

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIPE B. PAREJA, ET AL., DEFENDANTS, FELIPE B. PAREJA,
DEFENDANT-APPELLANT.**

G.R. No. L-21937. November 29, 1969

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PER CURIAM:

In the early evening of July 3, 1961, as Antonio Abad Tormis, lawyer and columnist-editor of Cebu City's leading daily newspaper The Republic News, came out of the Esquire Barber Shop along Borromeo street in Cebu City, a man casually sidled alongside and greeted him courteously. Acknowledging the greeting but without changing his normal pace, Tormis proceeded towards his car, which was parked nearby. He had already entered his car and was about to start the motor when the same man suddenly whipped out a revolver and pumped three bullets into him. At practically point-blank range, all three bullets accurately found their mark: two of them penetrated the victim's heart and death was instantaneous.

The news of the Tormis killing spread like wildfire not only in Cebu City but throughout the nation. The violent death of Tormis, who was regarded as a leading local citizen, one whose credentials as a crusading newspaperman had been impressive, arrested the concern of an awakened public. Local as well as national police agencies joined hands in tracking down the perpetrators.

About a week after the occurrence, the police received a tip that two laborers in the arrastre service at the port of Cebu, namely, Cesario Orongan and Gaspar Mesa, might have had some participation in the commission of the crime. First to be apprehended was Gaspar Mesa, who, after being duly investigated, executed a sworn written statement (Exh. "GG") relating in detail the incidents of the killing and the extent of his participation therein. In his statement Mesa admitted that he was the gunman's companion at the time. He acknowledged having witnessed the actual shooting and positively identified Cesar Roble^[1] as the one who fired the gun, pursuant to the instruction of a certain "Toto",^[2] who had earlier supplied the fatal weapon. Mesa also admitted having received P100.00 from Orongan to buy his silence. Mesa further declared in his sworn statement that hours before the shooting he and Orongan were taken by Toto to the office of appellant Pareja, where the murder plan was finalized. Thus:

“Q Do you know what is the true name of Toto and where he works?

A I do not know the true name of Toto, but I can recognize him if I see him, and I know that he is working at the City Hall.

Q Why do you know that Toto works at the City Hall?

A Because on July 3, 1961, at about 9:00 o'clock in the morning I and Cesar Roble (Orongan) were brought by Toto to the Office of Pareja at City Hall.

Q For what reason and object did Toto bring you and Cesar Roble to the office of Pareja?

A I did not know because it was only Toto and Cesar Roble who were talking in whispers.

Q On that morning when you arrived at the City Hall, did you see Cesar Roble and Toto enter the office of Pareja at about 9:00 o'clock in the morning of July 3, 1961?

A I saw Toto and Cesar Roble enter the office of Pareja and I was outside.

Q Who is this whom you call Pareja at the City Hall?

A I do not know Pareja, but at the Office which Toto and Cesar entered, I saw a name 'Pareja' and below 'Trea-surer.'" (Exh. "GG-1", p. 2)

Armed with this information, the police arrested Avelino Monzolin. When asked if he was the "Toto" mentioned by Gaspar Mesa, Monzolin promptly denied that he was the same person. However, when brought before Mesa for confrontation, Monzolin broke down and confessed that he had been ordered by city treasurer Felipe B. Pareja to contact a killer who would shoot Tormis for a reward of P400.00, because Tormis had been relent-lessly attacking him (Pareja) in The Republic News regarding the "garbage can scandal". Monzolin also pointed to appellant Pareja as the mastermind of the killing. His disclosures were finally embodied in a written sworn statement (Exh. "MM"), part of which reads:

Q Do you know where Antonio Abad Tormis is now?

A I know, he is already dead.

Q Do you know why Antonio Abad Tormis died?

A I know, sir, because last May Mr. Pareja started ordering me to kill him that I could not do it, Sir. 'Look for one of your friends', but I did not look for anyone who could do it because I was afraid to be implicated. Then on June Mr. Pareja kept on scolding and insulting me because I did not look for anyone since I was afraid to be implicated. At the end of June he again reprimanded me because I did not look for anyone. Then I told him 'Sir, please pity me; I may be implicated and I have a family', and he said 'just tell them if they happen to be apprehended they should just own the crime because they were mad at someone, because if I am implicated who is going to spend during the trial. . . '

Q Do you know the reason why Mr. Pareja ordered you to kill Antonio Abad Tormis in the month of May?

A Yes, sir. Mr. Pareja said that Mario Ortiz cannot also publish if it were not for that beast Tormis. Moreover, he was continuously attacked in The Republic News, regarding the garbage can. What Mr. Pareja said was 'what do I have to do with the garbage can since that came from Manila, that Tormis is certainly crazy'.

Q Did you comply with the order of Mr. Pareja to look for one of your friends who could kill Antonio Abad Tormis?

A Yes, sir. . . . "

Monzolin then proceeded to narrate, in the same sworn statement, the events leading to the search for an assassin, how the killing was to be subsequently carried out and the manner of its actual execution. He also gave the information that the gun used for the purpose came from Pareja, to whom he returned it after getting it back from Orongan.

