

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MORI (BILAAN) AND OTO (BILAAN), ACCUSED-APPELLANTS. THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAPNAYAN BILAAN...

G.R. Nos. L-23511 and L-23512. January 31, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is an appeal of certain Bilaans named Mori, Oto, Tiwaro, Mongkil, Lapnayan, Tot and Pok from the decision of the Court of First Instance of Davao, finding them guilty of three separate murders, sentencing each of them to three penalties of reclusion perpetua for the killing of Teresita Luad, Leticia Luad and Martina Culao, and ordering them to pay an indemnity of P6,000 to each set of heirs of the three victims and the costs. In imposing reclusion perpetua the trial court took into consideration the fact that the defendants are non-Christians. (Criminal Cases Nos. 6186 and 6588).

Mongkil Bilaan died on February 7, 1965 during the pendency of the appeal. Pok Masaid Bilaan withdrew his appeal. The withdrawal was granted in the Court's resolution of July 21, 1971.

The appellants raised purely factual issues. They contend through their counsel de oficio, Cornelio M. Aguila (who should be commended for taking the trouble of filing a printed brief) that the trial court erred (1) in giving credence to the testimonies of the prosecution witnesses, (2) in not sustaining appellants' defense of alibi and (3) in not finding that appellants' guilt has not been proven beyond reasonable doubt. The appeal hinges on the credibility of the prosecution witnesses.

The trial court rested the judgment of conviction on the following facts shown in the record:

The mise-en-scene in this case was the humble abode of the Luad (Lo-ad) family, a house about two "arms' length" long, located at Lawa-an in the upper portion of Barrio Cogon Bakaka, Municipality of Sulop, Davao del Sur. The family was composed of Pio Diamante, the spouses Teresita Luad and Simeon Tolabeng, the spouses Felicisimo Luad and Martina Culao, their baby Leticia Luad and Celedonio Luad. Teresita, Felicisimo and Celedonio were the grandchildren of Pio Diamante, being the children of his daughter, Herminia and his son-in-law Nemesio Luad.

At around eleven o'clock in the morning of September 2, 1958, Pio Diamante left the house and went to the garden patch about twenty meters at the back of the house to gather eggplants for the family's gulay. Before leaving the house, Diamante instructed his granddaughter, Teresita Luad, "to leaf calamongay" and prepare the midday meal. Teresita was in the kitchen on the ground floor. Her husband, Simeon, was also in the kitchen peeling kamoteng kahoy (a species of sweet potato) for the noon meal. Martina Culao was in the upper floor of the house putting to sleep her baby, Leticia. Celedonio Luad left the house to plant kawang kabog and drive away the maya birds from his farm. Felicisimo Luad also left the house to weed his farm which was about a hundred

"arms' length" from the house.

After gathering about seven eggplants, Diamante heard the sound of gunshot shattering the stillness of the rural scene. It originated from behind a baganga tree about seven meters from the western side of the house. Diamante looked in that direction. He saw Mori Bilaan, as the intruder who had fired the first shot, with nine other Bilaans, also armed with guns and krises, all emerging from behind the baganga tree. The Bilaans carried six guns. The house was between the eggplant garden and the baganga tree. Diamante sought cover among the plants in the garden which measured thirty brazas square. Through an opening he could see the Bilaans and the house.

He looked towards the house and saw his granddaughter, Teresita Luad, bleeding and shouting: "Help, Simeon." Tolabeng embraced her. At that juncture, Oto Bilaan came nearer about three "arms' length" from the house and fired at Tolabeng but missed him. To avoid the gunfire, Tolabeng jumped to the ground and fled to the forest. Part of the kitchen had no walls. That would explain why Diamante saw what happened to Teresita Luad and Simeon Tolabeng.

From the garden patch, Diamante saw Mori, Tiwaro, Lapnayan, Mongkil, and Oto going up the house. Lapnayan, Oto and Mongkil guarded the stairs, while Tiwaro, armed with a kris, and Mori, armed with a gun, went upstairs.

After Tiwaro and Mori had gone up the house. Diamante heard Martina Culao, shout "Tatang, help." He could not do anything because the Bilaans were armed. Then he heard the sounds of hacking and groaning emanating from the house. Moments later, bundles and other things were thrown out of the window. Trunks were destroyed. From his position in the garden patch Diamante saw Oto slashing the neck of Teresita Luad. Pot and Tot killed the pig in the yard. Thereafter, Mori, Oto, Tiwaro, Mongkil and the other Bilaans regrouped and left for the forest.

