

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERT NEWMAN Y BECLAR AND DIONISIO TOLENTINO Y
SANTILLAN, DEFENDANTS-APPELLANTS.**

G.R. No. L-45354. July 26, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from the decision[*] of the Court of First Instance of Negros Occidental, 12[th] Judicial District Branch IX, Bacolod City, dated 27 October 1976, in Criminal Case No. 1572 entitled "People of the Philippines, Complainant vs. Albert Newman y Beclar and Dionisio Tolentino y Santillan, Accused," finding the accused guilty beyond reasonable doubt of the crime of Robbery with Homicide.

The accused were charged with the crime of Robbery with Homicide, in an information which reads:

"That on or about the 19[th] day of March 1975, in the City of Bacolod, Philippines, and within the jurisdiction of this Hon. Court, the herein accused, conspiring, confederating together and mutually helping one another being then armed with a knife, with intent of gain and by means of violence did, then and there willfully, unlawfully and feloniously assault, attack and stab with the said knife, one Efren Bantillo, thereby causing upon the person of the latter the following wounds to wit:

- Wound stab 1 inch left hypochondriac region along anterior axillary line, penetrating abdominal cavity with prolapse of omentum, perforating ilium three (3) points (thru & thru) Hemorrhage internal severe, shock secondary.

- Wound stab one (1) inch 6th l.c.s. along anterior axillary line left penetrating chest cavity, perforating diaphragm one (1) inch, and lacerating left lobe liver by one (1) inch. Hemorrhage severe.

and then and there willfully, unlawfully and feloniously take, rob and carry away from said Efren Bantillo one (1) Ceba Wristwatch, wallet with pertinent papers inside, all having a total value of P500.00, Philippine Currency; which wounds directly caused the death of the said victim, to the damage and prejudice of the heirs of the said victim, as follows:

1) As indemnity for the death of the victim

— P12,000.00

2)

As indemnity of the loss of earning capacity of the victim

— 10,656.00

3) As moral damages

— 10,000.00

Act contrary to law.

City of Bacolod, Philippines, March 26, 1975."[1]

Upon arraignment on 18 June 1975, duly assisted by counsel de oficio, both accused entered a plea of not guilty.

On 29 October 1976, the trial court rendered judgment, the dispositive part of which is as follows:

"WHEREFORE, premises considered, the Court finds the accused Albert Newman y Beclar and Dionisio Tolentino y Santillan, GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, and hereby sentences them to the penalty of reclusion perpetua; to pay the heirs of the deceased Efren Bantillo, jointly and severally, the amount of TWELVE THOUSAND PESOS (P12,000.00) by way of civil indemnity, without subsidiary imprisonment in case of insolvency; and to pay the costs.

"The wrist watch, the FIFTY PESOS (P50.00) and the comb recovered from the crime scene, the driver's license and other personal effects of the deceased Bantillo are ordered returned to his heirs.

"IT IS SO ORDERED."[2]

The facts of the case, as summarized in the Solicitor General's brief, are as follows:

"At about 9:00 o'clock in the evening of March 19, 1975, while Rosita Empio was selling coffee in her store located in Barrio Granada. Bacolod City, a Minica taxi, (Ganbusco 500), bound for Bacolod City, stopped in front of her store. Her attention was attracted by the driver, later identified to be Efren Bantillo, who waved at her. When she approached the taxicab, the driver asked her for help saying that he had been held-up on the other side of the bridge. The driver was holding his left breast. She asked him if he had other wounds and the driver pointed to his stomach. She got a towel from her house to bind the wound but when she saw intestines coming out of the big wound on the stomach, she was frightened. She called other persons for assistance. A certain Felix and one Kiko Lucas bound the wound and they took the driver in his taxi to the hospital at Bacolod City (pp. 16-18, tsn, July 9, 1975; pp. 5-6 t.s.n. July 24, 1975).