A search was thereupon launched to locate the weapon. Properly armed with search warrants earlier issued by Cebu City Judge Maambong, a seven-men team composed of an agent of the National Bureau of Investigation (NBI), city policemen and Philippine Constabulary soldiers, proceeded to the house of Pareja. They were received by Pareja himself, who did not register any protest against the projected search. But the team leader, PC Captain Biazon, suggested that the search be first conducted at appellant's City Hall office, since at that early hour[3] there would be no employees and kibitzers to hamper them. Pareja went along and was cooperative enough to

open his desk drawers as well as those of his employees, and even the bigger one of his two steel safes. However, because he said he could not remember the proper lock combination of the smaller safe near his desk, the search of the premises was temporarily suspended and the team repaired back to his house. Meanwhile, the unopened safe was sealed and guards were posted to keep watch over it.

The search was continued at the house, after which the party returned to his office. This time Pareja was able to open the small safe after casually consulting a memorandum notebook he took from his shirt pocket. Among the articles found inside was a .32 caliber revolver COLT, SN-200425 (Exh. "O"), which the prosecution later on established as the gun used in the killing.

In the meantime, a combined force of police-PC-NBI men went on a hunt for Orongan, finally locating and arresting him on July 13, 1961. They frisked him and found a wallet which contained a piece of paper on which was written "Avelino Monzolin, c/o Treasurer's Office, Cebu City." Orongan told the arresting officers that Monzolin had given him that piece of paper so that he would know where to get in touch with Monzolin should he, Orongan, ever be in need of money. Inter-rogated by the NBI, Orongan made a clean breast of his part in the crime. His sworn statements were reduced to writing and then duly signed (Exh. "KK"), substantially corroborating statements previously given by Monzolin and Mesa. He said that the .32 Caliber revolver he used had been furnished him by Monzolin; that he killed Tormis in consideration of the sum of P400.00; that he received the money from Monzolin when the latter took back the revolver from him; and that he shot Tormis on orders of Monzolin, who told him about having an "understanding" with his boss. Thus:

Q Do you know any person here in the City of Cebu whose name is Toto Monzolin?

A Yes.

Q Why do you know him?

A Because he was always in the pier riding boats.

Q When was that when you knew him in the pier?

A That was quite a long time ago and possibly three or two years now. But his real name I did not know, yet.

Q When did you actually know his real name?

A That was during the incident because he left me an address.

Q What do you mean during the incident?

A When I shot because they ordered me.

Q Who was that person shot and who ordered?

A The person shot was Antonio Tormis and the one who ordered me was Avelino Monzolin because he had an understanding with his boss.

Q Who do you mean his boss?

A It is Pareja.

Q Who is that Pareja?

A The boss of Toto in his office in the City Hall.

.....

Primarily on the strength of the foregoing written statements and the other evidence so far obtained, Felipe B. Pareja, Avelino Monzolin, Gaspar Mesa and Cesario Orongan were charged with the crime of murder in the Court of First Instance of Cebu. The information, dated July 24, 1961, alleged conspiracy "with the attendant qualifying circumstance of treachery, and the aggravating circumstances of: (1) evident premeditation, (2) nocturnity, (3) taking advantage of superior strength or employing means to weaken the defense, (4) with the aid of armed men or persons to insure or afford impunity, and (5) in consideration of a price, reward, or promise."

Upon arraignment on August 4, 1961, Cesario Orongan pleaded guilty and was accordingly sentenced, on the following August 11, to "life imprisonment with all the accessories of the law, to indemnify the heirs of the deceased Antonio Abad Tormis in the sum of P6,000.00 and to pay his proportionate share of the costs." Orongan has since been serving his sentence.

The other defendants, Pareja, Monzolin and Mesa, pleaded not guilty and trial proceeded with respect to them. The case for the prosecution, as established by the evidence, is graphically and accurately restated in the decision of the trial court (Judge Amador Gomez, presiding) as follows:

"1. That as columnist editor of The Republic News, Antonio Abad Tormis had been conducting a vigorous and relentless crusade for clean government and official morality, and an uncompromising indictment of all forms of official venalities, graft, corruption, abuses, and excesses;

"2. That the accused Felipe B. Pareja, City Treasurer of Cebu, particularly was the butt of strong and vitriolic comments and editorials of Tormis in The Republic News covering the period from September 13, 1960 up to July 1, 1961, or two days before he was shot to death, as may be gleaned in the various issues and numerous articles, comments and editorials in the said news-paper, . . .

"3. That in those articles and editorials Tormis in no uncertain terms put in question the honesty of the accused Felipe B. Pareja as City Treasurer, and vehemently urged that he be both administratively and criminally investigated

a) for . . . receiving substantial amounts in the form of 'kickbacks' and thereby profiting personally in the anomalous transaction to the detriment of the City of Cebu;

b) for the overpricing of office supplies. . .; and

c) hospitalization loan anomalies,. . .;

"4. That there were even insinuations in the columns of Tormis that the money thus acquired by Pareja from those sources were used in buying properties and registered in the name of Aurora B. Reynoso, allegedly an employee in the Office of the City Treasurer with whom Pareja maintained illicit relations;

"5. That in the face of the continuous and persistent blasts of Tormis against him in the newspaper, the accused Felipe B. Pareja felt that Tormis was out to destroy him and would not stop until he is removed from office and/or put to jail;

