

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAN PROVO, ET AL., DEFENDANTS, JOSE MESINA, DEFENDANT-APPELLANT.

G.R. No. L-28347. January 20, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Defendant Jose Mesina seeks the reversal of a decision of the Court of First Instance of Tarlac, the dispositive part of which reads:

"WHEREFORE, on reasonable doubt, the accused PAN PROVO and LEONARDO DAVID are ACQUITTED of the crime charged, with costs de officio. However, PAN PROVO should not be re-leased from detention because of the pendency of Criminal Case No. 2190 of this Court wherein the said accused is one-of those charged for Murder. With reference to LEONARDO DAVID, his immediate release is ordered unless his confinement is warranted by some other legal cause.

"As for the accused JOSE MESINA, the Court finds him GUILTY of the crime of Murder punishable under Article 248 of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of reclusion perpetua; to indemnify the heirs of the victim Matignas Serrano in the amount of TEN THOUSAND PESOS (P10,000.00); and to pay the costs. The Court has imposed the penalty in its medium period instead of the maximum penalty of death because the aggravating circumstance of nighttime and use of superior strength alleged in the information have already been absorbed in the qualifying circumstance of treachery."

On October 9, 1958, shortly after dusk, Matignas Serrano, a security guard of the Clark Field Air Base, was forcibly taken away by five men from his guard post at Fish Hawk No. 1, locally known as "Pisok", at Bamban, Tarlac, where there is a cement vault, about 1-1/2 meters by 2 meters at its base and about 2-1/2 meters in height, with an iron door which is padlocked. There are electric wires, on top of the vault, connected with the wirings running southward from wooden transmission posts on both sides of said vault.[1] His dead body was found, on October 11, 1958, in a sugarcane plantation near a wooded area, known as Sapang Bituka, not far away from said post, with fractured "cervical vertebrae, right mandible, and right baso-frontal bones." On December 2, 1958, a complaint was filed accusing herein appellant Jose Mesina, together with John Doe, Peter Doe, Richard Doe and William Doe, of kidnapping with murder. Soon thereafter, the corresponding information was filed with the Court of First Instance of Tarlac charging Jose Mesina and Leonardo David, alias Benaring, with the aforesaid crime. Still later, the information was amended to include Pan Provo as one of the accused.

The main evidence for the prosecution against Mesina consisted of the testimonies of Benita Mayuyu, Anastacio Serrano, Apolonio Gilbert, Kudiaru Laxamana and Emilio Provo, and Exhibits C and E. The prosecution, likewise, introduced the testimony, among others, of Robert Armstrong, superintendent of the police, at the Air Base, which is partly in Camp O'Donnell, province of Pampanga, and partly in Bamban, Tarlac.

Armstrong testified that, in addition to a private road therein, the Air Base used to maintain its communications

with Camp O'Donnell by radio, as well as thru underground cables, about two (2) inches in diameter, containing around 900 wires, for the protection of which and other property within the base the U. S. Government had engaged as sentries the services of former members of the Philippine Scouts and members of the Non-Christian tribe known as "Baluga", among-whom was the deceased Matignas Serrano, whose guard post was on a small plateau, on top of a hill, about 600 feet high. Early in 1958, the communication officer of the Air Base had reported difficulty in communication, which was found to be due to the disappearance of a portion of said cables, about 3 miles in length - apart from the disappearance of bridges and culverts - owing, presumably to pilferage. In the evening of October 9, 1958, Anastacio Serrano, another Baluga sentry, reported that his brother Matignas Serrano had been missing from his post at "Pisok", with his carbine, since 6:00 o'clock that evening. The next day, a posse searched in vain the vicinity of "Pisok". On October 11, 1958, the body of Matignas was found in a state of decay at Sapang Bituka, not far away from Pisok. The carbine and ammunition issued to him were missing. Armstrong further said that Pan Provo is another Baluga chief in the region; that he (Armstrong) had seen Pan Provo and Mesina together on several occasions; that Pan Provo and Mesina are related to each other; and that once Pan Provo asked him (Armstrong) to engage the services of Mesina as security guard.

