

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ARSENIO BALUARTE AND DEMOCRITO LABARIA, DEFENDANTS AND
APPELLANTS.**

G.R. Nos. L-31180-81. October 30, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the judgment of the Court of First Instance of Cebu (Branch V) in Criminal Cases Nos. V-10220 and V-10245, dated June 20, 1967, finding appellants Arsenio Baluarte and Democrito Labaria guilty of robbery with homicide and sentencing each of them to suffer the penalty of reclusion perpetua, with the accessories provided by law, to indemnify the heirs of the deceased Clara Navales in the amount of P6,000.00, to pay Eleuteria Patalinghug the amount of P130.00, without subsidiary imprisonment in case of insolvency, and to pay 1/3 of the costs. Three of the five accused, namely, Francisco Enad, Zosimo Canoy and Ricardo Sato, Jr., were acquitted on the ground of reasonable doubt.

Eleuteria Patalinghug, a spinster, lived with a house helper, Clara Navales, at Barrio Basak in a mountainous sector of San Fernando, Cebu. On August 8, 1964, she left for Barrio Luknay of the same municipality to gather her own produce and to plow the field. Clara Navales was left behind in the house together with Rosita Alfeche, a neighbor whom the former requested to keep her company. Before retiring on the night of August 12, 1964, the two women closed all the windows and doors of the house, using a long piece of wood to bar the main door, and afterwards they slept together on a mat on the floor of the sala. At about 2:00 o'clock in the early morning of the next day, Rosita Alfeche was suddenly awakened by a man who was in the act of choking her. As the man pushed her head against a pillow, she struggled. At that juncture she realized that both of her hands were tied behind her back. By the dim light of a kerosene lamp she noticed another man sitting on top of the sewing machine about 1-1/2 meters away, wearing a straw hat locally known as "ticog," with the brim pulled down his eyes. According to her, the man resembled appellant Democrito Labaria. At an adjoining room, another man holding a flashlight was ransacking the trunks. The men left the house after taking whatever valuables they wanted.

After the departure of the malefactors, Rosita Alfeche discovered that her companion, Clara Navales, was already dead, and her body was covered with blood. She immediately shouted for help, and one Soledad Alfeche came to her aid, untied her hands and accompanied her to the house of one Honorato Saramosing. The latter, in turn, accompanied them to the barrio captain to report the incident. As it was still dark, they spent the hours until daybreak in the house of Saramosing before proceeding to the poblacion of San Fernando to report the matter to the authorities.

Upon learning of this unfortunate turn of events, Eleuteria Patalinghug returned to Barrio Basak and discovered that her trunk had been pried open, and some of its contents were scattered on the floor. The contents of her wooden piggy bank (Exh. "B") consisting of P60.00 in coins, a kitchen knife, a chisel and a coconut meat extractor, were missing. On that same morning of August 13, 1964, a team of investigators from the 53rd PC

Company of Cebu composed of Lt. Filart, Sgt. Armando Alfoja and some other constabulary soldiers and policemen of San Fernando, arrived at Barrio Basak. They saw the lifeless body of Clara Navales lying on her back on a mat spread on the floor (Exh. "J"). The face of the victim was turned to the left, and her skirt was raised up to the waist, exposing her panty. Her clothing, the pillows and blankets were all soaked with blood. The sewing machine was only about one foot from the feet of the victim. In the adjoining room, clothes were strewn on the floor; a kitchen knife covered with blood was found on top of the clothes. The post-mortem examination performed by Dr. Corazon Bautista, Municipal Health Officer of San Fernando, revealed that the victim sustained 19 stab wounds (Exh. "E"). The cause of death was suffocation and hemorrhage due to injuries to the vital organs such as the heart and the lungs. Rosita Alfeche sustained only minor injuries and conjunctival bruises in both eyes.

Four days later, on the early morning of August 17, 1964, Ignacio Alsa, Barrio Captain of Basak, found a "ticog" hat (Exh. "K") hidden underneath some thick bushes and stones in a ridge called Paling-paling, which was on the path leading from Barrio Balud to Barrio Basak about a kilometer away from the house of the victim. After the hat had been turned over to Sgt. Alfoja, the latter proceeded to the place where the same was found and conducted a further search. As a result of his search he found another "ticog" hat (Exh. "L") and a piece of wood (Exh. "D-1"), which turned out to be a part of the broken wooden piggy bank reported previously as missing by Patalinghug. The other portions of the piggy bank were subsequently found in the same site. In his determination to ascertain the identity of the owners of the hats, Sgt. Alfoja proceeded to the town of San Fernando, passing through Barrio Balud, and upon reaching the national road to Balud, he inquired from the stores there whether the "ticog" hats which he found were the same as those sold there. He found out, however, that none of the stores had that kind of hat.