"6. That exposed thereby almost daily to public humiliation by Tormis in his unrelenting campaign in the newspaper for his investigation and prosecution, Felipe B. Pareja finally arrived at the conclusion that the elimination of Tormis was the only solution;

"7. That the accused Felipe B. Pareja had a confidant and a bodyguard in the person of his co-accused Avelino Monzolin, who was employed in his office, and who had been enjoying his protection despite the fact that he was a police character;

"8. That since May, 1961 Felipe B. Pareja has already been urging Avelino Monzolin, to eliminate Antonio Abad Tormis himself, but the latter told him that he could not do it, where-upon Pareja urged Monzolin to

look for one among his friends who would not be afraid to kill Tor-mis, but Monzolin still declined because he was, afraid to be implicated;

"9. That on June, 1961, Pareja kept on scolding and insulting Monzolin for not helping him eliminate Tormis, and so Monzolin contacted one Fernando Frecillas alias Pandot, a notorious underworld character in the waterfront and asked the latter point-blank whether he had the guts to kill somebody for a reward, but Pandot declined, saying he could not kill a man who is not his enemy; Pandot, however, suggested that one Cesar, also a waterfront character, might be disposed to do so;

"10. That Pandot further told Avelino Monzolin that Cesar could be contacted by Gaspar Mesa who happened to be near the two of them at the time, and who allegedly was the constant com-panion of Cesar;

"11. That Gaspar Mesa accompanied Avelino Monzolin to the house of Cesar at Villa-Abono, and once there Avelino Monzolin asked Cesar if he had the guts to kill for a reward, and Cesar answered in the affirmative;

"12. It was then that Cesar Roble (whose true name is Cesario Orongan) agreed to do the killing of Antonio Abad Tormis for the sum of P400.00 which, according to Avelino Monzolin, would be paid by his boss, City Treasurer Felipe B. Pareja;

"13. That Avelino Monzolin furnished Cesario Orongan with a revolver, Exh. 'O', supplied by Felipe B. Pareja, and with it Cesario Orongan shot Antonio Abad Tormis to death at about 6:30 in the evening of July 3, 1961 as he entered his automobile parked in front of the Esquire Barber Shop in A. Borromeo St., Cebu City, with Gaspar Mesa for a companion, serving as the look-out man;

"14. That the next day, July 4, 1961, Cesario Orongan and Gaspar Mesa went to Avelino Monzolin to collect the P400.00 reward for the killing; and Avelino Monzolin left the house and went to see Felipe B. Pareja who gave him the amount of P400.00 with which to pay the killer, but Felipe B. Pareja required Avelino Monzolin to secure back the revolver used in the killing of Tormis before paying out."

After trial, which lasted 102 days, during which scores of witnesses for both sides testified and numerous exhibits were presented, the Court of First Instance of Cebu found all three (3) defendants guilty as charged and sentenced them to reclusion perpetua and to pay the heirs of the victim, jointly and severally, the total sum of P131,785.65. From this judg-ment of conviction, only Felipe B. Pareja appealed. He assigns eight (8) errors in the decision, to wit:

1. The lower court erred in holding that the extrajudicial confessions of Gaspar Mesa, Avelino Monzolin and Cesario Orongan were voluntarily given.
2. The lower court erred in declaring the extrajudicial confessions of Gaspar Mesa, Avelino Monzolin and Cesario Orongan are admissible evidence against defendant-appellant Felipe B. Pareja.
3. The lower court erred in giving credence to the testimony of Cesario Orongan.
4. The lower court erred in giving credence to the testimonies of Major Epifanio Hermosisima, Lauro Cauba, Captain Nicomedes Bacalso, and Municipal Judge Joaquin T. Maam-bong.
5. The lower court erred in finding that Exhibit "O" is the death gun.
6. The lower court erred in giving more weight to the testimony of Atty. Osmundo Galang in relation to Exhibit "O" than the testimony of Lt. Simeon Molina.
7. The lower court erred in holding that there was a conspiracy beyond reasonable doubt among the accused to kill the late An-tonio Abad Tormis.
8. The lower court erred in convicting the herein defendant-appellant of murder and therefore erred in

sentencing him to life imprisonment, to pay the costs and to pay the heirs of the late Antonio Abad Tormis, jointly and severally with the accused Avelino Monzolin and Gaspar Mesa, the sum of P131,785.65.

The question raised in the first assignment of error is essentially factual: whether or not the extrajudicial confessions of Gaspar Mesa, Avelino Monzolin and Cesario Orongan were voluntarily given. Both Mesa and Monzolin testified at the trial that they confessed because they were subjected to physical maltreatment and torture.

The general rule, based on logic and experience, is that the findings of the judge who tried the case and heard the witnesses are not disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case.

