

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMIDA RODRIGUEZ DE PASCUAL, DEFENDANT-APPELLANT.

G.R. No. L-32512. March 31, 1980

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PER CURIAM:

In the Circuit Criminal Court sitting at Pasig, Rizal, the following information was filed on June 17, 1970:

"The undersigned Assistant City Fiscal accuses ARMIDA RODRIGUEZ DE PASCUAL, of the crime of ROBBERY WITH HOMICIDE, committed as follows:

That on or about the 11th day of June 1970, in Caloocan City Philippines, and within The jurisdiction of this Honorable Court, the above-named accused with intent of gain and with intent to kill by means of force and violence on the person of one Juliana Sy that is by hitting the latter on the head with a bottle and cutting her neck with a kitchen knife, did then and there wilfully, unlawfully and feloniously take rob and carry away the amount of P6,000.00 (P3,000.00 in cash and P3,000.00 in checks) which was then in the possession of said Juliana Sy, to the damaged and prejudice of the latter in the aforesaid amount of P6,000.00 and as a result of the force and violence employed on said Juliana Sy by herein accused, said victim died instantaneously.

That the commission of the crime charged was attended by the following aggravating circumstances:

- After Juliana Sy is dead, the herein accused severed her head, arms and legs, thereby committing extreme cruelty which is unnecessary in the commission of the crime charged and adding ignominy to the offense: and
- That the offense was committed by means of craft and deceit by luring the victim to her residence."

After due trial, the court in a decision dated August 14, 1970, rendered the following judgment:

"WHEREFORE, finding the accused, Armida Rodriguez de Pascual, GUILTY, beyond reasonable doubt of the crime of Robbery with Homicide, under Article 293 of the Revised Penal Code in relation to Section 1 of Article 294 thereto, as charged in the information, the Court hereby sentences her to suffer the penalty of DEATH; to indemnify the heirs of the deceased. Juliana Sy, the amount of Sixteen

Thousand Four Hundred Forty Pesos (P16,440.00); to pay the heirs of the deceased the amount of Five Thousand Pesos (P5,000.00) as moral damages, and another Five Thousand Pesos (P5,000.00) as exemplary damages; and to pay the costs."

From the above judgment, the accused has appealed to this Court.

The evidence for the prosecution consisted of the testimony of the following witnesses: Patrolmen Ariston Agustin, Rogelio de la Pena, Rodolfo A. Adriano and Francisco Dujua of the Caloocan City Police Department; Dr. Eustaquio M. Medalla, Jr. of the Caloocan City General Hospital; Dr. Ricardo Ibarrola, Jr., a medico-legal officer of the National Bureau of Investigation; Remedios A. Bautista, a biologist of the NBI; Leonila Macalino-Sy, the victim's mother; Conrado de Lumen Ching a reporter-photographer of the Great China Press; Felipe S. Hermogenes, an NBI agent; and Rodrigo Datinginoo, a taxi driver. From their testimony and the

exhibits which they identified, particularly Exhibit "I" which is the extra-judicial confession of the accused, the following facts emerge:

A missing person report was received by the Caloocan City Police Department in the evening of June 11, 1970, from Mrs. Leonila Sy, in connection with the disappearance of her 17-year old daughter, Juliana Sy, nicknamed Tata. (Exh. "A".)

For two days, Mrs. Leonila Sy's inquiries as to the whereabouts of her daughter had been fruitless until June 13, 1970, when the members of the Philippine Constabulary and other police officers found a head and the two arms of an unidentified girl, somewhere in Roxas Boulevard. Upon suggestion of friends, Mrs. Sy, accompanied by a nephew, proceeded to the NBI morgue at Funeraria Popular. She was confronted with the shocking and nauseating recognition that the head and the two arms severed from the body, still unfound, were those of her missing daughter. The next day, the members of Caloocan City Police located the body of the victim somewhere in San Rafael Village, Navotas, Rizal. The remains cut in eight pieces were fitted, and Mrs. Sy again took the pain of identifying the butchered remains as her missing daughter.

