

G.R. No. L-9580

[ G.R. No. L-9580. September 30, 1957 ]

**THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, JULIANA CARIÑO Y RENIT, ET AL., DEFENDANTS-APPELLANTS.**

**D E C I S I O N**

**PARAS, C.J.:**

This is an appeal from a judgment of the Court of First Instance of Rizal, finding the appellants, Juliana Cariño Jesusa Golem, guilty of murder as principal and accomplice respectively. Cariño was sentenced to reclusion perpetua and Golem to an indeterminate penalty of from 10 years, 4 months and 1 day of prision mayor to 17 years and 4 months of reclusion temporal, and both to indemnify, jointly and severally, the heirs of the deceased Jose Gatchallan in the sum of P6,000.00 and to pay the costs.

The conviction was based on the affidavit executed by appellant Cariño before the Mayor of Quezon City and some newspapermen and agents of the law and found by the lower court to have been corroborated strongly by the evidence. Said affidavit recited that at 5:00 o'clock in the afternoon of August 15, 1954, near the door of the Office of the Golden Taxi Company in Paco, Manila, Cariño and appellant Golem agreed to kill the driver scabs of said company, because said scabs refused to cooperate in the strike staged by their husbands, former employees of said company; that at 8:00 o'clock that night, Golem passed by Cariño at the latter's house and disclosed that she had a knife tied to her thigh; that accordingly they first waited for a Golden taxi in Taft Avenue but, as none appeared, they proceeded to Quiapo by jeepney and to Rizal Avenue by foot; that at Azcarraga and Rizal Avenue, they sighted and hailed a Golden taxi, directing it to Quezon Institute; that they sat at the passenger's seat at the rear; that the taxi drove through España and turned right at 6th Street where Cariño told the driver (the deceased Jose Gatchalian) to stop and, standing from her seat, she stooped and, with a knife in her right hand, stabbed said driver on the chest; that the fatal knife had been held open and ready on Cariño's lap from the time they boarded the taxi; that after thrusting the knife, Cariño came out of the taxi through the left

front door, skipping over the wounded driver, because neither the left nor the right door at the rear would open; that she was so excited and alarmed that she could not remember what happened to her knife; that she remembered distinctly, however, that she stabbed the victim only once with all her might and strength; that no sooner had Cariño runaway than she heard someone call after her and, looking back, she saw Golem wounded and bloody all over asking Cariño to wait; that she covered Golem with her black skirt and together they took a taxi to the North General Hospital for medical treatment.

At the trial, Cariño testified in a way contrary to the in her affidavit. As corroborated by Golem, Cariño said that in the afternoon of August 15, 1954, she went to the house of Golem in Paco to borrow some money; that the latter had none and proposed that they go to Tondo to pawn Golem's chinaware with her relative; that they accordingly set out on their errand at seven o'clock that night, Golem picking up Gariño at the latter's house and both tailing a bus to Quiapo and a jeepney go Divisoria; that they were disappointed to find that Golem's relative, an aunt named Aurelia Salsona, also had no money; that they took a jeepney back to Quiapo, intending; to go horns; that at Azcarraga and Rizal Avenue, they alighted and walked long Rizal Avenue to take a bus at Echague for Paco, but that along the way, at about 11:00 o'clock, Cariño suggested that they go to Quezon to see a sister-in-law who lived on 6th Street, from they might be able to borrow money; that they thereupon called a taxi (the Golden Taxi in question) and sat at the back, directing the driver to proceed to 6th Street, Quezon City that when they were in Espana Extension and the taxi turned to the right, that discovered that it was not 6th Street and Cariño told the driver (the deceased) to slow down, whereupon the latter inquired what they were going to do at such an unholy hour; that they answered that they would borrow money from a relative in 6th Street, because their husbands were on strike against the Golden Taxi Company; that then the driver then said, "So your husbands are strikers, you better go back to work because you have no chance to win", to which Cariño replied, "if it were not for you scabs, this would not happen to us"; "we request you to join us only for three days but you refused, you are really scabs"\*; that the driver suddenly stopped his vehicle turned around and grabbed Cariño by the collar and whipped something out of his pocket her; that she parried the blow and thereby received only a knife wound on her left wrist; that the driver turned the knife to Golem and stabbed her several times; that Cariño fortunately remembered her knife and, pulling it out of her breast, she stabbed the driver once on the chest; that somehow she was able go get out of tho taxi, leaving Golem inside; that after having gone a short distance, she heard Golem calling for her to wait; that she found Golem wounded and bloody and, covering her with a black skirt, took her to the North General Hospital for

medical treatment.

The appellants contend not only that Cariño's extrajudicial confession was obtained under a promise of reward or leniency, but that said confession was not corroborated and was in fact contrary to the evidence presented by the prosecution and to the physical facts of record, namely:

1. The testimony of Dr. Ramirez to the effect that the knife recovered from the right hand of the deceased and belonging to appellant Cariño could not be the fatal weapon in view of the size and depth of the deadly wound compared to the length and width of the blade of said knife.
2. The position of the deceased when he was found slumped and turned around facing the passengers' seat with the knife of Cariño tightly gripped in his right hand, the absence of blood on the floor between the steering wheel, and the presence of liberal quantities of blood spattered in a pool on the floor of the taxi between the front and rear seats, clearly indicate that he was not attacked by surprise with his body facing the front of wheel but that there was a struggle between him and the appellants before he was stabbed.
3. The five wounds received by appellant Golem and the inflicted on the wrist of Cariño show that the deceased had not been attacked first, because if he had already received the fatal blow delivered by appellant Cariño, it could be impossible for him to have the strength to attack Cariño and Golem.
4. The testimony of Dr. Ramirez that the stab wound on the left chest must have been the last wound received by the deceased is contrary to the statement in the affidavit that the said wound was the first received by the deceased.
5. The fact that the taxi was found in 5th Street, Quezon City, is contrary to the recital in the affidavit of Cariño that the killing took place in 6th Street.