Pursuing his investigation, Sgt. Alfoja then proceeded to the town proper of San Fernando. Upon being informed that there were some laborers from Barrio Basak, San Fernando, working in the wharf in Cebu City, Sgt. Alfoja proceeded to Cebu City with Pat. Roman. At Pier 1 of the city, Sgt. Alfoja noticed one of the workers of M/S Florentina wearing a "ticog" hat (Exh. "F") which had the same brand or make as the two hats found at Paling-paling ridge. When questioned about his hat, the man, who turned out to be appellant Democrito Labaria, appeared quite nervous and informed the investigator that he bought it that morning in Barrio Balud, San Fernando, from one Baro. Suspicious about the hat, Sgt. Alfoja further questioned him on the matter, and it was then that said appellant stated that he merely borrowed the hat from one "Baro." Alfoja requested Labaria to lend him the hat so he could show it to Baro. He then proceeded to Barrio Balud to question Baro. Upon being shown the hat (Exh. "F"), Baro who turned out to be an uncle of appellant Labaria, denied ownership of the hat. Owing to the conflicting statements of Baro and Labaria, the PC investigator brought the two face to face, and in that confrontation Labaria revealed that the true owner of the hat was not Baro but his other uncle by the name of Arsenio Baluarte, who was living in Barrio Pardo of Cebu City. Bringing with them appellant Labaria, the PC investigators and Pat. Libor of the San Fernando police force proceeded to the house of appellant Arsenio Baluarte, arriving there at 7:00 o'clock in the evening, but they did not find him there.

The mother of appellant Arsenio Baluarte directed the investigators to proceed to the public market of Pardo, but when they did not find the said appellant there, she took them to the house of appellant's common-law wife. When they still could not find said appellant, the group decided to return to the market. While they were going down the stairs of the house, they saw appellant Baluarte approaching the house. The latter, upon seeing Pat. Libor, immediately ran away. The investigators, after pursuing him some distance, gave up, the chase.

The constabulary investigators thereafter left the area, but at about 8:00 o'clock in the evening of that date, Sgt. Alfoja and two companions returned to the house of the common-law wife of appellant Baluarte to conduct a

surveillance of the premises. It was while they were hiding inside the house that appellant Arsenio Baluarte arrived at about 10:00 o'clock that night. He was immediately arrested and brought to the PC headquarters for investigation. In that investigation, appellant Arsenio Baluarte admitted in his extra-judicial statement made in the native Cebuano dialect (Exh. "M"), his participation in the commission of the crime aforementioned and disclosed that the names of his companions were Moises Enad (also known as Francisco Enad), Simo Canoy, Junior Sato and Democrito Labaria. The following day (August 19, 1964), he was brought to the office of Municipal Judge Sarmiento of San Fernando. Judge Sarmiento read aloud in the dialect the contents of the statement (Exh. "M"), and afterwards inquired from Baluarte whether the declarations therein were true. Appellant Baluarte replied that all his answers therein were true and correct, after which he was made by the municipal judge to sign the statement and to swear to the veracity of its contents.

After taking the statement of Arsenio Baluarte, Capt. Villarin decided that they should proceed to effect the arrest of the other three suspects, namely, Zosimo Canoy, Junior Sato and Moises Enad. Democrito Labaria subsequently executed an extra judicial confession in the local dialect. (Exh. "T"),[1] admitting participation in the commission of the crime. When Junior Sato and Zosimo Canoy were brought to the house of Eleuteria Patalinghug where the crime was committed, the constabulary investigators inquired from appellants Arsenio Baluarte and Democrito Labaria whether the persons mentioned by them in their extra-judicial declarations were the same as the Zosimo Canoy and Junior Sato who were arrested, and they told the investigators that they were the same persons.

After informing the other investigators that they could not apprehend Enad as he could not be found in his house or in another place in the barrio, the investigators decided to have the crime reenacted by Arsenio Baluarte and Democrito Labaria. According to Sgt. Alfoja, during the re-enactment at the house of Eleuteria Patalinghug, appellant Democrito Labaria demonstrated how he and his companions were able to enter the house by climbing through the window of the kitchen as shown in the picture Exh. "N", appellant Democrito Labaria also stated during that occasion that after he, Francisco Enad, Zosimo Canoy and Ricardo Sato, Jr., entered the house, they went to the sleeping quarters of the victim; that Zosimo Canoy and Ricardo Sato, Jr. held Clara Navales, who was then sleeping, with Sato holding Clara's left hand, while Canoy held the face of the victim on the manner shown in the picture Exhibit "O", Labaria posing as the man (Exhibit "O-1") holding the head of the victim (Exhibit "O-2"). Appellant Democrito Labaria also pointed to the place where he stayed during the occurrence, by sitting on top of the sewing machine (Exhibit "G") in the manner depicted by the picture Exhibit "G". In that investigation Alfoja also testified that appellant Arsenio Baluarte revealed that at the time the crime was committed he was sitting on the stairs of the house in the manner shown in the picture Exhibit "Q". Democrito Labaria informed the investigators that when he went down the stairs he tapped Arsenio Baluarte on the shoulder as shown in the picture Exhibit "Q-2".

On their return to the town, upon reaching the Paling-paling ridge, the investigators asked appellants Arsenio Baluarte and Democrito Labaria to indicate the spot where they allegedly divided the money that they stole from the premises. The two appellants pointed to the place in the Paling-paling ridge inside the cogon grasses, behind some piles of rocks, where they divided the loot, as shown in the picture marked Exhibit "R". In the aforesaid picture, Democrito Labaria is marked as Exhibit "R-1", while Arsenio Baluarte is marked as Exhibit "R-2". The spot allegedly indicated by them is the same place where the wooden piggy bank was found earlier by the investigators hidden inside the cogon grasses about two meters away from the place where they found the "ticog" hats. According to Sgt. Alfoja, the written statement of appellant Democrito Labaria was taken in the presence of appellant Arsenio Baluarte, accused Ricardo Sato, Jr., Zosimo Canoy, Francisco Enad and other people. Appellant Baluarte testified both at the preliminary investigation before the Municipal Court of San Fernando, Cebu, and at the investigation conducted by the Provincial Fiscal and Assistant Provincial Fiscal, substantially reiterating what

he declared in Exhibit "M".

