

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CILDO (ALIAS CELDO CENENTE [CALAGAN]), DIALANG (CALAGAN)
AND MUDA (TAGACAULO), DEFENDANTS AND APPELLANT.**

G.R. No. L-2189. March 31, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

The soul is transfixed in horror by the extreme wantonness and brutality of the murders involved in this case. Two helpless women and three innocent children were attacked while asleep and butchered for a most trivial motive in their dwelling in the sitio of Sacub, barrio of Sinayawan, municipality of Sta. Cruz, province of Davao, on the night of November 10, 1947. The victims were Cuya Baga Lim, 35; her children Emilia Lim, 9, and Eli Lim, 8; her maidservant Constancia Bagaan, 30; and the latter's daughter, Candelaria Bagaan 7.

The nearest neighbor of the victims was the accused Dialang, a non-Christian belonging to a tribe called Calagan, whose house was only about 30 meters distant from theirs, when he was investigated by the constabulary as to what he knew of the horrible occurrence he made a statement to this effect: That about five o'clock in the afternoon of November 10, 1947, he went to the river near his house to fetch water and there saw and heard Unte Tagacaolo, Cania Galagan, Faustino Tagacaolo, Muda Tagacaolo, Cildo Galagan, and Makinista Calagan conversing and plotting to kill the Chinese widow named Cuya who owned a store near his house; that Unte proposed to kill Cuya because she had much money, she having just sold some corn; that Faustino seconded the proposition because she sold her wares at an exorbitant price; that he (Dialang) tried to dissuade them from their evil purpose, even telling them that Cuya was the only one who owned a store near then, and that he left them still planning to kill her; that during the night of November 10, prayers were being said in the house of Cuya which ended about ten o'clock; that not long after that Cania Calagan and four others came to his house and called for Muda Tagacaolo, who was already in his (Dialang's) house waiting; that Muda joined them and while downstairs they all agreed to continue their plan but waited for some time because it was still early; that he (Dialang) was afraid and tried his best to advise them not to commit the crime, but Faustino warned him to keep quiet or else they would also kill him; that about twelve o'clock they left and went directly to the store; that Cania was armed with a home-made shotgun; Cildo, with an ax, and the others with bolos; that while they were walking towards the store of Cuya he (Dialang) followed them and hid himself among the bananas in front of the store; that Cildo Calagan called the Chinese woman on pretext to buy some dried fish; that when the store was opened Gildo entered first, Unte next, and then Faustino and Makinista followed; that Cania Calagan guarded the main door of the store while Muda guarded the kitchen door; that immediately he heard a woman cry inside and then heard a shot; that a crying child was able to escape outside through the kitchen but was pursued and killed by Muda; that because he was very much afraid he returned to his house and waited till morning, when he reported the case to Mr. Pio Acot, president of the parents-teachers association of Sacub. (Exhibit B.)

Upon being apprehended Muda, another non-Christian belonging to a tribe called Tagacaolo, admitted his participation in the crime, saying that he was called by Cania and Faustino and that he went with them because he

was afraid they might kill him; that his companions were Faustino, Cildo, Cania, Unte, and Makinista; that during the attack one girl was able to escape through the kitchen but that he was able to catch and kill her; that Cania found some money and gave him some amount near the school-house of Sacub and after that they all returned to their respective homes; and that the following morning he escaped to Mandulog where he was apprehended by soldiers. (Exhibit C.)

The constabulary filed a complaint for robbery with multiple homicide against Dialang and all the persons implicated by him in his statement.

When the case was called before the justice of the peace of Sta. Cruz for preliminary investigation, the accused Cildo and Muda pleaded guilty and swore to written statements before the justice of the peace to the effect that Dialang was their ringleader and that they (Cildo and Muda) were induced by him to participate in the commission of the crime. They made no mention of the accused Unte, Cania, Faustina, and Makinista, and the constabulary said it had no proof against them. The complaint was then and there amended by excluding the said accused and including only Cildo, Muda, and Dialang.