It appears from the testimonies of Anastacio Serrano, Benita Mayuyu, Apolonio Gilbert and Kudiaru Laxamana that, on October 9, 1958, at about 9:00 a.m., Mesina went to the house of Anastacio Serrano, at Baluga Village, accompanied by a man whose face was partly covered; that, presently, Apolonio Gilbert arrived, also, at said house of Anastacio Serrano, to ask for some rice; that the three (3) visitors took their lunch in that house; that, soon thereafter, Mesina urged Anastacio to let him get some "pipes", referring to the electric cable lines, guarded by Matignas Serrano near Pisok, within the Air Base; that Anastacio answered that he could not grant Mesina's request because the "pipes" (cables) belonged to the Americans; that, thereupon, Mesina remarked: "If you do not know how to get along with people, you will not live long"; that, later, at about 3:00 p. m., Mesina and the unknown man, who came with him, departed stating that they were in a hurry because they had companions waiting for them at Pisok; that, just after sunset that evening, Benita Mayuyu went to the post of her husband at Pisok and gave him a flashlight he had bade her to bring; that, soon after, five (5) men, four (4) of them masked, came; that the unmasked man was Mesina, whom she knew long before, and who asked a cigarette from Matignas; that, as the latter extended his hand holding the cigarette, Mesina grabbed the rifle sling on his (Matignas') shoulder, whereas the four (4) masked men held him, and, with the help of Mesina, dragged him down the hill, and disappeared in the darkness at the foot thereof; that she, thereupon, screamed for help; that as her nephew Berting Sibal, whose house was not far away, came, she bade him to inform her brother-in-law, Anastacio Serrano, that Matignas had been kidnapped; that when Anastacio Serrano came, later that evening, he found Benita crying miserably; that he gathered from her that Matignas had been taken away by several men, and since, in view of her condition, he could not get from her the details of the occurrence, he proceeded to the Air Base and reported the matter; that the officer then on duty therein told him (Anastacio) to go home and come back the next day with a search team, which he did; that upon learning of the disappearance of Matignas, on October 10, 1958, Kudiaru Laxamana, another security guard of the Air Base, went, with several persons, to Pisok, where Benita Mayuyu confirmed the news that Matignas had been kidnapped by several persons and told him that one of them was Jose Mesina; that, as Laxamana and others proceeded down the hill to search for Matignas, following the footprints visible on the ground, Mesina came and joined the search; that the afore-mentioned footprints led to a sugarcane field, at a given point of which the footprints were divided into two (2) sets, one leading to the left and another to the right; that when the search team was about to take the latter direction, Mesina persuaded the members of the Team to follow the footprints leading to the left; that, heeding Mesina's advice, the search team followed this lead but failed to locate Matignas; that when the team, together with Mesina, returned to Pisok, Anastacio Serrano was there; that Benita Mayuyu then said that Mesina should not be allowed to go free "because he was the one who kidnapped my husband"; that, thereafter, Anastacio

brought Mesina and the others to the office of the Provost Marshal; and that, one Lt. Ocampo, an officer therein, referred them to Camp Olivas, upon the ground that the event had taken place beyond his territorial jurisdiction.

In an affidavit, Exhibit C, subscribed and sworn to before the Justice of the Peace of Angeles, Pampanga, Leonardo David stated that, when he was about to fetch his carabao in the vicinity of Pisok, early in the evening of October 9, 1958, he met his brother, Federico David, alias "Pedring", who was accompanied by Jose Mesina and Manuel Zamora, alias "Maning"; that "Pedring" bade him to join the group, which he did, in going to Pisok; that as Matignas Serrano refused to allow them passage therein, "Pedring" held Matignas, snatched his carbine, and, with the assistance of his companions, dragged him away from his guard post; that Matignas was brought to a place in Sapang Bituka, under a big tree, where "Pedring" gave him fist blows and then hit him on the head with the butt of the carbine taken away from him; and that Matignas then fell down unconscious.

