

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO CATINDIHAN, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-32508. April 28, 1980

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PER CURIAM:

These cases of robbery with homicide against Eduardo Catindihan, Eduardo Agujo and Eduardo Duria, like a similar case against Domingo Guevarra, L-33228, December 14, 1979, arose from the same incident. However, separate informations were filed against them because they were arrested on different dates.

Guevarra and Catindihan were tried separately and were sentenced to death in separate decisions of the Circuit Criminal Court at Malolos, Bulacan (Criminal Cases Nos. 182 and 093). Agujo and Duria were tried jointly and were sentenced to death in a decision of the Court of First Instance of Bulacan, Baliwag Branch IV (Criminal Cases Nos. B-311 and 430-73).

The cases of Catindihan, Agujo and Duria, like Guevarra's case, were elevated to this Court for review of the death penalty imposed upon them.

L-32508 - Case of Catindihan. - It is not disputed that between eight and nine o'clock in the evening of March 12, 1969, a group of armed men entered the house of the spouses Lorenzo Manuzon and Honorata Sevilla located at Barrio Batasan, San Miguel, Bulacan. The malefactors took the sum of eighty pesos from Honorata. On that occasion, she was shot in the chest. She died in the hospital on the following day.

In connection with that incident, the chief of police filed twenty-seven days later a complaint for robbery in band with homicide and frustrated homicide against Eduardo Catindihan, Eduardo Duria, Eduardo Agujo and Domingo Guevarra. After the preli-minary examination, a warrant was issued for the arrest of the accused.

Catindihan, 27, married, a laborer, and a native of Barrio Bagong Silang, San Miguel, who reached third grade, was arrested by agents of the Constabulary Criminal Investigation Service (CIS) on January 28, 1970 in the establishment of the National Steel and Shipyards Corporation at Mariveles, Bataan. He was taken to Camp Crame, Quezon City where two days later he executed a confession in Tagalog before Severino D. Constantino, the assistant chief of the CIS police intelligence branch (Exh. B).

In that confession, he recounted that three days after the robbery, he, Duria and Guevarra (the son of Patrolman Pedro Guevarra) were detained as suspects in the municipal jail. They were released for lack of evidence but they were told to come back. Instead of going back to jail, Catindihan went to Mariveles.

Catindihan revealed that his companions in the perpe-tration of the robbery with homicide were Guevarra, Duria, Agujo, Eduardo Dionisio, Benny Alcantara, and a person named Tony. Catindihan pinpointed Agujo as the killer of Honorata Sevilla. (Dionisio, as a prosecution witness, de-clared that Catindihan admitted having accidentally shot Honorata, 8 tsn April 28, 1970).

Catindihan disclosed in his confession that the robbery was planned by Guevarra. He said that Dionisio invited him to go to the house of Idong Taruc in Barrio Bagong Silang at about five o'clock in the afternoon of March 12, 1969 (about two hours before the robbery). There, Catindihan saw Duria, Agujo, and Tony drinking beer. Catindihan was cajoled by Dionisio into joining the drinking bout.

Later in the evening, Catindihan met Guevarra and Alcantara in a hut near Manuzon's house. Alcantara and Duria were armed with .45 caliber pistols. Guevarra was armed with a Garand rifle while Tony and Agujo were armed with carbines. Catindihan used the carbine of Idong Taruc. Asked point-blank as to his complicity in the robbery with homicide, Catindihan admitted his guilt in this wise in his confession:

"T: Sa ginawa ninyong panloloob at pagpatay ng babae, ano ang iyong masasabi? - S: Inaamin ko na ako ay nagkasala." (No. 28, Exh. B).

On March 24, 1970, Catindihan was charged with robbery with homicide in the Circuit Criminal Court. His confession was presented at the trial. Manuzon identified Catindihan as one of the four malefactors who robbed his house.

CIS Supervising Agent Constantino testified that Catindihan executed his confession voluntarily. However, Catindihan, who pleaded an alibi, repudiated his confession. He testified that he signed the confession after he was maltreated by the CIS agents and by complainant Manuzon.

