

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
IRENEO URRO, GUILLERMO DE LA CERNA, ELADIO DIANA AND
MEDRICO ARINASA, DEFENDANTS-APPELLANTS.**

G.R. No. L-28405. April 27, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An appeal from the decision promulgated on September 12, 1967 by the Court of First Instance of Zamboanga del Sur finding the four herein accused guilty as charged of murder for the death of the deceased Cornelio Reconalla and sentencing each of them to reclusion perpetua, to pay jointly and severally the heirs of the deceased the amount of P6,000.00, to suffer the accessory penalties of the law and to pay the costs.

The lower court's all too-brief 4-page judgment of conviction states its appreciation of the evidence and of the applicable law, as follows:

"The four accused Ireneo Urro, Guillermo dela Cerna, Eladio Diana and Medrico Arinasa are accused of Murder alleging that on January 26, 1962, in the municipality of Tabina, Zamboanga del Sur, acting with treachery and premeditation, they struck several times Cornelio Reconalla inflicting mortal injuries that caused his death.

"The prosecution presented seven (7) witnesses, namely, Mayor Antonio Adaptar, Dr. Moises T. Roque, Chief of Police Petronilo Pagaran, Municipal Secretary Alejandro Alcachupas, Restituto Estrella, Colita Cagno, and Pedro Calago, and offered Exhibits 'A' to 'M' inclusive.

"On the other hand, aside from the testimony of the individual defendants, the defense relied on the testimony of Dr. Moises T. Roque, Gregorio Ramis, Sotero Arbilon and Canuto (sic) Viscayno de Estribillo and other witnesses; and it offered Exhibits '1' to '13' inclusive.

"The evidence for the prosecution shows that on the night of January 25, 1962, Cornelio Reconalla left the conjugal home at Sitio Bual, Barrio Abong-abong, Tabina, this province, in order to catch fish. He did not return home the following morning. The wife, Colita Cagno searched for him, but her search was in vain. Hence, she (sic) reported the disappearance to the police authorities of Tabina. Thereupon, the Chief of Police together with Patrolman Monteclaro went to Sitio Bual to search for Cornelio Reconalla. They found him dead along the beach and nearby was his sailboat. Near his dead body were a piece of bamboo (Exhibit H) and a paddle (Exhibit 'I'), both of which were stained with blood. He (Chief of Police) immediately investigated Colita Cagno who informed him that the enemies of his (sic) deceased husband were Ireneo Urro, Medrico Arinasa, Guillermo dela Cerna, and Eladio Diana, defendants herein.

"It appears that Ireneo harbored ill feelings against the deceased, because two years before the incident in question, Ireneo Urro ordered one hundred coconuts from the deceased for seedlings. The deceased gathered the coconuts; but after Ireneo failed to get the coconuts, the deceased converted them into copra.

"Again, on another occasion Ireneo Urro wanted to buy from Canuta Viscayno de Estribillo a portion of her

land, but the deceased who is her cousin, dissuaded her from selling the land.

"The evidence for the prosecution further shows that the accused Medrico Arinasa also harbored ill feelings against the deceased. It appears that when the carabaos of Arinasa got loose, they ate the corn planted in the fields of the deceased. Hence, the carabaos were brought to Buburay, an act resented by Medrico Arinasa.

"The Chief of Police investigated the four suspects, namely, the four defendants herein, who voluntarily executed their confessions (Exhibits 'A', 'B', 'C' and 'D'). These confessions were signed by them, and acknowledged by them to be true, and to be their voluntary act before Mayor Antonio Adaptar.

"The four confessions, which are replete with details, are in complete harmony with one another. The four defendants admit that on the afternoon of January 24, 1962, the defendant Ireneo Urro asked his co-defendants to meet him the following day at the house of Domingo Bulocan for the discussion of important matters. The four defendants actually met in the house of Domingo Bulocan at 2:00 P.M. of January 25, 1962. In that meeting, Ireneo Urro promised to his three co-defendants the amount of P300.00 in case the latter could kill Cornelio Reconalla. The other three defendants accepted the offer.

