

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SIMEON DILAO Y BUCO AND ERNESTO ECHEVARRIA Y TECSON,
ACCUSED-APPELLANTS.**

G.R. No. L-43259. October 23, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In Criminal Cases Nos. 1882 and 1922, of the Circuit Criminal Court of Manila, Simeon Dilao, Ernesto Echevarria and Roberto de Joya were accused of robbery with homicide.

According to the informations, similarly worded in both cases, the offense was committed as follows:

"That on or about November 10, 1974, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously with intent of gain and by means of force, violence and intimidation, to wit: by pointing bladed weapons at the persons of AUDDIE VENZON Y ADRADOS and LOLITA MILLARE Y CRUZ, threatening to kill them if they would resist, take, steal and carry away the following:

From AUDDIE VENZON Y ADRADOS:

One (1) Seiko wristwatch, stainless, day-date type valued at

P300.00

One (1) wallet brown, leather

20.00

Cash money

40.00

P360.00

From LOLITA MILLARE Y CRUZ:

One (1) lady's watch, Aristocrat, 17 jewels, square, green dial and with stainless bracelet

P110.00

all valued at P470.00, against the latters' will, to the damage and prejudice of said owners in the aforesaid amount of P470.00, Philippine Currency; that at the time of the commission of the said offense, the said accused in pursuance of their conspiracy, and by reason of the aforesaid robbery, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon AUDDIE VENZON Y ADRADOS, by then and there stabbing him with a bladed weapon on the chest, thereby inflicting upon said AUDDIE VENZON Y ADRADOS a mortal wound which was the direct and immediate cause of his death thereafter."

In a decision dated August 20, 1975, Simeon Dilao and Ernesto Echevarria, the accused in Criminal Case No. 1882, were convicted as charged and meted the death penalty, but Roberto de Joya, the accused in Criminal Case No. 1922, was acquitted.

Upon a Motion for Reconsideration filed by Simeon Dilao, the trial court rendered another decision on December 29, 1979, with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered as follows:

In Criminal Case No. CCC-VI-1882, accused Simeon Dilao y Bucu and Ernesto Echevarria y Tecson are hereby found guilty beyond reasonable doubt as principals of the crime of robbery with homicide and sentences each one of them as follows:

- 1) Accused Echevarria, there being proved the aggravating circumstance of treachery without any mitigating circumstance to offset the same, to DEATH;
- 2) Accused Simeon Dilao, there being proved the mitigating circumstance of suffering some defect which thus restricts his means of action, defense, or communication with his fellow being because his left eye is blind, offset, however, by the aggravating circumstance of treachery, to reclusion perpetua.

Both accused are further ordered to jointly and severally indemnify the heirs of deceased Auddie Venzon y Adrados the sum of P12,000.00 for the death of the latter; the sum of P10,000.00 by way of moral damages; the sum of P10,000.00 by way of exemplary damages; the sum of P1,500.00 for funeral expenses; to return to Lolita Millare and to said heirs of Auddie Venzon the cash and valuables taken from them (Millare and Venzon) as described in the information or to jointly and severally indemnify them the sum of P470.00 representing the value thereof if they fail to do so and to proportionately pay the costs.

In Criminal Case No. CCC-VI-1922, accused Roberto de Joya y Caysido is hereby ACQUITTED of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt, with costs de oficio. His release is hereby ordered unless he is detained for another offense."

The evidence shows that after a snack at the Savory restaurant and a movie at the Luneta Theatre, Lucia Binuya and Jose Fortez, Josefina Carbon and Rolando Flores, and Lolita Millare and Auddie Venzon, walked along Roxas Boulevard, on their way to the girls' boarding house at 707 Balinguit Street, Malate, at around eleven o'clock in the evening of November 10, 1974. They strolled in pairs, somewhat leisurely on the lighted promenade along the seawall. Lucia and Jose were ahead, followed by Josefina and Rolando, with Lolita and Auddie about twenty meters behind.

In front of the Aristocrat restaurant (at the corner of San Andres and Roxas Boulevard), four men armed with short bladed or pointed weapons approached behind Lolita and Auddie and surrounded them.

The prosecution's version of what subsequently transpired, was recounted in court by Lolita, a medical technology student of Centro Escolar University, as quoted from the decision on review:

"While they were walking, going to the direction of Pasay City, they were held-up by four persons three of which are in the courtroom, Echevarria, Dilao and de Joya. Echevarria, coming from behind, pinned her neck with his right hand and with his left hand, he poked her a weapon on the left side of her neck. De Joya did the same thing to Venzon, while Dilao and the other unknown companion were forcing Venzon to sit down beside her on the seawall. But Venzon fought back by kicking. Then, Echevarria got her wrist watch worth P110.00 (Exh. "A"), and saw de Joya stab Venzon. Before the stabbing, Venzon asked for his wallet and it was then that de Joya stabbed him, causing him to fall on the other side of the seawall facing the sea, and she noticed blood stains on his right breast above the right nipple. Venzon was then in dark gray T-shirt and light brown pants. He was also with his stainless oval shaped Seiko wristwatch with black dial which was taken by one of the robbers whom she came to know in the headquarters as Edmund. This watch was taken by Edmund while Venzon was being forced to sit down. She saw Venzon take P20.00 from that wallet and P40.00 remained because before he chipped in for their expenses in the Savory restaurant, she saw three P20.00 bills in his wallet. When Venzon ran after the holduppers, she called Flores telling him that they were held up, and Flores ran towards her followed by Carbon. Flores followed Venzon while she and Carbon boarded a taxi to call Binuya and Fortez. The holduppers ran towards Roxas Boulevard and proceeded to Remedios street as they were held up before the Aristocrat Restaurant, Manila. Flores was not able to catch up with Venzon, and so they looked for Venzon in the vicinity but they did not find him. Thereafter, the five of them went home." (Expediente, Vol. II, pp. 26-27.)

It was Auddie alone who chased the robbers from the seawall of Roxas boulevard to Remedios street, then to San Andres street. At this time, Teodoro Calleja, a sales engineer, was driving his car on San Andres, on his way home to Carolina street (intersecting San Andres). He had just come from M. H. del Pilar street and had to pass by San Andres-Mabini intersection, before turning left to Carolina street.

Calleja said that he first noticed the chase at the corner of San Andres and Mabini streets. He slowed down along San Andres, and he saw one person running after two persons. After passing Mabini street, he saw them stop and the pursuer threw a stone at the two, and then one of the latter appeared to have boxed the pursuer. The two then continued running and turned left to Carolina street.

Calleja further testified that the person who gave chase was left behind. He crossed the street (San Andres) and went directly to the car of Calleja and told him that he had been stabbed and requested that he be taken to Ospital Ng Maynila. Calleja saw a stab wound on the right chest and rushed him to Ospital Ng Maynila. On their way to the hospital, his passenger told him that he was held-up. At the hospital, Calleja was told that the person he had brought died upon arrival.

The post mortem examination report (Exh. "I") of the police medico-legal examiner, Dr. Abelardo Lucero, revealed that the cause of death was shock and hemorrhage due to a four-corner stab wound in the anteroea right chest.

In the morning of November 11, 1974, Lolita Millare, Rolando Flores, Josefina Carbon, Lucio Binuya and Jose Fortez, still unaware of what happened to Auddie Venzon, looked for him. Their inquiries led them to Ospital Ng Maynila where they were referred to Tres Amigos Funeral Parlor and there they found the body of Auddie at the parlor's morgue.

They then proceeded to Metro Manila Police headquarters. Lolita Millare gave a written statement as follows:

"SALAYSAY NI LOLITA MILLARE Y CRUZ NA KUHA NI PAT. R. MONTAÑANO SA HARAP NI PAT. R. CAPALAD, DITO SA TANGGAPAN NG CRIMES AGAINST PERSONS DIVISION,

DETECTIVE BUREAU, METROPOLITAN POLICE FORCE - WD, NGAYONG GANAP NA IKA-1:40
NG HAPON PETA 11 NG NOBYEMBRE 1974.

01.

TANONG:

Nais mo bang mag-bigay ng isang malaya at kusang-loob na salaysay at sasagutin ng pawang katotohanan ang lahat ng aming itatanong sa iyo na hindi ka namin tinakot, pinilit o pinangakuan ng ano mang pabuya at ipinaalam din namin sa iyo na itong salaysay mong ito ay maaring gamitin laban sa iyo?

