

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BENJAMIN ONG Y KHO, AND BIENVENIDO QUINTOS Y SUMALJAG,
DEFENDANTS AND APPELLANTS.**

G.R. No. L-34497. January 30, 1975

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic appeal from a decision of the Circuit Criminal Court, Seventh Judicial District in Criminal Case No. CCC-VII-922 Rizal, dated October 11, 1971, the dispositive part of which reads as follows:

"WHEREFORE, finding the accused Benjamin Ong y Kho and Bienvenido Quintos y Sumaljag, 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 thereof, as charged in the Information, the Court hereby sentences each one of them to suffer the penalty of DEATH; to indemnity the heirs of the deceased Henry Chua, 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 jointly and severally; and to pay their proportionate share of the costs." [1]

The information filed by the Provincial Fiscal of Rizal, B. Jose Castillo against (1) Benjamin Ong y Kho, (2) Bienvenido Quintos y Sumaljag, (3) Fernando Tan, alias, "Oscar Tan," and (4) Baldomero Ambrosio alias "Val", the latter two being then at large, reads:

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, kidnap(ped) and carry(ied) away said Henry Chua, initially by means of a friendly gesture 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 receipt 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 thereafter stabbed in the abdominal region, several times with an icepick, 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; and

(f) Cruelty."[2]

Personal Circumstances of the Two Appellants

At the time of the trial before the lower court in September of 1971, the accused Benjamin Ong was 31 years old, employed with the Acme Shoes, Rubber and Plastic Corporation, a firm owned by his brother-in-law, Chua Pak, for the past 11 years, the last 6 of which was as an assistant manager. He was already receiving a monthly salary of P1,800.00 excluding yearly bonuses of P30,000.00 and other representation allowances or a total annual income of from P60,000.00 to P70,000.00. He had his elementary schooling at the Assumption Academy in San Fernando, Pampanga; his first and second years of high school at Chiang Kai-shek High School in Manila; and his third and fourth years at the Mapua Institute of Technology. He was a third year Commerce student, majoring in accounting at the University of the East, when he quit schooling in 1959. He married Athena Caw Siu Tee Ong on November 25, 1962 at the St. Jude Catholic Church, by whom he already had four children: Connie Louis, 7 years old; Dennis, 5 years old; Edgar, 3 years old; and Fanny, 1 year old.[3]

On the other hand, accused Bienvenido Quintos was 39 years old, single, an unlicensed surveyor and computer for two years already at the Robes Francisco Realty Corporation with a relatively "small" income. He was a third year engineering student when he stopped studying. In 1954 he was charged of Resisting Arrest and Assault Upon an Agent in Authority but this case was settled amicably.[4]

Brief Synopsis of the Testimony of the Prosecution's Witnesses

The prosecution presented several witnesses to prove its charge of kidnapping with murder. First to testify was Patrolman Marciano Roque of the Crime against Property Division of the Detective Bureau of the Caloocan City Police Department who declared that: He knew Benjamin Ong for about 6 years already because he usually investigated theft and robbery cases at the Acme Firm and at times received some money from Ong. In a series of 6 meetings with Benjamin Ong starting from the first week of April, 1971, Benjamin Ong confided to him his plan to get a man who cheated him in gambling by as much as P150,000; that he would ask for money from the latter's parents; and that after which, he would kill the victim. Benjamin Ong's determination was shown when his godson was even introduced to him as one who would help him. Benjamin Ong brought him to Barrio Makatipo in Novaliches, Caloocan City and described it as a suitable place where to bring the victim. Ong also told him that he had acquired a bag, flashlight and a piece of cloth. He was prevailed upon by Benjamin Ong to participate in his plan assuring that he could resign from the government service once the money is collected. Patrolman Roque revealed this plan to his Division Chief, Capt. Duenas, the Officer-in-Charge, Lt. Manapat, and the Chief of Police, Celestino Rosca. However, the three did not believe that Benjamin Ong had the guts to do it. After the incident, Patrolman Roque said that he and Police Chief Rosca met with Atty. Nestor Gonzales of the National Bureau of Investigation to supply the early leads in this case although they did not find a trace of the crime when they went to Barrio Makatipo.[5]

Miss Ligaya Tamayo testified next. She declared that: She worked as an entertainer at the Wigwam Nightclub in Parañaque, Rizal and knew Henry Chua very well. At around 1:30 o'clock in the early morning of April 24, 1971, she and Miss Mickie Yaro had Henry Chua and Benjamin Ong for their guests. The two talked in Chinese and had some drinks. Benjamin Ong showed her a check in favor of Henry Chua which he claimed that the latter won in a gambling game. She, however, did not actually see him give it. At around 1:30 that same morning, she accompanied the two to the door and saw them leave the place and ride in a Mustang car.[6]

Sy Yap, older brother of Henry Chua, was the third witness. He testified that: He was with Atty. Nestor Gonzales and other agents of the NBI on September 2, 1971 in Barrio Makatipo after Benjamin Ong pinpointed the place of burial, and there he saw the decomposing body of the victim under the ground, immersed in water. He saw and identified the following personal effects found with the body: a white gold watch which stopped at the hour of

6:22 and date of "24"; Driver's License No. 32219 with the name of Sy Sing Biok alias Henry Chua; Diner's card — Diner Group 0004149-1; pass issued by the Bureau of Customs for Henry Chua dated January 19, 1971; receipt for payment of the license of the car; residence certificate; lighter; wallet; currencies in different denominations; shirt jacket; pair of shoes; socks; brief; undershirt; T-shirt; and trousers with a mark "Especially tailored for Henry Chua, 2-2-71, No. 95812." [7]

Dr. Ricardo G. Ibarrola, Jr., Medico-Legal Officer of the NBI, appeared as the fourth witness. He testified on his post mortem examination made on September 2, 1971 at La Funeraria Paz, of the deceased Henry Chua, 31 years old, single, and on his necropsy report, Exhibit "M". He said that the deceased sustained two wounds on the liver and large intestine caused by a long pointed cylindrical instrument similar to an icepick. He added that most likely, the assailant was in front of and on a higher level than the victim. Although this did not appear in his report, he theorized that the two wounds were not the immediate cause of death since there was only a slight degree of hemorrhage in the vicinity of the punctured wounds. He said that the liver and large intestine had no sufficient time to bleed because something else must have happened which was the asphyxiation or suffocation of the victim due to his burial. [8] He stated, however, in his necropsy report, Exhibit "M", that the cause of death of the deceased was "punctured wounds of the abdomen."

Miss Clarita Teh, travel agent of Skyways Travel Service located at Ongpin St., Sta. Cruz, Manila, declared that: At about 4:00 p.m. of April 22, 1971, Benjamin Ong called her up by phone to ask for a reservation ticket for Hongkong and Taipei. On the morning of April 23, 1971, Benjamin Ong went to her office but forgot to bring along his papers including his Alien Certificate of Registration. In the afternoon of April 24, 1971, Benjamin Ong went back to the office, this time with the pertinent papers plus P4,000 cash. She said that he changed his destination from that of Hongkong and Taipei to that of Canada. However, he needed P7,000 for this purpose. On April 29, 1971, Mrs. Ong got back the P4,000 because the latter said that her husband did not have enough money. [9]

Patrolman Gener S. Estrella, municipal policeman of Baliuag, Bulacan, followed next on the witness stand. He stated that on April 25, 1971, he was on his tour of duty from 4:00 o'clock to 8:00 o'clock a.m. at the poblacion when he received information that an unidentified car was parked in a gasoline station. He therefore sought the company of Patrolman Ceferino Castro and they went to Barrio Tibag where they saw the locked Mustang car parked in a gasoline station with plate number 16-02B, L-P.C., series '71. They reported the matter to their head, Lt. Herminio Angeles. [10]

Severo "Boy" Roslin, mechanic, gave the next testimony. He knew Fernando Tan since 1965. On April 29, 1971, early morning, he saw Fernando Tan and another, introduced to him as Alfredo Hernandez, who happened to be Benjamin Ong. Fernando Tan requested him to bring them to the airport and obtain airplane seats for the Visayas. He accompanied them but they failed in this endeavor so that they proceeded to the pier. Likewise, they were frustrated in getting a passage to the South. They ended up taking a train ride to Lucena City. Roslin said that he went back to Manila that same day. On May 1, 1971, he and Fernando Tan went to the house of Bienvenido Quintos near Abad Santos St. in Manila. They did not see him so that they had to come back at noon. They then took him with them and, after passing by a laundry shop, they went to Singalong where they picked up Benjamin Ong at around 7:00 p.m. Roslin claimed that they were using his Chevy car. They went to Barrio Balugo, Oas, Albay and stayed at his parent's house. He, Quintos, and Tan stayed there for one half month where they took themselves into swimming at the river. They left Benjamin Ong there. [11]

Enrique Lacanilao, an NBI agent, testified that: Exhibits "N" and "O" are the voluntary written statements signed respectively by Benjamin Ong on September 1, 1971 and by Bienvenido Quintos on September 3, 1971. He said that Benjamin Ong pinpointed to them the place of burial at Barrio Makatipo, and Sy Yap was with them during

the examination. They found the mouth of the victim gagged and his hands tied. It was in a state of decomposition. The victim's body was facing downward with the buttocks protruding up. The hands were tied just above the chest while the feet were far apart. The buttocks were one foot from the surface while the face was one and a half feet below facing down. There were no houses in the area which he believed was the Araneta subdivision. He directed the reenactment of the crime. It appeared in their reenactment that Fernando Tan and Bienvenido Quintos were the ones who grabbed Henry Chua from his Mustang car when Benjamin Ong was urinating; that the victim's mouth was gagged while his hands were tied at the back; that during the making of the ransom note, Tan was holding the gun while Quintos was focusing the flashlight; that afterwards, Henry Chua's hands were tied again, this time in front; that he was stabbed after he was made to lie down facing up; that Baldomero Ambrosio and Bienvenido Quintos pulled the victim to the hole; that Baldomero Ambrosio shovelled while Bienvenido Quintos held the flashlight; that at the time the ransom note was being prepared Benjamin Ong was near the car, about 50 meters from the hole, so that his person did not appear in the picture of the reenactment of this portion. Benjamin Ong was taken by the NBI into custody from the 2nd PC Zone on September 1, 1971 at around 6:30 in the evening whereupon at 10:00 p.m. of that same night, his written testimony was taken down up to past 12:00 midnight. He had a small bandage around his wrist because of an attempted suicide on his part. Bienvenido Quintos, on the other hand, he said, was arrested on September 3, 1971 and his extrajudicial statement was taken on the same day at around 7:00 or 8:00 p.m.[12]

Diego H. Gutierrez, also an NBI agent, testified last for the prosecution. He identified Exhibits "Q" and "R" as the voluntary supplementary extrajudicial statements respectively of Bienvenido Quintos and Benjamin Ong. Gutierrez' testimony focused on Bienvenido Quintos' admission that the hole was dug and covered with fresh twigs after the group's second meeting at the Barrio Fiesta Restaurant.[13]

Brief Synopsis of the Testimony of the Witnesses for the Defense

The defense started the presentation of their evidence with the testimony of Dr. Mariano P. Lara, retired Chief Medico-Legal Officer of the Manila Police Department. His testimony centered on the matter of asphyxiation. He said that asphyxiation as the possible cause of death was nowhere reflected on the necropsy report of Dr. Ibarrola of the NBI; and that the death of the victim could have been due to shock as a result of the wounds inflicted on him.[14]

Rene Aguas, BIR examiner and first cousin of Bienvenido Quintos, then testified. He said that he went to the NBI on September 8, 1971 in order to follow up the clearance papers of his deceased father. By coincidence, he discovered that Quintos was detained there, so, he tried to get in touch with him. He gathered that Quintos was "okay" although later on the latter revealed that he was hurt also.

Artemio R. Quintos an engineer and father of accused Bienvenido Quintos, followed next. He said that he visited his son on September 3, 1971 along with Atty. Bonicilla at around 7:00 p.m. at the NBI. The guard refused to tell him where his son was so that the following day, September 4, he went back to the NBI in the morning as well as in the evening. Still he did not find his son. On September 5, he delivered clothes for the use of his son to the jailer, Benjamin Laforteza, and was issued a receipt therefor. On September 6, he brought a letter addressed to the Director of the NBI requesting him that he be allowed to see his son. It was only on September 7, at 4:00 p.m. he claimed, that he met his son. He said that Bienvenido Quintos showed to him his stomach with some bluish discoloration at the navel. On that day, he also received his son's dirty clothes and found bloodstains on it.[15]

Bienvenido Quintos then took the witness stand. He revealed that he came to know Fernando Tan when they were still in Dagupan City long time ago. He said that he was invited on April 23, 1971 by Fernando Tan and that they met at around 7:00 p.m. of that day. They proceeded to the Barrio Fiesta Restaurant in Caloocan City where he was introduced to Benjamin Ong and Baldomero Ambrosio for the first time. At 9:00 p.m., they went to Brown

Derby Supper Club in Quezon City after which they proceeded to Amihan Nightclub at around 10:30 p.m. at Roxas Boulevard. He, Fernando Tan, and Baldomero Ambrosio were left in the car. Later, Benjamin Ong went out of the Amihan Nightclub and took Fernando Tan with him. Fernando Tan returned and after a while he was invited to the nearby Wigwam Nightclub. They hurriedly left the place and Fernando Tan took the front seat of the Biscayne car while he took the back seat and followed a certain car. When that car stopped, he saw Benjamin Ong vomiting. Fernando Tan and Baldomero Ambrosio went down and Fernando Tan pulled out his gun. The victim was dragged and forced into the rear part of their car. The victim's hands and feet were tied by Baldomero Ambrosio while the mouth was gagged by Fernando Tan with a flannel cloth. Bienvenido Quintos made clear in his testimony that the victim was lying on his back inside the car so that his face was up and his hands were on his breast. Fernando Tan then threatened him with his gun should he not cooperate with them. At Barrio Makatipo, the victim laid down on the ground and Benjamin Ong got the shovel and flashlight and gave them to Fernando Tan. The victim was made to walk a little distance and then lie down again face up. Benjamin Ong gave to Fernando Tan an icepick who then gave it to Baldomero Ambrosio and in turn gave it to him. He refused to stab the Victim so that he returned it to Fernando Tan who made the actual stabbing on the victim's chest twice: According to him, there was already a hole in that place. He also claimed that Exhibit "O" was not a voluntary statement of his and that he was maltreated by more or less 5 men. He said that he went to Oas, Albay on May 1, 1971 but that he was never contacted by the group between April 24; and 30. At a certain point during the proceedings, the court suspended his testimony for about 15 minutes after he complained of an aching head.[16]

Benjamin Ong testified last for the defense. He related that Henry Chua was a friend and that they were slightly related to each other. He felt that he was cheated because he was the only one who continuously lost in their mahjong sessions. Henry Chua's group, including Ko King Pin, Go Bon Kin and Marcelo Tanlimco, went to his office and humiliated him there. On April 21, 1971, Henry Chua called him up by phone and invited him to the Amihan Nightclub where he could settle the gambling debt. He admitted responsibility for Henry Chua's death but emphasized that his purpose was merely to kill him. He added that nothing was taken from the body of the victim. He asked the assistance of Fernando Tan and Baldomero Ambrosio who merely drove the car. He denied the testimony of Patrolman Marciano Roque regarding his revelation of his plan. He believed that Henry Chua knew that he had a grudge against him during that fatal day. He waited for them to dig and cover the hole which took about one hour and a half after the stabbing. He attempted suicide by slashing his wrist 7 or 8 times while he was still in the custody of the P.C. at Camp Vicente Lim in Laguna. He was also brought by the NBI to the Salem Motel where he was investigated from 8:30 in the evening up to 5:30 in the morning of the next day. Exhibit "N", his extrajudicial statement, was taken while he was groggy and very weak. He likewise pinpointed the grave. At a certain juncture during Benjamin Ong's testimony, his counsel sought the court's permission to exclude the public from the hearing because Ong's wife would testify on something that would constitute a "great shame" to their family. Benjamin Ong, however, refused to go ahead with said testimony. Benjamin Ong further claimed that he decided to kill Henry Chua on April 22, 1971. He was hurt by the threatening words on the part of the victim which humiliated him and, as such, he was forced to resign from his job. He went to the Skyways Travel Service only after the incident. He, however, changed his destination and wanted to go instead to Canada and Europe. The reason why he was not able to pursue his departure was because Sy Yap called him up and asked him about his brother's whereabouts so that he seriously felt that the authorities were already after him. He left Manila on April 29, 1971 and went to Legaspi City with Fernando Tan but found no acquaintance there so that they went back to Manila. It was Fernando Tan who contacted Boy Roslin and Bienvenido Quintos after which they went to Oas, Albay and stayed there for about two to three days. He hid himself on top of the mountain with an old man. Furthermore, he said that Henry Chua was aware that he resented him. Benjamin Ong likewise denied having called Fernando Tan at anytime, to come in with him to the nightclub.[17]

Non-Conflicting Facts

Non-conflicting facts, as shown in the testimonies of the accused and witnesses in open court, and reiterated in the respective briefs of the parties, are as follows: For more or less one year and a half prior to the dreadful incident, the accused Benjamin Ong used to play mahjong with the deceased Henry Chua and the latter's companions, Ko King Pin, Go Bon Kim and Marcelo Tanlimco. In those sessions, he lost substantially that at one time, it amounted to as much as P150,000.00 He suspected that he lost in unfair games and was completely cheated by Henry Chua and the latter's companions, who made things worse by pressing him to pay his gambling debt with a threat of bodily harm upon his person and that of his family. The deceased and his companions embarrassed Benjamin Ong, incident after incident, especially when they went time and again to Benjamin Ong's office at the Acme Shoes, Rubber and Plastic Corporation to confront him. The extent of his embarrassment was made manifest by the fact that he had to resign from his job.

