

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PIO TINTERO, ACCUSED-APPELLANT.

G.R. No. L-30435. February 15, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This case is before Us on automatic review of the decision of the Court of First Instance of Leyte dated November 18, 1968 in Criminal Case No. 11029 finding the accused Pio Tintero guilty beyond reasonable doubt of the crime of Robbery with Homicide and Frustrated Homicide, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court, finding the accused Pio Tintero, guilty beyond reasonable doubt of the crime of robbery with homicide and frustrated homicide, defined and penalized by par. 1 of Article 294 of the Revised Penal Code, and there being one aggravating circumstance of treachery attending the commission of the offense, without any mitigating circumstance to offset the same, hereby imposes upon the accused the extreme penalty of death through electrocution to be carried out in accordance with the provisions of existing law and rules. The accused will indemnify the heirs of the deceased, Patricio Nicdao, the sum of P6,000.00, and to pay the amount of P350.00 to Tranquilina Merejolin, and to pay the costs.

In view of the fact that the accused is still in the prime of his youth, being only thirty years old, married and with four small children to support, and feeling that this man could possibly make an honest and sincere repentance for the crime he committed and to follow a righteous way of life, the Court hereby recommends that executive clemency be extended to him."

The facts supporting the conviction and gathered from the testimonies of the prosecution's witnesses, are as follows:

At about 8:00 o'clock in the evening of May 1, 1965, the spouses Patricio Nicdao and Tranquilina Merejolin were at their house located in Sitio Lawaan, Bo. Hilaba, Pastrana, Leyte. They were then preparing for bed and at the same time were conversing about matters related to coconuts which they had caused to be made into copra. Patricio was asking for money with which to pay the laborers he hired; and Tranquilina gave him P4.00 which he placed inside the backpocket of his pants. After a while, they heard their dog bark for which reason Patricio Nicdao called out "Kumpadre, kumpadre" thinking that their neighbor, Margarito Guanes, nicknamed Marga, was visiting. Since nobody responded to his call and feeling that persons were coming up the stairs, Patricio Nicdao stood up from the mat where he was lying down while his wife, Tranquilina, remained seated. Patricio Nicdao had not yet opened the door when three armed men burst into the room. Because their bedroom was lighted by a lamp, Tranquilina recognized the accused, Pio Tintero, whom she knew to be the stepson of her own son, although she failed to recognize the other two men. The three men were all armed with guns. Upon seeing Patricio Nicdao, the accused Pio Tintero shot him twice. Thereafter, the accused who was standing just in front of the seated Tranquilina, demanded money from her. Tranquilina denied having any. Upon hearing her reply, the accused shot her once hitting her at the breast. Tranquilina then took P300.00 from a handkerchief tied around her waist and

gave the money to the accused. The accused and his two companions again asked for more, and Tranquilina gave them P50.00 which she took from their trunk. Thereafter, the accused and his two companions left the house. Fearing that the three men might return, Tranquilina left the house and hurriedly followed an unblazed trail towards the house of their nearest neighbor, Margarito Guanes (their Compadre Marga) which was located at a distance of about 50 meters away. She spent the rest of the night in Guanes' house. The following morning, Tranquilina, Margarito Guanes and four others went back to Tranquilina's house and there they found the lifeless body of Patricio Nicdao. Thereafter, Tranquilina went to the poblacion of Pastrana and there reported the incident to the authorities.

Acting Chief of Police Prisco Metran received her report. However, before she was fully investigated, Tranquilina was first brought for treatment of her breast wound which was found by the doctor to be superficial and barring complications, would heal within a period of 15 to 19 days. After her medical treatment, Tranquilina gave her statement. She also reported a previous incident involving her husband and the accused that could have been the possible motive of the crime. Thereafter, Patrolman Metran and a companion went to Tranquilina's house and there found the dead body of Patricio Nicdao.