With respect to Mesa's extrajudicial confession, the following observations of the trial court are both pertinent and convincing:

"Actually there is hardly anything damaging to the declarant Gaspar Mesa in that written statement, Exhibit 'GG', except his having been in the company of Orongan until shortly before the actual shooting of Tormis, his having received P100.00 from Orongan, and his having been in possession of the hunting knife, Exh. 'W', which was originally the weapon intended to be used in stabbing Tormis. That statement of Gaspar Mesa is obviously too tame and too innocuous insofar as he himself is concerned to make likely and credible the claim that he made during the trial of the case when he testified that, to extort that statement from him, the Police, led by no less than their Chief, Higinio Pacaña, and their assistant Chief, Major Efren Arnejo, had to punch him repeatedly at the solar plexus, apply the so-called 'hi-fi' treatment of spurting into his nostrils the carbonated soft drink '7-Up', torturing him by squeezing his testicles, thereby causing him to gasp laboriously for breath, threaten to kill him by putting the muzzle of their guns in his mouth. If the Police did resort to such brutality to secure a written statement from Gaspar Mesa, it does not stand to reason that they would have been satisfied with the answers given by Gaspar Mesa which are evasive insofar as he is concerned,. . . it is evident that he (Mesa) was exempting himself from any guilty knowledge of the plan and conspiracy to kill Tormis. The yield is too disappointingly meager for the (alleged) excessive display of brutality and inhumanity on the part of the Police,. . ."

x x x

Obviously, Gaspar Mesa's imputation of violence, maltreatment, threats, and intimidation against the police authorities is not characterized by spontaneity. He has allowed a period of almost one year to lapse before making a revelation thereof. He has had four previous opportunities of appearing before judges in the months of July and August in the year 1961, when the events were still fresh, and yet he made no such charge or complaint. He first appeared before Judge Joaquin T. Maambong on July 11, 1961 at 1:15 p.m. And on July 20, 1961 he appeared before Judge Jose Mendoza in connection with the Habeas Corpus proceedings, Sp. Proc. No. 2172-R "RRR"), not only in open Court but also in chambers. And on July 24, 1961 at 2:55 p.m. he appeared before Judge Maambong. The fourth time was before the presiding judge of this Court on the occasion of his arraignment on August 4, 1961."

The same observations also hold true with respect to Avelino Monzolin. He had several opportunities, from the time he was arrested to the day of the trial, to complain about the alleged physical violence inflicted upon him, but he chose to wait for about a year before doing so. Said the Court:

"Avelino Monzolin has executed and sworn to more documents than has co-accused Gaspar Mesa. He not only executed the extrajudicial confessions, Exhs. 'LLL' and 'MM', on July 11 and 16, 1961, respectively, and the request he made to the PC Provincial Commander for protective custody, EXH. 'NNN', on July 11, 1961, but he also executed the deposition, Exh. 'KK', on July 12, 1961 in connection with the application of the police authorities for the issuance of a warrant for the search in the residential house of Felipe B. Pareja and in his

office as City Treasurer of Cebu at the City Hall for the revolver allegedly used in the shooting of the late Antonio Abad Tormis. Avelino Monzolin has therefore appeared four different times in the month of July 1961 before the Municipal Judge, Hon. Joaquin T. Maambong. Each time he confirmed the contents of the documents which he in fact subscribed and swore to before the judge. Not once did he complain to him against the police authorities for alleged maltreatment in securing any of those statements from him. Then not long thereafter during that same month of July, 1961, General Campo, Chief of the Philippine Constabulary no less, came to Cebu and visited Monzolin and Mesa in the PC stockade, and made direct in-quiries from them about the treatment they had been receiving from the police author-ities, and Avelino Monzolin testified before this Court that he told the General they had no complaint, and that they had been receiving good treatment.+++ Then on August 4, 1961, Avelino Monzolin, like Gaspar Mesa, also appeared before this Court on the occasion of his arraignment. He was then told of his rights under the law to have the assistance of counsel to defend him at every stage of the proceedings. Monzolin never complained to this Court then of any alleged maltreat-ment that he has received from the police."

Inasmuch as Cesario Orongan, the confessed gunman, aside from executing his extrajudicial confession also testified during the trial, the question of the voluntariness of his extrajudicial confession has little relevancy under the first assigned error. His part in the killing will be more extensively dealt with later.

In the main we see no valid reason to differ with the trial court in its conclusions regarding the manner the extra-judicial confessions were taken. They are replete with details known exclusively to the declarants. The narrations reflect spontaneity and coherence, and the response to every question is so fully informative, in many instances going beyond what the question calls for, as to indicate that the mind of the declarant was free from extraneous compulsion or restraint. We are thus satisfied that the confessions, viewed objectively and in the light of the testimony of the officers who took them and before whom they were signed, were voluntary given. (People vs. Cruz, 73 Phil. 615.)

One additional factor militates against Monzolin's and Besa's claim of maltreatment. Dr. Fe Sison, a doctor in the Southern Islands Hospital, testified that in the early hours of July 12, 1961, those two were brought to her by the police, and in her capacity as the medico-legal officer on duty she examined them physically. She found no traces of physical injury on their persons, nor did they complain of any. Although another physician in the same hospital, Ruben Arquillano, also testified and said that the physical examination made by Dr. Sison was rather haphazard, not much weight can be accorded to his testimony. His opinion as to how Dr. Sison conducted the physical examination is at best subjective; and in any case even a casual examination would have revealed signs of maltreatment, if there were any, or at least elicited some complaint of pain and discomfort from the persons being examined.