"In pursuance of the agreement, the defendants Eladio Diana, Guillermo dela Cerna, and Medrico Arinasa went to the house of Domingo Bulocan at the beach and rested there in the evening of January 25, 1962. At about 2:00 o'clock in the morning, the three defendants went out to the shore to look for Reconalla whom they found along the shore sorting out his catch for the night near his boat. The three defendants approached him on the pretext that they wanted to buy fish. But when Reconalla refused to sell any, the three defendants took turns in clubbing him to death with a piece of bamboo and a paddle. On the part of Ireneo Urro, he confessed (Exhibit 'D') that he wanted to kill Reconalla on promise of a reward from Canuta Viscayno de Estribillo.

"This confession of the four accused find testimonial corroboration from Pedro Calago, who declared that about 2:00 in the morning of January 26, 1962, while he and Sergio Tortes were returning to the shores near Abong-abong, Tabina, from the sea where they went to catch fish, they heard cries of agony 'Agoy! Agoy!' The two fishermen observed for sometime. Moments later, they saw Medrico Arinasa and Eladio Diana carry-ing a lifeless man whom they dumped into a vinta near the shore.

"The person found dead near the shore was identified to be Cornelio Reconalla who died of multiple wounds (Exhibits F and G).

"The defense consisted mainly of denials. Parti-cularly, during their investigation, and to corrobo-rate this testimony, they presented Dr. Moises T. Roque, who examined them on February 3, 1962 at the jail and found them to be suffering from physical injuries. (Exhibits 6 and 7).

"After weighing the evidence for the prosecu-tion and the defense, the Court believes that the crime of Murder was committed by the four defendants herein. Even granting that Medrico Arinasa and Eladio Diana were maltreated, never-theless, Pedro Calago identified them as the very persons who dumped a lifeless body into a vinta a few moments after they heard the sounds of beating and clubbings and the cries of agony 'Agoy, Agoy!'

"The commission of the crime is attended by the aggravating circumstances of premeditation and promise of reward without any mitigating circum-stance to offset them. The Court, however, hesitates to impose the extreme penalty of death."

The incomplete records of the case as appealed were received by the Court on December 14, 1967, with the lower court clerk's advise that the stenographic notes of the trial were delivered for immediate transcription to the three stenographers who attended the trial.

Notices to file briefs were issued to appellants under date of November 29, 1968. Accused-appellant Urro filed through counsel[1] his brief as pauper on August 23, 1969. Separate counsel for the three other accused-appellants,[2] however, found that stenographer Quirino Blancaflor, Jr. had not submitted complete

transcripts and that specifically, the transcripts of the testimonies of six of the seven prosecution witnesses were yet missing. His reglementary 30-day period to file appellants' brief was upon his motion suspended until the missing transcripts were made available.[3]

The stenographer having failed to submit the missing transcripts within the extended period given him which expired on January 22, 1970, the Court issued on February 3, 1970 its resolution ordering his arrest and confinement until he shall have submitted the transcripts. Blancaflor thereupon completed the transcripts and he was released on February 13, 1970 from confinement at the NBI detention cell per the Court's resolution dated February 12, 1970.

Counsel for the three other accused-appellants eventually filed on October 9, 1970 their brief as paupers, after a previous reprimand and warning from the Court for failure to timely file the brief before the lapse on March 29, 1970 of the suspended period to do so.[4] The State filed its brief on April 13, 1971 and the case was deemed submitted for decision upon the lapse of the period to file appellants' reply briefs on May 29, 1971.

On appeal, the accused-appellants assail the lower court for having based their conviction on their alleged extra-judicial confessions, notwithstanding their strong and convincing evidence that the confessions were "prefabricated" and taken from them by force and coercion, and the utter flimsiness and inherent incredibility of the prosecution's theory as "built-in" in the said confessions.

The Solicitor General, after noting that the judge who handed down the verdict, "based his decision on the record, not having presided at the trial of the case"[5] concurs with the appellants, manifesting that "counsel for the appellee, however, have diligently gone over the testimonies of the witnesses on both sides, scrutinized all the exhibits presented, and cannot help entertain a doubt whether the verdict of conviction is supported by evidence sufficient to produce moral certainty of guilt."

