

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DAMASO SARABIA, DOMINGO QUITORIANO, VIRGILIO BALDIVISO,
HERMINIO BALDIVISO, FRANCISCO CRISOSTOMO, TEOTIMO
CRISOSTOMO AND C...**

G.R. No. L-27422. January 30, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

DAMASO SARABIA, FEDERICO FORONDA, DOMINGO QUITORIANO, VIRGILIO BALDIVISO, HERMINIO BALDIVISO, CIRILO ADVINCULA, TEOTIMO (TIMOTEO) CRISOSTOMO and FRANCISCO CRISOSTOMO were accused of robbery in band with double homicide in the Justice of the Peace Court of Buguey, Cagayan. A warrant for their arrest which was issued on November 14, 1960, was served the next day except on Federico Foronda who was found dead in Luga, Buguey, Cagayan.

When the case was being tried in the Court of First Instance of Cagayan, Francisco Crisostomo was released on January 25, 1964, upon posting bail for P30,000.00. On March 14, 1964, Cirilo Advincula asked that he be released on a reduced bail of P20,000.00. His request was denied. He was able to post the requisite bail on October 23, 1966, and was released from custody.

The decision of the Court of First Instance sentencing the accused to suffer the penalty of death was promulgated on January 27, 1967, and thereafter all of them were committed to the Director of Prisons in Muntinlupa, Rizal, where they have been up to the present.

Damaso Sarabia, Virgilio Baldiviso, Herminio Baldiviso, Teotimo (Timoteo) Crisostomo and Domingo Quitoriano have been detained since November 15, 1960. Francisco Crisostomo has been detained for the same period except from January 25, 1964, to January 27, 1967; Cirilo Advincula has also suffered detention for the same period except from October 23, 1966, to January 10, 1967, because his bond was repudiated.

The information filed in Criminal Case No. 3233-A of the Court of First Instance of Cagayan on February 20, 1961, reads as follows:

"That on or about November 11, 1960, in the municipality of Buguey, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Damaso Sarabia, Domingo Quitoriano, Virgilio Baldiviso, Herminio Baldiviso, Cirilo Advincula, Teotimo Crisostomo and Francisco Crisostomo, armed with sharp pointed bolos, a bulldog (local made 12 gauge gun) and a local made 22 caliber revolver, conspiring together and helping one another, with intent to gain, by means of force, violence against and intimidation of persons, did then and there wilfully, unlawfully and feloniously enter the house of one Vicente Lazo, and once inside, take, steal and carry away cash money in the amount of P500.00 belonging to the spouses Vicente Lazo and Consolates Carpio, without their consent and against their will, to the damage and prejudice of said spouses and owners Vicente Lazo and Consolates in the total amount of P500.00; and that during the same

occasion, the said accused armed with sharp pointed bolos, a bulldog (local made 12 gauge gun) and a local made 22 caliber revolver, conspiring together and help-ing one another, with intent to kill, and with abuse of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack and stab the spouses Vicente Lazo and Consolates Carpio, inflicting upon them several wounds on the different parts of their bodies which caused their death." (Expediente, p. 43).

The trial of the case started on September 26, 1961, with Judge Roberto Zurbano presiding. Several other judges followed him including Judge Florentino M. Villanueva who decided the case. In his decision, Judge Villanueva said in part:

"The Court admits that it was not able to observe the conduct and demeanor of most of the witnesses pre-sented during the trial as there were several Judges who conducted the hearing of this case. However, there were witnesses presented on the part of the defense which were heard by this Court. After the prosecution and the defense rested their case waiving their rights to submit their respective memorandum, this case was submitted for decision last January 11, 1967." (Expediente, p. 421.)

The dispositive portion of the decision reads:

"WHEREFORE, the guilt of all the accused having been proved beyond reasonable doubt, the Court hereby sentences each of the accused Damaso Sarabia, Domingo Quitariano, Virgilio Baldiviso, Herminio Baldiviso, Francisco Crisostomo, Timoteo Crisostomo and Cirilo Advincula for the crime of Robbery with Homicide to suffer the penalty of DEATH; to suffer the accessories provided for by law; to jointly and severally indemnify the heirs of the deceased in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs pro-rata." (Expediente, pp. 462-463, 478.)

