

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO MOLLEDA Y GERONA ALIAS TIKBOY, VIRGILIO BALUYOT
Y DIESTRO ALIAS BOY BAKAL, REYNALDO NICOLAS Y MANANSALA
ALIAS BOY ...**

G.R. No. L-34248. November 21, 1978

Ponente: SANTOS, J.

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SANTOS, J.:

Mandatory review of the decision of the Circuit Criminal Court, Manila, Judge Manuel R. Pamaran, presiding, in Criminal Case No. CCC-IV-548(71) in which the above-named accused were each and all convicted as principals in the crime of murder, qualified by taking advantage of superior strength and with the aggravating circumstance of "deceit", and sentenced, each and all, to death, to jointly and severally indemnify the heirs of the deceased in the sum of P12,000.00, to pay P8,000.00 as exemplary, and P8,000.00 as moral, damages, and the costs.

On April 6, 1971, the above-named accused were charged with murder in an information, filed by Assistant Fiscal Bernabe Tiongco, to wit -

The undersigned accuses Roberto Molleda y Gerona alias Tikboy, Virgilio Baluyot alias Boy Bakal, Reynaldo Nicolas alias Boy Miro and Evelyn Duave alias Baby China.

That on or about January 7, 1971, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one whose true name and identity are still unknown, and helping one another with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence on one Alfredo Bocaling then and there stabbing him with a knife on the stomach and left arm, hitting him several times on the head with a piece of wood and kicking him, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.

At the trial, the prosecution presented the testimony of Ramon Ching, an eye- and ear-witness to the killing, Dr. Abelardo Lucero, Medico-Legal officer of the Manila Police Department, Detective Amador Jose, Manila Police Department (MPD), Patrolman Nestor Miguel, MPD and Investigator, Precinct 9, and Exhibits A, a Sketch; B, Identification Slip; C, Human Sketch; D, Certificate of Death; E, Postmortem findings; F, Necropsy report; G, Statement of Roberto Molleda; H, Statement of Virgilio Baluyot; and I, Statement of Reynaldo Nicolas.

The defense presented the testimonies of the accused Roberto Molleda, Reynaldo Nicolas, Virgilio Baluyot and

Evelyn Duave and Exhibits 1, Duave, a sketch; 1-a (Molleda) Statement of Sta. Brigida; 2 (Molleda) I.D. of Molleda; 2-a (Molleda) I.D. of Molleda; 2-b (Molleda) I.D. of Molleda; 2-c (Molleda) Voter's I.D. of Molleda.

The operative facts of and circumstances surrounding the commission of the crime and the apprehension and investigation of the accused as gleaned from the testimonies of the witnesses and the extra-judicial statements of three of the accused follow.

At or about 8:00 in the evening of January 7, 1971, Alfredo Bocaling and Ramon Ching were in the ground floor of the Good Earth Emporium on Rizal Avenue, Manila, waiting for one Daniel Morosi. While thus waiting for Morosi, they were invited by two women, Evelyn Duave alias Baby China and Melinda, to join them as they - Evelyn and Melinda - would return a radio at Suter St., near Herran. Since Ramon Ching had known Evelyn Duave alias Baby China for two years already as a call girl, the two -- Bocaling and Ching -- agreed to go with them because they were also going to one Gordon, their friend, to whom the transistor radio would be returned.

They rode in a bus and at some point on Herran (now Pedro Gil St.) alighted therefrom and then took a taxi for the house where Gordon lived. They arrived at Suter Street, whereupon, Melinda alighted from the taxi in which they were riding, while the three remained inside. Melinda said that she would talk to somebody. When Melinda returned, she was with a male companion. Ching and Bocaling were introduced to her male companion, a certain Paking. They were thereafter told to alight from the taxi and to proceed to a certain house nearby with Evelyn.

Ching and Bocaling saw four persons drinking, namely, Bay, Paking, a certain cursillista whom they did not know and one Ngongo. They joined the four and drank with them. A little while later, Melinda asked permission from them to go out to buy something. After about five minutes, she returned with three men, one of whom is a friend of Gordon, Reynaldo Nicolas alias Boy Miroy, who joined them. After drinking and conversing for sometime, Evelyn stood up and asked permission to go to a nearby store to buy lollipop. Actually, Evelyn contacted Roberto Molleda alias Tikboy, Virgilio Baluyot alias Boy Bakal and Reynaldo Nicolas alias Boy Miroy, all members of the Sigue-Sigue Sputnik gang. She informed them that the persons who robbed and raped her were there in the house. She then returned with Roberto Molleda, and Virgilio Baluyot to the house. They were introduced to each other and the group continued with their drinking. A while later, at or about 10:00 P.M., Ching and Bocaling indicated that they wanted to go home. The rest of the group also prepared to leave.

When they stepped out of the house, the group saw a wake in another house, nearby. They dropped there and stayed for a while, after which the group went to the corner of Suter and Tejeron streets. As they were proceeding towards Herran, now Pedro Gil, Nicolas alias Boy Miroy placed his hand on the shoulder of Ching, while Baluyot alias Boy Bakal did the same to Bocaling in an apparent show of friendliness to dispel any suspicion on the part of the two. A little while later, as they reached the corner of Suter and Tejeron streets, Ching was suddenly boxed on the nape by Nicolas and at almost the same time, Baluyot boxed Bocaling also on the nape. Ching sensing trouble, shouted to Bocaling, "Takbo na tayo, Freddie." and ran towards Pedro Gil. He was chased by two or three male companions who were earlier introduced to them. Alfredo Bocaling fell at the corner of Suter and Tejeron streets, possibly because he tripped; but Ching was able to make good his escape. While Ching was being chased, he turned his head towards Suter and saw several persons ganging up (pinagtutulungan) on Freddie Bocaling. He was being hit with bottles and pieces of wood by Molleda, Baluyot and Nicolas, and Baby China hit Bocaling with a belt. Ching hastily boarded a passenger jeep and proceeded to Rizal Park to look for Danny Morosi. Ching, however, failed to see Morosi and instead saw one Ruding Bakal.

At or around 11:00 P.M., Ching returned to the corner of Suter and Tejeron, with Rudy Aguilar, another person also by the name of Rudy and Junior. He informed them of what had happened to Freddie Bocaling. They did not see Bocaling anymore. On the following day, Ching learned that Bocaling was dead, whereupon he reported the

incident to the authorities. The police investigated him.

Alfredo Bocaling died as a result of the mauling. According to the post-mortem findings, Exhibit "E", he suffered the following injuries -

(1) Stab wounds measuring 2 x 1 x 18 cm. located at the right axillary line at the level of the 6th interspace. x x x.

(2) Punctured wound measuring 0.2 x 1 cm. x 3 cm. located in the anterior upper left lateral chest.

(3) Stab wound measuring 1.5 x 0.5 x 2 cm, located in the left anterior chest at the level of the anterior axillary line (slight).

(4) Stab wound measuring 2.5 x 1 x 6 cm. located in the posterolateral portion of the upper 3rds of the left arm. x x x.

(5) Multiple (2) lacerated wounds in the parietal region of the head.

(6) Multiple (4) hematoma located in the frontal region.

(7) Multiple (8) abrasions in the anterior left chest, right knee and another in the anterior surface of the lower right lip.

Dr. Abelardo Lucero, medical examiner of the Manila Police Department, who examined the cadaver of Bocaling, said that the cause of death was "intrapericardial tamponade due to multiple four (4) stab wounds lacerating the heart, liver and diaphragm; blunt injuries, contributing." Stab wound No. (1) which was "directed obliquely upwards to the left and slightly to the back lacerating the right lobe, liver, diaphragm, through the right ventricle of the heart" was fatal.

The incident was reported to Precinct 9 at Sta. Ana. It was investigated by Detective Amador Jose, Manila Police Department (MPD), who was on duty as investigator of the Precinct. The statements of Ramon Ching and one Manuel Sta. Brigida were taken. After a follow-up of the case, Detective Jose found and established the identities of the suspects as the above-named accused - Roberto Molleda alias Tikboy, Virgilio Baluyot alias Boy Bakal, Reynaldo Nicolas alias Boy Miroy - all members of the Sigue-Sigue Sputnik gang - and Evelyn Duave alias Baby China.

Meanwhile, shortly after the mauling incident, on the evening of January 7, 1971, Molleda, Nicolas, Baluyot, Duave and Melinda proceeded to Cine Rey. Thereafter, they went to the house of a friend, Chiqui, where they tarried for a while. They then proceeded to the house of Evelyn Duave who gave her electric fan to Nicolas who in turn hocked the same to her aunt, Alicia Nicolas, who lives at Sta. Ana, Pateros, Rizal. Thereafter, they proceeded to Olongapo City after they received information that masked men were coming back to Suter Street.

While in Olongapo, the group stayed in the house of another friend, one Carling Esmeralda on Pag-asa street. After a day or so they rented a house near Gordon Avenue somewhere near Pag-asa street. Evelyn and Melinda continued with their calling and worked as hostesses to provide the expenses of the group, who were then in hiding.

But the long arm of the law finally caught up with them in their hiding place and on March 5, 1971, Roberto Molleda fell into the hands of the operatives of the Anti-Hoodlum Unit thru which the alarm for the apprehension of the suspects was flashed. Molleda was brought to Manila for investigation in connection with the killing of Bocaling on January 7, 1971. Virgilio Baluyot, Reynaldo Nicolas and Evelyn Duave also fell into the hands of the law and were also likewise brought to Precinct 9, Sta. Ana, Manila, for investigation. Melinda, the common-law-wife of Reynaldo Nicolas was able to evade the operatives of the Anti-Hoodlum Unit and has remained at large.

During the investigation Roberto Molleda, who was investigated by Det. Amador Jose, gave his statement on April 5, 1971; while Virgilio Baluyot and Reynaldo Nicolas gave their written statements on April 4 and 5, respectively, before Pat. Nestor T. Miguel. Evelyn Duave was present when the three pointed to her as their companion and incriminated her; she did not contradict their statements.

Molleda's account of the killing follows -

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07. T - Sino sino ang mga kasama mo sa pagpatay sa isang lalaki duon sa Suter, Sta. Ana, Manila, nuong 10:00 ng gabi, Enero 7, 1971 na binanggit mo sa itaas nito?

S - Ang mga kasama ko po ay sina Reynaldo Molleda alias Boy Miroy, si Virgilio Baluyot alias Boy Bakal, at si Baby China, at si Melinda.

08. T - Saan naruroon ngayon sina Virgilio Baluyot, Reynaldo Nicholas, Baby China at Melinda?

S - Ayun po sina Reynaldo Nicholas, alias Boy Miroy, Virgilio Baluyot, alias Boy Bakal, baby China na ang tunay na pangalan ay Evelyn Duave y Ortega at si Melinda po ay wala rito. (Itinuro ang mga nabanggit na mga tao na nasa boob ng opisina).

09. T - Maaari mo bang sabihin dito sa amin ang mga bagay-bagay tungkol sa ginawa ninyong pagpatay duon sa isang lalaking ipinaalam namin sa iyo na si Alfredo Bocaling y Barcenaz ng mga 10:00 ng gabi, Enero 7, 1971, sa Suter, Sta. Ana, Maynila?