SAGOT:

Opo.

02.

T:

Maari bang sabihin mo sa amin ang iyong buong pangalan at ibat-ibang bagay na nauukol sa iyong pag-katao?

S:

LOLITA MILLARE Y CRUZ, 20 taong gulang, dalaga, estudyante, tubo sa San Guillermo, Morong, Rizal at sa kasalukuyan ay naninirahan sa 707-D Balinguit St., Leveriza, Malate, Manila.

03.

T:

Ano ba ang inabot mo sa iyong pag-aaral?

S:

Med-Tech. intern ho ako ngayon.

04.

T:

Nalalaman mo ba ang dahilan kung bakit ka naririto ngayon sa aming tanggapan?

S:

Upang mag-bigay ng salaysay tungkol sa pagkamatay ni Audie Benzon.

05.

T:

May nalalaman ka ba sa pagkamatay nitong si Audie Benzon?

S:

Mayroon po.

06.

T:

Alam mo ba kung ano ang ikinamatay nitong si Audie Benzon?

S:

Sinaksak po siya.

07.

T:

Kailan at saan ito nangyari?

S:

Kagabi hong mga bandang alas-11:20, petsa 10 ng Nobiyembre 1974, sa may Roxas Boulevard na malapit sa Aristocrat Restaurant, Malate, Manila.

08.

T:

Nakita mo ba nang si Audie ay saksakin?

S:

Hindi po.

09.

T:

Papano mo nasabi na ang ikinamatay nitong si Audie ay dahil sa pagkakasaksak?

S:

Kasi po nang puntahan namin siya sa morgue ng Tres Amigos ay nakita ko ang sugat niya sa kanang dibdib na ayon sa Ospital ng Maynila ay sinaksak daw.

10.

T:

Bago nasaksak itong si Audie magkasama ba kayo?

S:

Opo.

11.

T:

Ang sabi mo kanina may nalalaman ka tungkol dito sa pagkamatay ni Audie, maari bang sabihin mo sa amin ang lahat ng iyong nalalaman?

S:

Ganito po iyon. Kagabi po ay kasama ko si Audie, sila hong dalawa (Declarant pointing to two persons of LUCIA BINUYA Y JAVATE, 20 years old, single, student, native of San Antonio, Nueva Ecija, and

JOSEFINA CARREON Y GUTIERREZ, 18 years old, single, student, native of Malate, Manila, both residents of No. 707-D Balinguit St., Leveriza, Malate, Manila) at sila po (Declarant pointing to the persons of ROLANDO FLORES Y LARA, 19 years old, single, V. Casaje Optical employee, native of Balanga, Bataan and resident of No. 1026 Zobel St., Ermita, Manila; and JOSE PORTES Y ASBADILLO, 22 years old, single, V. Casaje Optical employee, and resident of No. 1026 Zobel St., Ermita, Manila). Kumain ho kami sa Savory Restaurant sa Luneta at pagkatapos ho ay nanood kami ng sine sa Luneta Theater. Paglabas namin ay nagdaan kami ng Roxas Boulevard pauwi. Kami ho noon ay hiwa-hiwalay. Nauna sina Lucy at Joey, sumunod sina Josie at Rey at kami ang huli ni Audie. Kami ho ay sa may sea-wall nag-lakad. Nang malapit na kami sa Aristocrat ay mayroon na lang hong biglang tumutok sa amin dalawa ni Audie. Dalawa ho iyong tumutok sa amin at galing sila sa likod namin at ang tutok sa akin ay sa leeg. Ang isang braso noong tumutok sa akin ay nakapulupot sa leeg ko. Ang napansin kong itinutok sa akin ay isang ice-pick ho, iyong ho bang bilog na bakal na maliit lang ng kaunti sa ball-pen at matulis ang dulo. Pagkatapos ho ay iniupo nila kami sa sea-wall at doon kinuha iyong relas ko na Aristocrat ang tatak na may 17 jewels, green ang bracelet at stainless. Pagkatapos ho ay nakita ko na itinulak si Audie sa ibaba ng sea-wall at siya ay bumagsak. Noon nga ho palang iniupo nila kami ni Audie ay napansin ko na kung hindi tatlong magkakasama iyong tumutok sa amin ay mga apat sila, kasi liban doon sa tumutok sa amin ni Audie ay may mga lumapit pa kay Audie. Pagbagsak ho ni Audie sa ibaba ay sumampa siya uli at hinabol niya iyong mga tumutok sa amin. Pag-dating hi Audie sa may island ng Roxas Boulevard ay nakita ko si Audie na naghubad ng sapatos at sinipa niya iyong nahuhuli roon sa mga nag-sitakbong tumutok sa amin. Noon ko ho huling nakita ng buhay si Audie kasi ako ay tumakbo ho para habulin ang iba kong mga kasama na nauna sa amin. Nang abutan ko sina Josie at Rey ay tumakbong pabalik si Rey sa pinangyarihan at kami ni Josie ay sumakay ng taksi para ipaalam naman kina Lucy at Joey. Tapos ho sakay na ho kaming apat nina Josie, Lucy at Joey ng taxi pabalik sa pinangyarihan at doon sa may Aristocrat kami bumaba at doon na rin ho namin nakita si Rey at ang sabi ay hindi na rin daw niya nakita si Audie. Tumawag si Rey sa bahay nila at nang malaman naming wala pa si Audie sa bahay ay umikot kami sa paligid ng Aristocrat pero hindi rin namin nakita si Audie. Tapos ho ay inihatid na ho kami sa bahay. Kanina lang ho namin nalaman, kanina hong umaga, na si Audie ho pala ay nasaksak at patay.

12.

T:

Ang sabi mo kanina ay kung hindi tatlo ay apat ang mag-kakasamang tumutok sa inyo ni Audie, hindi ba?

S:

Opo.

13.

T:

May nakilala ka ba o namukhaan doon sa tatlo o apat na inyon?

S:

Wala ho, liban doon sa tumutok sa akin.

14.

T:

Ang ibig mo bang sabihin ay kung sakaling makita mong muli itong tatlo o apat ay hindi mo makikilala kung sila ay makita mong muli o makikilala mo?

S:

Iyon lang hong tumutok sa akin ay maari kong makilala kung makikita kong muli. Iyong mga kasama ay hindi ko makikilala kung makita ko man silang muli.

15.

T:

Maari bang sabihin mo sa amin kung ano ang hitsura nitong tumutok sa iyo?

S:

Hindi ko po maidescribe sa inyo ang hitsura pero maari ko pong maituro sa inyo kung makikita ko siya muli.

16.

T:

Iyong relos mo na ika mo ay kinuha sa iyo magkano ba ang halaga noon?

S:

Mura lang ho iyon eh. P110.00 lang ho.

17.

T:

Alam mo ba kung ano naman ang kinuha kay Audie kung mayroon man?

S:

Ang pag-kakaalam ko po ang kinuha sa kanya ay ang relos niya at wallet dahil nang kami ay nagtanong sa Ospital Ng Maynila nang si Audie raw ay idating doon wala na raw ang relos niya at wallet.

18.

T:

Alam mo ba kung anong klaseng relos ang relos ni Audie?

S:

Ang pagkakaalam ko ay "SEIKO", oval shape, black dial at stainless ang bracelet. Ang wallet niya ay kulay talong.

19.

T:

Maliwanag ba roon sa pinangyarihan o madilim nang kayo ay tutukan?

S:

Hindi ho gaanong maliwanag at hindi rin ho gaanong madilim.

20.

T:

Gaano ba ang layo ninyo kina Lucy at Josie?

S:

Mga dalawang poste po ang layo naming bawat grupo.

21.

T:

Lalagdaan mo ba itong salaysay mong ito na may dalawang pahina bilang patotoo na lahat ng mga sinabi mo rito ay pawang katotohanan lang matapos na ito ay iyong basahin at maintindihan ang nilalaman?

S:

Opo.

----- WAKAS NG SALAYSAY -----

(SGD) LOLITA MILLARE Y CRUZ
Nagsalaysay

MGA SAKSI:

1. (SGD) Not legible

2.

SUBSCRIBED AND SWORN to before me this 11th day of November 1974, at the City of Manila, Philippines.

