

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONIDES PAREDES, PAULINO DANLAG ALIAS GENE AND FELIPE
PAYOT ALIAS RUDY, ACCUSED, LEONIDES PAREDES,
DEFENDANT-APPELLANT.**

G.R. No. L-41344. June 25, 1980

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PER CURIAM:

Leonides Paredes, appellant herein, together with Paulino Danlag and Felipe Payot, and two others mentioned in the information, was charged in the Court of First Instance of Bukidnon, with robbery in band with homicide.[1] On November 24, 1972, all the accused pleaded not guilty, but on February 15, 1972, before the prosecution started to present its evidence, appellant withdrew his plea of innocence and entered a plea of guilty. However, on May 10, 1974, upon taking the stand to be the first witness for the defense, appellant again withdrew his plea of guilty which was accordingly changed to that of not guilty.[2]

After trial, the Court acquitted Felipe Payot and Paulino Danlag, and convicted appellant for robbery with homicide, and finding the crime to have been attended by the aggravating circumstances of (1) band, and (2) use of motor vehicle, with no mitigating circumstance to offset them, sentenced appellant to the supreme penalty of DEATH, which sentence was appealed to this Court.[3]

To the statement of the evidence of the prosecution in appellant's brief, the Government substantially agrees. Appellant actually reproduced the statement of facts as given by the trial court which, not being disputed, We quote from the latter's decision the following:[4]

"At about 5:00 o'clock in the afternoon of July 9, 1971, Teodulo Galarpe was weighing corn on the ground floor of his house at barrio Bocboc, Don Carlos, Bukidnon, when three persons, one of whom was in a P. C. uniform, entered and inquired if there are still vehicles bound for the poblacion of Don Carlos. Teodulo Galarpe replied perhaps, and pointing to the truck parked in front of his house told the three that the truck is bound for the poblacion. At this time, also in the house of Teodulo Galarpe, were his daughters, Carmencita and Elsa, a certain Juana Celebran, a trusted employee of a certain Galenzoga with a driver by the name of Bata, a certain Mrs. Elsie Velez who was in the house to load corn, and some other people selling their corn to Teodulo Galarpe whose business was buying and selling corn. After the short conversation had with Teodulo Galarpe, the three persons, one of whom was in P.C. uniform proceeded to the yard while Teodulo Galarpe went inside the dining room to make a computation of the value of the corn he had weighed. On second thought, believing that the man in uniform was a P. C. soldier, Teodulo Galarpe came out of the dining room back to where his weighing scale, was with the intention of offering the man in uniform something as a show of hospitality. At a distance from the weighing scale, the three persons who were about a fathom away suddenly drew their firearms and leveled the same at Teodulo Galarpe, and told everybody not to move. At this juncture three other armed men appeared and with their guns herded the people in the yard, who were selling their corn, inside the house. The three men with guns levelled at Teodulo Galarpe held him by both arms and divested him of his money in the amount of P57.00. At this precise moment, Carmencita and Elsa, daughters of Teodulo Galarpe, were in the kitchen. Upon hearing the commotion outside, Carmencita and Elsa turned