The Solicitor General correctly noted for the State that "(T)he decision of the lower court convicting appellants is based mainly on the alleged confessions of appellants (Exhibits A, B, C & D, Rec., pp. 4-6, 7-9, 10-11, 12-13, respectively) and on the testimony of Pedro Calago, an alleged eyewitness (t.s.n. hearing on May 9, 1963, pp. 28-30). Aside from the fact that appellants repudiated the alleged confessions on the ground that they were by force, violence and intimidation compelled to sign previously prepared statements, there are circumstances that render the alleged confessions suspect."

The State as appellee then itself emphasized two telling earmarks of prefabrication of the appellants' alleged confessions in that "it is impossible to tell from the record just who actually reduced the statements in writing" and in that the "intrinsic evidence of diction and style unerringly shows that [the four confessions] are the products of one mind and not of four different minds. * * * There is therefore reason to believe that the alleged confessions were really prefabricated by persons other than the accused, who were thereafter compelled to sign them," as follows:

"In the first place, tending to support appellants' contention that the statements were prefabricated before they signed them is the fact that it is impossible to tell from the record just who actually reduced the statements to writing. Whereas then Police Sergeant Petronilo Pagaran said that it was then Police Chief Sotero Arbilon who typed the statements as he himself did not know how to type (t.s.n., hearing on May 8, 1963, pp. 9, 11-12), on the witness stand, then Chief of Police Sotero Arbilon denied having anything to do with the statements (t.s.n., hearing on Oct. 24, 1963, pp. 30, 39). He even added that he first laid eyes on Exhibits 'A', 'B', 'C' and 'D' in the evening of January 30, 1962 after they were already signed by appellants and by Mayor Adaptar (ibid., pp. 40, 45-46).

"In the second place, intrinsic evidence of diction and style unerringly shows that Exhibits 'A', 'B', 'C' and 'D'

are the products of one mind and not of four different minds. A reading, for instance, of Exhibits 'A' and 'B' side by side reveals the fact that sentence for sentence, almost word for word, but for necessary changes in the names of the accused, the statements run so parallel and homologous that they could not have been the product of the minds of two different persons. Exhibits 'C' and 'D' although not showing the same parallelism revealed by Exhibits 'A' and 'B' still show the same construction of sentences found in Exhibits 'A' and 'B'. The narration of the killing in Exhibit 'C', for example, is so pat and congruent with those in Exhibits 'A' and 'B' that it cannot be seriously doubted that it was concocted by the same author. There is therefore reason to believe that the alleged confessions were really pre-fabricated by persons other than the accused, who were thereafter compelled to sign them.”[6]

As to the testimony of the alleged eyewitness, Pedro Calago, who was not even listed as a prosecution witness and whose one-page direct testimony[7] sought to implicate two of the accused, Eladio Diana(n) and Medrico Arinasa, the Solicitor General likewise manifested that he "cannot help agreeing with appellants that the alleged eyewitness is unworthy of belief" for the reasons that "in the first place, although Calago claims to be an eyewitness to the killing of the victim in the middle of the night of January 26, 1962, there is no explanation for his silence during all the time that passed between the date of the incident and his surfacing at the trial on May 9, 1963. In the second place, being a resident of Upper Balañag, Pagadian, Zamboanga del Sur, he was a stranger in Abong-abong and knew no one except his cousin Ikot Amursillia, whom he went to see in Abong-abong on January 26, 1962 in order to ask for some corn. It is therefore surprising that he went to Abong-abong in the wee hours of the morning on January 26, 1962 and went fishing at around 1:00 o'clock in the morning. Even more incredible is his allegation that he saw Eladio Diana and Medrico Arinasa lift a body and place it on board a small vinta in spite of the fact that the lamps by which he was fishing had gone out and that is why he started to go home when he allegedly came upon appellants Diana and Arinasa on the seashore."

The Court further notes *motu proprio* that Calago's alleged companion on the evening in question, who would also be a vital eyewitness to corroborate his testimony as to the commission of the crime, was never presented nor was any explanation given for the failure to present him.