On April 21, 1971, Henry Chua repeated his demands for early settlement of his gambling debt and, as such, invited Benjamin Ong to see him on April 23, 1971 at the Amihan Nightclub and bring with him the money owed (P150,000.00). That same day that Henry Chua phoned Benjamin Ong, the latter contacted and sought the assistance of Fernando Tan, a technical supervisor also of the Acme Firm. Benjamin Ong told Fernando Tan about his grudge and plans against Henry Chua in order to avenge the embarrassment and humiliation he suffered before the eyes of his subordinates.

Fernando Tan, who incidentally, owed Benjamin Ong his job,[18] was very accommodating and he shared Ong's feelings against Henry Chua. And, according to Benjamin Ong, Tan said "Why not just kill him." [19] Tan immediately contacted Baldomero Ambrosio, Benjamin Ong's godson in marriage and a former Acme employee, and likewise called upon his boyhood friend Bienvenido Quintos at the latter's office at the Robes Francisco Realty Corporation.

On April 23, 1971, the four met at the Barrio Fiesta Restaurant in Caloocan City and finalized their plan to liquidate Henry Chua. The group, riding in Benjamin Ong's Biscayne car; then went to the Amihan Nightclub and arrived there at past nine o'clock in the evening. The two, Benjamin Ong and Henry Chua met there and had a couple of drinks. Benjamin Ong asked for patience and leniency with regard to his indebtedness and ample time for its settlement.

From the Amihan the two went to the nearby Wigwam Nightclub where they tabled two hostesses, Ligaya Tamayo and Mickie Yaro and had some more drinks. At around 1:30 a.m. of the following day, April 24, 1971, the duo left the place and rode in Henry's Mustang car. Fernando Tan, Bienvenido Quintos and Baldomero Ambrosio, riding in Ong's Biscayne car, followed the couple down Roxas Boulevard, then to Quiapo and Quezon Boulevard Extension in Quezon City where, after passing the Sto Domingo Church, they made a turn towards a dirt road leading to Del Monte Avenue. When they reached a dark and secluded place, Benjamin Ong urged Chua to stop the car in order to urinate, to which the latter obliged. It was at this time that the Biscayne car arrived and stopped in front of the Mustang car whereupon Fernando Tan and Baldomero Ambrosio alighted with a flashlight and pretended to be policemen. Fernando Tan poked his gun at Henry Chua and pulled him down from his Mustang car with Baldomero Ambrosio giving him help. They then guided and forced him inside the rear part of the Biscayne. He was made to lie, face up. His hands were tied and his mouth gagged with a flannel cloth. Fernando Tan and Bienvenido Quintos then rested their feet on him. Baldomero Ambrosio drove the Biscayne while Benjamin Ong drove the Mustang and followed them from behind.

The group took Del Monte Avenue, Roosevelt Avenue, and then E. de los Santos Avenue, right to the North Diversion Road, and right again to Novaliches until they reached a deserted place that looked like an idle

subdivision in Barrio Makatipo, Novaliches, Caloocan City. It was here that Henry Chua was stabbed twice with an icepick, allegedly by Fernando Tan, and buried there with all his belongings with him consisting of a Piagot watch, lighter, wallet containing P50 bills, driver's license, diner's card, etc.

After this, the group proceeded to Barrio Tibag, Balivag, Bulacan with Benjamin Ong and Fernando Tan on the Mustang. There they left it locked near a gasoline station. The foursome then regrouped in the Biscayne and proceeded back to Caloocan City where they separated at about 7:00 o'clock in the morning.

On August 29, 1971, somewhere in Barrio Balugo, Oas, Albay, Benjamin Ong was arrested by operatives of the 2nd PC Zone and later turned over to the NBI. On the other hand, Bienvenido Quintos was apprehended on September 2, 1971 in his residence at Tayabas St., in Sta. Cruz, Manila by members of the MPD and later turned over to the NBI also.

Important Points of Conflict

The prosecution adds more to what the defense claims and conflicts appear in various instances. One such instance was the testimony of the first prosecution witness, Patrolman Marciano Roque of Caloocan City, to the effect that one month or so before the execution of the crime, Benjamin Ong solicited his help in consummating his plan. Patrolman Roque testified that he tried his best to convince Benjamin Ong to desist but to no avail. It was this witness who revealed Benjamin Ong's plan to ask for money from the rich family of the deceased and, with said money, he, Roque, could already resign from his job should he participate.[20]

In his testimony before the lower court, Benjamin Ong vehemently denied having revealed such plan to the witness.[21] However, in his brief, accused Benjamin Ong claims that this testimony if ever there was such, does not reveal his intention to kill Henry Chua that early. At most, he said, it was a mere "infantile thought of wishing someone dead" and no more.[22]

On this point, counsel for the accused Ong, argued as follows in their well-written brief:

"Pat. Roque has not categorically asserted that he was a friend of Benjamin Ong. They came to know each other when he, as a policeman, investigated theft and robbery cases on the complaint of the Acme Shoe and Rubber Corporation where Benjamin Ong worked as Assistant Manager. (pp. 5-7, t.s.n., Sept. 16, 1971) As to why Benjamin would reveal a plan to kidnap another to a policeman, in the absence of a close and long association, is just too incredible to merit belief. Pat. Roque said that Benjamin Ong "confided to me that I am the only person whom he can trust so he further enumerated a detail that he intended to get a money and ask for the money from the parents of the victim." (Id., p. 10) As to why he merited the trust of Benjamin Ong, he did not say.

"Pat Marciano Roque said that he has no criminal record (Id., p. 42). He has not conveyed to Benjamin Ong any information that he is a gun for hire (p. 43), nor does he have that reputation (Id., p. 43). If he were a criminal or he had a reputation as a professional killer, it is perhaps possible for one in Benjamin Ong's position to have made the proposition to him. Moreover, when he was cross-examined on the alleged intention to collect ransom, he committed material contradictions such as to raise serious doubt on the veracity of his testimony. He could not categorically assert whether the alleged intention of Benjamin Ong was to kill the victim first and demand money from his parents after, or detain him first, and after receiving ransom money, kill the victim.

ATTY. QUISUMBING:

Q Your testimony is as follows: that he told you that after demanding the money to kill the man, you remember that?

A That was what he said.

Q In other words, this was not the way he told you, that he would grab the man so that he could get the money by extortion or by ransom?

A He said that after having in his possession his intended victim he would demand some money from his parents.

Q I will recall in your direct testimony ... you said that afterwards if he could get the money he will kill the man, that was your first testimony, which is correct?

A

He lost one hundred fifty thousand.

Q And he needed money and so he would demand money from the father or parents of the victim, is that your testimony?

A Yes, sir.

Q And afterwards he wanted to kill the man?

A No, sir.

Q And so what is your testimony now?

A After he got the man he will demand money from the parents or ransom money from the parents of the victim.

Q So it is the other way. He first would kill the man and afterwards get the money.

ATTY. DE SANTOS:

The question is misleading.

COURT:

Answer.

WITNESS:

A No, sir, he said that after receiving the money the man may be killed.

Q Is that your testimony? That he will kill the victim or the victim may be killed?

A

No, sir.

Q So which is which?

A He will kill the victim?

A After getting the money?

A Yes, sir. (pp. 38-41, t.s.n., Sept. 16, 1971)"

Another point of conflict is the claim of the prosecution that a ransom note was indeed written and copied by Henry Chua from a prepared note before the latter was icepicked and buried. It appears that co-accused Bienvenido Quintos stated in his supplementary extrajudicial statement before the NBI that:

"Yes sir. After we have brought victim some meters away from the road, FERNANDO TAN ordered victim to lie face down on the ground at the same (time) he untied victim and removed the gag while his gun was still pointed at the head of Victim. Thereafter he ordered the victim to copy a prepared ransom note in a piece of yellow paper saw the figure \$50,000.00 because I was holding then the flashlight. It was only after the ransom note was written and was submitted to BENJAMIN ONG that FERNANDO TAN returned to us." [23]

This is hearsay as against Benjamin Ong and Ong vehemently denied the same in his testimony, in open court when he said upon questioning:

"Q In this statement Exhibit "N", you admitted that Henry Chua was taken from the Mustang car and transferred to the Viscain (sic) car and then brought to that uninhabited place in Barrio Makatipo; what was your purpose in having the late Henry Chua taken from his car and brought to Makatipo?

A My purpose was just to kill him, and there is (sic) not going to be any delay.

"Q Was there any purpose of detaining him for sometime?

xxx xxx xxx

A

No, there was no purpose to detain him any further."[24]

Also, in his extrajudicial statement, he said:

"Q When you hatched the plan to kill HENRY CHUA, did it ever occur to you to demand or ask for any ransom money from the family of HENRY CHUA?

A Never, the question of ransom money never entered my mind."[25]

Admittedly, no such genuine ransom note was received by the family of the deceased. Undoubtedly, its presence in the crime could aggravate it, allowing the imposition of the capital punishment of death.[26]

Also conflicting is the matter of Bienvenido Quintos' participation at the time Henry Chua was dragged into the Biscayne car. The briefs of both parties tend to show that it was Fernando Tan and Baldomero Ambrosio who pulled Henry Chua out off his Mustang car, forced him into the Biscayne car, tied and gagged him.[27] However, Agent Lacanilao testified that in the reenactment of the crime it was shown that Bienvenido Quintos and Fernando Tan were the ones who dragged Henry Chua out of his car.[28] Added to this is the claim of Benjamin Ong that Baldomero Ambrosio merely drove the Biscayne for the group.[29]

The prosecution likewise claims in its brief that as early as a week before the incident, the group already chose a site and prepared a hole where to bury Henry Chua;[30] that this group was in constant search of the victim along the nightclub row in Roxas Boulevard during the succeeding evenings but failed to see him;[31] that a day before the unfortunate evening, Ong contacted Miss Clarita Teh of the Skyways Travel Service at Ongpin St., Sta. Cruz, Manila, and asked for a booking for Hongkong and Taipei, and deposited P4,000.00 therein.[32] Similarly, it is alleged that on April 29, 1971, a few days after the incident, Tan and Ong contacted Severo "Boy" Roslin, a long-time friend of Tan, to help them obtain airplane seats for the Visayas, but they failed;[33] that they also proceeded to the pier to seek passage to the South on a boat but they were likewise frustrated;[34] that instead, they took a train ride to Lucena City where Roslin left them and after which, they continued to Legaspi City;[35] that finding no acquaintance there, they went back to Manila;[36] that on May 1, 1971, Tan again engaged Roslin's services and with the latter driving his car, they picked up Quintos and Ong and went to Barrio Balugo, Oas, Albay and stayed there in the house of Roslin's parents;[37] that Ong was left there while Roslin, Tan and Quintos went back to Manila.[38]

A reenactment of the crime was had by Benjamin Ong, Bienvenido Quintos and some NBI and MPD agents who

played the role of their co-accused Fernando Tan and Baldomero Ambrosio.[39]

The trial of this case in the lower court proceeded with commendable speed, although separate trials for the two accused who had been arrested so far at that time were held upon the latter's request. Both entered a plea of "not guilty" to the crime charged upon arraignment on September 4, 1971. However, in the case of Benjamin Ong, he invoked the doctrine laid down in the case of *People vs. Yturriaga*[40] to the extent that the prosecution should not nullify the mitigating circumstance of a plea of guilty, by counteracting it with "unfounded allegations" of aggravating circumstances in the information. In other words, he admitted his guilt in so far as the crime of simple murder was concerned.[41]

Before this Court, the accused Benjamin Ong maintains that:

I

"The Court a quo erred in finding the accused guilty of the crime of kidnapping with murder because —

(a) There was no evidence offered against the accused which would prove that the crime of kidnapping was committed at all;

(b) Kidnapping cannot be complexed with murder.

(c) In those cases where the Supreme Court convicted the accused of Kidnapping with Murder, there was shown an intention to deprive the victim of his liberty, and it was held that the kidnapping was a necessary means to commit the crime of murder.

II

"The court a quo erred in finding that the killing of the deceased was attended by the generic aggravating circumstances of —

(a) Abuse of superior strength;

(b) Nighttime;

(c) Uninhabited place;

(d) Abuse of confidence;

(e) Use of motor vehicle; and

(f) Cruelty.

and the qualifying circumstances of —

(a) Alevosia

(b) Evident premeditation.

III

"Assuming that the killing of Henry Chua was attended by the aggravating circumstance of alevosia, the aggravating circumstance of abuse of superior strength and nighttime, if present, are absorbed by treachery.

IV

"The court a quo erred in not appreciating (a) plea of guilty, and (b) circumstances of a similar nature or analogous to Article 13, paragraphs 1 to 9 of the Revised Penal Code as mitigating.

V

"The court a quo erred in imposing the death penalty upon the accused.

VI

"The court a quo erred in sentencing the accused to pay excessive damages."[43]

For his part, the accused Bienvenido Quintos argues that:

- "1. The lower court erred in giving full weight and credit to the extrajudicial statement of the defendant-appellant.
- "2. The lower court erred in not finding that there was no conspiracy between defendant-appellant Bienvenido Quintos and the other accused.
- "3. The lower court erred in not acquitting defendant-appellant Bienvenido Quintos." [44]

OUR RULING

The Evidence on the Alleged Writing of a Ransom Note is Insufficient to Support a Finding in Favor of the Prosecution:

First, Benjamin Ong vehemently denied asking for ransom.

"In the extrajudicial statement of Benjamin Ong, he was asked this question: 'Q. When you hatched the plan to kill HENRY CHU A, did it ever occur to you to demand or ask for any ransom money from the family of HENRY CHUA?' to which he answered: 'Never, the question of ransom money never entered my mind.'" (Question No. 5, Exh. N.)