The trial court regarded the confession as voluntary and rejected Catindihan's alibi that at the time of the robbery he was playing cards (tres siete) in the house of his in-laws in Barrio Bagong Silang. It noted that Catindihan could have taken part in the robbery in Barrio Batasan and then returned to his residence in Barrio Bagong Silang, both barrios being a part of San Miguel town. It construed his flight to Mariveles as an evidence of guilt.

The trial court convicted Catindihan of robbery with homicide, aggravated by band, nocturnity, abuse of superiority and dwelling and without any mitigating circumstance. It sentenced him to death and ordered him to indemnify the heirs of Honorata Sevilla in the sum of thirty-two thousand pesos.

Counsel de oficio contends that the trial court erred in giving credence to the testimonies of Eduardo Dionisio and Lorenzo Manuzon and Catindihan's confession.

The principal evidence against Catindihan is his confession. Even if the testimonies of Dionisio and Manuzon are discarded, the judgment of conviction against Catindihan can stand because it is supported by his confession which is corroborated by evidence of the corpus delicti.

Catindihan is literate. His confession is in Tagalog. It was sworn to before Lieutenant Genaro D. Rosales. Catindihan, who did not finish the primary course, appears to be intelligent as shown by the fact that at the trial he answered some questions propounded in English even before they were translated to him (5 tsn May 20, 1970). His confession is replete with details which imply that his answers therein were given freely and spontaneously.

Another contention of counsel de oficio is that Catindihan was deprived of due process of law because he was defended in the lower court by his counsel de parte and two counsels de oficio and because the trial judge took an active part in the examination of the witnesses "for the purpose of helping x x x the prosecution".

During the presentation of the prosecution's evidence, the accused was represented by his counsel de parte, Ciriaco Cruz, who also represented him when the defense presented its evidence.

However, at the hearing on May 7, 1970, when Atty. Cruz was suffering from vertigo, the trial court appointed Atty. Raul Aviso as counsel de oficio for that hearing only. He presented as a defense witness, Mario Villaseñor, a lawyer and former chief of police of San Miguel.

Then, at the hearing on May 20, 1970, due to the inability of Atty. Cruz to appear, the trial court appointed Ponciano Hernandez as counsel de oficio for Catindihan. Atty. Hernandez presented Simeon Taruc as a defense witness. Apparently, Atty. Cruz later appeared at that hearing because he objected to a question of the fiscal when the latter was cross-examining Taruc and he (Cruz) announced that the next defense witness was Catindihan himself whom Atty. Hernandez interrogated on direct examination.

At the last hearing or on May 26, 1970, Atty. Cruz appeared and after examining the last witness, he closed the case for the defense. Under the circumstances, it is not correct to say that the accused was deprived of due process of law.

Counsel de oficio, who conscientiously studied the record and made a competent presentation of the case for the accused, contends that the trial judge deprived Catindihan of a fair and impartial trial and favored the prosecution by taking an active part in the examination of witnesses.

Counsel cited (1) the intervention of the trial judge in the examination of the prosecution witnesses, Dionisio and Manuzon, (2) the judge's failure to order Dionisio's prosecution after it was brought out that Dionisio took part in the robbery and (3) the award of moral and exemplary damages which were not alleged in the information.

The rule is that a judge may properly intervene in a trial of a case to promote expedition and prevent unnecessary waste of time or to clear up some obscurity. But he should bear in mind that his undue interference, impatience or participation in the examination of witnesses or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial may tend to prevent the proper presentation of the cause or the ascertainment of the truth in respect thereto (Paragraph 14, Canons of Judicial Ethics, Administrative Order No. 162 dated August 1, 1946, 42 O.G. 1803).

"Judges are not mere referees like those of a boxing bout, only to watch and decide the results of a game; they should have as much interest as counsel in the orderly and expeditious presentation of evidence, calling attention of counsel to points at issue that are overlooked, directing them to ask the question that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses, etc." (Ventura vs. Judge Yatco, 105 Phil. 287, 294).

In the instant case, whatever bias might have been exhibited by the trial judge in favor of the prosecution did not preclude the defense from making an adequate presentation of its side of the case. Accused Catindihan testified and presented his witnesses. He was given all the opportunity to exculpate himself.