towards the direction of the commotion and saw the three armed men with guns drawn levelled at their father. After taking the amount of P57.00 the three armed men brought Teodulo Galarpe to the second floor. At the second floor Teodulo Galarpe was hog-tied with a curtain and told to lie face down on the floor. While lying face down on the floor Teodulo Galarpe was asked where his money is. Teodulo Galarpe answered that he had no money other than the amount of P57.00 and was hit on the head with the butt of a gun and kicked on the back. Then one of the robbers forced open a cabinet and an aparador. From the aparador the robbers get a revolver worth P650.00, a Bulova watch worth P155.00, a Seiko watch worth P150.00, a pair of sunglasses worth P80.00 and a shotgun worth P600.00. The robbers repeated asked Teodulo where his money is. While all these were happening there was continuous firing around the house. Going back to Carmencita and Elsa upon seeing the three armed men with guns levelled at their father, Carmencita and Elsa turned their backs to run but as they were about to do so they were confronted by another robber behind them with a gun levelled at them. The robber ordered the two to lie flat on the concrete floor of the dining room. After a while the robber ordered them to stand up and they were asked who they are in the house to which Elsa replied that they are maids. The robber then brought Carmencita and Elsa to the bathroom. Another robber brought Juana Celebran to the toilet and then afterwards took her out of the toilet and brought her to the bathroom where Carmencita and Elsa were. Back again to Teodulo Galarpe, because of his repeated answer that he had no money other than the amount of P57.00 which the robbers had already taken, one of the robbers said, 'Kill him because he would not tell where the money is.' But after quite a time the robbers untied Teodulo's leg and brought him downstairs where he was made to sit on a stool, while the robbers asked him again where his money is. Teodulo insisted that he did not have anymore money which infuriated one of the robbers who pulled a chair with the intention of striking him. At this juncture two of the robbers who were on guard outside the house shouted, 'Bring the owner of the house.' Teodulo was brought outside and made to board the 3/4 truck owned by him. Teodulo was made to sit at the back of the 3/4, after which one of the robbers shouted at his companion, 'You go back and bring the ladies as our hostages.' So, the ladies, Elsa Galarpe, Carmencita Galarpe, Juana Celebran and Mrs. Elsie Velez were taken from the house and also brought to the 3/4 truck. The robbers also got the driver of the truck of Galenzoga by the name of Bata and ordered him to drive. One or two of the robbers sat beside the driver Bata while the rest rode on the rear of the 3/4 truck with Teodulo Galarpe, Elsa Galarpe, Carmencita Galarpe, Juana Celebran and Mrs. Elsie Velez. The 3/4 truck proceeded towards the poblacion of Don Carlos. Near the barrio market, after the 3/4 truck had travelled a distance of, about 30 meters from the house of Teodulo Galarpe, Mrs. Elsie Velez complained, 'Agoy, I am wounded.' Despite the complaint of Mrs. Elsie Velez that she was wounded the 3/4 truck proceeded towards the poblacion of Don Carlos. Near the Crossing of New Visaya the barrio people erected a barricade of stones, hollow blocks and wood across the road to prevent the 3/4 truck from passing through. One of the barrio folks by the name of Pedro Flores flagged down the 3/4 truck and was gunned down by the robbers. On reaching the San Isidro ranch, Teodulo Galarpe, his daughters Carmencita and Elsa, Juana Celebran and Mrs. Velez were ordered to alight from the vehicle. All five hostages alighted but apparently the robbers had a change of mind and ordered Elsa, Carmencita and Juana Celebran back to the 3/4. Teodulo Galarpe, the wounded Mrs. Elsie Velez and the driver Bata were then left behind and the 3/4 truck driven by one of the robbers proceeded on to the poblacion of Don Carlos. On the way, however, the 3/4 truck fell into a canal and stalled. Seeing that the 3/4 truck could not proceed any farther the robbers abandoned the truck and ran towards the tall grasses. Carmencita, Elsa and Juana Celebran also ran away opposite the direction to where the robbers ran.

"Mrs. Elsie Velez sustained a 'gunshot wound 1 centimeter in diameter at about the right pos-terior axillary line about 3 1/2 inches below the axilla. . .' (Exhibit F), but fortunately survived. Pedro Flores was brought to the Bukidnon Southern Hospital where he was operated on by Dr. Quintana but died one week after the operation due to cardio-respiratory arrest and hypostatic pneumonia as a consequence of the gunshot wound."

However, the Solicitor General would add the following[5] to the statement of facts in appellant's brief:

"1. According to Teodulo Galarpe, one of the three persons, who pointed their guns at him and ordered him to go upstairs, was Leonides Paredes (tsn, Vol. II, pp. 252-253). It was Paredes who hog-tied him (Galarpe) with

a piece of cloth torn from a curtain (ibid., p. 253). It was Paredes also who tried to hit him with a chair (ibid., p. 258) and who took him outside (ibid., p. 260).

"2. Carmencita and Elsa Galarpe identified the appellant as one of the three robbers who pointed their guns at their father (tsn, Vol. I, pp. 37-38, tsn, Vol. II, pp. 174-175).

"3. Carmencita Galarpe testified that Paredes was seated at the back of the 3/4 truck with her and the others when the robbers escaped in the truck (tsn, Vol. I, p. 131).