The second error assigned touches on the admissibility of the extrajudicial confessions of Monzolin, Mesa and Orongan as evidence against appellant Pareja. It is urged that even granting that they were voluntarily made, they may not be used against Pareja because "x x x it is a fundamental rule of evidence that confessions are admissible only against the makers". It must be borne in mind, however, that the said confessions, while not admissible as proof in themselves of specific acts imputed to Pareja, may be taken into consideration as strongly indicative of the truth of the other evidence against him, particularly the testimony of the confessed trigger-man, Cesario Orongan.

The prevailing rule is that in the absence of collusion among the declarants, their confessions should be read together in order to form a complete picture of the whole situation and to consider them collectively as corroborative or confirmatory of what evidence there is apart from the confessions them-selves.

"Extrajudicial confessions, independ-ently made without collusion, which are identical with each other in their essential details and are corroborated by other evi-dence on record, are admissible as circums-tantial evidence

against the person implicated to show the probability of the latter's actual participation in the commission of the crime." (People v. Condemena, et al., L-22426, May 29, 1968; 23 SCRA 910)

The case against the appellant is largely based on the evidence given by Cesar Orongan at the trial. His credibility is assailed with understandable vehemence. And it is that credibility that finds strong support in his own previous extra-judicial confession as well as in the confessions of Mesa and Monzolin. Above all, Orongan's plea of guilt and willingness to pay for his crime is a well-nigh conclusive proof of the truth of his confession and, by the same token, of his testimony on the witness stand.

Orongan's testimony has been accurately summarized by the trial court as follows:

"(1) That it was a Friday, the end of the month of June, 1961 when he was first sought by Gaspar Mesa and Avelino Monzolin in his house at Villa-Abono;

(2) That Monzolin feted him to eats and drinks that day and also the succeeding day;

(3) That it was on their second meeting that Monzolin first told him about his 'boss' in the City Hall having an enemy whom he wanted to kill;

(4) That Monzolin left that evening for Leyte and came back on Monday morning, July 3, 1961;

(5) That he and Monzolin took their lunch at the latter's house that day, and at 2:00 p.m. they went to the City Hall;

(6) While they stood there waiting for Gaspar Mesa, an automobile arrived, and Monzolin told Orongan that the man in the car was his 'boss';

(7) Monzolin approached the car and opened the door thereof, and the person who stepped out of it was the accused Felipe B. Pareja;

(8) Monzolin went up the City Hall with his 'boss', while Orongan remained out-side still waiting for Gaspar Mesa;

(9) A short while after, Monzolin stepped down, and the two of them proceeded to the waterfront, as Monzolin claimed he would look for his elder brother and a nephew in the boat DOÑA REMEDIOS;

(10) Then at about 3:00 o'clock the two of them went back to the City Hall;

(11) Monzolin again went upstairs, leaving Orongan outside with the instruction to await the arrival of Gaspar Mesa;

(12) After a short while, Monzolin stepped out again, and the two proceeded to a store in front of the City Hall, where Monzolin ordered tuba and beer;

(13) Not long after, Gaspar Mesa showed up and joined the two;

(14) It was then that Monzolin told Orongan that they would shoot the enemy of his 'boss' that evening;

(15) Orongan hesitated for a while, but Monzolin urged him to go ahead and promised that he would be given work and money;

(16) Orongan yielded, but he suggested that instead of shooting he would just use a hunting knife in the projected killing;

(17) When it was already about 5:00 p.m. the three of them went to the City Hall;

(18) They went up the office of the City Treasurer;

- (19) Monzolin stepped into the room, while Orongan and Mesa posted themselves by the door, from where Orongan could see Pareja and Monzolin talking, but he did not hear exactly what they were talking about;
- (20) During all the time that Monzolin and Pareja were conversing, Monzolin kept on pointing at the two of them to Pareja;
- (21) Orongan and Mesa stepped down, followed later on by Pareja and Monzolin;
- (22) After Monzolin had escorted Pareja to the car, he rejoined Orongan and Mesa;
- (23) The three of them rode on a bicycle and proceeded to Pier No. 3;
- (24) Once there, Monzolin gave Orongan a hunting knife, Exh. "W", wrapped in a copy of the Free Press;
- (25) From there, they proceeded to Rosita's Bazar;
- (26) There Monzolin pointed to a tall building and told Orongan that the enemy of his 'boss' had his office there;
- (27) Monzolin also told him the number of the automobile of his boss' enemy, Plate No. 29934;
- (28) Monzolin instructed the two to look for a car bearing that Plate number, at the same time telling them to go also to the Colegio de San Jose where, according to Monzolin the enemy of his 'boss' used to 'stand-by';
- (29) They finally located the car with Plate No. 29934 parked a little distance from a barber shop, but nobody was in;
- (30) Orongan and Mesa returned to Monzolin at Rosita's Bazar, and reported to him having located the car;
- (31) Monzolin instructed them to go in the barber shop and look for a man with his right ear folded forward ('pyonggot');
- (32) Orongan and Mesa did so, and located the man with that description inside the barber shop, and so they went back to Monzolin, who was then in an alley beside the Rosita's Bazar;
- (33) There Monzolin told Orongan and Mesa to keep watch of that man with the right ear folded forward ('pyonggot'), and at the same time instructed the two not to do the killing by stabbing with a hunting knife, but to shoot him instead;
- (34) With that instruction of Monzolin, Orongan gave to Mesa the hunting knife, Exh. 'W', which was still wrapped in a copy of the Free Press, and he posted himself in the alley by the side of Rosita's Bazar waiting for the man with the right ear folded forward to step out from the barber shop;
- (35) A little while after, a man stepped out from the barber shop and proceeded towards the car, and as he opened the car Orongan approached him, greeted him 'Good Evening';
- (36) Once the man was already inside the car and as he sat down, Orongan shot him three times;
- (37) The revolver that he used had a whitish handle, Exh. 'O';
- (38) From there Orongan went to his sister's house in Alaska, Mambaling, where he hid the revolver in the trunk of his sister;
- (39) Then he went back to Pier No. 3 where he found Gaspar Mesa, whom he invited to sleep with him that evening in Alaska, Mam-baling;
- (40) When they woke up the next day, Gaspar Mesa asked where the revolver used in the killing was;