It appears that at about 12:30 o'clock in the afternoon of June 11, 1970, Juliana Sy brought her mother a packed lunch, at the latter's grocery store in Maypajo Market, Sangandaan, Caloocan City. At that time, a son of Mrs. Sy had just finished the counting of the proceeds of the sale, amounting to P6,000.00, one half in cash and the other half in checks. The amount was then placed in an ordinary "supot" or paper bag for deposit at the nearby FEATI Bank, Monumento Branch. In a minute's time, Tata got hold of the bag full of money and hurriedly went on her way apparently to make the deposit, so the mother thought, because the previous day, Tata had told her that she would be the one to make the deposit and that she would be accompanied by Armida de Pascual, an apartment neighbor and acquaintance. Tata further told Mrs. Sy that they would ride in the panel (a detergent delivery truck) of one Reynaldo Sioson on their way to the bank.

Thus, when Tata failed to return at 3:00 o'clock in the afternoon, and after the apprehensive Mrs. Sy had called the bank, only to be informed that her daughter had not made any deposit, Mrs. Sy proceeded to Armida's apartment. Armida was not there so Mrs. Sy returned at around 8:30 in the evening. Mrs. Sy noticed Armida's left face to be swollen (contusion) and saw some scratches on Armida's hands (abrasions). But Mrs. Sy ignored what she saw and brought Armida with her to the Caloocan City Police. There, she pointed to Armida as the companion of her daughter at the time of the latter's disappearance. Later, after Mrs. Sy had identified her daughter by the head and arms, one of which still had an Omega wrist watch she pointed an accusing finger at Armida. Subsequently, Armida directed the Caloocan City Police to the places where the body and the lower extremities were found.

On June 15, 1970, Armida executed an extra-judicial confession of the crime which was first tape-recorded (Exh. "H") and later reduced to writing (Exh. "I"). In the course of the investigation, but before she had made the confession, the police found in her handbag the amount of P750.00. Mrs. Sy was summoned, and she at once identified the amount in five, ten, and twenty-peso denominations as part of those carried by Juliana Sy in the paper bag for deposit.

Thereafter, to ascertain the truth of Armida's recitals in her sworn affidavit, the police proceeded to her apartment at Mabini street. They found therein an empty family size Coca-Cola bottle used in hitting the head of the victim, the kitchen knife (Exh. "1-4") used in the macabre dismembering of Tata's remains, and the amount of P810.00 (Exh. "L-I") cleverly concealed at the bottom of a red flowerpot. Mrs. Sy, likewise, readily identified the P810.00 as forming part of the amount carried by Tata on that fateful afternoon. Later, NBI agent Felipe S. Hermogenes discovered a pair of sandals (Exh. "U-I") concealed in a double walled door of the comfort room. Mrs. Sy identified the pair of sandals as her daughter's. On the] 6th of June, Armida staged a reenactment of the crime in

the presence of Judge Martinez of Caloocan City who happened to be her neighbor, inquest Fiscal Valentin Cruz, members of Caloocan City Police, newspapermen and photographers, including Conrado de Lumen Ching of the Great China Press, and curious bystanders. Pictures of the re-enactment were taken. (Exh "O to O-61".)

From the recitals in Exhibit "I" which is Armida's extra-judicial confession, it appears that before going to the bank, Juliana Sy went to the apartment of Armida at Mabini street in Caloocan City. Armida who had been expecting her, invited Juliana to the third floor saying that they would wait for Reynaldo Sioson. Upon seeing that Juliana was getting anxious to leave for the bank. Armida suddenly grabbed the bag of money. Juliana clung to the bag and resisted Armida. Armida got hold of a kitchen knife and slashed Juliana on the neck. The wound was not fatal and Juliana continued to resist. They went down on the floor grappling with one another. Armida seized an empty bottle of family size Coca-Cola and hit Juliana on the head. Juliana continued to wrestle with Armida so the latter hit her again on the head and Juliana became unconscious. Meanwhile, the sight of blood oozing from Juliana's wound in the neck made Armida dizzy and she passed out for a while. When Armida revived, she saw Juliana apparently dead. With the use of the kitchen knife. Armida started to cut up the body of Juliana into eight pieces, severing the head thru the neck, the upper and lower extremities from the torso or body. The task was so bloody and nauseating that Armida passed out again.

After Armida regained consciousness, she wrapped the pieces in plastic bags and placed them in three boxes. She then cleaned the room of traces of blood, washed herself and changed her clothes. She placed the bag containing the money at a place where she kept her laundry.