"4. The Chief of Police, Amancio Tira, testi-fied that, after fifteen (15) policemen had en-circled and cordoned the cornfield where the robbers were (tsn, Vol. I, p. 329) and after they had blocked all possible exits (ibid., p. 327), they saw footprints from the cornfield to the road, and that when they followed the footprints they saw one of the robbers (ibid., p. 330). The robber boarded an MEL bus bound for Maramag. Tira and the policeman then followed the bus in a jeep. They caught up with the bus at Maramag. At the Maramag terminal, the conductor of the bus pointed to Paredes as the one who boarded the bus (ibid., pp. 330-332)."

In his first assignment of error, appellant contends in effect that the same evidence which the trial court found insufficient to establish the identity of appellant's co-accused, Felipe Payot and Paulino Danlag, was erroneously made the basis of appellant's conviction. This evidence con-sists of the eye-witness account of the incident as given by Teodulo, Carmencita and Elsa, all surnamed Galarpe.

It was no error for the court a quo to have considered appellant's identity established with certainty, but not so with his two co-accused on the basis of the same testimony of the three eye-witnesses for the prosecution. In the first place, all the aforementioned witnesses were unanimous in their identification of appellant. There is no such unanimity in their identification of appellant's co-accused, because not all of the aforementioned witnesses identified the latter.[6]

Secondly, the court's appreciation of the evidence evinces its disposition to convict only when morally convinced of guilt, a sure guaranty of the trial judge's strict adherence to the rule that conviction must follow only upon proof of guilt beyond reasonable doubt. If the court erred at all, it may be in its appreciation of the evidence as insufficient to establish the identity of Felipe Payot and Paulino Danlag as two of the culprits, an error which should not be made the cause for the commission of another error.

Thirdly, the alleged discrepancy in the testimony of the three aforementioned witnesses in that the acquitted accused were not identified by all of said witnesses, while the same witnesses were unanimous in identifying appellant as one of the malefactors, far from making the testimony of the aforementioned witnesses untrustworthy, all the more strengthens it for truth and credibility. Candor and sincerity are revealed thereby which give the testimony utmost reliability. The lack of uniformity in certain details in their testimony is not an earmark of falsity but was due to differences in the witnesses' perception and observation, as naturally happens of a fast-moving incident, or weakness of memory or recollection (People vs. Ancheta, 60 SCRA 33; People vs. Sangalang, 58 SCRA 737).

The manner of appellant's arrest, compared with the circumstances under which his co-accused were apprehended, likewise, made his conviction fully justifiable, as against what the court believed to be a cause for doubt in the guilt of his co-accused. Thus, the warrant of arrest under which Payot was nabbed was issued in the name of Rudy. And as it turned out, he was arrested only on being pointed to by appellant when the latter was threatened with harm unless one more robber was named. On the part of Danlag, he was arrested only because he was a new face in Don Carlos Norte, and he was identified only by Elsie Velez and Elsa Galarpe.

Appellant, as already stated, was identified by all the eye-witnesses, Carmencita Galarpe, Elsa Galarpe, their mother and Teodulo Galarpe, as well as by Elsie Velez. His alibi was contradicted by his witness in many points,

while that of Payot was corroborated by credible witnesses. Above all, appellant's arrest was such that his participation in the robbery was never cast in uncertainty. He was captured the morning following the robbery while coming out of the cornfields where the culprits went into hiding, but was cor-doned and encircled by policemen. His footsteps from the cornfields left prints which the policemen followed, leading to a MEL bus which he boarded. The policemen followed the bus, in a jeep they borrowed, up to the bus terminal where appellant was pointed to by the conductor as the one who boarded the bus.

Citing authorities, appellant argues that even witnesses who are positive in their identification may be in error. When at least three witnesses positively identified appellant, any possibility of error may safely be eliminated, specially when the identification resulted from the witnesses seeing appellant perform such violent acts as pointing a gun at Teodulo Galarpe, one of the witnesses, hogtying him, trying to hit him with a chair and then taking him outside of the house, affording enough time to enable the witnesses to have a good look of the appellant. On top of all these, the witnesses rode with appellant in the truck used for the escape from the scene for a considerable length of time, and they were at the back to have a good and constant look at the appellant who was at their front.

Appellant next tries to offer explanation to certain circumstances which would be consistent with his alleged innocence, not in the inculpatory manner the trial court appreciated the same circumstances. He then invokes the rule that when a given fact is capable of two explanations, one inculpatory and the other, exculpatory, the latter should be adopted as more in consonance with the need of proving guilt with moral certainty or beyond reasonable doubt.