- (41) Orongan took it out from the trunk and showed it to Mesa, after doing which he put it back in the trunk;
- (42) Orongan and Mesa then went again to Pier No. 3, and after a while they proceeded to the house of Monzolin to collect the 'reward money' that was promised;
- (43) They found Monzolin, who left them for a while, but returned at about 11:00 A.M.;
- (44) Upon his return Monzolin brought Orongan inside a room and gave him the sum of P400.00, telling him it was all the money his 'boss' gave him;
- (45) Monzolin told Orongan to give Gaspar Mesa P100.00;
- (46) Monzolin asked for the revolver used in the killing, and so the three of them went to the house of Orongan's sister in Alaska, Mambaling;
- (47) As they boarded a taxi, Orongan gave Monzolin P20.00;
- (48) Once in the house of his sister in Alaska, Mambaling, Orongan took out the revolver and gave it back to Monzolin;
- (49) There Monzolin gave P5.00 to his brother-in-law, Inocencio Canoy;
- (50) They then stepped out and as they were walking towards the street to hail a vehicle, Orongan gave Monzolin P21.00 more;
- (51) They then separated, but at 3:00 P.M. the three of them met again at T. Padilla Street where they indulged in a drinking orgy up to 5:00 P.M.;
- (52) They transferred to the pier where they continued drinking until 8:00 P.M.;
- (53) Orongan then went to his sister's house in Alaska, Mambaling;
- (54) Gaspar Mesa went there about mid-night;
- (55) It was then when Orongan gave Mesa the sum of P100.00;
- (56) Some days later, Monzolin met Orongan in the pier and instructed him to get out of Cebu City as the search for the killer of Tormis was getting hot;
- (57) Monzolin gave him a piece of paper, Exh. 'Z-1', with his name and address written and told Orongan that wherever he might go he could write to him in that address if he should ever need money."

In its material points the foregoing testimony of Orongan finds ample corroboration in the totality of the evidence for the prosecution. Aside from the extrajudicial confessions of Monzolin and Mesa, which interlock with the confession of Orongan, the latter's story is bolstered by: (1) the finding of the fatal gun (Exh. "O") in the small steel safe of Pareja, confirming Orongan's declaration that Monzolin took it back from him after the killing to be returned to Pareja, who was the owner thereof;³ and (2) the conclusion of the NBI ballistics expert that at least 2 of the 3 bullets extracted from the body of the victim had been definitely fired from the said gun.^[4]

The logic of the situation is inexorable. If the killer confesses that he shot a man to death and that he did so on orders of another, who represented himself as a contact-man acting pursuant to the instruction of the real mastermind, and that he, the killer, returned the fatal gun to the contact-man, who affirmed in his own confession that he in turn re-turned the gun to the mastermind; and if the gun was later on found in a place to which only the mastermind had access, that is, in his own steel safe of which he alone know the lock combination, it would be almost impossible to dismiss the killer's story as pure fabrication or to believe the master-mind's protestation of innocence.^[5]

In the fourth assignment of error the appellant impugns the testimonies of four witnesses for the prosecution: Cebu City Police Major Epifanio Hermosisima, an employee of the Treasurer's Office named Lauro Cauba, Cebu City Police Captain Nicomedes Bacalso and City Judge Joaquin T. Maambong. Major Hermosisima declared that Pareja was jittery and nervous when the search for the fatal gun was being conducted in his office; Cauba, that he had seen Monzolin carrying things for Pareja; Captain Bacalso, that Pareja inquired from him in an angry manner as to the whereabouts of Monzolin after the latter was arrested; and Judge Maambong, that he examined both Monzolin and Mesa in connection with their respective confessions and that they voluntarily affirmed the same before him. We find no reason to brand the testimonies of these witnesses as false. The facts to which they testified, although merely tangential to the main issue, render the main evidence against appellant so much more entitled to credence.