After the preliminary investigation Dialang, who pleaded not guilty, admitted before Policeman Felicisimo Bolado of Sta. Cruz in a conversation they had at the municipal jail that he (Dialang) was there confined because he had killed Cuya Lim, Eli, and Candelaria. The policeman reported that conversation later to the chief of police, Tamoteo Aguilar, who took Dialang's statement by question-and-answer in writing and later brought Dialang before the justice of the peace where Dialang swore to and thumbmarked his said statement Exhibit E after the justice of the peace had explained to him its contents and asked him whether they were true.

After the trial of the case in the Court of First Instance Judge Enrique A. Fernandez found the accused Dialang and Muda guilty of five separate crimes of murder (acquitting them of robbery for lack of sufficient evidence) and sentenced each of them to life imprisonment for each of the five murders with an indemnity of P2,000 in each case. The accused Cildo was found guilty as an accomplice of each of the five murders and was sentenced in each case to suffer an indeterminate penalty of 4 years, 2 months, and 1 day of prision correccional as minimum to 10 years and 1 day of prision mayor as maximum, with the appropriate indemnity in each case. From that sentence the three accused have appealed.

The main proofs against the accused are their respective confessions before the justice of the peace of Sta. Cruz—Exhibits E (by Dialang), F (by Cildo) and G (by Muda); and the only question before us is whether said confessions were made voluntarily and with full knowledge of the facts therein narrated.

The accused Dialang, 58, is married to a sister of the accused Muda, 40, and is the grandfather of the accused Cildo, 17.

Timoteo Acot, one of the neighbors of the victims, testified that about 6:30 in the morning of November 11, 1947, Dialang came to his house and told him that Cuya had been robbed and that there was plenty of blood and many died. This witness testified: "I asked him, 'Why is it that you did not find out what happened before you came here?' He said he was afraid. I told him to go to the barrio lieutenant, but he refused on account of the distance. He insisted that I should go with him to find out what happened and because of that I went with him. We went to the place of the incident, to the house of Cuya Daga Lim. On our way we met the rural policeman and I told him to report to the barrio lieutenant."

Juan Armilla, sergeant of the constabulary, testified in substance as follows: About one o'clock in the afternoon of November 12, 1947, I was assigned to investigate the killing at Sacub, Sta. Cruz, Davao. I went to the place where the dead persons were. The nearest neighbor is Dialang. I asked him whether he heard any cry or shout of persons

that night inasmuch as he is near the place, lie said that he did not hear. I asked him whether some persons happened to sleep in his house and he said Muda slept there on the 10th of November. I asked him where Muda was and he said he was no longer there. I took him around to the neighbors of his house. On November 13 Dialang admitted that Makinista, Cildo, and Cania Calagan were the ones who killed the Chinese. I got these men and brought them to Malalag. I delivered them to Captain Castillo and the latter and another sergeant investigated them. I arrested Muda in Bocalil on November 18. On the way to Malalag I investigated him and he admitted that he was the companion of Dialang in killing those persons. I brought him to Malalag and turned him over to the company commander and he was investigated by Sergeant Fabiania.

David Fabiania, sergeant of the constabulary, testified that he investigated the accused Dialang and wrote his statement Exhibit B which he (Dialang) later thumbmarked before the justice of the peace; that he also took the statement of Muda (Exhibit C) and that the latter affixed his thumbmark to it before the justice of the peace of Sta. Cruz, who asked Muda if the contents were true after it was translated to Muda in the Cebuano Visayan dialect. He further testified in substance as follows: On November 24, 1947, Muda was brought to the justice of the peace of Sta. Cruz for preliminary trial. After the trial I had a conversation with him. He told me that the bolo he used in the commission of the crime was thrown by him into the river. Because he was already delivered to the jailer at ota. Cruz, I requested permission to bring Muda with me to recover the bolo. lie also said that there was a khaki pant which he took from the house of Cuya Daga Lim and which he also threw away. I brought him to the place where he said he threw the khaki pant and the bolo. When we arrived at the place I asked him to look for the bolo and khaki pants. He could not find them because during those days it was rainy season and the river had overflowed its banks.