(SGD) JAMES G BARBERS
Deputy Chief of Police
and
Acting Chief of Police"

Lolita Millare's statement, dated November 11, 1974, was marked as Exhibit "1" for the defendants Simeon Dilao and Ernesto Echevarria but was not used by the prosecution.

Parenthetically, Jose Fortez, Rolando Flores and Josefina Carbon also gave statements. Josefina Carbon's statement was not presented in evidence. The statements of Jose Fortez and Rolando Flores both dated November 11, 1974 were marked as Exhibit "6" and Exhibit "7" respectively for the defense. The two, however, did not appear in court despite subpoenas requested by Simeon Dilao's counsel.

On November 13, 1974, Lolita and Josefina returned to the police headquarters. Lolita Millare executed another statement dated November 13, 1974. In the records, it was marked as Exh. "2" for both accused-appellants but again was not used by the prosecution. Its recitals are:

"KARAGDAGANG SALAYSAY NI LOLITA MILLARE Y CRUZ NA KINUHA AT ISINAMAKINILYA NI DET. JUANITO V. GARCIA SA HARAP NI DET. A. EVANGELISTA DITO SA TANGGAPAN NG CRIMES VS. PERSONS DIVISION, DETECTIVE BUREAU, METROPOLITAN POLICE FORCE-WD NGAYONG IKA-13 NG NOBYIEMBRE 1974 SA GANAP NA 3:00 NG HAPON.

November 13, 1974

ROBBERY WITH HOMICIDE

Case No. 18928 - 74

01.

TANONG-

Bago kita kunan ng tanong ay muli kong inuulit sa iyo na ang salaysay mong ibibigay ay kusang loob mo at di ka namin tinakot, sinaktan o pinangakuan ng ano mang pabuya o kaluwagan at dapat mo ring malaman na ang ibibigay mong salaysay dito ay maaring gamitin laban sa iyo sa alin mang hukuman dito sa ating kapuluan. Matapos mong malaman ang lahat ng mga ito, ikaw ba ay kusang-loob pa ring magbibigay ng iyong kusang loob na salaysay?

SAGOT-

Opo.

02.

T-

Ulitin mo nga ulit kung ano ang iyong pangalan at ibang bagay na mapagkikilanlan sa iyong pagkatao?

S-

LOLITA MILLARE Y CRUZ, 20 taong gulang, dalaga, estudyante, tubo sa San Guillermo, Morong, Rizal at sa kasalukuyan ay naninirahan sa 707-D Balinguit St., Leveriza, Malate, Manila.

03.

T-

Ikaw ba ay marunong bumasa, sumulat at umintindi ng wikang tagalog?

S-

Opo.

04.

T-

Paano kang natutong bumasa at sumulat ng wikang tagalog?

S-

Ako po ay estudyante sa Med-Tech at intern na ho ako ngayon.

05.

T-

Bakit ka ngayon naririto sa aming tanggapan?

S-

Upang magbigay uli ng salaysay tungkol sa pagkakaholdap at pagkakasaksak kay AUDDIE VENZON noong bandang 11:20 ng gabi, petsa 10 ng Nobyembre, 1974 doon po sa Roxas Boulevard malapit sa Aristocrat Restaurant, Malate, Manila.

06.

T-

Noong ika-11 ng Nobyembre, 1974 sa ganap na 1:40 ng hapon ay kinunan ka ng tanong ni Pat. R. Capalad dito rin sa tanggapang ito, ano ang masasabi mo rito?

S-

Totoo po iyon.

07.

T-

Aking ipinakikita sa iyo ang isang salaysay na kinuha at isinamakinilya ni Pat. R. Capalad dito sa tanggapan ng Crimes Vs. Persons Division, DE, MPF-WD noong ika-11 ng Nobyembre, 1974 na may lagdang LOLITA MILLARE sa ibaba at sa gawing panig naman ay may gayon ding lagdang pangalan. Ano ang masasabi mo rito?

S-

Iyan nga po ang salaysay kong ibinigay at ang pangalang nakalagda ryan ay pangalan ko at ako ang pumirma.

08.

T-

Sinabi mong nang kayo ni AUDDIE ay naglalakad at ng iba pa ninyong kasama ay bigla na lang may tumakbo sa inyong likuran ni AUDDIE na dalawang tao at iyong isa ay inipit ako sa liig at ang isang kamay niyang may patalim ay itinutok sa aking liig. Ano ang masasabi mo rito?

S-

Totoo po iyon.

09.

T-

Aling kamay ang ipinang-ipit sa iyong liig at aling kamay ang may tangang patalim?

S-

Iyong pong kanang kamay niya ang ipinang-ipit niya sa aking liig at iyong pong kaliwang kamay naman niya ang may tangang patalim.

10.

T-

Saan naman nandoon si AUDDIE nang ikaw ay tutukan ng patalim at ipitin ang iyong liig?

S-

Nasa gawing kaliwa ko po si Auddie.

11.

T-

Sinabi mo rin sa iyong ibinigay na salaysay na nakikilala mo ang taong nanutok at kumuha ng iyong relo ay makikilala mong muli kung iyong makikita. Ano ang iyong masasabi rito?

S-

Totoo po iyon.

12.

T-

Igala mo nga ang iyong paningin sa kulungan ng Crimes Vs. Property Division, Detective Bureau, Metropolitan Police Force at tignan kung naririto ang taong umipit at tumutok ng patalim sa iyo?

S-

Ayan po siya (Declarant points to the person of ERNESTO ECHEVARRIA Y TECSON, 23 years old, single, laborer, native of San Andres, Manila and residing at No. 2102-E Dakota, Malate, Manila who is presently detained in the cell of the Theft & Robbery Division, DB, MPF-WD with more than 20 other detention prisoners who is wearing a light colored khaki pants and a checkered polo shirt).

13.

T-

Hindi ka kaya nagkakamali ng pagtuturo sa kanya?

S-

Hindi po, siya hong talaga ang taong umipit at tumutok ng patalim sa aking liig.

14.

T-

Paano mong natiyak na siya nga ang taong umipit at tumutok ng patalim sa iyo?

S-

Noon hong pinaupo na niya ako at kinuha ang aking relo at isa pa ho ay may ilaw doon na sapat makilala ang isang tao.

15.

T-

Pansamantala ay wala na akong itatanong sa iyo, may nais ka pa bang idagdag o bawasin sa isinalaysay mo rito?

S-

Wala na ho.

16.

T-

Ito bang salaysay mong ito ay iyong lalagdaan bilang patunay na ang lahat ng iyong sinabi rito ay pawang katotohanan lamang?

S-

Opo.

----- 0 -----

4:00 P.M. Nov. 13, 1974
(WAKAS NG SALAYSAY)

(SGD) LOLITA MILLARE
(NAGSALAYSAY)

MGA SAKSI:

1. Det. Juanito V. Garcia
2. (Sgd) Det. A. Evangelista

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13th DAY OF NOVEMBER, 1974. DONE IN THE CITY OF MANILA, PHILIPPINES.

(SGD) JAMES G. BARBERS
Colonel, MMP
Deputy Chief of Police
and
Acting Chief of Police"

It also appears that when Lolita and Josefina returned to the police headquarters on November 13, 1974, the accused Simeon Dilao, Ernesto Echevarria, and Roberto de Joya had already been apprehended. In a police line-up of about twenty persons, Lolita identified Ernesto Echevarria as the one who grabbed her and poked an icepick on her neck. She also identified Roberto de Joya as one of those who accosted Auddie Venzon but she did not identify Simeon Dilao because, according to her, he (Dilao) was already giving his statement when she saw him. On the same occasion, Josefina Carbon identified Simeon Dilao at the office of Patrolman Federico Jaymalin and Roberto de Joya at the detention cell. She did not, however, identify Ernesto Echevarria because, according to her, she was not asked to.