At the trial, however, on March 10, 1965, appellant Arsenio Baluarte repudiated his extra-judicial declaration (Exhibit "M"), claiming that he signed the statement because he was threatened and maltreated. He asserted that Sgt. Willy Ebas kicked him and struck his ears with his two palms; while Capt. Villarin pointed his pistol at him, telling him to admit his participation in the crime and testify as state witness against Canoy, Enad and Sato; that he participated in the re-enactment because he was threatened by Capt. Villarin with further maltreatment if he refused; that he, Labaria and Sato merely followed what Sgt. Alfoja was instructing them to do; and that Exhibit "M" was read to him, and he signed the same without complaining to Judge Sarmiento, because he was afraid of Capt. Villarin and Sgt. Alfoja. On cross-examination, however, he admitted that he affirmed the contents of Exhibit "M" during the preliminary investigation subsequently conducted by Provincial Fiscal Ferandos, and, later, by Asst. Provincial Fiscal Maribao; but he claims that he did so for he was afraid of Capt. Villarin because he looked at him "with sharp eyes". He also admitted that at first he was willing to plead guilty because the prosecution promised to make him a state witness, but later he changed his mind.

Appellant Democrito likewise repudiated on the witness stand the extra-judicial declaration (Exhibit "T") executed by him on August 19, 1964 before Judge Sarmiento. According to him, he was threatened by PC Captain Cesar Villarin, who told him that if he would not sign the affidavit, he would be mauled; and that Francisco Enad, Zosimo Canoy, Arsenio Baluarte and Ricardo Sato, Jr. are mentioned in the affidavit as his companions in the commission of the crime although he did not participate therein and in fact he did not even know Enad, because the affidavit had already been-prepared in advance; that at the PC stockade he was mauled several times, not only by Capt. Villarin but also by Willy Ebas and 'another PC soldier, who all boxed him on his breast and thighs and stepped on his body, and when he was down, they kicked him; and that he did not show his injuries to Judge Sarmiento because he was told by Capt. Villarin that if he were asked if he had been threatened or harmed, he must answer in the negative.

In connection with the re-enactment of the crime, appellant Labaria declared that he sat on the sewing machine, Exhibit "G-2", because Capt. Villarin told him that he had nothing to do with the commission of the crime, and that he should just sit there so that a picture could be taken in order to satisfy the owner of the house. With respect to the picture Exhibit "H", where he appears to be holding the body of a person lying down (Exhibit "H-2", he explained that he was made to demonstrate that because he was threatened by Capt. Villarin that if he would not obey, he would be mauled again. When they took the picture Exhibit "N-1" wherein appellant Labaria appears to be in the act of committing a crime, he said that he was told by Capt. Villarin and Sgt. Alfoja to act in that manner while the picture was being taken. As regards Exhibits "P" and "P-1", where appellant appears to be holding a piece of bamboo, he said he was instructed by Capt. Villarin to hit Willy Ebas (representing the victim) with it on the breast; and as to Exhibits "Q", "Q-1" and "Q-2", where appellant Labaria appears to be standing in the house, he said he assumed that position upon instructions of Capt. Villarin. In Exhibit "R" appellant Labaria appears to be pointing to a certain place (Exhibit "R-1"); according to him, he was told by Sgt. Alfoja that that was the place where the money was recovered, and he should therefore point to it. Appellant Labaria declared that before the so-called re-enactment of the crime, he had never been to any of the places pointed to by him.

This appellant further declared that during the day of August 12, 1964, he was plowing the field, and in the evening of said day he was at home in Barrio Sangat, San Fernando, Cebu, which is some six kilometers away from the scene of the crime in Barrio Basak. His father Bernabe Labaria attempted to corroborate him in his regard. It is, however, admitted that appellant Democrito Labaria is the nephew of his co-appellant Arsenio Baluarte.

The two PC officers most closely connected with the investigation of the case took the witness stand to refute

appellants' claim of maltreatment, intimidation and coercion on the part of the constabulary. Capt. Cesar Villarin, Commanding Officer of the 53rd PC Company, denied as untrue the claim of appellants that they were threatened and maltreated by the PC soldiers when they were being investigated by them, or that appellant Baluarte signed his confession because he was promised to be utilized as a state witness. He declared that the two appellants – first, Labaria, then Baluarte – readily confessed to the commission of the crime when they were brought in separately to the headquarters. He stated that he personally investigated Arsenio Baluarte, while Tech. Sgt. Armando Alfoja questioned Labaria, and noted that each appellant during the investigation implicated the other. They also explained that the scar on the neck shown by Labaria was an old scar, which was already existing at the time appellant was arrested. Sgt. Alfoja also denied appellants' claim that they were maltreated, threatened or coerced, and said that the confessions were voluntarily executed and appellants freely participated in the re-enactment. He pointed to Exhibit "Y" (a letter dated September 18, 1964 signed by Arsenio Baluarte) to show that Baluarte even requested for his confinement in the PC stockade instead of in the provincial jail, for he was afraid of the retaliation by his co-accused, who were then in the provincial jail as a consequence of his extra-judicial declaration.