It should be underscored that his guilt was established beyond peradventure of doubt by his own confession which was fortified by the testimony of Manuzon, an eyewitness, who identified Catindihan as one of the malefactors. While there may be discrepancies in that testimony, nevertheless, it has probative value because the declarant, the husband of the deceased robbery victim, testified according to his own personal knowledge and observation of what transpired during the robbery and the killing of his wife.

The trial court did not err in regarding Catindihan as a co-conspirator and co-principal by direct participation in the robbery with homicide which was aggravated by dwelling, nocturnity and band. Hence, the death penalty was properly imposed. The inclusion of moral and exemplary damages in the civil liability is justified under articles 2219[1] and 2229 of the Civil Code.

L-42104 - Cases of Agujo and Duria. - On April 8, 1969, or twenty-seven days after the incident, the criminal complaint for robbery in band with homicide and frustrated homicide against Guevarra, Catindihan, Agujo and Duria was filed in the municipal court on the basis of the affidavits of Eduardo Dionisio and Lorenzo Manuzon. As already noted, separate informations for robbery with homicide were filed against the four accused because

they were arrested on different dates.

Catindihan and Guevarra were tried separately by the Circuit Criminal Court. The separate cases against Agujo and Duria were tried jointly by the Court of First Instance of Bulacan, Baliwag Branch IV.

The trial court in its decision of November 28, 1975 convicted Agujo and Duria of robbery with homicide, sentenced them to death and ordered them to indemnify the heirs of Honorata Sevilla-Manuzon in the sum of twelve thousand pesos.

The prosecution witness, Lorenzo Manuzon, who testified at the separate trials of Catindihan and Guevarra, also testified at the joint trial of Agujo and Duria. Dionisio, who testified at the trial of Catindihan, died a mysterious death and could not, therefore, testify at the trial of Agujo and Duria. But his affidavit of April 6, 1969 was presented in evidence as Exhibit E.

Hence, it is not surprising that the facts established by the prosecution in the Guevarra and Catindihan cases (L-33228 and L-32508) are substantially the same as those proven by the prosecution in the instant cases of Agujo and Duria.

As noted in L-32508, *supra*, it is not disputed that at about eight o'clock in the evening of March 12, 1969, Honorata Sevilla-Manuzon, 41, a school teacher, who was then five months pregnant, was shot inside her house located at Barrio Batasan, San Miguel, Bulacan after she was robbed of the sum of eighty pesos. That amount was given to her on that night by her husband, Lorenzo Manuzon. It represented the earnings of their jeepney.

After Honorata was shot, the intruders fired upon Manuzon but he was not seriously injured. Honorata was taken to the hospital in San Miguel and then to the Philippine General Hospital. A caesarean operation was performed upon her. She died on the following day, March 13.

Dionisio, 23, a native of Barrio Sibul Spring, recounted in his affidavit (Exh. E) that Encho Guevarra, Duria alias Nardo, Agujo (a Batangueño) alias Eddy, and Catindihan alias Dando, conspired to rob the spouses Honorata Sevilla and Lorenzo Manuzon. The conspiracy was finalized at seven o'clock in the evening of March 12, 1969 in a hut in Barrio Mayantok, near Barrio Batasan.

Dionisio allegedly tried to dissuade Guevarra from robbing Manuzon because they were neighbors but Guevarra did not heed Dionisio's advice. At the hut, Dionisio noticed that Catindihan and Duria (Doria) were armed with carbines, Guevarra with a Garand rifle and Agujo (Ago) with a .45 caliber pistol.

It was planned that Catindihan, Duria and Dionisio would enter the house of Manuzon while Agujo and Guevarra would remain outside as lookouts (*alalay*) and that no inmate of the house would be killed. When Dionisio allegedly informed the group that he would not take part in the robbery, Catindihan told him to remain in the hut and wait for them.

While Dionisio remained in the hut, he heard gunshots. He left the hut and walked back to Barrio Sibul Spring. Dionisio learned on the following day from the malefactors that Honorata Sevilla was accidentally shot.