The statement of Simeon Dilao dated November 13, 1974, was marked as Exhibit "C" for the prosecution. Its recitals, material to the discussion below, are as follows:

"SALAYSAY NI SIMEON DILAO Y BUCO NA IBINIGAY KAY PAT/RODOLFO C. JALANDRA SA HARAP NINA PAT. D. AGUITO AT DET. A. EVANGELISTA DITO SA TANGGAPAN NG CRIMES VS. PERSONS DIVISION, DETECTIVE BUREAU, METROPOLITAN POLICE FORCE, NGAYONG ALAS NUEVE Y MEDIA NG UMAGA, NOBYEMBRE 13, 1974:

TANONG

01:

IKAW, SIMEON DILAO Y BUCO, ay aming iniimbestigahan ngayon sa kasalanang PANGHOHOLD-AP AT PAGPATAY ng nangyari noong bandang alas onse bente ng gabi, Nobyembre 10, 1974 sa SEAWALL harapan ng ARISTROCRAT RESTAURANT sa ROXAS BLVD., ERMITA, Manila, at naaayon sa Articulo IV, Sec. 20, ng ating Saligang Batas, ikaw ay may karapatang tumahimik, na ang lahat na sasabihin mo dito sa imbestigasyong ito ay maaring gamitin laban sa iyo sa alinmang hukuman dito sa Pilipinas; na ikaw ay may karapatang magkaroon ng abugado; na kung wala kang ibabayad at kung gusto mo ng abugado ikaw ay bibigyan ng isa, ano ang masasabi mo tungkol dito?

SAGOT

01:

Magbibigay pa rin po ako ng salaysay kasi ang sasabihin ko dito ay katotohanan lamang.

T

02:

Ikaw bay sinaktan namin o binugbug kaya para magbigay lamang ng salaysay dito?

S

02:

Hindi po.

T

03:

Kung gayon sabihin mo sa amin ang iyong buo at tunay na pangalan at ibat-ibang mga bagay bagay maaring mapagkilanlan ng iyong pagkatao?

S

03:

SIMEON DILAO Y BUCO po, 20 años, walang asawa, walang hanap-buhay, tubo sa San Andres, Malate at kasalukuyang naninirahan sa 584 Int. 41 San Andres, Malate, Manila

x x x x x x x x

T

19:

Alam mo ba ang dahilan nandito ka ngayon sa aming oficina at kinukunan ng salaysay?

S

19:

Tungkol po sa nangyaring hold-apan sa CAROLINA ST. malapit sa kanto ng SAN ANDRES, Malate, Manila.

T

20:

Natandaan mo pa ba kung anong oras nangyari ang sinasabi mong hold-apanang ito?

S

20:

Sa pagkatantya ko po ay mga bandang alas nuebe ng gabi, Nobyembre 10, 1974.

T

21:

Natandaan mo ba kung anong araw yon?

S

21:

LINGGO po ng gabi

T

22:

Kasama ka ba dito sa sinasabi mong hold-apang ito?

S

22:

Kasama rin po ako.

T

23:

Ilan kayong nanghold-ap?

S

23:

APAT po kami.

T

24:

Sino sino itong mga kasama mo?

S

24:

Sina "BERT" po, si "BOY RUTHS", si EDMUND na taga-Parañaque at AKO po.

T

25:

Itong si "BERT" alam mo ba ang tunay na pangalan nito?

S

25:

"BERT" or BETOK lang po ang tawag ko sa kanya.

T

26:

Matagal mo na bang kakilala itong si "BERT"?

S

26:

Almost fifteen years na po at naging barkada ko po siya pero hindi naman madalas.

T

27:

Paano mo nakilala itong si "BERT"?

S

27:

Maliliit pa po kami ay magkapitbahay kami sa San Andres, Malate at nang magkaroon ng demolition ng mga squatters sa San Andres ay nalipat sila sa Parañaque.

T

28:

Bago kayo nanghold-ap, kailan kayo huling nagkita nitong si "BERT"?

S

28:

Palagi po kaming nagkikita sa tinutuluyan niyang bahay sa DAKOTA.

T

29:

Sabi mo ay lumipat na sina "BERT" sa Parañaque ano naman ang ginagawa niya sa DAKOTA?

S

29:

Diyan lang po siya tumutuloy kasi marami siyang barkada sa DAKOTA pero ang kanyang mga magulang ay sa Parañaque.

T

30:

Sino ang tinutuluyan niya sa DAKOTA?

S

30:

Kasamahan po niyang security guard na si "FRANKLIN" na security guard sa CUSTOM.

T

31:

Security guard rin ba itong si "BERT"?

S

31:

Seguro po pero hindi ko tiyak.

T

32:

ALAM MO BA KUNG NASAAN NA ITONG SINASABI MONG "BERT"?

S

32:

Siya po (DECLARANT pointing to ROBERTO DE JOYA Y CAYSIDO, 23 years old, married, security guard Bureau of Fisheries, native of San Andres, Malate, and residing at No. 2102 Dakota, Malate, Manila).

T

33:

Ano naman ang dala nitong si "BERT" sa panghohold-ap ninyo?

S

33:

Patalim po na double blade.

T

34:

Ano naman ang participasyon nitong si "BERT" sa panghohold-ap ninyo?

S

34:

Tinutukan po niya ang isa sa dalawang babae.

T

35:

May nakita ka bang kinuha si "BERT" sa nasabing babae?

S

35:

Wala po akong nakita pero si EDMUND ang kumuha ng mga alahas ng mga babae.

T

36:

May binanggit kang "BOY RUTHS", na isa sa kasama ninyo sa panghohold-ap, alam mo ba ang tunay na pangalan nito?

S

36:

ERNESTO ECHEVARRIA po.

T

37:

Matagal mo na bang kakilala itong si "BOY RUTHS"?

S

37:

Halos kababata ko po siya.

T

38:

Kailan mo huling nakita itong si "BOY RUTHS" bago kayo nanghold-ap?

S

38:

Madalas ko po siya makita sa Dakota.

T

39:

Alam mo ba kung ano ang trabaho nitong si "BOY RUTHS"?

S

39:

Ngayon po ay wala na pero dati ay sa Central Bank construction siya.

T

40:

Paano mo nalaman na nagtrabaho siya dati sa Central Bank construction?

S

40:

Dahilan po sa nakita ko ang ID niya.

T

41:

Ano naman ang dala nitong si "BOY RUTHS" sa panghohold-ap ninyo?

S

41:

Patalim rin po na parang style KITCHEN KNIFE.

T

42:

Ano naman ang participasyon nitong si BOY RUTHS sa panghohold-ap?

S

42:

Tinutukan po niya ang lalaki na kasama ng mga babae.

T

43:

May kinuha ba siya sa nasabing lalaki?

S

43:

Wala po.

T

44:

Itong si EDMUND alam mo ba ang tunay na pangalan nito?

S

44:

Hindi po.

T

45:

Matagal mo na bang kakilala itong si EDMUND?

S

45:

Noong LINGGO lang po nang mangyari ang hold-apan.

T

46:

Sino ang nagpakilala sa iyo kay EDMUND?

S

46:

Si BOY RUTHS po.

T

47:

Paano ka ipinakilala ni BOY RUTHS kay EDMUND?

S

47:

Kasama ko po noon ang aking mga barkada na mahahaba rin ang mga buhok sa San Andres Play Ground nang dumating sina BERT, at BOY RUTHS na may kasama pang isa. Tinanong ko po si BOY RUTHS kung sino ang kasama nila at ang sabi, "SIYANGA PALA SI EDMUND" at nagkamayan kami.

T

48:

Pagkatapos ano ang nangyari?

S

48:

Sinabi sa akin ni BOY RUTHS na "SAMA KA SA AMIN MAY HOHOLD-APIN KAMI IKAW ANG TAGA BANTAY".

T

49:

Mga anong oras yon sinabi?

S

49:

Hindi ko po matantya ang oras pero mga bandang 8:30 po ng LINGGO ng gabi.

T

50:

Pagkasabi ba noon ni BOY RUTHS ay lumakad na kayo?

S

50:

Pumayag na rin po ako at sumama sa kanila.

T

51:

Pagkagaling ninyo sa SAN ANDRES PLAY GROUND saan kayo nagtuloy?

S

51:

Sa San Andres po patungong ROXAS BLVD.

T

52:

Pagkatapos ano pa ang nangyari?

S

52:

Sinabi po sa akin ni BOY RUTHS na maghintay ako sa harapan ng MODERN RESTAURANT sa may kanto ng CAROLINA at SAN ANDRES at sila ay tumuloy sa ROXAS BLVD.

T

53:

Sino sino ang tumuloy sa ROXAS BLVD.?

S

53:

Sina BERT po, si BOY RUTHS at si EDMUND.