The State's brief concluded with its appraisal that "(N)o amount of scrutiny of the testimony of Pedro Calago appearing on pages 28 to 30 of the t.s.n. for the hearing on May 9, 1963 can remove the impression that Pedro Calago was an eleventh-hour witness who was pulled into the case in order to give some color of corroboration to the alleged confessions of the appellants."

Nevertheless, on July 16, 1971, the Court received a motion to withdraw appeal signed by accused-appellants Cerna and Arinasa, stating that they "have lost interest in continuing their appeal, they having served for more than eight (8) years imprisonment as detention prisoners." At the same time, said appellants manifested that they were "now financially hard up due to their confinement in prison there being nobody in the family to help them finance their appeal." The Court accordingly resolved to take no action on this submittal on the part of the two accused to the life sentence imposed by the trial court and instead to painstakingly review the record and resolve this appeal on the merits.[7a]

After such review, the Court concurs with the State's report that the evidence linking appellants to the crime at bar – if in fact there were such a crime – is "flimsy, tenuous and unsubstantial" and approves the recommendation for reversal of the appealed decision and acquittal of appellants of the serious charge of murder.

In addition to those already stated above, the following vital considerations call for the acquittal of the accused-appellants:

1. The alleged confessions, including that of Canuta Vizcayno Vda. de Estribillo,[8] the alleged masterminded who supposedly hired the accused thru Urro to commit the murder on the promise to pay them P300.00 (which

was never paid) were all subscribed and sworn to before the town mayor, Antonio Adaptar on January 30, 1962 (except those of the accused de la Cerna and Arinasa which bore the date of January 29, 1962[9]). Mayor Adaptar as such conducted the investigation of the alleged crime (the deceased being a brother of his son-in-law, besides[10]) and at the same time received and acted on the complaint against the accused (as filed by his chief of police) for and in the absence of the justice of the peace. Mayor Adaptar as ex officio justice of the peace thus issued the warrant on January 30, 1962 for the arrest of the four accused and Canuta (Exhibit 3). The complaint against all five accused (including Canuta) and the amended complaint (excluding Canuta) as filed by the chief of police were all dated January 30, 1962. (Exhibits 1 and 2). No sooner was the warrant of arrest against Canuta, et al. issued on January 30, 1962 by Mayor Adaptar when he issued on the same date, January 30, 1962, the order for the release of Canuta. (Exhibit E). The double role of Mayor Adaptar as both investigator and judge (for and in the absence of the justice of the peace) was totally inconsistent and a deplorable denial of due process to the accused, prescinding from the inherent improbability that five conspirators would simultaneously and in one day execute written confessions readily admitting their conspiracy and commission of the crime.

2. Mayor Adaptar's pretensions that he asked and made sure that the four herein accused understood the contents of their alleged confessions which were written in a language not known to them were completely shattered by his by his own admission that he himself "could not fully comprehend or understand the contents [of the alleged confessions]" and had to "call (his) secretary who translated (the) affidavits from English to Visayan" and thus "would not be able to know (or) to inform the court whether the translation was made faithfully or not because (he) could not fully comprehend the English language." [11]

3. The prosecution's theory as built-in in the alleged confessions of the accused Urro, et al is that Canuta hired Urro "to contract some one who could kill Cornelio Reconalla" so that she would no longer pay (him) the amount she got from him by way of mortgage loan (which was in the form of a pact de retro for only P180.00, Exhibit J) promising Urro a reward of P50.00, and P300.00 to the three other accused, which none of them ever received as Canuta did not have the money. The absurdity of this theory was immediately realized by Mayor Adaptar's chief of police, Sotero Arbilon, who thereupon on the same day, amended his complaint by excluding Canuta, since it would be "stupid", if the confessions were to be believed, for Canuta to hire assassins to kill her creditor for P350.00, where she could just pay off her indebtedness of P180.00 to him and not have to commit any crime at all! As Arbilon testified on the witness stand:

"Fiscal Fuentes:

Q – Can you tell this Honorable Court what was the ground of your amending the original complaint and excluding the accused Carnota Vda. de Estrevilla? [12]