Felicisimo Bolado, patrolman of Sta. Cruz, Davao, testified in substance as follows: On November 24, I was sergeant of the guard and I inspected the municipal jail and found Cania, Cildo, and Dialang there. I asked them what crime they were charged with and Dialang answered that he had killed Cuya Lim, Eli, and Candelaria and that his companion was Muda, who killed Emilia and Constancia. I asked him why he killed them and he said that at nine o'clock in the morning Cuya tried to collect from him his indebtedness of P7 and that he was not able to pay his indebtedness and Cuya got angry and scolded him, calling him a shameless Calagan and slapped him on his left cheek and he showed to me one of his teeth which was moving due to the slapping. During that conversation Cildo and Cania were present. At that time Muda was with the MPC. The chief of pollco was absent. When he arrived on November 26 I reported to him the confession given to me by Dialang. He sent for Dialang and asked him whether he was the one who killed at Sacub and Dialang answered yes. The chief of police took his affidavit in Visayan. After the affidavit was finished Biclans was brought before the justice of the peace with the affidavit which is Exhibit E. The justice of the peace read the affidavit and asked Dialang whether the contents are true and he answered they are true.

Timoteo Aguilar, chief of police of Sta. Cruz, testified in substance as follows: On the morning of November 24, 1947, I investigated Muda and Cildo. They were brought out of the jail to my office preparatory to the preliminary investigation which was set on that day and in my investigation they admitted before me that they committed the crime charged. After I was convinced that what they told me was true I typed their statements. After typing their statements I took them to the justice of the peace to have their oaths taken. Exhibit F is the statement of Cildo and Exhibit G is the statement of Muda. The justice of the peace read and explained to the accused the contents of Exhibits F and G and after reading and explaining to them they were asked if the contents were true and the accused Cildo and Muda said yes. After the preliminary investigation Sergeant Fabiania asked permission from me to bring with him Muda in order to show to Sergeant Fabiania the river or place where Muda had thrown the west point cloth and the bolo. I was informed later that they "were not able to recover those things because on the previous days the river overflowed its banks and probably those things were carried away by the flood. On

November 26, when I reported to the office, Patrolman Bolado approached me and told me that Dialang had confessed to him and admitted to have participated in the killing of Cuya Lim and companions at Dacub. Immediately I ordered the guard to bring Dialang to me. When Dialang was before me I confronted him with the report made by Bolado and Dialang readily admitted that the conversation he had with Bolado was true. On November 27 I took him before the justice of the peace with his statement Exhibit E. The justice of the peace ordered patrolman Bolado to read and translate the affidavit to Dialang.

Artemio Cometa, justice of the peace of Sta. Cruz, testified for the prosecution and vouched for the authenticity and voluntariness of the different confessions made by the accused and thumbmarked and sworn to by each of them before him, assuring the court that each of the accused thumbmarked his confession before him after the contents were translated and explained to him in the Visayan dialect and after each had affirmed before him (the J. P.) that they were true.

We shall disregard the first statements made by the accused Dialang and Muda to the constabulary, Exhibits B and C, as inaccurate and consider only their statements, Exhibits E, F, and G, taken subsequently by the chief of police of Sta. Cruz.

Exhibits E and E-1, translated into English as Exhibits E-2 and E-3, read as follows:

"I, Dialang Calagan, of legal age, married and a resident of Sacub, Padada, Sta. Cruz, Davao, after having been duly sworn according to law, depose and say:

"Q. In the evening of November 10, 1947, what happened in Sacub, Sta. Cruz, Davao?—A. Cuya, Tanciang, two children of Cuya (Emilia and Eli) and one child of Tanciang, Candelaria, were killed.

"Q. Who killed them?—A. I killed Cuya, Eli and Candelaria, and Muda killed Tanciang and Emilia.

"Q. why did you kill those persons?—A. I killed them because I was slanderously scolded by Cuya and her children. I was put to shame and I could no longer endure.

"Q. You said that you were put to shame; what then happened between you and Cuya?—A. I was indebted to Cuya in the amount of P7. She tried to collect from me my debt on Sunday at about 9:00 A.M. I told her to please wait for a while as I was going to harvest yet my corn. But she slanderously reprimanded me and put me to shame. She called me a Calagan without manners. Her children helped also in defaming me. And I was slapped by Cuya on my left face.

