

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIO CRISOLOGO, ET AL., DEFENDANTS. ANTONIO TRINIDAD, DEFENDANT-APPELLANT.

G.R. No. L-23153. June 30, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

This is an appeal interposed by Antonio Trinidad from the judgment of conviction of the Court of First Instance of Abra in its Criminal Case No. 415, finding him guilty of murder and imposing upon him the sentence of reclusion per-petua, to indemnify the heirs of one of the deceased in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

On August 23, 1963, after proper preliminary investigation, Antonio Trinidad and Julio Crisologo were charged before the Court of First Instance of Abra, with the crime of double murder as follows:

"That on or about the 29th day of July, 1963, in the Municipality of Bucay, Province of Abra, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with sharp-pointed instruments, with deliberate intent to kill without justifiable motive, and with treachery and evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack and stab one, Claro Tejero inflicting upon him the following wounds, to wit:

"1. Stab wound, measuring about 1.5 cm. in length and gaping of about 1.2 cm. located at a point just below the left clavicle and about 5 cm. to the left from the midsternal line. It is directed posteriorly and inferiorly and slightly medially cutting the cartilaginous portion of the first rib on the left side together with the left subclavian artery and vein. The upper extremity of the wound was dull while the other extremity was sharp; and

"2. Incised wound, at the anterior side of left forearm, about 3 cm. in length and 0.1 cm. in width and depth, directed superiorly and medially making an angle of about 35 to 45 degrees with the horizontal axis of the body,

which wounds caused his instantaneous death, and one, Jose Paligutan, inflicting upon him the following wounds, to wit:

"1. Wound, stab, penetrating, abdomen, anterior, umbilical region, left; and

"2. Wound, chest anterior, stab, right non-penetrating;

which wounds caused his death thereafter.

"With the aggravating circumstance in the commission of the crime, in that, accused Julio Crisologo is a recidivist he having been convicted of the crime of Homicide and sentenced to suffer an indeterminate imprisonment of 2 years, 4 months and 1 day of prison correccional to 8 years and 1 day of prison mayor as

maximum and to indemnify the heirs of the deceased, Simeon Tuscano in the sum of P6,000.00"

"CONTRARY TO LAW."

On October 24, 1963, both accused were arraigned and with the assistance of their respective counsels de parte pleaded "not guilty" to the charge. After the prosecution had presented its first witness, upon request of his counsel and without objection of the fiscal, Julio Crisologo was allowed by the court to change his plea to that of "guilty" to double homicide only. The information was thus read again to accused Julio Crisologo already with the charge reduced to double homicide and so, he pleaded "guilty", and upon request of his counsel, he was allowed to testify in order to prove one mitigating circumstance, presumably drunkenness.

After the trial, which the court a quo apparently held as to both accused, notwithstanding Crisologo's plea of guilty, as aforesaid, the court found the two accused separately liable for their individual acts in causing the death of Claro Tejero and Jose Paligutan and held Crisologo to be guilty of homicide for the death of Claro Tejero and of slight physical injuries for inflicting a non-fatal wound upon the other deceased, Jose Paligutan, and Trinidad to be guilty of murder for the death of the same Jose Paligutan. The pertinent portions of the decision, dated January 14, 1964, read thus:

"The act of conspiracy between the accused Julio Crisologo and Antonio Trinidad in the commission of the crime not having been proven by the prosecution, each accused is responsible and liable, under the law, for his own act and deed.

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused Julio Crisologo guilty beyond reasonable doubt of the crime of homicide for the death of Claro Tejero with the aggravating circumstance of recidivism, without any mitigating circumstance to offset the same the plea of 'guilty' could not be considered by the court (People vs. Noble, 77 Phil. 93), and sentences him to suffer an indeterminate penalty of from Ten (10) years and One (1) day of prison mayor as minimum to Seventeen (17) years, Four(4) months and One (1) day of reclusion temporal as maximum, to indemnify the heirs of the deceased in the amount of P6,000.00 and to pay the costs; for having stabbed and inflicted a wound on the body of the deceased Jose Paligutan which wound have not caused his death, the accused Julio Crisologo is guilty beyond reasonable doubt of the crime of slight physical injuries (People vs. Amara, et al., [CA], 36 O.G. 3462), and he is hereby sentenced to an imprisonment of Thirty (30) days of arresto menor (Art. 266, par. 1 of the Penal Code).

"The Court also finds the accused Antonio Trinidad guilty beyond reasonable doubt of the crime of Murder for the death of Jose Paligutan, and hereby sentences him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, in view of the nature of the penalty imposed. He shall also pay the costs.