T

54:

Nakita mo ba nang manghold-ap sina BERT, BOY RUTHS at EDMUND?

S

54:

Opo.

T

55:

Nasaan sila nang makita mo sila na manghold-ap?

S

55:

Sa ROXAS BLVD. po sa harapan ng ARISTOCRAT RESTAURANT.

T

56:

Paano mo naman nakita sila samantalang ikaw kamo ay nakatayo at nagbabantay sa harapan ng Modern Restaurant sa kanto ng CAROLINA at SAN ANDRES?

S

56:

Ang totoo po niyan ay tinakot lang po ako nila, ni BERT at BOY RUTHS na magsabi ng totoo at papatayin daw nila ako. Ang talagang totoo po ay nasa FERNANDO MA. GUERRERO ELEMENTARY SCHOOL sa ROXAS BLVD. ako at taga sinyas nila. Nakita ko pong tumawid sila patungong SEAWALL sa harapan ng Aristocrat Restaurant. Nakita ko pong may dalawang babaeng lumalakad sa SEAWALL papuntang CULTURAL na may kasunod na naglalakad rin na dalawang babae at isang lalaki. Yon po ang tinityempuhan nila. Nakita ko na lang po na tinutukan ni BERT ang babae at tinutukan rin ni BOY RUTHS ang lalaki. Si EDMUND po ang kumuha ng mga alahas ng mga babae at ng lalaki. Pagkatapos po ay nakita kong lumaban kay BOY RUTHS ang lalaki. Yinakap po niya si BOY RUTHS. Nakita ko na lang po na biglang sinaksak ng patalim ni BERT yong lalaki. Nagkaroon po ng gulo at ako po ay tumakbo na at hindi ko na nakita kung ano pa ang sumunod na nangyari.

T

57:

Totoo na ba itong mga sinasabi mo na ito talaga ang nangyari?

S

57:

Yon na po ang totoo na nangyari.

T

58:

Kung gayon sino ang nagsabi sa iyo na maghintay ka duon sa harapan ng FERNANDO MA. GUERRERO ELEMENTARY SCHOOL?

S

58:

Si BOY RUTHS po. Sinabi sa akin na mag-istambay ako duon at sisinyasan ko sila kung may dumarating na pulis.

x x x x x x x x

----- WAKAS NG SALAYSAY -----

(SGD) SIMEON DILAO Y BUCO

MGA SAKSI:

(SGD) PAT. RODOLFO C. JALANDRA

(SGD) PAT. DELFIN AGUITO

DET. AVELINO EVANGELISTA

THIS STATEMENT WAS TAKEN IN MY PRESENCE:

(SGD) MRS. NATALIA DILAO Y BUCO

SUBSCRIBED AND SWORN TO BEFORE ME this 13th day of November 1974, in Manila, Philippines.

(SGD) A. BARRIAS
(Administering Officer)"

The case against Simeon Dilao was established principally on his extrajudicial statement of November 13, 1974, Exh. "C". Patrolmen Federico Jaymalin and Rodolfo Jalandra, and Fiscal Arturo Barrias testified that the accused gave the statement out of his own free will, and after he had been advised of his right to remain silent and to counsel under Sec. 20, of Art. IV of the 1973 Constitution.

Lolita testified, as stated in the excerpt from the lower court's decision, that Simeon Dilao was one of those who mauled Auddie Venzon. She identified Dilao in court. She, however, said that she did not identify him at the police headquarters on November 13, 1974, because he was then giving a statement. She explained her declarations in Exh. "1" and Exh. "2", to the effect that she could recognize only the malefactor who grabbed her and poked a bladed weapon on her, by saying that she was "under tension" when she gave her statements to the police.

Josefina Carbon corroborated Lolita's account of the incident, point by point. She explained that even as she walked with her boyfriend, some 25 meters ahead of Lolita and Auddie, she saw how the latter were held up, because when her boyfriend tried to kiss her, she evaded his kiss by turning her head to her left, thereby enabling her to see the hold-up, just in time. She added, that she saw Simeon Dilao among others, who was then sporting long hair, reaching down his shoulders and wearing a white T-shirt with green vertical stripes. Josefina described Dilao as "mestizong Bombay," and said that she identified him to the police on November 13, 1974, at the headquarters.

Juanito Abella, a cigarette vendor plying his trade in front of the Aristocrat Restaurant, said that between 8:00 and 9:00 o'clock, he saw the three accused Dilao, Echevarria and de Joya and a certain "Edmund" also known as Cenon de Joya, walk to the seawall. Then, at around 11:00 o'clock, he saw the four being chased by a person whom he came to know the next morning as the victim. He stated that he followed the chase from Roxas Boulevard to Remedios street to M.H. del Pilar street then to San Andres until the intersection of Carolina street, where the person pursuing was picked-up by a motorist. He said further, that he knew the three accused whom he supervised as "watch-your-car" boys in the area where he sold his wares.

The defense of Simeon Dilao is outright denial and an alibi that in the evening of the robbery, he was watching the TV late movies in his house at 584 Int. 41, San Andres, Malate, Manila. He likewise disowned the statement of November 13, 1974, Exh. "C", and claimed that it was extorted by torture and hence in violation of Sec. 20, Art. IV of the New Constitution.

The case against Ernesto Echevarria was built on the testimony of Lolita Millare as corroborated by Josefina Carbon, and the testimony of Juanito Abella. Lolita Millare categorically stated that the one who grabbed her, forced her to sit down on the seawall and took her wrist watch was Ernesto Echevarria. She stated that she recognized Echevarria because the seawall in front of the Aristocrat Restaurant was sufficiently lighted. She further stated that she identified him on November 13, 1974, at the police headquarters as her mauler.

Josefina Carbon said that she saw how Echevarria accosted Lolita while Simeon Dilao, Roberto de Joya and another person accosted Auddie Venzon. She however said that she did not identify Echevarria in the police headquarters on November 13, 1974, because she was not asked to do so.

The substance of Juanito Abella's testimony is that Echevarria was one of the four who sat on the seawall between 8:00 and 9:00 o'clock that evening, and ran with Simeon Dilao and the others during the chase at around 11:00 o'clock.

Ernesto Echevarria denied any participation, and offered the alibi that as early as 9:30 o'clock in the evening of the robbery he was asleep in his house at 2102 Dakota Compound, Malate, Manila. He denied that Lolita Millare identified him in the police headquarters on November 13, 1974.

The thrust of the appeal is on the credibility of the contending witnesses. Thus, appellant Simeon Dilao assigns the following errors:

- The trial court erred in convicting him solely on his extrajudicial confession taken without the assistance of counsel in violation of Sec. 20, Art. IV of the New Constitution;
- The trial court erred in giving full faith and credence on the testimony of Lolita Millare, Josefina Carbon and Juanito Abella;
- The trial court erred in rejecting the defense of alibi.

Appellant Ernesto Echevarria assigns the following errors:

- The trial court erred in giving credence to the utterly unreliable, inconsistent and inconceivable testimony of Lolita Millare and Josefina Carbon;
- The trial court erred in considering against him the inadmissible, invalid and void extrajudicial statement of Simeon Dilao.

The rule is well settled that when it comes to the question of credibility of witnesses, the findings and conclusions thereon by the trial court are entitled to great respect upon appeal. The obvious reason is the peculiar competence of the trial court to observe the demeanor, actuations and deportment of the witnesses during the trial.

The rule, however, finds exception as when the records disclose circumstances of weight and substance which affect the trustworthiness of the witnesses on the material facts in issue.

The case of Simeon Dilao falls under the exception.

It is contended that the extrajudicial confession, Exh. "C" was executed without the declarant having been forwarned of his constitutional rights to remain silent and to counsel. To be sure, the preliminary statement of the extrajudicial confession, Exh. "C", as set forth above, states that the accused was so forwarned. The testimony of Patrolman Rodolfo Jalandra, as supported by the testimony of the verifying fiscal, Fiscal Arturo Barrias confirms this. The import of the testimony is that the suspect having been advised of his rights, waived the same.

In this respect, there is, in favor of the public officers concerned, a presumption of regularity in the performance of official duties, as pointed out by the trial court. But where there are circumstances on record which tend to substantiate the claim of the accused the presumption has to be cast aside; otherwise, the presumption (which is but an aid in pointing where the burden of evidence rests), would be made to prevail over the facts themselves in evidence. In other words, where the facts are clear, the presumption cannot stand.