Secondly, no ransom note was presented as evidence by the prosecution, nor did the latter show that a demand for money was made upon the family of the victim. In the case of *People vs. Manzanero, Jr.*, [44] We held:

"Furthermore, what could have been the motive for the kidnapping? According to the trial court, the ransom money was needed by Manzanero to defray the huge expenses for the day-to-day living of his lawful wife and seven children, and of his mistress and his five children by her, and his repair shop that was earning only about P1,000 monthly could hardly meet the salaries of his 16 workers and mechanics. But is it credible that Manzanero, 'being the intelligent and shrewd man that he appears to be,' according to the trial court, could even have entertained the illusion that the kidnapping that he was to perpetrate so clumsily and amateurishly would be profitable to him, and he could escape from criminal prosecution? And what is strange is, if the ransom note was indeed written, why was it never presented in evidence? The claim that it was lost is unbelievable. That ransom note, if it ever existed, was the most important piece of evidence that could support the prosecution's theory that the kidnapping was for ransom. Certainly, that piece of evidence should be kept and preserved. No plausible explanation was given how that ransom note got lost. Neither the father nor mother of Floresita was made to testify regarding the alleged ransom note.

"Moreover, if ransom was the purpose of the kidnapping, why did Manzanero so easily, and without apparent reason, give up his alleged criminal enterprise, when he could have pursued it to a successful end? If there was really that ransom note, and that ransom note was sent, the most logical thing that Manzanero would have done was to send instructions to Floresita's family on how, when, and to whom the ransom money should be delivered. There is no evidence that Manzanero ever made any follow up in order to get the ransom.

"Furthermore, barely two days after the alleged kidnapping for ransom, Manzanero, without having obtained even part of the ransom money, released Floresita. Would a kidnapper, as Manzanero was alleged to be, readily release the victim without realizing his purpose?" (Italics Supplied)

Thirdly, the extrajudicial statement of accused Quintos wherein he stated that Fernando Tan ordered Henry Chua to prepare a ransom note wherein he saw the figure S50,000.00, is tainted with serious doubts due to the apparent maltreatment that Quintos received from the NBI and MPD men on September 3, 1971. [45] The medical certificates and case record [46] issued by the Philippine General Hospital support the findings and remark of the examining physician, Dr. Florencio Lucero, that in the person of accused Quintos, "intramuscular hematoma is evident." Besides, it is hearsay and therefore incompetent evidence against Benjamin Ong. And in the reenactment, as testified to by NBI agent Lacanilao, while the ransom note was being prepared, Benjamin Ong was about 50 meters away from the place where the note was being prepared.

Fourthly, although both parties in their briefs agree that the victim's hands were tied after he was shoved into the rear floor of the Biscayne car, neither, makes a categorical claim that the hands were tied at his back. In fact Acting Solicitor General Hector C. Fule submits in his brief that the victim was made to lie down "face up".[47] This leads to the conclusion that the rope around the victim's hands was never removed at any instance up to the time that he was buried and exhumed. This discounts the idea that before the victim was made to a copy prepared ransom note the hands at his back were tied, and after the writing, his hands were again tied, this time in front. Bienvenido Quintos in open court positively stated that the victim was made to lie on his back inside the car and hands tied on his breast.[48] The contrary evidence on this point are those of Agent Lacanilao on the reenactment of the crime which was based on the extrajudicial statement of Bienvenido, Quintos.[49] However, as shown above, this statement is of dubious veracity.

Finally, that appellants never intended to make money out of the murder of Henry Chua, can be clearly deduced from the fact that Chua was buried with everything in his person; and during the exhumation of his body, his brother, Sy Yap Chua, identified the articles found in the body of the deceased, such as a Piaget watch worth around P10,000.00 (Exh. B), a wallet together with money, with P50 bills and other denominations.

In the light of the foregoing facts and circumstances, We cannot give any credence to the testimony of Patrolman Roque that about the first week of April, 1971, Benjamin Ong confided to him his plan to get a man who cheated him in gambling by as much as P150,000.00; that he would ask for money from the latter's parents and after which he would kill the victim. And the facts brought out on cross examination of this witness, which We have discussed earlier, show the incredibility of Ong confiding to Patrolman Roque his criminal intention, particularly, his intention to ask money from the parents of the intended victim. As a matter of fact, this witness, on cross examination, got lost, so to speak, on the point of whether according to Ong, he would first kill the intended victim and demand money from his parents afterwards, or detain him first and, after receiving a ransom money, kill the victim. Furthermore, from the first week of April, 1971, when this intention was allegedly revealed by Ong to this witness, Ong could have changed his mind with respect to the demand for money when the victim was actually taken and killed in the early morning of April, 1971.

There was no Kidnapping to Make the Crime a Complex one of Kidnapping with Murder

The extrajudicial confession (Exhibit N) of accused Benjamin Ong was affirmed and confirmed by him in open court, thus:

"Q I show you this document marked as Exhibit "N", statement of Benjamin Ong, dated September 1, 1971, do you admit that this is your statement given to the NBI?

A Yes, sir.

Q In this statement, Exhibit "N", you admitted that Henry Chua was taken from the Mustang car and transferred to the Biscayne car and then brought to the uninhabited place in Barrio Makatipo, what was your purpose in having the late Henry Chua taken from his car and brought to Makatipo?

A My purpose was just to kill him, and there is not going to be any delay.

Q Was there any purpose of detaining him for sometime?

A No, there was no purpose to detain him any further."

The evidence on record shows clearly that the deceased Henry Chua and Benjamin Ong left the Wigwam

Nightclub at Parañaque, at about 1:30 a.m. on April 24, 1971, in the car of Chua. Chua went voluntarily with Ong, so much so that Chua himself drove his car. They were already in Del Monte Avenue, near the place in Caloocan where Chua was killed and buried when they tied the hands of the deceased; that there were still disagreement among the four accused oh who would kill the deceased, until finally it was the co-accused Fernando Tan who stabbed him with an icepick; and that the four accused including two others, parted from each other at 7:00 o'clock in the early morning of April 24, 1971 after they brought the car of Chua and left it in Bo. Tibag, Balivag, Bulacan.

In view of the foregoing facts and circumstances, We hold that there was no kidnapping, but only murder, because the detention of Chua was only incidental to the main objective of murdering him and was not a necessary means for the commission of the murder. From the Commentaries on the Revised Penal Code of Justice Aquino, an acknowledged authority in criminal law, We find the following:

"If the detention of the victim is only incidental to the main objective of murdering him, and is not a necessary means for the commission of the murder, the crime is only murder and not the complex one of murder through kidnapping. In the Guerrero case, the accused Huks brought to the mountain two persons, father and son. The father was killed. The son, a 14-year old minor, was able to escape on the second night following his detention. HELD: The accused were guilty of murder as to the father and kidnapping as to the son.

"In a 1902 case, the victim was taken from his house and then brought to an uninhabited place, where he was murdered. HELD: The crime was murder only. There was no illegal detention 'since it does not appear that it was the purpose of the accused to commit this offense.' The primary objective was to kill the victim:

"Where after the robbery committed in a house, three of its inmates were taken to a place near the river one kilometer from the house, where they were killed, the kidnapping was deemed absorbed in the crime Of robbery with homicide.

"Where the appellants kidnapped the victim at his house at Aviles Street, Manila and forced him to ride in a car, but while the car was at the intersection of Libertad Street, Pasay City, the victim jumped from the car and was shot to death, the crime was held to be murder only." (I Revised Penal Code by Justice Aquino).

And We quote from the brief of appellant Ong:

"The crime committed was only murder.

"As early as the case of US vs. Nicolas Ancheta, et al. (No. 422, March 14, 1902; 1 Phil. 165), it was held that where the accused kidnapped the victim, Ventura Quinto, took him to a place called Radap, and there by order of Nicolas Ancheta and Sebastian Dayag, the victim was killed, the crime committed by them was murder. The acts committed by the accused do not constitute the crime of illegal detention since the deceased was captured in his house and taken by the accused to an uninhabited place selected by them for the purpose of killing them there. (At p. 169). In the case of US vs. Teodoro de Leon (No. 522), March 10, 1902; 1 Phil. 163), there was a demand for the payment ransom. Nevertheless, the accused was found guilty not of kidnapping with murder but of murder only. In this case, the deceased, Don Julio Banson, was forcibly removed from his house by Fabian Tolome, by order of Teodoro de Leon. He was tortured and maltreated by the defendant until they arrived at a place called Bulutong. 'Not satisfied with torturing the deceased by himself he (Teodoro de Leon) ordered Tolome to give him a blow upon the chest with a bolo. Don Julio begging for mercy, the defendant sent one of his servants to the wife of the deceased to ask for \$1,000.00 for his ransom. After the servant had been sent all were led to a place called Cosme and upon arriving there the defendant ordered Fabian and Tomome to conduct Don Julio to a ditch. At the same time the witness and his three companions were given their liberty by the defendant, who remained with his two companions and with Don Julio. Don Julio was never afterwards seen alive and his headless body was found two or three days later in this same place.' The accused was found guilty of the crime of murder. Similarly, in the case of US vs. Emiliano Cajayon, et al. (No.

981, Oct. 8, 1903; 2 Phil. 570) twelve armed men kidnapped Tranquilino Torres and took him with them to the barrio Maliig, in the town of Lubang, Cavite province, where they killed him and buried him in a hole dug for that purpose. It was held that the crime committed was murder. The pertinent facts of the case are stated briefly as follows: About 20 armed men forced their way into the house of Felix Marin, made him and his son prisoners, and carried them off with their arms tied behind their backs. From there they proceeded to the house of the head man of the barrio which they set on fire, and after capturing all the inmates, brought them to an estero called the "Pasig" where they set all prisoners free, except Felix Marin and Isabel Beltran. These two they took away in a boat and carried to a clump of manglares, at the edge of the estero, where Maris, still bound, was decapitated by one of the band with a single stroke of a bolo. Isabel Beltran was set free. It will be noted that as to Isabel Beltran, the son of Felix Maris and the others, who were made prisoners, there was deprivation of liberty. Nevertheless, the accused was found guilty of murder, and not of kidnapping with murder. In the case of *People vs. Magno Quinto, et al.* (L-1963, Dec. 22, 1948; 82 Phil. 467), it was established that Gregorio Caling was picked up at his home in Floridablanca, Pampanga by a band of Hukbalahap on the night of December 9, 1945 and taken to the bank of the Gumain River, Gregorio Caling was investigated in connection with his arms, maltreated, and subsequently killed. The judgment finding him guilty of murder was affirmed. In the case of *People vs. Juan Bulatao* (L-2186, Jan. 29, 1949; 82 Phil. 743), one Jose Tan was forcibly taken by four armed men, among them the accused. The following morning, the victim was found dead. It was also held that the accused was guilty of murder. In the case of *People vs. Eufracio Lansang* (L-1187, Jan. 25, 1949; 82 Phil. 662) the accused who participated in the kidnapping of the victim who was thereafter killed was found guilty as an accomplice in the crime of murder. The case of *People vs. Alejandro Mendiola, et al.* (L-1642, 44, Jan. 29, 1959; 82 Phil. 740) is more significant. In this case the Supreme Court said:

'The circumstances of the case, as proved by the evidence, lead us to the conclusion that each and everyone of appellant took part with Taciano V. Rizal in a conspiracy to kidnap as they did Teofilo Ampil and they are all equally responsible for his killing, which was perpetrated in accordance with the plan of the kidnappers. Once the kidnapping has been decided, the authors necessarily had to entertain the killing as one of the means of accomplishing the purposes of kidnapping.

'The three appellants were correctly found by the trial court guilty as authors of the crime of murder. . . '

In the case of *People vs. Francisco Moreno* (L-2335, March 7, 1950; 85 Phil. 731), several armed men went to the house of Manuel Artates in barrio Pagoncile, Aguilar, Pangasinan, and took him to the Marapudo Mountains in Mangatarem where, he together with one Jose Jasmin, was beheaded. Thereafter, 'the defendant Francisco cautioned all the men who took part in or witnessed the execution as well as the kidnapping of the two men not to reveal to anyone what they had seen that night under penalty of punishment.' The decision of the trial court finding the appellant guilty of murder was affirmed. In the case of *People vs. Alfredo Riparip, et al.* (L-2408, May 31, 1950; 85 Phil. 526), one Enrique Roldan was on December 27, 1944 kidnapped and on the following day killed by certain guerilla units. The accused were found guilty of the crime of murder. In *People vs. Gaudencio Villapa, et al.* (L-4259, April 30, 1952; 91 Phil. 189, the deceased Federico Agonias, was taken by the accused from the house of Guillermo Calixto in barrio San Marcelino, Balugao, Pangasinan, and he was killed about 50 meters from the house. They were found guilty of murder. In *People vs. Emeterio Sarata, et al.* (L-3544, April 18, 1952; 91 Phil. 111), it appeared that the four accused took the victim Sabiano Bucad from his house, placed him in a banca and sailed towards the opposite shore of the Bato lake where the victim was maltreated and killed by the accused. It was held that the crime committed was murder. In the case of *People vs. Eligio Camo and Buenaventura Manzanido* (L-4741, May 7, 1952; 91 Phil. 240), the accused took the deceased Patricio Matundan from his house in the barrio of Conda to the barrio of Talaan, both of the Municipality of Sariaya, Quezon. Upon reaching a place near the mangroves, the group stopped, and accused Came shot and killed the victim. The accused were charged with the crime of murder with kidnapping. The Supreme Court held:

'The Solicitor-General next contends that the offense committed was the complex crime of kidnapping with murder. Again, we are inclined to agree with the trial court that the crime committed was simple murder. It is true that Patricio was taken from his home but it was not for detaining him illegally for any length of time or for the purpose of obtaining ransom for his release. In quite a number of cases decided by this court where the victim was taken directly from his house to the place where he was killed, kidnapping was not considered to raise the offense to the category of a complex.' (At p. 246)

In *People vs. Nestorio Remalante* (L-3512, Sept. 26, 1952; 92 Phil. 48), the accused with about 10 armed men met Mercedes Tobias, accompanied by Eusebio Gerilla and Lucia Pilo, on the way to her home in the barrio of Guiarona, Municipality of Dagami, Province of Leyte. The accused took hold of Mercedes Tobias and dragged her, while at the same time striking her with the butt of his rifle at different parts of her body. Eusebio Gerilla and Lucia Pilo saw Mercedes being dragged towards the sitio of Sawahan. Hardly had they walked one kilometer when they heard gun reports. The following day, Mercedes was found dead in Sawahan with two gunshot wounds. Nestorio Remalante was charged and found guilty by the trial court of the crime of kidnapping with murder. As to the charge of kidnapping, the Supreme Court held:

'There is no sufficient evidence of intention to kidnap because from the moment Mercedes Tobias was held and dragged to the time when the gun reports were heard nothing was done or said by the appellant or his confederates to show or indicate that the captors intended to deprive her of her liberty for sometime and for some purposes and thereafter set her free or kill her. The interval was so short as to negative the idea implied in kidnapping. Her short detention and ill-treatment are included or form part of the perpetration of the crime of murder.' (at p. 51)

In the case of *People vs. Silvino Guerrero, et al.*, (L-9559, May 14, 1958; 103 Phil. 1136, Unrep.), the appellants were found guilty for the murder of Candido Disengano and the kidnapping of Paulo Disengano. As to the killing of Candido Disengano, it was held:

As the court a quo has correctly held, appellants cannot be convicted of the complex crime of kidnapping with murder under Article 48 of the Revised Penal Code, for the reason that kidnapping was not a necessary means to commit the murder. Candido was detained and brought to the mountains to be killed - this we have held may not be considered kidnapping with murder but mere murder. (*People vs. Camo*, G.R. No. L-4741, May 7, 1952; *People vs. Remalante*, G.R. No. L-3512, 48 O.G. 3881-3883; *People vs. Villapa, et al.*, G.R. No. L-4259, April 30, 1952) [13 Velayo's Digest (new Series) 337; please see also 103 Phil. 1136]

In *People vs. Santos Umali, et al.* (L-8860-70, January 23, 1957; 100 Phil. 1095 Unrep.), the accused were charged and convicted by the trial court of kidnapping with murder. The evidence shows that the deceased was killed in front of his house. The crime committed is only murder. (13 Velayo's Digest [New Series], p. 340).