Witness Pedro Camino confirmed the previously related altercation between Patricio Nicdao, the accused, and his cousins Olimpio and Camilo, both surnamed Tintero. Camino narrated that some four days before May 1, 1965, he and his wife, Paciencia Dabocol, with Patricio Nicdao, were gathering coconuts from the coconut plantation belonging to Gregorio Montejo, but tenanted by the deceased, located at Barrio Palanog, Jaro, Leyte. While they were gathering coconuts, the accused and his cousins Olimpio and Camilo arrived. The accused asked the deceased, "Why did you climb the coconut trees? They do not belong to you. They belong to me." The deceased retorted, "This is not your coconut plantation. This is mine. That was given to me by Gregorio Montejo." The Tinteros then unsheathed their bolos and challenged the deceased to a fight saying, "Let us fight." The deceased, however, hurriedly left the premises on his horse, while the accused shouted after him, "We will shoot you. We will kill you."

Margarito Guanes declared that on the night of May 1, 1965, he heard gunshots coming from the direction of the house of the deceased. He also confirmed that Tranquilina thereafter sought refuge in their house and spent the rest of the night with them.

The autopsy report of Dr. Veresimo Opiniano, Municipal Health Officer of Pastrana, gave as the cause of death, hemorrhage secondary to gunshot wounds involving the chest, which was fatal, and the left forearm.

On May 4, 1965, a complaint was filed against the accused. On May 5, 1965, the accused was arrested at his house and then brought to the house of Enrique Terado, Tranquilina's brother-in-law. On May 6, 1965, he was brought to the P.C. Headquarters in Tacloban City for investigation where he signed a sworn statement, Exhibit "A", admitting his participation in the crime charged, implicating as his companions, Esteban Recatillo and Graciano Magallon, but pleading in his defense that Recatillo and Magallon forced him to accompany them. The said statement was subscribed and sworn to before Atty. Virgilio C. Lentejas, Clerk of Court, Court of First Instance of Tacloban City. On May 15, 1965, the complaint was amended to include Esteban Recatillo and Graciano Magallon. On December 13, 1966, an information was filed against the accused, Esteban Recatillo and Graciano Magallon. Esteban Recatillo was, however, released because Tranquilina Merejolin could not positively identify him as one of those who accompanied the accused on that fatal night. As to Graciano Magallon, he had remained at large up to the present. Hence, only herein accused was arraigned on June 20, 1967 when he pleaded not guilty.

The accused's defense is centered on denial and alibi.

He testified that on the night of May 1, 1965, he was at the house of Pablo Merate located at Bo. Palong, Pastrana, 3 kilometers from Barrio Palanog, helping in his preparation for the first death anniversary of Merate's child the following day, May 2, 1965. Pablo Merate fetched him in the afternoon of May 1, 1965 and from six o'clock of that afternoon, they caught the pig, slaughtered, cleaned and cooked it. He went home only after eating his breakfast the following morning. His alibi was corroborated by Pablo Merate.

The accused also repudiated Exhibit "A", his sworn statement. He claimed that he signed the same under the following circumstances: After he was arrested in the afternoon of May 5, 1965, he was not immediately brought to the P.C. headquarters. Instead, he was first brought to the house of Enrique Terado whose wife was the sister of Tranquilina Merejolin. There, the arresting officers made him lie on a long table with his head, back and upper extremities hanging at one end of the table, and his thighs spread apart and tied to both sides of the said table. He was in that position for two hours. They spent the night in Terado's house and he was brought to the P.C. headquarters at Tacloban City the following day. Thereafter, he was interrogated by one Sgt. Abadiano who maltreated him by boxing his body and ears and by kicking him, all the while insisting that the accused admit his guilt to which the accused refused. He was asked whether he knew one Esteban Recatillo and Graciano Magallon, to which he answered that he knew them. Then Sgt. Abadiano started to type and after he was finished, he asked the accused to sign a prepared statement. Since the accused did not know how to write or read English, in which the statement was prepared, he inquired as to its contents. Abadiano reportedly informed him that he was merely signing a statement to the effect that he knew Esteban Recatillo. After that, the accused signed Exhibit "A". Fear of another maltreatment prompted him to confirm the veracity of the statements in Exhibit "A" before the Clerk of Court, Atty. Virgilio C. Lentejas.

