

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BENJAMIN ONG Y KHO, AND BIENVENIDO QUINTOS Y SUMALJAG  
(PREVIOUSLY CONVICTED AS AFFIRMED IN G.R. NO. L-34497),  
ACCUSED. BAL...**

*G.R. No. L-37908. October 23, 1981*

Ponente: CONCEPCION JR., J.

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**CONCEPCION JR., J.:**

On the night of April 23, 1971, victim Henry Chua was last seen alive in the company of his friend Benjamin Ong. As Chua failed to return to his home, his family, alarmed by his mysterious disappearance, sought the help of the National Bureau of Investigation, the Manila Police Department, and the Philippine Constabulary to locate him. Knowing that Benjamin Ong was the last person with Chua before the disappearance of the latter, the NBI tried to contact Ong. Ong also disappeared, so the various police agencies began a manhunt for the apprehension of Ong.

Benjamin Ong was apprehended on August 29, 1971, in Sitio Patanda, Barrio Balugo, Oas, Albay. Brought to Ligao, Albay, Ong denied any knowledge of the disappearance of Chua. When Ong was transferred to Camp Vicente Lim in Laguna, he attempted to commit suicide. On September 1, 1971, when Ong was turned over to the NBI for investigation, he unhesitatingly confessed his responsibility for the killing of Henry Chua. Ong implicated Bienvenido Quintos as one of his companions in the crime. When Quintos was arrested, he also admitted his participation in the crime, and pointed to Fernando Tan and Baldomero Ambrosio as their companions in the per-petration of the crime, stating the details of its execution.

Based on the confessions of Ong and Quintos, the NBI and the Manila Police Department were able to recover the body of Henry Chua in a state of advanced decomposition. The identity of the body of Chua was confirmed by Siy Giap Chua, brother of Henry.[1] Both Benjamin Ong and Bienvenido Quintos were tried (CCC-VII-922-Rizal, for "Kidnapping with Murder") and convicted by the Circuit Criminal Court of Pasig, Rizal, Seventh, Judicial District, (Judge Onofre A. Villaluz) in the "Sentence", dated October 11, 1971.[2] As both Ong and Quintos were sentenced to death, the criminal case was elevated on automatic review to this Court (G.R. No. L-34497). This Court in its decision dated January 30, 1975,[3] found the two accused Benjamin Ong y Kho and Bienvenido Quintos y Sumaljag guilty beyond reasonable doubt of the crime of murder, with the qualifying circumstance of treachery, and the aggravating circumstances of evident premeditation and use of motor vehicle offset by the mitigating circumstances of plea of guilty and one analogous to passion or obfuscation, thereby imposing the penalty of reclusion perpetua on both of them.[4] Said decision became final and executory on February 19, 1975.[5]

At the time Benjamin Ong and Bienvenido Quintos were tried and convicted by the trial court, accused Baldomero Ambrosio and Fernando Tan, alias Oscar Tan, were still at large.[6]

After the arrest of accused Baldomero Ambrosio sometime in August of 1972,[7] an information was filed by the

Provincial Fiscal of Rizal against him, to wit:

"The undersigned Provincial Fiscal accuses Benjamin Ong y Kho, Bienvendio Quintos y Sumaljag, Fernando Tan alias 'Oscar Tan', and Baldomero Ambrosio alias 'Val' of the crime of Kidnapping with Murder, committed as follows:

"That on or about April 23 to April 24, 1971, inclusive, in the municipality of Parañaque, province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, being then private individuals, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and with treachery and known premeditation and for the purpose of killing one Henry Chua and thereafter extorting money from his family through the use of a ransom note, kidnapped and carried away said Henry Chua, initially by means of friendly gestures and later through the use of force, in an automobile, and later after having taken him to an uninhabited place in Caloocan City, with the use of force detained him (Henry Chua ) and killed him in the following manner, to wit: The accused after gagging and tying up Henry Chua and repeatedly threatening him with death, assured him that if he would write and sign a ransom note for the payment by his family of the sum of \$50,000.00 (US), he would not be killed and would be released upon re-ceipt of the ransom money, but after said Henry Chua agreed and did execute such a ransom note, he was again gagged and tied up by the accused, and there-after stabbed in the abdominal region, several times with an ice-pick, inflicting upon him (Henry Chua) mortal wounds on his vital organs, which directly caused his death.