Thus, he explains why he boarded the MEL bus, not as escaping, as the court a quo found, but simply to go home from the house of Josefina Ochigue where he allegedly slept the whole night. However, it was duly proven that he came from the cornfields where the malefactors were holed up, not from somewhere else, not somewhere near the cornfield, as he stated, before he boarded the bus. The Chief of Police who testified seeing appellant coming out of the cornfields candid-ly admitted seeing only the back of the latter. However, he was positive as to seeing appellant coming out of the cornfields and boarding the bus which they followed in a jeep they borrowed up to the bus terminal. They would not have bothered to borrow the jeep to follow appellant in the bus, unless they saw the latter coming out of the cornfields, not "somewhere near the cornfield," where they knew the malefactors had sought cover from the police, to collar him on catching up with the bus. Furthermore, appellant's pretension of having spent the night in the house of one Josefina Ochigue is devoid of truth. This is confirmed by appellant's failure to tell his captors upon being nabbed at the bus terminal that he had spent the night in the Ochigue house, and to ask them to check on the veracity of his statement, as he would have done if his claimed innocence were true.

What firmed up the prosecution's evidence is appellant's extra-judicial confession given to the police (Exhibit A-1),[7] which, notwithstanding his claim of being involuntary be-cause it is allegedly the product of third degree treatment, is clearly not so, judged from the following circumstances, as listed by the Solicitor General:[8]

"1. The statement contains details which only the appellant could have supplied or which only he was in a position to know and which the police officers could not have known. For instance, he furnished the names of the persons who were with him in the robbery. He even men-tioned the caliber of the firearm which he carried on the occasion of the robbery. He also gave information about a previous robbery in which he participated. All these are un-mistakeable signs that the confession was freely given by him (People vs. Feliciano, et al., 58 SCRA 383 [1974]; People vs. Paras, et al., 56 SCRA [1974]; People vs. Abalos, et al., 57 SCRA 330 [1974]).

"2. The appellant swore to his extra judicial confession before Andres Delgado, Muni-cipal Judge of Don Carlos, Bukidnon on July 12, 1971. According to Judge Delgado, the appellant affirmed before him the

voluntariness of his statement (tsn, Vol. I, p. 8) and said that he was not subjected to any force or intimidation (ibid., p. 11). It has been held that the failure of the accused to complain to the municipal judge that he was forced to sign his confession negates the claim that the said confession was extracted from him through force and intimidation (People vs. Abalos, et al., supra; People vs. Ragas, 44 SCRA 152 [1972]), especially so when the municipal judge himself testified to the voluntariness of the confession (People vs. Santos, et al., 19 SCRA 446 [1967]; People vs. Sta. Maria, et al., 15 SCRA 222 [1965]).

"3. Appellant claims that in order to get him to sign the statement, the policemen pounded staple wires into his hands and fingers until they became bloodied. But he presented no medical certificate to support his testimony. His claim that he was maltreated cannot therefore be given credence (People vs. Reyes, et al., 17 SCRA 279 [1966]).

"4. Appellant did not file any charges against the policeman who allegedly maltreated him. This is another fact that belies the claim of maltreatment (People vs. Feliciano, et al., supra).

"5. On the face of the confession, there is absence of any sign of suspicious circumstances tending to cast doubt upon its integrity. This is indicative that the confession is voluntary (People vs. Pesquiza, G. R. No. L-5036, Feb. 27, 1953). There are even signs of spontaneity on the face of the confession, which indicate voluntariness (People vs. Bautista, et al., 65 SCRA 460 [1975]; People vs. Ragas, et al., supra). The confession likewise contains exculpatory statements, which also show that it was given voluntarily (People vs. Paras, et al., supra).

"7. Likewise, there is no evidence or indication that the police investigators had a motive or grudge against the appellant that would make them subvert the ends of justice and falsify the truth by utilizing force and intimidation on him (People vs. Bautista, et al., supra).

"8. Finally, the details in appellant's confession were corroborated by prosecution witnesses. This demonstrates its voluntariness (People vs. De Villa, 16 SCRA 419 [1966])."