After a careful examination and evaluation of the evidence of record, We are convinced that appellants Baluarte and Labaria voluntarily executed their statements Exhibits "M" and "T".

It must be noted that both appellants (Baluarte and Labaria) affirmed under oath before the Municipal Judge of San Fernando, Cebu, on August 19, 1964, the veracity of the contents of their extra-judicial confessions. At the second stage of the preliminary investigation of the accused before Municipal Judge Sarmiento on August 28, 1964, appellant Baluarte again narrated under oath, their participation in the robbery, affirming substantially the contents of Exhibit "M". A subsequent preliminary investigation was conducted by the fiscal's office – before Provincial Fiscal Ferandos, and, later, before Asst. Fiscal Maribao – and each time, appellant Baluarte affirmed the truth of his sworn statement. In all of these occasions said appellant never complained to the aforesaid officers about the alleged maltreatment or duress. On the part of appellant Labaria, he could easily have complained to Judge Sarmiento about the execution of Exhibit "T", for, according to him he knew this Judge even before he executed his statement before her. And yet on August 19, he never complained to the Municipal Judge that Exhibit "T" was executed under duress. It is true that he impugned the voluntariness of his statement on August 28, 1964 during the second stage of the preliminary investigation, but it was for a different reason. During that hearing, he testified under oath that he signed the extra-judicial confession because his uncle Arsenio Baluarte threatened him with bodily harm if he did not admit his complicity. This was completely different from his claim at the trial that he signed the statement because he was threatened by Capt. Villarin that if he did not sign, he would be mauled.

2. Appellant Baluarte claims to have suffered maltreatment in the hands of the PC soldiers, yet he requested for his detention in the PC stockade instead of in the provincial jail. Appellant Labaria tried to make much of what he claims to be a scar on his neck evidencing injury inflicted upon him by the PC soldiers; but when he was asked in court by his counsel to remove his shirt, no scar could be found on appellant's neck. Both appellants did not submit to any doctor for the examination and treatment of their alleged injuries, although they could have easily done so, considering that during that time they were already conferring with their lawyers.

3. The claim of the appellants is further made improbable by the fact that each of the affiants in extra-judicial confession tried to minimize his own participation in the crime and tried to throw the whole blame upon the others, a thing which would not have been permitted if the confession had been put in their mouths by the investigating officer. Thus, Baluarte in his extra-judicial confession (Exhibits "M" and "M-1") stated that all that he did when they went to the house of the victim was to wait on top of the stairs while his companions entered the

house and committed the robbery in question, and that the persons who killed Clara Navales were Simo (Zosimo Canoy) and Francisco Enad; while appellant Labaria claimed that while his companions committed the robbery, all that he did was to sit on the sewing machine. Certainly, if the claim of appellants that they were coerced into executing the aforesaid extra-judicial confessions has any grain of truth in it, no cogent reason has been given why their co-accused – Zosimo Canoy, Francisco Enad and Ricardo Sato, Jr. – were able to deny before the investigators any complicity in the commission of the aforementioned offense and to refuse any participation in the re-enactment of the crime without suffering any maltreatment or harassment in the hands of the (constabulary investigators as a consequence thereof.

4. The confessions contained details which could hardly have been concocted by the investigators, such as the conference held on the afternoon of August 11, 1964 for the purpose of planning the robbery, the preparations which they made, the routes taken by the different participants in entering the house, the identities of the persons who had tied the maid, and those who held the head and arms of the deceased Clara Navales, the place where they distributed the loot among themselves, and where they hid the broken piggy bank. Those are matters which only the declarants themselves could have known. As a matter of fact, parts of the broken piggy bank were found at the place indicated by the appellants during the investigation.

Appellants finally contend that conspiracy among them has not been proven, as the extra-judicial declaration of one appellant cannot be admissible against the other, to prove conspiracy. While it is true that an extra-judicial declaration of a co-conspirator could not be given in evidence against his co-accused unless the conspiracy be proven first, there is no question that the extra-judicial declaration of the declarant is nevertheless admissible as evidence of the declarant's own guilt.^[2] In the case at bar, appellants Baluarte and Labaria admitted in their separate extra-judicial declarations that the two of them, together with their companions, had plotted to rob the house of Eleuteria Patalinghug, and that they had, in fact, carried out their criminal plan into execution. Effects of the crime, such as the piggy bank (Exhibit "D") together with its lid (Exhibit "D-1") were recovered at the site indicated by appellants, and they positively admitted in their statements having received their share of the money contained in said piggy bank. Moreover, the testimony of Rosita Alfeche in describing the movements of the men that entered the house of Patalinghug in the early morning hours of August 13, 1964, indicated that there was among them unity of purpose and of action 'indicating a common criminal design. There was, therefore, sufficient evidence to show the existence of a conspiracy.

The crime committed is robbery with homicide punishable by reclusion perpetua in the absence of any mitigating or aggravating circumstances, which is the case here. The penalty imposed upon appellants by the court below is, therefore, correct. However, the civil indemnity must be increased from P6,000.00 to P12,000.00, and the costs that should be taxed against each of them is 1/2 instead of 1/3 against both of them.