Faced with the problem of disposing the mutilated remains, Armida hailed a taxicab, which turned out to be a Relet taxi driven by one Rodrigo Datinguinoo. According to Datinguinoo, Armida placed the boxes with her at the backseat. He was then directed to proceed to Sande street then to Plaza Moriones at Tondo, to del Pan bridge and to Roxas Boulevard. He was requested to buy some toothache drops and band aid at Plaza Moriones and upon reaching Roxas Blvd., some fried chicken at Max's Restaurant. He was told to stop near the Flame Restaurant where they both ate the fried chicken. While thus eating Armida saw several Metrocom cars cruising nearby so she told Datinguinoo to go to a private place where they could rest. He brought her to the International Motel in Pasay City where they checked in as "Mr. and Mrs. Remigio." (Exh. "W-1") Armida preceded him to the room and there they had sexual intercourse for four times. At times Armida requested him to see whether the boxes were safe at the backseat of the taxicab. They left the motel at past 6:00 o'clock. (Exh. iiW-26".) He dropped Armida somewhere at Harrison Blvd. and Armida paid him two twenty-peso bills to cover the fare and the motel bill. (Exh. "W-3".)

After Armida had dismissed Datinguinoo she hailed another taxicab and proceeded to dump the boxes containing the pieces of Juliana Sy's remains at the different places where they were discovered by the police.

As additional substantiating evidence, the prosecution presented the testimony of an NBI biologist, Remedios A. Bautista and Dr. Ricardo Ibarrola, Jr., NBI Medico-Legal Officer. Bautista testified to the positive finding of blood traces on the second

floor of Armida's apartment and on the boxes which contained the pieces of human remains. Dr. Ibarrola, Jr. testified that the lacerated wounds on the head of the victim were inflicted by a blow, possibly with the use of a family-sized bottle of coke, and that death resulted from the incised wound on the neck. He inferred that the victim must have fought or struggled with the assailant, considering the presence of wounds which he described as defense wounds.-He said that the body was cut up after death, and divided into eight pieces, possibly with a knife such as the kitchen knife on exhibit (Exh. LLI-4").

The evidence for the accused consisted of the testimony of Dr. Serafin Cruz of the Rizal Provincial Health Office;

Attorney Artemio R. Pascual, who said he considered the accused as his daughter-in-law; and the accused herself Armida Rodriguez de Pascual, plus the exhibits which they identified. The thrust of the defense was to the effect that Armida's extra-judicial confession was extorted by force and that it was not she but Reynaldo and Arsenio Sioson who were the killers of Juliana Sy.

This appeal involves no question of law and its determination hinges solely on the credibility of witnesses.

The conviction of the accused was based mainly, albeit not exclusively, on Exhibit "I" which was her extra-judicial

confession. This exhibit is in the form of questions propounded to her by Patrolman Ariston Agustin. It consists of seven typewritten single-spaced pages, verified before Assistant Fiscal Valentin Cruz of Caloocan City who was the inquest fiscal on June 15, 1970.

In her brief, the appellant attacks the decision of the trial court on these counts: (a) that her extra-judicial confession was involuntary; (b) that the testimony of Rodrigo Datinguinoo, the taxi driver, was fantastic and incredible; (c) that her version of the incident should have been accepted; and (d) that there was no rigid investigation conducted on Reynaldo and Arsenio Sioson. We shall consider these points in seriatim.

(a) That the extra-judicial confession was involuntary.

The appellant contends that her confession was involuntary because in the evening of June 13, 1970, she was brought to the second floor of the Caloocan City Hall where she was totally undressed and tied to a piece of wood; that she was dunked into a basin full of water repeatedly and then laid flat on the floor and three or four men sat on top of her; that a policeman placed a towel on her nose and poured water into it; that she was boxed and burned on different parts of the body with alighted cigarette; and that on the midnight of June 14, 1970, she was dunked twice into the toilet bowl and given the so-called 7-Up treatment when she was forced to drink Seven-Up mixed with Red Devil sauce. But the striking thing about this testimony is that she was allegedly tortured, not to confess her guilt, but to exonerate Reynaldo and Arsenio Sioson.