Exhibit E is the transcript of the testimony given by Emilio Provo before Fiscal Fernando M. Bartolome of Tarlac, at the pre-liminary investigation conducted by the latter, on July 16, 1959. Emilio Provo then testified, among other things, that Mesina is well known to him, Mesina having visited frequently Emilio's father, Pan Provo; that in 1958, his father was engaged in supervising the digging of cable lines and culverts and the dismantling of bridges in the Clark Air Force Base - with the assistance of many persons, among them Emilio Provo and Jose Mesina; that the cables, culverts and I-Beams thus obtained were sold to Domingo de Vera and a Chinaman in Mabalacat, Pampanga; that on October 9, 1958, just after twilight, Emilio and Pan Provo went to the house of Jose Mesina, whom the latter invited to go to Pisok; that on the way thereto, Federico David, alias "Pedring", and Leonardo David, alias "Benaring", joined them; that before reaching Pisok, Emilio's companions said that they would get Matignas Serrano, the guard in that place, "because of the tubes" they were taking "and that one that was enclosed in a tank which were being guarded by Matignas Serrano"; that as they reached Pisok, Pan Provo called Matignas Serrano; that as Matignas stepped out of his guard post, Mesina wrested the carbine slung on the former's shoulder; that Pan Provo and Federico and Leonardo David helped Mesina drag Matignas down the hill; that, as Matignas offered resistance, Mesina, Pan Provo and Federico David boloed him at Sapang Bituka, where Matignas was left, already dead; and that when they learned that the body of Matignas Serrano was found subsequently, Emilio Provo and Pan Provo fled to Pulong Calara, in the mountains.

Although Emilio Provo admitted having given this testimony, he denied, before the lower court, any knowledge about the truth thereof and affirmed that he gave said testimony upon instructions of Angel Manipon and one Panolapi, who had assured him that he would, thereafter, be free.

Appellant denied having performed any of the acts imputed to him by the prosecution. The defense would, also, have the Court believe that on October 9, 1958, Mesina was in his house at Barrio San Nicolas, Bamban, Tarlac, up to 5:00 o'clock p. m.; that, after taking an early dinner, he attended the religious service, which lasted up to 8:00 p. m. , at the Iglesia ni Cristo, to which he is affiliated, in that barrio; that, at about 8:30 p.m., he and Ruben Villas attended a barrio meeting called by barrio lieutenant Remigio Ocampo; that, upon adjournment of the meeting, around 10:00 p. m. they returned to the house of Mesina and then went to bed.

As indicated above, the trial court acquitted Pan Provo and Leonardo David, upon the ground of reasonable doubt, but convicted Mesina of the crime of murder, and sentenced him accordingly, whereupon Mesina interposed the present appeal, contending that the trial court erred: (1) in relying upon the testimony of Benita Mayuyu; (2) in giving credence to the testimony of Anastacio Serrano, Apolonio Gilbert and Kudiaru Laxamana; (3) in admitting Exhibits C and E as evidence; and (4) in not believing the evidence for the defense.

Under the first assignment of error, the defense assails the credibility of Benita Mayuyu's testimony, upon the ground that she had given conflicting versions, in that at one time she said it was dark, between 8:00 and 8:30

p.m., when her husband was taken away by several men, one of whom was Mesina, and, at another time, stated that the occurrence took place just after twilight, in a seeming effort to explain how she could recognize said appellant; that in the evening of October 9, 1958, she did not tell either her nephew Berting Sibal or her brother-in-law Anastacio Serrano, that she had recognized appellant among the kidnappers of Matignas; that she, likewise, failed to convey such information to Anastacio Serrano, as soon as he arrived at Pisok the next Morning, not even when Mesina then showed up in that place; and that neither had she revealed his participation in the commission of the crime charged, while they were going to the office of the provost Marshal on October 10, 1958.

At the outset, it should be noted that Benita Mayuyu is a member of the Non-Christian tribe known as Baluga. As such, she had grown up and lived in a primitive condition, devoid of any education whatsoever. She is illiterate and cannot read, not even a time-piece. Although Matignas had been snatched by his kidnappers at 8:00 or 8:30 p. m., she explained that this was a mere estimate of the time, which may be mistaken, and that the event had happened "just after twilight." It is well to remember, in this connection, that, in response to her screams for help, her nephew Berting Sibal came; that she bade Berting Sibal to forthwith inform her brother-in-law, Anastacio Serrano, of the kidnapping of Matignas; and that, after verifying this fact, Anastacio Serrano immediately reported to the authorities that Matignas "had been missing with his carbine since 1800 hours x x x 9 Oct. 58, " as recorded in the "Daily Journal SPL Police Operation" of the Air Base. In other words, Anastacio Serrano had estimated the time of the disappearance of Matignas to be about 6 p.m. Considering that Anastacio is more enlightened than Benita Mayuyu and that Matignas had been snatched from his post "just after twilight," there is every reason to believe that Anastacio's estimate of the time of the occurrence is more accurate than that of his sister-in-law. In fact, Benita testified that, at 5 p.m., she brought the dinner of Matignas, who, after taking the same, bade her to bring his flashlight, whereupon she picked it up at their hut, barely 70 meters away from Pisok, and then brought the flashlight thereto, at about 6 p.m. The occurrence took place shortly thereafter.²