"IT IS SO ORDERED."

Only Antonio Trinidad appealed from this decision.

It appears from the evidence adduced by the prosecution at the trial that late in the afternoon of July 29, 1963, Antonio Trinidad left his house at Labon, Bucay, Abra, bound for the house of his friend, Alfredo Gonzales, to see if the latter had already arrived from Manila. On the way, he chanced upon Julio Crisologo near a culvert on the side of the road and the latter, upon learning that he was to see Alfredo Gonzalez, followed him. They found out, however, that Gonzales was not yet home; so, along with Islao Lazo, whom they encountered nearby, they proceeded farther down the road towards the south until they reached the store of Maestra Nena Pilar whereat Islao Lazo bought three bottles of gin. At this juncture, Guillermo Bernardez and one named Loreto also joined them and all together, they partook of the wine. Crisologo had about three glass-fulls while Antonio Trinidad had

one. Soon, Crisologo was drunk, and so was Trinidad in a lesser degree. As they went out, Crisologo became unruly and started to make trouble - trying to go back inside the store. His companions, principally Trinidad, were able to prevail upon him and so the group left the store, broke up and each of the members went on his way home, except the two accused who went together.

Eventually, these accused reached the crossing at Bucay, Abra, at about 8:30 in the evening. There, they saw an old friend, Flaviano Daquigan who, upon the invitation of Trinidad agreed to walk with them to Barrio Caba-ruan. As they walked along the road, Crisologo challenged everybody they met, and each time Trinidad held him. Finally, when they came upon the place where two young men, Claro Tejero and Jose Paligutan, were standing on the edge of the road, Crisologo rushed forward at the two, followed by Trinidad who tried to hold Crisologo. Coming upon Tejero, Crisologo stabbed him on the left side of his breast with a bolo or dagger about six (6) inches long. Thereafter, Crisologo turned his weapon on Jose Paligutan and stabbed him at the upper portion of the breast. The attack on Jose Paligutan was followed by Trinidad who also rushed at the boy and stabbed him with his bolo, about five to six (5-6) inches long, in the abdomen. The wounded Tejero scampered away from the place and ran the distance of about one hundred (100) meters to their house where he expired in the hands of his parents. Paligutan also ran away from his assailants. He went up the house of Pedro Gloria not far from the scene, shouting for help. Daquigan who was left about five meters behind on the road when Crisologo and Trinidad chanced at Tejero and Paligutan at the edge of the road was stunned at the occurrence; and as soon as the two victims and their assailants had left the place, Daquigan also ran home.

The Chief of Police of Bucay, Abra, rushed to the scene of the incident soon after he received news thereof. He came upon the wounded Paligutan in the hands of some people who had come to his aid at the "batalan" of Pedro Gloria's house. Finding the victim still conscious, the Chief of Police took the victim's statement (Exhibit B), which the latter subscribed and swore to before the Mayor of the town who had also gone to the place. Thereafter, Paligutan was rushed to the Abra Provincial Hospital where he died a few hours after his admission (Exh. D). Before his death, however, the Chief of Police who accompanied the victim to the hospital took his statement (Exh. C), which the latter subscribed before the Mayor who was also there with them.

At about 10:00 o'clock in the morning of the following day, July 30, 1963, Dr. Jose Buhain, a resident physician of the Abra Provincial Hospital performed the post mortem examination of the body of Paligutan. His findings were set forth in his necropsy report (Exh. D). Death was attributed to "shock and hemorrhage" due to multiple perforations in the intestines caused by the penetrating stab wound in his abdomen which was fatal. The wound on the chest was non-penetrating and was not fatal.

The defense submitted evidence consisting of the sole testimony of appellant and Exhibits 1 to 1-b Translation and 2 and 2-Translation, Exhibits 1 to 1-b Translation being statements, made by the lone eye-witness of the prosecution, which were presented for impeachment purposes, and Exhibits 2 and 2-Translation being the confession of accused Crisologo wherein he admitted that he "was the only one who killed Paligutan and Tejero" and none of his companions had any participation in said killings.