"All contrary to law with the following generic aggravating circumstances:

- (a) Evident premeditation;
- (b) Grave abuse of confidence;
- (c) Nighttime;
- (d) Use of a motor vehicle;
- (e) Use of superior strength;
- (f) Cruelty."

The accused Baldomero Ambrosio pleaded not guilty upon arraign-ment on August 26, 1972, was tried, and the trial court rendered its decision dated October 17, 1973, with dispositive portion, to wit:

"WHEREFORE, finding the accused Baldomero Ambrosio, Guilty, beyond reasonable doubt of the crime of Kidnapping with Murder as defined under Article 248 of the Revised Penal Code, in relation to Article 267 thereto, as charged in the Information, the Court hereby sentences him to suffer the penalty of Death; to indemnify the heirs of the offended party the amount of P12,000.00; to pay moral damages in the amount of P10,000.00 and another P10,000.00 as exemplary damages jointly and severally with Benjamin Ong and Bienvenido Quintos; and to pay his proportionate share of the costs.

So Ordered."

The evidence for the prosecution, essentially the same as presented and reviewed by automatic appeal, by this Court in G.R. No. L-34497, establishes its version as follows:

Dr. Ricardo Ibarrola, Medico-Legal Officer of the National Bureau of Investigation stated that he conducted the autopsy of the deceased Henry Chua, and prepared the necropsy report Exh. "M". The body of the deceased at the time of the autopsy was already in a far advanced state of decomposition. The brains, lungs, and other soft tissues of the body were already totally decomposed while some of the internal organs, like the heart and the liver were already autolized. Dr. Ibarrola located two stab wounds on the liver, caused by a sharp pointed piercing

implement, most probably an ice-pick. He attributed death to these stab wounds, although he gave the considered opinion that death could have been hastened by asphyxiation as the probability existed that Henry Chua was buried alive.[10]

The body of Henry Chua was identified by his brother, Siy Giap, who was present when the body was exhumed from a shallow grave in Barrio Makatipo, Caloocan City. His identification of the body was based on the clothes and shoes worn by the deceased, as well as the personal effects found on it, including an expensive Piaget white gold watch, a lighter, a wallet with driver's license, Diner's card and other personal papers.[11]

Agents Enrique Lacanilao and Diego Gutierrez of the National Bureau of Investigation investigated the accused Benjamin Ong and Bienvenido Quintos. The original and supplementary extrajudicial confessions of Ong and Quintos[12] which led to the successful dis-covery of the place where Henry Chua was buried and the subsequent exhumation of the body[13] were identified by these agents. These witnesses also revealed the recovery of the rope with which Chua's hands were tied and the flannel cloth with which he was gagged when he was killed.[14] Both agents testified on the re-enactment of the crime.[15] In the course of investigation of accused Benjamin Ong and Bienvenido Quintos, the accused Baldomero Ambrosio was im-plicated. When accused Ambrosio was arrested in August of 1972, he was brought to the NBI office by the Chief of Police of Batan, Aklan. Ambrosio voluntarily gave the extrajudicial statement Exhibit "S".[16]

Ceferino Castro of the Baliwag Police Department narrated the discovery of Henry Chua's Mustang car with Plate No. 1602 which was abandoned near a gasoline station at barrio Tibag, Baliwag, Bulacan. The pictures of the car were identified.[17]