Then, too, "Pisok" is in a small plateau, then cleared of grass, on a hill about 600 feet in height. Although, for lack of electric lights in the vicinity, it was already dark, particularly at the foot of the hill, it is a fact that Pisok was at the top thereof; that twilight had been over only shortly before; that the hut of Matignas and Benita was barely 70 meters away from Pisok;³ that Benita's eyesight had already been adjusted to the existing conditions when" she went to Pisok bringing a flashlight to Matignas; that her ability to see and recognize persons and objects was enhanced by the circumstance that she had been with Matignas several minutes before the arrival of his kidnappers; that the glow of the light at the Air Base proper, although 5 to 6 kilometers or miles away, rendered the top of the hill, where Pisok was, less dark than the area at the foot thereof; and that she was beside her husband when the malefactors snatched him. We are satisfied that the surrounding circumstances were not such as to render it impossible, or even improbable, for Benita to identify a person whom she knew well, like Mesina, had he been with the kidnappers, unmasked. Indeed, Kudiaru Laxamana learned from Benita, on October 10, 1958, that she had recognized Mesina among the offenders, the night before. What is more, Mesina testified that, in a conversation he had with her on October 10, 1958, Benita said she had recognized one of the kidnappers. Benita had no possible reason to inculcate him - if he were not really the unmasked kidnapper - and thereby exculpate the true culprit.

Let us now consider appellant's argument based upon Benita's failure to forthwith reveal the participation of Mesina in the commission of the crime. It will be recalled that, as soon as Matignas and his kidnappers had disappeared in the darkness at the foot of the hill, Benita hurried down another part of the hill, screaming for help. When, soon thereafter, her nephew Berting Sibal appeared, she bade him to inform Anastacio Serrano that Matignas had been kidnapped. She did not tell Berting Sibal the details of the occurrence, for there was vital urgency of rescuing Matignas and, hence, she did not wait for Berting to approach her, but conveyed her

message to him as soon as he was within shouting distance.

When Anastacio Serrano came, it was sometime later. Meanwhile, there was nothing she could do to save Matignas. It is not unusual for female members of our masses, particularly those least enlightened, to express their sorrow or desperation by crying loudly and otherwise acting in a frenzied or hysterical manner. An intense lamentation and expression of grief for a misfortune, when unchecked soon enough, is bound to result in a condition of numbness, under which the mind becomes some-what dull. Under these circumstances, it is not difficult to picture Benita's plight on October 10, 1958. When Anastacio Serrano eventually arrived, she was in no condition to explain the occurrence or to do anything except lament the loss of her husband. She was in a daze, and did not clearly perceive or remember what she did, or what transpired about her. She did not converse with Anastacio Serrano when he arrived, or notice the presence of Jose Mesina, either when he first showed up that morning, or when she went to Clark Field and later to Camp Olivas. When Kudiaru Laxamana arrived later in the morning of October 10, 1958, she, however, confided to him that Jose Mesina was one of the culprits. And still later, when the search team headed by Laxamana came back empty handed, she said: "do not let this man (referring to Mesina) go free, for he was the one who kid-napped" her husband.

The first assignment of error is, therefore, untenable.

Appellant assails the testimony of Anastacio Serrano and Apolonio Gilbert upon the ground that neither had inquired about the identity of the companion of Mesina, or converse with him (Mesina's companion) when they (Mesina and his companion) allegedly went to the house of Anastacio Serrano in the morning of October 9, 1958, and stayed there up to 3:00 p. m., and that the remark of Mesina, about the short life of those who do not know how to get along with others, does not have the import the pro-secution attaches thereto.