The fifth and sixth errors assigned refer to the identity of Exhibit O - the gun found in Pareja's possession - as the one used in the commission of the crime. The identification is challenged by the appellant on the strength of the opinion of his expert witness[6] that the bullets recovered from the body of the victim fail to produce "identifying marks sufficient enough (sic) to show that the same had been fired from the barrel of the (alleged) fatal gun." This opinion is contradicted by the ballistics expert for the prosecution, Attorney Osmundo L. Galang, the chief ballistics expert of the National Bureau of Investigation, who examined the same bullets and came to the conclusion that two of them (the third one was deformed beyond identification) came from the gun in question.

The respective reports of the two experts are as follows:

A. GALANG REPORT, Exh. "YY"

"FINDINGS-CONCLUSION:

1. Comparative examinations were made between evidence bullets, x x x and test bullets fired from the evidence firearms with positive results on Colt Revolver, Caliber .32, SN-200425; the evidence bullets, x x x were fired through the barrel of Colt Revolver, Caliber .32, SN-200425.
2. Comparative examinations were made between evidence bullet x x x and test bullets fired from Colt Revolver, Caliber .32, SN-200425. There are no sufficient individual characteristics to establish identity as to whether or not evidence bullet x x x was fired through the barrel of Colt Revolver, Caliber .32, SN-200425 due to its deformed, mutilated and distorted condition."

B. MOLINA REPORT, Exh. "17-Pareja"

"STUDIES:

1. The exhibit bullets x x x were examined against each other under the comparison microscope. There are no identifying marks sufficient enough to show that both had been fired from the barrel of only one and the same firearm.
2. The exhibit bullets x x x were examined under the comparison microscope in conjunction with the test bullets obtained from the exhibit firearm. There are no identifying marks sufficient enough to show that both had been fired from the barrel of only one and the same firearm.

CONCLUSION:

No definite conclusion could be rendered on the studies made on the exhibit bullets x x x in relation to the exhibit firearm and the test bullets obtained therefrom due to the insufficiency of consistent individual characteristic identifying marks.

The exhibit .32 caliber lead re-volver marked "H-2" is badly damaged beyond identification."

As correctly noted by the trial court, the main conflict in the foregoing reports proceeds from a divergence of views as to what is necessary for a positive finding that a certain bullet has been fired from a particular gun. Lieutenant Molina would require the striations on the evidence bullet to flow into or coincide with the striations all around the circumference of the test bullet; Attorney Galang disagrees, and maintains that the presence of at least eight (8) congruent striations in the two bullets would justify the conclusion that the evidence bullet and the test bullet have been fired through the barrel of the same gun. In support of his conclusion, Attorney Galang cites the following authorities:

"Complete identity between all the striae in any one rifling above groove of one bullet and all the striae in the corresponding rifling groove of another bullet probably NEVER OCCURS." (Forensic Chemistry and Scientific Criminal Investigation by A. Lucas, 1946 Edition, p. 228)

"Perfect correspondence between all striae is not required for proof of identity, and in fact is not to be expected. A correspondence between major striae, general gross contour, and a reasonable number of finer striae will prove identity. No two bullets encounter precisely the same conditions in passing through a bore, nor do the corresponding striae always appear at the same lengthwise position on identical specimens." (An Introduction to Tool Marks, Firearm and the Striagraph by John B. Davies, 1958 Edition, p. 146).

"If a sufficient number of individual characteristics correspond when comparing fatal bullets with test bullets, it is then possible for the firearms identification technician to render an opinion in answer to the question, 'Did this gun fire this particular bullet?'" (Homicide Investigation by Le Mayne Snyder, 1959 edition, p. 161)

We are satisfied as to Attorney Galang's qualifications as a ballistics expert, and accept, as did the trial court, his conclusion with respect to the identity of the gun from which the fatal bullets were fired. For one thing, he was a disinterested witness. Lieutenant Molina, on the other hand, was admittedly a hired expert for the defense, who was paid P3,000 for his report, aside from his expenses in attending the trial. Bias, therefore, could have conceivably colored his opinion. Again, while Attorney Galang's opinion is positive and categorical, all that Lieutenant Molina can say is that he cannot make a definite conclusion, one way or the other, because "there are no identifying marks sufficient enough to show x x x" that the fatal bullets had been fired from the evidence gun. He does not make any clear statement as to what identifying marks would be sufficient for a positive finding, although apparently he would require a congruence of all the striations of the test and evidence bullets in order to be able to arrive at such a conclusion. On a similar question this Court had occasion to observe:

"At this point, it may be well to refer to certain elementary principles of ballistics. The barrel of a gun is bored with a cylindrical steel which leaves inside the bore a rifling of spiral character. The rifling produces grooves - and lands on the bore which are impressed upon the bullet that passes through the barrel. These impressions or striations identify the gun from which a bullet is fired. To determine, therefore, whether or not a bullet is fired from a certain gun, it is compared with test bullets that are actually fired from that gun. If the striations appearing on the test bullets match or marry with the striations appearing on the bullet in question the conclusion is that the latter bullet has been fired from the said gun. The striations, being minute scratches, can be seen under a compound microscope and may be reproduced in photographs. If eight or more scratches or striations coincide, they are sufficient ground for identification. x x x"(People v. Timbol, XI Lawyers Journal, pp. 109, 113)

Attorney Galang, by means of several comparison charts, pointed to at least eight (8) striations in the fatal bullets, running from one end to the other, which correspond to the striations in the test bullets.