After the departure of the Bilaans, Diamante went to the house and found the bodies of Teresita Luad, Leticia Luad, and Martina Culao sprawled on the floor with several wounds. The head of Teresita (who was five months pregnant) was almost severed from her body. The same was true with the baby, Leticia. Martina Culao suffered wounds in the abdomen. She was eight months pregnant. Her abdomen was almost severed. Diamante saw a blood-stained kris and its scabbard beside her body. Felicisimo Luad later broke (leguat) the kris into two pieces. The kris and its scabbard were exhibited in court (Exh. A and B)

Diamante immediately sought the aid of the barrio lieutenant and his neighbors. Together with Felicisimo Luad, Lino Lanticsc, Tacio Saron, and other neighbors he went to the house to view the bodies. The barrio lieutenant sent Vicente Dakuno to report the horrible tragedy to the municipal authorities in the poblacion of Sulop. Diamante prepared coffins for the cadavers.

The following day, after receiving a report of the killing, Chief of Police Serafin S. Senajon, accompanied by four policemen, named Bernardino Recla, Roberto Hoyohay, Robato Molejon and Barcelote, and by Doctor Carlos D. Joven, Judge Isidro M. Ordaneza and one Cumabing, went to Cogon Bakaka to investigate the killing. Cogon Bakaka is about thirty kilometers from the poblacion. They arrived in the barrio at about two o'clock in the afternoon. Senajon asked Diamante who committed the killing. Diamante named Tiwaro, Mori, Gi, Nalon and Oto as some of the Bilaans who killed the victims (Nalon died). Doctor Joven, the rural health officer, assisted by Judge Ordaneza, conducted an autopsy on the bodies. After the autopsy, he prepared a medical certificate containing the following findings (Doctor Joven was already dead when the case was tried):

"TERESITA LUAD

Description:

Female, Filipina, 18 years old, married, with light complexion wearing a printed dress, lying on her side, in their house, downstairs.

Examination Findings:

1. The head was almost severed from the body thru the neck.
2. Bullet wounds, penetrating, of 2 millimeters in diameter on the sternum, upper thoracic region.
3. Wound 8-1/2 inches long, 4 inches wide and 2 inches deep, upper dorsal region, middle, obliquely.
4. Wound 8-1/2 inches long, 4 inches wide and 2 inches deep, upper part spinal region, vertically.
5. Wound 9-1/2 inches long, 2 inches wide and 2 inches deep, on the middle, dorsal region, obliquely.
6. Wound 10 inches long, 2-1/2 inches wide and 2 inches deep, back, waistline, lumbar region, obliquely.
7. Wound 6-2 inches long, 2-1/2 inches wide and 2 inches deep, left, gluteal region, obliquely.
8. Wound 6-2 inches long, 3-1/2 inches wide and 2 inches deep, left, scapular region, obliquely.

Conclusions:

The cause of the death based on the above findings was due to the mortal wounds and external hemorrhage.

MARTINA CULAO

Female, married, 21 years old, 8 months pregnancy, of light complexion, wearing a kimono and patadyong, lying on her back, in their house, upstairs.

Examination Findings:

1. Open wound 32 inches long, 4 inches wide and 4 inches deep, upper thoracic region, obliquely.
2. Open wound 8 inches long, 2-1/2 inches wide and 2 inches deep, cutting the stomach transversally.
3. Open wound 12 inches long, 5-1/2 inches wide and 2 inches deep, above the umbilical region, internal organs out, obliquely.

Conclusions:

The cause of death based on the above findings was due to traumatic shock from the multiple wounds and external hemorrhage.

LETICIA LUAD

Description;

Female, child of 1 year and 2 months old, wearing a white dress, lying on her back in their house upstairs.

Examination Findings:

1. An open wound, triangle in form whose 2 sides are 7-1/2 inches long each as the base, between the thoracic and abdominal regions, right, lateral side, below the axilla. The vertex is on the thoracic region and the base, on the abdominal region.
2. The internal organs were out from the above-stated wound.
3. Left hand removed from the wrist.

Conclusions:

Death was instantaneous based on the above findings." (Exh. E, 221-4 tsn, Restauero).

After Diamante had informed the chief of police that Mori, Tiwaro, Oto, Gi and Nalon were the Bilaans involved in the killing, together with other Bilaans whose names he did not know, Senajon ordered his men to arrest the Bilaans named by Diamante. The four policemen, headed by Rccla went to Pasig, a barrio of Sulop, the place which they knew was Mori's residence and which was about three and a half kilometers from Diamante's house. They arrived in Mori's place at nine o'clock in the evening of September 3rd. They arrested Mori. Recla investigated Mori orally. He had known Mori since 1954 (166 tsn). Mori worked on Recla's lands for two harvest seasons in 1955 at one peso and fifty centavos a day with free meals (185, 191 tsn). Mori admitted in the Cebuano Visayan dialect that he and other Bilaans named Tiwaro, Lapnayan, Gi, Nalon, Oto and Mongkil participated in the killing at Diamante's house. However, he claimed that he only butchered a pig upon the order of Tiwaro.