The significance of said remark is, however, irrelevant to the veracity of said witnesses for the prosecution, who corroborated each other in connection therewith. Moreover, in the light of the fact that Mesina and the unknown person, who came with him, left the house of Anastacio Serrano, at 3:00 p. m., stating that their companions were waiting for them at Pisok; that, at about 6:00 p. m., that same day, Mesina and four (4) masked men went to Pisok, snatched the carbine of Matignas and dragged him away; and that, thereafter, Matignas was found dead, it is clear that the remark in question, made after the refusal of Anastacio Serrano to allow further pilferage of electric cables within the Air Base, was meant to be a threat to those who might obstruct said pilferage. Upon the other hand, since the man who accompanied Mesina to the house of Anastacio Serrano had his face covered with a towel, it was obvious that Mesina and he did not want his identity to be known. It was, therefore, indiscreet and useless to converse with him or to otherwise ask who he was or where he came from.

It is argued that the act of Mesina of dissuading the posse headed by Kudiaru Laxamana from following the set of footprints going to the right of the sugarcane plantation near Pisok, and of persuading the posse to track the footprints leading to the left of said plantation is "too insignificant" to implicate said appellant. This argument is manifestly devoid of merit, aside from being immaterial to the issue of credibility of Laxamana's testimony. In-deed, considering that the posse had thereby failed to locate the body of Matignas, which it would have found had it (the posse) turned right, which was the logical course to take - as Laxamana wanted to - for there were small footprints in that direction and Matignas is small, the aforementioned act of Mesina tends to show that he knew where the body was and corroborates the testimony of Benita Mayuyu to the effect that he was one of those who snatched Matignas in the evening of October 9, 1958.

It is next urged that Kudiaru Laxamana, Anastacio Serrano and Benita Mayuyu had contradicted each other, in that - according to the defense - the first said that Benita "told the search party not to allow Mesina to go free because he was the one who kid-napped her husband," whereas Anastacio Serrano affirmed that Benita "told him

about Jose Mesina only the day after they came from the Office of the Provost Marshal and when they were already at Camp Olivas," and Benita declared that "it was only when they were at Clark Field when she told Anastacio Serrano about Jose Mesina and she did not tell the same to other members of the search party. 4

The statement of Benita Mayuyu, testified to by Laxamana, was made to him, not to the search party or to Anastacio Serrano, so that no inconsistency exists between the latter's testimony and that of Laxamana. Besides, Benita did not testify that the participation of Mesina in the commission of the offense had been revealed by her to no other person than Anastacio Serrano. What she said is that no other person heard her or was present when she conveyed the aforementioned information to Anastacio Serrano. Then, too, after the ordeal of the night before, Benita did not feel well on October 10, 1958. The apprehension and the tension resulting from the failure to locate the body of Matignas on that date did not certainly help improve the situation. Hence, when she was, thereafter, brought, first to Clark Field and, then - after the usual period of waiting during the preliminary inquiries therein made - referred to Camp Olivas, she was literally and understandably groggy. When we add to this the fact that she was kept on the witness stand for five (5) days, and that she was so extensively cross-examined by several lawyers for the defense that the transcript of her testimony covered one hundred and five (105) pages, some of which are single space, it is not in the least strange that this simple, illiterate member of one of our tribes of aborigines, found herself uncertain or confused on whether her conversation with Anastacio Serrano took place at Clark Field or at Camp Olivas. Well settled is the rule that inconsistencies and contradictions incurred by an illiterate witness in the course of a lengthy examination will not affect the credibility of her testimony.⁵

One fact stands in bold relief, and that is that Benita Mayuyu had positively recognized one of the culprits and that she had so stated, from the very first moment she explained the circumstances under which her husband had been "kidnapped." This was established, not only by her testimony and that of Kudiaru Laxamana and Anastacio Serrano, but, also, by the appellant himself.⁶ In the light of the foregoing, and considering that neither Laxamana, nor Anastacio Serrano, nor Benita Mayuyu had any possible motive to falsely incriminate appellant Jose Mesina, We do not find sufficient grounds to doubt the veracity of said witnesses for the prosecution.