Appellant invokes the provision of the new Constitution for having been allegedly not informed of his constitutional right before he swore to his confession before Judge Delgado. As held, however, in Magtoto vs. Manguera, 63 SCRA 4, the provision which has reference to the right to remain silent and the right to counsel has no retroactive application. (See also Moran, Comments on the Rules of Court, Volume 5, p. 265, 1971, edition).

His plea of guilty with which he changed his plea of not guilty before the prosecution commenced to present its evidence, helps to generate moral certainty of his guilt. His plea was not an improvident one in that he did not know the consequences thereof. In entering his guilty plea, he was assisted by counsel. The contents of the information were clearly explained to him with translation into his Cebu--Visaya dialect. He answered in the affirmative when asked by the presiding judge if he understood the contents as translated. When informed that he could be sentenced to die by electrocution, he insisted on his plea of guilty. Before he testified on May 10, 1974, he confirmed his plea of guilty, but withdrew it after conferring with his counsel (pp. 353, 354-355, Vol. 3, tsn).

Appellant's defense of alibi is manifestly of no avail to him. It was disproved by his having been positively identified by the three state witnesses who had no motive to implicate him falsely in the commission of the grave offense imputed to him and his confederates.[9] There are inconsistencies between his testimony and that of Josefina Ochigue in whose house he allegedly slept the night the robbery was being committed that renders his alibi totally incredible. Thus, it is very improbable that one of the participants of the robbery would bother to see appellant in the house of Ochigue to advise him to leave. His continued or prolonged presence there after sleeping the whole night would be his surest way of disclaiming participation in the robbery and avoid being implicated.

With his alibi totally discredited by his having been positively identified by wholly credible witnesses who are without motive to falsely testify against him,[10] and his extra-judicial confession shown to be perfectly

admissible because it is voluntary,[11] which by itself would be sufficient to convict, same being corroborated by evidence of corpus delicti, other than the confession,[12] and his original spontaneous plea of guilty which was, likewise, shown to be not an improvident one,[13] although changed at the last minute when he took the witness stand, apparently upon advice of counsel, appellant's contention that the evidence of the prosecution is insufficient to prove his guilt beyond reasonable doubt is clearly untenable and without basis.

That the crime committed is the capital offense of "robbery with homicide" is not disputed. Neither is there any dispute as to the presence of band and the use of motor vehicle as aggravating circumstances that attended the commission of the crime charged. The death penalty as imposed by the trial court is, therefore, unavoidable.

WHEREFORE, the judgment appealed from is hereby found free from any error and accordingly, same has to be, as it is hereby, affirmed in toto.

SO ORDERED.

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

Teehankee, J., I concur but maintain my dissent from Magtoto ruling (63 SCRA 427).

Fernando, C.J., did not take part.

[1] pp. 3-4, Rollo.

[2] pp. 7-8, id.

[3] pp. 33-34, id.

[4] pp. 8-14, id.

[5] pp. 2-3, Appellee's Brief.

[6] pp. 14-22, Rollo.

[7] pp. 120-121, Record.

[8] pp. 11-13, Appellee's Brief.

[9] People vs. Salazar, L-37791, October 30, 1979; People vs. Compacion, etc., et al., L-33951, September 28, 1979; People vs. Artieda, L-38725, May 15, 1979; People vs. Garcia y Dalit, L-44364, April 27, 1979; People vs. Barut, et al., L-42666, March 13, 1979; People vs. Damaso, L-30116, November 20, 1978; People vs. Tizon, 66 SCRA 372; People vs. Moises, 66 SCRA 151; People vs. Bautista, 65 SCRA 460; People vs. Mabuyo, 63 SCRA 532.

[10] See Footnote No. 9.

[11] People vs. Molleda, 86 SCRA 667; People vs. Palencia, 71 SCRA 679; People vs. Sumayo y Bersebal, 70 SCRA 488; People vs. Dorado, 30 SCRA 53; People vs. Narciso, 23 SCRA 844.

[12] People vs. Manobo, 18 SCRA 30; People vs. Reyes, et al., 17 SCRA 279; People vs. Abrera, et al., 17 SCRA 771.

[13] People vs. Alde, 64 SCRA 224; People vs. Espejo, 36 SCRA 400; People vs. Sta. Maria, 15 SCRA 222.

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