The policemen brought Mori to Chief of Police Senajon for investigation in the house of a certain Rosita in Barrio Pasig, where they stayed for the night. On being questioned by Senajon, Mori again admitted having been a companion of Tiwaro, Lapnayan, Oto, Mongkil and other Bilaans who killed Teresita Luad, Leticia Luad and Martina Culao but he again claimed that his participation was only in the killing of a pig at the behest of Tiwaro.

In view of that admission and the fact that Mori was wearing a bloodstained maong jacket (Exh. C), Chief of Police Senajon brought Mori Bilaan to the municipal jail for further investigation. At the municipal building, Mori, in the presence of the justice of the peace, whose office was in the same room occupied by Senajon, executed an affidavit naming his other companions in the killing of the three victims. After the questions and answers were translated to Mori, Judge Ordaneza asked him whether he swore to the truth of the contents of his statement. Mori admitted their truth. He thumbmarked his affidavit (Exh. D).

Mori was transferred to the provincial jail at Davao City. Previously, he had escaped from the municipal jail of Sulop. He was later captured. The other appellants were arrested and charged accordingly by the authorities. Chief of Police Senajon died in 1959, while Policemen Molejon and Barcelote were no longer in the service during the trial of the case. That explains why they did not testify.

Appellants' counsel de oficio averred that Felicisimo Luad, the first prosecution witness, "was never an eyewitness to the incident." That is true. But Felicisimo was not presented to prove that the appellants perpetrated the killings. He testified that he heard gunshots between eleven-thirty and twelve noon on September 2, 1958. The gunshots came from the house of the Luad family. His testimony only proved that the three victims, namely, his pregnant wife, Martina Culao, his one-year old baby, Leticia, and his sister, Teresita, were killed, a fact as to which there is no controversy.

The credibility of Pio Diamante, the prosecution's principal witness, is assailed by the appellants. They point to the discrepancies between his testimony and his affidavit (Exh. 1). They argue that if, as stated by Diamante in his affidavit, he took cover when he heard a shot, his testimony that he saw Mori Bilaan "fired the gun" would be incredible. They argue that according to Diamante's affidavit, he "presumed" that the appellants committed a crime, whereas, he testified that he actually saw the killings.

Those arguments, while plausible ex facie, do not appear to be well-taken when Diamante's affidavit and testimony are closely scrutinized. The basic facts alleged in Diamante's affidavit are that he "saw Mori Bilaan, Gi Bilaan holding guns and Tiwaro holding a kris with both of them hurrying up the house while some Bilaans were around the house waiting to rush up," that they butchered his pig, and that, after the Bilaans left, he (Diamante) and his neighbors went to his house and found Teresita Luad, Martina Culao and Leticia Luad dead in consequence of wounds inflicted by gunshot and by stabbing.

These facts synchronize with the main points of Diamante's testimony that, after hearing the gunshot and taking cover in the garden patch, he saw from an opening among the eggplants Mori Bilaan holding a gun, the weapon which had just been fired, that Oto Bilaan fired at Simeon Tolabeng, that the Bilaans went into the house, some of them guarding the stairs while Oto hacked Teresita Luad and Mori and Tiwaro went upstairs, after which Diamante heard "sounds of hacking and destruction of trunks" and the shout of Martina, "Help, Tatang, help," and that two Bilaans killed his pig.

Considering the circumstances under which affidavits of witnesses in criminal cases are prepared, it has been repeatedly noted that usually in some details they do not dovetail with the testimonies of the affiants. As long as the affidavit and the testimony agree or are consistent on the principal or vital details of the crime, although divergent on minor details, the affidavit cannot be used to impugn the affiant's testimony or his credibility.

The infirmity of affidavit evidence "is much a matter of judicial experience" (People vs. Resayaga, L-23234, December 26, 1973). "Generally, an affidavit is not prepared by the affiant himself. Omissions and misunderstandings are not infrequent particularly under circumstances of hurry and impatience." (People vs. Mariquina, 84 Phil. 39, 42).

An affidavit, "being taken ex parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the first correct suggestion of his memory and for his accurate recollection of the subject." (People vs. Alcantara, L-26867, June 30, 1970, 33 SCRA 812, 820).

"We have too much experience of the great infirmity of affidavit evidence. When the witness is illiterate and ignorant, the language presented to the court is not his; it is, and must be, the language of the person who prepares the affidavit; and it may be, and too often is, the expression of that person's erroneous inference as to the meaning of the language used by the witness himself; and however carefully the affidavit may be read over to the witness, he may not understand what is said in language so different from that which he is accustomed to use. Having expressed his meaning in his own language, and finding it translated by a person on whom he relies, into language not his own, and which he does not perfectly understand, he is too apt to acquiesce; and testimony not intended by him is brought before the court as his." (2 Moore on Facts. Sec. 952, p. 1105; People vs. Timbang, 74 Phil. 295, 299).