The accused further testified that while he was detained, the widow Tranquilina Merejolin visited him and asked for P300.00 in exchange for his release. He said that while Esteban Recatillo and he were both in the stockade, Recatillo told him, "For you, Pio. You better give the amount of P300.00 so that you will be released also. For my part, I was able to give P300.00, so I can be released now." (t.s.n., Pio Tintero, Hearing of October 2, 1968, pp. 78-79). The accused thus claimed that the trial proceeded only as to him because he was not able to satisfy the demands of Tranquilina that he pay her P300.00.

After trial, the lower court found the accused guilty as charged, and rendered its decision, imposing the penalty of death on the accused.

Only two issues pose themselves for Our resolution. One, whether or not the herein appellant has been positively identified by the prosecution's lone eye-witness, Tranquilina Merejolin; and second, whether or not the alleged extra-judicial confession of the appellant could be taken in evidence against him.

Examining carefully the evidence of the prosecution anent the identity of the assailants, We are convinced that the accused Pio Tintero was positively identified by Tranquilina Merejolin as one of the perpetrators of the crime charged. Tranquilina clearly declared that the accused Pio Tintero was known to her for more than two years already (t.s.n., pp. 3-4, July 12, 1968 Hearing) and she knows him as the stepson of her own son, Crispiniano Francisco, the husband of Pio Tintero's mother (t.s.n., p. 169, Aug. 16, 1968 Hearing). She pointed to Pio as the one who shot her, who demanded money from her and took P350.00 from her, and she recognized him as there was a lighted lamp in their room at the time, 8:00 o'clock in the evening when they were preparing to retire for the night. She pointed to the accused Pio Tintero as the one who shot also her husband Patricio Nicdao inside their bedroom.

The defense assails Tranquilina's identification by presenting Exhibit "1", a statement signed by Prisco Metran, policeman and OIC of the Police Station of Pas-trana, Leyte, during the preliminary investigation conducted by

the Municipal Judge, which statement contains a brief summary of the results of Metran's initial investigation of the incident which We herein quote in full:

"During my investigation of the incident, I investigated Tranquilina Merejolin first, who was wounded at her right breast of gunshot.

She testified before me that 'I did not know who shot them.'

She testified however that she remembered Pio Tintero who was among the 3 persons who shot them and robbed of their money.

I also conducted on the spot investigation at the place of the incident, and I found Patricio Nicdao already dead. I called some persons one, Perfecto alias Entoy Comusta, so I went up and discovered one wound (gunshot). I also found 2 empty carbine shells and 1 ammunition unused.

Then I went to the neighbor house of Margarito Guanes who told me he did not know the cause but he heard gun reports. When I ask Margarito if she was able to identify she said no. Then I called the tenant Pedro Camino who informed me that the Tinteros; Pio, Camilo and Olimpico warned them (sic) (Patricio and Pedro) because of the coconuts of Patricio Nicdao who was claimed by the Tinteros as theirs.

PRISCO METRAN"

While the statements in Exhibit "1" appear to be conflicting in the sense that Tranquilina Merejolin testified that she did not know who shot them, as stated in the second paragraph of the exhibit, she also testified that she remembered Pio Tintero who was among the three persons who shot them and robbed (them) of their money, which appears in the third paragraph of the same exhibit, the apparent contradiction is explained by Prisco Metran in the following wise:

"ATTY. PASAGUI:

Q. I am showing you this Exhibit "1", the statement which you made in the investigation conducted by the Municipal Judge. Please read this, if those are the statements made by you.