On June 19, 1970, the trial court, upon petition of defense counsel, directed the Provincial Health Officer of Pasig, Rizal, "to conduct a thorough physical examination on the person of the accused" which was done on June 22, 1970. According to Dr. Serafin Cruz who conducted the examination and whose findings are contained in Exh. "6", he found the following:

- (1) Hard mass felt, about one inch in diameter at the area of the left cheek (Exhibit "6-A-1");
- (2) Pale impression on the portion of the chest about one-half inch on the side of the externum right (Exhibit "6-A-2");
- (3) Another pale impression on the chest about one-half inch above the base of the externum, right below between the two breasts (Exhibit "6-A-3");
- (4) Another pale impression, on the abdomen (Exhibit "6-A-4");
- (5) Slight bluish discoloration on proximal portion of right bicep below the armpit (Exhibit "6-A-5");
- (6) Another slight bluish discoloration two inches above the left knee (Exhibit "6-A-7");
- (7) Scar, superficial lacerated wound about 1/2 inch in length, in the area of the patella region (Exhibit "6-A-8");
- (8) Pale impression on the left scapular region (Exhibit "6-A-9");

- (9) Another pale impression on the right back side (Exhibit "6-A-10");
- (10) Clotted blood at the base of the 4th & 5th fingers on the right hand (Exhibit "6-A-11");
- (11) Lacerated superficial wound on the inner side of the base of the left thumb (Exhibit "6-A-12");
- (12) Another superficial lacerated wound, on the left hand fingers (Exhibit "6-A-13");
- (13) Lacerated wound about 1/4 inch on the base of 2nd & 3rd left hand ringers. (Exhibit "6-A-14");
- (14) Multiple small lacerated wounds at the frontal surface below the toe. (Exhibit "6-A-15"); and
- (15) Fresh scar - superficial wound about 1/4 inch in length and 1/5 inch width (Exhibit "6-A-6").

Dr. Cruz opined that Exhibit "6-A-2" could have been caused by an impact or trauma; that Exhibits "6-A-3" and "6-A-4" could have been caused by a blunt instrument or by fist blows; that Exhibits "6-A-9" and "6-A-10" could have been caused by a blow or sudden impact of a blunt instrument; that Exhibits "6-A-12,13 and 14" could have been caused by a sharp edged material; that Exhibit "6-A-15" could have been caused by a sharp edged instrument but could not have been caused by a lighted cigarette. He also stated that the wounds of the accused were inflicted not less than seven to ten days before his examination; that the multiple lacerated wounds on the hands of the accused could have been caused by broken pieces of bottle; that the hematoma on the left cheek of the accused could have been five to seven days old at the time of his examination; and that the placing of ice over a hematoma will hasten the disappearance of the hematoma.

Settled now in our jurisdiction is the rule that an involuntary or coerced confession is inadmissible in evidence because it is unreliable', offends the community's sense of fair play and decency, and most importantly is violative of the constitutional right of the accused against self-incrimination. The pivotal question then is whether or not the appellant's confession was involuntary as she had testified which testimony she sought to fortify through the evidence given by Dr. Serafin Cruz.

The trial court ruled that the confession was voluntary and said, among other things: "x x x closely analyzing the contents of her written confession, the Court is all convinced that the same was voluntarily given. It cannot be otherwise, because the confession exhibits no sign of suspicious circumstances to doubt its integrity for it is replete with details which could possibly be supplied only by the accused, it is indicative that no extraneous restraint was applied to procure the same."

A confession is presumed to have been given voluntarily and the burden of proof to clearly show involuntariness is on the accused. (People vs. Alod Manobo, L-19798, Sept. 20, 1966, 16 SCRA 30.) In the instant case, the only proof to support the claim that the confession was coerced consisted of the statements of the appellant and Dr. Serafin Cruz.

The appellant said she was physically abused which included the burning of different parts of her body with a lighted cigarette. Yet Dr. Cruz who testified on Exh. "6" never attributed any of his findings to burning by a lighted cigarette. In fact with regard to Exh. "6-A-15" he was positive that it could not have been caused by a lighted cigarette.