Diamante, who was already sixty-eight years old when he testified, was examined in three successive sessions. He withstood the gruelling interrogation. He broke down only when he could not stand the blazing glances of the appellants, which produced tremors in his body and made him recall that they were the killers of his granddaughter, great granddaughter and granddaughter-in-law.

As to the identity of the assailants, Diamante said that he knows Mori because Mori had been his neighbor for three years before the incident occurred. He knows Oto because Oto was a rural policeman in Barrio Balasiao, Sulop. He saw Lapnayan, Mongkil and Tiwaro near the stairs leading to the second story of the house. He identified the two Bilaans who killed the pig. They turned out to be the brothers Pok and Tot whose patronymic is Masaid.

Diamante knows Lapnayan, Mongkil and Tiwaro because one time, when they came hunting for wild pigs, they passed his house and ate there. They even gave Diamante some meat of the wild pig. Diamante was friendly with Tiwaro. He used to give Tiwaro Tres B chewing tobacco. They used to call each other compadre.

Diamante fingered the appellants during direct examination. Not content with that identification, the trial judge himself interrogated Diamante in order to test the accuracy and veracity of his identification. The trial judge resorted to the device of placing the appellants at a distance of twenty meters from Diamante. That was the

distance between the scene of the crime and the eggplant garden where Diamante was allegedly hiding when he saw the appellants. Diamante did not waver in his identification as shown by his answers to the questions propounded by the lower court which are quoted below:

Q. Tell us who among the defendants whose names you know on the day of the incident? — A. Tiworo, Mori, Nalon and Gi.

Q. But aside from these defendants did you see other persons in the crime scene? — A. I saw some others but I do not know their names.

Q. I am asking you about Lapnayan. Tell me the truth if he was there on the day of the incident? — A. Lapnayan and his companions were under the stairs.

Q. As I told you the crime with which the defendants are charged is a serious one, do you understand that? — A. Yes, sir.

Q. You insist that Lapnayan Bilaan was there at the crime scene on the day of the incident? — A. They were only downstairs. They were not able to come up. There were four of them.

Q. Who were those downstairs with Lapnayan Bilaan on the day of the incident? — A. Monkil and two other Bilaans.

Q. You come down from the witness stand and point out those two other Bilaans who were downstairs with Monkil and Lapnayan? — A. These two.

COURT: Witness pointing to two of the defendants whose names are — you ask their names — Tot Bilaan and Pok Bilaan.

Q. Do you have a good sight? — A. I have a good sight.

Q. How far can you see? — A. Until that tree there, which I believe is called "camansi."

Q. How far were these defendants from you when you saw and recognized them, how many meters more or less? — A. My garden is around 15 meters from where they were.

Q. But I am asking you how far you were from them when you saw and recognized them? — A. Maybe more than twenty meters.

Q. What was Mori Bilaan doing when you first saw him? — A. I saw him only after he fired the gun.

Q. Who among the group was the first one you saw? — A. Mori Bilaan.

Q. Who fired at Simeon Tolabeng? — A. Oto Bilaan.

Q. Who did you say fired at Simeon Tolabeng? — A. Oto Bilaan.

Q. Where is Oto Bilaan? You come down from the witness stand and point to him. — A. This one. Witness went down the witness stand and proceeded to the bench where the defendants are seated and pointed to one of the defendants who answered by the name of Oto Bilaan.

Q. At the time you saw him firing at Simeon Tolabeng did you know him? —

A. I know him because he was our rural policeman in Balasiao.

Q. You mean to say you know him not only by his appearance but also by his name? — A. Yes, sir.

Q. At the time of the incident? — A. Yes, sir, I know him because I already know him at Balasiao.

Q. But why is it that according to you at the time of the incident only Mori Bilaan, Gi Bilaan and Tiwaro Bilaan and Nalon Bilaan were the defendants you know by names, the rest you did not know their names? — A. Because a while ago I was afraid when I looked at them, the killers, I trembled. (99-109 tsn, I Restauero.)

Q. Are you sure you saw Tiwaro Bilaan in the crime scene during the incident? — A. I am sure I saw him, sir.

Q. Before the incident on September 2, 1958, did you know already Tiwaro Bilaan? — A. We already knew each other before September 2, 1958.

Q. How long did you know each other before September 2, 1958? — A. Around three years we know each other since 1955.

Q. How did you come to know each other? — A. At the time they hunt wild pigs they used to pass by my house.

COURT: Q. I am asking you about Tot? — A. Your Honor, I do not know the two Bilaans. I do not know the two Bilaans. I misunderstood your question. I only know Oto.

Q. I am asking you about Tot. Did you know him before September 2, 1958? — A. No.

Q. You are sure of that? — A. I am sure because he was the one who killed my pig.

Q. I am asking you if you are sure that before September 2, 1958 you had not met Tot Bilaan? — A. I have not met him.

Q. So, the first time you saw Tot Bilaan was in the crime scene during the commission of the crime on September 2, 1958? — A. Yes, sir, that was the time I saw him.