Testifying as sole witness for the defense, appellant gave the following version of what happened: In the afternoon of July 29, 1963, he saw accused Crisologo near the culvert at the edge of the street in barrio Labon, Bucay, Abra, about ten meters from his (Trinidad's) house. When Trinidad proceeded southward, Crisologo followed him. Trinidad was then on his way to the house of Alfredo Gonzales to inquire from the latter's parents if he had already arrived from Manila. From Gonzales' house whereat they were joined by Islao Lazo, the three went farther south and upon reaching the store of Icong Pilar, they bought gin. Crisologo drank three bottles and Trinidad and Lazo, one each. Here, Crisologo became drunk and when they came out of the store, he became unruly and unsheathed his bolo. He wanted to go back into the store, Trinidad held him back. After they left the

store, upon reaching a road crossing, they saw the prosecution witness Flaviano Daquigan who joined them. When they reached the store of a certain Andong, there were two persons named Felix Balneg and Siok, standing there; Crisologo wanted to stab them, Trinidad held him back; when he released him, he again wanted to stab these two, but Trinidad told them to go home already, which they did. From the store of Andong, the four went to the Bal station and then proceeded eastward. When they reached near the house of one Serafin Pasos, Crisologo rushed at two women whom they came across there; they were able to run away. After this, they reached the house or store of one Felisa Timbreza, where Crisologo again asked for a drink, but they did not give him, for which reason he wanted to make trouble, but his companions, including Trinidad, were able to pull him downstairs. As they were going out, Crisologo tried to stab the government witness Flaviano Daquigan but desisted when Daquigan asked him why he wanted to stab him. They proceeded on their way. In the words now of Trinidad:

"Q.- And what happened next after that?

A.- We were on our way but when we were near the place of Petra Duria, there were two persons standing there. He again wanted to make thrust at them but I was able to hold him back.

Q.- With what did he thrust?

A.- With his bolo, sir.

Q.- Did you recognize that two persons?

A.- I was not able to recognize them, sir, because it was night.

Q.- And what happened after that?

A.- We were on our way home and I told him, "Manong, give to me your bolo, because by accident you might hurt a person", I said to him, but he did not give me his bolo, sir.

Q.- Where did you go then?

A.- We were on our way home and I told him, "Manong, give me your bolo because you may, by accident, hurt somebody", I said, but he did not like to give to me his bolo but instead he put it inside its scabbard.

Q.- And where did you go after that?

A.- We were on our way home and I told Julio Crisologo, "Manong, give me your bolo", but he did not like to give me his bolo and he hated me also and I was able to touch the blade of his bolo and since then I went away towards him.

Q.- And towards what direction did you go next?

A.- We were on our way home but the ones who were aiding him were Islao Lazo and Flaviano Daquigan and I was behind and when I was urinating I heard somebody complaining of pain and I said, "Why manong, why manong Juling (referring to Julio Crisologo) what did you do with that person", I said.

Q.- Did he answer you?

A.- No, sir, he did not answer but when I went to hold him back, they were not there anymore.

Q.- Were you able to recognize them?

A.- No, sir.

Q.- Until now?

A.- When we arrived at Labon, I heard somebody crying. We went to visit the place where the crying originates and it was already Genaro Tejero.

Q.- What about the other one?

A.- I did not see Jose Paligutan, sir.

Q.- But did you not come to know that he was injured also?

A.- I only came to know that he was in-jured when they told me that Jose Paligutan was injured.

Q.- Previous to that, did you have any ill-feeling against Jose Paligutan and Claro Tejero?

A.- None, sir.

Q.- If you say Genaro Tejero, do you refer to Claro Tejero?

A.- Yes, sir.

Q.- Flaviano Daquigan while testifying as a witness for the prosecution said that you were the one who stabbed from the front Jose Pali-gutan, what can you say about that?

A.- At the time when I went to hold back Julio Crisologo, it was also at that time that Flaviano Daquigan and Islao Lazo saw me.

Q.- But as a matter of fact, were you the one who stabbed Jose Paligutan?

A.- No, sir." (T.S.N., pp. 43-45)

In other words, while the prosecution tried to prove that it was Trinidad who dealt the fatal stab on the de-ceased Paligutan, the defense claimed that Trinidad was not the one who did it but Crisologo. Except as to this point which, of course, is the most vital, there is no ma-terial variance between the version of the prosecution and that of the defense. Accordingly, the decision of this case must have to rest on whether or not the evidence of the prosecution as to this vital point can be said to have established its theory beyond reasonable doubt. On this basis, there are strong reasons why this Court is not con-vinced of the alleged guilt of the appellant.