A statement was submitted on February 11, 1967, that "the true name of one of the convicted accused x x x should be Teotimo Crisostomo instead of Timoteo Crisostomo." (Rollo, p. 1.)

Jose F. S. Bengzon, counsel de oficio, of Damaso Sarabia filed a separate brief.

Dakila F. Castro and Associates, counsel de oficio of Teotimo and Francisco Crisostomo; and Virgilio and Herminio Baldiviso filed a separate brief.

The Advincula Law Office, counsel de oficio of Cirilo Advincula and Domingo Quitariano filed a separate brief.

The People's version of the facts is as follows:

"At about 8:00 o'clock in the evening of Friday, November 11, 1960 at barrio Luga, Buguey, Cagayan, while Vicente Lazo was mending the string of his hooks at his home after supper, appellant Damaso Sarabia and the late Federico Foronda called to say that they wanted to buy cigarettes (pp. 40, 41, 45, 46, 53, 58, t.s.n., Feb. 21, 1962). Together with Vicente Lazo at the time were his wife, Consolates Carpio, who was sewing; his daughter, Felicidad Lazo, who was reading the 'Bannawag'; his other three children and a young farm helper (pp. 40, 41, 45, id). Upon hearing the call of Sarabia and Foronda, Vicente Lazo opened the door of the annex of his house (pp. 46, 53, id). As soon as he did this, Sarabia and Foronda rushed inside, followed by the other appellants, and held Vicente's hands (id). While in the annex, the intruders fired their guns into the air and all then proceeded upstairs bringing along Vicente where they tied his hands with a string (Exh. "K") which the dwellers used in tying the bar of their door shutter (pp. 42, 46, 54, id). The accused Teotimo "Abat" Crisostomo then asked Vicente where the money was kept (pp. 42, 46, 47, id) and Vicente pleaded: 'Get this

key and take all the things you want provided you will not kill us' (p. 47, id). Teotimo Crisostomo got the key and opened the trunk after which appellants ransacked it (id). They also ripped the pillow cases where Cirilo Advincula got P500.00 from one of them (pp. 44, 45, 47, 48, id). After they had taken the amount, Federico Foronda asked Vicente Lazo's wife, Consolates Carpio, if they have some more money and she answered that that was all they got (p. 48, id). Foronda gave a signal by counting "1, 2, 3", after which all the malefactors stabbed the spouses Vicente and Consolates (pp. 48, 49, id). They then left their victims, Consolates Carpio, however, was able to overtake Foronda at the stairway's and stabbed the latter, hitting him at the right shoulder, but he was yet able to run away (p. 49, id).

The malefactors were all armed with big pointed bolos, a bulldog gun (Exh. "M") held by Foronda and a small gun (pp. 43, 44, 48, 49, id). Aside from the cash of P500.00, they also carted away a watch that Foronda pledged for P25.00 to the couple a few days before the incident after losing in a card game with appellants (pp. 44, 45, 57, 58, id).

Thereafter, Consolates Carpio repaired to the house of her mother-in-law, Juana Pagador, who saw her on the doorway bathed in blood and heard her say: "Please come and help us. I am now dying" (pp. 5, 6, 20, t.s.n., April 10, 1962). Juana Pagador immediately dragged her inside the house, lighted the lamp and placed her on bed. Asked by Pagador who injured her, Consolates said: 'We were robbed and the robbers stabbed us' (id). She then mentioned all the appellants and the late Federico Foronda as the perpetrators (pp. 12, 13, 21, id). Juana Pagador then called for Catalino Tacuboy, a rural policeman, and sent him to fetch barrio lieutenant Florencio Bañez who arrived with one Jessie Cortes (pp. 6, 17, 18, 20, id). Consolates' ante-mortem statement (Exhs. "P" and "P-1"-translation) was taken in the presence of Juana Pagador, Florencio Banez (Catalino Tacuboy, Jessie Cortes and Pagador's husband who could hardly hear (id, pp. 6-7, rec.).