Q. And you are sure you saw him? — A. I am sure because he was the companion of Tiwaro.

Q. Do you know that before you took the witness stand you were sworn to under oath? — A. Yes, sir.

Q. Do you know your obligation under the oath? — A. Yes, sir.

Q. You still affirm that you saw Tot Bilaan that day, September 2, 1958, during the incident? A. — I saw him there, but I will tell the Court that I do not know his name.

Q. This Monkil Bilaan was he in the crime scene during the incident of September 2, 1958? — A. He was there.

Q. Are you sure of that? — A. I am sure about that because they were around the house and as a matter of fact I could not go there in our house because they were going around the house.

Q. Did you know him before September 2, 1958? — A. We already knew each other.

Q. Before September 2, 1958? — A. Yes, sir.

Q. How did you know each other? — A. Because he used to go to the house with Tiwaro.

Q. This Pok Bilaan did you see him in the crime scene on September 2, 1958? — A. I saw him during that day.

Q. When was that when you saw Pok Bilaan? — A. On September 2, 1958.

Q. During the incident? — A. I saw him there, and as I already said they were the only two Bilaans whose names I do not know.

Q. This Mori Bilaan you are sure that you saw him during the incident? — A. Yes, sir, because he was the one who fired at Teresita.

Q. Before September 2, 1958 did you already know him? — A. I already know him.

Q. How long before September 2, 1958 did you know him? — A. We know each other in 1955.

Q. About Oto Bilaan are you sure you saw him at the crime scene on September 2, 1958? — A. I am sure because he was the one who fired which caused the jumping of Simeon Tolabeng. That is the fellow, maybe he is Pok.

COURT: Let the records show that the Court conducting the examination ordered the defendants to take the positions at the end of Sala III of this Court which is a distance of about 20 meters away from the place where the witness Pio Diamante is in Sala I, and then the witness was made to identify the defendants and the first defendant was Pok, by informing the

Court "maybe he is Pok."

COURT: Q. Who is that one next to Pok Bilaan? — A. Mori Bilaan.

COURT: He is really Mori Bilaan.

Q. The next one? — A. That is Tiwaro.

COURT: He is really Tiwaro.

Q. Who is the next one? — A. I have seen him there but I do not know his name.

Court: He is referring to Tot Bilaan whom he said he does not know the name, but he claims to have been him in the crime scene.

Q. Next, who is he? — A. Monkil.

Court: He is really Monkil.

Q. Next, who is he? — A. He is Oto.

Court: He is really Oto Bilaan.

Q. Next, who is he? — A. He is Lapnayan.

Court: He is really Lapnayan.

Fiscal: At this juncture, we would like the records to show that while this witness is taking the witness stand and while he is being made to identify the defendants by the Honorable Presiding Judge, it is cloudy all around the two salas, Salas I and III of this building because although there is the sun but it is not shining bright in view of the presence of the clouds.

Court: The manifestation of the Fiscal may be allowed to remain in the records for whatever it is worth, The Judge presiding over this Sala knows the circumstances under which this witness was made to identify the defendants. And it is a fact that it is cloudy.

Court: Q. The incident happened in what part of (he day? — A. Between eleven and twelve o'clock, noontime.

Q. Was it sunny or was it cloudy when the incident look place? — A. The sun was shining already. It was a hot day. (111-119 tsn I, Restauero.)

The Court cannot accept appellants' theory that Diamante "is not an eyewitness to the incident complained of (and) neither is he a credible witness."

The appellants vehemently assail the testimony of Patrolman Recla as to the alleged oral confession made to him by Mori Bilaan, when he was arrested. They argue that Recla should have reduced the confession to writing. They also characterize as incredible or fabricated Recla's declaration as to the finding of the kris and its scabbard (Exh.

A and B) at the scene of the crime.

Recla's mission was to arrest Mori. After taking Mori into custody, Recla incidentally asked him whether he was involved in the killing. Mori said that as a member of Tiwaro's *banci* he participated in the assault on the Luad family. Considering that the arrest of Mori was made by Recla at nine o'clock at night in the remote barrio of Pasig and that the urgent thing to do was to bring Mori immediately to the poblacion, it would be too much to expect Recla to make Mori sign a written confession at the time of the arrest. Mori was brought by Recla and his three companions to a store where the chief of police was waiting for them. It was that official who, with the assistance of the municipal judge and an interpreter, obtained Mori's confession, Exhibit D, a confirmation of what he had told Recla at the time of his arrest.