It appears that Simeon Dilao was arrested in his house, between 3:00 and 4.00 o'clock, early in the morning of November 13, 1974, by a police team lead by Patrolman Federico Jaymalin. According to Patrolman Jaymalin, they (the police), acting upon information supplied by an informant, merely "invited" Dilao to Precint 5, in connection with the robbery in the evening of November 11, 1974. Dilao was then brought to Precint 5, wherein he was investigated by Patrolman Jaymalin. Jaymalin stated that in the course of his investigation, Dilao readily admitted his guilt, though orally, without any compulsion or force exerted on him. Jaymalin also stated that Dilao was accompanied by his father to Precint 5.

Thereafter, Dilao was transferred from Precinct 5 to the police headquarters and placed under the custody of a

certain Patrolman Avelino Evangelista who turned him over to Patrolman Rodolfo Jalandra at around 6:00 o'clock. Jalandra testified that at around 9:00 o'clock, he took Dilao's confession in writing (Exh. "C"). He stated that he warned Dilao of his rights under Sec. 20, Art. IV of the 1973 Constitution. He also said that Dilao's mother Natalia Dilao was present during the investigation, and he (Jalandra) made her sign Dilao's written statement, once, after Dilao's signature on the last page of the statement.

Dilao was then brought to the inquest fiscal, Fiscal Arturo Barrias, at around 3:00 in the afternoon of November 13, 1974. Fiscal Barrias testified on rebuttal that he asked Dilao whether he had read the statement, and advised him of his constitutional rights. Barrias continued that, when informed of his rights, Dilao replied that he was not asserting them for he actually committed the crime.

We have thus a situation where a person, suspected of having committed a crime, was arrested by the police between the hours of 3:00 and 4:00 o'clock in the morning of November 13, 1974. The suspect was not arrested in the act of committing an offense or immediately after committing an offense. He was aroused from his sleep in his residence and "invited" to the precinct for investigation. There was no warrant of arrest, the police officers having acted merely upon "information" supplied by an informant. And yet, he was conducted to the precinct, placed under custody, and interrogated in connection with a crime committed on November 10, 1974. That the investigation was focused on the guilt of the suspect, is borne out by the testimony of Patrolman Jaymalin that the accused Simeon Dilao readily admitted his guilt, orally.

Simeon Dilao testified that when he was arrested by the police, he was blindfolded, made to enter a cold room, made to strip naked and was forced to admit participation in the robbery. Of course, Patrolman Jaymalin denied these allegations by the accused. It will be noted, however that Patrolman Jaymalin in his attempt to disprove appellant's claim of torture, failed to state that before any question was asked of the witness, he (Jaymalin) or any one of the investigators took the necessary precautions to advise the accused of the rights of a person under investigation for the commission of an offense as required by Article IV of the Constitution, which provides:

"SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

Simeon Dilao was advised of his rights to remain silent and to counsel only during the subsequent investigation by Patrolman Jalandra at the police headquarters. This investigation resulted in the execution of Exh. "C". It will be noted, that had the accused executed a statement before Patrolman Jaymalin (to whom he allegedly admitted guilt orally), there would have been no need for further investigation by Patrolman Jalandra. As it was, Exhibit "C" appears to have been an offshoot of Dilao's alleged previous oral admission.

To our mind, the crucial stage in the custodial police investigation of Simeon Dilao was in Precinct 5, where he was said to have admitted, orally, his guilt to Jaymalin. It should be recalled that he was "invited" (in this case, Jaymalin's euphemism for an arrest without a warrant of arrest) between 3:00 and 4:00 o'clock in the morning, brought to Precinct 5 at around 4:00 o'clock and interrogated between the hours of 4:00 and 6:00 o'clock, until turned over to the police headquarters. He was alone before the investigator in one of the investigating rooms of Precinct 5, it not having been shown that his father who accompanied him to Precinct 5 was allowed to be present in the investigation room. On top of it all, it should be considered that the police officers arrested him upon "information" furnished by an informant (whose name was not disclosed), indicating the absence of reasonable basis or ground of belief that the accused was probably one of the culprits. It may be naturally expected that the accused was subjected to searching and extensive questioning, precisely aimed at obtaining incriminating evidence out of his own mouth.

That stage was critical because of the attendant circumstances that bring about an intimidating and threatening atmosphere peculiar to custodial police interrogation. In such an atmosphere, a man of ordinary or average composure may yield to a skilled investigator or one who though unskilled is prone to brutal techniques. All the more, his constitutional rights must be respected.

The warning given by Patrolman Jalandra in the subsequent investigation of the accused did not subserve the purpose of the constitutional protection accorded to a person under investigation for an offense. Firstly, because, when the advice was given, the harm had been done. The accused had already been questioned, wherein he allegedly made a verbal admission of guilt. Secondly, assuming that there was no such previous investigation, the warning by Patrolman Jalandra was so mechanically given that it could not have been meant to inform the accused of the constitutional rights he was alleged to have waived.

At the risk of being repetitious, we quote what is pertinent in Exh. "C":

"TANONG 01:

IKAW, SIMEON DILAO Y BUCO, ay aming iniimbestigahan ngayon sa kasalanang PANGHOHOLD-AP AT PAGPATAY na nangyari noong bandang alas onse bente ng gabi, Nobyembre 10, 1974 sa SEAWALL harapan ng ARISTOCRAT RESTAURANT sa ROXAS BLVD., ERMITA, Manila, at naayon sa Artikulo IV, Sec. 20, ng ating Saligang Batas, ikaw ay may karapatang tumahimik, na ang lahat na sasabihin mo dito sa imbestigasyong ito ay maaring gamitin laban sa iyo sa alinmang hukuman dito sa Pilipinas; na ikaw ay may karapatang magkaroon ng abugado; na kung wala kang ibabayad at kung gusto mo ng abugado ikaw ay bibigyan ng isa, ano ang masasabi mo tungkol dito?

SAGOT 01:

Magbibigay pa rin po ako ng salaysay kasi ang sasabihin ko dito ay katotohanan lamang."

Simeon Dilao was then a 20-year old, out-of-school youth, who had just reached second year high school. Once, he was a drug addict. In the words of the trial judge, he was "suffering some defect which thus restricts his means of action, defense or communication, with his fellow beings, because his left eye is blind." Was he, then, in a position to waive a right which in the first place, he was not made to understand? That the accused did not have the slightest notion of the import of the warning given him, is obvious from the unresponsive answer to question 01.

In all appearances, the advice given by Jalandra was nothing but a formality, an empty ritual. To the investigator, it was a lip-service compliance with what was ordinarily expected of him. To the person investigated, it was but another question, perfunctorily calling for a response.

It cannot be said that Simeon Dilao had intelligently, voluntarily and willingly waived his rights, as otherwise maintained by the prosecution. The statement, Exh. "C", is perforce, inadmissible, according to Article IV, Sec. 20 of the 1973 Constitution.

Setting aside momentarily, the fact that there was no intelligent and effective waiver on the part of Simeon Dilao, the extrajudicial statement, Exh. "C", would still be inadmissible for other reasons.

On the strength of the testimony of Patrolman Jaymalin (the policeman who arrested and investigated Dilao in Precinct 5), that no force or compulsion was exerted on the accused; and, on a finding that the statement was full of details, believed to have been supplied by the accused alone, the trial court held that the statement was voluntarily executed by the accused.

It will be noted, however, that Jaymalin testified only as to the period covering the arrest of the accused between

3:00 and 4:00 o'clock in the morning of November 13, 1974, and his detention in Precinct 5, until turned over to a certain Patrolman Evangelista at 6:00 o'clock that same morning at the police headquarters. It appears that Patrolman Jalandra received custody of the accused from Evangelista, and made him execute a statement at around 9:30 in the morning. How can Jaymalin say that no force was used on Dilao, if he relinquished custody of the accused to another policeman (Evangelista) who was not even presented in court to support Jaymalin's testimony? Certainly, Jaymalin's testimony cannot cover the time when he left Dilao in the police headquarters from 6:00 o'clock that morning and when Dilao was made to execute Exhibit "C". It will be recalled that it was not Patrolman Jaymalin who took Exhibit "C" but Patrolman Jalandra. It may be asked: if Dilao was brought to Precinct 5 by Jaymalin and investigated there as early as 4:00 o'clock that morning, why was Exhibit "C" taken only at around 9:30 o'clock, and by another investigator?