To start with, the testimony of the lone eye-witness presented by the prosecution is far from being free from doubt precisely as to the said vital point of whether or not it was appellant and not Crisologo who fatally stabbed the deceased Paligutan. While at the trial, this witness did testify that he saw appellant stab the said deceased once after Crisologo had first stabbed him, it appears that when he was investigated by the constabulary authori-ties and his statement was taken by Corporal Marcos Taberdo of the 29th PC Company that same night of July 29, 1963 when the occurrence in question took place, he declared as follows:

"Q.- Who stabbed Jose Paligutan?

A.- I do not know who of the two persons who assaulted the two wounded persons, sir.

x x x x x

Q.- You stated Julio Crisologo stabbed and his companion Antonio Trinidad both assaulted the two, Jose and Clarito, what weapon did Julio and Antonio, use?

A.- I saw that Julio Crisologo was hold-ing a small sharp pointed bolo about one finger-length long; and Antonio had no weapon, sir." (Underscoring supplied.) [Exhibit 1-Translation; p. 14, Appellant's brief]

Understandably, defense counsel laid the predicate for his impeachment thus:

"Q.- You were investigated by a sergeant of the Philippine Constabulary on the same night, is that true?

A.- Yes, sir.

Q.- And at the time when you were investigated everything that happened during that incident was still clear in your mind, is that it?

A.- Yes, sir.

Q.- And the said sergeant of the P.C. asked you questions and he wrote the questions and you also gave the answers, is that it?

A.- Yes, sir.

Q.- And after everything has been written or after the questions and answers has been written, you read the questions and answers, is that it?

A.- Yes, sir.

Q.- And the sergeant asked you if those written statement were correct or not, is that it?

A.- Yes, sir.

Q.- And you told him to be all correct?

A.- Yes, sir.

Q.- And after that you were brought to the Justice of the Peace of Bucay to swear to the truth of your statement, is that it?

A.- Yes, sir.

Q.- And you claim that they were all correct and true, is that it?

A.- Yes, sir.

Q.- Now, showing to you this statement which is now found on page 10 of the record and which bears a signature and which reads Flaviano Daquigan appearing on the right margin at the bottom on the reverse side of this document, will you tell this Honorable Court if this was the written statement you gave to the investigating officer at that time?

A.- Yes, sir.

ATTY. BRILLANTES:

We ask, Your Honor, that the sworn statement be marked as Exhibit "1" for the defense of Antonio Trinidad and the translation which appears on page 11 of the record be marked as Exhibit 1-Translation.

COURT:

Mark it.

ATTY. BRILLANTES (CONT)

Q.- In this document we find the following question and which I quote: 'Q-Who stabbed Jose Paligutan? and the answer you gave was this: I do not know who of the two persons who assaulted them - Julio Crisologo and Antonio Trinidad, because there were two who assaulted the two wounded persons, sir'. Was that question asked of you and was that the answer you gave?

A.- Yes, sir.

Q.- You have just stated that this Antonio Trinidad stabbed Jose Paligutan, is that correct?

A.- I was afraid to talk at that time, sir.

Q.- No, my question is you have just stated that Antonio Trinidad stabbed Jose Paligutan, is that it?

A.- Yes, sir.

Q.- Which of this statement is cor-rect, that you did not see or you see?

A.- My statement now is the one cor-rect, sir.

ATTY. BRILLANTES:

I asked that this portion of the statement which I have just quoted be marked as Exhibit 1-A and to be marked also in the translation as Exhibit 1-A-translation, Your Honor, for the defense of Antonio Trinidad.

COURT:

Mark them.

ATTY. BRILLANTES (CONT)

Q.- You also said in the witness stand, that you saw Antonio Trinidad having a weapon. Do you still affirm to that statement?

A.- Yes, sir.

Q.- When you made statement, Exhibit "1" this question was asked to you: 'Q-you stated Julio Crisologo stabbed and his companion Antonio Trinidad both assaulted the two, Jose and Clarito, what weapon did Julio and Antonio use?', and the answer that you gave was this: 'A-I saw that Julio Crisologo was holding a small sharp pointed bolo about one finger length and Antonio had no weapon.' Was that question asked of you and was that your answer?

A.- Yes, sir.

ATTY. BRILLANTES:

I ask, Your Honor, that the quest-ion and answer that I have just quoted be enclosed with blue pen-cil and it be marked as Exhibit 1-B for Trinidad.

COURT:

Mark it.

ATTY. BRILLANTES (CONT)

Q.- Which of these two statements is cor-rect now - that he had no weapon as you stated here in your statement Exhibit "1" or that he has weapon as you now stated in the witness stand?

A.- That is correct.

Q.- Which?

A.- That he has weapon, sir.

Q.- And why did you state here that Anto-nio Trinidad had no weapon?