In *People vs. Cenon Serrano alias Peping, et al.* (L-7973, April 27, 1959; 105 Phil. 531), the accused were charged with illegal detention with murder. After a drinking spree, the accused, Cenon Serrano, suggested to the deceased Pablo Navarro to leave Bacolor, Pampanga for San Fernando for a good time, to which suggestion the latter agreed. While the victim together with the accused Cenon Serrano and others were on the way to San Fernando, Cenon Serrano suggested that they proceed to Angeles for a good time to which Pablo Navarro agreed. Upon reaching barrio San Isidro, Cenon Serrano ordered the driver to proceed to barrio Dolores, Bacolor, Pampanga where the deceased was detained and questioned at the stockade of the civilian guards. That same afternoon, Pablo Navarro was taken out of the stockade and was brought to sitio Castilang Malati where the deceased was shot and killed. The trial court found the defendants guilty of the crime of murder. The decision was affirmed by the Supreme Court. In *People vs. Rosario Lao, et al.* (L-10473, January 28, 1961; 1 SCRA 42), one Rosa Baltazar was taken by two of the accused and killed beside a creek about 6 to 10 meters away from the hatchery of the Lao poultry farm where she was staying. The trial court found them guilty of the crime of kidnapping with murder.

The Supreme Court held that 'the crime committed is not kidnapping with murder as stated in the title of the information but murder.'

In *People vs. Felipe Sacayanan* (L-15024-25, Dec. 31, 1960; 110 Phil. 588), a group of five armed men forcibly took from their houses the victims Juan Galaraga and Victor Alamar to a place about 40 meters away from the house where they were shot. Juan Galaraga died. Victor Alamar was seriously wounded. The trial court convicted the accused of the complex crime of kidnapping with murder. The Supreme Court held that this was error. 'Nothing was said or done by the accused on his confederates to show that they intended to deprive their victims of their liberty for some time and for some purpose. There was no appreciable interval between their being taken and their being shot from which kidnapping may be inferred.' (See *People vs. Remalante*, 92 Phil. 48; O.G. [9] 38881).

From the foregoing discussion, it seems clear that the weight of authority is in favor of the proposition that where the victim was taken from one place to another, solely for the purpose of killing him and not for detaining him for any length of time or for the purpose of obtaining ransom for his release, the crime committed is murder, and not the complex crime of kidnapping with murder. This ruling is entirely consistent with the law. Art. 267 of the Revised Penal Code penalizes a person 'who shall kidnap or detain another,' and the penalty becomes capital 'where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person.'

x x x x x x x x

In the case at bar, the only evidence appreciable against the appellant Benjamin Ong regarding the surrounding circumstances of Henry Chua's death are (1) the extrajudicial statement of Benjamin Ong, (2) the testimony of Benjamin Ong during the trial, (3) the testimony of agent Enrique Lacanilao about the reenactment of the crime.

In the extrajudicial statement (Exhibit N) Benjamin Ong said that from the Wigwam nightclub, Henry Chua and he rode on Henry's Mustang car with the latter driving it. Fernando Tan and his friend were in the Biscayne car of Benjamin Ong following the Mustang. (Answer to Question No. 40, p. 3, Exh. N). At Araneta Avenue in Quezon City, Benjamin Ong requested Henry Chua to stop the car to enable him to urinate. When Henry Chua complied, Fernando Tan and his friend stopped in front of the Mustang car, pretending to be policemen, and ordered Henry Chua to go with them to the police precinct. (Id., p. 5) Fernando Tan drove the Biscayne car, while Benjamin Ong in Henry Chua's car followed. From Araneta Avenue, Fernando Tan drove to Novaliches where Henry Chua was killed. (Id.) It will be noted that no appreciable time elapsed from arrival at Novaliches up to the time Henry Chua was killed, to indicate a separate intention to deprive the latter of his liberty. When Benjamin Ong testified on September 22, 1971, he affirmed his admission of responsibility for the death of Henry Chua (t.s.n., Sept. 22, 1971, p. 26). He further testified as follows:

ATTY. QUISUMBING:

Q

In this statement Exhibit "N", you admitted that Henry Chua was taken from the mustang car and transferred to the biscayne car and then brought to that uninhabited place in having the late Henry Chua taken from his car and brought to Makatipo?

A My purpose was just to kill him, and there is not going to be any delay.

Q Was there any purpose of detaining him for sometime?

xxx xxx xxxx

A No, there was no purpose to detain him any further. (Id., pp. 27-28)

The narration of agent Enrique Lacanilao about the re-enactment of the crime showed that there was no detention of the deceased Henry Chua for any length of time. He was killed and promptly buried. (Please see pp. 43-47, t.s.n., Sept. 18, 1971). On the basis of the foregoing evidence, the accused can hardly be held liable for kidnapping as well. It may not be amiss to state that an accused is entitled to acquittal unless his guilt is shown by proof beyond reasonable doubt. (Rule 133, Section 1, Revised Rules of Court). The evidence at hand hardly satisfied the requirement of proof beyond reasonable doubt as to the charge of kidnapping. The necessary result is that the accused can be held liable only for the killing of Henry Chua." [Brief for the Appellant Benjamin Ong y Kho, pp. 43 to 56]

And the evidence on record clearly show that Henry Chua voluntarily went with Benjamin Ong when they left the Wigwam Nightclub at Parañaque at about 1:30 a.m. on April 24, 1971, so much so that they rode in the car of Chua and it was driven by Chua himself. The two drove straight down Roxas Boulevard, then to Quiapo, and Quezon Boulevard Extension in Quezon City; and after passing Sto. Domingo Church, they made a turn towards a dirt road leading to Del Monte Avenue. 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.

In other words, the time interval when the deceased Henry Chua was actually deprived of his liberty was short (from Del Monte Avenue to Barrio Makatipo, Novaliches, Caloocan); and the same was only incidental to the main objective of murdering him.

The only authority cited by the prosecution on this point is that of the case of *Parulan vs. Rodas* (88 Phil. 615). But the ruling in the *Parulan* case cannot be applied to the case at bar, because in the *Parulan* case, the Court found that the kidnapping was a necessary means for the purpose of extorting ransom from the victim and killing him if the desired amount could not be given; and that the defendants had to kidnap or carry the victim from Manila (where he was already deprived of his liberty, with *Parulan* poking his gun on the victim), to a faraway and secluded place (a river in Bambang, Bulacan) in order to better secure the consent of the victim through fear to pay the ransom, and kill him if he refuses to accede to their demands, as in fact he was killed by *Parulan* because of his (victim's) refusal to pay the ransom.

We Hold that Both Appellants are Guilty of Murder

The killing of the victim in this case was attended by several qualifying and aggravating circumstances. The facts on record prove this, beyond reasonable doubt, even if we were to disregard the extrajudicial confession of Benjamin Quintos which he denied and was allegedly extracted from him through force and intimidation.

Treachery (alevosia) qualified the killing to murder. Undisputed facts show that Henry Chua's hands were tied and his mouth was gagged with a flannel cloth before he was stabbed twice with an icepick and buried in a shallow

grave near a creek. These facts portray well that the tied hands of the victim rendered him defenseless and helpless thereby allowing the accused to commit the crime without risk at all to their person.[50]

The accused Benjamin Ong and Bienvenido Quintos, however, were quick to insist that this circumstance should not be taken against them because they did not do the actual stabbing (which was done by Fernando Tan). Easily, the weakness of this claim can be discerned. 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 consequence 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 execution.[51] Thus, treachery should be considered against all persons participating or cooperating in the perpetration of the crime.[52]

With regards to the aggravating circumstance of abuse of superior strength, the same should be deemed absorbed in treachery. This position is itself supported by the Acting Solicitor General in his brief and is sustained in a long line of decisions.[53]

In the same vein, the accused would like the aggravating circumstance of nighttime (nocturnidad) to be absorbed in treachery in that it forms part of the peculiar treacherous means and manner adopted to insure the execution of the crime. The case of *People vs. Berdida*[54] provides the exception to this rule and is applicable to the case at bar. It was there held that:

"From the facts and evidence of record in this case, it is clear that appellants took advantage of nighttime in committing the felonies charged. For it appears that to carry out a sentence they had pronounced upon Antonio Maravilla and Federico Canalete for the death of one Pabling, they had evidently chosen to execute their victims under the cover of darkness, at the dead of night, when the neighborhood was asleep. Inasmuch as the treachery consisted in the fact that the victim's hands were tied at the time they were beaten, the circumstance of nighttime is not absorbed in treachery, but can be perceived distinctly therefrom, since the treachery rests upon an independent factual basis. A special case therefore is present to which the rule that nighttime is absorbed in treachery does not apply."[55]

This aggravating circumstance was correctly appreciated by the lower court regardless of whether or not the same was purposely and deliberately sought by the accused for it is clear that the darkness of the night facilitated the commission of the crime and was taken advantage of by them.[56]

The purposive selection of an uninhabited place (despoblado) is likewise clear from the evidence. The killing was done in Barrio Makatipo, Novaliches, Caloocan City, an isolated place that resembled that of an abandoned subdivision. The place was ideal not merely for burying the victim but also for killing him for it was a place where the possibility of the victim receiving some help from third persons was completely absent. The accused sought the solitude of the place in order to better attain their purpose without interference, and to secure themselves against detection and punishment.[57] As aptly stated in the "Sentence" of the lower court:

". . . The possibility of the victim calling for succor or assistance from any third person was ruled out by the chosen site. Trees, lush vegetation and thick cogon grasses hide the place where the crime was committed from the view of even a chance passerby. The choice of an uninhabited place for the killing of Henry Chua, therefore, further aggravated the offense committed by the accused. *People vs. Curiano*, L-15256-57, October 31, 1962; *U.S. vs. Vitug*, 17 Phil. 1)."[58]

In the case of the aggravating circumstance of abuse of confidence (*abuso de confianza*), it appears that the lower court wrongly appreciated this circumstance. In order for this circumstance to obtain, it is necessary that there be a relation of trust and confidence between the accused and the one against whom the crime was committed, and that

the accused made use of such relation to commit the crime,[59] It is essential too that the confidence be a means of facilitating the commission of the crime, the culprit taking advantage of the offended party's belief that the former would not abuse said confidence.[60]

Nowhere in the records does it appear that Henry Chua reposed confidence upon the person of Benjamin Ong. If any, Henry Chua was simply not afraid of Benjamin Ong, having told and bragged to the latter about his violent exploits in the past and threatened him with bodily harm in case of failure to pay.[61] He knew that he was far stronger than Benjamin Ong in terms of influence and money. He thought that Benjamin Ong would fear him. The fact that Henry Chua invited Ong for nightclubbing that fatal evening and accommodated him in his car on their way home from the nightclub does not mean that Henry Chua had confidence in him. There was no special relation of confidence between them. He knew that Benjamin owed him a substantial amount and that its settlement had long been overdue which fact irritated him very much. Benjamin Ong and Henry Chua were together that night in the nightclub as well as in the car not because of said confidence. It was simply because Benjamin Ong had some accounts to settle with him. Thus, in the case of *U.S. vs. Cruz, et al.*,[62] it was held that:

"...The fact of Cabaya having simulated friendship and desire for work, together with the companions who went with him, and the fact that he received food and work immediately upon being accepted by the Americans to work in the mines, is not, as stated in the judgment, a degree of treachery, according to law, sufficient to constitute the aggravating circumstance of abuse of confidence. It may however, be argued as unworthy conduct and ingratitude, but not as abuse of confidence. It is necessary first to show what has been the confidence granted or given in order to determine whether there was or was not an abuse of it, and in the present case there is nothing to show what the confidence given or conceded to Cabaya was, that could facilitate the commission of the crime."

Likewise, in the case of *People vs. Brocal*,[63] it was held that:

"There is no abuse of confidence in attempted rape where on the day of the crime the accused was in the company of the offended girl, not because of her confidence in him, but because they were partners in a certain business."

More convincing this time is the aggravating circumstance of use of motor vehicle in the commission of the crime. The Biscayne car of Benjamin Ong was used in trailing the victim's Mustang car from Wigwam Nightclub up to the time that it was overtaken and blocked. It carried the victim on the way to the scene of the killing; it contained at its baggage compartment the pick and shovel used in digging the grave; it was the fast means of fleeing and absconding from the scene. Again, the motor vehicle facilitated the stark happening. It has been held that the use of motor vehicle is aggravating in murder where the said vehicle was used in transporting the victim and the accused.[64]

Cruelty (*ensañamiento*), as an aggravating circumstance, cannot be considered here. The brief of the Acting Solicitor General agrees with that of the accused in denying the attendance of cruelty as an aggravating circumstance. Indeed, as it appears from the record, the group intended merely to kill the victim, bury him, and flee from the locale of the fearful crime. For cruelty to exist, it must be shown that the accused enjoyed and delighted in making their victim suffer slowly and gradually, causing him unnecessary physical or moral pain in the consummation of the criminal act.[65] Even granting that the victim died because of asphyxiation when he was buried and not hemorrhage from stab wounds, as testified to by Dr. Ibarrola,[66] which, however, has been contradicted by his own necropsy report which shows that the cause of death was the "punctured wounds in the abdomen," and by Dr. Lara who testified that the two wounds could have produced death due to shock, it appears that the victim's burial was not meant to make him suffer any longer but simply to conceal his body and the crime itself.

Concededly, the qualifying circumstance of evident premeditation (*premeditacion conocida*) attended the commission of the crime. What else can better portray this circumstance than the frequent meetings[67] of the four accused at the Barrio Fiesta Restaurant in order to discuss, lay out the plan, and secure the different paraphernalia consisting of the rope, icepick, flannel cloth, flashlight and shovel.[68] Added to this is the careful selection of an "ideal" site for the grisly happening.[69] Similarly, the plan to go to Taipei and Hongkong immediately after the incident pictures the presence of evident premeditation.[70] The accused meditated and tenaciously persisted in the accomplishment of the crime and were not prompted merely by the impulse of the moment.[71]

Although the claim of the accused Benjamin Ong that the mitigating circumstance of plea of guilty should be appraised in his favor appears academic herein, as will be shown in the dispositive portion, for the sake of argument, however, the same is given weight here. Indeed, the kidnapping portion of the crime cannot be appreciated here beyond reasonable doubt as stated at the outset. Furthermore, it can be seen that the prosecution alleged so many aggravating circumstances which should be absorbed in one or the other. To plead guilty to this information naturally would be most unfair for the accused especially where the penalty would be the capital punishment of death. The accused showed signs of remorsefulness upon his arrest when he cooperated with the police authorities in the solution of the crime. As held in the case of *People vs. Yturriaga*,[72]

"x x x It only remains to consider briefly whether the defendant's plea of guilty in the form it was entered constitutes a voluntary confession of guilt before the court as defined in the same subsection of Article 13. We think it does.

"Although the confession was qualified and introduction of evidence became necessary, the qualification did not deny the defendant's guilt and, what is more, was subsequently fully justified. It was not the defendant's fault that aggravating circumstances were erroneously alleged in the information and mitigating circumstances omitted therefrom. If such qualification could deprive the accused of the benefit of plea of guilty, then the prosecution could nullify this mitigating circumstance by counteracting it with unfounded allegations of aggravating circumstances."