Because Consolates told the group to go to their house and see if her husband was still alive, they proceeded to the scene where they found Vicente Lazo writhing in agony (pp. 7, 8, 21, id). Juana Pagador embraced her son and asked who inflicted his injuries (p. 8, id). Vicente mentioned two from the rest 'who mortgaged to me the watch' and Virgilio Baldiviso and then expired (pp. 8, 22, id). Pagador saw her grandchildren, Felicidad, with a brother and sister, still cowering in fear in a corner covered with a blanket (p. 9, id). The group saw things scattered, pillows ripped, an open trunk, a can (Exh. "J") and a gun (Exh. "M") (pp. 9, 13, 14, id).

When Juana Pagador returned to her house, Consolates Carpio was no longer there as she had been taken to the Camalaniugan Emergency Hospital where she died in the morning of November 13, 1960 (p. 11, id; pp. 5, 6, 9, t.s.n., Sept. 26, 1961). But before she died, Consolates Carpio gave her ante-mortem statement at about 8:00 o'clock in the morning of November 12, 1960 which was taken by Sgt. Pablo Tabaco of the Buguey Police Department (Exh. "O", in Ilocano, p. 5, rec.; Exh. "O-1", translation, pp. 3-4, id; pp. 205, 206, t.s.n., Jan. 11, 1967).

Dr. Iluminado Nebab, a physician working at the Camalaniugan Emergency Hospital, Cagayan, attended to Consolates Carpio from the time of her admission up to her death (pp. 6, 7, t.s.n., Sept. 26, 1961). His examination disclosed that the victim suffered five (5) stab wounds on different parts of the body and the cause of death was shock due to excessive bleeding (pp. 3, 4, 5, 9, t.s.n., Sept. 26, 1961; Exh. "A"; pp. 87, 87-A, rec.).

Postmortem examination on the cadaver of Vicente Lazo by Dr. Fortunato Tacuboy, Jr., Municipal Health Officer of Buguey, Cagayan disclosed that the victim suffered twelve (12) stab wounds on different parts of the body and the cause of death was hemorrhage due to multiple wounds (pp. 10, 11, 12, 13, t.s.n., Sept. 26, 1961; Exh. "D", p. 18, rec.). Traces of linear depression were found on the distal portion of victim's forearms indicating that it was caused by a rope, a string or anything used for tying (pp. 15, 16, t.s.n., id).

The dead body of Federico Foronda, one of the robbers, was found along the banks of the river about 200 meters

from the victim's house and a postmortem examination was also conducted by Dr. Tacuboy, Jr. (pp. 29-31, t.s.n., May 9, 1966; pp. 13-14, t.s.n., Sept. 26, 1961; Exh. "E", p. 19, rec.)." (Brief, pp. 2-6.)

Damaso Sarabia. In the brief filed for this appellant, counsel de oficio states:

"For resumé, on the evening of November 11, 1960, at Bo. Luga, Buguey, Cagayan, Consolatres Carpio and her husband, Vicente Lazo were robbed. Their P500.00 hidden in the pillow case was taken. In addition, their other savings in their trunk were also taken thru violence and intimidation hereinafter shown. That on the occasion of said robbery, Consolatres Carpio and Vicente Lazo were stabbed several times. The accused tied the hands of Vicente Lazo. They stabbed and killed him. Consolatres Carpio was stabbed in different parts of her body; her nipple was slashed and her rib hacked by the accused. She died on the second day after the ghastly attack. Damaso Sarabia was one of their attackers.

The following records show the above facts:

The confession, Exhs. "G" and "G-1" of Damaso Sarabia, showed that -

'At around 7:00 o'clock at night on November 11, 1960, we started with Federico Foronda in Alucao, Buguey, Cagayan, because he came to fetch me there in Luga, Buguey, Cagayan. We hiked from Buyon up to the road, then we hike up to the road of Palagao, Buguey, Cagayan. When we were in Luga, Buguey, we dropped for Virgilio Valdoviso and Herminio Valdoviso, and Federico Foronda told them that we are going to get the watch he pledged to Vicente Lazo, just in case he does not like to give it, we are going to force him, so they came with us. When we were near the house of Vicente Lazo we agreed to force him to give us, if he does not give it voluntarily. Federico Foronda called Vicente Lazo so we are going to buy cigarette, and Vicente Lazo got up lighted a lamp and came out. Federico Foronda went up the house and when Vicente Lazo recognized him, he asked Federico Foronda, 'IF WE ARE GOING TO GET THE WATCH' and Federico Foronda answered YES, Vicente Lazo invited him in, but because I did not follow, Federico Foronda came back so we will go up. When I went up and was at the door, I saw Federico Foronda leveled his gun to Vicente Lazo, then he ordered Vicente Lazo to bring out the watch. After the wife of Vicente Lazo gave the watch to Federico Foronda, Federico Foronda ordered again Vicente Lazo to turn his back so he will tie him, but Vicente Lazo submitted to him to be tied facing Federico Foronda and Federico Foronda tied Vicente Lazo.'

In the same confession, Damaso Sarabia also stated that their intention in going to the house of Vicente Lazo was to rob and that in the course of robbery Vicente Lazo died and his wife was wounded. That Damaso Sarabia was armed with a locally made 22 caliber revolver and that he knew that his companion Federico Foronda robbed the watch. (Exhibits "G" and "G-1").

The above confession of Damaso Sarabia was corroborated by Felicidad Lazo, 12, daughter of the victims. She declared as follows:

In the evening of November 11, 1960, she was with her parents (the victims) in their house at Luga, Buguey, Cagayan (TSN, Sept. 26, 1961). She saw all of the accused stabbed her parents (TSN, Sept. 26, 1961, p. 41). She specifically mentioned Damaso Sarabia as one among those who attacked her parents (TSN, Sept. 26, 1961, p. 41). She also declared that it was Damaso Sarabia who used the bolo Exhibit "C" in stabbing her parents (TSN, Sept. 26, 1961, p. 44); that it was Damaso Sarabia and Foronda who entered first their house; that these two were the ones who tied her father (TSN, Sept. 26, 1961, p. 46) with the rope Exh. "K"; that accused entered thru false pretense of buying cigarettes; that Abat Crisostomo another accused, got the key of the trunk and opened it; that it was, however, his co-accused Irong Advincula who got the P500.00 hidden in the pillow after ripping it; he also

got the money in the trunk. (TSN, Sept. 26, 1961, p. 47). That after taking the money, accused Foronda warned Consolatres Carpio, 1, 2, 3, after which all the accused stabbed Consolatres Carpio and Vicente Lazo (TSN, Sept. 26, 1961, p. 48).

Corroborating further the above facts, Consolatres Carpio in her ante-mortem confession Exh. "O" and "O-1" declared:

That at 8:00 P.M. on November 11, 1960, Domingo Quitariano, Andres Valdiviso, two from Pattao, Buguey, Cagayan, Cirilo Advincula, Teotimo Crisostomo and one from Buyon, Buguey, robbed them of P500.00 and killed her husband Vicente Lazo and stabbed her several times and that said atrocities was committed in the presence of their children. (Exh. "O").

Further, before Vicente Lazo died he was able to tell his mother-in-law, Juana Pugador that his assailants were Rogelio Baldoviso and companions including two others from the west. (TSN, April 10, 1962, p. 8). The two men from the west were declared by Francisco Crisostomo to be Damaso Sarabia and Federico Foronda (TSN, Oct. 28, 1965, p. 108).

In addition to the foregoing, de Gracia, Chief of Police of Buguey, Cagayan, in November 11, 1960, and who was presented as witness for Damaso Sarabia, declared - That when the accused were presented to Consolatres Carpio at the Dugo Hospital, she was already unconscious; in fact, she had been pointing to the companions of the Chief of Police and even he himself was pointed by Consolatres Carpio, as one among those who stabbed her. (TSN, Aug. 14, 1963, p 82). However, while he declared the above, he also admitted having executed on November 12, 1960, Exh. "1" a portion of which was marked as Exh. "I", reads as follows:

'That we took the person of Damaso Sarabia near the bed of Consolatres Carpio and we showed him to her and at that instant, said Consolatres Carpio immediately said that he was one of the robbers who robbed them and that he was the very person who stabbed to death her husband, Vicente Lazo, and that we noticed sign of anger in her face.'