S - Opo. Nuong hapon ng Enero 7, 1971, kami nina Reynaldo Nicolas alias Boy Miroy at Virgilio Baluyot a-las Boy Bakal ay nag-inuman ng alak sa Bagong Bituin Restaurant sa J. Rizal Ave., Makati, Rizal, at inabot kami ng gabi doon. Nuong mga 10:00 ng gabi ng araw na iyon ay umalis kami sa nasabing restaurant at

sumakay kami ng isang pangpasaherong jeep at bumaba kaming tatlo sa kanto ng Tejeron at Suter at sinalubong kami ni Baby China at Melinda at sinabi ni Baby China sa amin na pinagnakawan siya ng pera at ni-rape pa siya sa isang hotel ng ilang lalaki. Sinabi ni Baby China na ang dalawa sa mga lalaking nagnakaw ng kanyang pera at ng rape sa kanya ay nanduon sa isang bahay duon sa Suter, Sta. Ana, Manila at kami ay naglakad na papunta doon sa nasabing bahay. Nagdaan ako sa isang patay duon sa Suter at sina Boy Miroy, Boy Bakal, Baby China at Melinda na lamang ang nagpunta duon sa bahay na pinag-iinuman na binanggit ni Baby China. Pagkaraan ng humigit kumulang sa beinte minutos ay nakita ko silang nagdaan papunta ng Tejeron at akbay ni Boy Miroy ang isang lalaki at akbay din ni Boy Bakal ang isa pang lalaki at kasama nila sina Baby China at Melinda at ako'y sumunod sa kanila. Nang malapit na kami sa kanto ng Tejeron ay pinalo ni Boy Bakal ng hibilya ng sinturon sa ulo ang lalaking akbay niya at sinuntok naman ni Boy Miroy iyong lalaking akbay niya at nakatakbo ang nasabing lalaki. Nahawakan ni Boy Bakal iyong lalaking akbay niya, hinabol namin ni Boy Miroy iyong lalaking nakatakbo at hindi namin siya inabutan at nagbalik at nakita ko na bagsak na sa daan dahil sa palo iyong lalaking nahawakan ni Boy Bakal. Dumampot ng isang kahoy si Boy Miroy at pinagpapalo sa ulo iyong lalaki. Sinaksak ko naman ang nasabing lalaki ng isang kutsilyo sa kanyang tiyan at pinagpapalo pa ni Boy Bakal at Boy Miroy ang lalaking sinaksak ko habang sinasabi ni Baby China na tuluyan siyang patayin kung hindi isasauli iyong pera niya. Pagkatapos na murahin ng marami ang lalaking sinaksak ko ay umalis na kami at nagpunta kami duon sa bahay na may patay at pagkatapos ay nagpunta kami sa Pateros, Rizal, at duon kami nagpaumaga at kinabukasan ay nagpunta kami sa Olongapo City.

Baluyot's account in turn, follows –

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06. T - Maaari ba naman na isalaysay mo sa pagsisiyasat na ito, kung ano ang mga bagay-bagay na iyong nalalaman na may kinalaman din naman sa patayan na naganap sa Suter St., Sta. Ana, Manila?

S - Ganito po iyon, kami pong tatlo nina BOY MIROY, TIKBOY at AKO ay nag-inuman sa Makati, Rizal, sa Tejeron St., sa loob ng Bagong Bituin Restaurant nuong gabi ng mga oras na humigit-kumulang sa ika 9:00 ng gabi ng bago mangyari ang patayan sa daang Suter at matapos na kami ay makapag-inuman ay umuwi na at pagdating namin sa kanto ng Suter at Tejeron ay aming nakita itong si Baby China tinawag po ni Baby China sina BOY MIROY at TIKBOY at niyaya na magtuloy sa bahay nila POPOY na ang tunay na pangalan ay MANUEL STA. BRIGIDA at sila po ay nag-inuman samantalang ako po naman ay nasa bahay nina ELSA na nakaburol ng mga pagkakataong iyon na malapit sa bahay nina POPOY at hindi po natagalan ay lumabas sina TIKBOY, BOY MIROY, MELINDA, BABY CHINA, at may kasama pang dalawang lalaki na hindi ko po kilala at ako po ay kinalabit ni BOY MIROY at sinenyasan naman ako ni TIKBOY na sumunod sa kanila at nang kami po ay naglalakad ay aking tinanong si BOY MIROY kung bakit at sinabi niya sa akin na ang dalawang lalaki na kanilang kasabay ay mayroong atraso kina BABY CHINA at MELINDA at mayroon tatak na BAHALA NA GANG, inakbayan po ni BOY MIROY ang isa sa dalawang lalaki at ang isa po naman sa kanila ay kinausap namin ni TIKBOY, at tinanong kung saan sila umuwi at ako po ay nagpakilala na ako si BOY at samantalang kami po ay naglalakad na, nauuna si BOY MIROY at kaakbay ang isa sa dalawang lalaki ay nakita ko na sinuntok ni BOY MIROY ang kanyang kaakbay at ang kasabay naman namin ni TIKBOY ay tumakbo at kami naman ni TIKBOY ay tumakbo palapit kay BOY MIROY at tinanong ko si BOY MIROY kung bakit niya sinuntok o inumpisahan at sinabi niya sa amin ni TIKBOY na iyon ang siyang nagnakaw ng pera ni BABY CHINA at matapos na aking malaman kay BOY MIROY na iyon ang siyang nagnakaw ng pera ni BABY CHINA ay sinuntok ko po iyon (lalaki) at bumagsak sa lupa at ng iyon po ay bumulagda ay nilapitan naman siya ni TIKBOY at sinaksak at si BOY MIROY po naman ay kumuha ng isang pirasong kahoy, pinalo po niya sa ulo, likod at ibang parte ng katawan ang nakahandusay na tao at ako po naman ay hinugot ko ang aking sinturon at pinalo ko ng hibilya ang taong nakahandusay at bago kami umalis ay minsan ko pang hinataw

ng hibilya ng aking sinturon ang tao na tumama sa kanyang noo at ako po at si BOY MIROY ay tinawag ni TIKBOY at nagsabi na "PARE, HALIKA NA KAYO, TAMA NA YAN" at habang kami po ay papalayo sa lugar na pinangyarihan ay sinabi niya sa amin ni BOY MIROY na sinaksak niya iyong tao at kami ay nagtuloy sa patay at hindi nagtagal ay mayroong dumating na taong lalaki at kinausap si BOY MIROY at TIKBOY at ng bumalik po sina BOY MIROY at TIKBOY, tinawag ako na nang mga pagkakataong iyon ay umiinom ng kape at sinabi sa akin noong tao na tumawag sa kanila na patay na iyong tao at ako nga po ay niyaya na nilang magtago.

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11. T - Ayon sa iyo ay nagkasama kayo nina BABY CHINA, MELINDA, TIKBOY at BOY MIROY, sa isang bahay na inyong inupahan sa Olongapo, nalalaman mo ba naman kung saan ngayon naroroon itong iyong mga kasamahan na ito?

S - Si BABY CHINA at BOY MIROY po ay narito ngayon dito sa presinto ng Sta. Ana at nakakulong at si TIKBOY po naman ay nakakulong din sa Olongapo City ayon sa kina BABY CHINA at BOY MIROY, dahilan iyon daw po sa mayroong pending case doon at si Melinda po naman ay hindi ko alam.

16. T - Sinabi mo na itong si MIROY ay narito ngayon dito sa presinto ng Sta. Ana, Manila, at itong si Baby China, sila ba ay narito ngayon?

S - Opo, ito po si BOY MIROY (Declarant pointing to the person Reynaldo Nicholas y Manansala) at iyon po naman si Baby CHINA (Declarant pointing to the person Evelyn Duave y Ortega).

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And Nicolas' account follows -

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09. T - Sinabi mo na ikaw ay narito sa aming tanggapan, dahilan sa pagkakapatay ninyong magkakasama na iyong binanggit sa salaysay na ito, sa isang tao, noong ika-7 ng Enero, 1971, sa Suter St., maaari ba naman isalaysay mo sa lalong maikling pananalita ang buong pangyayari?

S - Ganito po iyon, nasa Makati po kami at nag-iinuman sa Bagong Bituin Restaurant na nasa daang J. Rizal. Matapos po kaming mag-inuman, kami ay umuwi at pagdating namin sa kalye Suter, Maynila ay nasalubong namin si Evelyn at nagsumbong sa akin na iyon daw pong tao na nagnakaw ng kanyang pera ay naroon sa bahay nina Manuel Sta. Brigida na nasa kalye Suter, kami nina BOY MIROY, EVELYN at TIKBOY ay

nagpunta doon at sa pagdating po namin doon ay tamang-tama na lumalabas na sila, tinawag ko po sila ng "PARE PUEDE BANG MAKASAP KAYO SANDALI" at kinalabit po ni TIKBOY si BOY BAKAL o VIRGILIO BALUYOT na ng mga sandaling iyon ay nasa lamayan at aming sinabayan ang dalawang tao sa paglakad nila sa kalye Tejeron hanggang kanto ng kalye Suter at aking sinuntok iyong isa sa dalawang magkasama at lumapit sina BOY BAKAL at TIKBOY sa akin at ako po ay tinanong ni BOY BAKAL kung bakit ko sinuntok, ang sagot ko ay ito raw ang nagnakaw ng pera ni Evelyn at matapos na malaman ni BOY BAKAL ay sinuntok niya iyong tao at bumagsak naman at lumapit si TIKBOY at sinaksak iyong tao at pagkatapos po niyon ay hinagupit ng sinturon ni BOY BAKAL iyong tao at kami ay tinawag ni TIKBOY at sinabi na tama na pare at umalis na kami.

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14. T - Ano naman ang ginawa ninyo matapos na inyong mapag-alaman na patay na iyong tao?

S - Amin pong ipinaalam kay BOY BAKAL na patay na ang tao na aming binugbog sa kalye Suter at kami po ay nagpunta sa bahay ni EVELYN sa kalye San Jose malapit sa kanto ng Legaspi, Makati, Rizal. Kinuha ni Evelyn ang kanyang bentilador at iyon po ay ibinigay sa akin at isinanla ko naman kay Alicia Nicholas na aking tiyahin na nakatira sa Sta. Ana, Pateros, Rizal, at nagtuloy na kaming magkakasama sa Olongapo City.

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20. T - Saan naman kayo kumuha ng inyong iniuupa sa bahay na iyong inupahan sa Gordon Avenue?

S - Nag-hostess po si BABY CHINA at ang aking asawa na si MELINDA.

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On June 11, 1971, after trial, the court a quo rendered its decision, which - in detailing its rationale for its findings on the guilt of the herein accused-appellants and its sentence - held as follows:

As to the proofs on record, i.e., the eyewitness testimony of Ching and the extrajudicial statements which establish the conspiracy to kill Alfredo Bocaling –

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The testimony of Ramon Ching indubitably shows that the four (4) accused conspired and confederated with one another in killing the victim. Ching testified in a categorical, spontaneous, straight-forward and logical manner with marked ease and fluency that while he and the victim (Alfredo Bocaling) were on the way to the intersection of Suter and Tejeron Streets, Manila, with the four (4) accused and others like a certain Melinda,

he was boxed by Nicolas on the nape. Bocaling was also boxed on the nape either by Molleda or Baluyot and for which he shouted "Takbo na tayo, Freddie". He ran towards Herran St. with two or three persons chasing him, while Bocaling fell at the corner of Suter and Tejeron possibly because he tripped. While he was being chased, he turned his back towards Suter and saw several persons helping one another in mauling the victim. The victim was being hit by a belt, bottles and pieces of wood. Accused Molleda, Baluyot and Nicolas were among those persons mauling the victim. Accused Duave also participated in the mauling of the victim by hitting him with a belt. The positive categorical testimony of Ching became more convincing in the cross-examination to which he had been exposed wherein he reiterated in full details the mauling of the victim. He declared that he was running sidewise when he saw Bocaling being mauled and he was only eighteen (18) meters away from him. There was even a light at the corner about twelve (12) meters away from where the victim was mauled. He looked back three (3) times while running and the first time he looked back, he saw the victim already being mauled. He even demonstrated with particularity how Duave hit the victim with a belt by taking hold of a leather belt, rolled the end of it around her right palm and with the buckle at the other end made a swinging motion of the belt from his back to the front and at the same time made a step forward.

The fact that no evil or bad motive was presented by the accused why Ching will testify in the manner he did if such were not the fact further augments his testimony. Settled is the rule that where no evidence whatsoever have been presented to show bad or evil motive why the witnesses for the prosecution should have testified falsely against the defendant (*People versus Macalindong*, 76 Phil. 719), and where the defendant failed to show that the prosecution witnesses have any special interest in the conviction of the accused, the logical conclusion is that no such improper motive existed and their testimony is worthy of full faith and credit (*People vs. Borbono*, 76 Phil. 702; *People vs. Baguiño*, 77 Phil. 427). Prosecution witnesses who had no reason to falsely impute on the defendants the commission of so grave an offense deserve credence (*People vs. Albapara*, L-25001, March 15, 1968). It cannot be assumed that in seeking justice and the punishment of the assailant, prosecution witnesses would indiscriminately and without any motive, point to the wrong parties (*People vs. Ricaplaza*, L-25856, April 29, 1968).

The testimony of Ching that the accused helped one another in assaulting the victim is corroborated by the extra judicial confessions of accused Molleda, Baluyot and Nicolas.

Accused Roberto Molleda admitted in his statement (Exhibit 'G') that he stabbed the victim on the stomach with a kitchen knife while Baluyot and Nicolas were hitting the victim all to the tune of Duave's utterances that they kill the victim if he will not return her money.