One of the accepted signs of voluntariness of an extrajudicial confession, is when it is replete with details which could have been supplied by the confessant alone. Needless to say, this presupposes that the confessant was himself the perpetrator for otherwise he would not be in a position to supply the details.

In this case, however, even a superficial reading of the statement would show that the details of the crime allegedly recited by Dilao, do not dovetail with the evidence of the prosecution. The statement can well refer to another robbery, with different circumstances of time, persons and events. Thus, it appears from Dilao's statement that the robbery took place at 9:00 o'clock in the evening of November 10, 1974; that the victims were four women and a male companion who were then walking along the seawall; that "Bert" (Roberto de Joya) accosted one of the women, and "Boy Ruths" (Ernesto Echevarria) attacked the man; that "Edmund" (Cenon de Joya) took the jewelry of the women, and that the man fought back "Boy Ruths", and the latter stabbed the man.

The mistaken reliance by the trial court on the testimony of Patrolman Jaymalin, and on the so-called details of the statement, casts doubt as to whether or not the statement was voluntarily executed by the accused. We are left with no alternative, but to resolve the doubt in favor of the accused.

In view of the inadmissibility of Exhibit "C", there should be other clear, strong and convincing evidence showing that Dilao was in fact present at the time and place of the robbery, and had in fact participated in it. To be considered are the testimony of Lolita Millare, Josefina Carbon and Juanito Abella.

During the trial, Lolita Millare identified Dilao as one of the culprits. She testified that she recognized Dilao, who with co-accused Roberto de Joya and another person whose name she did not know, held at bay Auddie Venzon. She further said that she saw Simeon Dilao on November 13, 1974, at the police headquarters. She did not however, identify him to the police, because Dilao was already executing a statement.

On account, however of Lolita's declaration in her pre-trial statements (Exh. "1" and Exh. "2", as set forth above), substantially to the effect that among the three or four persons who held them up, she could recognize only the person who grabbed her, i.e., Echevarria, Lolita's testimony that she recognized Dilao as one of those who attacked Auddie Venzon, was successfully impeached by Dilao's counsel. Her lame excuse that she was still "under tension" when she gave her statements to the police is not a satisfactory explanation for her contradiction.

Thus, a cursory reading of the decision appealed from, would show that even the trial court did not at all consider Lolita's assertion that she recognized Dilao. As it was, what could have been a direct evidence against Dilao was correctly set aside; instead the trial court took into account the following:

"The statement of Dilao is corroborated by the testimony of Lolita Millare that Echevarria or Boy Ruth was the robber who came from behind, pinned her neck with his right hand and poke a knife on the left side of her neck held by his left hand and then took her wrist watch. This testimony of Millare cannot be doubted because on

November 11 at around 1:40 p.m., the day immediately following the incident, she already gave to the police her statement (Exhibit 1-Dilao) wherein she spontaneously narrated that she cannot identify the other robbers but she could identify the robber who poked at her (Question and Answer Nos. 13 and 14, Exhibit "1-Dilao"). So when Echevarria was arrested and brought to her on November 13, 1974, at 3:00 p.m. she spontaneously identified him as the person who pinned her neck and poked a bladed weapon at her (Question and Answer No. 12, Exhibit "2-Dilao")." (Expediente, Vol. II, p. 75.)

At this point, however, there is no longer any statement to which Lolita's testimony could relate; Dilao's extrajudicial statement, Exh. "C", having been found to be inadmissible. Standing alone, it will be noted that Lolita's testimony had nothing to do with Simeon Dilao, but with co-accused Ernesto Echevarria. In the absence of proof of conspiracy between Dilao and Echevarria, Lolita's testimony was admissible only against Echevarria, but not against Dilao.

We are left to contend with the testimony of Josefina Carbon and Juanito Abella. Josefina's testimony, to the effect that she saw Simeon Dilao, Ernesto Echevarria, Roberto de Joya and another person, hold up Lolita Millare and Auddie Venzon, was aimed to corroborate Lolita Millare's account of the robbery. Juanito's testimony to the effect that before the robbery he saw the three accused and a certain "Edmund" or Cenon de Joya, sit on the seawall in front of the Aristocrat and that he saw them again while being pursued by a man after the robbery, was aimed to provide a circumstantial evidence not only against Dilao but against the other two accused as well. But inasmuch as Josefina Carbon and Juanito Abella testified on the collective participation of the three accused, it is essential that mention be made of their testimony against one of the accused (Roberto de Joya) who was acquitted by the lower court.

It is significant to note that the testimony of these witnesses with respect to Roberto de Joya was found by the trial court to be unreliable, thus:

"With respect to Josefina Carbon, her testimony that she saw de Joya, her classmate, seated on the seawall almost in front of the Aristocrat Restaurant with his three companions and that he was the one who pinned the neck of Venzon and finally stabbed him cannot also be given credence in view of the absence of a written statement taken by the police on November 11, 1974 despite the fact that she was then available. No reason was given by the prosecution. She is a very important witness to be ignored by the police in their investigation right after the incident had she really identified de Joya or any of the accused. The probability, therefore is strong that her statement was not taken by the police whatsoever because she cannot identify any of the robbers or that it was taken but was not presented because it would contradict her testimony on the witness stand. But what intrigues this court is the failure of the prosecution to produce the handwritten statement claimed by Carbon to have been given by her on November 11, 1974 in the police headquarters in the presence of Millare, Flores and Fortez. Such statement is very material because it will show spontaneity of the declaration of Carbon. The fact that it was not presented or its non-production satisfactorily explained shows that if presented it would be adverse to the prosecution for 'evidence wilfully suppressed will be adverse if produced.' (Rule 131, Sec. 5 (e), Rules of Court.) The manifestation of the prosecution that Det. Avelino Evangelista who is in possession thereof is sick is flimsy. The probability therefore is that Carbon in her suppressed handwritten statement did not identify any of the accused or that she could identify any of them if she sees them again." (Expediente, Vol. II, pp. 91-93.)

The decision continues with respect to Juanito Abella's testimony, thus:

"The same is true with Juanito Abella. His claim that he saw also de Joya that evening cannot be considered. He too, like Millare is too important a witness to be ignored or not to be investigated by the police." (Idem.)

Parenthetically, Lolita Millare's testimony that de Joya stabbed Auddie Venzon was not believed by the trial court

apparently because of her declarations in Exhs. "1" and "2" that she could recognize only the person who attacked her, namely: Echevarria.

And so the trial court concluded:

"All told the testimonies of Millare, Carbon and Abella are merely afterthoughts to implicate de Joya in order to strengthen his implication in the confession of Dilao. But it has been held that 'where the prosecution witnesses, immediately after the killing, did not inform the authorities that the author of the killing was the accused, this circumstance raises grave doubts as to the veracity of their statement that they saw the accused on the night the crime was committed. Indeed, reasons exist for an impartial observer to say that said witnesses crossed the boundaries of credibility.'" (citation omitted). (Idem.)

Considering that the testimony of Josefina Carbon and Juanito Abella (and even Lolita Millare) against Roberto de Joya, had the same import as their testimony against Simeon Dilao, there seems to be no cogent reason why the trial court's finding as to the unreliability of their testimony as regards to Roberto de Joya, was not equally applied to Simeon Dilao.

In the final analysis, the contention of Simeon Dilao that his conviction was based mainly on the extrajudicial statement, Exh. "C", is well taken. There appears no other evidence, direct or circumstantial upon which his conviction may be based. For this reason, his alibi acquires commensurate strength. The accused cannot be convicted on evidence which independently of his alibi is weak. For the rule that alibi must be satisfactorily proved was never intended to change the burden of proof in criminal cases, i.e., that the prosecution must prove the guilt of the accused beyond reasonable doubt for otherwise we would have the absurd situation where an accused is placed in a more difficult situation where the prosecution's evidence is vague and weak than where it is strong. (People v. Baquiran, L-20153, June 29, 1967, 20 SCRA 451.)

It follows that the accused Simeon Dilao is entitled to an acquittal, his guilt not having been proved beyond that moral certainty, sufficient to support conviction in an unprejudicial mind.