The fact of death of the victims, were likewise proven beyond doubt by the declarations of Dr. Iluminado Nehab, 24, physician and Dr. Fortunato Tacubay, Jr. 29, physician. (TSN, Sept. 26, 1961, pp. 5, 12-13).

The issue to be resolved is whether or not robbery with two homicide were committed by the accused.

The defense of the accused Damaso Sarabia was that he was a minor (being 16 years of age) at the time the crime was committed. However, while he stated that he was born in 1944 and that he was more than 17 years old in 1960, (should be more than 16) yet the evidence of his being a minor that he presented to the undersigned is not convincing. In his confession, Exh. "G" and "G-1", he stated under oath that he was 19 years old. His defense of minority not having been duly established, the same may not be considered in his favor.

The records will show that the undersigned counsel de oficio had asked for many extensions to file brief. One of the main reasons is the fact that counsel had carefully read and scrutinized the records of the case in his effort to look for and pin point flaws in the evidence presented and in the decision of the trial court either for purposes of acquittal or for the reduction of penalty. It is unfortunate, however, that all records and pieces of evidence point to the guilt of the accused beyond reasonable doubt.

The undersigned counsel de oficio therefore, respectfully submits the fate of the accused Damaso Sarabia to this

Honorable Court." (Pp. 2-6.)

The record of the case confirms the statement of counsel for which reason We hold that there is no doubt as to the guilt of Damaso Sarabia.

Francisco Crisostomo, Teotimo Crisostomo, Virgilio Baldiviso and Herminio Baldiviso.

Consolatres Carpio made two ante-mortem statements. The first was on the night of the incident, November 11, 1960, in the house of Juana Pagador. The second was made at the Camalaniugan Emergency Hospital on November 12, 1960.

In the first statement (Exhibit P), Consolatres said among other things that she "do not know if I will survive." In the second statement (Exhibit O), in response to the question, "are you going to die?" she answered, "I do not know Sir, because my wounds are too painful."

It is contended that the statements were not made with a consciousness of impending death so that they do not qualify as exceptions to the hearsay rule. It suffices to state that for an ante-mortem statement to qualify as such it is not necessary for the declarant to expressly state that he believes that death is inevitable. A declaration made by the deceased while suffering from serious wounds is admissible as a dying declaration. (People vs. Abedosa, 53 Phil. 788 [1928].)

In the case at bar, Consolatres had no less than five (5) stab wounds and the following speak of their serious nature:

"1. Wound, stabbed, 4/5 inch, left intercostal space, along the left mid-clavicular line

2. Wound, stabbed, 1/4 inch, right lumbar, penetrating.

3. Wound, stabbed, 3/4 inch, left lumbar, penetrating.

4. Wound incised, lateral aspect, distal third, forearm, left.

5. Wound, stabbed, thru and thru, middle third, lateral aspect, thigh, right

OPERATIVE FINDINGS.

1. Hemoperitoneum, (1 1/2 liters)

2. Wound, perforating, 2 portions, descending colon.

3. Wound, perforating, 2 portions, mesocolon.

4. Retroperitoneal hematoma, extensive." (Exh. A.)

Exhibit P is assailed because the person who testified on it was Juana Pagador, mother of Consolatres, and it is alleged that "as such, had in her heart a very great desire to avenge the death of her daughter and her son-in-law, is a very biased witness." This claim is negated by the fact that Exhibit P contains statements by and large similar to those in Exhibit O which was made under entirely different circumstances. It should also be stated that revenge is a normal reaction in a person who has lost loved ones because of a crime but it does not follow that the revenge should be directed aimlessly so as to include innocent persons.

Further to the ante-mortem statements, it is said "that the names of accused Virgilio Baldiviso, Herminio Baldiviso and Francisco Crisostomo were not among the names said deceased gave to the authorities in Exhibit O, but that she gave the name only of a certain Andres Baldiviso. Andres Baldiviso is not one of the accused in this case. In Exhibit "P", the names of Herminio Baldiviso, Francisco Crisostomo and Teotimo Crisostomo were given and it is just strange why there has not been consistent declaration made by Consolatres Carpio in two dying declarations which she gave. On this matter alone, said declarations should have been rejected and not given credence by the Lower Court." (Brief for Francisco Crisostomo, et al., p. 9.) That Exhibits P and O are not perfectly congruent does not impair their evidentiary value. The variations between the two can be attributed to the fact that they were made when Consolatres was in a state of agony because her husband had been killed and she herself had been mortally wounded. Moreover, she said that there were three assailants she did not know.