We hold that the accused Benjamin Ong is likewise entitled to the mitigating circumstance that is analogous to passion and obfuscation (Art. 13, par. 10, Revised Penal Code), based on the following facts stated in his brief:

- a) Henry Chua and his companions went to the office of Benjamin Ong. In a loud voice, with angry gestures, and in the presence of his subordinates and fellow employees, Henry Chua demanded payment, and threatened bodily harm to him and his family.
- b) Henry Chua went as far as to threaten the life of Benjamin Ong unless his obligation to Chua was paid. "If you treasure your life, you better pay first."
- c) Because of this incident, he, Benjamin Ong, "was humiliated."
- d) His brother-in-law, Chua Pak, told him that he was holding a very responsible position in the company and so he should not be involved in any scandal.
- e) He was "discredited and degraded in front of my brother-in-law. He was so embarrassed, he finally tendered his resignation from the company.
- f) Because of the threat of Henry Chua, the accused tried to get money from all sources but he was not successful. The allotted time was so short. To relieve him of the pressure brought to bear upon him to pay his gambling debt, he even thought of embezzling money belonging to the company in which he worked.
- g) Because of his inability to raise money to be paid to Henry Chua, he became "deeply depressed." He felt: "I was being turned into a criminal.

h) He begged Henry Chua to give him more time to raise the money. "Nagmamakaawa na ako sa kanya." This was the night before Henry Chua was killed. If Henry Chua had granted him time "the whole plan to kill Henry Chua might not materialize." But Henry Chua, while not relenting, but perhaps in utter contempt and disdain of Benjamin Ong instead decided to transfer from Amihan to Wigwam because he wanted to be entertained by a hostess. Henry Chua, it will be noted, was well known to Wigwam hostess, Ligaya Tamayo. Benjamin Ong was seen by her for the first time that evening.

i) So while Chua enjoyed himself, Benjamin Ong was worried, as he pleaded with Henry Chua in vain for more time to pay the obligation.

x x x x x x x x

In *People vs. Timoteo Olgado, et al.* (L-4406, March 31, 1952; 91 Phil. 908, Unrep.), the two accused were provoked to commit two murders because of the indecent propositions made to the women by Jalumio and his companions. For Mario Aninias, this is the mitigating circumstance of passion and obfuscation or vindication of a grave offense to his wife.[73]

In this regard, accused Benjamin Ong filed on October 10, 1973 before this Court a Petition for New Trial and/or to Consider Case as Simple Murder.[74] In this petition, Benjamin Ong's wife, Athena Caw Siu Tee Ong, alleged in an affidavit an incident when her husband refused to allow her to testify on during the regular trial in the lower court. She said that Benjamin Ong suppressed it because it would be a source of "great shame" to their family. Indeed, the records show how Benjamin Ong's counsel vainly convinced him to tell it but he refused to do so.[75] Lately, Benjamin Ong has changed his mind and has consented to his wife's divulging the story. Said story simply consists of Henry Chua's proposal of love and attempted rape allegedly committed on the person of Athena on April 15, 1971 which Henry Chua asked in lieu of the payment of the gambling debt. However, this matter is now academic because it would only tend to bolster the mitigating circumstance that is analogous to passion and obfuscation, which we have just considered in favor of the accused Benjamin Ong.

IN VIEW OF ALL THE FOREGOING, the two accused-appellants Benjamin Ong y Kho and Bienvenido Quintos y Sumaljag, are hereby found guilty beyond reasonable doubt of the crime of murder with the attendant qualifying circumstance of treachery, and the aggravating circumstances of evident premeditation and use of motor vehicle. These two circumstances are offset by the mitigating circumstances of plea of guilty and one similar or analogous to passion or obfuscation which are appreciated in favor of accused-appellant Benjamin Ong who is hereby sentenced to reclusion perpetua. Justices Teehankee and Makasiar, however, are of the opinion that the crime committed by the two accused-appellants Benjamin Ong and Bienvenido Quintos is kidnapping with murder and that the kidnapping was conceived for the purpose of extorting ransom, among other motives. The members of the Court failed to arrive at a clear consensus on the existence of the aggravating circumstances of "nighttime" and "uninhabited place" (which Justice Barredo, in his concurring and dissenting opinion, concluded do not obtain in this case).

With respect to the accused-appellant Bienvenido Quintos, although no mitigating circumstance can be appreciated in his favor, and he should therefore be sentenced to death, the Court hereby imposes upon him the penalty of reclusion perpetua and not death, because of Our conclusion that his co-accused-appellant Benjamin Ong should be sentenced only to reclusion perpetua, and because Justice Barredo, in his concurring and dissenting opinion, even concluded that Bienvenido Quintos is guilty only as an accomplice; and hence, in any event, We would not have the necessary ten votes for the imposition of the death penalty upon said accused-appellant.

As We hereby sentence the two accused-appellants Benjamin Ong and Bienvenido Quintos to suffer the penalty of reclusion perpetua, We affirm that part of the decision under review, which sentenced them 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, as We find no reason to disturb the same.

Makalintal, C.J., Teehankee, Makasiar, Antonio, Esguerra, Muñoz Palma, and Aquino, JJ., concur.

Castro, J., concurs in the result.

Fernando, J., took no part.

Barredo, J., concurs and dissents in a separate opinion.

[1] "Sentence", Rollo, p. 40.

[2] "Information", Rollo, pp. 2-3.

[3] TSN, Records, September 22, 1971, 2:00 p.m., pp. 5-11.

[4] Ibid, pp. 2, 4; "Extrajudicial Statement Bienvenido Quintos," Exhibit "O", Records, September 3, 1971, pp. 49-50.

[5] TSN, Records, September 16, 1971, pp. 2-59.

[6] TSN, Records, September 16, 1971, pp. 59-73.

[7] Ibid.

[8] Ibid, pp. 74-97.

[9] TSN, Records, September 17, 1971, pp. 2-8.

[10] Ibid, pp. 8-12.

[11] Ibid, pp. 12-23.

[12] Ibid, pp. 2-88.

[13] TSN, Records, September 20, 1971, pp. 2-32.

[14] TSN, Records, September 21, 1971, 2:00 p.m., pp. 3-13.

[15] Ibid, pp. 14-16.

[16] Ibid, pp. 17-35.

[17] Ibid, pp. 2-100.

[18] TSN, Records, September 22, 1971, 2:00 p.m., pp. 3-90.

[19] "Extrajudicial Statement of Benjamin Ong, Exhibit "N", Records, September 1, 1971, p. 43.

[20] TSN, Records, September 22, 1971, p. 30.

[21] TSN, Records, September 16, 1971, pp. 22-23.

[22] TSN, Records, September 22, 1971, p. 31.

[23] Brief for the Accused Benjamin Ong y Kho, p. 91.

[24] "Supplementary Sworn Statement of Bienvenido Quintos," Exhibit "Q", Records, September 4, 1971, p. 63.

[25] TSN, Records, September 22, 1971, pp. 26-28.

[26] "Estrajudicial Statement of Benjamin Ong" Exhibit "N", Records, September 1, 1971, p. 46.

[27] Article 267 of the Revised Penal Code, as amended provides:

"ART. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense. (As amended by Rep. Acts Nos. 18 and 1084, effective June 15, 1954 *Italics ours.*)"

[28] Brief for the Defendant-Appellant (Bienvenido Quintos), pp. 5-6; Brief for the Plaintiff-Appellee, p. 10.

[29] TSN, Records, September 18, 1971, p. 8.

[30] TSN, Records, September 22, 1971, p. 31.

[31] Brief for the Plaintiff-Appellee, p. 6.

[32] *Ibid.*, p. 7.

[33] *Ibid.*

[34] *Ibid.*, pp. 13-14.

[35] *Ibid.*, p. 14.

[36] *Ibid.*

[37] *Ibid.*

[38] *Ibid.*

[39] *Ibid.*

[40] *Pictures*, Exhibit "P" to "P-20", Records.

[41] 86 Phil. 534 (1950).

[42] "Manifestation," September 14, 1971, Records, pp. 24-25.

[43] "Brief for the Accused Benjamin Ong y Kho," pp. a-d.

[44] "Brief for the Defendant-Appellant (Bienvenido Quintos)," pp. 17, 31, 37.

[45] L-33698, December 20, 1973, 54 SCRA 335, 344.

[46] TSN, Records, September 22, 1971, pp. 63-65, 73, 77.

[47] "Medical Certificates," September 23 and 27, 1971, Records, pp. 108-109; "Case Record," Exhibit "4a-b," Records, pp. 118-121.

[48] Brief for the Plaintiff-Appellee, p. 10.

[49] TSN, Records, September 22, 1971, pp. 27-28.

[50] TSN, Records, September 18, 1971, pp. 9-10; Extrajudicial Statement of Bienvenido Quintos, Exhibit "O", Records, September 3, 1971, p. 48.

[51] *People vs. Suday*, L-33572, Oct. 10, 1974; *People vs. Antonio*, L-25845, August 25, 1970, 34 SCRA 401; *U.S. vs. Indanan*, 24 Phil. 203 (1913); *U.S. vs. Colombo*, 8 Phil. 391 (1907); *U.S. vs. Cobe*, 1 Phil. 265 (1902).

[51] *People vs. Mojica*, L-17234, March 31, 1964, 10 SCRA 515.

[52] *People vs. Carandang, et al.*, 54 Phil. 503 (1930).

[53] *People vs. Ordiales*, L-30956, Nov. 23, 1971, 42 SCRA 238; *People vs. Brioso*, L-28482, Jan. 30, 1971, 37 SCRA 336; *People vs. Espejo*, L-27708, Dec. 19, 1970, 36 SCRA 400; *People vs. Layson*, L-25177, Oct. 31, 1969, 30 SCRA 92; *People vs. Lumantas*, L-28355, July 17, 1969, 28 SCRA 764; *People vs. Nabual*, L-27758, July 14, 1969, 28 SCRA 747; *People vs. Reyes*, L-21445, May 30, 1967, 20 SCRA 304; *People vs. Agustin*, L-18368, March 31, 1966, 16 SCRA 467; *People vs. Develles*, L-18866, Jan. 31, 1966, 16 SCRA 47; *People vs. Redona*, 87 Phil. 743 (1950); *People vs. Mabe*, 81 Phil., 58 (1948).

[54] L-20183, June 30, 1966, 17 SCRA 520.

[55] See also the cases of *People vs. Luna*, L-28812, July 31, 1974, 58 SCRA 148; *People vs. Sera Josep*, 52 Phil. 206 (1928); *U.S. vs. Perez*, 32 Phil. 163 (1915); *U.S. vs. Bredejo and Sudoles*, 21 Phil. 23 (1911); *U.S. vs. Salgado*, 11 Phil. 56 (1908).

[56] *People vs. Villas*, L-20953, April 21, 1969, 27 SCRA 947; *People vs. Apduhan*, L-19491, August 30, 1968, 24 SCRA 801; *People vs. Baubay*, L-13901, September 19, 1961, 3 SCRA 24; *People vs. Corpuz*, L-10104, January 28, 1961, 1 SCRA 33.

[57] *People vs. Cornelio*, L-1289, June 10, 1971, 39 SCRA 435; *People vs. Arpa*, L-26789, April 25, 1969, 27 SCRA 1037; *People vs. Luneta*, 79 Phil. 815 (1947); *People vs. Aguinaldo*, 55 Phil. 610 (1931).

[58] "Sentence," Rollo, p. 36.

[59] *U.S. vs. Rodriguez*, 19 Phil. 150 (1911).

[60] *People vs. Luchico*, 49 Phil. 689 (1926).

[61] TSN, Records, September 22, 1971, p. 23.

[62] 4 Phil. 252, 255 (1905).

[63] CA, 36 O.G. 858 (1937).

[64] *People vs. Mitra, et al.*, 107 Phil. 851 (1960); *People vs. Fortin*, 97 Phil. 983 (1955); *People vs. Valeriano*, 90 Phil. 15 (1951); *People vs. Cruz*, 85 Phil. 577 (1950).

[65] *People vs. Llanera*, L-21604-6, May 25, 1973, 51 SCRA 48; *People vs. Dayug and Bannoisan*, 49 Phil. 423 (1926); *U.S. vs. Rivera*, 41 Phil. 472 (1921).

[66] TSN, Recrods, September 16, 1971, pp. 127-128.

[67] "Supplementary Extrajudicial Statement of Bienvenido Quintos."

[68] "Extrajudicial Statement of Benjamin Ong," Exhibit "N", Records, September 1, 1971, p. 41.

[69] Ibid, p. 45.

[70] TSN, Records, September 17, 1971, pp. 2-8.

[71] *People vs. Hanasan*, L-25989, September 30, 1969, 29 SCRA 534; *People vs. Sarmiento*, L-19146, May 31, 1963, 8 SCRA 263; *People vs. Bautista*, 79 Phil. 652 (1947).

[72] 86 Phil. 534, 539 (1950).

[73] Brief for the Appellant Benjamin Ong, pp. 121-123, 124.

[74] "Petition for New Trial and/or to Consider Case as Simple Murder," Rollo, p. 188.

[75] TSN, Records, September 22, 1971, pp. 3, 41-47.

CONCURRING AND DISSENTING OPINION

BARREDO, J.:

I fully concur in the finding in the main opinion of Mr. Justice Fernandez that herein accused-appellants Benjamin Ong y Kho and Bienvenido Quintos y Sumaljag are guilty of the murder of Henry Chua. The conspiracy among Ong, Quintos and their co-accused which resulted in the killing of their victim in the early morning of April 24, 1971 appears proven in the record beyond reasonable doubt. So also the manner in which the offense was committed. No less than Ong himself admits his responsibility for it. Indeed, I venture the thought that this case could have been terminated earlier with the conviction of appellants were it not for the unjustified insistence of the prosecution to exact from them more than what I consider, in the light of the proven circumstances, to be demanded by justice and the public interest.

At the arraignment, Ong's counsel made it plain that even as his client was entering a plea of not guilty, he was doing so with the intention to invoke the ruling of this Court in *People vs. Felipe Yturriaga*, (86 Phil. 535), meaning in effect that while Ong was willing to plead guilty to the murder charged in the information, he could not do so only because the accusation has not only baselessly complexed it with kidnapping for ransom but alleged several aggravating circumstances which he felt are unfounded, hence he would in due time ask the court that he be credited with the mitigating circumstance of the plea of guilty, after he shall have succeeded in showing that the prosecution is making the charge against them appear graver than what they have actually committed.

As it turned out later and as borne by the record, outside of the confessions of the appellants and their testimonies in open court, the prosecution had no independent evidence as to how the offense here in question was committed. Indeed, from the very nature of the versions of the accused, which the People accepts; regarding the manner in which Henry Chua died in their hands, the same would have remained unknown to the investigating authorities and the fiscal, were it not for the voluntary revelations contained in said confessions. Notably no portion of Ong's confession has been repudiated. Thus, it may be said that for the government, this would have been no more than a plain case of murder qualified by treachery, which could be deduced by the fact that when the corpse of Chua was disinterred, his hands were tied at the back and his mouth was gagged, had not the accused gone further than admitting that they had killed their prey. Whatever qualifications of the killing appear now in the

information, must have been based by the Fiscal on his own conclusions from the facts furnished by the appellants, not from the findings of any investigator. And unfortunately for the accused, the Fiscal's conclusions, erroneous as they are, made the case against them much much graver than what it actually is.

The record shows that appellant Ong and the deceased Chua were close friends and even distant relatives. For more than one year and a half they were often together with some other friends of Chua, namely Go Bun Kin, Marcelo Tanlimco and Ko King Pin. They used to gamble — play mahjong — with the peculiarity that the constant loser was Ong. His losses mounted to close to P150,000, and at the time of the killing of Chua, Ong still owed him P50,000. Things came to a point that in the mind of Ong, he suspected that he was being cheated and Chua was the culprit. On the other hand, Chua was assiduous in demanding payment of his winnings. So much so that about one month before the tragic occasion in question, Chua, accompanied by the other players aforementioned, went to the offices of Acme Shoe and Rubber Products, where Ong was employed as assistant manager, and demanded, shouting and gesturing in the process, payment of the P50,000. This incident humiliated Ong because it happened in the presence of his superiors and subordinates; he had pleaded with his visitors not to create any scandal, but they persisted; Ong lost face; his brother-in-law, the owner of the firm admonished him that the responsible position he was occupying should be spared from such "scandals". Things became harder and harder for Ong to bear; he had to resign. Ko King Pin had subsequently returned to that office two or three times, at the instance of Chua, on which occasions, he did not only demand payment, he suggested to Ong that Chua was not a man to be angered; and Ong had every reason to believe the veiled threat, since Chua used to brag to him about violent incidents where he was involved; in fact, Chua told him once "You do not have money, why do you have to gamble? Are you not ashamed of yourself? If you treasure your life, you better pay first." Thus cornered, Ong turned to all his sources of funds, but even his usual lenders were no longer available.

On April 21, 1971, Chua called him by phone and in angry tones informed him that the check he (Ong) had issued in payment of his gambling losses had been dishonored by the bank. Chua threatened to "turn over the check to other people who will not be courteous anymore." And Chua demanded that they meet at Amihan Night Club on April 23, 1971, and that Ong should bring the money with him. The chosen hour: 9:00 p.m.