WHEREFORE, the judgment appealed from is affirmed with, the modification indicated above.

Barredo, Fernandez and Aquino, JJ., concur.

Fernando, J., in the result.

[1]

"1.

Q:

You are now investigated here regarding the robbery committed in Barrio Basak: San Fernando. Cebu. at dawn Of Thursday. August 13. 1964. in the house of Eleulena Patalinghug. and in this investigation you are going to swear to tell the truth and nothing but the truth only?

A:

Yes. I swear.

2.

Q:

State your name. age. and other personal circumstances?

A:

Arsenio Baluarfe. 22 years of age. single and resident of Pardo. Cebu City.

3.

Q:

According to the information we have gathered in the investigation conducted regarding the robbery committed in Basak, San Fernando. Cebu. on August 13. 1964. in which a certain Clara Navales, a maid, was killed, there were five persons composing the robbers, and the perpetrators wore hats made of ticog." What do you say regarding said robbery? Are you involved in that robbery?

A:

Yes.

4.

Q:

Who were your companions in that robbery; in Basak?

A:

This Simo Canoy. Moises Enad. Junior Sato and this Democrito Labaria.

5.

Q:

How come that the five of you went together in order to rob the house of Eleuteria Patalinghug in Basak. San Fernando?

A:

We had agreed in Balud. San Fernando, on Wednesday. August 12. 1964.

6.

Q:

Why were you there in Balud. San Fernando. Cebu. on that Wednesday'. August 12. 1964?

A:

Because I was brought by Moises Enad and Simo Canoy.

7.

Q:

Why, where did you meet Moises Knad and Simo Canoy because you were brought by them to Balud?

A:

They had gone to my house in Pardo.

8.

Q:

When did they meet you at your home in Pardo?

A:

On that day Tuesday. August 11, 1964.

9.

Q:

What lime was it when they'went to see you in Pardo?

A:

At 2:00 o'clock in the afternoon.

10.

Q:

What was the purpose of Simo Canoy and Moises Enad in coming to see you?

A:

The asked me to go with them to San Fernando because they would rob somebody.

11.

Q:

What lime did they return home after seeing you on that Tuesday?

A:

At 3:00 o'clock in the afternoon.

12.

Q:

Who were their companions of Simo Canoy and Moises Enad when they returned to San Fernando ?

A:

I was their companion because I accompanied them.

13.

Q:

Besides Simo Canoy and Moises Enad who went to see you in Pardo regarding the same purpose of Simo and Moises?

A:

Democrito Labaria.

14.

Q:

This Democrito Labaria. from where is he?

A:

He is from Cogon. Sangat. San Fernando .

15.

Q:

It means to say then that you had gone to Balud only on that Tuesday. August II. 1964?

A:

Yes.

16.

Q:

What time was it when you arrived at Balud on that Tuesday?

A:

At about 4:00 o'clock in the afternoon.

17.

Q:

Where did you proceed when you arrived at Balud?

A:

Near the house of Simo Canoy.

18.

Q:

You did not stay in a house when you arrived at Balud from the afternoon until you slept in the night?

A:

No.

19.

Q:

Where did you take your supper that day and where did you sleep?

A:

I just ate bread which was brought to me by Simo and I slept in the truck of Dodo Medalla.

20.

Q:

What kind of truck of Dodo Medalla was that where you slept?

A:

A cargo truck for hauling clothing.

21.

Q:

The following day. where did you stay?

A:

In the morning I went with Simo to the store of Nang Payang and we ate there.

22.

Q:

From the store of Payang. where did you go?

A:

I went towards the market place of Balud because that was Wednesday which was a market day.

23.

Q:

Where did you take your dinner?

A:

I did not take dinner.

24.

Q:

Where did you really agree that you would rob somebody in Basak?

A:

The first was at home in Pardo. We agreed again when we were in Balud.

25.

Q:

Therein Balud who were your companions in making agreement?

A:

Moises Enad, Simo Canoy. Junior Sato and Democrito Labaria.

26.

Q:

In what place of Balud did the five of you agree to rob?

A:

Above the market place of Balud.

27.

Q:

Who among you five stated the manner of committing the robbery?

A:

Moises and Simon.

28.

Q:

After you had agreed above the market place of Balud. where did you go?

A:

We went farther above to wait for Simo and Junior.

29.

Q:

It means to say that early in the evening Simo Canoy and Junior Sato were not with you in your hideout?

A:

Yes.

30.

Q:

Where were then Simo and Junior in the early part of the evening?

A:

Simo and Junior were drinking in the store of Nang Payang.

31.

Q:

What time was that when Simo Canoy and Junior Sato followed you up to your hideout?

A:

Past 9:00 o'clock in the evening.

32.

Q:

Where were you three, you. Moises Enad and Democrito Labaria hiding while waiting for Simo Canoy and Junior Sato?

A:

We were just sitting on the cogon grass located above the market of Balud.

33.

Q:

What time was that when you went up the house of Teria Patalinghug in Basak during the robbery committed by you?

A:

About 2:00 o'clock more or less.

34.

Q:

Where did you pass when you entered the house?

A:

Through the window of the kitchen.

35.