The case of Ernesto Echevarria is altogether different.

He was convicted on the sole testimony of Lolita Millare, as these excerpts from the decision appealed from would show:

"On the liability of Echevarria, it is worthy repeating that his complicity was established by the testimonies of Lolita Millare that he was the one who came from behind, pinned her neck with his right hand and poked a weapon on the left side of her neck held by his left hand; and he was even the one who took her wrist watch. The testimony of Millare, a 20-year old student of medical technology was given in a very spontaneous and categorical manner with marked fluency and ease especially in the identification of Echevarria. She never hesitated or wavered for a moment in identifying Echevarria. The fact that she was so sure of the very person who pinned her neck is again clearly shown by her statement given on the following day, November 11, 1974 at 1:40 p.m. wherein she narrated that she could not identify the other robbers but she can identify the one who pinned her neck if shown to her again. And true to what she declared on November 11, 1974, she immediately identified Echevarria when the latter was presented to her on November 13, 1974 at 3:00 o'clock in the afternoon. This is shown in her statement executed on that very day (Exhibit "2 - Echevarria).

"The fact that no evil or bad motive was presented on why Millare will implicate Echevarria if such were not the fact shows again the sincerity of her testimony for a prosecution witness' lack of motive to make a false imputation against the accused strengthens the credibility of the said witness (People vs. Amiscua, L-31238, Feb. 27, 1971; People vs. Obngayan, L-29201, January 31, 1974). This is especially true in this case where as observed by the court, Millare is that sweet and shy type of maiden encrusted by courtroom experience. She is not definitely one who is given to perjury." (Expediente, Vol. II, pp. 86-88.)

Before us, the credibility of Lolita Millare is put in issue. It is contended that it was improbable for her to have seen and recognized her attacker considering that "she was pinned from behind, and with a weapon like an 'icepick'" and that she was scared; and that there were shadows cast by coconut trees planted along the seawall that made recognition impossible. It is likewise contended that no one testified to corroborate Lolita's testimony.

Echevarria's contention is correct, to the extent that Lolita's testimony was uncorroborated. We do not find the testimony of Josefina Carbon and Juanito Abella (whose credibility was also assailed by appellant), to be convincing for the same reasons that we found them unconvincing as to Simeon Dilao.

However, a look at the place of the robbery and the conditions of light and view in the evening of the incident, and the manner Lolita was accosted by the attacker gives credence to her assertion that she had ample opportunity to see and recognize her assailant. The promenade (along the seawall), in front of the Aristocrat Restaurant is lighted by mercury lamps on posts evenly spaced from each other. This was confirmed by the trial court when it conducted an ocular inspection of the place at 7:15 o'clock in the evening of June 25, 1975. The uncontradicted testimony of the prosecution was that the mercury lights were ablaze on the evening of the incident. The trial court also confirmed that there are coconut trees planted in the area. The uncontradicted testimony of Lolita on this point is that in the evening of the robbery there were fewer coconut trees than there were on the night of the ocular inspection. In fact, she said that there were still holes (apparently for transplanting coconut trees) and that Audie Venzon almost stepped into one of them. Considering the bright glare of the mercury lights, the impression is that whatever shadows the leaves of the trees might have cast, they were not sufficient to produce pitch darkness so as to prevent recognition. The trees were after all ornamental and not intended to make a forest out of the promenade.

True, Lolita Millare was surprised from behind. But, this does not mean that she did not have a chance to look at her attacker. She stated that, with a bladed weapon pressed at her neck, she was forced to sit on the seawall. And, as she sat, the culprit stood on her left side, his weapon still pressed on her neck. That she saw the face of her mauler was made emphatic on cross examination by counsel for appellant Echevarria:

"ATTY. FLORES:

Q:

It was only Audie, who, according to you - - -

A:

Who kept on struggling, kicking.

Q:

You mentioned that you were sitting down and Audie was made to sit beside you. Were you already in that position when you were pinned down?

A:

My neck was still pinned even when I was already seated, sir.

Q:

And the one who pinned you down was always at your back all the time?

A:

Beside me, sir (witness demonstrating that the hold-upper who pinned her neck was on her left side). And that

man pinning my neck even told Venzon to give it as Venzon was struggling.

Q:

How about the others, were there any conversation or did they also talk?

A:

No, sir.

Q:

Now, after you were held-up, and according to you, Venzon fell down, was that the time the hold-uppers ran away?

A:

Yes, sir. After Audie fell down, the hold-uppers ran away.

Q:

Now, from the time you were first held-up by the neck up to the time the hold-uppers ran away, what was the lapse of time?

A:

I cannot calculate, sir.

Q:

Estimate only?

A:

I cannot estimate. It was fast, sir.

Q:

Did you notice what were the clothes worn by the person who pinned you down?

A:

I did not notice, sir.

Q:

Do you know what was the weapon with which you were poked with?

A:

It was like an icepick, sir.

Q:

How long was it?

A:

About five (5) inches, sir.

Q:

With what hand did he poke you, with what hand?

A:

With the left hand, sir.

Q:

Did you look at the face of the man who poked you while seated and then he told Venzon, "Pare, better give it"?

A:

I cast him a glance, sir.

Q:

At what side did you cast a glance? At your right or at your left?

A:

Left side, sir.

Q:

How long did you turn your head? Was it just turned like that?

A:

I just glanced without turning my head, sir.

Q:

And what was the position of the face of the one who was holding you up, who was pinning you, was that on the same side as you or slightly at the back of you?

A:

His face was towards Audie, sir."

(TSN, pp. 389-393.)

In fact, in her statement of November 11, 1974, (Exh. "1"), she categorically declared that among those who held them up, she could recognize only the culprit who accosted her. This statement, with reference to this particular point, may well be deemed part of her testimony. This is very important when viewed in the light of the circumstances when it was made. She gave the statement in the morning following the robbery and after she had seen the body of her deceased boyfriend in the morgue. Animated by strong attachment to the deceased, she could have said that she could recognize all the culprits, more so those who attacked Auddie Venzon. Instead, she limited herself to the one who actually molested her. To our mind, this reflects not only spontaneity but also candor on the part of Lolita. This is bolstered by the fact that on November 13, 1974, she reiterated the same declaration in her statement, Exh. "2" and identified Echevarria in a police line-up of some 20 persons.

That Lolita was unable to describe her assailant to the police, when asked by the latter in Exh. "1", does not detract from the veracity. Recognition and description are different processes that do not necessarily go together. Description presupposes a facility of communication that many persons do not possess. (People vs. de Roxas, No. L-16947, November 29, 1962, 6 SCRA 666.)

Lolita was herself a victim in the robbery. The natural tendency of a person in her position is to attempt to recognize the robber. That Lolita recognized and positively identified Echevarria as the person who grabbed her and forced her to sit down on the seawall and took her wrist watch, constitute direct evidence with respect to which no inference need be made as to Echevarria's guilt. It is of no moment that Lolita's testimony against Simeon Dilao is unreliable there being nothing in the record that can impeach her credibility as to Echevarria.

It thus, follows that Echevarria's defense of alibi cannot prevail over the positive identification made by Lolita Millare, whom the appellant himself victimized. To our mind, his guilt has been proved beyond reasonable doubt.

Ernesto Echevarria was convicted of robbery with homicide. On the trial court's finding that "Echevarria and his companions suddenly came from behind (Lolita Millare and Auddie Venzon) pinned their necks and when Venzon resisted, he was stabbed," the aggravating circumstance of treachery was appreciated against Ernesto Echevarria. Hence, the death penalty. We agree. But even if treachery is said to be absent, the aggravating circumstance of abuse of superior strength, if not also nocturnity, would still be present. There was abuse of superior strength because there were four malefactors of whom two were armed.

WHEREFORE, the judgment appealed from is hereby modified in that appellant Simeon Dilao is acquitted because his guilt has not been proved beyond reasonable doubt and modified with respect to Ernesto Echevarria on the penalty to reclusion perpetua for lack of the required number of votes. Costs de oficio.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur. Fernando, C.J., I vote for reclusion perpetua as for as appellant Echevarria is concerned and acquittal for appellant Dilao.

Teehankee, J., I vote for the imposition of reclusion perpetua on appellant Echevarria and concurs in the acquittal of appellant Dilao.

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