accused Protacio Maagad in Court).

COURT: (to the accused)

Q What is your name?
A Protacio Maagad."[27]

The circumstances by which she pointed the accused Protacio Maagad to the PC investigators is also worthy of note. Her testimony reads, as follows:

"Q While you were in Masimag, what happened?
A I saw the robber.

Q What was he doing?
A Standing at the store.

COURT:

Q Somebody pointed him to you?
A No, sir.

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[27] t.s.n., pp. 113-114.

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Q That he is the robber?
A No, only myself.

Q While you were travelling with the vehicle of the PC?
A We already stopped.

Q Who told the driver of the vehicle to stop?
A We had our dinner in Masimag.

ATTY. AZURA:

Q When you noticed according to you one of the robbers, what did you do?
A I pointed him to the PC.

COURT:

Q What words did you use in pointing the person?
A I said: 'That's the man who killed my husband, I cannot be mistaken.'

Q What else?
A I said I saw it already."'[28]

Tita Sing also identified Protacio Maagad as one of the culprits. Her testimony reads, as follows:

"Q What happened downstairs?
A I saw Protacio Maagad guarding.

Q What was he guarding?
A Guarding the door of the house.

Q Was he inside or outside of the house?
A He was inside the door.

ATTY. AZURA:

Q If Protacio Maagad whom you mentioned is in the Court you point to him if he is present in Court?
A (Witness pointing to the person who is fat one of the accused.)"[29]

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[28] *Id.*, pp. 126-127.

[29] *Id.*, p. 77.

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Protacio Maagad was very close to Tita Sing as to preclude a mistake in identifying him. She declared, as follows:

"Q How far were you from Maagad?
A Very near.

Q How far?
A One (1) armslength, from Maagad.

Q Were you able to see the face of Maagad?
A Yes, sir.

Q Was the face of Maagad covered?
A No, sir.

Q Did you talk to Maagad downstairs?
A None.

Q Look at Protacio Maagad again, is he the same Maagad that you saw him in February 19, 1969?
A He is the one."[30]

The place was well lighted and Tita Sing saw the features of Maagad very clearly. She said:

Q When you were brought down, was there a light?
A There was a petromax lamp.

Q Where was it placed?
A Near the door where Maagad was standing."[31]

Considering that the prosecution witnesses have no possible motive to make a false imputation against the accused herein, there is no reason why Protacio Maagad's denial that he was not the culprit should prevail over the positive identification made by them. The claim that revenge motivated the witnesses Dionisia Sing and Tita Sing to testify falsely against the accused is without merit. The records do not show that these witnesses had vengeance in their hearts. If they had, they would have also pointed to Natong Tejada and Ceferino Gamba as the culprits in the commission of the felony. All they had to do was to

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[30] *Id.*, pp. 99-100.

[31] *Id.*, p. 102.

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confirm the statement of Pablito Denurog since these persons have already been mentioned by Denurog. The fact that they did not, so much so that these persons were acquitted of the crime charged, only shows the veracity of the testimony of these witnesses.

Counsel for the accused makes capital of the testimony of Pat. Felipe Munalem that when he investigated these witnesses immediately after the robbery, he was told by them that they could not recognize the robbers so that he did not file any criminal case. This contention, however, is without merit. While Dionisia Sing may have told Pat. Munalem that she did not know the robbers, she added that she could recognize their faces if she ever saw them again. And she did, when she spontaneously pointed to Maagad upon seeing him at Barrio Masimag. In her sworn statement given to the PC investigators on February 21, 1969, Dionisia Sing stated:

"7. Q Can you recognized one of the four persons who robbed you and killed your husband on the 19th of February, 1969 at about 5:30 o'clock in the afternoon?

A I do not know the name, but I can recognized the face in case I can see him.

8. Q I am showing to you a person now, what can you say about him?

A That one Sir, is one of the robbers that robbed us and shot my husband. (Witness pointing to Mr. Protacio Maagad).

9. Q Why are you sure that he is one of the robbers and shot your husband?

A Because I saw him."[32]

Tita Sing explained her initial reluctance to name the robbers to Pat. Munalem saying that she was afraid that the robbers might come back to their house and retaliate. Her testimony reads, as follows:

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[32] See Exhibit "1-A", Original Record, p. 176.

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"Q Patrolman Felipe Munalem of Valencia testified here that when you were asked whether you recognized the person who tied you and brought you out of your house you answered that you could not recognize them because you were looking down and that the robbers were mad when you looked at them, is this true or not?
A Yes, I told Munalem as I was afraid to tell.

COURT:

Q To tell what?
A That I saw them.

ATTY. AZURA:

Q Why were you afraid?
A As the robbers might come back to our house.

Q But actually, could you tell the Court if you have seen the faces of those robbers who ties your hands and brought you down outside your house?
A Yes, I saw.

COURT:

Q What you stated in Court is the truth?
A Yes, sir."[33]

The defense was correctly rejected by the trial court because even conceding that the testimonies of the defense witnesses are truthful, nevertheless, in point of time, it could have been possible for the accused to go to Lurogan and to commit the felony of which he stands convicted. Pedro Loyloy testified that the accused was in his rice mill at 4:00 o'clock in the afternoon of February 19, 1969 and left after half an hour. On the other hand, Crispin Dalaguit testified that he saw the accused pass by his house going towards Loyloy's rice mill at about 4:00 o'clock, but did not see him come back. For his part, Jose Cantillo declared that he waited until 5:00 o'clock in the afternoon for the accused. The robbery-killing took place about 5:30 o'clock and the distance between Lurogan and Calubihon is only 43

[33] t.s.n., pp. 366-367.

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kilometers which could have been negotiated by a motor vehicle in less than an hour. And the confessed robber, Pablito Denurog, stated that they used the jeep of Natong Tejada in going to Lurogan.[34] Considering that this Court has ruled time and again that a defense of alibi must be looked upon with suspicion, it is obvious that it cannot prevail over the explicit and positive identification made by Dionisia Sing and Tita Sing who, without hesitation, pointed to him as one of the robbers. The trial court, therefore, correctly found the accused guilty of the felony of which he stands convicted.

The killing of Francisco Sing was done by reason of and on the occasion of a robbery perpetrated by four armed men in the house of Francisco Sing. There is, therefore, present the aggravating circumstances of by a band and dwelling. Hence, the penalty imposed is correct.

WHEREFORE, the judgment under review is hereby affirmed *in toto*.

SO ORDERED.

Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio-Herrera JJ.*, concur.

Fernando, C.J., took no part.

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[34] See Exhibit "4-A".