Virgilio Baluyot also admitted in his statement (Exhibit 'H') that after he was informed by Nicolas that the victim was the one who store money of Duave, he boxed the victim who fell on the ground. While already in that position, Molleda approached the victim and stabbed him while Nicolas got a piece of wood and hit the victim on the head, at the back and other parts of his body. At this juncture, he pulled his belt and hit the victim with the buckle while the latter was lying flat on his back. In the process, Duave was giving orders to maul the victim as he was really the one who stole her money. Before they finally left, he even hit again the victim's forehead with the buckle of his belt.

Reynaldo Nicolas likewise admitted in his statement (Exhibit 'I') that he boxed the victim and thereafter, the victim was boxed again by Baluyot and stabbed by Molleda.

The trial court then explained why the extrajudicial confessions of the three - Molleda, Baluyot and Nicolas were admissible against Evelyn Duave alias Baby China, and cited decisions in support thereof -

These extra-judicial confessions of Molleda, Baluyot and Nicolas which identically show also that Duave instigated the assault on the victim can be taken likewise against Duave. It has been repeatedly held that 'extra judicial confessions independently made without collusions, which are identical with each other in their essential details and are corroborated by other evidence on records are admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime.' (People v. Condemena, L-22426, May 29, 1968; People vs. Provo, L-28347, January 20, 1971). In this particular case, Ching corroborated the fact that Duave was one of those who assaulted the victim by hitting him with the buckle of a belt.

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In passing upon the claims of the accused that their statements were extracted from them through third degree, i.e., maltreatment, force and intimidation, the trial court observed –

The claim of accused Molleda, Baluyot and Nicolas that they were forced to give their statements has the earmark of artificiality. Their statements contain details which could only be given by them and for which the police could not be much interested or possibly concoct like for example, the fact that they assaulted the victim because according to Duave he was the one who raped her and stole her money; that they first came from the Bagong Bituin Restaurant in Rizal, Makati, where they had a drinking spree before they proceeded to Suter and many more. The answers to the questions appearing in the statements of the accused appear also to be fully informative and even beyond the requirements of the question indicating that the minds of the accused were free from extraneous restraint. It has been held that where the statements of the appellants in answer to the questions are responsive and informative containing details which only the declarant could have furnished, and could not have concocted by the investigators the said statements are considered to have been voluntarily given (People v. Dorado, L-23464, Oct. 30, 1969).

The Court has likewise observed that the statements of the accused were not only subscribed but signed before the Inquest Fiscal who, before swearing the accused, even inquired from them whether their statements contained the truth and they so answered in the affirmative. They did not make any complaint or protests before the Fiscal. It is well established jurisprudence that where the confession was subscribed and sworn to by the appellant before an Assistant City Fiscal of Manila and it was not shown at all that appellant ever hesitated or refused to sign and swear to the same, much less did he protest to the fiscal regarding the way he was investigated, the confession is considered to have been voluntarily given. (People v. Racca, et al., L-15812, December 30, 1961; People v. Dorado, L-23464, October 31, 1969).

The Court then observed that the injuries inflicted on the victim as revealed in the statements of the accused were corroborated by the post-mortem findings - and the testimony of the lone eye-and ear-witness to the killing –

It is also worthwhile to note that the injuries inflicted on the victim as confessed by Molleda, Baluyot and Nicolas in their respective statements were corroborated by the post-mortem findings of Dr. Lucero. The post-mortem findings (Exhibit 'E') shows that the victim actually suffered stab wounds on the front part of his

body, namely, one 'in the left anterior chest at the level of the anterior axillary line' wound no. 3) and another one 'in the right axillary line at the level of the 6th interspace' (wound no. 1). These wounds corroborated the stabbing of the victim as admitted by Molleda.

The four (4) hematomas located in the frontal region or on the forehead of the accused (wound no. 6, Exhibit 'E'), corroborated the fact that the victim was hit with a piece of wood by Nicolas or a buckle and the two (2) lacerated wounds on the parietal region of the head (wound no. 5, Exhibit 'E') bolster the fact that accused was hit also by a blunt or a hard object. The same is true with the abrasions on the anterior left chest, right knee and on the anterior surface of the right lower lip (wound no. 7, Exhibit 'E'). They indicate that the victim had really been hit by a blow of a blunt object.

It is important to stress that the facts narrated in the confession of the accused were more or less corroborated by the testimony of Ramon Ching. In the statements of Molleda (Exhibit 'G'), it was admitted therein that a companion of the victim was boxed but he was able to run away, hence, they chased him. Ching testified that he was boxed on the nape and he was able to run away but chased by the friends of the accused. Ching also testified that the four (4) accused helped one another in assaulting the victim.

The Court noted that all the accused fled to Olongapo City after the murder --

The fact that accused Molleda, Baluyot and Nicolas truthfully confessed their participation in the commission of the crime is further augmented by the fact that they, with Duave and Melinda, fled from the crime scene to Olongapo City immediately after the happening of the incident. Nicolas testified in Court that he and Baluyot went to Olongapo the day immediately after the incident and there saw Duave and Melinda. Baluyot also testified that they all did not go home that evening but went straight to Olongapo City after staying for a while in Chiqui's house. But two (2) weeks after, he left Olongapo and went to the house of his aunt in Pasig, Rizal, instead of going to his residence in Suter, where he was apprehended. Duave likewise testified that she went to Olongapo with Melinda on January 8, 1971. And it has been held that 'the wicked flee, when no man pursueth but the righteous are as bold as a lion' (US vs. Algad, 25 Phil. 510; U.S. vs. Uy, 37 Phil. 618; People vs. Manalo and Atienza, 46 Phil. 572). This is especially true in this case where all the accused were not able to explain their flight to Olongapo and flight, when unexplained, is proof of guilt (People vs. Bacra, L-11485, July 11, 1958; People vs. Cidro, L-11804, February 28, 1959). Only Baluyot made the explanation that he went to Olongapo because they received news that masked men were coming back, which explanation however, being uncorroborated and made in general terms is too flimsy to discuss.

The Court also considered the defenses - alibi and non-participation - put up by the accused -

Accused interposed different defenses. Roberto Molleda interposed the defense of alibi for the reason that in the evening of January 7, 1971, he was in Olongapo City. But alibi, however, is considered a weak defense not only because of the facility with which it is fabricated but also because it is so easy for witnesses to get confused as to the dates (People vs. Ramos, L-17404-03, August 31, 1963) and becomes worthless in the face of positive identification by prosecution witnesses pointing to the accused as *particeps criminis* (People vs. Peralta et al., L-19019, October 29, 1968). In this particular case, the alibi of Molleda does not measure up to that standard for here he was categorically and positively identified by witness Ramon Ching. He was even invariably implicated by his co-accused Baluyot and Nicolas in their respective statements and which statements according to the case of People v. Condemena and People v. Provo, *supra*, can be considered against him.

Accused Baluyot, Nicolas and Duave admitted their presence in the crime scene but denied, however, having inflicted any injury on the victim. But their testimony lack the sincerity and candidness of a credible testimony. They cannot prevail over and above the positive, categorical and clear testimony of Ramon Ching whom this Court found to have passed the test of credibility as he appeared to be very truthful in his behaviour giving quick, frank and straight-forward answers to all material questions in an easy and fluent manner. The denial of Baluyot and Nicolas likewise falls by its own weight in the light of their respective extrajudicial confessions which this Court found to have been voluntarily given. But what exposed the inherent weakness of the denial of Baluyot, Nicolas and Duave is, as discussed before, their failure to explain why they fled to Olongapo in the following morning after the incident.

Finally, as to the nature of the crime committed by the accused, the trial court held –

The crime committed is murder qualified by taking advantage of superior strength. It is clear from the testimony of Ramon Ching and the extra-judicial confessions of Molleda, Baluyot and Nicolas that all of the four accused armed with pieces of wood, bladed instrument and belt helped one another in assaulting the victim who was alone and unarmed. The fact that said accused took advantage of the superiority that their number and arms can afford is shown by the fact that they were able to mercilessly and indiscriminately assault the victim inflicting on him three (3) stab wounds, one (1) punctured wound, two (2) multiple lacerated wounds, four (4) hematomas and eight (8) abrasions on the different parts of his body (Exhibits 'C' and 'E'). The said injuries show that the victim was no match at all to the accused.

The aggravating circumstance of deceit is considered against all the accused. It appears from the statement of Molleda (Exhibit 'G') and that of Baluyot (Exhibit 'H') that all of the accused, with murder in their hearts, pretended to accompany the victim in a friendly manner in going home. And in order to lure the victim into a full sense of security and make him unmindful of the tragedy that will befall upon him one of the accused even placed his hand on the shoulder of the victim while walking, but before reaching the corner of Tejeron and Suter, the victim and his companions were immediately assaulted. As a matter of fact, there was deceit right from the start when Duave invited the victim and Ching to Suter upon meeting them in the Good Earth Emporium in Rizal Avenue, Manila, under the pretext of returning a radio. Upon arrival thereat, the victim and Ching were entertained in a drinking spree and in the course thereof Duave left and contacted her co-accused and informed them that the persons who raped and robbed her in the hotel are in the house drinking. All the while, the victim and Ching did not know of the evil plot to liquidate them. These facts were established by the testimony of Ching and the statements of Molleda, Baluyot and Nicolas.

The Court did not consider anymore treachery as it is absorbed already in abuse of superior strength (*People vs. Redoña*, 87 Phil. 743; *People v. Alcantara*, 33 SCRA 812). Neither did it consider evident premeditation because there was no showing that there was a sufficient length of time that transpired from the plan to kill to the actual killing of the victim for the accused to coolly and serenely think and deliberate on the consequences of their evil act (*People v. Mendoza, et al.* 91 Phil. 64).

The penalty imposed herein may seem harsh especially on Evelyn Duave but considering, however, the gruesome killing of the victim whom they beat and stabbed to death with extreme cruelty the Court has no alternative but to impose it for the law gives no mercy to perpetrators of heinous crime. As a matter of fact, even the Beatitudes says that only the merciful shall receive mercy.

xxx xxx xxx.

The four accused-appellants filed three separate briefs.[*]

Roberto Molleda alias Tikboy raises the following Assignments of Errors:

I

THE TRIAL COURT ERRED IN NOT REJECTING THE SUPPOSED CONFESSION OF MOLLEDA, AS NOT ALL THE WITNESSES TO IT TESTIFIED, PARTICULARLY CONSIDERING THAT IT WAS REPUDIATED BY SAID ACCUSED AND THAT THIS CASE INVOLVES THE CAPITAL PENALTY.

II

THE TRIAL COURT ERRED IN TAKING AS PROOF OF GUILT OF MOLLEDA THE CIRCUMSTANCE OF FLIGHT TO OLONGAPO AS HE WAS A RESIDENT OF AND EMPLOYEE IN THAT CITY.

III

THE TRIAL COURT ERRED IN REJECTING MOLLEDA'S DEFENSE OF ALIBI.

IV

ASSUMING, IN GRATIA ARGUMENTI, THAT ACCUSED HELPED KILL THE OFFENDED PARTY, THE TRIAL COURT ERRED IN CONVICTING HIM FOR MURDER, AS THE QUALIFYING CIRCUMSTANCE OF SUPERIOR STRENGTH ALLEGED IN THE INFORMATION WAS NOT DULY PROVED DURING THE TRIAL.

V

ASSUMING, IN GRATIA ARGUMENTI, THAT ACCUSED HELPED KILL THE VICTIM, THE TRIAL COURT ERRED IN FINDING THAT THE COMMISSION OF THE OFFENSE WAS CHARACTERIZED BY DECEIT.

VI

ASSUMING, IN GRATIA ARGUMENTI, THAT ACCUSED HELPED KILL THE VICTIM, THE TRIAL COURT ERRED IN FINDING THAT CONSPIRACY EXISTED AMONG APPELLANT MOLLEDA AND HIS CO-ACCUSED.

VII

ASSUMING, IN GRATIA ARGUMENTI, THAT ACCUSED HELPED KILL THE VICTIM, THE TRIAL COURT ERRED IN NOT FINDING THAT ACCUSED WAS ENTITLED TO THE MITIGATING CIRCUMSTANCE OF INTOXICATION.

VIII

THE TRIAL COURT ERRED IN ADMITTING ACCUSED'S SUPPOSE I CONFESSION SINCE, DURING THE INTERROGATION, HE WAS NOT DULY AFFORDED THE RIGHT TO COUNSEL AND OTHER CONSTITUTIONAL RIGHTS GUARANTEED TO SUSPECTS.

IX

THE TRIAL COURT ERRED IN CONSIDERING AGAINST MOLLEDA EVIDENCE COMPRISING THE FRUITS OF AN ILLEGAL ARREST WITHOUT A WARRANT.