A. Yes, sir. I propounded to Tranquilina Merejolin who were the persons who shot them and Tranquilina Merejolin answered me that she did not know who was the person who shot her husband, but she recognized Pio Tintero who was the one who shot her." (TSN, Prisco Metran, August 23, 1968, pp. 65-66)

More than the above explanation are the signed statements of Tranquilina Merejolin, marked Exhibit "E-2" prepared by Policeman Prisco Metran which read as follows:

"Tranquilina Merejolin, 60 widow of the late Patricio Nicdao, resid. at Bo. Lawaan, Jalaba, Pastrana, Leyte, after having been duly sworn on oath declared before this Court:

When asked by the Court if she was able to identify accused Esteban Recantilo, she answered no, although she used to see him at the cockpit of Bo. Patong. She only identified Pio Tintero who was among the ones who went up the house on May 1, 1965 at about 7:00 p.m."

and Exhibit "D" (Statement of Tranquilina Merejolin taken in the Municipal Court of Pastrana, Leyte, on May 4, 1965), pertinent portions of which read as follows:

"State your name and other personal circumstances?

Tranquilina Merejolin, 60 years old, widow, Filipino and a resident of Sitio Lawa-an, Bo. Halaba, Pastrana, Leyte.

Why are you here in the Court?

I want to file complaint about the accident that happened to me.

Can you tell the Court about the accident that happened to you?

That on May 1, 1965, at about 8:00 o'clock in the evening while we were conversing with my husband Patrecio Necdao our dog bark and bark and we thought that it was my compadre Marga and my husband called saying that 'Padre Marga' for two times and no one answered and not long three persons went up the house and while my husband was going to see if who are those persons coming up the house at once fire the gun to my husband for two times and while my husband was already killed I was shot by Pio Tintero and when I was hit I said to them that do not kill us all and that was the time when the three persons asked me money and because I am afraid I give them our money amounting to Three Hundred Fifty Pesos (P350.00);"

These statements of the witness Tranquilina Merejolin clearly and positively identifying the accused Pio Tintero as one of the three men who went up their house on the night of May 1, 1965, shot her and her husband and robbed them of P350.00, which were reiterated by her during the trial of the case, strongly and convincingly support the trial court's holding that the accused Pio Tintero's identity was fully established. We find no error in the court a quo's ruling, thus:

"And after the Court has made a painstaking, repeated study and assessment of the evidence, and upon a consideration of the demeanor and conduct of the witnesses at the witness stand which the Court had carefully observed, and also the logic, the quality and the reasonableness of their respective versions, the Court has found the facts established by the prosecution to be convincing and definitely credible. The evidence of the prosecution is abso-lutely free from the debilitating effects of any material inconsistency or contradiction, or of any unnatural or artificial tinge, that it easily captures the credu-lity of the Court. The identification of the accused Pio Tintero by the government witness, Tranquilina Merejolin, as one of the three perpetrators of the crime, and the one who shot her and her husband, is positive, clear and satisfactory, that it leaves no room for doubt on its verity, nor, leaves in the mind of the court even a figment of a thought that the identification is the product of human error, or of the lavishness and even mawkishness of the human imagination. The government eye-witness had known the accused Pio Tintero at least two years before the incident (People vs. Bumatay, et al., G.R. No. L-16620, April 30, 1963), and Tranquilina Merejolin had easily recognized him as one of the three nocturnal intruders due to the light coming from a lighted lamp inside her house at the time."

Indeed, on matters of credibility the Supreme Court has accorded the highest degree of respect for the findings of the trial judge because he had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies. The trial judge's findings of facts shall not be disturbed unless it appears from the records that facts or circumstances of weight or influence were overlooked, their significance misinterpreted, or there were inherent weaknesses in the supporting evidence. (People vs. Juanito Bautista, et al., L-31900, August 6, 1979, 92 SCRA 465, 472).