A.- Because I was still afraid at that time, sir. (T.S.N., pp. 16-19)

x x x x x

Q.- Is it not true that when you were in-vestigated by Sgt. Marcos Taberdo you mentioned only Julio Crisologo as the one who stabbed these two persons?

A. - He was the one whom I mentioned be-cause I was afraid of him because there was an information going around the town that Antonio Trinidad will kill me if I mention his name, sir.

Q.- So that what you told to the investigat-ing officer was that it was Julio Crisologo who stabbed the two persons Jose Paligutan and Claro Tejero, is that it?

A.- Yes, sir.

Q.- When for the first time did you men-tion that Antonio Trinidad stabbed somebody else?

A.- During this time only because at that time I was afraid to tell the truth because of the information that was going around.

Q.- Do you know if after the incident Anto-nio Trinidad was arrested?

A.- Yes, sir.

Q.- You say that it is only here for the first time that you mentioned the name of Antonio Trinidad who stabbed on that night of the incident, is that it?

A.- No, sir, I only forgot that date.

Q.- How many days after the incident to the date when you first mentioned Antonio Trinidad to have stabbed somebody else?

A.- At a later date but I forgot the exact date.

Q.- To whom did you relate first that in-cident?

A.- Only in the house, sir.

Q.- House of whom?

A.- In our house.

Q.- Who was the person to whom you related that incident?

A.- To the grandmother and grandfather of Antonio Trinidad, sir.

Q.- And where was Antonio Trinidad then when you related that story to the grandmother and grandfather of Antonio Trinidad?

A.- He was in the presidencia, sir.

Q.- Was your testimony taken by the sergeant who investigated you?

A.- Yes, sir.

Q.- Besides these persons to whom you related the incident, did you tell it to somebody else?

A.- No more, sir.

Q.- And you did not mention that Antonio Trinidad stabbed somebody else?

A.- No, sir, I was afraid.

Q.- Did you tell that Antonio Trinidad stabbed somebody else to any person in authority?

A.- No, sir.

Q.- To whom ... I reform. So that as a matter of fact you did not tell to any peace authority with what you are now testifying before this court except today?

A.- No, sir.

Q.- You did not even tell that to the Provincial Fiscal?

A.- I told him, sir, when we were in his office.

Q.- When was that?

A.- Maybe that was on the 8th of November.

Q.- Last month?

A.- Yes, sir.

Q.- And that was the first time you told that story to a person in authority or a proper official, is that it?

A.- Yes, sir.

Q.- What ... I reform. Why did you not tell it to the proper authorities in Bucay?

A.- I was afraid, sir.

Q.- But is it not true that Antonio Trinidad has been under detention ever since three days after the incident until now?

A.- Yes, sir, he was under detention."^[1] (T.S.N., pp. 13-14.)

Thus, the only explanation he gives for his clearly in-consistent declarations is fear of Trinidad. And if his testimony is to be believed, this fear gripped him until November, 1963 when, according to him, he revealed the participation of appellant to the fiscal for the first time. It is strange, however, why he should be so afraid when Trinidad was under detention all the time.^[2] Moreover, if he was in such fear of Trinidad, it is amazing that before the trial, the only private person to whom he would mention Trinidad as having stabbed Paligutan were precisely the grandparents of said accused whom he allegedly feared.

Another point. Even in court, this witness admitted that Trinidad had no weapon with him. It was only when Trinidad was facing the deceased, that he (the witness) allegedly saw the "weapon" of Trinidad. In answer to questions of the court, he declared:

"Q.- When did you see that Antonio Trinidad had a weapon?

A.- When he faced Jose Paligutan, sir.

Q.- You saw the weapon of Antonio Trinidad?

A.- Yes, sir.

Q.- When you came from the crossing and you followed them, do you know if Julio Crisologo was armed already?

A.- There was already, sir.

Q.- What about Antonio Trinidad, did you see if he has an arm or weapon at that time?

A.- None, sir.

Q.- Where did he get the weapon then?

A.- It was only on that time when I saw him facing Jose to have a bolo.

Q.- But you did not see him with a weapon when you came from the crossing?

A.- There was none, sir.

Q.- What cloth did he use on that night, a polo shirt?

A.- A polo shirt with short sleeves, sir.

Q.- And that polo shirt was inserted in-side his pants?

A.- No, sir.

Q.- When you saw that Julio Crisologo ... Where was the weapon at that time?

A.- He was holding, sir.

Q.- From the beginning when you met him in the street crossing?