Even without the kris, the guilt of the appellants had been sufficiently proven. Mori's bloodstained denim jacket, Exhibit C, is an irrefutable and gruesome evidence of the killing. The seven wounds inflicted on the eighteen-year old Teresita Luad, whose head was almost severed from the body, the three wounds inflicted on the twenty-one year old Martina Culao, whose internal organs were out, and the wound inflicted on the one-year old baby Leticia Luad whose internal organs were also out and whose left arm was severed from the wrist, could have been inflicted only by means of a bladed weapon, like a kris, which is a Muslim dagger with scalloped cutting edges and ridged serpentine blade.

The appellants question the probative value of Mori's confession (Exh. D) and Judge Ordaneza's testimony as to how it was thumbmarked by Mori. They note that the confession, which is in English, was translated into Cebu Visayan by an interpreter, and then translated into Bilaan by another interpreter so that Mori could understand it. They further note that Mori was not assisted by counsel during the custodial interrogation.

The trial court predicated its judgment mainly on the testimony of Diamante and not on the confession. Its observation that Diamante's testimony "rang with sincerity" is confirmed by the records. Its commentary is that Mori's escape from the municipal jail "is an indication of guilt". As stated earlier, another appellant, Pok Masaid, withdrew his appeal. The Solicitor General relevantly stressed that what is crucial "is the fact that Pio Diamante saw and recognized appellants as the persons who came to his house and killed the victims."

Mori's claim that he was beaten in order to force him to thumbmark his confession (Exh. D) is refuted by the record. He thumbmarked it before the justice of the peace and the interpreter who also affixed his thumbmark thereto. The following testimonies prove that Exhibit D was voluntarily thumbmarked by Mori:

Testimony of Judge Ordaneza:

Q. Here is a document consisting of two pages entitled "Investigation taken by Chief Serafin Senajon on the Person of Mori Bilaan," please look over this document and tell us the relation of this document to that one written investigation which you have stated before? — A. This is the very document which this Mori Bilaan, the accused in this case, affixed his right thumbmark after investigation by the Chief of Police Senajon and after having been interpreted to him, Mori Bilaan, by Genaro Paralisan.

Q. You made mention of thumbmarks and here I noticed on the second page of this document two thumbmarks, one appearing over the typewritten name Mori Bilaan and another over the typewritten name Genaro Paralisan, please identify those two signatures? — A. This thumbmark over the typewritten name Mori Bilaan is the thumbmark of the accused Mori Bilaan, and the other thumbmark is that of Genaro Paralisan.

Q. Of course, the signature appearing over the typewritten name Isidro Ordaneza is your signature? — A. Yes, sir.

Q. Who interpreted to the accused these questions and answers appearing on this document now identified by

you? — A. Genaro Paralisan.

Q. In what dialect was this document translated to the accused Mori Bilaan by Genaro Paralisan? — A. To their own dialect, Bilaan dialect.

Q. Before this was actually thumbmarked by Mori Bilaan did you request the accused Mori to do something? — A. I let him stand up and had him swear to the truth of the questions and answers to this document.

Q. Did you ask him before swearing whether he understood the contents of this document? — A. I asked him whether he understood what Mr. Paralisan said to him and he said that he understood the contents of this document which is in questions and answers.

Q. Did you actually tell him to swear to the contents of this document? — A. Yes, sir. (217-218 tsn, Restauero.)

Testimony of Genaro Paralisan:

Q. Showing you this sworn statement which has already been marked as Exhibit D, please tell us whose thumbmark is this? — A. This is my thumbmark.

Q. About this other one, whose thumbmark is this? — A. That is Mori's thumbmark. Witness pointing to the thumbmark above the typewritten name Mori Bilaan. (246-247 tsn, Restauero.)

Q. Who were present when you translated the contents of Exhibit D in the office of the police, if you still could remember? — A. The policemen.

Q. Who else? — A. The justice of the peace of Sulop.

Q. Can you assure the Honorable Court that this Exhibit D was faithfully translated into the Bilaan dialect to the accused from the Visayan and from the Bilaan to the Visayan dialect to the police? — A. Yes, sir.

Q. And while Mori was being asked did he confirm all the contents of this Exhibit D to be all true? — A. Yes, sir. (247-248 tsn, Restauero.)

Q. At the time the interpretation was made to Mori he was handcuffed? — A. He was not handcuffed during the time I made the translation. The handcuff was removed. (252 tsn, Restauero.)

Testimony of Mori Bilaan:

Q. And did you not complain to the judge about your having been forced to affix your thumbmark on that document? — A. No, sir. (351 tsn, Restauero.)

Q. When you said before that you did not complain about the boxing or about your having been forced to sign the paper or papers before the justice of the peace or any other authority, did you not complain to anybody else? — A. No, sir.

Q. Meaning that you did not complain at all? — A. No, sir. (356 tsn, Restauero.) See last questions in Mori's statement dated September 18, 1958, (Exh. I).