X

THE TRIAL COURT ERRED IN NOT FINDING THAT THE WRITTEN EXTRA-JUDICIAL CONFESSION OF THE ACCUSED WAS EXTORTED BY FORCE, VIOLENCE AND INTIMIDATION.

XI

THE TRIAL COURT ERRED IN FINDING MOLLEDA GUILTY BEYOND A REASONABLE DOUBT.

Evelyn Duave y Ortega alias Baby China raises the following Assignments of Errors:

I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF RAMON CHING IMPLICATING ACCUSED-APPELLANT EVELYN DUAVE ON THE GROUND THAT SAID

TESTIMONY IS INCREDIBLE AND CONTRARY TO THE NATURAL COURSE OF THINGS.

II

THE LOWER COURT ERRED IN FINDING THAT ACCUSED-APPELLANT EVELYN DUAVE HAD NO EXCUSE IN HER FLIGHT TO OLONGAPO CITY.

III

THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF ACCUSED APPELLANTS.

IV

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME OF MURDER ON THE GROUND THAT THE ALLEGED QUALIFYING CIRCUMSTANCE OF USE OF SUPREME (SIC) STRENGTH WAS NOT PROVED BEYOND REASONABLE DOUBT.

V

THE LOWER COURT ERRED IN FINDING THAT THERE WAS A QUALIFYING CIRCUMSTANCE OF DECEIT IN THE INSTANT CASE.

VI

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE STATEMENTS MARKED EXHS. 'G', 'H' AND 'I' BECAUSE THEY WERE OBTAINED THROUGH FORCE AND MALTREATMENT AND MOREOVER, THEY ARE IN-ADMISSIBLE AGAINST ACCUSED-APPELLANT EVELYN DUAVE.

VII

THE LOWER COURT DENIED THE ACCUSED-APPELLANTS DUE PROCESS OF LAW WHEN IT GAVE THEM ONLY ONE DAY TO PREPARE THEIR DEFENSE.

Reynaldo Nicolas alias Boy Miroy and Virgilio Baluyot alias Boy Bakal raise the following Assignments of

Errors:

I

IN GIVING CREDENCE TO THE STATEMENT OF APPELLANT MARKED EXHIBITS 'G', 'H' AND 'I', ALLEGED EXTRA-JUDICIAL CONFESSIONS OF ACCUSED ROBERTO MOLLEDA, VIRGILIO BALUYOT AND REYNALDO NICOLAS, RESPECTIVELY, DURING THE INVESTIGATION OF THE SAID ACCUSED IN PRECINCT 9 OF THE MANILA POLICE DEPARTMENT.

II

IN NOT GIVING CREDENCE ON THE TESTIMONIES OF THE HEREIN APPELLANTS.

III

IN FINDING THAT THE FOUR ACCUSED CONSPIRED AND CONFEDERATED WITH ONE ANOTHER IN KILLING THE VICTIM.

IV

IN FINDING THAT THERE WERE QUALIFYING CIRCUMSTANCES OF USE OF SUPERIOR STRENGTH AND DECEIT IN THE INSTANT CASE.

V

IN DENYING THE ACCUSED-APPELLANT DUE PROCESS OF LAW.

For the purpose of this mandatory review and in the interest of logical and systematic treatment of the foregoing several assignments of errors raised by the four accused-appellants in their separate briefs, the errors alleged and relied upon by them in their respective briefs for the reversal of the trial court's findings and sentence - which are similar and therefore duplicate each other in many respects - may be collated and discussed logically as follow. Accused-appellants, in synthesis, claim that the Circuit Criminal Court erred -

- (1) In according credence to the testimony of prosecution witness, Ramon Ching, (Error I, Duave);
- (2) In admitting the confessions of accused-appellants Molleda, Nicolas and Baluyot (Exhibits "G", "H" and "I") (Errors I, VIII, IS & X, Molleda; Error I, Nicolas and Baluyot);
- (3) In according credence to the extra-judicial confessions of accused Molleda, Nicolas and Baluyot and in

holding that the same are admissible against accused-appellant Duave (Error VI, Duave);

(4) In rejecting accused-appellant's defenses (Error III, Molleda; Error III, Duave; Error II, Nicolas and Baluyot);

(5) In not according credence to the testimonies of accused-appellants (Error III, Duave; Error II, Nicolas and Baluyot);

(6) In appreciating the qualifying circumstance of superior strength (Error IV, Molleda; Error IV, Duave; Error IV, Nicolas and Baluyot);

(7) In appreciating the aggravating circumstances of "deceit" (Error V, Molleda; Error V, Duave; Error IV, Nicolas and Baluyot);

(8) In finding that conspiracy existed among the appellants (Error VI, Molleda; Error III, Nicolas and Baluyot);

(9) In taking their trip to Olongapo as proof of guilt (Error II, Molleda; Error II, Duave); and,

(10) In denying the accused-appellants due process of law when it gave them only one day to prepare for their defense (Error VII, Duave; Error V, Nicolas and Baluyot).

Now, to consider and resolve the foregoing, seriatim.

1. That the testimony of prosecution witness Ramon Ching should not have been accorded belief. It is urged as the main thrust of this assigned error by appellant Evelyn Duave that the account of the incident by prosecution witness Ramon Ching should not have been accorded belief because "...it is very unnatural for a woman to be standing amidst the mauling"; that "... it is hard to imagine a girl who would have the nerve to stand a gruesome sight"; and that it was impossible for the lone prosecution witness Ramon Ching to have observed, as he testified, that she hit the victim with a belt, in the manner he demonstrated in Court (Brief, Duave, pp. 14-18; Rollo, p. 194).

We find this assigned error without merit. In the first place, the findings and conclusions of the trial court on the credibility of a witness are matters that are left mainly to its discretion because the trial court observed the demeanor and the manner of his testimony. And, as a matter of established jurisprudence, the findings of the trial court on the credibility of a witness are not disturbed on appeal unless it is shown that it failed to consider certain facts and circumstances which would change the same. The trial court held the eye and ear-witness account of witness Ching as credible because he "...testified in a natural, systematic, straight-forward and logical manner with marked fluency and ease...", that while he and the victim (Alfredo Bocaling) were at the intersection of Suter and Tejeron streets, Manila, he saw Bocaling being mauled and ganged upon (pinagtutulungan) by all the herein accused including appellant Evelyn Duave alias Baby China.

The bare, self-serving assertion of appellant Duave, which is a mere generalized hypotheses, i.e., that as a woman she could not have committed the acts imputed to her, cannot prevail over the positive and categorical testimony of Ching on a matter of fact, which was able to withstand the cross-examination of appellant's counsel. In addition, as the trial court observed, appellant Duave could not point to any evil or bad motive on the part of Ching to testify in the manner that he did, positively naming the herein accused Duave as having taken an active part in mauling the victim - by hitting him with the buckle of a belt. In a clash between a fact, as testified to by a credible witness, and a self-serving hypotheses, as alleged by the accused herself, the trial court cannot be faulted for electing to accord credence to the former and disbelieving the latter. This is specially so where, as in the case at bar, the eye-witness account is corroborated by other evidence on record, consisting of confessions of her co-conspirators and now, co-accused [Exh. "G" (Molleda), "H" (Baluyot) and "I" (Nicolas)].

2. That the extra-judicial confessions of accused Molleda, Nicolas and Baluyot are not admissible in evidence. It

is urged in connection with the second common error assigned, that, as the case involves a capital offense, there was need for the prosecution to call on everyone who witnessed the execution of Exhibit "G", the extra-judicial confession of accused Molleda (Error I, Molleda); that accused Molleda was not afforded the right to counsel during the interrogation (Error VII, Molleda); and that his extra-judicial confession should not have been taken into account, since the same is the result of an illegal arrest without a warrant (Error IX, Molleda). It is also urged that the extra-judicial statements of Baluyot and Nicolas (Exhibits "H" and "I", respectively) were obtained thru maltreatment, torture and intimidation and should have been rejected (Error I, Baluyot and Nicolas).

In brief, appellants Baluyot and Nicolas argue that their extra-judicial confessions (Exhibits "H" and "I") were extracted thru intimidation and maltreatment; and appellant Molleda in turn claims that the offense charged being capital in nature, the prosecution should have called on everyone who witnessed the execution of Exhibit "G" to testify thereon; that he was not afforded the services of counsel in the course of his investigation; and, that, having been allegedly illegally arrested, his statement is inadmissible in evidence.

Appellants Nicolas' and Baluyot's claim that the trial court should have rejected their extra-judicial confessions, to wit, Exhibit "H" and Exhibit "I" - on the ground that these were not voluntarily given but were obtained by force, violence and coercion, is bereft of any evidentiary support apart from their own testimonies to this effect. The records also show that they never complained to anyone that they were maltreated or tortured in the course of their investigations.

Upon the other hand, the trial court's finding that the statements - including that of appellant Molleda (Exh. "G") - were voluntarily executed, is premised on the facts that the accused were investigated in the open and before several witnesses; that they were thereafter brought in the presence of the Inquest Fiscal before whom they signed and affirmed to the truth of their statements; and that the same contain details which could have been given only by the accused themselves. The trial court, therefore - as maintained by the Solicitor General in his reply briefs - correctly concluded that the same were voluntarily given and consequently are admissible in evidence.[1]

Since no evidence was adduced by the appellants to support their claim that the confessions were extracted thru third degree, i.e., force and intimidation, apart from their self-serving assertions, there was clearly no need on the part of the prosecution to present all the persons who witnessed the investigation to testify on the voluntary character of the confessions.

Molleda's claim that he is entitled to counsel is without merit. The right to be represented by counsel at custodial investigation became effective and enforceable only after the enactment of the Constitution on January 17, 1973.[2] The investigations of the accused-appellants having taken place much earlier or in April 1971, the right to counsel was not applicable in their case.[3]

Molleda's claim that his statement is inadmissible in evidence because it is the fruit of an illegal arrest is also not well-taken. Accused-appellants were apprehended by the Anti-Hoodlum Unit of the Manila Police Department while in hiding in Olongapo City on April 5, 1971, pursuant to an alarm flashed after they were identified and verified to be the perpetrators of the killing of Alfredo Bocaling on the evening of January 7, 1971. Upon being discovered in their hideouts in Olongapo, they were invited by the Anti-Hoodlum Unit for investigation on well-grounded suspicions for their part in the killing. The justification for arrests on reasonable suspicion that a person has committed an offense has been stated thus –

One of the duties of the policeman is to arrest lawbreakers in order to place them at the disposal of the judicial or executive authorities upon whom devolves the duty to investigate the act constituting the violation or to prosecute and secure the punishment thereof. One means of conducting to these ends is identification of the

alleged criminal or lawbreaker, who should be arrested by the police for the purpose of such investigation. Thus, the policeman who in compliance with the orders of his chief, arrests a suspected criminal for the purpose of identification is not guilty of arbitrary detention. He has acted in the performance of his duty. It is not necessary that the crime should have been established as a fact in order to regard the detention as legal. The legality of the detention does not depend upon the actual commission of the crime but upon the nature of the deed, wherefrom such characterization may reasonably be inferred by the officer or functionary to whom the law at the moment leaves the decision for the urgent purpose of suspending the liberty of the citizen.[4]

In point of fact, they were transported from Olongapo City to Precinct 9 at Sta. Ana of the Manila Police Department, which had police jurisdiction over the place where the offense was committed. In the course of their investigations, all the three accused in the presence of several witnesses including their co-accused, Evelyn Duave - who, it should be noted, did not give any statement - confessed freely and voluntarily to the commission of the offense in Exhibits "G", "H" and "I". Their statements, as observed by the trial court, are rich in details which jibe with and corroborate each other, and thus show the earmarks of a free and voluntary statement. It is apparent that all the three accused wanted to make a clean breast of their respective participation in the commission of the offense, which they perpetrated on the evening of January 7, 1971, or three months earlier. Their claim now that they have been illegally arrested is rather late in the day and is clearly an after-thought, a transparent defense gimmick, to delay the trial and postpone their punishment.

3. That the extra-judicial confessions, Exhibits "G", "H" and "I", should not have been accorded belief and credence; and that the same are not admissible as against accused Duave alias Baby China. It is urged in connection with the third common error that the trial court erred in according credence to the extra-judicial confessions. This, obviously is clearly without merit. The confessions having been voluntary and freely given are admissible in evidence. That they are rich in details which only the accused themselves could have given to the police rendered each and every statement not merely competent but also relevant and credible. Finally, the statements are corroborated by other evidence on record.