On the other hand, it is contended that appellant Golem cannot be convicted as an accomplice, because mere presence at the scene of the crime does not justify the imposition of any liability on her; there is no evidence showing Golem to have cooperated in the execution of the offense by previous or simultaneous acts and neither is there proof of conspiracy; the affidavit of Cariño cannot be used against Golem because the same is

admissible only against the affiant.

This Court finds the extra judicial confession of appellant Cariño to be a coherent narration of facts — a sincere and candid account of the killing of the driver, Jose Gatchalian, an admission of guilt clothed with human sentiments and devoid of false legal defenses. The prejudice harbored by the appellants against the scabs of the Golden Taxi Company prompted the killing. It is not usual for family women to go out into the dark night and to quite distant places just to borrow money. Nighttime (especially when late) is certainly not the ideal hour to disturb anybody for a loan. More natural and in accordance with reason is to choose night time for the pursuit of an evil purpose. Besides if as claimed by the appellants during trial, to pawn Golden's chinaware, why was not even a piece thereof found in the taxi?

The evidence presented by the defense merits no consideration. The position of the victim as he was found dead in the taxi does not in any way discredit the theory of the prosecution that appellant Carino stabbed him while he was sitting down, facing the steering wheel. Dr. Ramirez testified, corroborated by Cariño in her affidavit, that the victim could have been stabbed in such sitting position facing the wheel, and that the assailant stabbed him on the chest by stooping from behind.

Even assuming that there was a struggle, it is more natural and logical to conclude from the evidence that said struggle happened after appellant Cariño had stabbed the deceased. According to Dr. Ramirez, after the deceased was stabbed on the chest, he could still have survived for a period of five minutes — enough time for him to have fought back his assailants. This is corroborated by the statement of Golem that when Cariño stabbed the victim, the latter did not die instantly and was able to resist.

The discrepancy between the sizes of the wound and the knife can be explained by the direction of the chest wound which was horizontally backward and slightly medial and the great force employed by appellant Cariño in stabbing the deceased. "They are usually larger than the size of the weapon, unless it be inflicted perpendicularly to the surface of the body and withdrawn in the same direction as that in which it was inserted." (p. 259, Angeles, Legal Medicine.)

The evidence is clear that Cariño signed her affidavit willingly, the statements of Patrolman Pomento, Chief of Police of Quezon City, and of the Assistant City Fiscal of Quezon City corroborated this fact. Appellant Cariño, when asked, answered that she was

willing to sign said affidavit. She swore to it and signed it in the presence of Mayor Amoranto, the Chief of Police, and two reporters of the press. Mayor Amoranto stated that he read and explained the affidavit to Cariño who readily signed and swore to it before him. She neither objected nor asked that any correction be made therein, Assistant City Attorney J. Lustre in turn asked appellant Cariño whether the statement was hers and she understood the contents thereof and all her answers were in the affirmative.

Appellant Marino in the affidavit revealed the conspiracy between her and appellant Golem to kill the scabs of the Golden Taxi cab, and the fact that Golem had informed that the latter was carrying a knife. The circumstance that together they went out in the dead of the night and hailed a Golden taxi, proves their conspiracy to carry out an evil purpose.

We are constrained to admit the affidavit as against appellant Golem as evidence of conspiracy, because this conspiracy is corroborated substantially by other evidence. Golem herself admitted to Patrolman Pomento that she and Cariño had a plan to kill the seeks. The appellants went out together and rode in a Golden taxi and both admitted that they had no money to pay the fare. Cariño admitted bringing a knife with her, and Golem revealed to Cariño that she also had a knife tied to her thigh. Both were in the fateful taxi at the time of killing.

“While as a general rule, an extrajudicial confession is only admissible against the accused making it, nevertheless, it is now well settled that where two or more accused have made, without collusion, extra judicial confessions, which are identical or tallies with each other in their essential details and are corroborated by other evidence of record, such confessions are admissible against a co-accused not only to prove conspiracy among them, but also to establish his participation in the crime, (People vs. Luarez, Feb. 28, 1953, CA-G. R. No.922728 )

Inasmuch as in the affidavit Cariño admitted having stabbed the deceased only once, it is fair to conclude that the four other wounds received by the deceased were inflicted by Golem who was then the only companion of Cariño in the taxi. Both must accordingly be considered as principals. The crime committed is murder, with the qualifying circumstances of nighttime, use of motor vehicle, and premeditation. The prescribed penalty should therefore be imposed in the maximum degree, but for lack of necessary majority, the crime will be reduced to reclusion perpetua.

In view of the foregoing, it being understood that both appellants Cariño and Golem are sentenced go reclusion perpetua, with the accessories provided by law, the appealed judgment is in all other respects affirmed, with costs. So ordered.

*Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.*

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