Felicidad Lazo the 12-year old daughter of the deceased spouses was a star witness. Her testimony is summarized in the decision of the trial court as follows:

"That on the night of November 11, 1960, she was at home at barrio Luga, Buguey, Cagayan with her late parents, their farm helper and her two brothers and sister; that on that night they were robbed by the herein accused and her parents were stabbed; that this witness identified each of the accused in Court by pointing at them; that one of the culprits who was with the accused by the name of Federico Foronda is already dead as he was stabbed by her late mother Consolatres Carpio when the robbery was taking place; that the accused were armed with bulldog, small gun and big pointed bolos; that she identified Exhibits C and C-1 as the very bolo used in stabbing her mother and father; that it was Damaso Sarabia who used the bolo; that the accused were able to get more than P500.00 and a watch which was mortgaged by Virgilio Baldiviso in the amount of P25.00 before the incident; that the watch belonged to the late Federico Foronda; that she was able to identify all the accused in the house during the robbery and stabbing as there was light; that before the robbery and stabbing she was reading Bannawag while her late father was mending the string of his hook and her mother was sewing." (Expediente, pp. 425-426.)

It is asserted that Felicidad could not have witnessed anything because it is more likely that she would "have hidden herself or have sought some place of concealment" upon seeing armed men enter the house. This is pure speculation.

It is likewise asserted that except for Damaso Sarabia and Federico Foronda, all the other accused were neighbors of the Lazos for which reason they must have been known by Felicidad and yet, it is said, they made no attempt to mask their identities. The answer is that there is no pat explanation on the working of the criminal mind.

Partiality is also attributed to Felicidad; that like Juana Pagador "there is the same desire in her heart to avenge the death of her father and mother." Our statement regarding Juana's credibility is equally applicable to Felicidad.

In its decision, the trial court posed the following question: "Has conspiracy been proven x x x, if so what penalty should be imposed?" (Expediente, p. 455.) The court answered in the affirmative and on that basis imposed the

death penalty on all of the accused.

It is now claimed that "the lower court erred in having found that conspiracy has been sufficiently proven." We reject the claim and quote with approval the circumstances mentioned in the People's brief which show the existence of conspiracy:

"Firstly, when Damaso Sarabia and Federico Foronda rushed inside the victims' house, the other appellants immediately followed and, once inside, they all fired their guns and tied Vicente's hands (pp. 45, 46, 54, t.s.n., Feb. 21, 1962);

Secondly, appellant Teotimo Crisostomo did the asking as to where the money was kept and got from Vicente Lazo the key to the victims' trunk which appellants ransacked (p. 47, id);

Thirdly, all appellants participated in ripping the victims' pillow cases and appellant Cirilo Advincula got P500.00 from one of them (pp. 44, 45, 47, 48, id);

Fourthly, when Federico Foronda gave the signal by counting '1, 2, 3', appellants altogether stabbed the spouses Vicente and Consolates (pp. 48, 49, id); and

Finally, the location of the victims' injuries on different parts of their bodies must have been inflicted by more than one person. Vicente Lazo sustained twelve (12) wounds while Consolates Carpio had five (5)." (P. 10.)

The defense of the two Crisostomos and the two Baldivisos is alibi. The trial court rejected the defense and it is now asserted that it erred in doing so.

The Baldiviso brothers claimed that they were at home in the evening of November 11, 1960. Their house is situated about 70 meters from the Lazo house in Barrio Luga, Buguey, Cagayan. They claimed that they had cordial relations with the Lazos.

Francisco Crisostomo also claimed that he was at home with his parents and a visitor, Aniceto Garcia, when the incident happened. His house is near that of Lazo and in fact is the latter's nearest neighbor.