With regard to Exh. "6", Dr. Cruz testified that the wounds of the appellant were not less than seven or ten days old (in other words they were older than seven or ten days) and the hematoma he found could have been five to seven days old at the time of the examination on June 22, 1970. In the appreciation of this testimony, the fact that the offense charged took place on June 11, 1970, should be considered and that according to the prosecution's evidence the victim put up a strong resistance against the accused before she finally expired. Thus, Dr. Ricardo Ibarrola, Jr. of the NBI who conducted a post-mortem on the victim said that because of the various lacerated,

contused and incised wounds found on her body, there must have been a fight between the victim and her assailant. Even the appellant's version of the incident tends to rebut her claim of maltreatment because she testified that when Reynaldo Sioson was trying to abuse Juliana Sy, she tried to intervene and help the latter but in so doing she was manhandled by Reynaldo and Arsenio Sioson and as a result she sustained several injuries. She even claimed that she lost consciousness after she received a fist blow on the head. Accordingly, the estimated age of the injuries does not exclude the probability that they were sustained on the date of the incident. It may also be mentioned in this connection that on June 12, 1970, Dr. Eustaquio M. Medalla, Jr. of the Caloocan City General Hospital made an examination on the appellant but she refused a complete physical examination (Exh. "B"). On June 14, 1970 (or one day before her confession, Exh. "I" was taken), she was again examined by Dr. Medalla, Jr. who found the following injuries:

"Hematoma, old, multiple, arm anteromedial, left; thigh anterior, left; knee, left.

Contusion with hematoma, old, malar, left; infra-orbital, left. Wound lacerated, old, 1 cm. base thumb and index finger left.

Punctured wound, multiple, dorsum, distal phalanx, index finger and middle finger, left, (old)." (Exh "C".)

According to Dr. Medalla, Jr. the injuries found on the body of the appellant could have been caused by fist blows or kicks by another person. It is to be noted that all the injuries are described as old.

In view of the foregoing, we have to conclude that the appellant has failed to overcome the presumption that her extrajudicial confession was voluntarily given. Moreover, as will be demonstrated later, there is ample evidence in the record to prove the guilt of the accused independently of her confession.

(b) That the testimony of Rodrigo Datinguino, the taxi driver, was fantastic and incredible.

The appellant denies having met Datinguino and assails his account of their sexual encounter at the International Motel as too fantastic to be worthy of belief. It is indeed strange for a woman who had just committed a heinous crime to thirst for sexual gratification and satisfy it with a man she had met for the first time and when her mind was pre-occupied with the thought of disposing the mutilated remains of her victim. Yet truth comes in many strange ways and can be stranger than fiction as any well-read person can attest. Indeed the very strangeness of Datinguino's narrative gives it credence especially when he had no selfish motive to tell a tall story.

It is to be noted that Datinguino's testimony, as above-narrated, was detailed and supported by documentary exhibits which lent credence to it. Additionally, this witness testified that, "I noticed in her (appellant) left open thigh that there is a protruding flesh right open portion of the thigh (singit)." It would have been easy for the appellant to shatter completely Datinguino's testimony by showing that her thigh did not have the peculiarity described. But she did not. Hence, the integrity of Datinguino's testimony is unimpaired.

(c) That the appellant's version of the incident should have been accepted.

The record is bereft of any evidence to support the appellant's bare assertion that it was not she but Reynaldo and Arsenio Sioson who were the killers of Juliana Sy. It is to be recalled that only two witnesses testified for her, namely: Dr. Serafin Cruz of the Rizal Provincial Health Office and Attorney Artemio R. Pascual, the father of Artemio Pascual, Jr. with whom she lived after she had left her lawful husband, a Captain Felix Regino with whom she had four children. Neither Dr. Cruz nor Atty. Pascual corroborated her claim in respect of the Siosons. On the contrary, as we have stated above, independently of the appellant's confession, circumstantial evidence point to her guilt in a convincing manner. Thus, Mrs. Leonila Sy testified that her daughter was with the accused at the time of her disappearance and this was admitted by the accused; the amount of P750.00 which was found in the bag of the appellant was identified by Mrs. Sy as part of the money which the victim was to have deposited at

the FEATI Bank; the amount of P810.00 was found in the appellant's apartment cleverly concealed at the bottom of a red flower pot; the slippers of the victim were found concealed in a double-walled door of the appellant's comfort room. It is worth mentioning that if indeed the Siosons did away with Juliana Sy in the-presence of the appellant, her natural reaction would have been to report the incident at the earliest opportunity to the authorities. But she did not although she must have known that she would be a suspect because Mrs. Sy knew that she was with Juliana prior to Juliana's disappearance. We quote here with approval a portion of the lower court's decision which is relevant to this point:

"Corollary to the defense of denial, as a last ditch effort to escape liability, herein accused implicated two persons, namely Reynaldo Sioson and Arsenio Sioson, who are cousins as the real killers of Juliana Sy. She was emphatic in her denial that she is the perpetrator of the gory slaying. Thus, she declared that Reynaldo Sioson, Arsenio Sioson and the victim were at her rented apartment on that fateful afternoon of June 11, 1970. That Reynaldo Sioson and Juliana Sy went upstairs of her apartment, thereafter she heard the victim shout, she then went upstairs to look what was going on and there she found Reynaldo Sioson raising the shirt of Juliana Sy. She tried to rescue the victim from being criminally assaulted by Reynaldo Sioson but then she was kicked, mauled and tied by Reynaldo Sioson and Arsenio Sioson, the latter having followed her in going upstairs, where Reynaldo Sioson and Juliana Sy were. Further, she said that because of the determined resistance of the victim to the lewd designs of Reynaldo Sioson, the latter took hold of a hunting knife and hit the former in the head that proved fatal to the victim. Thereafter, Reynaldo Sioson and Arsenio Sioson dismembered the body of Juliana Sy and placed them inside two carton boxes. Afterwards, she was asked by Arsenio Sioson to call a taxi, which she did, but when she returned, another taxi was already parked in front of her rented apartment. She was forced to ride on the parked taxi by Arsenio Sioson and Reynaldo Sioson and they left the place, she however, noticed that the boxes containing the cut up body of Juliana Sy was already loaded in the taxi. They passed along Pritil, Del Pan Bridge and proceeded to the Barbecue Plaza along Roxas Boulevard, then at the Luneta Grandstand, where both Reynaldo Sioson and Arsenio Sioson alighted and talked with each other. That at her apartment she was already threatened by the Sioson cousins to keep her mouth shut and not to reveal the incident to the Police otherwise she will be killed by them.

"Based on logic and common sense, is the version of the accused pointing to Arsenio Sioson and Reynaldo Sioson as the slayers of Juliana Sy credible and trustworthy? A cursory study of the evidence on record unmistakably reveals that aforesaid version of the accused has not been corroborated by other piece of evidence to render the same of probative value. One can readily notice many glaring and fatal inconsistencies in her testimony that runs counter to common experience, hence it is not hard to conclude that it was a deliberate falsehood intended to muddle the issue to mislead the Court. Accused version is not believable, just like a commodity that is hard to sell even to a gullible one. This is so for the following reasons: Firstly, if she is that sincere in helping the victim when she was being allegedly molested by Rey Sioson, with full knowledge of the death of victim at the hand of the Siosons, with her mature mind why did she not make any earnest effort to report the incident to the police? She has a very good chance to do so, when she was asked by Arsenio Sioson to call a taxi, though threatened as claimed by her, she was not being followed or watched by the Siosons, when she went out to look for a taxi, in fact, she walked quite a distance away from her apartment but surprisingly despite this opportunity she did not report the matter to the police or at least to cry for succor from the neighborhood. Secondly, the alleged killers Reynaldo Sioson and Arsenio Sioson certainly are not stupid enough to do a crime right in a place where there is a living witness, the accused in this case. Also, as claimed by the accused, Arsenio Sioson will not have the temerity of asking a witness to a crime to call a taxi, because then in all probability the witness will not comply with it but would rather call the police. Thirdly, if as alleged by accused she was threatened, manhandled, and beaten almost to death by Reynaldo Sioson and Arsenio Sioson, if only to give an iota of truth to what she said, why did she not file charges of threat or physical injuries against the Siosons. Fourthly, nothing in the records would reveal that Juliana Sy and Reynaldo Sioson are sweethearts or engaged to one another, it is beyond reason therefore to believe that the victim would readily consent to go upstairs in the privacy of the room of accused, with a man she has no relation with and

fifth, the route of the taxi where they (accused and the Siosons) rode in a crowded place, most especially at the Barbecue plaza, passed the Cultural Center and at the Luneta Grandstand where both Reynaldo Sioson and Arsenio Sioson alighted and talked with each other. There are plenty of police on the beat on these places being the tourist belt area. The records show that the Siosons are not armed with guns, again in these places accused has all the chances to escape or at least make a scene to attract the policemen, but she did nothing.

