

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
LEOPOLDO ABEJERO Y VILLON, ACCUSED-APPELLANT.***G.R. No. L-36039. May 17, 1980*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6ee7725c0649/>**PER CURIAM:**

This is a case of robbery with homicide. At about five o'clock in the afternoon of December 26, 1971, Clinton C. Tan, 47, and Chua Sy, 49, boarded a calesa at the corner of Teodora Alonzo Street and Claro M. Recto Avenue, Manila. They were going home. The calesa proceeded to Jose Abad Santos Street.

After passing the M. Hizon Elementary School, Tan and Chua Sy espied four male persons in the middle of the street. They stopped the calesa and two of them, later identified as Leopoldo Abejero, 24, and Jesus Reyes, 18, entered the calesa. Reyes announced that they were staging a holdup. Abejero and Reyes and their third companion, identified as Benjamin Mallari, were armed with knives. They demanded money.

Tan and Sy gave sixty pesos to Abejero who passed the money to Reyes. Sy also gave his wallet containing a Hongkong dollar. Not satisfied with their loot, Abejero and Reyes demanded some more money. As the demand was not heeded, Abejero stabbed Sy. Tan jumped to the ground and ran away, pursued by Reyes, who desisted when a jeep arrived at the place.

Sy was brought to the hospital where he died two days later. He suffered two stab wounds in the chest which lacerated his heart, liver and diaphragm.

From Tan's description of the knife-wielder, Patrolman Jose de la Cruz, Jr. of the Crimes Against Persons Division, Detective Bureau of the Manila Metropolitan Police concluded that the assailant might be Abejero, alias Boy Sakay. His hangout was placed under surveillance. Abejero was apprehended on January 10, 1972. After verbally admitting his participation in the holdup, he executed an extrajudicial confession which was sworn to before Fiscal Mariano Chavez.

In that confession, Abejero, single, jobless, a native of Tondo and a resident of Sta. Cruz, Manila, who reached first year at the Arellano High School, disclosed that his companions in the holdup were Susing, Benny Bulok and Ebot; that he had committed several holdups; that he stabbed Sy because the latter fought back ("lumalaban ho") and that with the money taken from Tan and Sy, the four malefactors bought food and a case of beer and proceeded to the Old Avenue Cabaret at Caloocan City where they entertained two hostesses up to three o'clock in the morning.

Annexed to Abejero's confession is a sketch (drawn by him) of the knife which he used in the stabbing. Under that sketch, he wrote the following legend: "Ito ang itsura ng patalim na gamit ko sa pagsaksak doon sa taong hinoldup namin nila Susing, Ebut at Benny Bulok noong hapon ng De-ciembre 26, 1971 (sa) Kalye Abad Santos." That annex was also sworn to before the inquest fiscal, Fiscal Chavez.

On the basis of that confession, Abejero was charged on January 11, 1972 with robbery with homicide in the Circuit Criminal Court (Criminal Case No. 862).

Because of the description of Abejero's companions in that confession, the police apprehended on January 12, 1972 Susing and Benny Bulok whose real names are Jesus Reyes and Benjamin Mallari. Their confessions were like-wise taken and sworn to before Fiscal Avelino Concepcion. They pointed to Abejero as the killer of Sy (No. 15, Exh. G and No. 10, Exh. H).

Reyes and Mallari were separately charged with robbery with homicide in the Circuit Criminal Court (Criminal Cases Nos. 865 and 899). The three cases were tried jointly by Judge Manuel R. Pamaran who in a decision dated March 3, 1972 convicted them of robbery with homicide, aggravated by abuse of superiority, and sentenced Abejero to death. Reyes, who pleaded guilty, was sentenced to reclusion perpetua.

Mallari, who was sixteen years old at the time of the commission of the crime, was sentenced to an indeterminate penalty of ten years and one day of prison mayor as minimum to seventeen years, four months and one day of reclusion temporal as maximum.

The three were ordered to pay solidarily an indemnity of thirty-two thousand pesos to the heirs of Chua Sy, to return the articles taken and, if unable to do so, to pay solidarily sixty pesos to Clinton C. Tan and Sy's heirs. The return of the Hongkong dollar to Sy's heirs was ordered.