With respect to the claim that the same is not admissible against accused Evelyn Duave, the general rule is "... that an extra-judicial confession is admissible against the maker; it is incompetent evidence against his co-accused, with respect to whom it is hearsay." [5] This general rule is not without its exceptions. [6] Thus, it is now settled that "extra-judicial confessions independently made without collusion which are indetical with each other in their essential details and are corroborated by other evidence on record are admissible, as circumstantial evidence, against the person implicated to show the probability of the latter's actual participation in the commission of the crime." [7]

This doctrine was upheld by this Court as early as November 5, 1915 in *U.S. v. Perez*, 32 Phil. 163, 173, and has been repeatedly acknowledged and applied by this Court in several cases, e.g., *People v. Lumahong*, L-6357, May 7, 1954 and so forth. [8]

In addition, the records show that accused-appellant Evelyn Duave alias Baby China was present personally when their statements were taken from each of the affiants, Molleda, Baluyot and Nicolas [Exhibit "G", Molleda, Question and Answer (Q & A) No. 08; Exhibit "H", Nicolas, Q & A No. 06; and Exhibit "I", Baluyot, Q & A, No. 11]. In each instance, the affiants pointed to Duave alias Baby China as a participant in the killing of the victim (*Id.*, Molleda, Q & A No. 09; *id.*, Nicolas, Q & A No. 09; and *id.*, Baluyot, Q & A No. 06). Appellant Duave, thus acquiesced to these statements, because she did not contradict the same during the investigation. The same are, therefore, admissible in evidence even as against her. [9]

4. That the lower court should not have rejected accused-appellants' defenses. It is urged in this fourth common error that the trial court erred in rejecting appellant's defenses. Appellant Molleda defended on the ground of alibi.

But, as the trial court observed, the defense of alibi is a weak defense not only because of the facility with which it is fabricated but also because it is not uncommon for witnesses to get confused with the dates. In this case, not only did Molleda not present any witness to support his alibi, the records also show that he was implicated by his co-accused - Nicolas and Baluyot - in their extra-judicial confessions.

Baluyot, Nicolas and Duave, in turn, admitted their presence at the scene of the crime at Suter street on the fatal night of January 7, 1971. They denied, however, having inflicted any injury on the victim. Their testimonies, however, as the trial court observed "...lacked sincerity and candidness" and, therefore, cannot prevail over the positive identification of eye-and ear-witness Ramon Ching. This defense was also properly discredited in the face of Baluyot's and Nicolas' confessions of their participation in their extra-judicial confessions, where they implicated accused Duave who not only took an active and direct part in assaulting Bocaling, but urged them to do so as well. [Exh. "G" (Molleda), Q & A No. 09; Exh. "H" (Baluyot), Q & A No. 06; Exh. "I", Q & A No. 09]. This assignment of error is clearly without merit.

5. That the trial court should have accorded credence to the testimonies of the accused-appellants. Appellant Duave urges that the theory of the prosecution that because she was raped and robbed by Ching and Bocaling, she and Melinda lured and invited the two to join them from the Good Earth Emporium to Suter street, is improbable because their meeting was admittedly accidental; that, as the accused-appellants explained, the immediate cause of the incident in the evening of January 7 was when Ching molested Melinda by placing his hand over her shoulder, which Nicolas resented. Finally, she claims that the appellants testified clearly, logically and in a straight-forward manner (Brief, Duave, p. 19). Upon the other hand, appellants Nicolas and Baluyot urge in this regard, that the prosecution presented no evidence to support its theory that Duave was raped and robbed by Ching and Bocaling, except Exhs. "G", "H" and "I", and that the incident was triggered when Ching molested Melinda. (Brief, Nicolas and Baluyot, pp. 12-13).

The rule is well-settled that the issue of credibility is left to the discretion of the trial judge who has had the opportunity to observe the conduct and demeanor of the witnesses during the trial. Time and again, this Court has held that it will not alter the findings of the trial court on credibility of witnesses principally because they are in a better position to assess the same than the appellate court. Appellants herein have not shown any special or compelling reason why this rule should not be observed in their case.

The trial court accorded credence to the theory that Bocaling and Ching were lured and invited by accused-appellant Duave alias Baby China and Melinda to join them from the Good Earth Emporium to Suter street; that Duave and Melinda thereafter contacted their co-accused Molleda alias Tikboy, Nicolas alias Boy Miroy and Baluyot alias Boy Bakal – all Sigue-Sigue Sputnik gang members - whom they informed to the effect that the two - Ching and Bocaling - previously raped and robbed Baby China. That thereafter and as their intended victims, Bocaling and Ching, were on their way home, all the accused with obvious concert of purpose taking advantage of superiority and by means of craft, killed Bocaling and nearly succeeded to kill Ching, who was barely able to escape from their clutches.

The trial court based its findings as to the motive behind the killing upon the confessions of the accused themselves (Exhibits "G", "H" and "I"). It should be noted that these confessions which were voluntarily and freely given and thereafter subscribed before the Inquest Fiscal of the City of Manila, immediately after they were apprehended at their hiding place in Olongapo were made when they had no opportunity to contrive their defense. This assignment of error, therefore, which is a mere statement of a self-serving assertion on their part, without any supporting evidence, is clearly without merit. The efforts during the trial on the part of the accused to show that the incident was triggered when Ching allegedly molested Melinda by placing his hand over her shoulder which action was allegedly resented by Nicolas, her common-law-husband, are clearly an after-thought which they have

contrived as part of their defense to delay the trial and their punishment for an offense to which they had earlier confessed.

6. It is urged in connection with the sixth common error, that the trial court should not have appreciated the qualifying circumstance of superior strength. The records, however, do not show any evidence adduced on the part of the accused to discredit the testimony of eye- and ear-witness Ramon Ching that they ganged upon their hapless victim, Alfredo Bocaling, after he tripped and fell. Ching testified that when Bocaling fell after he tripped, the four accused, with clear and obvious concert of purpose ganged up (pinagtulungan) the fallen victim thru a series of intermittent blows -- with belt, bottles and pieces of wood and a bladed weapon -- until he succumbed to their merciless assault. But the evidence that they ganged upon their hapless and defenseless victim did not come from Ching alone -- it is provided by their own statements, wherein they described in detail the gruesome manner in which they subjected Bocaling to their vicious attack until he died. The concerted action of the above-named accused, three of whom - Molleda, Baluyot and Nicolas, are known Sigue-Sigue Sputnik members - to the urgings of accused Baby China fully justified the appreciation of the employment of superior strength upon a hapless and defenseless victim.[10]

7. It is urged that the lower court erred in appreciating the aggravating circumstance of "deceit" (craft). It is argued, instead, that the attack was spontaneous and without any pre-conceived design on the part of all the accused, including Evelyn Duave alias Baby China.

The trial court appreciated the generic aggravating circumstance of "deceit" (sic, should be craft) upon its finding - which is based upon the statements of Molleda and Baluyot (Exhibits "G" and "H", respectively) - that all the accused "...with murder in their hearts pretended to accompany the victim in a friendly manner in going home and in order to lure the victim into a false sense of security and making him unmindful of the tragedy that will befall him, one of the accused even 'placed his hands on the shoulder of the victim while walking...'; that, as a matter of fact, 'there was deceit right from the start when Duave invited the victim and Ching to Suter... under the pretext of returning a radio'; and upon arrival thereat, the victim and Ching were entertained in a drinking spree in the course of which Duave left and surreptitiously contacted her co-accused and informed them that the persons 'who raped and robbed' her were in the house drinking. All the while the victim and Ching did not know of the evil plot to liquidate them.

These findings find support in the testimony of Ching, and are affirmed by the confessions of the three (3) accused - Molleda, Nicolas and Baluyot. The bare assertions of the appellants, to the effect that the incident which led to the killing of the victim was Ramon Ching's alleged attention to Melinda that aroused the jealousy of her common-law-husband Nicolas - which they did not state in their confessions, cannot prevail over the lower court's findings which are based on substantial evidence on record. This error is, therefore, clearly without merit.

8. It is urged that the trial court erred in finding that conspiracy existed among the appellants. In support, it is argued that according to the statement of appellant Molleda, he and his co-accused Nicolas and Baluyot had been drinking at the Bagong Bituin Restaurant at J. Rizal, Makati, up to 10:00 o'clock in the evening drank of January 7, 1971 and they must have been drunk when they were met by Baby China and Melinda; that there is no direct proof available to show that he d his co-accused conspired, since conspiracy must be consciously and deliberately entered into by sober persons.

That appellants conspired in the commission of the offense finds support in the testimony of Ching corroborated by the appellants' own statements that they attacked their victim, Alfredo Bocaling, in a manner indicating community and concert of purpose by inflicting upon him several wounds, as soon as he fell to the ground, with each of the conspirators doing his part to achieve their common objective to avenge Baby China (Exhs. "G", "H"

and "I", Q & A Nos. 09, 06 and 09, respectively). Conspiracy arose the very moment they agreed to attack their victim and it is clear that the assault was not the lone and solitary act of one but of all the accused. Direct proof of conspiracy is not necessary, it may be inferred from the circumstances surrounding the commission of the offense.[11]

9. It is urged in this connection that the trial court erred in taking the accused's trip to Olongapo as proof of guilt. It is argued specifically in the case of appellant Molleda that he had been living and working in Olongapo since 1967 and that he was in Olongapo all the time. With respect to appellant Duave, it is argued that she went to Olongapo because she joined her sister and Melinda, and, as a friend of Melinda, she was expected to accompany her to Olongapo City where Melinda's common-law-husband, Nicolas, had gone.

The trial court did not err in considering the appellants' hasty and clandestine refuge to Olongapo after the killing as a circumstantial evidence indicating guilt, on the biblical adage that "... the wicked flee when no man pursueth, but the righteous are as bold as the lion." It was fully justified in doing so because it is established by the evidence on record that they were the ones who assaulted the victim. That they fled from the scene of the crime is a form of admission by conduct which gives rise to the inference that they committed it.[12] Baluyot's explanation that he went to Olongapo because they received news that masked men were coming back lends additional support for the inference. Finally, Nicolas' statement that Baby China gave him her ventilador (electric fan) to be pawned (isinanla) with one Alicia Nicolas, his aunt, of Sta. Ana, Pateros, to finance their trip to Olongapo leave no room for doubt that they fled to said city [Exh. "I" (Nicolas), Q & A No. 14; See p. 14, supra].

10. That the accused were denied due process. It is urged, finally, that the accused were denied due process of law when they were given only one day to prepare their defense. It is argued that after the prosecution rested its case on May 1971, the trial court ordered the accused-appellants to present their evidence on the following day; that they have a right to know the accusation against them; that it was only on May 26 when they knew of the nature of the accusation; and, that the one day allowed them to prepare for the defense is tantamount to denial of due process.

A review of the records, on the other hand, shows that the trial court gave full consideration to the rights of the accused-appellants to be assisted by counsel; to be informed of the nature and the charge against them; and to be confronted by the witnesses who were cross-examined by their counsel. If appellants believed that one day was not sufficient for them to prepare for their defense, they should have moved for a longer period within which to present their evidence, which they did not.

In resume, the qualitative and quantitative preponderance of the evidence adduced by the prosecution - consisting of the eye-and ear-witness account of the killing by Ramon Ching who was present at the scene of the killing, and, in fact, barely escaped death by the skin of his teeth; the extra-judicial confessions of Roberto Molleda alias Tikboy, Exh. "G", Virgilio Baluyot alias Boy Bakal, Exh. "H" and Reynaldo Nicolas alias Boy Miroy, Exh. "I", which taken separately and without collusion corroborated each other in material respects, and implicated accused Duave alias Baby China; the circumstantial evidence of flight; and the corroboration and congruence of the evidence as to the injuries inflicted upon the victim Bocaling, as revealed in the autopsy report - considered, viz a viz, the self-serving and uncorroborated testimonies of each of the accused, which are not supported by any other evidence on record, but which in an important aspect contradict their own statements - e.g., that the incident was triggered by Ching's placing of his hand on Melinda's shoulders and the resultant jealousy of Nicolas alias Boy Miroy, who by the way is the common-law-husband of Melinda and not a legitimate spouse, which was not even mentioned in accused' statements and is, therefore, an obvious defense tactic to camouflage the conspiracy and convert the nature of the offense to homicide merely - fully justify the finding of guilt of herein appellants beyond reasonable doubt.

We have taken note that the Solicitor General in the People's briefs, filed by way of answer to the three briefs submitted by the accused-appellants, took the position that the assignments of errors which assail the trial court's findings of the presence of "abuse of superior strength" as qualifying and "craft" as generic aggravating circumstances in the commission of the crime, should be favorably considered and/or appears to have merit (Reply to the Brief of Nicolas and Baluyot, p. 13; Reply to the Brief of Molleda, p. 10; Reply to the Brief of Duave, p. 12).