Appellant Mori set up an alibi. He claimed that on September 2, 1958 he was in Barrio Balasiao, Sulop, helping in the construction of a school building. With him in the construction were Albino Deatras, a school teacher, and the vice-barrio lieutenant, Malangoy Sarotan, a Bilaan. Mori took his lunch on that day in the house of Malangoy which was about forty meters from the construction site. The distance between Barrios Balasiao and Cogon Bakaka can be covered in five hours of walking.

Mori denied that the denim jacket (Exh. C) belonged to himself. That denial contradicts his sworn statement of October 27, 1958 at the preliminary investigation that he owned the maong shirt which he was wearing on September 2, 1958 (Exh H).

Mori's alibi is contradicted by his sworn statement (Exh. H), already referred to, that on September 2, 1958 he was working in the house of a certain Menoy rather than in the construction of the schoolhouse at Balasiao as testified by him during the trial.

Albino Deatras, whose voice was reduced to a whisper during the cross-examination, after he was reminded that he was testifying under oath, corroborated Mori's alibi. The trial court did not give him any credence. Deatras never told anybody about Mori's alibi. He contradicted Mori by saying that Mori took his lunch at the house of Sofronio Cacam and not in Malangoy's house. He could remember September 2, 1958 but he could not remember when he testified before the provincial fiscal in connection with this case. He did not mention any schoolhouse construction in his statement before Fiscal Jesus Quintillan (Exh. J).

Appellant Oto Bilaan claims that on September 2, 1958 he was harvesting corn for his neighbor, Ondio Kinoc, in Barrio Tuac, Matanao, Davao del Sur. The distance between Cogon Bakaka and Tuac can be traversed by walking from sunrise to sunset. Before September 2nd, he was already at Tuac. He resided with his parents-in-law and his daughter. He stayed there for a week until his arrest. He affirms that it was impossible for him to be in Cogon Bakaka on September 2nd.

Ondio Kinoc corroborated the claim of Oto. Kinoc testified that on September 2nd Oto and ten other Bilaans harvested corn in his farm at Tuac from seven-thirty in the morning up to five o'clock in the afternoon. On the morning of September 3rd, Oto allegedly returned to Kinoc's farm to husk the corn which he had harvested on the preceding day. Nicolas Ronquillo also corroborated the alibi of Oto.

Oto's alibi cannot be given any credence. It is contradicted by his sworn statement dated October 27, 1958 which was presented at the preliminary investigation. In that statement, he said that on September 2, 1958 he was at Tibongbong doing farm work for his son (Exh. F). Although Oto's alibi was corroborated by Ondio Kinoc, it was not corroborated by his parents-in-law and by his daughter who allegedly stayed also in the house of his parents-in-law, Oto has no idea of what "September 2, 1958" means because he does not know the days of the week and the months of the year. He does not even know his own age. He said that many persons worked with him in harvesting Kinoc's corn. But when he was asked to name his companions he named only himself, the Dominguez spouses and Kinoc's wife. "That is all," he said, "we were only four". Kinoc did not harvest corn. In contrast, Ondio Kinoc said that those who helped in harvesting his corn, aside from Ondio himself, were his wife, Oto, Oto's wife, Ondio's two children, or around ten (10) persons (373-4 tsn, Reslauro).

Kinoc, an educated or literate Bilaan, testified on July 11, 1963. The Fiscal asked him whether he would remember the date when he accompanied one Lansopen to the Fiscal's office in connection with a subpoena in this case. Kinoc could not remember the date, which was August 7, 1962. If he could not remember that recent date, how could Kinoc possibly remember on July 11, 1963 that on September 2, 1958 Oto Bilaan harvested his corn in Tuac?

Dionisio Ronquillo, who corroborated Oto and Kinoc, rendered the alibi of Oto less credible, instead of strengthening it. Ronquillo testified that he remembered that he saw Oto in Kinoc's house on September 2, 1958 because he looked at his calendar. He said he was always looking at his calendar. He looked at his calendar on September 2, 1963 and September 2, 1962 but he could not remember the persons and places he saw on those dates.

The other appellants, Tiwaro, Mongkil, Lapnayan (whose patronymic is Nayok), Tot and Pok, also set up alibis. They all declared that they did not know Cogon Bakaka and Pio Diamante. They heard of the killings. Their information was that the killers were Wop or Wok (already dead), Kablakan, Manongay, Limokon, Lakan, Gula-i and Sigawan or Siyawan. The brothers Tiwaro and Mongkil said that they had always stayed in their native barrio,

Daang Luyong, Lapnayan Nayok, his son-in-law Tot Masaid, and the latter's younger brother, Pok Masaid, declared that they were in M'tio or Magbok, Cotabato when killings in Cogon Bakaka were committed.