On the other hand, as a complement to Dionisio's affidavit, Manuzon testified for the third time in six hearings from March to December, 1974 or repeated what he had declared in his affidavit and at the separate trials of Catindihan and Guevarra, that Catindihan and Duria, both provided with firearms, entered his house and pushed his wife Honorata to the bedroom after extracting eighty pesos from her. Then, Manuzon heard an explosion and his wife slumped on the floor. Catindihan fired his carbine at Manuzon who was in the bedroom but he was not seriously injured. Manuzon allegedly saw Agujo in the sala armed with a .45 caliber pistol taking the baby from the cradle. Then, the malefactors fled.

Agujo was arrested at three o'clock in the morning of December 27, 1972 at Barrio Ticob, Laurel town, Batangas (p. 24, Record of Criminal Case No. 430). Evidently, he fled from San Miguel and went into hiding.

On that same day, he was brought to the Constabulary camp at Malolos, Bulacan, where at eleven o'clock in the morning his statement was taken in Manuzon's presence. In that statement, Agujo, 22, admitted that he was in Manuzon's house when the robbery with homicide was perpetrated. He guarded an old woman (Manuzon's mother) while his companions Eddy and Dando held up the victim, Honorata Sevilla (Exh. F, p. 391, Record of Criminal Case No. 311).

Constabulary Lieutenant Reinario Albano testified that before Agujo swore to his statement, he asked Agujo whether he understood its contents. Agujo told him (Albano) that he had read his statement and understood its contents. Albano then directed Agujo to stand and raise his right hand and he asked Agujo whether he swore to the truthfulness of his state-ment and Agujo allegedly answered "yes".

From the provincial jail, Agujo was transferred to the municipal jail at San Miguel. Police Sergeant Leonardo Rodriguez took his second confession, Exhibit T, which was witnessed by his brother Domingo Agujo and his relative, Gerardo Dulay. Excerpts from his incriminating confession are quoted below:

"9. T: Ngayon, isalaysay mo ang buong pangyayari kung papaano nilooban ninyo ang bahay nila Honorata Sevilla?

"S: Ako ay niyaya ni Eddy Dionisio na papunta sa Bagong Silang, at kami ay magiinum. Iyon ay Marzo 12, 1969, bandang 5:00 at 6:00 ng hapon. Nagpunta kami roon sa bahay ng kanyang kaibigan. Nagdaan lamang kami at nag-tuloy kami sa bahay ng kaibigan ni Dando.

"Naginuman kami roon at nakaubos kami ng 1-case na beer. Ng maubos na iyon, ay nagkayayaan na mangloob kami. Kaya apat kaming lahat na lumakad. Si Eddy Dionisio, si Dando, ako at iyong isa na hindi ko alam ang pangalan ngunit taga Bagong Silang.

"Ng malapit na kami sa Batasan, sa bukid, ay may sumalubong sa amin na isang lalaki, at iyon ang ika-lima na nagpunta kami sa bahay ng lolooban namin. Malago ang puno at gumamela sa harapan at may bakod na pader cementado.

"Si Eddy Dionisio at ako ay umakyat sa harapan. Nag-akyat kami sa bubong na katabi ng balcon, at si Dando sabi sa amin ay sa likuran lamang siya aakyat, at iyong dalawang kasama pa namin ay naiwan sa lupa bantay.

"Ng kami ay nakapasok sa kalooban ng bahay, may nakahigang matanda. Sinipa ni Eddy at sabi (sa) akin ay bantayan mo iyan. Kaya bantay lamang ako sa matandang babae. Si Eddy Dionisio at si Dando, ay labas pasok sa kuwarto. Nakita ko na akay ni Dando iyong babae na (i) pinasok sa kuwarto.

"Nagsalita si Dando: 'Labas ang pera'. Sagot ng babae: 'Wala po.' Si Dando at Eddy ang dalang baril ay kapuwa carbine. Pinaputukan nila Eddy at Dando iyong babae at may kasama pa sa kuwarto. Basta nagpapaputok sila. At ang ginawa ko ay nagtalon ako sa balkon tuloy sa bubong ng garahe, tuloy sa likuran sa bukid.

"At may nagpaputok ng malakas na putok sa aming pinuntahan. Nagtuloy kami sa Bagong Silang, doon (sa) pinaginuman namin. Doon na kami natulog ni Eddy. Si Dando ay hindi namin nakasama.