In justifying his recommendation in this respect, the Solicitor General argues that (1) Melinda and Baby China were picked up by the victim and Ching from the Good Earth Emporium; (2) that later, while Ramon Ching and Alfredo Bocaling were walking towards Herran street on their way home, Ching held Melinda on the shoulder, which action irked and angered Reynaldo Nicolas, her common-law-husband; that Nicolas boxed prosecution witness Ching in the nape; that the hot-blooded and spontaneous attack upon Bocaling and Ching by the appellants is shown by the fact that the weapons used were belts, bottles and pieces of wood; that the only evidence concerning the presence and use of a bladed instrument was given by accused Duave, not the prosecution, who testified that "... Bocaling drew a knife... then I saw the bladed instrument with Roberto Molleda"; (3) that the eternal human triangle represented by Melinda as the common point of interest between Ching and Nicolas spurred the sudden and spontaneous attack in the heat of jealousy and injured pride, and, (4) that, therefore, the accused did not deliberately seek or take advantage of superiority of numbers or deceit (craft) to commit the crime against Bocaling. As a result, the Solicitor General submits that the killing falls under Art. 249 of the Revised Penal Code on homicide, rather than murder, and that the penalty should not be imposed in the maximum degree.

We are not persuaded to give our favorable consideration to these conclusions drawn from a consideration of the evidence on record; nor do We concur in the recommendations as to the nature of the offense committed and the penalty to be imposed. The findings of fact submitted by the Solicitor General are not supported by the evidence on record and the conclusions therefrom are, therefore, unjustified. The pivotal and basic premises upon which the Solicitor General bases his view of the case are - that the killing was a spur-of-the-moment incident arising from the alleged act of Ching in placing his hand on the shoulder of Melinda which in turn spurred the jealousy of Nicolas, her common-law-husband; that close upon this provocative act of Ching, the four accused engaged the two, Bocaling and Ching, in a fight, which resulted in the death of Bocaling; that the killing was thus a result of a chance encounter with no foreknowledge on the part of the appellants, who acted as anybody would in a melee. From these factual premises, the People's brief concludes that the offense is merely homicide, not murder, and the qualifying and aggravating circumstances of superior strength and "deceit" (craft), which the trial court appreciated, should be overruled.

We cannot agree. In the over-all context of the evidence on record - consisting mainly of the accused's own confessions and the testimony of Ramon Ching - the conclusion is inescapable, that the assault on Bocaling and Ching, which resulted in the death of the former, was, as the trial court found it to be, qualified by superior strength and aggravated by craft. The confessions of the accused taken at a time when they could not have contrived their defense leave no room for doubt that the two, Ching and Bocaling, were lured by Duave and Melinda from the Good Earth Emporium; that once they were in a house at Suter street, Duave and Melinda lost no time in contacting and then pointing to the three co-accused, Molleda, Baluyot and Nicolas, three hardened members of the Sigue-Sigue Sputnik gang, Bocaling and Ching as having allegedly raped and robbed Duave, without their awareness; that the three - who were told that the two had previously robbed and raped Duave - contrived to execute their scheme to kill them, and that in the process, as the lower court observed, they managed thru craft to make them unaware of their impending fate.

The appellants' claim that the incident was triggered by the indiscreet act of Ching is very obviously an after-thought, a clear but transparent attempt to show that the killing was not the result of a conspiracy among them. But the fact that none of the accused, not even Nicolas, the common-law-husband of Melinda revealed this to the investigators, shows the utter falsity of this defense. Furthermore, all the three without exception, specifically mentioned the role of Duave and one of them even said that she gave the orders to kill as long as Bocaling would not return her money [Exh. "G" (Molleda), Q & A No. 09; See pp. 9-10, supra].

The concerted action among all the accused, the manner in which they pounced and ganged upon Bocaling and the merciless assault they perpetrated upon his person when he fell down after the initial blow leave no room for doubt that they did in fact avail of their superior strength to snuff the life of their victim, while the manner in which they perpetrated this act by first making them believe that no harm would befall them and keep them off-guard, clearly underlined the craft by which they executed their nefarious scheme. Accordingly, the trial court committed no error in finding all of the accused guilty of the crime of murder - qualified by taking advantage of superior strength and attended by the generic aggravating circumstance of craft with no mitigating circumstance to offset the same.

Hence, the correct penalty for the crime committed is death pursuant to Art. 248, in relation to Art. 64(3) of the Revised Penal Code. However, after the deliberation of the Court en banc, only eight (8) Justices[13] voted to affirm the judgment of conviction with respect to defendants Roberto Molleda, Virgilio Baluyot and Reynaldo Nicolas, and only seven (7)[14] with respect to defendant Evelyn Duave. It results, therefore, that with respect to defendants Roberto Molleda, Virgilio Baluyot and Reynaldo Nicolas, the penalty of reclusion perpetua is to be imposed. As regards defendant Evelyn Duave, only seven (7) Justices concurred in holding her guilty. Thus, pursuant to Section 3, Rule 125 of the Revised Rules of Court, or for lack of the requisite eight votes, the judgment of conviction as regards defendant Evelyn Duave alias "Baby China" should be reversed and said defendant should be acquitted.

WHEREFORE, the decision under review is hereby **AFFIRMED** as regards defendants Roberto Molleda, Virgilio Baluyot and Reynaldo Nicolas, with the only modification that the penalty of death imposed upon them reduced to reclusion perpetua; but **REVERSED** as regards defendant Evelyn Duave - as to whom only seven (7) Justices concurred in the finding of guilty - and is, therefore, acquitted of the crime charged.

SO ORDERED.

Castro, C.J., Makasiar, Aquino, Concepcion, Jr., Fernandez, and Guerrero, JJ., concur.

Fernando, J., concurs except as to appellant Evelyn Duave, as to whose appeal, he takes no part.

Teehankee, Barredo, and Muñoz Palma, JJ., concur in the dissenting opinion of Mr. Justice Barredo.

Barredo, J., dissents in a separate opinion.

[*] (1) Accused-appellant Roberto Molleda, filed his Brief through his counsel de oficio Atty. Rene Saguisag on March 13, 1972 (Roll., p. 96); (2) Accused-appellant Evelyn Duave y Ortega filed her brief through counsel de parte Gamaliel G. Bongco, Rodolfo Mapile, Cornelio M. Orteza and Mena Taganas on July 17, 1972 (Roll., p. 194); (3) Defendants-appellants Reynaldo Nicolas and Virgilio Baluyot filed their joint Brief thru counsel Joshua Caponong, on December 2, 1972 (Roll., p. 211); (4) The Solicitor General, for plaintiff-appellee, filed the respective Briefs in answer to the Briefs of Nicolas and Baluyot on March 28, 1973 (Roll., p. 241); to that of Roberto Molleda on May 30, 1973 (Roll. p. 244); and that of Evelyn Duave y Ortega on May 31, 1973 (Roll., p.

247); (5) Accused-appellant Roberto Molleda and accused-appellant Evelyn Duave filed their Reply-Briefs on July 5 and September 3, 1973, respectively (Roll., p. 255; Roll., p. 276); (6) On January 12, 1978 (Roll., pp. 426-427), Evelyn Duave alias Baby China filed a supplemental Brief thru counsel de oficio, Marcial Desiderio, on May 26, 1978; (7) The Solicitor General manifested in connection with her Supplemental Brief, however, that the same raises similar issues already urged in the first three assignments of errors in her main Brief, which had been discussed and refuted in an appellate Brief dated May 22, 1973, and accordingly, the Solicitor General submits for Decision, the appeal of Evelyn Duave on the Brief dated May 22, 1973, already submitted by them (Roll., p. 464).

[1] Sec. 29, Rule 130, New Rules of Court; Salonga, Philippine Law on Evidence, 3rd ed., 1964, citing *US v. de los Santos*, 24 Phil. 329, 359 (1913) etc. at pp. 329, etc.

[2] *Magtoto v. Manguerra*, L-37201-02, March 3, 1975; 63 SCRA 4.

[3] *Cudiamat v. People et al.*, G.R. No. L-47753, July 25, 1978.

[4] Aquino, *The Revised Penal Code*, 1978 ed., II, p. 829, citing *Eulogio vs. Sanchez*, 27 Phil. 442; see also Moran, *Comments on the Rules of Court*, 1970 ed., Vol. IV, p. 135, citing footnote 32, *U.S. v. Sanchez*.

[5] Salonga, *op. cit. supra* fn. 1, p. 366, citing *People vs. Villanueva, et al.* G.R. L-12687, July 31, 1962.

[6] *Id.*, at pp. 366-369.

[7] *People v. Condemena*, L-22426, May 29, 1968, 23 SCRA, pp. 9-10.

[8] *People v. Provo*, L-28347, January 20, 1971; 37 SCRA 19, at pp. 33-34; other cases are: *People v. Cariño*, L-9580, Sept. 30, 1957; *People v. Tansianco*, L-19448, Feb. 28, 1964; *People v. Simbajon*, L-18073-75, Sept. 30, 1965; *People v. Narciso*, L-24484, May 28, 1968; *People v. Pareja*, L-21937, Nov. 29, 1969.

[9] Salonga, *op. cit.*, at p. 367, 2nd exception, citing as footnote 103, *People v. Atienza and Closa*, G.R. L-3001, June 17, 1950.

[10] See: *U.S. v. Lasada*, 21 Phil. 287; *U.S. v. Bañagale*, 24 Phil. 69; *U.S. v. Abril*, 51 Phil. 670.

[11] *People v. Cadag*, 2 SCRA 388; *People v. Cruz*, 4 SCRA 1114; *People v. Belen*, 9 SCRA 39; *People v. Capito*, 22 SCRA 1130; *People v. Peralta*, 25 SCRA 759; *People v. Alcantara*, 33 SCRA 812; *People v. Pudpud*, 39 SCRA 618; *People v. Mejia*, 55 SCRA 453; *People v. Genoguin*, 56 SCRA 1818; *People v. Alviar*, 59 SCRA 136.

[12] *US. v. Alegado*, 25 Phil. 510; *People v. Manalo and Atienza*, 46 Phil. 572; *People v. Bacsá*, 104 Phil. 136; *People v. Cidro, et al.*, 105 Phil. 238.

[13] Namely: (1) Chief Justice Fred Ruiz Castro; (2) Senior Associate Justice Enrique M. Fernando; (3) Associate Justice Felix V. Makasiar; (4) Associate Justice Ramon C. Aquino; (5) Associate Justice Hermogenes Concepcion Jr.; (6) Associate Justice Guillermo S. Santos; (7) Associate Justice Ramon C. Fernandez; and (8) Associate Justice Juvenal K. Guerrero. Associate Justices (1) Claudio Teehankee; (2) Antonio P. Barredo; (3) Felix Q. Antonio; and (4) Cecilia Munoz-Palma voted to convict Roberto Molleda, Virgilio Baluyot and Reynaldo Nicolas of homicide only and to acquit Evelyn Duave.

[14] Senior Associate Justice Enrique M. Fernando did not take part as to Evelyn Duave's appeal.

DISSENTING OPINION

BARREDO, J.:

I dissent. My vote is to find the appellants Roberto Molleda, Virgilio Baluyot and Reynaldo Nicolas guilty of homicide only, to impose upon them the corresponding penalty in its medium degree and to acquit appellant Evelyn Duave.

In this automatic appeal, the charge against appellants in the information is murder qualified by treachery and evident premeditation. On the other hand, the trial court convicted all of them of "murder qualified by taking advantage of superior strength", the treachery charge, according to His Honor, being already absorbed in superioridad; and as to evident premeditation, His Honor refused to consider the same "because there was no showing that there was sufficient length of time that transpired from the plan to kill to the actual killing of the victim for the accused to coolly and serenely think and deliberate on the consequences of their evil act." However, His Honor found that the commission of the offense was attended by deceit, and on the foregoing premises imposed upon all of them the extreme penalty of death.

It behooves Us, therefore, to take a hard look at the evidence, especially of the prosecution, to the end that We may be morally certain that it is just and legal that the four lives of appellants be taken away to vindicate the death of the deceased Alfredo Bocaling. The main opinion decrees that the trial court's judgment be affirmed in toto, since "the trial court committed no error in finding all the accused guilty of the crime of murder -- qualified by taking advantage of superior strength and attended by the generic aggravating circumstance of craft with no mitigating circumstance to offset the same."