The alibis were not corroborated. Those appellants (except Mongkil) were implicated by Mori Bilaan in his confession (Exh. D). In Exhibit G, an order of the justice of the peace court of Sulop, dated October 31, 1958, Tiwaro is described as "notorious" (134 tsn, Santillana).

The trial court did not err in discrediting appellant's alibis. Their counsel de oficio admits that the defense of alibi is weak because "it is easily manufactured". Mori's attempt to escape and Pok's withdrawal of his appeal are implied admissions of guilt.

The two informations charge the accused with multiple murder as a complex crime (Arts. 48 and 248, Revised Penal Code). The offense proven is the special complex crime of robbery with multiple homicide and intentional abortion (Arts. 294 and 256, Revised Penal Code) of which the accused cannot be convicted because that was not the offense charged (Sees. 4 and 5, Rule 120, Rules of Court). The trial court convicted the accused of "multiple murder," a complex crime, but then it imposed three distinct reclusion perpetuas for three separate murders thus, in effect, discarding the complex nature of the offenses.

Possibly, the three murders may be regarded as a complex crime under the theory that they were perpetrated under the influence of a single criminal impulse (People vs. Manantan, 94 Phil. 831; People vs. Sakam, 61 Phil. 27; People vs. Lawas, 97 Phil. 975).

However, the different killings may also be characterized as distinct and juridically independent acts which should be separately punished as was done by the trial court (People vs. Layos, 60 Phil. 224; *Flemister vs. U.S.*, 207 U.S. 372, 11 Phil. 803). That would be a form of *concurso real de delitos* resulting in "la acumulacion material de las penas" which is founded on the theory that "si son varios los resultados, si son varias las acciones, esta conforme con la logica y con la justicia que elagente soporte la carga de cada uno de los delitos" (1 Cuello Calon, *Derecho Penal*, 15th Ed., 1968, p. 652). The trial court's conviction of the accused of three separate offenses should not be disturbed.

The killings were attended with the aggravating circumstances of treachery, abuse of superiority, dwelling and band (*cuadrilla*). The qualifying circumstance alleged in the information is treachery which absorbs abuse of superior strength and *cuadrilla*.

There was treachery (*alevosia*) because the accused made a deliberate, surprise attack on the victims. They perpetrated the killings in such a manner that there was no risk to themselves arising from any defense which the victims might have made (par. 16, Art. 14, Revised Penal Code). As correctly observed by the trial court, the killing of the helpless baby, Leticia, was downright murder,

The qualifying circumstance of evident premeditation was not proven. Disregard of sex is not aggravating because there was no showing that the accused deliberately insulted the sex of the three victims. It may be included in treachery. (People vs. Mangsant, 65 Phil. 548; People vs. Gervacio, L-21965, August 30, 1968; People vs. Limaco, 88 Phil. 35, 44).

The trial court did not make any express finding as to the appellants' degree of instruction although the record shows that they are illiterate. That circumstance may be merged in the fact that they are non-Christians (People vs. Bakang, L-20908, January 31, 1969, 26 SCRA 840). No mitigating circumstance can thus be appreciated in their favor.

The death penalty is imposable on the appellants because the aggravating circumstance of dwelling justifies the

imposition in the maximum period of the penalty for murder which is reclusion temporal maximum to death (Arts. 64 [3] and 248, Revised Penal Code).

Nevertheless, the circumstance that the appellants are non-Christians entitles them to special treatment under Section 106 of the Administrative Code of the Department of Mindanao and Sulu (quoted in *People vs. Main*, 51 Phil. 933; *Lumiguvs vs. People*, L-20338, 19 SCRA 842). The trial court had that law in mind when it imposed "reclusion perpetua only." There was no abuse of discretion in not imposing the death penalty, "taking into consideration all the circumstances of the case, including the state of enlightenment of the accused and the degree of moral turpitude which attaches¹ to the killings among the Bilaans.

The conspiracy among the appellants may be implied from the manner in which, as a band, they acted in concert when they perpetrated the three murders. Hence, each one of them is responsible for the three crimes. The act of one was the act of all.

The indemnity for each victim should be raised to twelve thousand pesos. Each appellant is solidarily liable for the indemnity (Art. 110, Revised Penal Code).

WHEREFORE, the judgment of the trial court is modified by raising the indemnity for each of the three murders to P12,000 and declaring that each appellant (except Pok and Mongkil) is solidarily liable therefor.

In all other respects, the judgment of the trial court is affirmed with costs against the appellants.

In the service of the penalties the forty-year limit fixed in Article 70 of the Revised Penal Code should be observed as well as the provisions of Article 29 of the Revised Penal Code if the conditions described in Republic Act No. 6127 are satisfied.

The modification of the lower court's judgment does not affect defendant Pok Masaid who withdrew his appeal.

SO ORDERED.

Zaldivar (Chairman), Fernando, Antonio, and Fernandez, JJ., concur.
Barredo, J., took no part.

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