Q:

Who climbed first the window of the kitchen?

A:

Moises Enad.

36.

Q:

Who followed Moises in climbing the window?

A:

Simo.

37.

Q:

Next to Simo who passed through the window of the kitchen.

A:

Junior Sato.

38.

Q:

Who followed Junior passing through the window the 1 were using in entering?

A:

No more because I and Moering (Democrito) passed through the main door in front when it was already opened.

39.

Q:

Who opened the door in order to allow you and Moering to get inside?

A:

Simo.

40.

Q:

What weapon were you provided with that night?

A:

When I was on the way to the house I had nothing with me. But when I went up the house I was given by Simo a small hunting knife, the handle of which is made of wood.

41.

Q:

Who entered into the bedroom of the two women who were sleeping, namely Rosita Alfeehe and Clara Navales?

A:

They were Moises. Simo. Junior and Mocring, because I was made to sit at the stairs in front.

42.

Q:

What were the weapons of Moises, Simo, Junior and Mocring?

A:

Moises had a hunting knife. Simo got a bolo when he was upstairs and when he gave me a hunting knife. Junior had a Batangas knife, and Mocring had a chisel.

43.

Q:

Who killed Clara Navales?

A:

Moises and Simo because when we went down Moises and Simo spoke that they killed the woman because she recognized them.

44.

Q:

Why. did Clara tel! that she recognized you?

A:

Yes. Sir. she said: 'I know you. Dong.

45.

Q:

Besides the fact that Moises and Simo talked about having killed the woman, what is your ground in believing that they were the author of the killing?

A:

Because when they lighted a match on the hill when they broke the 'alcansiyu' (money container), their hands were smeared with blood.

46.

Q:

How much money were you able to get?

A:

I do not know how much, but Moises gave me thirty pesos.

47.

Q:

What kind of money was given to you by Moises?

A:

Twenty and ten-centavo pieces.

48.

Q:

Where did Moises give you the money?

A:

On the hill where we destroyed the money container.

49.

Q:

Besides (the money that you got. what other articles were you able to get?

A:

I have not seen except the money that was counted.

50.

Q:

How much was the money counted?

A:

After counting thirty pesos they gave it to me and I was told by Moises that I should go home then.

51.

Q:

What did you use in breaking the money container?

A:

I have not seen when they broke the money container because I arrived later at the hill. Upon my arrival, they were already counting the money.

52.

Q:

What hat were you using when you committed the robbery?

A:

That "licog" hat which was taken from the possession of Mocring.

53.

Q:

There are two very new hats both of "ticog" which were found by the PC Investigator at the hill of Paling-Paling together with the money container. Who wore those hats during the robbery at Basak?

A:

Moises Enad and Simo Canoy.

54.

Q:

Where did Moises and Simo buy these two "licog" hats which are similar to your hat which was taken from the possession of Mocring (Deinocriso Labaria)?

A:

At Fardo.

55.

Q:

Who bought these hats of Moises and Simo?

A:

The two themselves.

56.

Q:

From what store in Pardo did these Moises and Simo buy their hats?

A:

From the Chinese Store in front of the Store of Elyong where I bought my hat.

57.

Q:

Who went down first from the house where you committed the robbery after the commission of the crime?

A:

Mocring.

58.

Q:

Do you acknowledge this statement of yours before the Court of Justice even if the same will be used against you hereafter?

A:

Yes.

59.

Q:

What do you say regarding this investigation made by the Investigator?

A:

Nothing."

[2]

"1.

Q:

You are being investigated here now regarding the robbery committed in barrio Basak, San Fernando, Cebu, last August 13, 1964, where a certain Clara Navales, maid of Eleuteria Patalinghug, was killed by stabbing her, and in this investigation you will swear to tell the truth, and nothing but the truth?

A:

Yes.

2.

Q:

State your name, age and other personal circumstances?

A:

Democrito Labaria, 20 years old, single, and resident of Cogon, Sangat, San Fernando, Cebu.

3.

Q:

That hat made of "ticog" which was taken from your possession by the PC soldiers at the wharf of Cebu City on Monday night, August 17, 1964, and which was known to have been used by the robber in Basak last August 13, 1964, who was wearing that hat right during the robbery?

A:

Arsenio Baluarte.

4.

Q:

Who is this Arsenio Baluarte and where is he residing?

A:

He is the son of Imong Baluarte and he is living in Pardo, Cebu City

5.

Q:

Why do you say that it was Arsenio Baluarte who wore the said hat during the robbery in Basak?

A:

That hat belongs to him.

6.

Q:

During the robbery in Basak where according to you, Arsenio Baluarte was wearing or using your hat, where were you then on that occasion?

A:

I was in Basak.

7.

Q:

Why were you in Basak on the occasion of the robbery.

A:

Because I was brought along by Arsenio.

8.

Q.:

You mean to say that you are among the perpetrators of the robbery?

A:

Yes.

9.

Q:

Besides Arsenio Baluarte, who were your other companions in committing that robbery?

A:

Simo, Asis and Junior.

10.

Q:

What are the family names of Simo, Asis and Junior?

A:

Simo's family name is Canoy; this Asis is Enad; and this Junior is Sato.

11.

Q:

From where are these Asis, Simo and Junior?

A:

Asis is from Sangat; Simo and Junior Sato are from Balud.