Patrolman Marciano Roque of the Caloocan City Police Depart-ment, narrated the alleged plan to kill Chua as initiated by Benjamin Ong. Roque knew Ong for more than five years as the Assistant Manager of the Acme Shoes Rubber and Plastic Corporation, a company situated in Caloocan City, owned by Ong's brother-in-law Chua Pak. During the first week of April, 1971, Roque went to the Acme office to get a pair of rubber sandals. Benjamin Ong invited Roque for a ride in Ong's car, where Ong revealed his plan to kidnap a person who allegedly cheated Ong in gambling games. Roque tried to discourage Ong from carrying out his plan. The latter insisted and asked Roque to assist him during the several meetings that followed between Ong and Roque. Roque claimed he was taken by Ong to Barrio Matipo, Caloocan City, and shown the place where Ong planned to bury the person he planned to kidnap and kill. In one of the meetings between Roque and Ong, the former saw a man seated at the rear of Ong's car and the latter referred to that man as his godson who will help him in the execution of the crime. That man turned out to be the accused Baldomero Ambrosio. Ong tried to persuade Roque to join the plan as the father of the intended victim happens to be a very rich man and the ransom money they expected to get would enable Roque to leave the police force and retire. Roque tried to avoid Ong and urged the latter to forget the matter.[18]

Bienvenido Quintos who was previously accused and convicted of the crime of murder,[19] implicated Baldomero Ambrosio when the former testified in his defense during that trial of CCC-VII-922-Rizal against Ong and Quintos.[20] Quintos stated that he could recognize his co-accused, then at large, Fernando Tan and Baldomero Ambrosio. On April 23, 1971, Quintos and Tan met Ong and Ambrosio at the Barrio Fiesta restaurant in Caloocan City. At about 9:00 p.m. they went to the Brown Derby restaurant at Quezon Bou-levard Extension, riding in the Chevrolet car of Ong. They proceeded afterwards to Roxas Boulevard where Ong ordered his driver Ambrosio to stop at the Amihan Night Club. While Ambrosio and Quintos stayed in the car, Ong and Tan went inside the night club. Tan returned to the car and invited Quintos to go to the nearby Wigwam Night Club. After a while, Tan and Quintos returned. Tan sat beside the driver Ambrosio while Quintos sat at the rear seat. They followed another car — a Mustang — from Dewey Boulevard to City Hall, then to Quiapo, España and Quezon

Boulevard Extension, Quezon City. They passed Sto. Domingo Church, made a U-turn, and turned right to Talayan Village. Quintos saw the car they were following stop in a dark place, and Ambrosio alighted from their Chevrolet car. Tan pulled a gun as he went to the other parked car — the Mustang. Quintos followed the two and he saw Tan approach and point a gun at a man while Ambrosio pulled that man out of the Mustang. That man was the victim, Henry Chua. Tan and Ambrosio forced Chua to the rear seat of the Chevrolet car, then compelled him to lie down on the floor. Ambrosio took a rope and tied the feet and hands of the victim, while Tan took a flannel cloth and gagged that man. They took the route going to San Francisco del Monte Avenue. In the meantime, Ong rode in the Mustang car and followed them. They all went to Novaliches road. At a narrow street along the way both cars stopped. Tan and Ambrosio took the victim from the car as Ong arrived. That man was made to walk and then made to lie down face up. Ong gave Tan an ice-pick and ordered "patayin na iyan" (kill him already), who in turn gave the ice-pick to Ambrosio. For his part, Ambrosio gave the ice-pick to Quintos. However, Quintos returned it to Tan, who said "Hindi ka pa pala puwede" (You are not capable yet). Whereupon, Tan told Ambrosio to focus a flashlight on the center of the front side of the body of Henry Chua. Tan stabbed Chua twice on the chest. While Tan lighted their way, Ambrosio carried the upper portion of the body, while Quintos carrying the lower portion. When Quintos got tired, Tan gave him the flashlight while Tan and Ambrosio carried the body to a hole. The hole was covered by Ambrosio. Ong then stepped re-peatedly over the covered hole to compress the earth. They re-turned to the car. Ong drove the Mustang car together with Tan. Quintos and Ambrosio rode in the Chevrolet car, driven by the latter. They followed the Mustang to the highway. Later, it was parked and abandoned near a gasoline station. Then Ong and Tan joined Quintos and Ambrosio in the Chevrolet and they proceeded to Manila.[21]

The version of the defense is as follows:

Accused Baldomero Ambrosio stated that in 1971, he was a family driver of Roger Chen, and before that employment, he worked for seven years at the Acme Shoes Rubber Corporation. Accused Benjamin Ong was the manager of the Acme Shoes Rubber Corporation while the accused Tan was a supervisor in the same company. Ambrosio alleged that Tan was a man of bad reputation, involved in a killing incident and kidnapping of a woman.[22]

In the evening of April 23, 1971, Ong, with Tan and Quintos, picked up Ambrosio from his place so that the latter could drive for Ong. They went to a restaurant at Balintawak known as Barrio Fiesta. They then went to the Amihan Night Club at the Dewey Boulevard. Ong, Quintos and Tan alighted from the car while Ambrosio remained in the car and he slept. The trio woke up Ambrosio at about 1:00 a.m. Tan and Quintos rode with Ambrosio where Ong was riding. They went towards España. At the Araneta Avenue, the car where Ong was riding stopped. Tan ordered Ambrosio to stop in front of the car. Tan and Quintos went to the other car. Tan introduced himself as a policeman, then he opened the door of the car and pulled the driver out.[23]

The narration of Ambrosio as to how the crime happened substantially coincided in details to the manner it was described by Quintos.[24] Ambrosio, however, claimed that he did not participate voluntarily in the crime, but rather he was ordered by Tan as to all the acts he did during the execution of the offense.

Accused Ambrosio admitted that at about 4:00 p.m. of April 24, 1971, he and his wife went to Arayat, Pampanga. They stayed two days in Arayat, then he proceeded to his brother's place in Balintawak. He then went to Aklan up to the time he was arrested in August of 1972.[25] He denied that Ong pointed to him as a godson in the presence of Patrolman Roque.[26] Ambrosio likewise denied that even before April 23, 1971, he was already with Ong, Quintos and Tan and that Ambrosio already dug that hole in Novaliches where the body of Chua was placed.[27]

He also claimed that the extrajudicial statement Exhibit "S" was signed by him because he was maltreated.[28]

The principal thrust of the defense's argument that the trial court never acquired jurisdiction over the subject matter of this case (complex crime of kidnapping with murder) because its jurisdiction as a Circuit Criminal Court is limited to "x x x. (a) crimes committed by public officers, crimes against persons and crimes against property as defined and penalized under the Revised Penal Code, whether simple or complex with other crimes," and kidnapping is not one of the crimes that may be tried and decided by that court, becomes of no moment when this Court in G.R. No. 34497 ruled that Ong and Quintos were guilty of murder and not kidnapping with murder.[29] The co-accused of Ambrosio were, therefore, tried and convicted of the crime of murder, a crime against persons, certainly within the jurisdiction of the circuit criminal court that rendered judgment in this case.

The only issue in this case, therefore, is whether or not the accused Ambrosio voluntarily participated in the commission of the crime. That the crime of murder was committed has already been established by the prosecution beyond reasonable doubt when this Court convicted Ong and Quintos in G.R. No. L-34497. This Court already ruled that "Conspiracy, connivance and unity of purpose and intention among the accused were present throughout in the execution of this crime. The four participated in the planning and execution of the crime and were at the scene in all its stages. They cannot escape the consequences of any of their acts even if they deviated in some detail from what they originally thought of. Conspiracy implies concert of design and not participation in every detail of the execution. Thus, treachery should be considered against all persons participating or cooperating in the perpetration of the crime." [30]

The defense of the accused Ambrosio that he was an unwilling participant in the killing of Henry Chua because of threats made by Fernando Tan, to Our mind, cannot be given credence. Quintos, as shown in his testimony, (Exh. "1") clearly narrated how Ambrosio participated in the crime, manifesting voluntariness in his acts throughout the execution of the same. Ambrosio was the one who pulled Chua from the Mustang car. Ambrosio provided the rope and tied the hands and feet of Chua. He was the one who drove the car with the victim inside to that place in Novaliches where they buried Chua after killing him. He focused the flashlight on the chest of the victim when Tan stabbed him. He helped carry the victim to the hole where he was buried, and Ambrosio covered the hole with earth using a spade. Exhibit "1" for the defense is certainly binding on it.

