

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FORTUNATO CASILLAR Y GABRIELES, ET AL., DEFENDANTS;
ROGELIO AMITA Y BALDORADO AND DOMINICO ARMALDA Y
BARTOLATA, DEFENDANTS...**

G.R. No. L-28132. November 25, 1969

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PER CURIAM:

Automatic review of a death penalty sentence for robbery with homicide, imposed by the Court of First Instance of Manila, in its Criminal Case No. 82728, on accused Rogelio Amita y Baldorado and on Domini-co Armalda y Bartolata. In the same decision, a co-accused, Fortunato Casillar y Gabrieles, was also convicted of the same felony but was meted the lesser penalty of eight (8) years of prison mayor to seven-teen (17) years, four (4) months and one (1) day of reclusion temporal on account of his being only 16 years of age at the time of the commission of the crime.

The evidence for the prosecution more than adequately sustains a conviction for the commission of the crime for which the accused were charged; its weight is impressive, especially in view of the clear, straight-forward and convincing testimony of a young 15-year old waste paper scavenger, Danilo Nicolas,[1] who was an eyewitness to the crime and identified the culprits. The substance of his testimony was correctly summarized by the court a quo, as follows:

"On June 11, 1966, about 9:00 o'clock in the evening, testified Danilo Nicolas, a 14-year old boy, while at the corner of Lope de Vega and Misericordia Streets, Manila, scouring garbage cans for scraps of paper to sell, he saw a Chinaman, identified later as Chan Siak, walk-ing on Lope de Vega St. towards Misericordia St. He was met by 4 men, the accused Fortunato Cas-illar, Rogelio Amite, Dominico Armalda, and another not in Court. The 4th man was Celso Puzon who is charged with the same offense before the Juvenile & Domestic Relations Court, he being only 15 years of age. Casillar and Puzon held the Chinaman's hands while Armalda and Amita pointed a 'balisong' at him; the former being then to the right of their victim and the latter in front of him. Armalda thereafter stabbed the Chinese in his right side whilst Amita stabbed him in his neck, after which Armalda took Chan's wallet from the hip pocket of his trousers. This done, the four fled.

"Chan also ran away but fell about 3 meters away from where he was attacked. He rose and again ran but once more fell at the corner of Doro-teo Jose and Misericordia and was not able to get up any more.

"After a time, a jeep with three policemen came along. They examined the Chinaman to see if he was still alive and began making inquiries as to who saw him attacked. Danilo replied he did and was taken to Precinct No. 2. He went back there later and identified the four as the persons whom he saw assault and kill Siak."

Autopsy findings on 12 June 1966 on the Chinaman indicated a contusion at the right cheek and upper lip, a non-penetrating stab wound below the right lower mandible, two (2) non-penetrating stab wounds on the mid-anterior chest and a penetrating stab wound on the right lower antero-lateral chest, and that the cause of death was profuse hemorrhage due to the penetrating stab wound on the right chest, lacerating the lower lobe of the right lung and right ventricle of the heart (Exhibit "J").

The appellants were later apprehended by the police while playing a game of "palmo". They were investigated, and executed, on 13 June 1966, individual extrajudicial confessions. In their confessions, Armalda owned that out of the money taken from the victim's pocket he received a share of P50 (Exhibit "A"); Casillar stated that he received P50 (Exhibit "C"), while Amita got P75 (Exhibit "D"). A re-enactment of the crime by all the accused was conducted on 15 June 1966 (Exhibits "I" - "I-3"). At Funeraria Paz, Armaldo and Casillar identified the corpse of Chan Siak (already placed in a coffin) as the one whom they robbed and killed (Exhibits "I-5" & "I-6"). Twenty pesos (P20) were recovered from a relative of Armalda to whom he had entrusted the money (T. s. n., 24 August 1966, pages 20-31). On information given by Casillar, the police recovered fifty pesos (P50) from his mother, who gave the money to the police when informed about its source (T. s. n., 24 August 1966, pages 43-47).

The defendants-appellants assail the testimony of Danilo Nicolas on the ground of incompetence and incredibility, and object to the admissibility of the extra-judicial confessions and the photographic evidence of the re-enactment of the crime on the ground of involuntariness.

According to the appellants, the testimony of Danilo is unworthy of credit, because when the fiscal propounded questions to him the fiscal based his questions on 11 June 1965, instead of 11 June 1966, as the date of the commission of the crime and Danilo's answers thereto responded to the date 11 June 1965; the fiscal discovered that an error was made in the information in that the information (to which the accused had already pleaded not guilty) mentions the date of commission as 11 June 1965, whereupon the fiscal moved for its amendment, which was granted by the trial court; the accused again pleaded not guilty to the amended information and Danilo was recalled to the witness stand and reiterated what he had theretofore testified but with the correction that the date of the incident occurred on 11 June 1966, and not on 11 June 1965. The error in the testimony notwithstanding, we still believe that the same testimony, with its subsequent correction, is truthful and credible on the facts, for the possibility is that when Danilo first testified his mind was focused more to the unusual happening rather than when it happened. Memory is generally more tenacious of facts than of dates [Francisco, *The Revised Rules of Court (Evidence)*, page 1059, citing *Matter of Burtis* (Surrogate Court), 43 Misc. (N. Y.) 437, 89 N. Y. Supp. 441, 454]. In fact, the transcript shows that Danilo was misled by the fiscal's questions, that gave 11 June 1965 as the date of the happening when it actually took place on 11 June 1966, and we are satisfied that the witness' error was not a conscious attempt to establish an untruth.