Evidently facing a dead end in his effort to raise the necessary funds, the thought of doing away with the life of Chua when they would meet that night recurred to his mind. He had been previously crying over the shoulders of another close friend, his co-accused Fernando Tan, and the latter had broached the idea, "Why not just kill him." In fact, Tan agreed to take part in the killing. As related in the People's brief.

"x x x A week before April 23, 1971, Fernando Tan phoned his friend Bienvenido Quintos at the latter's office at Robes Francisco Realty and made an appointment with him whereat they discussed the plan of Ong to which Quintos agreed (tsn., p. 4, Sept. 22, 1971; Quintos' answers to Nos. 7-9 in his second sworn statement [Exh. Q], rec., p. 61). Soon, the trio (Ong, Tan and Quintos) met at the Barrio Fiesta Restaurant at Caloocan City and after eating dinner, they left and bought a shovel and pick at hardware store somewhere at Rizal Avenue Extension Caloocan City (Ans. to Q. No. 13, Exh. Q, rec., p. 62). From there, and using Ong's car, the trio proceeded to Novaliches to look for a site where to bury their intended victim. Ong selected a particular place, saying "Ito ang mabuti", after which they returned to Caloocan City and parted ways (Ans. to Q. No. 16, Exh. Q, rec., p. 62). On the following evening, the trio they again at the Barrio Fiesta Restaurant and at this meeting, they were joined by Baldomero Ambrosio, alias "Val", a former Acme employee and a godson of Ong by marriage (tsn, p. 31, Sept. 22, 1971; Exh. R, rec., p. 65). After eating dinner, they all rode on Ong's car and proceeded to the site in Novaliches, selected the previous day by Ong (Ans. to Q. No. 17, Exh. Q, rec., p. 62). Upon reaching the site, Ong opened the back compartment of his car and instructed Val to get the shovel and pick. The four walked for a distance of about thirty meters from the road, after which Val was instructed to dig a hole. With Quintos holding a

flashlight, Val dug the hole while Tan and Ong watched the digging, after which they covered the hole with fresh twigs. Thence, they returned to Caloocan City where they separated (Ans. to Q. No. 18, Exh. Q, rec., p. 62)."

Regarding what happened immediately before, during and after the meeting of Chua and Ong at Amihan at 9:00 p.m., April 23, 1971, I find the following conclusions of the trial court to be supported by the evidence, except as to (1) one aspect of that meeting at Amihan, for whereas the decision simply says that Chua and Ong met, it omits the pivotal relevant point that it was the deceased who fixed the time and place of said meeting and (2) the existence of the alleged ransom note, which does not appear to be clearly established, as will be discussed later:

On April 20 or 21, 1971, Benjamin talked to Henry Chua over the telephone. They agreed to meet at the Amihan Nightclub on Roxas Club Blvd., Parañaque, Rizal, at around 9:00 o'clock in the evening of Friday, April 23, 1971. The stage was set for the carrying out of his plans, so on April 22, 1971, Benjamin Ong contacted Clarita Teh of the Skyways Travel Agency and requested not only booking but also the preparation of his travel papers, destination — Taipei. Obviously, this was a necessary step to insure his escape immediately after the execution of his plan to kidnap and murder Henry Chua.

"At 7:30 o'clock, in the evening of April 23, 1971, Benjamin Ong met Fernando Tan, "Val" and Bienvenido Quintos at the Barrio Fiesta in Caloocan City. There the plans of the group were finalized and after dinner they proceeded to Amihan Nightclub.

"Benjamin Ong joined Henry Chua inside the Club while Fernando Tan, Val and Quintos remained in Ong's Biscayne car and waited outside the club. A short while later, Benjamin Ong came out of the Amihan Nightclub and told Fernando Tan to come inside. Obviously, this was a necessary step to enable Fernando Tan to know the identity of the intended victim. Quintos and Val remained in the car. Sometime later, Fernando Tan came out of the Amihan Nightclub and asked Quintos to go with him to the Wigwam Nighclub which is next door to the Amihan Nightclub.

"After plying Henry Chua with brandy inside the Amihan Nightclub, Benjamin Ong, on the pretext that the hostesss of his acquaintance was not there, urged the former to move to the Wigwam Nightclub. There they tabled two hostesses known to them, one of them being Ligaya Tamayo. Ong continued to ply Henry Chua with brandy. In the meanwhile, Fernando Tan and Quintos took a separate table inside the Wigwam Nightclub so they could watch Benjamin Ong and Henry Chua when they start to leave the place. At around 1:30 a.m., April 24, 1971, Henry Chua and Benjamin Ong left the Wigwam Nightclub and got into Henry Chua's Mustang car. Fernando Tan and Bienvenido Quintos followed and got into Ong's Biscayne car, and when the Chua car passed by, they followed, with "Val" driving the Biscayne.

"The Chua car left the Wigwam Nightclub in Parañaque, Rizal, proceeded through Manila, passing Quezon Bridge, then to Quezon City, passing Quezon Boulevard Extension, passed Sto. Domingo Church, where it made a U-turn and then turned right on a dirt road leading to Del Monte Avenue. Reaching a paved portion of the road leading to Del Monte Avenue, Ong told Chua to stop the car on the pretext of wanting to urinate. As soon as Ong got out of the parked Chua car, Val parked the Biscayne car ahead of the Mustang, blocking its way, and Fernando Tan and Val alighted. They proceeded to the parked Mustang car where Fernando Tan poked a gun at Henry Chua and Val opened the door at the driver's side and dragged Henry Chua from the Mustang car and forced him into the back seat of the Biscayne car. Henry Chua was then forced to lie down face up on the floor of the car while his hands and feet were bound by Fernando Tan with pieces of rope and a flannel cloth tied over his mouth to gag him. Benjamin Ong got behind the wheel of the Mustang car and followed the Biscayne car which had started to move towards Novaliches.

"Arriving at the site previously chosen in Barrio Makatipo, both cars stopped. Fernando Tan and Benjamin Ong, having alighted from the cars they were riding in, talked, while Val pulled Henry Chua out of the Biscayne car. Ong then took a shovel and a flashlight from the trunk compartment at the back of the Biscayne car. He handed the shovel to Quintos. The rope binding Henry Chua's feet was untied, but his hands remained

tied and his mouth was still gagged, as the accused led him to the site where a hole had previously been dug out.

"At that place, Henry Chua's hands and mouth were untied and ungagged, although Fernando Tan held his gun pointed at Henry Chua's head. He was then ordered to copy a prepared ransom note directing that \$50,000.00 ransom money be paid. Henry Chua complied, but pleaded 'Huwag ninyo akong patayin, ha?', to which Fernando Tan answered, 'Pabaya mo, makauwi ka.' Henry Chua's hands were again tied in front of him and the gag over his mouth tied again. He was made to lie on the ground, face up. Benjamin Ong then handed the icepick to Fernando Tan and said 'Patayin na iyan!' Fernando Tan handed the icepick to Val, who in turn, handed it to Quintos. But Quintos, obviously did not have the nerve to kill Chua, justifying his inaction by saying he had no grudge against Chua. Fernando Tan then grabbed the icepick uttering the words, 'Hindi ka pa pala puede.' The flashlight was then handed by Tan to Val who focused it on Henry Chua's breast. Fernando Tan then stabbed Henry Chua, twice, with the icepick. The body of their victim was then dragged to the prepared hole, Val pulling the body while Quintos was holding the legs, and dumped in a crouching position, face down, with the tied hands held in front of his breast. The hole was then covered with soil, then the mound stomped on by Benjamin Ong.

"Benjamin Ong and Fernando Tan boarded the Mustang while Quintos and Val rode in the Biscayne car. With Ong driving the Mustang and Val the Biscayne, they proceeded to Barrio Tibag, Baliwag, Bulacan, where the Mustang car was locked and abandoned near a Shell gasoline station. All four then returned to Manila in Ong's Biscayne car. They parted from each other's company at around 7:00 o'clock in the morning of April 24, 1971. On the following days, both Benjamin Ong and Bienvenido Quintos reported to their respective place of work as if nothing sinister had taken place." (Appellants's Brief [Ong], pp. XIV-XIX)

In connection with the meeting at Amihan, the only evidence on record as to how the place and time thereof were fixed is the following portion of Exhibit N, the extrajudicial confession of Ong:

"30. Q. What did you do after you were embarrassed and degraded as you mentioned?

A.

Sometime on April 20 or 21, 1971, HENRY CHUA called me up by phone at my office and it was at this time that I decided to kill him. He asked me when I could make settlement of my obligations and he asked me if I am available on Friday, April 23, 1971 to see him at AMIHAN CLUB at Roxas Blvd. and I said yes, promising that I would pay him." (Appellant's brief [Ong], No. 30, p. 22)

It was Chua then who set such place and time. As will be elucidated later, this particular detail is decisive in determining whether or not appellants purposely sought the cover of the night's darkness in committing the crime for which the State is demanding atonement with their own lives.

With respect to the supposed ransom note, I must make it clear at the outset that in my view of the case at bar, it is of no significant consequence whether or not there was in fact such a note. But if it could be in any sense material, I would subscribe to the view in the main opinion that its nonproduction considerably impairs credence as to the possibility of its actual existence. And as I will explain at a more appropriate place in the subsequent discussion, the other related circumstances extant in the record tend to belie, in my opinion, that anything about ransom was ever taken up on the occasion in question.

Subject to the foregoing reservations, I would say that the basic conclusions of fact of the trial court find ample support in the evidence before it. Indeed, in the light of said facts, it is beyond reasonable doubt that appellants Ong and Quintos should be held criminally responsible for the killing of Henry Chua. And from what I gather

from appellant Ong's position since the time he was investigated by the agents of the National Bureau of Investigation, he is not shirking that responsibility.

Insofar as appellant Quintos is concerned, while he admits having been with his co-accused when Chua's life was taken, he claims that his part in the whole affair was either innocuous or impelled by uncontrollable fear. At least one damaging point, however, is quite clear in his own testimony. He admits having been handed the ice pick for him to kill Chua, and although he claims he refused to use it, he has not proven that he exerted any effort to dissuade his companions from completing and accomplishing their criminal design. At any rate, the discussion and finding in the main opinion that Quintos was one of the conspirators has sufficient basis in the record to warrant his conviction, and I concur therein, even as I do not share the conclusion, as I will presently point out, that he and Ong deserve the extreme penalty of death.

His Honor held that the crime committed by appellant is kidnapping for ransom with murder, an offense ineludably punished precisely with death. Even for kidnapping for ransom alone, such is the inexorable penalty provided by law. (Article 267, Revised Penal Code, as amended by Republic Act 1084.) The pertinent provision reads thus:

"The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense."

However, I concur fully in the main opinion that such holding is completely erroneous and cannot be upheld.

As Mr. Justice Fernandez very well points out, it is basic and elementary that the essence of the crime of kidnapping under Article 267 of the Revised Penal Code is detention. Indeed, from the very beginning of Philippine jurisprudence in Volume I of the Philippine Reports, the Supreme Court already took the view that taking the victim from his home to a suitable place and then and there killing him evinces no shade of illegal detention, since it would not appear that the intention is to deprive him of his liberty, but rather of his life. (United States vs. Ancheta, 1 Phil. 165, 169.) There has been no ruling otherwise since then.

It is to my mind incorrect to say that in the two Parulan cases, Parulan vs. Rodas, 78 Phil. 855 and People vs. Parulan, 88 Phil. 615, this Court held that the offense of kidnapping or illegal detention can be complexed with the crime of murder pursuant to Article 48 of the Revised Penal Code when it is shown that the purpose of the apprehension and detention of the victim is to take him to the place of killing, as where the kidnapping is resorted to as a means for his killing, thereby overruling the doctrine in Ancheta, supra. I have read and studied both Parulan decisions, but I cannot find therein anything along the legal proposition suggested. This is what appears in Justice Feria's opinion in the first case:

"From a cursory examination of the foregoing it clearly appears that the crime charged is kidnapping and murder and the former was committed by the defendants as a necessary means 'for the purpose of extorting ransom from the victim or killing him if the desired amount of money could not be given,' that is, that the defendants had to kidnap or carry the victim to a faraway and secluded place in order to better secure the consent of the victim through fear to pay the ransom, and kill him with certain sense of impunity and certainty that no other person may witness the commission of the offense by the defendants if the victim refuses to accede to their demand, and that in fact he was killed by the defendants because of his refusal to pay the ransom."

And this is what Justice Pablo said in the second case:

"La contencion de que el Juzgado de Primera Instancia de Manila no tiene jurisdiccion sobre la causa, ya esta resuelta por este tribunal en Parulan contra Rodas, 78 Phil., 855. En dicho recurso el acusado impugno la

jurisdiccion del Juzgado de Primera Instancia de Manila, alegando que el secuestro y asesinato son dos distintos crímenes; que el asesinato se cometió en Bulacan y, por tanto, el juzgado de esta provincia es la que tenía jurisdiccion exclusiva sobre la causa. Este Tribunal declaro que el crimen denunciado es el delito complejo de secuestro con asesinato; que el secuestro se realizo como medio necesario para arrancar dinero de la victima o matarle si la cantidad pedida no lo diese; que cualquier juzgado de primera instancia en que se haya cometido cualquier elemento esencial de dicho crimen complejo tiene jurisdiccion; y se denego la solicitud."

What is to me clear from these quotations is that it is the element of demand for ransom and subsequent frustration in getting the same existing in Parulan that makes the difference between it and Ancheta, wherein said element was absent. Which is understandable, because when the purpose of the kidnapping is ransom, the offender would necessarily have to detain his victim while waiting for the result of the demand, and kill him only in case such result is negative. In other words, in Parulan the kidnapping was definitely for ransom and not necessarily to kill, whereas in the instant case it was solely to kill. When the sole purpose of the kidnapping is to kill, I maintain that the Ancheta ruling still holds, precisely because in such a case the intent to commit detention which is the essence of kidnapping is absent. Strikingly parallel; indeed, to the circumstances of the case at bar were those of Ancheta. Said the Court therein:

"Furthermore, in view of the nature and circumstances of the murder for which this cause is prosecuted it is evident that the fact that the deceased was captured in his house and taken by the defendants to an uninhabited place selected by them for the purpose of killing him there, does not constitute the crime of illegal detention, since it does not appear that it was the purpose of the accused to commit this offense. On the contrary they seized the unfortunate Quinto in his house with the sole object of carrying him away to a suitable place, which they subsequently pointed out to the authorities, and of there murdering him."

A careful review of the evidence in this case fails to show any indication that Ong and his co-accused ever entertained the thought of detaining the deceased for ransom. It is true a certain Patrolman Marciano Roque of the Caloocan City Police testified regarding alleged conversations he had with Ong wherein the latter supposedly revealed to him a plan to kidnap Chua for ransom. Let us hearken in this connection to the findings of the trial judge himself:

"x x x The first witness presented was Pat. Marciano Roque of the Caloocan Police Department. He testified to having known Benjamin Ong for more than five years as the latter was the Assistant Manager of the Acme Shoe, Rubber and Plastic Corporation, a company situated in Caloocan City, owned by Chua Pak, Ong's brother-in-law. Sometime during the first week of April, 1971, he went to the Acme office to get a pair of rubber sandals and was there met by Benjamin Ong who invited him to ride in his car and there revealed his plan to kidnap a person whom he believed had cheated him in a gambling game. The witness dissuaded the accused Benjamin Ong from carrying out his plan but the latter persisted and reiterated his request for assistance during the several meetings which followed. On one occasion, according to this witness, he was taken to Barrio Makatipo, Caloocan City, by Benjamin Ong and shown the place where said accused intended to bury the person he was planning to kidnap and kill. Benjamin Ong tried to convince the witness to join in his plan to effect a kidnapping by assuring him that he already had completed plan, that a godson of his would also help out, and that the father of the intended victim was very rich and that from the ransom money they would received from the father of the victim, the witness could already leave the police force and retire. Witness also testified that he tried his best to avoid Ben Ong, and at their last meeting urged him to forget the whole thing. Although he informed Capt. Duenas and Lt. Manabat of the Caloocan Police, and still later Chief of Police Celestino Rosca of Benjamin Ong's plan, he did not know the identity of the intended victim until the first week of May, 1971 when he was called by Chief of Police Celestino Rosca who informed him that a Chinaman by the name of Henry Chua was missing and that Benjamin Ong was being sought by the NBI x x x" (Pp. III-IV, Appellant's Brief [Ong].)