Witness:

A - After I filed the original complaint, I again perused all the affidavits thinking that I might be committing a mistake. Then after going over on the affidavit of Carnota she stated that there was something which prompted me to think that she was indebted to the deceased regarding the mortgage of her coconut trees. In the affidavit of Urro, it states that he was hired by Carnota for P50.00. For the three suspects Carnota would give P100.00 each, or a total of P300.00. Now, I doubt that Carnota is stupid to be spending P300.00 and face danger in the future. It would be better for her to pay P180.00, to her cousin than expect trouble for employing three persons to kill her cousin. I consulted the matter with the Mayor and he agreed and told me to drop Carnota, and so I amended the complaint." [13]

If Canuta as the alleged mastermind were out of the case because it was simply ridiculous to charge her of plotting to hire killers for P350.00 to murder her creditor to whom she owed merely half the amount (a debt of P180.00), surely then the herein four accused-appellants as the alleged hirelings should be more so out of the case.

4. The record shows a strong possibility that in fact, as contended by appellants, no crime had been committed but

that the deceased who was found dead on the shores of Tabina had been the accidental victim of the rough seas and huge waves seen at Tabina during the months of January to March in that year, 1962.[14] Dr. Moises T. Roque, municipal health officer certified the "probable cause of death (as) drowning while unconsciously submerged in water for a long time." (Exhibits 8 and 9). Dr. Roque, who was well versed about the coast, testified that "the cadaver was floating in the sea when it was found"[15] and that the physical injuries inflicted on the victim could well have been caused by the "huge, big and strong waves" dashing the body of the deceased against the rocks in the seashore.[16] Unfortunately, as admitted by the doctor, he did not conduct any autopsy of the deceased which could have revealed any internal injury or ailment of the deceased that could have accidentally caused the deceased to fall from his small sailboat and meet his death in the sea.[17]

5. It is established doctrine that the confession or "declaration of an accused expressly acknowledging his guilt of the offense charged" may be given in evidence against him, where it is voluntary.[18] Involuntary or coerced confessions obtained by force or intimidation are null and void and are abhorred by the law, which proscribes the use of such cruel and inhuman methods to secure a confession. A coerced confession "stands discredited in the eyes of the law and is as a thing that never existed." [19]

Where there is convincing evidence of violence, the validity and admissibility of the confession are destroyed. The issue generally focuses on the voluntariness of the confession which in turn depends upon the credibility of the witnesses.[20]

In any case, the most painstaking scrutiny must be resorted to by the trial courts in weighing evidence relating to alleged voluntary confessions of the accused and the courts should be slow to accept such confessions unless they are corroborated by other testimony.[21]

The case at bar is replete with numerous clear warning signals for the rejection of the alleged confessions, which had they been but heeded by the lower court, would have prevented it from the grave error it incurred in rendering its judgment of conviction:

- To begin with, as stressed by the Solicitor General, *supra*, the prosecution could not even establish who actually reduced the confessions to writing and the intrinsic evidence of the language and style of the confessions themselves (for example, in Exhibits A and B) indicate their prefabrication per the homology and identity of the words used, sentence for sentence, and word for word but for necessary changes in the names of the accused referred to, and that they could not have been the confessions, voluntarily made, of two different persons;[22]

The double role of investigator and *ex officio* judge played by Mayor Adaptar in the execution of the alleged confessions, *supra*;

- The fact that the alleged confessions were made in a language (English) not known to the accused, nor even to their investigator and the official before whom they allegedly swore to the truth thereof, Mayor Adaptar, and required the reading and translation thereof to the accused in the Visayan dialect known to them and to the mayor-investigator;
- As Mr. Justice Barredo stated for the Court in one case,[23] "Such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the said answers is naturally pregnant with possibilities of human, if unintentional, inadequacies and incompleteness which render the said confession unsafe as basis of conviction for a capital offense, unless sufficiently corroborated."