"Q. When did you think or decide to kill Cuya?—A. Muda arrived at my house at 12:00 noon, Monday, November. 10, 1947. In the afternoon I decided to kill Cuya because Muda was already there who could help me.

"Q From the time you decided to kill Cuya please state what you actually did until you consummated your plot.—A. At about 5:00 P.M., Monday, I told Muda of my plan to kill Cuya. I told him the reasons and because he is my brother-in-law he sympathized with me and he acceded. I told also Muda that I will call for Cildo to accompany us. In the evening, after the prayer (novena) in the house of Cuya, I went to the house where Cildo lived and woke him up without the knowledge of his housemates. I told Cildo of my plan while on the way to my house. At the outset Cildo did not like to consent, but I forced him, he being my grandson and I promised him that he will just stay outside. As we arrived at our house I woke up Muda so that we can leave without the knowledge of my wife and children. At about 12:00 midnight we left for the house of Cuya. I then opened the back door of the kitchen and entered followed by Muda while Cildo stayed outside, "when we entered we already drew our bolos from the scabbard. We saw Cuya and companions sleeping as there was a light from the lamp. I immediately stabbed and slashed Cuya until she died and then I killed lili and Candelaria. I then killed first Tanciang and because Emilia ran outside I ordered Muda to follow her and he killed Emilia. When

they were dead already I got one khaki pant. When Muda reentered the house after killing Emilia, we left passing thru the main door. The short west point khaki pant was taken by me from a hanger inside the store. When we went out I gave the pant to Muda and then we returned to our house while Cildo went to ths house where he was living. Early the next morning Muda returned to the mountains.

"Q. Why did you not also kill the two other children of Cuya?—A. We did not kill them because they could not yet talk and as such they could not report.

"Q. Why did you kill Tanciang and her daughter when they are not your enemies?—A. We killed them because they will report what we have done.

"Q.. In your affidavit which you have sworn to before the Justice of the Peace, Sta. Cruz, Davao, on November lo, 1947, you stated that Cania, Faustino, Makinista, Unte, Cildo and Muda were the ones who killed Cuya and companions, and now you stated again that the ones who killed are Muda, Cildo and you, which is now true?—A. The truth is Muda and myself while Cildo accompanied us only and he stayed outside of the house.

"Q. Why did you report Cania, Makinista, Faustino and Unte when in fact they are innocent?—A. I reported them because I was afraid of the MPC and so that it will not be known that I was the one who killed.

"Q. What else did you get from the store of Cuya?—A. Nothing else except the west point pant. We were not able to get the money because we were in a hurry to get out due to fear of being discovered.

"Q. When you were investigated by the authorities in Sacub why did you not tell the truth?—A. At the beginning I did not tell the truth as I was afraid that I will be killed by the MPC, but later when there were no more MPC I told the truth to a policeman of Sta. Cruz.

"Q. Do you have anything more to say?—A. No more.

"Q. Do you swear to the truth of the foregoing statement and that it is your own free and voluntary declaration without force, threat or intimidation nor any promise of reward of any kind?—A. Yes, sir.

"Witness:

(Sgd.) "Teotimo S. Aguilar

"Chief of Police

(marked)

"Dialang Calagan

"Subscribed and sworn to before me this 27th day of November, 1947, at Sta. Cruz, Davao.

(Sgd.) "Artemio Cometa

"Justice of the Peace

"Note: The above confession xjonsists of two pages. The confession was read to the affiant by Patrolman Felicisimo Bolado before said affiant swore it before the undersigned.

(Sgd.) "Artemio Cometa

"Translated by:

(Sgd.) "Teotimo S. Aguilar

"Chief of Police"

Exhibit F, translated into English as Exhibit F-1, reads as follows:

"I, Cildo Cemente (Calagan), of age, single, farmer and a resident of Sacub, Padada, Sta. Cruz, Davao, after having been duly sworn to, depose and say:

"Q. On Monday, the 10th of this month where were you?—A. I was in our house and in the evening I went to the house of Cuya to attend the novena.

"Q. After the novena was finished where did you go?—A. I went home to sleep.

"Q. Did. you see Dialang on the night of Monday?—A. Yes, sir.