12.

Q:

Can you point where is Simo Canoy, Asis Enad and Junior Sato?

A:

This is Simo Canoy (witness pointing to Zosimo Canoy); this is Asis Enad (witness pointing to Francisco Enad), and that is Junior Sato (witness pointing to Ricardo Sato).

13.

Q:

How come that the five of you, Simo Canoy, Asis Enad, Junior Sato, Arsenio Baluarte, and you were together in committing the robbery at the house of Eleuteria Patalinghug in Basak on the dawn of August 13, 1964?

A:

Because Arsenio Baluarte had an agreement beforehand with Simo Canoy, Junior Sato and Asis Enad.

14.

Q:

You, where did you have an understanding with them that you were going to commit robbery in Basak?

A:

In the house of Arsenio Baluarte in Pardo.

15.

Q:

When was that when you have an understanding with Arsenio in Pardo?

A:

On Tuesday, August 11, 1964:

16.

Q:

Who were present when you have an agreement with Arsenio in Pardo?

A:

We two alone, Sir. He did not tell me that we would do that.

17.

Q:

What did Arsenio Baluarte tell you regarding what you should do in Basak?

A:

He only told me to go along to Basak, but he did not tell me that we would do that.

18.

Q:

There in Pardo what date did you agree that you would go to Basak?

A:

We agreed that on Wednesday we would go to Basak.

19.

Q:

What did you agree with Arsenio regarding the place where you should meet before proceeding to Basak?

A:

We agreed that we would meet in Balud.

20.

Q:

What time was it when you and Arsenio had an agreement in Pardo on that Tuesday?

A:

At about 8:30 o'clock in the morning.

21.

Q:

After having an agreement with Arsenio, where did you go?

A:

I went home to Cogon.

22.

Q:

What time was it when you went to Balud on Wednesday, August 12, 1964?

A:

At 4:30 o'clock in the afternoon.

23.

Q:

Whom did you meet in Balud upon your arrival on Wednesday?

A:

We two only, I and Arsenio.

24.

Q:

In what part of Balud did you meet Arsenio on that afternoon of Wednesday?

A:

At the place where ball is played.

25.

Q:

When you met Arsenio there in ground where ball is played, what did you talk about?

A:

He did not yet talk about what we should do.

26.

Q:

Why, when did he tell you about what you should do?

A:

When we proceeded on our way up the hill.

27.

Q:

What time was that more or less when Arsenio revealed to you about the robbery that you would commit?

A:

At 11:00 o'clock in the evening.

28.

Q:

What did Arsenio tell you when he revealed that you were going to commit robbery?

A:

He told me to go with him to Basak because we will rob somebody and that our companions were Simo Canoy, Asis Enad and Junior Sato.

29.

Q:

In what house did all of you five meet before you went up the house in Basak in order to rob?

A:

There in Paling-Paling.

30.

Q:

What time was it when you went up the house of Eleuteria Patalinghug there in Basak?

A:

About 1:00 o'clock at Dawn.

31.

Q:

Why is it that it was dawn already when you committed robbery at the house of Terya Patalinghug?

A:

We were waiting yet for them.

32.

Q:

Whom were you waiting for, and who were waiting for them?

A:

We, Arsenio, Asis and myself, were waiting; and Simo and Junior were the ones we were waiting for.

33.

Q:

On your way, the five of you, to Basak, who among you five have weapons?

A:

Simo Canoy brought a hunting knife.

34.

Q:

What were the weapons you had, and that of Asis Enad, Junior Salo and Arsenio Baluarte?

A:

We had no weapons.

35.

Q:

Where did you pass when you entered the house where you committed robbery?

A:

Through that window which I pointed to you when we were in the house. where we committed the robbery.

36.

Q:

Who was the first to pass through that window in the kitchen?

A:

The first who went up was Simo. The next was Asis, then Junior and I followed Junior.

37.

Q:

There in the house where you committed the robbery, the PC investigator who was in the room found a knife which was smeared with blood, the said knife being property of the owner of the house. Who used the said knife?

A:

I do not know.

38.

Q:

Did you get inside the bedroom of the women who were sleeping?

A:

Yes.

39.

Q:

When you entered the bedroom, what was the position of the two women who were lying down?

A:

That position which I showed to you when a picture of mine was taken.

40.

Q:

Who was really the one who killed that woman Clara Navales who was lying down?

A:

Simo Canoy and Junior Sato because when I entered the bedroom of the women, I saw Simo and Junior stooping over Clara. Asis was seen by me ransacking inside the other room.

41.

Q:

When you got inside the room where the two women were sleeping, did you not notice if Clara Navales was still alive at the time that Simo and Junior were stooping over her?

A:

I have not seen or noticed if Clara was still alive when I saw Simo and Junior stooped over her.

42.

Q:

It means to say then that you cannot be sure if it was Simo Canoy, or Junior Sato, or else it was Asis Enad who killed Clara because you did not know whether or not Clara was still alive when Simo Canoy and Junior were stooping over her?

A:

I cannot be sure who among the three killed. Only that I saw Simo and Junior who were the ones who stooped over her.

43.

Q:

While you were inside the house, whom did you see enter the small room where things like the chest are placed?

A:

This Asis.

44.

Q:

Who hogtied Rosita Alfeche?