One does not have to tarry for more than a moment to see how preposterous Patrolman Roque's testimony is. What immediately strikes me is that allegedly Ong did not only confess to him his diabolical plan to kidnap Chua for ransom, Ong actually invited Roque to join in the commission of such capital offense. If such testimony were in any way true, I am sure the present case would not have come to be at all — Chua would not have been killed and Ong would probably have long been in jail for a non-capital offense initiated by no less than the Caloocan City Police. For I cannot conceive of a faithful and loyal policeman to whom a proposal to commit such a heinous crime can be made without his taking corresponding action in the public interest, just as it is for me difficult to imagine how Ong or any man could have had the courage and audacity to even merely suggest such an idea to a member of the police, there being nothing in the evidence showing that such a close and intimate relation existed between them to permit that a matter so strictly personal and confidential in nature be discussed by them just like that. The thing becomes more absurd and ludicrous when it is considered that Patrolman Roque added that he had sort of reported Ong's proposal earlier to his superiors Captain Duenas and Lieutenant Manabat and later to the Chief of Police himself, Celestino Rosca. One has to be completely naive to believe that these high officers of the Caloocan City Police just laughed off the report of Patrolman Roque merely because allegedly Ong did not reveal to him the name of the intended victim, even if it was already apparent to Roque that Ong was really serious and persistent in his proposal. The Court has consistently refused to give any credit to testimonies that on their faces do not accord with the ordinary experience of man and the usual course of official conduct, and surely, in my opinion, We must reject this one for being obviously a pure canard. Indeed, if only so that the police in this country are made aware of the necessity for all of them to always act consistently with the demands of public interest on occasions similar to the present one, wherein a policeman either imposes upon the good faith of the court by telling it a cock-and-bull story or reacts to an invitation for him to take part in the commission of a capital offense as if it were nothing more casual than a personal and private matter to him, I feel that the record of the testimony in question should be brought to the attention of the National Police Commission.

But even if there were a way of considering the said testimony as true, still, the fact would be that whatever proposition it was that Ong made to Patrolman Roque, nowhere in the record has it been demonstrated that Ong ever carried out the same either alone or together with his co-accused in this case, much less with the assistance of Roque which admittedly was never given. There is neither testimony of any witness nor statement of any of the accused indicating any link between Tan's alleged act of making Chua copy a ransom note and sign it and Ong. If such a link could be a matter of inference or something covered by the rule that the act of any of the conspirators constitutive of an inculpatory element or circumstance of the offense is the act of all, the conspiracy being proven, this legal conjectures would be patently belied by the undisputed proof to the effect that, as found by His Honor, after Chua had prepared and signed the supposed ransom note, and even as he was pleading "Huwag ninyo akong patayin, ha?" and Fernando Tan was assuring him "Pabayaang mo, makauwi ka", his (Chua's) "hands were tied again and the gag over his mouth tied again. He was made to lie on the ground face up. Benjamin Ong then handed the ice-pick to Fernando Tan and said 'Patayin na iyan'", and without further loss of time, it was so done. In other words, even assuming arguing that Ong had ever made a proposition to Patrolman Roque to join him in a kidnapping for ransom, the fact is that that idea never passed the stage of a mere proposal, hence is not punishable under Article 8 of the Revised Penal Code, and what actually was committed by Ong and his companions was no more than murder, the ransom idea, if it was ever thought of, having been abandoned completely at least insofar as Ong was concerned. The prosecution did not present any evidence, presumably because there was none, that anybody, not to speak of the members of the Chua family, one of whom, Sy Giap, a brother of the deceased, testified at the trial, ever received a demand for ransom from any of the accused.

The following, therefore, rule out the possibility that there was any element of ransom in the taking of Chua to the place of his killing: (1) The evidence of the prosecution that such an idea was in the mind of Ong days before

April 24, 1971 is utterly incredible, being unnatural and contrary to human experience and official comportment of the most simple minded policeman; (2) the non-production of the alleged ransom note has not been explained at all; (3) indisputably, no demand was ever made upon anyone for the payment of any ransom; and (4) the trial court found, and this finding is firmly borne by the evidence presented by both parties at the hearing, that Ong evidently paid no heed to the supposed preparation or copying and signing of the alleged ransom note, as on the spot he resolutely, impatiently and curtly directed his co-accused, "Patayin na iyan", without regard to the alleged ransom note, which, to be sure, does not appear to have been talked about then by the accused at all.

In view of the foregoing, I am totally convinced that the offense committed by the accused in the instant case cannot be more than murder; certainly, it was not kidnapping for ransom with murder. Thus, the only question that remains to be determined is, were there any circumstances attending the commission of the offense or related thereto that could legally be considered as mitigating or aggravating the same for purpose of imposing the appropriate penalty?

According to the information, the murder in question was qualified by treachery and that it was attended by the following generic aggravating circumstances: (1) evident premeditation; (2) grave abuse of confidence; (3) nighttime; (4) use of motor vehicle; (5) use of superior strength and (6) cruelty. But as earlier stated, at the arraignment, appellant Ong offered in effect to plead guilty to murder, instead of to kidnapping for ransom with murder, and challenged the propriety of the aggravating circumstances thus alleged. In convicting the appellants of kidnapping for ransom with murder, the trial court appreciated against them the aggravating circumstances of nighttime, despoblado or uninhabited place, abuse of confidence, use of motor vehicle and cruelty. Additionally, in His Honor's own words, it was his finding that "the killing of the victim was qualified by evident premeditation . . . The killing of Henry Chua was, therefore, also qualified by the circumstance of treachery or alevosia", hence, neither of these two circumstances was considered as generic aggravating. And with respect to the submission of appellant Ong that applying the doctrine in *Yturriaga*, supra, he should be credited with the mitigating circumstance of plea of guilty, the learned trial judge disposed of the contention as follows:

"In a manifestation filed before entering trial, the accused Benjamin Ong reiterated the fact that he entered a plea of 'not guilty' to the information as read to him, but invoked the doctrine in the case of *People vs. Yturriaga*, 86 Phil. 534, 539, that the prosecution may not nullify the mitigating circumstance of a plea of guilty and deprive the accused of the benefit of such a plea, by counter-acting it with 'unfounded allegations' of aggravating circumstances in the information.

"This Court, however, believes that the *Yturriaga* doctrine cannot be invoked in this case in view of the conclusion reached that the crime committed was the complex offense of kidnapping with murder for which the law prescribes the indivisible penalty of death. Furthermore, having reached the conclusion that aggravating circumstances attended the commission of the crime, even if the plea of guilty to simple murder were to be credited in favor of the accused Benjamin Ong, the same will not suffice to offset entirely the impact of the aggravating circumstances which impel this Court to impose the maximum penalty prescribed by the law even if the crime committed were only murder." (Appellant's brief [Ong] p. XXXIII.)

It is my considered view that the trial court erred in the appreciation of the different circumstances attending the killing of the deceased, except as to the aggravating circumstance of use of motor vehicle, which appears to have been properly taken into account. I do not see sufficient basis, whether in fact or in law, for His Honor's appreciation of the circumstances of nocturnidad and despoblado, just as I concur in the main opinion in rejecting also abuse of superior strength and cruelty, for the reasons therein given to which I find it unnecessary to add any. I also concur in that instead of using both alevosia and evident premeditation as qualifying circumstances, one of them, evident premeditation should be considered as a generic aggravating circumstance. In other words, my conclusion at this point is that only two aggravating circumstances may be appreciated against appellants, namely,

evident premeditation and use of motor vehicle. I hold further that nocturnidad and despoblado may not be so considered, and I submit the following considerations in this regard.

Anent the aggravating circumstance of despoblado, in *United States vs. Salgado*, 71 Phil. 56, the Supreme Court of the Philippines quoted approvingly the definition of an uninhabited place contemplated in Article 14 (6) of the Revised Penal Code given by the Supreme Court of Spain in its decision of January 9, 1884 to the effect that it "is one where there are no houses at all, a considerable distance from town, or where the houses are scattered a great distance from each other." (at p. 58) Such that "in order that despoblado may be aggravating, it is necessary that the proofs show affirmatively that the crime was committed in an uninhabited place." (Aquino, Revised Penal Code, Vol. I, p. 306) Thus, in a parricide case where the distance of the houses to the scene of the crime was not shown, this Court held that despoblado could not be appreciated as aggravating. (*United States vs. Ayao*, 4 Phil. 114) This is how Justice Mapa puts it:

"The prosecution says that the murder was perpetrated in an uninhabited place, and with the concurrence of this aggravating circumstance, asks that the penalty of death be imposed upon the appellants. We do not agree with this view, although the complaint establishes that the place called Denden, where the crime was committed, is uninhabited; the evidence in the case does not prove sufficiently that it was really so. The only witness who was interrogated about this matter was Faustina Bobiles, who testified that at the place in question 'there are houses,' although they are at a distance from the site where the deceased was wounded. This distance not being clearly specified, there is not a good basis from which to determine accurately whether the site was inhabited or not, and the defendants should be given the benefit of the doubt."

In the case at bar, the scene of the crime, according to the prosecution, is an "abandoned subdivision." To start with, the expression by itself already negates the idea of a place "where there are no houses at all, a considerable distance from town." A subdivision is designed as a place for habitation and to refer to it as abandoned is often an exaggeration, unless the exact import of the word is explained. It is true, in testifying about the reenactment, one of the NBI investigators, Enrique Lacanilao, mentioned that there are no houses there. But such a casual statement does not convince me of its accuracy and positiveness, to warrant the finding that the aggravating circumstance in question may be held to legally exist. Even the fact that Ong did mention in his confession that he considered the place "ideal" because it was "abandoned and uninhabited" is not to my mind indicative enough that said appellant's use of the term uninhabited is precisely what the law connotes. Besides, if precision of language is to be taken into account, Ong did not refer to the place as "ideal" for killing Chua, but, to quote him exactly, "to bury him." (Exh. N.) The pictures taken during the reenactment which, in the words of His Honor, shows "trees, lush vegetation and thick cogon grasses hide the place", cannot be conclusive, taken as they have been about five months after the happening at issue. In any event, considering that the appreciation or non-appreciation of this aggravating circumstance, which notably was not alleged in the information, could spell the difference between the imposition of either reclusion perpetua or death upon the accused herein, I would rather give appellant the benefit of my doubt by making the finding that would not make the consequence of any mistake of mine in connection therewith irretrievable.

Similarly, I am not sufficiently persuaded that the trial court properly appreciated the aggravating circumstance of nocturnidad. Earlier, I have punctualized the circumstance clearly established in the record that it was the victim, Henry Chua, who specified the place and the time of Ong's meeting with him at Amihan on that fateful night of April 23, 1971. This point is to my mind important because "nocturnity is not necessarily an aggravating circumstance, and the same should be taken into consideration according to the circumstances surrounding the commission of the crime. Where it is not evident that the defendants had purposely sought the nighttime to perpetrate the crime, nocturnity cannot be considered as an aggravating circumstance. While it is true that the defendants in the case under consideration killed the deceased about eight o'clock at night, it is not shown that

they purposely sought this hour for this purpose." (United States vs. Balagtas, 19 Phil. 164, 173.) My impression from all the circumstances disclosed by the evidence surrounding the commission of the offense in the instant case is that it would not have mattered to the deceased whether the killing was to take place at night or in the daytime. Even if the place which the accused had chosen to be "ideal" for their purpose, may not, as I have demonstrated, be considered in the criminal law as "uninhabited" for purposes of its being an aggravating circumstance and hence may not be deemed to have afforded them the sense of impunity contemplated in the law, as regards nighttime, there is no indication at all that they actually deliberated on the necessity or convenience of waiting for the cover of the night's darkness in carrying out their plan.

I am not unaware that Balagtas was decided under the aegis of the Old Penal Code which provided in Article 10 (15) that nocturnity, band or despoblado "shall be taken into consideration by the courts according to the nature and incidents of the crime" and that, on the other hand, Article 14(6) of the Revised Penal Code has eliminated that qualification and instead considers it as aggravating "that the crime be committed in the nighttime, or in an uninhabited place or by a band, whenever such circumstances may facilitate the commission of the offense." In fact, there are decisions of this Court justifying the appreciation of nocturnidad as aggravating even when, without purposely seeking the night's darkness to commit the crime, the offender "had taken advantage of it in order to facilitate the commission of the crime or for the purposes of impunity." (Cases cited in Aquino, op. cit. at pp. 301-304; Padilla, Criminal Law, Vol. I, 1974 ed. pp. 377-383.) But in People vs. Matbagon, 60 Phil. 887, Justice Vickers spoke for the majority of the Court thus:

"The next question is whether or not nocturnity should be taken into account as an aggravating circumstance in this case.

"No. 15 of article 10 of the Penal Code provided that it was an aggravating circumstance that the crime be committed in the nighttime, or in an uninhabited place, or by a band of more than three armed men (en cuadrilla); that this circumstance should be taken into consideration by the courts according to the nature and incidents of the crime.

"No. 6 of article 14 of the Revised Penal Code provides that it is an aggravating circumstance that the crime be committed in the nighttime, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense; that whenever more than three armed malefactors shall have acted together in the commission of an offense it shall be deemed to have been committed by a band.

"There appears to be no material difference between the provision of the Revised Penal Code and that of the Penal Code. In construing the provision of the Penal Code relating to nocturnity would be considered as an aggravating circumstance only when it appeared that it was especially sought by the offender or that he had taken advantage thereof in order to facilitate the commission of the crime or for the purpose of impunity.

"It was said in the case of People vs. Trumata and Baligasa (49 Phil., 192), that nocturnity should not be estimated as an aggravating circumstance, since the time for the commission of the crime was not deliberately chosen by the accused; that if it appears from the record that the accused took advantage of the darkness for the more successful consummation of his plans, to prevent his being recognized, and that the crime might be perpetrated unmolested, the aggravating circumstance of nocturnity be applied (U.S. vs. Billedo, 32 Phil., 574, 579).

"In the present case none of the foregoing reasons exists for appreciating nocturnity as an aggravating circumstance. The attack made by the defendant upon the deceased was but a sequel to the fight at the cockpit, which had taken place half an hour before. If the defendant had killed the deceased in the fight at the cockpit, probably no one would contend that nocturnity should be appreciated as an aggravating circumstance in that case. It would be purely accidental, and so it was in the present case.

"The Supreme Court of Spain in its decision of May 23, 1885 held that even in the case of robbery with homicide the fact that the crime was committed at night is not to be appreciated as an aggravating circumstance when it may be inferred that the darkness was not intentionally sought or taken advantage of, but intervened casually: 'Considerando que tampoco es de estimar en perjuicio de los mencionados reos Oliva y Ruiz Bringas la circunstancia de haberse ejecutado el delito de noche, que es la 15 del citado articulo 10, porque no surte efecto alguno legal en sentido de agravar la pena imponible si los culpables no la han elegido para realizar mejor sus malos propositos, o como medio de conseguir la impunidad, lo cual no consta que hicieran aquellos al matar y robar al Lopez, toda vez que hallandose los tres con frecuencia en una habitacion independiente de las demas que ocupaban otros vecinos, no parece que les fuera necesaria una hora precisa para su perpetracion, deduciendose sin gran esfuerzo que, si el delito se cometio de noche, fue sin ser buscada expreso, interviniendo esa circunstancia casualmente'.

"In its decision of January 25, 1888, relating to a tumultuous affray at night, the same court held that the fact that the offense was committed at night should not be regarded as an aggravating circumstance, because it was not chosen or sought for by the accused, but was purely accidental.