"With these circumstances, it is evident that her story is self-serving, and can be classified as a pure fantasy, a product of her imagination in an effort to blunt the incriminating evidence arrayed against her as gathered by the Caloocan City Police Department and the NBI. As such it does not merit even the slightest consideration to be of probative value in her behalf.

"Accused claimed that she was forced by the Siosons to ride on a taxi. That they took a long route from A. Mabini St., at Caloocan City, passing along Del Pan bridge, to the Barbecue Plaza and at the Luneta Grandstand. It is obvious that she could have very well remembered the face of the taxi driver and the name of the taxi, for inside every cab is placed the name of the taxi. Accused could have located this driver, a most vital witness to corroborate her testimony that the Siosons really forced her to ride in said taxi, but then the court is amused that no earnest effort was made by the defense to find this important witness. If accused has no faith with the Caloocan City Police, at least she could have enlisted the aid of neutral police agencies like the NBI and the CIS to look for said taxi driver. With this apparent neglect on the part of the defense the Court is of the strong belief that there is really no taxi driver to look for because her story about the Siosons is untrue." (pp. 19-24, People's Brief)

(d) That no rigid investigation was conducted on Reynaldo and Arsenio Sioson.

The appellant contends that for reasons known only to the Caloocan City Police or because these persons are closely related to the power that be in the same city there was no rigid investigation of Reynaldo and Arsenio Sioson. However, the argument (sic) given on this point by the appellant is as follows: "This error is intimately related to Error No. 2 (that it was not the appellant but the Siosons who killed Juliana Sy) and so it need not be discussed lengthily. The point is only to call the attention of this court, especially in this new society under President Marcos to look more into this case to bring to justice whomsoever is/are the author/s of this murder. The maxim is 'It would be better to free a criminal than to convict an innocent person.'"

The reply of the Solicitor General on this point is well-taken. He states:

"The contention is pure conjecture. No evidence whatsoever has been offered during trial or before this Honorable Court to prove that no such rigid investigation was conducted. On the contrary, the record shows that both the Caloocan City Police Department and the National Bureau of Investigation had conducted thorough and separate investigations regarding the incident, as found by the lower Court (p. 147, rec); in fact, the result of the exhaustive NBI investigation disclosed that only the accused was responsible for the criminal act (pp. 162-187, rec). As to the investigation of the Caloocan Police Department, the fact that no charges were recommended to be filed against the Siosons is proof that no grounds surfaced, in the course of such investigation, to hold them liable. It is to be presumed, until proven otherwise, that the angle as to the possible participation of the Siosons in the criminal act was thoroughly looked into."

The information cites cruelty and craft as aggravating circumstances.

Cruelty is not to be inferred from the fact that the body of the deceased was dismembered and placed inside a sack, in the absence of proof that this was done while the deceased was still alive. (People vs. Jimenez, 99 Phil. 285 [1956].) Justice Ramon C. Aquino notes that this ruling may not be good under Art. 248(6) of the Revised Penal Code where cruelty is partly defined as "outraging or scoffing at his person or corpse." (Aquino. The Revised Penal Code, Vol. II, p. 1281, 1976 ed.) However this may be, the presence of craft cannot be disputed under the facts of the case. For the evidence shows that the appellant had deceived the victim into coming to her

apartment on that afternoon of June 11, 1970, under the pretext of accompanying the victim to the bank; and, played upon the victim's seeming fondness for Reynaldo Sioson to lure the victim to the third floor of the apartment where the appellant committed the crime. The unsuspecting Juliana Sy found herself caught in the malevolent tickery practiced by the appellant, the consequence of which proved indeed fatal.

The trial court awarded, among other amounts, P16,440.00 to the heirs of Juliana Sy. This is broken down as follows: P12,000.00 as indemnity for the life of the victim and P4,440.00 which was unrecovered (P6,000.00 minus P750.00 and P810.00 cash recovered). But of the P4,440.00, P3,000.00 was in checks which could not have been cashed by the appellant. Accordingly, the award of P16,440.00 must be reduced by P3,000.00 to P13,440.00.

WHEREFORE, as thus modified, the judgment appealed from is hereby affirmed in all respects. Costs de officio.

SO ORDERED.

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

Fernando, C.J., on leave.

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