A:

This Junior.

45.

Q:

Why did you kill Clara Navales?

A:

I do not know why she was killed.

46.

Q:

Did not Clara Navales speak?

A:

I did not hear.

47.

Q:

Where were you then when Clara Navales was stabbed?

A:

I was near the sewing machine.

48.

Q:

Why is it that you are not sure as to who killed Clara?

A:

I am not sure because they were two.

49.

Q:

Who are these two that you mean?

A:

These Simo and Junior.

50.

Q:

What were these Simo Canoy and Junior Sato doing when you saw them stooping over Clara?

A:

I saw that Junior Sato was holding the arm of Clara. This Simo was holding the mouth of Clara.

51.

Q:

Was it the only thing that you saw that Simo Canoy was holding the mouth of Clara?

A:

Yes.

52.

Q:

That picture that you saw in which Clara was held by Simo Canoy by the mouth and Junior was holding the arm was Clara moving a you saw her?

A:

She was not moving.

53.

Q:

Who entered first the bedroom where Clara and Rosila were lying?

A:

Simo Canoy was the first to enter.

54.

Q:

You, what did you do while you were inside the very room where Clara and Rosita were lying down?

A:

I sat on the sewing machine, as I demonstrated while in the house where the robbery was committed.

55.

Q:

What did you bring with you when you came down the house where the robbery was committed?

A:

I had nothing. I even touched the body of Arsenio.

56.

Q:

What did you receive out of the things stolen from the house?

A:

That amount of money of twenty pesos when we were going home.

57.

Q:

Where did you get that twenty pesos?

A:

It was given by Asis Enad to me.

58.

Q:

Where did Asis give you that twenty pesos?

A:

There in Paling-Paling an the spot where our picture was taken.

59.

Q:

There in Paling-Paling where you were given twenty pesos the PC investigators of the case found I two hats made of "ticog which were thrown to the grass, and also the money container (alkansiya] Who were wearing the two "ticog" hats during the robbery?

A:

These Simo and Junior.

60.

Q:

Who was the one who broke the money container (alkansiya)?

A:

I do not know because upon my arrival I was given twenty pesos by Asis.

61.

Q:

Before you came up the house where you committed robbery, did the five of you agree that you would kill Clara Navales?

A:

We did not agree, Sir. Our intention was to rob.

62.

Q:

Who of you five who robbed, who was Clara's enemy?

A:

I do not know.

63.

Q:

Before, you robbed that house, how many times you have gone to that house where you committed robbery?

A:

Never. I even could not locate said house.

64.

Q:

After you received your share of twenty pesos, where did you go and where is the remainder of your share?

A:

I went home and there is nothing left of the money.

65.

Q:

Are you not an enemy of Simo Canoy, Asis Enad and Junior Sato before you committed robbery in Basak?

A:

We are not enemy.

66.

Q:

After you committed robbery in Basak, did you not quarrel with Simo Canoy, Asis Enad and Junior Sato?

A:

No.

67.

Q:

Who took charge of distributing the money which you stole when you arrived at Paling-Paling?

A:

This Asis.

68.

Q:

What is the share of Simo, Asis and Junior of the money which you have stolen?

A:

I do not know, Sir.

69.

Q:

Why do you not know how much is their share?

A:

I was just given my share when I arrived and they had already finished making the partition.

70.

Q:

What can you say about this investigation made on you by the Investigator?

A:

Nothing, Sir.

71.

Q:

Are you going to swear to the truth of your statement before our Courts of Justice even if this would be used against you hereafter, by sining it?

A:

Yes, I will swear to the truth, Sir."

[3] *People vs. Bande*, 50 Phil., 37; *People vs. Boon*, 64 Phil., 296.

People vs. Yatco, etc., et al., 97 Phil., 940, 944:

"We believe that the lower court committed a grave abuse of discretion in ordering the complete exclusion of the prosecution's evidence on the alleged confessions of the accused Juan Consunji at the stage of the trial when the ruling was made.

"Section 14; Rule .123, Rules of Court, is specific as to the admissibility of the extra-judicial confession of an accused, freely and voluntarily made, as evidence against him.

"Sec. 14. Confession. – The declaration of an accused expressly acknowledging the truth of his guilt as to the offense charged, may be given in evidence against him.'

Under the rule of multiple admissibility of evidence, even if Consunji's confession may not be competent as against his co-accused Panganiban, being hearsay as to the latter, or to prove conspiracy between them without the conspiracy being established by other evidence, the confession of Consunji was, nevertheless, admissible as evidence of the declarant's own guilt (*U.S. vs. Vega*, 43 Phil., 41; *People vs. Bande*, 50 Phil., 37; *People vs. Buan*, 64 Phil., 296), and should have been admitted as such.

"The rule cited by the Court below in support of its exclusion of the proffered evidence is Sec. 12 of Rule 123, providing that:

The act or declaration of a conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.'

Manifestly, the rule refers to statements made by one conspirator during the pendency of the unlawful enterprises (during its existence) and in furtherance of its object, and not to a confession made, as in this case, long after the

conspiracy had been brought to an end (U.S. vs. Empeinado, 9 Phil., 613; U.S. vs. Raymundo, 14 Phil., 416; People vs. Badilla, 48 Phil., 718; People vs. Nakpil, 52 Phil., 985)."

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