Ambrosio admitted that he went to different places and to Aklan after the crime was committed, and he was arrested only in August of 1972, nearly two years after the crime was committed. He never revealed to the authorities the crime that he alleged to be an unwilling participant of in that long span of time. He also admitted that there were at least two times when he could have escaped from the group of Ong when the crime was being executed and yet Ambrosio never did so. During the execution of the felony, Ambrosio never by act or deed protested to the group regarding its cruel commission. We also cannot fully understand why Ambrosio had to join the group of Tan, if according to Ambrosio, himself, Tan was a man of bad reputation.[31] Tan has never been apprehended. The defense of Ambrosio that he was threatened by Tan to participate in the crime stands uncorroborated, as contradicted by the testimony of Quintos. The inevitable conclusion is that Ambrosio voluntarily participated in the commission of the crime.

The trial court did not err in discrediting Ambrosio's claim that he was maltreated by the agents of the law to extract his extrajudicial statement. (Exhs. "S"). He never did protest the alleged maltreatment before the Regional Director Nestor Gonzales before whom he signed the statement. Although he had all the chances to do so, he never filed charges against the persons who allegedly maltreated him.[32] The confession of the accused Exhibits "S" is, therefore, admissible against him.

As to the aggravating and mitigating circumstances present in the commission of the crime, this Court already

ruled in G.R. No. L-34497, that treachery (alevosia) qualified the killing of Chua to murder. Chua's hands were tied and his mouth was gagged when he was stabbed twice with an ice-pick. Chua was defenseless and helpless enabling the accused to commit the crime without risk to them. The aggravating circumstance of abuse of superior strength is absorbed in treachery. The aggravating circumstance of nighttime (nocturnidad) cannot be absorbed in treachery because in this crime treachery arose from the defenseless position of Chua when he was killed, while night-time was purposely sought by the accused to facilitate immunity in the commission of the crime. The aggravating circumstance of uninhabited place (despoblado) is also present, due to the deliberate selection of an isolated place (Barrio Makatipo, Novaliches, Caloocan City) for killing and burying the victim. Abuse of confidence can-not be considered as an aggravating circumstance present in the crime, because it does not appear that the victim Chua ever reposed confidence on Ong. Chua knew that he was far stronger in money and influence than Ong. The fact that Henry Chua invited Ong night clubbing on that fatal evening and accommodated the latter in his car did not show that Chua had confidence in Ong.

The aggravating circumstance of use of motor vehicle in the commission of the crime can be considered present because the Biscayne car of Ong was used to trail the victim's car and to facilitate the commission of the crime and the escape of the accused.

Cruelty (ensañamiento) cannot be considered because there is no evidence that the victim Chua was buried while still alive to make him suffer.

Evident premeditation attended the commission of the crime because the accused meditated, planned, and tenaciously persisted in the accomplishment of the crime.

Accused Ong was given the mitigating circumstances of plea of guilty and one analogous to passion and obfuscation<sup>[33]</sup> because Chua previously threatened Ong for non-payment of debt arising from gambling, causing Ong humiliation and shame.<sup>[34]</sup>

Taking into consideration the above aggravating and mitigating circumstances, Ong was sentenced to reclusion perpetua. Accused Quintos, although no mitigating circumstance could be appreciated in his favor, was also sentenced to reclusion perpetua.<sup>[35]</sup> Ong and Quintos were also sentenced "jointly and severally to indemnify the heirs of the deceased Henry Chua in the amount of P12,000.00; to pay moral damages in the amount of P50,000.00; and another P50,000.00 as exemplary damages; and to pay their proportionate share of the costs. <sup>[36]</sup>

The present case (G.R. No. L-37908) already pending review in this Court when G.R. No. L-34497 was decided on January 30, 1975, should have been decided together with the latter case, as they arose from the same crime, involving the same accused.

It is Our considered view that the accused Baldomero Ambrosio stands in this case on a similarly situated position as convicted accused Bienvenido Quintos in G.R. No. L-34497, and should, therefore be sentenced to reclusion perpetua, and not death.