"On the other hand, in its decision of April 14, 1888, the Supreme Court of Spain held that the aggravating circumstance of nocturnity should be appreciated when the accused chose the nighttime or took advantage of it to commit the crime more easily or to secure his impunity.

"Viada's comment on this question is as follows: 'En aquellos delitos, cuya naturaleza no empeece a la apreciacion de la circunstancia de la noche, habra que distinguir: cuando aparezca que el autor del hecho busco la noche, o por lo menos se aprovecho de ella para facilitar la ejecucion del delito, o lograr, a ser posible, su impunidad, debiera apreciarse esta circunstancia de agravacion; cuando aparezca lo contrario, esto es, que la noche no ha sido aguardada ni aprovechada con intencion por el delincuente para ejecutar en ella el delito, en este caso no debiera tomarse en consideracion la circunstancia de nocturnidad, que fue puramente accidental, para agravar la responsabilidad del culpable.' (2 Viada, 262, 5th ed.)."

Justice Hull, with whom Justices Villareal and Butte concurred, wrote a dissent^[1] in which he argued that "The test fixed by the statute is an objective one", and that "a subjective test (was) fixed by the majority opinion." To my knowledge, this disparity of views as to whether the test should really be objective or subjective has not been definitely resolved in any subsequent decision of this Court. I wish this case were considered by the Court as the appropriate one to lay down the law on the matter with more clarity, but since it seems that not all my colleagues are disposed to go along such direction, I would express my own considered view that as seemingly conceived by the Old Penal Code, the test should be subjective.

As Justice Vickers elucidated in *Matbagon*, "to take advantage of a fact or circumstance in committing a crime clearly implies an intention to do so, and one does not avail oneself of the darkness unless one intended to do so." In the quotation from Viada in that same case, it is important to note that he makes it plain that in a case where "la noche no ha sido guardada ni aprovechada con intencion por el delincuente para ejecutar en ella el delito, en este caso no debiera tomarse en consideracion la circunstancia de nocturnidad." (*Italics mine*)

In the Court's per curiam decision in *People vs. Boyles*, G.R. No. L-15308, May 29, 1964, 11 SCRA 88, this is what is said:

"The lower court appreciated nocturnity against the appellants solely on the basis of the fact on record that the crime was committed at about 5:00 o'clock in the morning. This particular finding can stand correction. By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender and taken advantage of by him to facilitate the commission of the crime to insure his immunity from capture (*People vs. Alcala*, 46 Phil. 739; *People vs. Matbagon*, 60 Phil. 887; *People vs. Pardo*, 79 Phil. 658). Stated differently, in default of any showing or evidence that the peculiar advantages of nighttime was

purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnidad. It must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.

"In the case presently on appeal, We note that other than the time of the crime, nothing else whatsoever suggests the aggravating circumstance of nighttime. Not one of the prosecution evidence, oral or documentary, makes the slightest indication that the protection of night's darkness was deliberately availed of by the appellants. In view of this deficiency in the case for the Government, We are constrained to disallow the said circumstance even as, technically, it may have been accepted by them when they pleaded guilty on arraignment."

I cannot really imagine how anyone can be criminally held responsible for taking advantage of nighttime, when there is no evidence that the benefit or gain to be derived from its darkness was in any way considered, much less intended or designed by the accused, especially when, as in the case at bar, the thrust of the government's proof is that Ong was so bent on killing his victim and, to my mind, would have cared less if he did it in the daytime. There may be instances where the circumstances may indicate positively, even in the absence of any words coming from the accused, that night is being taken advantage of, but I am not ready to say that it is so in this case under our consideration now.

Withal, following a decision of the Supreme Court of Spain (of February 28, 1884), this Court held in *United States vs. Baguio*, 14 Phil. 240, that the appreciation of nocturnity as an aggravating circumstance (lies) in the discretion of the court." I believe that the change I have referred to above in the phraseology of the pertinent provision of our penal code has not deprived the Supreme Court of that discretion, particularly where the question of whether the death penalty should be imposed or not hinges on the opinion of the Court as to the presence or absence of such aggravating circumstance. For my part, therefore, after mature reflection and deliberation in the light of the somehow unsettled construction of the specific pertinent penal provision, I feel there is ample ground to hold, as I do hold, that the extant circumstances of the killing here in question do not warrant the conclusion that nighttime should be appreciated as having aggravated the crime committed by the accused, for the simple reason that the record is bare of any indication that the accused ever considered the advantage of nighttime in the commission of the offense in question. In this connection, it might be relevant to recall that in *Boyles*, supra, the accused had already pleaded guilty to the information which charged nocturnidad and still the Court, after hearing the evidence, discarded the same for want of evidence of intent or design in that respect.

Coming now to the contention of appellant Ong that he should be credited with the mitigating circumstance of plea of guilty, I agree with the main opinion that the contention is justified by the facts of record. To reiterate, this appellant made it manifest from the start of the present proceedings in the court below that in due time he would invoke *Yturriaga*, supra, because the prosecution was indicting him for an offense much graver than what he had committed and was furthermore alleging aggravating circumstances unwarranted by the facts he had confessed to or could be proven. As it has turned out, appellant's initial position as to the offense he has committed and the circumstances attending the same is in the main the correct one. More than that, if more effort had only been exerted by the fiscal to be as accurate as possible in designating the offense imputable to the herein accused, the absence of the element of ransom would have been obvious to him. It is not fair to level against anyone a charge of having committed an offense generally punishable with death, which in itself should cause uncalculable mental torture, when with a little more deliberation and study, it should be apparent that a lighter offense can sufficiently vindicate the public interest involved. I do not mean to urge prosecuting officers to be unnecessarily liberal. What I wish to discourage is overzealousness that can have unjust and oppressive consequences. The touchstone of a democratic criminal prosecution is nothing less than fairness in the charge, the trial and conviction.

Section 4 of Rule 118 allows the accused, with the consent of the fiscal and the court, to "plead guilty of any

lesser offense than that charged which is necessarily included in the offense charged in the complaint or information." Under this provision, once the consent of the fiscal and the court is secured, and upon the information being correspondingly amended, the accused actually enters a plea of guilty, he is still entitled to the benefit of the plea of guilty as a mitigating circumstance when the court sentences him for such lesser offense, even if the offer, the amendment and the plea re made after the prosecution has started its evidence, (*People vs. Ortiz*, 15 SCRA 352) albeit it may be mentioned that the reasoning pursued in this decision is that after the amendment, the plea is to an entirely new information as to which no evidence has yet been presented, thus adhering strictly to the language of Article 13 (7) of the Revised Penal Code requiring that the accused should have "voluntarily confessed his guilt before the court prior to the presentation of the evidence of the prosecution." Where no evidence has yet been presented by the prosecution, it is doubtless that the benefit of the plea of guilty under the above provision inures to the accused. (*People vs. Intal*, 101 Phil. 306.) In *People vs. Noble*, 77 Phil. 93, where the accused offered to plead guilty to the lesser offense of homicide instead of murder with which he was charged and the fiscal refused to agree, the Court held, after finding the accused guilty of murder, that the mere offer to plead guilty to homicide was not a mitigating circumstance.

In the case at bar, the Court is confronted with a situation in which the appellant offered to plead guilty to precisely the lesser offense which he had confessed to from the start of the NBI investigation before his arraignment. That offer was rejected by the fiscal, who, we must presume, was already in possession of all the evidence which he eventually presented to the court, and which the court has found as not warranting at all the graver charge of kidnapping for ransom with murder. Under these circumstances, I concur in the main opinion that the following dictum in *Yturriaga* applies:

"x x x It only remains to consider briefly whether the defendant's plea of guilty in the form it was entered constitutes a voluntary confession of guilt before the court as defined in the same subsection of article 13. We think it does.

"Although the confession was qualified and introduction of evidence became necessary, the qualification did not deny the defendant's guilt and, what is more, was subsequently fully justified. It was not the defendant's fault that aggravating circumstances were erroneously alleged in the information and mitigating circumstances omitted therefrom. If such qualification could deprive the accused of the benefit of plea of guilty, then the prosecution could nullify this mitigating circumstance by counteracting it with unfounded allegations of aggravating circumstances."

The trial court refused to consider the foregoing ruling, taking the pragmatic view that inasmuch as it had found the offense committed to be one punishable with the indivisible penalty of death, and, even if it were murder, there were five aggravating circumstances present, it was inconsequential to discuss the applicability of *Yturriaga* as in the end it would not affect the result. For the reasons I have already discussed above, it is evident that His Honor's position cannot be sustained.

The main opinion also credits appellants Ong with a mitigating circumstance analogous to passion and obfuscation. Indeed, in passing judgment over the criminal responsibility of this appellant, it is but just that the Court should consider the cause or reason that must have impelled him to have Chua's life taken. After all, he is not asking to be absolved. He has freely confessed his guilt; he is only seeking understanding of his motives, hopefully to secure thereby whatever lightening effect the same may have on the penalty he would have to undergo in atonement for his it. I am certain he does not expect the Court to exempt him from criminal liability. In other words, he refers to the reasons for his crime not to justify it, but only to show absence of real depravity or any inherent criminal nature. If he did premeditate and premeditating did persist in going ahead with his decision to kill his friend, the urge was accidental, not inborn. The frequent and persistent demands for payment of his gambling debts perhaps should have been expected, but the manner in which these were made is something else.

As already noted earlier, such importunings bothered the boss of Ong, they annoyed and "scandalized" Ong's co-workers in the office, to whom he lost face being the assistant manager; so much so that he had to give up his job. Then there were the veiled threats conveyed to Ong by Ko King Pin that Chua was not a man to be provoked to anger, which Ong could not ignore, what with Chua's own words, "If you treasure your life, you better pay first," and that he would turn over Ong's bouncing check "to other people who will not be courteous anymore." Not every man is given the equanimity and calmness needed to withstand all these without breaking down inwardly and feeling oppressively aggrieved. Under these circumstances, it would not be an exaggeration to say that the urge in the feeling of appellant to kill his tormentor was less than purely voluntary, which diminution is the basis of the mitigating circumstance contemplated in Article 13(5) of the Revised Penal Code.⁷⁸ (Reyes, Criminal Law, Vol. 1, p. 250.) Indeed, rather than consider the motive behind Ong's offense to be analogous to passion or obfuscation as the main opinion does, I am more inclined to hold that the resolution to do away with the life of Chua "surged from the resentment" of Ong over the importunings, and threats of Chua and his companions, and inasmuch as evident premeditation is being appreciated against him, in the fashion of *People vs. Guzman, et al*, L-7530, Aug. 30, 1958, he could be given, by analogy, the benefit of this mitigating circumstance. Anyway, it can be considered alternatively with passion or obfuscation, with which it cannot co-exist. (*People vs. Doniego*, 9 SCRA 541.).

There is no definite criterion of what is a grave offense for the purposes of Article 13(5) of the Revised Penal Code. Each case should be decided according to the peculiar milieu proven to have been the setting of the offense. In *People vs. Rosel*, 66 Phil. 323, the Court held that the remark of the injured party before the guests that the accused was living at the expense of his wife was such an offense under this article. Where the injured party had insulted the father of the accused by contemptuously telling him: "Phse, ichura mong lalake (Pshaw, you are but a shrimp), the accused was held to have acted in vindication of a grave offense against his father. And it matters not that the killing of Chua was not immediately after Ong was humiliated, threatened and oppressed, it being clear to me that the influence of such importunings lasted until the commission of the offense. (*People vs. Parana*, 64 Phil. 331).

I realize that the circumstances I have pointed out cannot justify the killing of Chua. But as I have already stated earlier, this discussion is not intended to exonerate him. I have just looked, as it were, into the surely perturbed mind of appellant in the night in question, to determine the degree of perversity and criminal tendencies therein, and I am convinced that he was motivated by the circumstances I have elucidated on rather than by pure criminality. At this point, I am not even taking into account, because of procedural and technical impediments, that appellant Ong has filed a motion for new trial strongly indicating what at the trial he vehemently refused to divulge for reasons very personal to him, namely, that the deceased had made amorous advances to his wife and attempted to rape her on April 15, 1971, which Chua asked in exchange for her husband's gambling debt. No doubt, if the wife had testified to such facts at the trial, appellant would be entitled to a full credit of the mitigating circumstance under discussion.

There is an additional circumstance which to me is important in measuring criminal responsibility of the appellants in this case. I refer to the peculiarity that were it not for the disclosures made by them in their confessions and during the reenactment, the prosecution would have had no basis whatsoever for its attempt, which the Court has frustrated by this decision, to make them answer for the graver offense of kidnapping for ransom with murder accompanied by the string of aggravating circumstances listed in the information. One cannot easily commiserate with killers, but considerations of human dignity and fairness demand that they are not made to undergo any punishment more than the facts, the law and justice warrant. And the law is inclined to be more liberal to those who after committing any offense evince by their conduct some signs of remorse and resignation to accept the penalties that they deserve, by admitting their guilt. But in the present case, appellant Ong has gone

further. He did not only confess he and his co-accused killed the victim, he freely told his investigators exactly what happened to its last details, thereby making himself subject to the charge of aggravating circumstances, no other evidence of the government could have supported, considering how and where the offense was committed and the difficulty of securing witnesses for the State to testify thereon. As I have said earlier, without the help of the appellants, this would have been no more than a case of murder. In view of this consideration, I believe it would only be consonant with existing rules in the appreciation of mitigating circumstances that appellant Ong be credited with an additional mitigating circumstance analogous to the plea of guilty.

As regards the case of appellant Quintos, I am struck by the evidence that at the last moment he refused to do what he was assigned to do — stab the victim. In other words, he did not carry out to its ultimate conclusion the criminal design he had in common with his co-accused. Indeed, in my review of the record I have not discerned any clear evidence of the specific participation of this appellant in the commission of the offense in question. In the brief of the Solicitor General, the only imputation to Quintos is that he held the flashlight while Tan was making Chua prepare a ransom note and that Quintos held the legs of the victim when his dead body was dumped into the previously chosen hole for his burial. And there is a hint in the record to the effect that Quintos had his feet on top of Chua when the latter was being taken to the place of killing. As to the alleged preparation of a ransom note, I have already demonstrated, it has not been proven beyond reasonable doubt. This is also the holding in the main opinion. As to the other acts attributed to him, I am not satisfied of their conclusiveness. And having in mind the undisputed desistance of this appellant, I would say that his responsibility as principal does not satisfy my conscience. I hold him guilty only as accomplice because his act of accompanying the other accused was an act of cooperation short of direct participation.

Accordingly, my vote is to find appellant Benjamin Ong guilty as principal of the crime of murder, with the aggravating circumstances of use of motor vehicle and evident premeditation although these are offset by the mitigating circumstances of plea of guilty, passion or obfuscation alternatively with vindication of a grave offense and the disclosure of all the details of the offense that enabled the prosecution to allege aggravating circumstances which otherwise could not have been known, which in my opinion is analogous to the plea of guilty but separate and distinct therefrom. In consequence, said appellant should suffer an indeterminate sentence of from 12 years of prision mayor as minimum to 20 years of reclusion temporal as maximum, with the accessory penalties of the law.

Likewise, I find the appellant Bienvenido Quintos guilty of murder, but only as an accomplice, with the aggravating circumstances of evident premeditation and use of motor vehicle offset only by one mitigating circumstance similar to that in the case of Ong which is analogous to the plea of guilty inasmuch as Quintos also revealed details that the government would not have known otherwise. Accordingly, he should be sentenced to 6 years of prision correccional as minimum to 17 years and 4 months of reclusion temporal as maximum, with all the accessory penalties of the law.

In all other respects, I concur in the dispositive portion of the main opinion.

Before closing, I would like to explain that I had to prepare this separate opinion because I believe that in order for me to save any person accused of a capital offense from the death penalty it must appear that from a computation of the attending aggravating and mitigating circumstances, the death penalty is not imposable. In other words, I cannot vote for less than the extreme penalty of death when the Court finds that there are aggravating circumstances not sufficiently offset by mitigating circumstances.

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