"Q. Where?—A. When I was already sleeping I was awakened by Dialang and he told me that we will kill Cuya so that he could get the money of Cuya to pay his debt to Muda. I refused when he told me but he forced me and for fear that he will kill me I went with him.

"Q. From your house where did you go and what did you do?—A. Dialang brought me to his house and then he awakened Muda. when Muda was awakened Dialang again said that we will kill Cuya. It was about 12:00 midnight more or less we went to the house of Cuya bringing with us our respective bolos. When we arrived at the house of Cuya Dialang opened the back door and he entered followed by Muda. I stayed outside listening. I heard that they were hacking and stabbing the people inside and then a child ran out of the house. Dialang ordered Muda. to run after the child. Muda ran after the child and he stabbed and killed also the child. Not long after Dialang came out bringing with him "West Point khaki good for one pantalon. This was given to Muda and Dialang said that he was able to get money in the amount of P100.00 but he did not give me anything. After that I went home while Dialang and Muda went together.

"Q. "Why did you not report the matter to the authorities?—A. Because I was advised by Dialang not to tell anybody and I was afraid that Dialang might kill me.

"Q. Do you have anything more to say?—A. No more.

"Q. Do you swear to the truth of the foregoing without force, threat or intimidation nor promise of reward of any kind and that the above is your free and voluntary statement?—A. Yes, sir.

"Witness:

(Sgd.) "Teotimo S. Aguilar

"Chief of Police

(marked)

"Cildo Cenente

" Subscribed and sworn to before me this 24th day of November, 1947, at Sta. Cruz, Davao.

(Sgd.) "Artemio Cometa

"Justice of the Peace

"Translated from original Visayan confession of Cildo Cenente by:

(Sgd.) "Teotimo S. Aguilar

"Chief of Police

November 26, 1947"

Exhibit G, translated into English as Exhibit G-1, reads as follows:

"I, Muda Tagacaolo, of age, married, farmer and a resident of Magdolog, Sta. Cruz, Davao, after having been duly sworn in accordance to law, depose and say:

"Q. Where were you on Monday, the 10th of this month?—A. I went to Dialang Galagan at Sacub to collect his debt of a horse and I arrived at his house at 12 noon.

"Q. On the night of Monday where were you?—A. In the house of Dialang.

"Q. During the time you were in the house of Dialang what happened to you?—A. At about 12 midnight I was awakened by Dialang and when I woke up Cildo was already there. Dialang said that we will kill Cuya.

"Q. From the time you have agreed (to kill Cuya) what did you do?—A. We went to the store of Cuya. When we arrived, Dialang opened the door in the kitchen and he entered followed by Cildo and me. We saw that everybody were sleeping in the house. Then Dialang stabbed Cuya and Cildo stabbed Constancia. When Cuya died he (Dialang) also hacked the two children. When we were stabbing one of the children ran out of the house in the direction of the toilet, When Dialang saw he ordered me to run after the child so that I also ran out and killed the child, life used our respective bolos in killing those people. After I killed the child outside I did not enter anymore inside the store. I only waited for them outside.

"Q. Why did you know whom Dialang and Cildo killed?—A. I saw them because of the light of the lamp (lamparilla). did they bring? A. Dialang brought West Point Khaki good for one pantalon and he gave it to me.

"Q. Where is that West Point given to you?—A. When I went to Bocalil I threw it into the river together with my bolo because I was afraid of what we have done.

"Q. How much money were you able to get from the store?—A. I did not know because they did not give me anything.

"Q. After you have robbed and killed those people where did you go?—A. Dialang and myself returned to his house while Cildo returned to his house also. Early in that morning Dialang ordered me to return to the mountains.

"Q. You have anything more to say on this investigation?—A. No more.

"Q. Do you swear to the truth of the foregoing statement freely and voluntarily without any force, threat or intimidation or any promise of reward of any kind?—A. Yes, sir.

"Witness:

(Sgd.) "Teotimo S. Aguilar

(marked)

"Muda Tagacaolo

" Subscribed and sworn to before me this 24th day of November, 1947, at Sta. Cruz, Davao.