A.- Yes, sir.

Q.- Was it in its scabbard or it was with-out scabbard?

A.- It was without scabbard, sir." (T.S.N., pp. 19-20)

Besides, considering that admittedly it was dark then, it is quite difficult to believe that with all the excitement caused by the incident, this witness could have really distinguished between the stab given by Crisologo and that allegedly given by appellant so as to note that Crisologo's stab landed at the throat, as he said repeatedly, and that of appellant elsewhere, even if it is conceded that said witness was only five meters away. On top of this, there is the indubitable evidence consisting of the necropsy re-port and the testimony of Dr. Jose M. Buhain, the medical expert who conducted the autopsy, to the effect that the non-fatal wound found on the body of the deceased was "at the chest about one inch right to the sternal natch," certainly, not the throat, and that it is possible that the two wounds on said body, the fatal and the non-fatal, could have been caused by only one weapon, a sharp pointed instrument.

Under these circumstances, it would not be fair to appellant to give full faith and credit to this evidence of the prosecution. And We are strengthened in this conviction by the obvious weakness and unreliability of the corroborative evidence offered by the prosecution.

The two alleged ante-mortem statements of the deceased Paligutan, Exhibits B and C, with their translations, wherein appellant is mentioned together with Crisologo as the "two persons who assaulted us" and "they stabbed us including my companion Claro Tejero", deserve scant consideration. To begin with, they are couched in general terms. Then, We cannot understand why the Chief of Police and the Mayor had to take two separate statements, which are substantially identical as to the material facts. And, what is more, the Chief of Police who took down said statements in his own hand-writing practically admitted that the deceased never told him that Trinidad, the appellant, stabbed him. The Chief testified thus:

"Q.- You mean to say that you investigated Jose Paligutan twice?

A.- Yes, sir.

Q.- And that on the first time he only mentioned Julio Crisologo as his only assailant, is that it?

A.- Yes, sir.

Q.- But the second time you investigated him, he told you that Antonio Trinidad was the companion of Julio Crisologo, is that it?

A.- Yes, sir.

Q.- But as a matter of fact Jose Paligutan did not specifically mention Antonio Trinidad as one of those who stabbed him?

A.- 'Two of them,' he said, 'who attacked us', he said.

Q.- But he did not mention that Antonio Trinidad stab him?

A.- He did not tell." (T.S.N. p. 23)

Judge Cojeto Paligutan, notably surnamed like the de-ceased, the then Mayor of Bucay, before whom Exhibits B and C were allegedly subscribed and sworn to, added nothing to, but on the contrary further weakened the cause of the prosecution. When he was asked how the said exhibits were sworn to before him, he gave the following incredible testimony:

"Q.- In Exhibit "B" it appears that this statement was also subscribed and sworn by Jose Paligutan, how did you subscribe Jose Paligutan?

A.- After his statement was taken, he was able to stand up and raised his right hand. He was yet strong to raise his right hand before.

Q.- He stand up along by himself, is that it?

A.- Yes, sir.

Q.- And what about Exhibit 'C', how did you subscribe him also?

A.- When we saw him to be complaining of pain they made him rise up to breath little air in the hospital.

Q.- And how did you subscribe him?

A.- After he has given his statement, he subscribed to the truth of his statement and he raised his right hand, sir.

Q.- What do you mean to say when he sub-scribed to his statement?

A.- He said that his statement was the one to be true.

Q.- Was he able to say that clearly and distinctly?

A.- Yes, sir." (T.S.N., p. 29, unedited) [Underscoring by the Court]

There is still another circumstance which engenders grave doubts as to the alleged guilt of the appellant. Extant in the records of this case is the confession of Crisologo wherein he owned both killings. This was pre-sented as evidence by the defense, the court admitted it over the objection of the prosecution but did not consider it of any worth in its decision. The Solicitor General con-tends it is hearsay. But considering that Crisologo plead-ed guilty to double homicide, without any indication what so ever of any attempt to merely help the appellant, it is Our considered opinion that said confession, Exhibit 2, may be taken into account in weighing the credibility of

the lone eye-witness of the prosecution, considering that his testimony is inconsistent with the statement he gave to the authorities on the very night in question.

It is the judgment of this Court that, by and large, the supposed guilt of appellant has not been proven beyond reasonable doubt and he is entitled to be as he is hereby acquitted, with the proportional costs de officio.

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

[1] According to the Mayor, Trinidad was detained shortly after the investigation.

[2] Per testimony of the Mayor (T.S.N., pp. 29-30).

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