The above rule now well-established in Our jurisprudence has found application in the more recent cases of People vs. Tigulo and Velasquez, L-34334, November 7, 1979, 94 SCRA 183; People vs. Ramos, L-35063, December 27, 1979, 94 SCRA 842; People vs. Caramonte, L-31866, November 7, 1979, 94 SCRA 150; People vs. Rizal, L-43487-89, February 26, 1981, 103 SCRA 282; People vs. Lacson, L-46338, January 27, 1981, 102 SCRA 457.

We also find no error committed by the lower court in admitting the extra-judicial confession of the accused-appellant, marked Exhibit "A" for the prose-cution, which confession the accused-appellant has repudiated claiming that it was not his free and voluntary statement. Appellant's contention that since "the investigating officers were biased in this case and under the influence of persons close to Tranquilina who is

interested in the case, the statement was prepared in English by the investigators and signed by the appellant after at least ten (10) hours of continuous interrogation, during which he was maltreated, without knowing its contents since he did not know nor could he read English, and because he was threatened with further harm if he did not sign," x x x "the affidavit or statement does not meet the test and requirements established by law and judicial precedents to make it admissible as evidence, and the lower court erred in taking this statement (Exhibit "A") as additional evidence of appellant's guilt"(Brief for Appellant, pp. 114-115, Records) is without merit.

According to the accused, he suffered grave mal-treatment in the hands of PC Sergeant Tampil and his PC companions in the house of Enrique Terrado just after he was arrested, and also in the hands of Sgt. Abadiano at the PC Headquarters, Camp Dumpus, Tacloban City, when St. Abadiano investigated him. He declared that in all these investigations, he always maintained his non-participation in the killing of Patricio Nicdao and the wounding of Tranquilina Merejolin. He claimed that he signed his affidavit (Exhibit "A") because it was represented to him that it merely contained a statement to the effect that he (accused Tintero) knows a person by the name of Esteban Recatillo.

As correctly held by the trial court, "(t)his claim of the accused Tintero that he did not comprehend the real contents of Exhibit "A", and that he was made to believe that he was only declaring on his acquaintanceship with Esteban Recatillo, is, however, belied by Clerk of Court Virgilio Lentejas before whom the jurat was administered, and by Sgt. Xerxes Abadiano. Atty. Virgilio Lentejas declared that when Exhibit "A" was brought to him by the affiant, Pio Tintero, he read to the accused the contents thereof, translated it into the waray-waray dialect which the accused speaks and understands, and when it was read to him, he was asked if the contents thereof are true, to which the accused-affiant answered in the affirmative. Thereafter, the accused was made to swear to the truth of its contents, before he (the accused) signed the same. Now, between the testimony of the accused, who had every reason to distort the fact to tailor them to fit into the pattern of his defense, and the disinterested testimony of the Clerk of Court of this Court, who had no proven ill-motive to prevaricate the truth, the Court is certainly inclined to believe fully and completely the testimony of Clerk of Court Virgilio Lentejas. It has been consistently held that the testimony of a disinterested officer who administers an oath to an affiant, who affirms that the accused understood his written declaration and swore to the truth thereof, should be given faith and credit there being no ground to disbelieve him (People vs. Tangyao, G.R. No. L-14675, November 21, 1961; People vs. Balibar, et al., G.R. No. L-12450, Dec. 29, 1960; People vs. Balonto, et al., G.R. No. L-11325, Nov. 29, 1960; People vs. Argone, et al., G.R. No. L-19448, Feb. 28, 1964; People vs. Belen, et al., G.R. No. L-13895, Sept. 30, 1963)."

The defense of duress interposed by the accused-appellant is likewise belied by the testimony of Atty. Virgilio Lentejas, Clerk of Court, who clearly testified as follows:

"Q - Exhibit "A" is a sworn statement in question and answer form, questions are propounded and answers thereto are made by the affiant, this is in English, can you recall Mr. Lentejas what you did to this affidavit in English?