Referring now to Exhibits C and E, Leonardo David testified that he had acted under duress in subscribing to the first and swearing to the truth of its contents, whereas Emilio Provo affirmed that he knew nothing about the truth of his statements in Exhibit E, he having made the same upon instructions of Angel Manipon and one Panolapi, who assured him that he would thereby be set free. Furthermore, appellant maintains that, being in the nature of extra-judicial admissions or confessions, the same are admissible in evidence against its makers only, not against him.

The testimony of Leonardo David about his alleged maltreatment by the police has all the earmarks of artificiality, for he did not reveal said maltreatment, either to his own father, when the latter visited him at Camp Olivas, or to the Justice of the Peace of Angeles City, before whom he subscribed and swore to the truth of the contents of Exhibit C. Besides, his signatures on each and everyone of the three (3) pages thereof appear to have been written with a firm hand. More important still, apart from, in effect, exculpating himself therein, Leonardo David points in Exhibit C to his brother - Federico David, alias "Pedring" - as the sole killer of Matignas Serrano. The participation of Jose Mesina, as one of those who helped "Pedring" drag Matignas away from his guard post, was merely an incident in the description of the crime, as committed principally by "Pedring". Likewise significant is the fact that the latter - Federico David, alias "Pedring" - had already been killed, in an encounter with peace officers, shortly after October 9, 1958.⁷ In short, there was no reason why the agents of the law who investigated Leonardo David would resort to duress in order to secure a statement substantially favorable to him.

Exhibit E is the transcript of the questions propounded by Fiscal Bartolome of Tarlac and of the answers given by Emilio Provo at the preliminary investigation conducted by said official. Angel Manipon and Panolapi - who,

according to Emilio Provo, induced him to give said answers - did not take part in said investigation. It does not even appear that they were present when it was held. There is, likewise, nothing in the record to indicate the interest, if any, of Manipon and Panolapi in the case at bar, or that Emilio Provo had reasonable grounds to believe that they could order his release or cause it to take place.

Again, unlike Exhibit C, which depicts Federico David - alias "Pedring" - as the main culprit, the testimony of Emilio Provo in Exhibit E tends to show that his father, Pan Provo, was the mastermind, for it was he (Pan Provo) who invited Mesina to go to Pisok, and it was he (Pan Provo) who called Matignas and persuaded him to step out of his guard post. Moreover, Pan Provo took part in the act of hacking Matignas to death. As in Exhibit C, the reference to Mesina in Exhibit E was merely in-cidental to the main role played by Pan Provo. Had it been con-cocted by the prosecution in this case, the story given by Emilio Provo in Exhibit E would have, in all probability, followed a pat-tern identical to that of Exhibit C, made prior thereto, or to that resulting from the testimony of Benita Mayuyu, Anastacio Serrano and Kudiaru Laxamana. Although all are unanimous on the parti-cipation of Mesina, and Exhibits C and E are in accord that Pan Provo and Federico David had taken part, also, in the commission of the crime, these two (2) documents do not agree as regards the details of their participation therein. In short, the explanation given by Emilio Provo, for his statements contained in Exhibit E, is manifestly unworthy of credence.

As regards the admissibility of Exhibits C and E as evi-dence against Mesina, it should be noted that, although extraju-dicial confessions are in general admissible only against those who made the same, this rule is subject to an exception. As pointed out and applied in *People v. Condemena*⁸:

"Extra-judicial confessions independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as cir-cumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime."⁹

Indeed, as early as November 5, 1915, this Court had occasion to state¹⁰:

"x x x The truth of the incriminating state-ments of Miguela Sibug, Damaso Valencia's widow, in connection with each one of the said three defendants, is proved by those made by the other witness for the prosecution, Lorenzo Reyes, and by the confession, although extra-judicial, made by Faustino Mañago himself in the municipality of Hagonoy to the lieutenant of the Constabulary, Cristobal Cerquella, and to the municipal presi-dent and a policeman of the said pueblo; and this confession is worthy of credence and is admissi-ble against him, as it is likewise credible and admissible against his co-defendants, Abdon de Leon and Severino Perez, his accusation of their participation in the crime, inasmuch as the confession is corroborated both by the testimony of Miguela Sibug herself and by that of Lorenzo Reyes and confirmed by the other evidence related thereto and found in the record."¹¹