(Sgd.) "Artemio Cometa

"Justice of the Peace

: "Translated from original Visayan confession of Cildo Cenente by

(Sgd.) "Teotimo S. Aguilar

"Chief of Police

November 26, 1947"

As against the foregoing evidence for the prosecution, the evidence for the defense consists merely in the denial by each of the accused of any knowledge of the contents of their respective confessions.

Dialang testified that the contents of his confessions Exhibits B and E are not true. He said: "I did not know what I was signing, whether it was good or not. When they prepared Exhibits B and B-1 I was sleeping. I did not know where they prepared it. I learned of this in the following morning." This witness, however, cannot be believed because his testimony shows that he had no regard for the truth. We quote a portion of his testimony on direct examination as follows:

"Q. Did you, Cildo and Muda ever go to the house of Cuya on the night of November 10, 1947?—A. No, sir, I was sick, I was wearing a patadyong. I stated those statements because they threatened me with the revolver, they pointed to me the revolver.

"Q. Did they not explain to you the contents of Exhibits E and E-1?—A. No, sir.

"Q. In exhibits E and E-1 it appears that you appeared before the justice of the peace; is it true that you appeared before the justice of the peace in connection with exhibits 2 and E-1?—A. No, sir.

"Q. Please tell the truth, because I myself I am convinced that you appeared before the justice of the peace. Did you really not appear before the justice of the peace in connection with exhibits E and E-1?—A. No, sir."

Thus Dialang denied under oath having appeared before the justice of the peace to sign Exhibit E, although his own attorney believed, and it had been clearly established, that he did appear. As between his testimony and that of the justice of the peace, the chief of police, and Patrolman Bolado, we find that the trial court did not err in rejecting the former and in accepting the latter.

The testimony of Teopisto Capul, provincial warden of the City of Davao, as a witness for the defense, to the effect that on December 2, 1947, the accused Dialang was sent to the public hospital because he complained that one of his ribs was dislocated, has no decisive weight because such complaint of the accused was not verified either by the warden himself or by a doctor of the hospital. It was a mere self-serving statement of the accused, and the accused himself did not testify during the trial that one of his ribs was damaged due to any maltreatment inflicted by an officer of the law to extract a confession from him. Besides, the testimony of the provincial warden that Dialang could not walk alone and had to be held by other prisoners was contradicted by the next witness for the defense, Generoso Evangelico, who testified that he was the one who received Dialang in the provincial jail on November 29 and that Dialang could walk alone, although with difficulty. Dialang in his testimony repeatedly asserted that he suffered from a boil.

The accused Cildo, also a Calagan, who pleaded guilty before the justice of the peace, according to the record and according to the latter's testimony, denied that he entered that plea. He said that he was maltreated by the soldiers in the house of Dialang. On cross-examination he testified in part as follows:

"Q. And during that preliminary investigation of the case the justice of the peace asked you whether you were guilty of the murder of Cuya, and you answered the justice of the peace that you were guilty?—A. I stated I was not guilty.

"Q. Just tell the truth, is it not true that you said yes, there were many people there?—A. I stated I was not guilty.

"Q. And during the time that the justice of the peace was asking you, your other coaccused were there, hearing your confession, is that not true?—A. I did not say that I was guilty.

"Q. And during that investigation or preliminary investigation of your case the justice of the peace showed you a paper and asked you to thumbmark that paper, is that right?—A. I was made to sign certain paper but I did not know what it was.

"Q. But it was the justice of the peace who asked you to thumbmark on that paper, is that right?—A. He said to sign it because it is for our own good.

"Q. And when you put your thumbmark on said paper, all your coaccused were present, is that true?—A. They were there and they saw.

"Q. They also heard your conversation with the justice of the peace relative to that paper on which you were placing your thumbmark?—A. Maybe they heard, because they were there.

"Q. And after you marked that paper, the justice of the peace called your coaccused Muda and had a talk with him, is that true?—A. He was asked.

"Q. And the justice of the peace showed Muda some paper and asked Muda to thumbmark that paper, is that true?—A. Muda was forced to sign.

"Q. Who forced him?—A. The justice of the peace.

"Q. What did the justice of the peace say in having Muda sign that paper?—A. He said to sign it because it is for his own good."