A - When this affidavit was brought to me, I read to myself the contents of the affidavit, then I explained to the affiant what he was going to swear to, I asked him whether he will confirm to the contents of the affidavit and he answered in the affirmative. I then translated the questions and the answers into the dialect.

Q - In what dialect did you translate the question and answers?

A - Into the vernacular, waray-waray dialect.

Q - Why not into the Cebuano or Ilongo dialect?

A - Because his residence is Palanog, Jaro, Leyte and I presume he is using the waray-waray dialect.

Q - What is the dialect?

A - Waray-waray dialect.

Q - After translating the contents thereof into the waray-waray dialect, what did you ask him?

A - After translating the questions I also translated the answers and everytime I ask him whether it is true, he would always answer in the affirmative.

Q - Did you ask him regarding every question and answer in the affidavit?

A - Every question and every answer was asked and translated and all his answers were in the affirmative.

Q - After telling you that all the answers were true and correct, what did you do next?

A - I let him swear.

Q - Did he swear to all the questions and answers?

A - Yes, sir.

Q - After that what did you do?

A - After he swore to the truth of the affidavit I let him sign the affidavit. It appears here that his affidavit was already signed, that is why, in order to verify the truth of his statement I let him sign again in my presence, that is why there are two signatures.

Q - Whose signature?

A - The signature of Pio Tintero. I believe that this Pio Tintero already signed when he was brought to me and when he swore before me I again let him sign to show that he was not intimidated.

Q - After you swore him, what did you do?

A - That is the time when I signed.

Q - On the left side of Exhibit "A" is a signature, whose signature is that?

A - That is the signature of Pio Tintero.

Q - To the left there is another signature, whose signature is that?

A - That is the signature of Pio Arcena.

Q - Why did he sign?

A - In cases like this, I always call a witness when I administer the oath to show that the affiant was not intimidated." (pp. 3-5, t.s.n., April 5, 1968)

It will be noted that Exhibit "A" was subscribed and sworn to by the accused Pio Tintero before Clerk of Court Virgilio C. Lentejas on May 7, 1965 at Tacloban City. The accused claims that he was maltreated by the PC soldiers after his arrest on May 5, 1965 at the house of Enrique Terrado and that he was threatened with further maltreatment during his investigation at the PC Headquarters at Camp Dumpus, Tacloban City if he did not admit his guilt, for which reason he signed Exhibit "A" on May 7, 1965 before Clerk of Court Virgilio Lentejas. Such testimony, however, cannot be believed in the same light that the lower court rejected it. From the accused's own testimony, it is admitted that since his arrest on May 5, 1965 up to the day when he testified during the hearing on August 16, 1968, it was only during his conference with his counsel, Atty. Pasagui, that he revealed for the first time the subject of his having been maltreated by the PC soldiers. (See t.s.n., pp. 141-142).

Moreover, as the trial court further observed, the claim of the accused that he was investigated by Sgt. Xerxes Abadiano was denied by the latter when he declared in the witness stand that he had nothing to do with the investigation of the accused because it was Sgt. Avelino M. Dionaldo who investigated him, which is affirmed in the title of Exhibit "F" itself which reads: "Sworn Statement of Pio Brazil Tintero Propounded by Sgt. Avelino Dionaldo, Regular Member of the 57th PC Company, Camp Dumpus, Tacloban City Taken in the Pre-sence of Cpl. Tito Tampil at the Office of the 57th PC Company, Tacloban City at about 1500hrs. 6 May 1965."