Teotimo Crisostomo said that he was at home at the time of the incident. He was with Diego Tacderas dressing and cooking chickens for the latter's farm helpers. His house is about 300 to 350 meters from the Lazos and the distance can be traveled by walking in 3 minutes. He and the Lazos were good neighbors and knew each other well.

The trial court rejected the defense of alibi and well it did for not only is alibi a weak defense which can be easily fabricated, in the case at bar the alibis are for naught due to the following reasons: (a) the pleaders had been positively identified by the combination of the ante-mortem statements of Consolates and the testimony of Felicidad; and (b) it was not physically impossible for them to be at the scene of the crime.

Cirilo Advincula and Domingo Quitoriano.

These appellants, like the Crisostomos and the Baldivisos, also dispute the finding of the trial court that there was

a conspiracy. For the reasons already stated, We hold that the trial court correctly concluded that there was indeed a conspiracy so that evidence against one was evidence against all.

In arguing against conspiracy, these appellants say that there is no "evidence of agreement among the co-accused in the instant case to rob and kill the victims." Suffice it to say that proof of conspiracy is not limited to an express agreement; it can be proved by circumstantial evidence. Thus it was held in *People vs. Pedro*, 122 Phil. 1155, 1166(1966):

"We cannot entertain the defense' claim that the court a quo erred in finding all appellants guilty of the crime charged there being no evidence of an agreement or conspiracy,' but such is not necessary in order that conspiracy may be considered it being sufficient that it may be inferred from the circumstances surrounding the commission of the crime. Here the common purpose or design on the part of the appellants to commit the crime is clearly inferred from the facts proven by the evidence. Thus, they show that all the appellants went to the scene of the crime and while Bautil Pedro fired the shots, his co-defendants, armed with guns, stood at both sides of the truck and demanded and received the money from Dina. This concerted action on their part proves conspiracy which makes them equally liable for the same crime."

These appellants also impugn Exhibits P and O; they claim that the exhibits were doctored and fabricated; that they do not meet the requisites of ante-mortem statements; and that even if they be considered as ante-mortem statements they are entitled to no credit. The credibility of Pablo Tabaco who testified on Exhibit O is likewise impugned.

The admissibility and probative value of Exhibits P and O have been sufficiently and substantially discussed and there is no need to deal with them again.

The rest of the assignments of error made by these appellants assert that their evidence is more credible than that of the prosecution. They claim in effect that their alibis should have been believed and accepted.

Cirilo Advincula claimed that at the time of the incident he was at home attending to a sick daughter who had a high fever; that the child was treated by Valentin Tarriga who spent the night with them because he sought their help to locate a stray carabao.

Domingo Quitariano claimed that he had been staying in Barrio Marede, Sta. Ana, Cagayan, since October, 1960; that in Marede he was the farm helper of Pablo Pagaduan; and that although he went to Barrio Luga on November 8, 1960, to get clothes, he returned to Marede on November 9 so that on November 10 and 11 he was working with Pagaduan.

The alibis of Advincula and Quitariano cannot hold for the same reasons already given in respect of the alibis of the Crisostomos and the Baldivisos.

The appropriate penalty for the crime committed by the appellants is that meted by the trial court. But this Court is unwilling to affirm the penalty because the appellants have been detained since November 15, 1960, to the present except for Francisco Crisostomo and Cirilo Advincula who were released on bail for sometime.

WHEREFORE, each of the appellants is sentenced to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the amount of P50,000.00, and to pay the costs. They shall be credited in full with their preventive imprisonment.

In view of the length of time the appellants have served as detention prisoners, the Court recommends that they be granted executive clemency without delay. Let a copy of this decision be sent to the Minister of Justice.

SO ORDERED.

Fernando, C.J., Aquino, Conception, Jr., Guerrero, De Castro, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, J., concurs except for the recommendation of executive clemency.

Makasiar, J., for death penalty and no executive clemency, the heinous nature of the murder and the aggravating circumstances, leaving as orphans the three minor children of the victims.

Melencio-Herrera, JJ., concurs except for the recommendation as to executive clemency since other accused similarly situated in other criminal cases have not been favored with a similar recommendation, besides the fact that prior detention alone of an accused ultimately found guilty should not be a ground for executive clemency..

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