I

To begin with, it must be noted that, as already stated, in the information under which they were tried, the circumstance specifically alleged as qualifying the crime charged as murder are treachery and evident premeditation. While I know that treachery is sometimes deemed absorbed in superioridad, I am not certain that the specific accusation of treachery in the information can be legally substituted with superior strength, assuming the latter to be the one borne by the evidence, for purposes of qualifying the crime supposedly proven here as murder. The strict rule is that any aggravating circumstance which under the Revised Penal Code could be a qualifying circumstance of murder may not be so considered even if substantiated by the evidence adduced at the trial unless the same is specifically charged as such in the information, and the killing concerned becomes plain homicide albeit attended by the aggravating circumstance so proven. The basis for this rule is that the accused can be convicted only of the offense specifically charged since that is the cause of the accusation of which he is informed and against which he is prepared to defend himself.

While it is true that treachery is under certain circumstances deemed absorbed in superiority when the latter circumstance appears, there can be superiority without treachery. Thus, where four persons attack an unarmed victim but the ingredients of surprise and suddenness that would deprive the victim of the opportunity to defend himself or to escape injury are absent, the circumstance to be appreciated should be superiority, if this is shown to have been deliberately or purposely taken advantage of by the assailants. (The Revised Penal Code by Aquino, Vol. I, 1976 ed., pp. 348-349, citing Santiago Lasada, 21 Phil. 287; Banagale, 24 Phil. 69; Fajardo, 92 Phil. 818; Nuto, 105 Phil. 1306; Caroz, 68 Phil. 521; and Surbito, 108 Phil. 788.)

Now, in the case at bar, as I will show anon, it is not even justifiable to appreciate superiority because there is no clear indication that appellants deliberately took advantage of their number in supposedly mauling the deceased, (Aquino, supra p. 350, citing Flores, 40 SCRA 230) but even if We were to concede superiority to have been

proven, on the other hand, the elements of treachery as such would be absent, since whatever degree of surprise or suddenness in the acts attributed to appellants may be gleaned from the evidence, it cannot be said that the deceased was thereby disabled to defend himself or to repel the aggression. (Aquino, supra, pp. 372-373.)

Withal, having in view the elementary principle in criminal law of resolving controversial points reasonably in favor of the accused, it must be assumed that, knowing, as the fiscal who investigated this case must have known, the fundamental character and tendency of the evidence at his disposal before he filed the information, he would have alleged in it superiority as the qualifying circumstance, and not treachery, if what he had in contemplation were that kind of treachery that could be deemed included in superiority. And since the charge here specifies treachery, it would be unfair and legally unwarranted to now hold that the superiority found by the trial court, assuming it to have been correctly appreciated, should qualify the crime in question as murder.

II

In any event, although I am morally convinced on the basis of their respective confessions that appellants Molleda, Baluyot and Nicolas did each of them take part in one way or another in the mauling and stabbing of the deceased Alfredo Bocaling, I cannot in conscience hold that the offense they committed was attended by superiority, and even if so, that they resorted to deceit or craft in attaining their objective. The following analysis of the evidence would support, to my mind, no other conclusion.

The evidence on which the trial court and the main opinion here rely or are based consist of the following: (1) the testimony of the lone "eye and ear" witness, Ramon Ching; (2) that of the medico-legal expert, Dr. Abelardo V. Lucero; (3) that of Detective Amador Jose, who investigated Ramon Ching and took down the statement Exhibit F of Manuel Sta. Brigida, whose name is listed in the information but who unexplainedly was not called to the witness stand, and the statement Exhibit G of appellant Molleda; (4) that of Patrolman Nestor Miguel, who took down the statements, Exhibits H and L of appellants Baluyot and Nicolas, respectively; and (5) of course, the said statements, Exhibits F, G, H and I. In sum, the conviction and imposition of the death penalty upon the four appellants are sought on no more basis than the sole testimony of Ching and the supposed "interlocking confessions" of Molleda, Baluyot and Nicolas.

- A -

To my mind, there can be no question that standing alone, the testimony of Ching cannot sustain the charge in the information of murder qualified by treachery and evident premeditation. Said testimony may be summarized as follows:

On the night in question, January 7, 1971, at about 8:00 o'clock, Ching and Alfredo Bocaling, the victim herein, were at the Good Earth Emporium on Rizal Avenue, Manila waiting for a certain Daniel Morosi. While they were thus awaiting Morosi, they accidentally met Evelyn Duave, also known as Baby China and who will hereinafter be referred to as Baby, and a certain Melinda, both known to them as "call girls". Melinda told them that she had to return a transistor radio to a certain Gordon, who is also known to Ching, in Suter, Sta. Cruz, Manila. Without mentioning who specifically between Baby and Melinda made the invitation, Ching claimed they were invited to go with the two girls and because he also knew Gordon, they went along. They rode in a bus but later on transferred to a taxi. When they were already in Suter, Melinda alone alighted saying she would talk to somebody. After a while, she returned to the taxi with a male companion introduced to them as Paking. Thereupon, all of them alighted also and jointly went to a house somehow but not definitely referred to as that of Gordon (although elsewhere in the record, the same house is referred to as that of the Manuel Sta. Brigida, already mentioned above). At that house, they came upon four male persons drinking alcohol, namely, Boy, Paking (it is not clear if

he is the same Paking introduced earlier by Melinda), a certain "cursillista" and another person nicknamed Ngongo who were all introduced to them. They sat and joined the group and drank with them. As they were thus seated and drinking, Melinda left for five minutes and when she returned, there were three male persons with her, one of whom was introduced as Boy Miroy (the appellant Nicolas), a friend of Gordon. Ching did not recognize the other two because "they left immediately." After Miroy joined them, they continued drinking, and they were "telling stories". Later, Baby asked permission to buy lolipop and stayed away from three to five minutes. When she returned, there were also three male persons with her, two of whom were introduced to Ching as Tikboy, the appellant Molleda, and Boy Bakal, the appellant Baluyot. These persons also joined the group in drinking.

After they had been there for almost two hours, Ching asked permission to leave and all the others stood up also to leave. Ching, Bocaling, Baby, Melinda, Bakal, Miroy and Tikboy were together. They passed by a wake in a house nearby for about two minutes. On their way to Tejeron, they met Boy and Paking, who, as would appear from the statement of Sta. Brigida, Exhibit F, had earlier separated from the group to conduct somebody to the corner of Suter and Tejeron.

When they were at the corner of Suter and Tejeron, Miroy boxed Ching on his nape and at the same time somebody, either Tikboy or Bakal, also boxed Bocaling likewise on the nape. Ching shouted to Bocaling for them to run, as he did run towards Herran Street (now Pedro Gil) and was chased by "two or three men." Alfredo however fell on the corner "possibly because he tripped". Meanwhile, as he was being chased, he was turning his head back towards Suter and thus saw that Bocaling was being mauled ("pinagtutulungan"). He was being beaten with a belt, bottles and pieces of wood, but he could not be certain how many were beating him. He identified Tikboy, Bakal, Miroy as among them and specifically pointed to Baby as having hit Bocaling with a belt. He said that his pursuers were throwing bottles at him as they chased him on Tejeron up to midway between Suter and Herran and then went back, after which he saw them join in beating Bocaling. Without knowing the condition of his companion, he boarded a jeep at the corner of Tejeron and Herran and went to Rizal Park. He went back to the place at 11:30 o'clock that same night together with one Rudy Aguilar but Bocaling was no longer there. It was already the next day that he came to know he had died.

On cross-examination, Ching testified he had known Baby for about two years and Bocaling had known her about a year and that their meeting with the two "girls" was accidental. He also said that he was to talk to Morosi about the case, where he (Ching) was accused, of "robbery hold-up". (The fiscal volunteered the information that he was subsequently acquitted); that Melinda actually left the transistor on the window sill of the house (supposedly of Gordon); that it was Faking and Miroy who chased him, with Miroy about only five meters behind and Paking following, but he could not recognize the third one; that he was running sideways; that there was no ill-feeling between him and Baby and Melinda; that about seven persons took part in the mauling, including Baby and Melinda; that that was the first time he ever went with Baby; that he was eighteen meters (his own estimate, not the court's) from the place of the mauling when he saw it; and that he saw two females taking part, and even saw Baby hitting Bocaling with a belt.

It must be conceded that the foregoing testimony, even taken together with the proof of death of Bocaling, which can be deemed as unquestionably caused by the injuries suffered by him in that incident, cannot be the basis of a finding of murder qualified by superiority and deceit. Indeed, it is hardly believable that under the circumstances related by him, the witness could have really seen what happened to his companion. It was then about 11 o'clock in the night, he was running to save himself, with Miroy and two others chasing him, throwing bottles at him, and he was at least about eighteen meters away when he looked back. At most, he could have only glanced from time to time at what was happening behind him, and definitely, he must have been concentrating on those pursuing him.

Thus, he claimed there were about seven persons mauling Alfredo. But, as will be recalled, when they left the place, aside from the two of them, their companions were only Miroy, Tikboy, Bakal and the two girls. And if there were really seven, how come that only four were charged? Not even Melinda was included among the accused. Besides, how could the witness have been positive, under those circumstances, that Baby took part in the mauling by hitting the deceased with a belt, to the point that he was able to demonstrate in court how she did it? In my opinion, this particular declaration of the witness is an exaggeration. Withal, his whole testimony is too scanty and uncertain to be the basis of conviction of all the appellants of the grave offense charged, much less the imposition of the extreme penalty of death. It would not even be possible to hold that there was definite identification of those who took part in the melee, without resorting to conjecture and surmises.

- B -

Turning now to the reliance of the trial court and the main opinion on the supposed "interlocking confessions", Exhibits G, H and I of Tikboy (Molleda), Bakal (Baluyot) and Miroy (Nicolas) respectively, the first important point to consider is that as a rule, the same are admissible only against each of them respectively. Accordingly, together with the testimony of Ching, the said appellants may be held guilty of their confessed individual participation in the mauling of the deceased. For instance, it is definite from Molleda's confession that he stabbed the victim. So, it is clear also from their own respective confessions that Baluyot and Nicolas did box him and hit him with a piece of wood. Baluyot even stated in Exhibit H that Nicolas told him that he (Nicolas) had stabbed the deceased.

But I cannot agree that said exhibits can serve for any other purpose, such as to prove the craft found by the trial court and the guilty participation of Baby in the actual killing of the deceased. I deny that they are as spontaneous and identical as the rule on interlocking confessions requires. In other words, it is not correct to consider them to be really interlocking, meaning, so corroborative of each other as to inspire faith that they must have basis in fact, thereby constituting circumstantial evidence against anyone implicated therein other than the declarants themselves. Indeed, my conclusion after reading and studying them is that whatever similarities exist among them can be attributed only to any factor other than the spontaneous and truthful narration or declarations of the respective appellants themselves.

It is well to bear in mind in connection with the subject of interlocking confessions that even when these are substantially identical on material details, they do not constitute direct evidence against the other co-accused but only circumstantial evidence to show the probability of the participation of the latter in the commission of the offense charged if corroborated by other independent evidence to the same effect. *Badilla*, 48 Phil. 718; *Condemeva*, 23 SCRA 910; *Pareja* and all the other decisions cited in the main opinion go only that far.

In other words, to hold appellant Duave liable in this case, the tenuous imputation made against her by Ching as having hit the deceased with a belt must appear corroborated by the so-called interlocking confessions of her three co-appellants already mentioned. There is no such corroboration. In Exhibit G, all that Molleda is supposed to have said is that while the mauling was going on, Baby shouted that they go on until the victim agreed to pay the money taken from her. (It is claimed that the confessed motive of the appellants in committing the offense in question was to avenge what Baby had reported to them - rape and robbery committed against her by Ching and the deceased. I will deal with this point later.) In Exhibit H, what Baluyot appears to have said was simply that Baby "ay nagutos pa na bugbugin namin at iyon ang nagnakaw ng kanyang pera." On the other hand, in Exhibit I, Nicolas only referred to Baby's supposed report about her money having been taken by Ching; he mentioned nothing that Baby did or said during the mauling, and added that Melinda shouted to them "sigi tirahin ninyo". I cannot see in these varying details appearing in the subject exhibits that they are clearly interlocking with each other as to the participation of appellant Duave in the mauling such as to sufficiently corroborate Ching's

testimony. In any event, I am not convinced such evidence could legally constitute the proof beyond reasonable doubt enjoined by law and jurisprudence.