Considering now the contents of Exhibit "A", We find that the same contains many details and facts which the investigating officer could not have known and could have not simply supplied without the knowledge and information given by the accused. According to Our jurisprudence, details disclosed in the confession which could have been known only by the declarant indicate the voluntariness in executing the same. (People vs. Bautista, 92 SCRA 465). Voluntariness in the execution of and details narrated in the extra-judicial confession render the claim by appellant of duress in its execution incredible. (People vs. Llamoso, 91 SCRA 364). And in People vs. Villa, 93 SCRA 716, We held that the confessions of the accused cannot be totally ignored even if they repu-diated all of them on the ground of alleged extraction by force and intimidation, because the narrations contained in them coincide with the narration given by the eyewitnesses. And where the narration of the defendant tends to explain his conduct or shift the blame to others, this is a circumstance that may be considered as demonstrative of voluntariness rather than of compulsion. (People vs. Santalani, 93 SCRA 315).

Thus, in his extra-judicial confession, Exhibit "A", the accused Pio Tintero admitted that in the morning of 30 April 1965, he went to the house of his cousin to help him unhusk the coconuts to make the same into copra and went home to his house about 5:00 o'clock in the afternoon of the same day. About 6:00 o'clock, Esteban Recatillo armed with a U.S. carbine and Graciano Magallon, alias Casiong, armed with a pistol, arrived in the house and ordered him to go with them to a certain gambling den and when he told them that he cannot go with them because he had no money, they threatened him that if he will not go they will kill him so that he was forced to go with them. They went to Bo. Lawa-an, Pastrana, Leyte, to the house of one Patricio Nicdao, arriving thereat at about 7:00 o'clock in the evening of the same day, 30 April 1965. Immediately upon their arrival at Bo. Lawa-an, Pastrana, Leyte, they penetrated the house of Patricio Nicdao. Esteban Recatillo was ahead, followed by the accused and Graciano Magallon. When he and his companions were already inside the house of Patricio Nicdao, Esteban Recatillo immediately fired his carbine, 3 shots hitting Patricio Nicdao, the owner of the house, and his wife. Patricio Nicdao received two mortal gunshots on his breast that caused his instant death and his wife also received one mortal gunshot on her breast. After killing Patricio Nicdao and shooting his wife, Esteban Recatillo demanded money from Mrs. Nicdao. Recatillo was able to get money from Mrs. Nicdao which he could not determine the amount because it was wrapped with a handkerchief taken from Mrs. Nicdao's body and the other bundle taken from under their trunk. Recatillo received the money and immediately placed it inside his pocket. After that, Tintero was told to go home by Recatillo and Magallon. He was not given a share in the amount robbed from Mrs. Nicdao.

The defense contends that the discrepancy as to the date of the robbery and killing (in the evening of April 30, 1965 at about 7:00 o'clock according to Exhibit "A", while according to the prosecution evidence the crime was committed in the evening of May 1, 1965) is proof that the accused-appellant did not know the date of the killing because he was not there and the date was typed by the investigators because that was their conjecture and the appellant could not supply the correct information. There is no merit to this contention. On the contrary, it proves that the accused freely and voluntarily answered the questions of the investigator since the answers given by the accused contain numerous details and circumstances which the investigator could not have known but the declarant himself alone. The pivotal and essential fact borne out of Exhibit "A" was the presence and participation of the accused Pio Tintero in the commission of the robbery and the shooting to death of Patricio Nicdao and the

wounding of his wife, Tranquilina Merejolin.

The defense of the accused is alibi. According to him, on May 1, 1965 at around the time when the spouses Nicdao were allegedly shot at 8:00 or 8:30 that night, he and Pablo Merate were together slaughtering Merate's pig in the latter's house in Bo. Patong, which is three kilometers away from Bo. Palanog, Jaro where the appellant's house was, and that from the time the accused arrived there at around 6:30 p.m., he did not leave but stayed there the whole night. After catching the pig and slaughtering it, he cooked it and then had dinner with them leaving them only after breakfast on May 2, 1965.