The applicability of the foregoing exception - which has been repeatedly acknowledged and applied by this Court¹² - to the case at bar becomes apparent when we bear in mind that the statements contained in Exhibits C and E were made - obviously without collusion and independently of each other - for the pur-pose of establishing the guilt of Federico David and Pan Provo, respectively, and that they corroborate one another and the tes-timony of Benita Mayuyu, Anastacio Serrano and Kudiaru Laxa-mana with respect to the fact that Matignas Serrano was dragged away from his guard post in the evening of October 9, 1958, by Mesina and several other persons - apparently for not allowing them to steal and take away electric cables from Clark Field Air Base - and then killed. Hence, said Exhibits C and E were properly admitted as circumstantial evidence tending to show the probability of the participation of appellant in the commission of said offense, as testified to by said witnesses for the prose-cution.

Needless to say, as one of the weakest defenses available in criminal cases, the alibi set up by appellant herein cannot off-set the testimony of Benita Mayuyu, who positively identified him as one of those who seized Maignas Serrano, at Pisok, in the evening of October 9, 1958, corroborated by the testimony of the aforementioned witnesses for the prosecution and by the afore-mentioned Exhibits C and E. It may not be amiss to add that Lazaro David, whose testimony was introduced by Mesina to corroborate his alibi, could not explain why he allegedly re-membered distinctly the presence of Mesina at the religious service in the Iglesia ni Cristo and the barrio meeting held subsequently thereto, in the evening of October 9, 1958, but could not remember other events of similar nature, at about that period of time. Upon the other hand, Remigio Ocampo would have us believe that Mesina arrived at said meeting in the barrio of San Nicolas around 9:00 p.m., which does not negate Mesina's presence at Pisok, at about 6:00 p.m., the latter being less than 1/2 kilometer from the barrio of Camat-sili, which, in turn, is about one-hour walk from San Nicolas.¹³

The acts proven constitute the crime of murder, qualified by abuse of superior strength, with the aggravating circumstances of nocturnity and evident premeditation, which would warrant the imposition of the extreme penalty, were it not for the lack of the number of votes necessary therefor. Except as to the indemnity, which should be increased from P10,000 to P12,000,¹⁴ We find, therefore, no reason to disturb the decision appealed from, which, as thus modified as to the indemnity, is hereby affirmed, in all other respects, with the costs of this instance against appellant Jose Mesina.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur. Barredo, J., took no part.

[1] CFI Record, pp. 385-386.

2 See t.s.n., pp. 135, 148-1950.

3 See Record of lower court, pp. 28 and 386, and t.s.n., p. 132.

4 Appellant's Brief; pp. 16-17.

5 People v. Del Castillo, L-16941, October 29, 1968; People v. Fontanilla, L-25354, June 28, 1968; People v. Rica plaza, L-25856, April 29, 1968; People v. Fontillas, L-25298, April 16, 1968; People v. De la Cerna, L-20911, October 30, 1967; See also: People v. De Gracia. L-21419; Sept. 29, 1966.

6 T.s.n., pp. 925-926.

7 See Record of the Court of First Instance, Vol. III, p. 628.

8 L-22426, May 29, 1968.

9 Underscoring ours.

10 U. S. v. Perez, 32 Phil. 163, 173.

11 Underscoring ours.

12 People v. Lumahang, L-6357, May 7, 1954; People v. Cariño, L-9580, Sept. 30, 1957; People v. Tansianco, L-19448, Feb. 28, 1964; People v. Simbajon, L-18073-75, Sept. 30, 1965; People v. Narciso, L-24484, May 28, 1968; People v. Pareja, L-21937, Nov. 29, 1969.

13 T.s.n., pp. 832, 867, 869 and 894.

14 People v. Pantoja, L-18793, Oct. 11, 1968; People v. Gu-tierrez, L-25372, Nov. 29, 1968; People v. Buenbrazo, L-27852, Nov. 29, 1968; People v. Mabaga, L-26337, July 25, 1969; People v. Pagaduan, L-26948, Aug. 25, 1969; People v. Agdeppa, L-17489, Dec. 24, 1969.

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