"Kinabukasan, sakay kami ng jeep. Nagtuloy kami sa Sibul, at doon ko nalaman na may napatay na isang babae sa nilooban namin. At ako ay nagtuloy sa (Sitio) Kalawakan. Makalipas ang 1-linggo, umuwi na ako sa Batangas, sa (Barrio) Tikob, Laurel, dating Talisay." (Exh. T.)

"15. T: Inaamin mo na ikaw ay isa sa kasama nila Dando Catindihan, Eddy Dionisio, at 2-tao pa na hindi mo nakikilala, sa pangloloob doon na naganap ng ika-12 ng Marzo, 1969, na napatay ang isang babae na

nagngangalang Honorata Sevilla na isang maestra, na naganap sa Batasan?

"S: Opo.

"16. T: At ang pagamin mo ay kusang loob, hindi ka pinilit o tinakot, hindi ka ginamitan ng dahas, o pangako, upang magbigay ng salaysay at umamin sa iyong pagkakasala?

"S: Opo." (Exh. T-1.)

Sergeant Rodriguez testified that Agujo's second confession was given voluntarily.

Manuzon declared on the witness stand that he knew Agujo as a companion (barkada) of Manuzon's relative, the other accused named Duria, and that at noontime on March 12, 1969 or eight hours before the robbery, he saw Agujo, Duria, Catindihan and Guevarra at a store near his house in Barrio Batasan. On a previous occasion, Manuzon allegedly inquired from Guevarra about the identity of Agujo, who had long hair, and Guevarra informed Manuzon that the long-haired fellow was Agujo.

Testifying in his own behalf, Agujo (he finished Grade four) declared that at the time the incident occurred he was in his residence at Sitio Kalawakan, a hill about twelve kilo-meters away from Barrio Sibul Spring. It takes three to four hours to negotiate on horseback the distance between Kalawakan and Sibul Spring.

He went to Barrio Ticob, Laurel, Batangas at the behest of his uncle who allegedly requested him to live there with his godfather and stay in the latter's house because his children, who were studying, were in school most of the time.

Before he was arrested, the Constabularymen shot him in the shoulder. He told the arresting peace officers that he had nothing to do with the robbery with homicide in Barrio Batasan, San Miguel. He does not even know that barrio.

He admitted his signature in his confession, Exhibit F, but denied that he knew the contents thereof. He signed it because Manuzon and the Constabulary officers told him that if he did not sign it he would get hurt. When he signed it, he was weak and his wound in the shoulder had not been treated.

He said that his nickname is Duardo. He admitted that he came to know Duria in the provincial jail in 1973 but he denied being acquainted with Catindihan and Guevarra. He admitted having signed his second confession, Exhibit T. He was not maltreated by the policemen of San Miguel. But after reading Exhibit T, he denied having given that confession. He said that he signed it at the request of Sergeant Rodriguez after he heard that he was going to be electrocuted (bitay) and he realized that his case was hopeless (19 tsn October 20, 1975).

Duria alias Nardo and Donggue, 27, a farmer, residing at Barrio Bagong Silang, San Miguel, also relied on an alibi. He was in his house when the robbery with homicide was perpetrated. His barrio is about three kilometers away from Barrio Batasan where the incident occurred. It would take about an hour to walk from Barrio Bagong Silang to Barrio Batasan.

Duria testified that three days after the incident, or on March 15, 1969, he was summoned by the chief of police to the municipal building. He was placed in a lineup with other persons. Manuzon and his housemaid were asked if anyone of the malefactors, who entered his house, were in the lineup. They failed to identify him as one of the robbers. So, he was released.

In May, 1969, he left his barrio and went to the house of his aunt in Makati, Metro Manila, because of the rumor that the Constabulary soldiers would shoot him if they saw him. Later, he went with a friend to Barrio Ulango, Tanauan, Batangas. His family lived with him in Barrio Ulango. Then, his father informed him that he was among

those accused of robbery with homicide.

On August 24, 1973, he went to the Constabulary camp at Malolos. He denied any complicity in the robbery with homicide but the Constabularymen detained him. Later, he was released. He returned to Barrio Bagong Silang.

He denied being acquainted with Agujo and Guevarra. He admitted that he was acquainted with Catindihan alias Dando who also resided at Barrio Bagong Silang. He knows Manuzon because they are relatives (16 and 32 tsn October 13, 1975).