WHEREFORE, the decision of the trial court dated October 17, 1973, is hereby MODIFIED, finding the accused Baldomero Ambrosio guilty beyond reasonable doubt of the crime of Murder and sentencing him to reclusion perpetua, to indemnify, jointly and severally with his co-accused, the heirs of the deceased Henry Chua in the amount of P12,000.00; to pay moral damages in the amount of P50,000.00; and another P50,000.00 as exemplary damages; and to pay his proportionate share of the costs.

**SO ORDERED.**

Fernando, C.J., Teehankee, Barredo, Makasiar, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Aquino, J., see concurrence.

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[1] pp. 393-395, Original Record, CCC-VII-922-Rizal.

[2] pp. 19-48, Id.

[3] pp. 275-358, rollo, G.R. No. L-34497.

[4] pp. 328-329, Id.

[5] p. 364, Id.

[6] p. 20, Original Record, CCC-VII-922-Rizal.

[7] p. 59, Id.

[8] p. 1, Original Record, CCC-VII-922-Rizal.

[9] pp. 472-473, Original Record, CCC-VII-922-Rizal.

[10] pp. 4-22, t.s.n., Aug. 7, 1973.

[11] Exhs. "I", "J", "K", "C", "H", "D", "E", "F" and "G"; pp. 6-17, 47-60, t.s.n., August 16, 1973.

[12] Exhs. "N", "R", "O" and "Q".

[13] Exhs. "N-10", "N-10-a", "N-11.

[14] Exhs. "L-1" and "L-2".

[15] Exhs. "P", "P-1" to "P-19".

[16] pp. 24-99, t.s.n., Aug. 7, 1973; pp. 18-47, t.s.n., Aug. 16, 1973; pp. 5-15, t.s.n., Sept. 14, 1973.

[17] pp. 61-66, t.s.n., August 16, 1973.

[18] pp. 2-60, t.s.n., August 28, 1973; pp. 2-9, t.s.n., Sept. 3, 1973.

[19] G.R. No. L-34497.

[20] Exhibit "1".

[21] Exh. "1", pp. 2-54, t.s.n., September 22, 1971.

[22] pp. 16-20, t.s.n., Sept. 14, 1973.

[23] pp. 21-28, t.s.n., Sept. 14, 1973.

[24] pp. 20-40, t.s.n., Sept. 14, 1973.

[25] pp. 41-43, t.s.n., Sept. 14, 1973.

[26] pp. 44-45, t.s.n., Sept. 14, 1973.

[27] p. 46, t.s.n., Sept. 14, 1973.

[28] pp. 48-80, t.s.n, Sept. 14, 1973.

[29] pp. 328-329, rollo, G.R. No. L-34497.

[30] p. 318, rollo, G.R. No. L-34497.

[31] pp. 16-20, t.s.n., Sept. 14, 1973.

[32] pp. 59-64, t.s.n., Sept. 14, 1973.

[33] Art. 13, par. 10, Revised Penal Code.

[34] pp. 317-328, rollo, G.R. No. L-34497.

[35] p. 329, rollo, G.R. No. L-34497.

[36] Id.

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## CONCURRING OPINION

### AQUINO, J.:

I concur. The role played by Baldomero Ambrosio, the godson of Benjamin Ong, in the murder of Henry Chua, is described in this Court's decision in *People vs. Ong*, L-34497, 62 SCRA 174, 210, as follows:

"When they reached a dark and secluded place, Benjamin Ong urged Chua to stop the car for the former to urinate to which the latter obliged. The Biscayne car where Fernando Tan, Bienvenido Quintos and Baldomero Ambrosio were riding, stopped. Fernando Tan poked his gun at Chua and pulled him down from his Mustang car with Ambrosio giving help.

"His hands were tied, his mouth gagged with a flannel cloth, and he was placed in the Biscayne car. Tan and Bienvenido Quintos then rested their feet on him. Then Ambrosio drove the Biscayne while Ong drove the Mustang. They proceeded towards Barrio Makatipo, Novaliches, Caloocan City, where Henry Chua was stabbed to death and buried."

There can be no doubt as to Ambrosio's complicity in the murder of Chua.

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