On Abejero's motion, Judge Pamaran set aside that decision and granted a new trial because Reyes on March 10, 1972, or after the first judgment of conviction was promulgated, signed a statement wherein he declared that it was not true that Abejero was his companion in stabbing Sy. Reyes said that he was the only one who stabbed Sy. He stabbed Sy because they bumped each other and Reyes fell on the ground (Exh. 1, p. 92, Record).

Reyes and Jose Abejero, the father of Leopoldo, testified again at the new trial. When Reyes was shown his statement, Exhibit 1, he said that he does not know how to read. When it was read to him, he said that he had forgotten it already. He said that Exhibit 1 was prepared by Abejero's lawyer. Reyes said that he was forced to sign the statement. The new trial was a fiasco for Abejero.

Judge Pamaran in his amended decision of July 17, 1972 reaffirmed his prior judgment. Abejero appealed.

Abejero's defense during the trial was an alibi: he was taking a bath in the yard of his house at 1559 F. Tubera Street, Tindalo, Sta. Cruz at the time the alleged robbery with homicide was perpetrated. The trial court rejected that defense. Abejero's residence is near the scene of the crime.

Appellant's contention that Clinton C. Tan's testimony needs corroboration does not deserve any serious consideration because the principal evidence against Abejero is his own confession which is corroborated by the indubitable evidence of the corpus delicti and reinforced by the eyewitness testimony of Clinton C. Tan.

Abejero's claim that he was maltreated before he signed his confession is not sufficient to overthrow the testimony of Patrolman De la Cruz that he signed it voluntarily. Abejero did not complain of the alleged maltreatment to Fiscal Chavez when he was brought to the latter's residence to swear to his confession.

Fiscal Chavez required him to read his confession and to sign it again if he was in conformity with the contents thereof. Thus, his confession contains two signatures: one above and the other below his typed name. He also signed twice the sketch of the knife which sketch was a part of his confession.

It is not sound practice for the court to disregard the confession just because the accused repudiates it at the trial. Before setting aside a confession, the reasons and motives for its repudiation should be carefully scrutinized (People vs. Dorado, L-23464, October 31, 1969, 30 SCRA 53, 57-58).

If it were true that Abejero was maltreated and that his confession was involuntary, he could have complained about the maltreatment to Fiscal Chavez and refused to swear to it and he could have also asked his counsel de

oficio to complain to the proper authorities about the alleged maltreatment. His failure to do so militates against the veracity of his claim that his confession was involuntary (*People vs. Ijad and Muslim*, 113 Phil. 348, 356; *People vs. Racca*, 113 Phil. 802, 812).

The contention that robbery with homicide was not committed because the killing was not perpetrated in order to conceal the robbery is not well-taken. The provision in article 294 of the Revised Penal Code that the homicide be committed "by reason or on occasion of the robbery" ("cuando con motivo o con ocasion del robo resultare homicidio") means that it is sufficient that between the robbery and homicide "exista una relacion meramente ocasional".

"No se requiere que el homicidio se cometa como medio de ejecucion del robo, ni que el culpable tenga intencion de matar, el delito existe segun constante jurisprudencia, aun cuando no concurra animo homicida, incluso si la muerte sobreviniere por mero accidente siempre que el homicidio se produzca con motivo o con ocasion del robo, siendo indiferente que la muerte sea anterior, coetanea o posterior a este." (2 Cuello Calon, *Derecho Penal*, Volumen Segundo, 14th Ed., 1975, p. 872.)

Abuse of superiority was correctly appreciated by the trial court because the four malefactors took advantage of their strength to overwhelm the two unarmed victims. One of the robbery victims had to scamper from the calesa to avoid physical injury (*People vs. Mabassa*, 65 Phil. 568; *U. S. vs. Tampacan*, 19 Phil. 185; *People vs. Cruz*, 103 Phil. 693, 706; *People vs. Abrina*, 102 Phil. 695, 706).

Since Abejero and Reyes had already extorted some money from Tan and Sy, the killing of Sy was utterly senseless and uncalled for, a case of pure lawlessness.

WHEREFORE, the trial court's judgment as to Leopoldo Abejero is affirmed. Costs against the appellant.

### **SO ORDERED.**

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

Fernando and Teehankee, JJ., are abroad.

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