The accused Muda, who lived in Bocalil, about two days' walk from Sacub, admitted that on the night of November 10, 1947, he was in Sacub, to ask his sister, the wife of Dialang, to help him harvest his palay, but that she could not go with him because her husband Dialang was sick with a boil. He testified that he was forced to thumbmark his confession, Exhibits G and G-1. From the testimony of this accused it also appears that he has little or no regard for the truth. We quote from his testimony on cross-examination as follows:

"Q. You remember that during the preliminary investigation the justice of the peace had a talk with you right in his court, is that right?—A. Yes, sir.

"Q. The justice of the peace spoke to you about the killing of Cuya and members of her family, is that right?—A. Yes, sir.

"Q. And during that preliminary investigation the justice of the peace showed to you some document which you thumbmarked later on, is that right?—A. Yes, sir.

"Q. And during your conversation with the justice of the peace and during the time that you were talking with him about the killing of Cuya Lira and some members of her family there were plenty of people who were inside the Court room, is it not?—A. Many people.

"Q. And during your conversation with the justice of the peace your coaccused Dialang and Cildo were present and hearing that conversation, is that right?—A. They were not.

"Q. They were not there?—A. They were there but they did not hear our conversation, myself and the justice of the peace.

"Q. And during that occasion the justice of the peace also had a talk with Cildo, is it not?—A. Yes, sir.

"Q. And their conversation was about the killing of Cuya Lim and some members of her family, is it not?—A. No, sir.

"Q. But you have just told us that they had conversation. Tell the truth.—A. No, sir.

"Q. What were they talking about?—A. They were not talking anything.

"Q. Is it not true that during that occasion Cildo also thumbmarked some paper?—A. No, sir.

"Q. Are you sure of that?—A. Yes, sir.

"Q. I want to call your attention that Cildo has testified here and stated that he had thumbmarked certain paper in your presence at the office of the justice of the peace. Tell the truth now.—A. There was none.

"Q. But Cildo was present during that occasion?—A. Yes, sir.

"Q. And so also was Dialang?—A. Yes, sir.

"Q. So it is not true then that the two were not present?—A. They were there."

We do not accept confessions readily and without due care and caution because we are aware that some officers of the law resort to the illegal and reprehensible tactics of extorting confessions thru violence and intimidation (People vs. Tipay, G.R. Mo. 49014, March 31, 1944[*]). But in the present case we believe with the trial judge that the confessions of the accused were voluntary and true. The fact that the four individuals who were at first implicated by Dialang and Kuda and who were also arrested and included in the original complaint were not forced to sign any confession or statement, tends to show that the constabulary and the local police acted properly in handling this case.

The Solicitor General recommends affirmance and we find his recommendation in order. The judgment is affirmed, with costs.

Moran, C.J., Pablo, Bengzon, Padilla, Tuason, and Reyes, JJ., concur.

[*] 74 Phil., 615.

Moran, C. J.:

I certify that Mr. Justice Montemayor, now in Baguio, took part in the consideration of this case and voted off affirmance.

PARAS, J., dissenting:

I vote to reverse the appealed judgment and to acquit the appellants.

Appellants' conviction is based exclusively on appellants' alleged confessions. Not a single eyewitness, and not even a scintilla of circumstantial evidence, was presented by the prosecution.

On November 18, 1947, appellant Dialang signed an affidavit (Exhibit B) in which he imputed the killing of Cuya Daga Lim, Constancia Bagaan, Candelaria Bagaan, Eli Lim and Emilia Lim to Unte Tagacaolo, Cania Calagan, Faustino Tagacaolo, Muda Tagacaolo, Cildo Calagan and Makinista Calagan, the motive being robbery. This resulted in the filing in the justice of the peace court of Santa Cruz on November 18, 1947, of the corresponding complaint against these individuals.

On November 24, 1947, appellant Cildo signed an affidavit (Exhibit F) in which he stated that appellants Dialang and huda were the authors of the crime, that he accompanied said appellants to the house of Cuya at midnight of November 10, because he was forced to do so by Dialang; that the motive for the crime was robbery.