The record shows that although Duria was at first not identified by Manuzon and his housemaid as among those who took part in the robbery with homicide, nevertheless, he was included in the complaint filed by the chief of police on the basis of the sworn statement of Eduardo Dionisio dated April 6, 1969 that Duria participated in the perpetration of that special complex crime. Duria was also implicated in Manuzon's statement and by Sergeant Rodriguez, the investigator.

But although Dionisio had already implicated Duria (Doria) in his statement of April 6, 1969, he, nonetheless, executed a second statement dated April 23, 1969 wherein, upon being shown by Patrolman Rodriguez a photograph of the son of Damaso Duria, he (Dionisio) clarified that the person named Duria, whom he implicated in his first statement, was not the same Duria shown in the photograph, who was Damaso's son and was a resident of Barrio Bagong Silang. So, on the back of that photograph, Dionisio signed this statement: "Wala sa retrato na ito si Eduardo Duria na aking binabanggit sa aking pagtestigo sa Kaso Bilang 4318" (the case in the municipal court).

Dionisio further declared in his second statement that Eduardo Duria was not the real name of the person whom he had implicated in the robbery with homicide in his first sworn statement, although that person introduced himself to Dionisio as Eduardo Duria (Exh. 12-A).

Patrolman Rodriguez informed the chief of police on that same day, April 23, 1969, that Manuzon failed to identify the person named Eduardo Duria in the photograph, the son of Damaso, as one of the malefactors who entered his house on March 12, 1969. Patrolman Rodriguez recommended that Duria be dropped from the criminal complaint.

Acting on that request, the chief of police filed in the municipal court a motion dated April 24, 1969, praying that the case against Duria be dismissed. The court granted the motion in its order of that date.

On May 6, 1969, Manuzon sent a letter to the provincial fiscal asking the latter to oppose the dropping of Duria from the complaint and to include Eduardo Dionisio as one of the accused. Because of that letter, an assistant fiscal filed a motion for reconsideration in the municipal court. That court granted the motion and ordered Duria's re-arrest.

Since Duria had fled to Makati and later to Tanauan, he could not be arrested. As already noted, he surrendered to the Constabulary camp at Malolos on August 24, 1973. He was detained in the municipal jail of San Miguel on October 4, 1973. He waived the second stage of the preliminary investigation. On November 7, 1973, an information for robbery with homicide was filed against him in the Baliwag branch of the Court of First Instance (Criminal Case No. 430-73).

He pleaded not guilty. By agreement of the parties, Duria's case and the case against Agujo, Criminal Case No. 311, were tried jointly.

Resolution of contentions of the accused. - The six assignments of error of counsel de oficio for Agujo and Duria, who made a painstaking study of the case, may be reduced to the issue of whether their guilt was established

beyond reason-able doubt.

Counsel contends that the trial court erred in finding that Manuzon identified Duria as the person who shot his wife. That contention is correct. Manuzon did not testify that he witnessed the actual shooting of his wife but he categorically declared that he saw his wife "being pushed by Eduardo Duria and Eduardo Catindihan with a carbine" (8 tsn March 25, 1974). Manuzon had known Duria since the latter's boyhood.

Counsel points out that the trial court erred in find-ing that Manuzon saw Agujo firing a .45 caliber pistol near his child. Even if it were admitted that that finding is erro-neous, it would not mean that there is reasonable doubt as to Agujo's guilt. His two confessions and Dionisio's statement (Exh. E) leave no room for doubt that he was a co-conspirator and co-principal in the robbery with homicide.

Another contention of counsel is that Manuzon failed to denounce immediately to the police the persons responsible for the robbery with homicide. That is true. However, Ma-nuzon explained that he had to attend first to his wife, who was mortally wounded, and he was afraid of reprisals.

Conceding that, initially, Manuzon had some doubts as to the identity of the accused, those doubts were dissipated by the statement of Dionisio, a co-conspirator who became a State witness and who pinpointed Agujo, Duria, Guevarra and Catindihan as the perpetrators of the robbery with homicide.