Finally, whatever doubt there might still be, notwithstanding the evidence given by said expert, is erased beyond peradventure by the positive identification of the death gun by the confessed triggerman, Cesario Orongan.

In the penultimate error assigned, the appellant vigorously insists that the trial court erred in holding that there

was conspiracy among the accused in the killing of the victim. We find this claim negated by the established facts.

The acts of the accused, collectively and individually considered, have clearly demonstrated the existence of a common design towards the accomplishment of the same unlawful end. Appellant Pareja had the primary motive, and was the instigator of the crime, who provided both the fatal weapon and monetary reward to persuade Cesario Orongan to accept the role of executioner; Avelino Monzolin acted as the contact man between Pareja and Orongan and the one who took charge of the details as to how the killing was to be effected; and Gaspar Mesa actively assumed the role of look-out. Their respective individual participations were geared towards a unifying purpose - to kill Tormis, and so all of them were correctly held liable as principals (see *People v. Jaravata, et al.*, L-22029, August 15, 1967; 20 SCRA 1014).

"Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law the act of one is the act of all. The foregoing rule is anchored on the sound principle that 'when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone.'" (*People v. Peralta, et al.*, L-19069, October 29, 1968; 25 SCRA 759)

The commission of the crime was attended by two (2) circumstances, namely, treachery and that the killing was committed in consideration of a price or reward. Of these two circumstances, either would suffice to qualify the crime as murder (Art. 248, RPC). The trial court appreciated the latter as the qualifying circumstances but refused to consider treachery even as a generic aggravating circumstances against appellant, on the ground that he was not present when the crime was actually committed, and left the means, modes or methods of its commission to a great extent to the discretion of the others, citing *People vs. De Otero*, 51 Phil. 201,

The citation is not in point. It refers to a case where the accused was convicted as principal by inducement per se under paragraph 2 of Article 17 of the Revised Penal Code, without proof of conspiracy with the other accused. In the case at bar, however, there was conspiracy among the defendants, and the rule is that every conspirator is responsible for the acts of the others in furtherance of the conspiracy. Treachery - evident in the act of the gunman in suddenly firing his revolver, preceded as it was by a false showing of courtesy to the victim, thus insuring the execution of the crime without risk from any defense or retaliation the victim might offer - should be appreciated as a generic aggravating circumstance against appellant.

The trial court considered evident premeditation as an aggravating circumstance. Except in the sense that there is always some element of premeditation when reward is offered for the commission of a crime, in which case the latter circumstance absorbs the former, we do not feel justified, for technical reasons, in considering evident premeditation as a separate and independent aggravating circumstance herein. The evidence in this respect consists of the extrajudicial confession of Monzolin, confidant and bodyguard of appellant, to the effect that for about a month before Tormis was killed appellant had been giving orders to Monzolin to look for someone to do the killing. But, as already pointed out, such confession is not admissible to prove specific acts of appellant, and has been taken into account, together with the confessions of the two other defendants, only as corroborative and confirmatory of the testimony of Cesar Orongan, which, however, is insufficient to establish evident premeditation. Nor is this circumstance to be necessarily deduced from the existence of conspiracy in this case, for the former is not inherent in the latter (*People vs. Peralta*, 25 SCRA 759, 787; *People vs. Mendoza*, 91 Phil. 58; *People vs. Iturriaga*, 47 O. G. 166; *People vs. Lesada*, 70 Phil. 525.)

Strictly speaking, the trial court's appreciation of the mitigating circumstance of passion and obfuscation, as a result of the newspaper articles written by the victim assailing appellant's official integrity, is an error. For this

mitigating circumstance to exist the act producing the obfuscation must be so proximate, in point of time, to the commission of the crime as to preclude a sober realization of the wrongfulness of the course of action about to be taken. This is not true in the case of appellant, for the publication of the offending articles covered an appreciable period long enough for pause and reflection.

The presence of one (1) aggravating circumstance without any mitigating circumstance to offset it would justify the imposition of the maximum of the penalty provided by law, which is reclusion temporal in its maximum period to death (Art. 248, RPC). However, only seven members of this Court, which is one short of the number required by law, voted affirmatively for that purpose.

Wherefore, the judgment appealed from is affirmed, with costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.

Zaldivar, J., reserves his vote.

Barredo, J., no part.

[1] There is no dispute that the person referred to is Cesario Orongan himself, the confessed gunman. Cesar Roble is merely one of the various names by which Orongan is known.

[2] "Toto" was identified later as Avelino Monzolin, driver-bodyguard of herein appellant.

[3] It was about 4:00 o'clock a.m. of July 12, 1961.

3 Monzolin likewise disclosed in his extra-judicial confession that he did get back the gun from Orongan the day after the killing and returned the same to Pareja in compliance with the latter's order.

[4] The 3rd bullet, because of its mutilated condition, could not be positively established as coming from the fatal gun.

[5] People vs. Carillo, et al., 47 O. G. No. 8, pp. 4188, 4173.

[6] Lt. Simeon Molina, Deputy Chief of the Criminal Investigation Laboratory and Chief of the Firearms Identification Section of the Manila Police Department.

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