On the same date, November 24, 1947, appellant Muda signed an affidavit, (Exhibit G) in which he stated that he

and appellants Dialang and Cildo were the authors of the killing in question, the motive being robbery. These later affidavits caused the filing in the justice of the peace court of Santa Cruz on November 24, 1947, of an amended complaint naming as defendants only appellants Dialang, Muda and Cildo.

On November 27, 1947, appellant Dialang signed another affidavit (Exhibit E) in which he admitted that he killed Cuya, Eli and Gandelaria, while Muda killed Constancia and Emilia; that the crime was committed because Dialang was slanderously reprimanded by Cuya and her children; that appellant Cildo was present during the commission of the crime but only remained outside of Cuya's house.

On November 21, 1947, appellant Muda signed another affidavit (Exhibit C) in which he admitted that he, Faustino, Cilco and Cania were the authors of the killing of Cuya and members of her family, no motive for the crime being given.

The charge against the herein appellants was robbery with multiple homicide. Under the appealed judgment, the crime is only murder, appellants Dialang and Muda being the principals, and appellant Cildo (17 years old) an accomplice.

The alleged confessions of appellants cannot be the safe basis for conviction, in view of their rather irreconcilable conflict. It is noteworthy that in the first confession of appellant Dialang, he incriminated persons other than the herein appellants. In the later affidavit of appellant Muda, Dialang was not incriminated. In the first affidavit of appellant Dialang, as well as in the first affidavit of appellant Muda, Cildo is accused as a principal. In the first affidavit of Dialang, the motive for the crime is given as robbery, and this is the same motive given in almost all the other affidavits, except the affidavit of appellant Dialang dated November 27, 1947, in which the motive given is the reprimand of Dialang by Cuya and her children. Any conviction based on such conflicting affidavits will be shaky and unreliable. If one confession may be believed, any of the other confessions may also be believed. As the motive for the crime preponderantly indicated in the confessions is robbery, and as the trial court itself ruled that there is no evidence on record showing that anything was robbed from Cuya's house, the said confessions have to be discredited for being false in at least one vital aspect. Indeed, there is evidence on record to the effect that the things in the store of Cuya were found to be intact and in orderly arrangements soon after the commission of the crime.

When we add to the foregoing considerations the fact that the alleged confessions are flatly repudiated by the herein appellants, on the ground that they were secured thru maltreatment, we have more than a reasonable doubt as to the guilt of appellants. This allegation of maltreatment finds corroboration in the following testimony of the provincial warden of Davao:

"Court:

"Q. When were the prisoners received?—A. November 29th.

"Q. Actually from whom did Dialang ask permission to go to the public hospital?—A. I usually go inside the jail and find who are the prisoners who are sick and he told me that he is sick.

"Q. Do you remember when was the first time he told you that he was sick?—A. Yes, sir, December 2.

"Q. Did he tell you what kind of sickness he was suffering?—A. He told me that one of his ribs is dislocated.

"Q. Did he tell you the cause of that dislocation?—A. I asked him and he told me that it was buttstroke by the MPC during the investigation in connection with the murder at Sta. Cruz.

"Q. On December 4, 5, 10, 13 and January 12 he was suffering the same sickness?—A. He did not complain any more, but that is our practice every morning we opened the gate of the jail and send prisoners who wanted to

go to the hospital for treatment.

"Q. You do not ask them what kind of sickness the prisoners has. He might be only pretending to be sick so that he could not go out and work?—A. That is our practice.

"Court:

"It will be best to find out.

"Q. Who is attending the prisoners of the hospital, do you know?—A. If the sickness is serious the physician, but if not, only the attendants.

"Q. He did not complain to you that he has boil?—A. He did not, Your Honor.

"Court:

"Es todo.

"Attorney Mangune: Re-direct.

"Q. During the time that you had the accused Dialang under your custody and during the time that you sent him to the hospital, did you notice that he was only pretending to be sick?—A. I don't think so, because whenever he walked he is being held by other prisoners. That was about a week when he arrived, after his arrival. He could not stand very well."

Another circumstance that militates against the guilt at least of appellant Dialang, is the fact that he was the one who reported the incident in question to the witness for the prosecution, Timoteo Acot.

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