The utter absurdity of the situation where the alleged mastermind, Canuta, was dropped from the case because of the incongruity of her allegedly hiring the four accused for P350.00 to kill her creditor to avoid paying a much

lesser debt of P180.00; and

The unlikelihood of the grudges that Arinasa and Urro allegedly bore against the deceased as motives for murder. On the part of Arinasa, a long settled dispute where his carabao had eaten up the corn planted in the fields of the deceased, and on the part of Urro, an incident where he ordered 100 coconuts from the deceased but failed to get the coconuts, and the deceased allegedly advising his cousin Canuta against selling a portion of her land to Urro, when Urro was "too poor that he could hardly eat." [24] Certainly, in the natural course of events, such "grudges" would not drive men to murder!

The lower court's decision as well as the State's brief [25] concede in effect the violence and intimidation used by Mayor Adaptar and his town policemen, who were specifically identified, namely, Eliot, Pagaran (who was chief of police at the time of the trial, from sergeant at the time of the incident), Monteclaro and Husayan, [26] to extract the "confessions." Convincing evidence was presented at the trial by the defense to establish the brutal tactics used against the accused-appellants, viz, the testimony of Dr. Roque, the municipal health officer, who examined them (except Urro who was forcibly kept in the toilet to avoid his being examined) [27] and found physical injuries to have been inflicted upon them coinciding with the date of the "confessions" and issued the corresponding medical certificates [28]; the testimony of the then chief of police, Sotero Arbilon, (acting mayor of Tabina at the time of his testimony) who received the report from one Nicolas Utanda that the accused "were maltreated by Adaptar and the policemen" [29]; and the very testimonies of the herein four accused who recounted in detail the force and violence inflicted against them.

The case should therefore be brought to the attention of the Department of Justice for an official inquiry into the actuations of then Mayor Adaptar and the Tabina police officers above mentioned, and the testimonies given in the case at bar by Adaptar and Pagaran, and for their prosecution under the pertinent laws, if warranted by the evidence.

ACCORDINGLY, the judgment of the trial court is hereby reversed, and the herein four accused-appellants are acquitted of the charge against them and their immediate release is hereby ordered, unless they are held for some other lawful cause, with costs de officio.

Let a copy of this decision be furnished the Secretary of Justice for appropriate action as hereinabove indicated.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Fernando, and Barredo, JJ., concur.

Castro, Makasiar, and Antonio, JJ., did not take part.

Concepcion, C J., on official leave.

[1] Atty. Valentin O. Boncavil.

[2] Atty. Aquiles R. Ceniza.

[3] Resolution of September 4, 1969, Rollo, p. 168.

[4] Resolution of July 1, 1970; Rollo, p. 220.

[5] Judge Vicente G. Ericta, appointed sometime in 1966 as regular presiding judge of the lower court rendered the decision, after having had to cite for contempt the missing stenographers, Quirino Blancaflor, Jr. and Jose Pagunsan, for failure to transcribe the notes of the trial to enable him to decide the case on the basis of the record, per his order of March 3, 1967, Rec. p. 117. The judge therein deplored the "rigodon of stenographers" who come and go with their judges, vacation and regular, to their various assigned posts without transcribing the notes taken

by them for the information and use of the judge left to decide the case. The prosecution witnesses were heard in May 1963 by vacation judge Mariano Benedicto (with stenographer Blancaflor taking the notes). The defense witnesses were mainly heard in October and November, 1963 by regular judge Tito V. Tizon and the case was submitted for decision on November 5, 1963, upon termination of the trial. Judge Tizon was permanently transferred to the Court of First Instance of Bataan in August, 1964 without deciding the case.

[6] Italics supplied.

[7] Blancaflor, t.s.n. hearing May 10, 1963, pp. 28-30. His cross-examination took half a page.

[7a] Except for Urro, 33, Cerna, 22, Diana, 22 and Arinasa, 19, respectively, at the time of their arrest in January, 1962, were able to post P15,000.00 bail bond on Sept. 15, 1966, Jan. 23, 1967 and Sept. 6, 1966. However, Judge Ericta raised their bail to P30,000.00 and ordered their re-arrest per his order of March 4, 1967, Rec. p. 121.

[8] Exhs. C (Diana's), D (Urro's) and 10 (Estribillo's).