The claim that what triggered the fatal incident in dispute was Baby's report that she had been robbed and raped by several men in a hotel, among them Ching and the deceased, does not appear to me to be probable and should be disregarded as something of mysterious origin. First of all, it is not disputed that the meeting of Ching and Bocaling with Melinda and Baby could not have been so anticipated by Baby that then and there she could have conceived the crafty idea of luring the two, Ching and the deceased, to go with them to Sta. Ana, with such an uninteresting purpose of returning a transistor radio to Gordon, who happened to be a common friend, for the purpose of killing them. Secondly, from all appearances, the meeting was friendly and cordial, devoid, at least, of any indication of resentment on the part of Baby, as otherwise, why would Ching and the deceased have readily accepted the invitation? Ching himself declared that there was "no ill-feeling" between them. On the other hand, it is likewise a definite fact that Baby and Melinda were not strangers to Ching and the deceased. They were known to them as "call girls" for two years, -- to Bocaling, one year. It does not need two guesses to be certain why the girls' supposed invitation was accepted, although, in this connection, I am more inclined to believe it was Ching and his companion who, as declared by Baby at the trial, insistently invited themselves.

Apart from such improbabilities in the light of common human experience, there are at least eight (8) very material and unexplainable discrepancies in the three supposedly interlocking confessions, Exhibits G, H and I. They are the following:

1. As to how the three appellants met Baby that evening in question, the said exhibits are unanimous only in that the meeting was not intentional inasmuch as they had come from a bar, Bagong Bituin, in Makati where they had been drinking and they only happened to meet Baby as they alighted from a taxi near the corner of Suter and Tejeron. (According to Ching, Baby had left them to buy lolipop.) According to Exhibit G, Molleda's statement, "sinalubong kami ni Baby China at Melinda at sinabi ni Baby China sa amin na pinagnakawan siya ng pera at ni-rape pa siya sa isang hotel ng ilan lalaki." In Exhibit H, Baluyot declared that "aming nakita si Baby China, tinawag po ni Baby China sina Boy Miroy (Nicolas) at Tikboy (Molleda) at niyaya na magtuloy sa bahay ni Popoy (Sta. Brigida)." In Exhibit I, Nicolas stated that "nasalubong namin si Evelyn (Baby) at nagsumbong sa akin na iyon daw pong tao na nagnakaw ng kanyang pera ay naroon sa bahay nina Manuel Sta. Brigida." Note that, according to Molleda, they were met by Baby and Melinda and that Baby said she had been raped, while Baluyot said he only saw Baby inviting Nicolas and Molleda to the house of Sta. Brigida and made no mention of robbery nor rape, whereas Nicolas claimed Baby complained to him that the ones who took her money (no rape mentioned) were in the house of Sta. Brigida.
2. Molleda claimed that he did not go with Miroy, Bakal, Baby and Melinda to the house indicated because he was left at a wake in a house on the way to Sta. Brigida's place. The same claim was made by Baluyot for himself, whereas Nicolas said that Molleda was with him and Baby and Melinda when they went to said house.
3. Molleda stated that after twenty minutes that he was at the wake, he left with Nicolas and Baluyot together with Melinda and Baby, and Nicolas and Baluyot were walking with each of them accosting Ching and the deceased. On the other hand, Nicolas said that the six of them, Molleda, Baby and Melinda, and Ching and Bocaling were together and that as they passed by the wake, Molleda "kinalabit si Baluyot" and the latter joined them. Baluyot on his part declared, that as the group was passing by the wake, Nicolas was the one who touched him and Molleda just "signaled" to him apparently to come along.
4. According to Molleda, at the corner of Suter and Tejeron, Baluyot hit the man he was accosting with a buckle, while Nicolas boxed the other. Nicolas admitted he boxed one of the two, without mentioning exactly who of

them, and said that after he did that Molleda and Baluyot approached him and the latter asked him why he did that and he answered, "Ito raw ang nagnakaw ng pera ni Evelyn (Baby)." On the other hand, Baluyot stated that when Nicolas touched him, he asked why, and the answer was "May atraso kina Baby at Melinda at mayroon tatak na Bahala Na Gang."

5. Molleda further stated that the one boxed by Nicolas ran and he and Nicolas ran after him, but they could not overtake him, so they went back and he saw the man hit by Baluyot slumped on the ground. On the other hand, Nicolas said that after he boxed the one with him, Molleda and Baluyot approached him, Baluyot asked why, and when he answered that the man was the one who robbed the money of Baby, Baluyot boxed the man who "bumagsak". On his part, Baluyot stated that as he saw Nicolas box the man with him (Nicolas), the one with Molleda ran away, and when Nicolas answered that the man he boxed was the one who robbed Baby's money, he (Baluyot) boxed the man and the man fell to the ground.

6. In Exhibit G, Molleda stated that as he and Nicolas were not able to overtake the man who ran away from him, they went back to the man hit by Baluyot with a buckle and who was slumped on the ground and Nicolas hit him with a piece of wood while he (Molleda) stabbed him. Nicolas stated in Exhibit I that after the man fell upon being boxed by Baluyot, Molleda approached and stabbed him. Baluyot affirmed in Exhibit H that the man whom he boxed after Nicolas had boxed him, was stabbed by Molleda and hit by a piece of wood by Nicolas on the head and he himself hit him with a buckle on the forehead.

7. Molleda further stated in Exhibit G that Nicolas and Baluyot continued hitting the man with them and afterwards, they went back to the wake. Nicolas claimed that after Baluyot hit the man with a buckle they went back to the wake. Baluyot said it was Molleda who told them "Tama na" and that as they were separating, Nicolas told him that he (Nicolas) stabbed the man. They proceeded to the wake.

8. According to Molleda, from the wake, they went to Pateros and from there, the next day they went to Olongapo. On the other hand, Nicolas said that they went first to the house of Baby in Legazpi St., Makati and proceeded to Olongapo where they were taken by Molleda, and the next day in Olongapo they moved to another house on Gordon Avenue.

I maintain that the foregoing eight (8) discrepancies existing among the supposed confessions of appellants Molleda, Baluyot and Nicolas are material and substantial and cannot be explained by the usual argument that no two persons are impressed in exactly identical ways by the same event and it is but natural that their separate narrations thereof should contain inconsistencies as to some details. As can be seen, the discrepancies I have pointed out refer to details regarding which there would have been in the very nature of things unanimity among the declarations were they spontaneous and truthful. Moreover, except in a very general way, it cannot even be said that the exhibits in question corroborate the testimony of Ching in its essential points.

Thus, while Molleda claimed in Exhibit G that after the three of them, he, Baluyot and Nicolas, met Baby and Melinda as the three of them alighted from a taxi and Baby complained about having been raped and robbed, only the two girls and Baluyot and Nicolas proceeded to the house where Ching and Bocaling were, and he (Molleda) was left behind in the other house where there was a wake, on the other hand, Baluyot claimed in Exhibit H that he was the one who was left in the wake and that Molleda and Nicolas were the ones who went with Baby to said house. Besides, Baluyot made no mention at all about the presence of Melinda and of the alleged complaint of Baby about having been raped and robbed. In turn, Nicolas stated in Exhibit I -- that all the five of them went directly to the house where Ching and the deceased were, that is, neither Molleda nor Baluyot were left behind at the wake and that Baby without mentioning Melinda -- complained of robbery -- he made no mention of rape.

In regard to the testimony of Ching that the incident started with Nicolas boxing him on the nape, Molleda's

confession is to the effect that it was Baluyot who started it by hitting one of the two -- it is not indicated whether it was Ching or Bocaling -- with a buckle. Nicolas admitted he boxed one of them, but, whereas Ching said that he ran away upon being boxed by Nicolas, Baluyot declared that it was the man walking with him and Molleda, not the one with Nicolas, who ran away, without their doing anything to him, and so, they (he and Molleda) approached Nicolas, and when Nicolas told him that the man he had just boxed had "robbed" Baby's money, he (Baluyot) boxed the man who "bumagsak". According to Baluyot, the same man was the one whom Molleda stabbed, adding that Nicolas told him that he (Nicolas) had also stabbed the same victim. On the other hand, Molleda's version is to the effect that when Nicolas boxed one of the two, the one boxed by Nicolas ran away and he and Nicolas pursued him but because they could not catch up with him, he and Nicolas went back to where the other man was slumped on the ground after being hit by Baluyot with a buckle on the head, and once there, Nicolas hit the man with a piece of wood, and he (Molleda) stabbed him.

In other words, the identity of who was boxed by Nicolas and ran away, per the testimony of Ching, whether it was Ching or Bocaling is not clear from the so-called interlocking confessions. Ching and Molleda are one in that it was Ching, on the other hand, Nicolas and Baluyot referred to the one who was subsequently boxed by Baluyot and stabbed by Molleda.

Indeed, even as to the supposed flight to Olongapo, Exhibits G, H and I vary. While Molleda said they went to Pateros first that night and proceeded to Olongapo the next day, Nicolas said they went to the house of Baby in Legazpi St., Makati and later proceeded to Olongapo in a certain house, and from there, the next day they moved to Gordon Avenue. Baluyot's version is that they went to Sta. Cruz, Pasig in the house of the aunt of Baby, from where they proceeded to Olongapo in the house of one Esmeralda where they were taken by Molleda and from there, the next day, they transferred to Gordon Avenue.

In fact, there are other material discrepancies among the supposed confessions in question, but I will refrain from discussing them to avoid unduly extending this opinion. After all, what I have so far discussed should suffice to prove my contention that the said confessions so vary or are so inconsistent with each other on material points, which if the said confessions were as spontaneous and as faith-inspiring as the trial court held them to be, would not have been as they are. It must be remembered that these supposed confessions were taken more than four months after the incident in dispute. What is more, they would indicate that all the three appellants, Molleda, Baluyot and Nicolas were together in Olongapo all that time. For this reason, I do not believe it is safe to hold that there was no opportunity for collusion, imperfect as it has turned out to be, among them as to what they would say if arrested.

On the other hand, considering that there is indication in the record that the said appellants belong to a notorious gang -- either Sputnik or Sigue-Sigue, just as Ching and Bocaling were members of a rival gang known as Bahala Na Gang, it is not very farfetched to imagine that the confessions under discussion must have been tailored by those concerned in order that all of them may be found guilty, albeit the execution of such design has turned out to be a little clumsy and marked with loopholes.

One last point. The conviction by the trial court of Baby or appellant Duave is predicated on the theory that she and Melinda lured Ching and the deceased to go with them to Sta. Ana to be then and there dealt with by her co-appellants. The question that bothers me is, what could have been the true motive of such evil design? On the basis of the evidence given by Ching himself that their meeting with Baby and Melinda was accidental and that there was "no ill-feeling" between them, added to the fact that from the way Ching related what happened from the time they left the Good Earth Emporium up to the time of the fatal incident, it appears that everything was friendly and cordial, I believe that the theory that Baby pretended that she had been raped and robbed by Ching and his companions is simply preposterous. And why would Ching be so complacent and unsuspecting, if it were

true that he had so victimized Baby? On the other hand, I cannot imagine why Baby would conceive the idea of making her male friends believe she had been raped and robbed by Ching and his companions, just to set them to be mauled and possibly killed. The evidence does not suggest any answer to this poser. In a word, the theory on which Duave is conviction has been premised by the trial court is unnatural and improbable. Indeed, there is more than ample ground in the evidence offered by the defense at the trial to hold, as suggested by the Solicitor General, that what started the melee that tragically ended in the death of Bocaling was Ching's indiscreet act of putting his arm around Melinda's shoulders thereby drawing the jealous reaction of her common-law husband, appellant Nicolas. I consider such theory to be more consistent with common human experience than the highly improbable imputation to Baby that, to avenge a supposed robbery and rape committed on her by them, she had lured Ching and Bocaling to go with her and Melinda in order to be killed. Taking all relevant circumstances into account, particularly, the complete absence of any act or word of either Baby or Ching and Bocaling during the whole time between their unexpected meeting at the Emporium and the fatal incident itself indicative of any feeling of resentment on her part or of shame or remorse on their part, and considering that according to Ching himself it was Melinda, rather than Baby, who said she was returning a radio to Gordon, I cannot agree with the majority that in that chance encounter at the Good Earth Emporium, Ching and Bocaling were the victims of deception.

All in all, I have serious doubt as to the guilt of the appellant Duave and I, therefore, hold she should be acquitted. The evidence against her is meager and hazy. As to appellants Molleda, Baluyot and Nicolas, I am convinced there is enough evidence to hold them guilty of homicide deserving of the medium penalty therefor, there having been neither any aggravating nor mitigating circumstance proven. Neither superioridad nor craft, as already discussed, can be considered against them. As I have stated at the outset, such is my vote.

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