So, less than a month after that incident, Manuzon executed a sworn statement wherein he narrated the tragic occurrence and the involvement therein of Duria, Agujo and Catindihan (Exh. C). The pertinent portions of his statement read as follows:

"10. T: Sa maigsing pangungusap, isalaysay mo nga kung papaano ang nangyari? - S: Noon nga ng gabi ng 12 ng Marzo, 1969, pagitan ng 8:00 at 9:00 ng gabi, ako at ang aking asawa na si Honorata ay nagbibilang ng pera, na galing sa engreso ng mga jeep na aking pinaghahanapbuhay.

"Iniwanan ko ang aking asawa sa may komidor at ako ay pumasok sa silid upang humingalay. Di naglipat sandali ay nakarinig ako ng kalabog at may narinig akong nagsalita ng 'Labas mo pa ang ibang pera'. Babangon sana ako ngunit nakita ko ang aking asawa na tinutulak papunta sa loob ng kuwarto.

"Pagkatapos ay bigla akong nakarinig ng putok. Ang aking asawa ay napalugmok sa may paanan sa pagpasok ng pintuan. At di naglipat sandali, ay pinagbabaril ako. Nagpatihulog ako sa may bandang likuran ng katreng hinihigaan ng aking tatlong anak at patuloy pa rin ang pagbaril sa akin.

"Pagkatapos ay nahinto and putok at nagtakbuhan na ang masasamang loob. Bumangon ako at aking sinundan hanggang balcon at nakita ko na nagsilundagan sa bubong ng garahe na kakabit ng aking balcon, at sila ay nagpatungo sa likuran ng aking bahay.

"24. T. May namukhaan ka ba sa mga manloloob? - S. Mayroon po.

"25. T. Sino ang iyong namukhaan? - S. Si Dando, Donggue at si Eddy.

"26. T. Alam mo ba ang pangalan ni Dando? - S. Eduardo Catindihan po na taga Bagong Silang po.

"27. T. Si Donggue, alam mo ang tunay na pangalan? - S. Opo, si Eduardo Doria na taga Bagong Silang din.

"28. T. Iyong si Eddy, ano ang tunay na pangalan? - S. Ang tunay na pangalan ay Eduardo Agojo na taga Sibul, San Miguel, Bulacan.

"29. T. Bakit mo nakilala ang mga taong iyong binabanggit? - S. Mangyari po ay nakikita ko sila sa aming lugar sa Batasan."

Manuzon's sworn statement erased any impression that he was unaware of the identity of the intruders who

com-mitted robbery and killed his wife.

Counsel, in assailing Manuzon's credibility, adverts of the fact that Manuzon and his housemaid failed to identify Duria in the police lineup on March 15, 1969 or three days after the incident. That may be true but, as already noted, Manuzon's subsequent affidavit made up for his failure at the outset to finger the culprits.

Even the chief of police, who was aware of Manuzon's equivocation, was convinced by Manuzon's affidavit, which, together with Dionisio's statement, was the basis of the criminal complaint filed by that functionary.

Counsel contends that the trial court erred in giving any probative value to Dionisio's statement (Exh. E) which is hearsay as to Agujo and Duria since they were not able to cross-examine the deceased Dionisio. Dionisio testified at the trial of Catindihan and was duly cross-examined. As already noted, his death prevented his presentation during the trial in the case.

But it should be noted that Dionisio's statement is partly corroborated and confirmed by Agujo's second confession (Exh. T). Hence, it cannot be said that Dionisio's statement is totally devoid of any probative value.

Needless to stress, the fact that Agujo and Duria were fugitives from justice is an indication of their guilt.

We find that the culpability of Agujo and Duria for robbery with homicide, aggravated by band, dwelling and nocturnity, was established beyond reasonable doubt. Hence, the death penalty should be meted out to the accused (Arts. 63[1] and 294[1], Revised Penal Code).

WHEREFORE, the lower courts' judgments in L-32508 and L-42104 are affirmed with the slight modifications that in L-42104 the indemnity of twelve thousand pesos should be paid solidarily by the accused, Eduardo Agujo and Eduardo Duria, and that the three accused should pay solidarity to Lorenzo Manuzon the sum of eighty pesos. Costs de oficio.

SO ORDERED.

Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J. and Teehankee, J., took no part.

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