[9] Exhs. A (Cerna's) and B (Arinasa's).

[10] Blancaflor t.s.n., May 6, 1963, p. 21.

[11] Blancaflor, t.s.n. May 6, 1963, pp. 13-14.

[12] Canata is also referred to as Carnota in other portions of the record.

[13] Pagunsan, t.s.n., hearing of Oct. 25, 1963, pp. 48-49; italics supplied.

[14] Blancaflor, t.s.n. hearing, May 7, 1963, p. 16.

[15] *Idem*, at p. 15.

[16] *Idem*, at p. 15-18. The injuries as certified by Dr. Roque (Exhibit 7) are reproduced in the complaints filed by the chief of police thus: "two adjacent depressions with probable fracture of skull underneath, frontal region left; contusion with hematoma, eyes right and left; contusions, naso-maxillary region, left; swollen labia (upper and lower) with cuts in inner surface; two broken incisor teeth, upper left; broken canine tooth, lower, left and linear contusion with swelling and reddening extending from shoulder to level of 3rd rib, left." (Exhibits 1 and 2). It does not seem likely that they could have been inflicted by "the piece of bamboo and a paddle" allegedly used by the three defendants, per the lower court's decision, *supra*.

[17] *Idem* at p. 19.

[18] Rule 130, section 29.

[19] *U.S. vs. de los Santos*, 24 Phil. 329; *People vs. Nishisima*, 57 Phil. 26.

[20] *Vide* 5 Moran's comments, pp. 264-265 and cases cited.

[21] *People vs. Fontanosa*, 20 SCRA 249.

[22] Excerpts from Cerna's "confession" (Exh. A) and Arinasa's "confession" (Exh. B) show this beyond peradventure. From Cerna's Statement: "At about 2:00 at dawn of the same night, Eladio Diana awakened us saying that 'Mo adto na ta sa dagat kay toa na si Teliong karon nanudsod', which means to say that 'Let us go to the sea now for Cornelio Reconalla must be there already fishing.' We proceeded immediately to go down to the beach and searched Cornelio Reconalla. Not long after that, we found Cornelio Reconalla sitting on his boat sorting the fishes he caught. We approached him and I stayed around 7 meters from the boat facing Cornelio Reconalla, he being in the position sitting on his boat with one foot on the water facing southward; Eladio Diana

was also standing by the side of the boat near the victim in the direction toward the south; while Medrico Arinasa stayed near the boat a little behind the victim. Then Eladio Diana asked Cornelio Reconalla saying 'Teliong papalita me ug isda' which mean 'Teliong let us buy fish' to which the victim replied that he would not spare some for us because he did not have enough catch to sell to us."

From Arinasa's statement: "At about 2:00 the same night Eladio Diana awakened us saying, 'Mo adto na kita sa dagat kay toa na karon si Cornelio Reconalla nanudsod' which means to say 'Let us go to the sea for Cornelio Reconalla must be there already fishing.' We proceeded immediately to the beach and search for Cornelio Reconalla. Not long after that we found him sitting on his boat sorting the fishes he caught. We approached him and I stayed near the boat a little behind from Cornelio Reconalla, he being in the position sitting on his boat with one foot on the water facing southward; Eladio Diana was also standing by the side of the boat near the victim in the direction to the south; while Guillermo dela Cerna was standing about 7 meters away from the victim in the direction to the west. Then Eladio Diana asked Cornelio Reconalla saying 'Teliong, papalita kami ug isda' which means 'Teliong let us buy fish' to which the victim replied that he could not spare some for us because he did not have enough catch to sell to us."

[23] *People vs. Maisug*, 27 SCRA 742, 753.

[24] *Pagunsan*, t.s.n. p. 89.

[25] Solicitor General's brief, at p. 4.

[26] *Pagunsan* t.s.n. pp. 106, 123.

[27] *Idem* , at page 168.

[28] Exhibits 6 and 7; *Blancaflor* t.s.n. hearing, May 10, 1963, pp. 31-34.

[29] *Pagunsan* t.s.n. p. 31 et seq.

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