The trial court rejected the appellant's defense of alibi that he was in the house of Pablo Merate preparing for the celebration of the death anniversary of the latter's child on the night of May 1, 1965. The trial court's rejection is proper and correct and We affirm the same for the testimony of the accused is re-pudiated by his own corroborating witness for the defense, the witness Pablo Merate, who declared that his child died on May 2, 1965, not May 1, 1965. Merate's testimony partly is as follows:

"Fiscal Cablitas (Cross-Examination)

Q - Was that child a girl or a boy for whose death anniversary you were celebrating on May 2, 1965?

A - A girl.

Q - The name, please?

A - Elenita Merate.

Q - When did she die?

A - It was on the second day of May.

Q - What year?

A - 1965.

Q - You are sure of that or not?

A - I am sure."

(p. 155, t.s.n., Nov. 11, 1968)

We agree with the assessment of the testimony of defense witness Pablo Merate made in the decision under review which is quoted hereinbelow, thus:

"A consideration of all these, therefore, shows the paucity of the evidence of the accused to sustain his defense of alibi. For even his only witness, Pablo Merate, had miserably failed in his mission of mercy for this accused for he (Pablo Merate) had enmeshed himself in a quagmire of falsity and prevarication. This is patent from his testimony when, on cross-examination, he declared that he went on May 1, 1965, to request the accused Tintero to help him catch the pig, slaughter and cook it on the night of May 1, 1965, ready for a party to be held on the following day, May 2, 1965, in celebration of the death anniversary of his child, Elenita Merate. This witness declared, however, that his child died on May 2, 1965. It is revoltive to the conscience that this witness would want to bulldoze the court into believing that he would prepare on the day before, for the death anniversary of a child who would die the next day - a clear absurdity of the highest order." (CFI Decision, p. 38, Records).

The defense of alibi must be proved by positive, clear and satisfactory evidence. The reason is that evidence of alibi is so easily manufactured and usually so unreliable that it can rarely be given credence. When the accused is

identified by the witnesses for the prosecution by clear, explicit and positive testimony, as in the instant case, the alibi will not be credited.

Besides, assuming for the sake of argument that in the night of the killing and robbery, the accused-appellant went to the house of Pablo Merate, nevertheless since Merate's house was only two kilometers away from the house of the victims and the distance could be negotiated for more than half an hour (Appellant's Brief, p. 6) it was not physically impossible for the accused to be at the scene of the crime during its commission, thereby rendering the defense of alibi ineffectual. This is the rule on this point.

Moreover, since the testimony of Tranquilina Mere-jolin, the lone eyewitness who was shot at her breast point-blank, satisfied the trial court as to the identification of the accused Pio Tintero as the person who with two companions shot her and her husband, such testimony is sufficient to convict. (People vs. Barut, 89 SCRA 14; People vs. Garcia, 89 SCRA 440; People vs. Artieda, 90 SCRA 144; People vs. Cabeltes, 91 SCRA 208; People vs. Estante, Jr., 92 SCRA 122; People vs. Tabion, 93 SCRA 566; People vs. Ang, 94 SCRA 586; People vs. Resurreccion, 94 SCRA 696).

The guilt of the accused has been established by proof beyond reasonable doubt. The penalty of death imposed by the trial court is correct, the crime committed being robbery with homicide and frustrated homicide, a special complex crime punishable under Article 294, paragraph 1 of the Revised Penal Code, attended by the generic aggravating circumstance of treachery without any mitigating circumstance to offset the same. The indemnity to the heirs of the deceased Patricio Nicdao should, however, be raised from P6,000.00 to P12,000.00 which the accused is hereby ordered to pay besides the P350.00 to Tranquilina Merejolin and the costs.

However, for lack of the necessary votes, the penalty of death is reduced to reclusion perpetua.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment under review is hereby MODIFIED in that the penalty of reclusion perpetua is imposed on the accused and the civil indemnity of P6,000.00 to the heirs of the deceased Patricio Nicdao is hereby increased to P12,000.00. Costs de officio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Abad Santos, De Castro, Melencio-Herrera, Erica, Plana, and Escolin, JJ., concur.

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