Danilo's testimony under the amended information correcting his previous declarations (on the date he witnessed the felony) is not incompetent evidence and did not make him, as contended, an incompetent witness. Furthermore, it is not true that all that he testified to during his second turn at the witness stand, after the amendment, was merely to correct the date of the incident, for the fact is that he was cross-examined by counsel for the appellants about details of the crime that he had previously related (T. s. n., Calvo, pages 8-14); hence, any technical defect in the admission of his testimony should be deemed cured by his cross-examination.

The appellants claim that they were manhandled by the police and this vitiated their confessions. The presumption of voluntariness in the execution of the confessions was not overcome by the defendants' evidence. As the trial court observed, the confessions exhibit on their faces no sign of suspicious circumstances tending to cast doubt on their integrity; they are replete with facts which could be possibly supplied only by the defendants,[2] and they substantially interlock, confirming each other as to details. Note that appellants did not denounce the alleged maltreatment when they swore to the truth of their confessions before the fiscal who administered their oaths thereto, and by voluntarily participating in the re-enactment of the crime they had impliedly admitted their guilt (*People vs. Tia Fong*, 98 Phil. 609).

Appellants' common defense is alibi. Amita declared that at about 9:00 o'clock in the evening of 11 June 1966 he

was asleep in his house at 48 Abra St., Quezon City; Casillar claimed that he was at San Andres Bukid from 9 June to 12 June 1966 helping in a store of Mrs. Ilumi-nada Noriega; while Armalda declared that at about 9:00 o'clock in the evening of 11 June 1966 he was hauling flowers at Grace Park. Not only is their evidence auto-contradictory and replete with inconsistent details, as noted in the decision below; but the places where the respective appellants claim to have been at the time of the commission of the crime are so near to the place of commission that their presence at the scene of the crime during its commission cannot be considered as impossible; hence, their alibi cannot stand to off-set their positive identification by Danilo Nicolas and their own extrajudicial confessions and participation in the re-enactment of the crime (People vs. Villalba, L-17243, 23 August 1966).

With respect to the P50 in bills (Exhibits "H", "H-1", "H-2") that she surrendered to the police, the mother of Casillar asserted that she gave it in consideration of the release of her son by the police. Her sole testimony is insufficient to disprove the evidence of the pro-secution that Casillar himself revealed that the money was part of the loot, and had been entrusted to his mother by him (T. s. n., 24 August 1966, pages 45-47). Not only that: for police officers to accept money to release a suspect is an illegal act that must be clearly proved.

The trial court properly considered the existence of abuse of superior strength as having aggravated the commission of the felony. The assailants were four in number and were armed with bladed instruments (as disclosed in their confessions) while the deceased was alone, unarmed, and taken by surprise (U. S. vs. Tandoc, 40 Phil. 954; People vs. Caroz, et al., 68 Phil. 521).

It is finally urged that the accused-appellants should be credited with the mitigating circumstance of lack of instruction. Amita is a la-borer who reached Grade V; Casillar is a puto vendor, whose schooling reached Grade III; and Armalda, a push-cart hand (nangangariton), is illiterate. It is for the trial court, rather than the appellate court, to find and consider the circumstance of lack of instruction, for it is not illiteracy alone but the lack of sufficient intelligence and knowledge of the full significance of one's acts that constitute this mitigating circumstance, and only the trial court can properly assess the same (Padilla, Criminal Law; The Revised Penal Code, Book I, page 395, citing People vs. Ripas, et al., L-6246, 26 March 1956; 98 Phil. 1004, unrep; U. S. vs. Estorico, 35 Phil. 410, and other cases).

FOR THE FOREGOING REASONS, the judgment under review is hereby affirmed, with the sole modification that the amount of the indemnity shall be, as it is hereby increased to, P12,000.00 (People vs. Pantoja, 25 SCRA, 468). Costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.

Barredo, J., did not take part.

[1] Commended by Col. Papa of the Manila Police Department and given an award for testifying in the case (Manifestation by Fiscal Ca-tindig, T. s. n., 7 February 1967, pages 20-21).

[2] Such details as that they decided to hold up the Chinaman upon meeting him; that Bartolata snatched the victim's pocketbook; that it was a black one; and the share of each in the booty.

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