"When the taxicab arrived at the Corazon Locsin Montelibano Memorial Hospital in Bacolod City, Patrolman Eduardo Yanson, a police investigator of the Bacolod City Police Force happened to be in the vicinity. He noticed that a wounded man was taken to the emergency room, so he followed to investigate. Sensing that the wounded man was in serious condition, he took a piece of paper and began to ask him some questions (pp. 3-4, 7-8 tsn, Aug. 11, 1975). He was able to obtain the name of the victim as Efren Bantillo, his age and address; that he was held-up by two persons whom he did not know, but one was a short fellow with long hair, and the other was tall and stout, and that sixty (P60.00) pesos was taken from him. As the victim was getting delirious Pat. Yanson also asked him if he feels he was going to die. The victim was not able to answer him anymore because he fell unconscious. The victim was not able to sign the piece of paper where he jotted the answers to his questions (pp. 9-11 t.s.n., Aug. 11, 1975). When police investigators of the Theft and Robbery Section arrived, Pat. Yanson, endorsed the case to them. Upon his return to his office, he executed an affidavit, narrating the foregoing incident. At the trial of the case, however, he could not present the piece of paper on which he jotted down the answer of the victim because he could not find it in his folder where he used to keep his papers (p. 16, t.s.n., Id.).

"Dr. Orville Paez, resident physician of the Corazon Locsin Montelibano Memorial Hospital in Bacolod City treated Efren Bantillo for two stab wounds, one at the 10th intercostal space, left front side, and another at the abdomen below the navel. The wounds were caused by a knife similar to the one presented as Exhibit "N".

Both wounds were fatal pp. 4-7, t.s.n., Oct. 9, 1975). Efren Bantillo was admitted to the hospital at 10:30 p.m. on March 19, 1975. Despite an operation and all the medical assistance given to him, the victim died at 2:40 p.m. on March 20, 1975. Dr. Paez signed the death certificate of the deceased. According to the doctor, the victim suffered other minor injuries, such as a stab wound at the middle left forearm, an incised wound at the left 3rd finger and the thumb, which injuries could have been caused by a sharp knife (pp. 11-12, t.s.n., Oct. 9, 1975). The doctor confirmed the fact that a policeman interrogated the victim at the emergency room before the operation took place (p. 18, t.s.n., Oct. 9, 1975).

"Patrolman Ramon Iligan, homicide investigator of the Bacolod Police Department headed the team that followed up the investigation of this case (p. 21, t.s.n., Aug. 27, 1975). Early in the morning of August (sic) 20, 1975 Pat. Daniel Lucot another police investigator was sent to Bo. Granada and from there to Hacienda Hermilinda together with police photographer Eleuterio Salde. They arrived at Hacienda Hermilinda at about 9:00 a.m. (pp. 4-5, t.s.n., Aug. 27, 1975). They were guided to the crime scene, where they met Sgt. Palomiro of the Theft and Robbery Section who reached the place ahead of them. Sgt. Palomiro pointed to Pat. Lucot, a yellow comb and fifty (P50.00) pesos in bills in the ditch and P1.20 in coins. The bills consisted of one (1) P20.00 bill, one (1) P10.00 bill, and four (4) P5.00 bills (pp. 5,9-10, t.s.n., Id.). The police photographer took pictures of the comb, the money, the footprints, shoe marks and tiremarks still fresh on the ground. This place was along the Hacienda road and was deserted. The house nearest to it was about 200 yards away and no public utility vehicle passes through this Hacienda road (pp. 14-16, t.s.n., Id.).

"In the morning of March 21, 1975, Detective Ramon Iligan received information that the suspect went to the house of a certain Isidoro Naranja in Bo. Arabay. Isidoro Naranja is the uncle of the accused, Albert Newman. Together with Det. Jose Belocura they went to Bo. Arabay and contacted Naranja who informed them that Albert Newman, with a companion later identified as Dionisio Tolentino, arrived at his house at past one o'clock in the morning of March 20, 1975. Albert Newman washed his clothes there. Later, the two left his house. Following the information they received that Albert Newman was working as a cargo truck driver of Mr. Cusi in Hacienda Gerardo, they proceeded in the evening of March 21, 1975, to Sitio Tambocal where Hacienda Gerardo was located (pp. 28, 60-61, t.s.n., Oct. 21, 1975). At the Hacienda they first saw Dionisio Tolentino whom they found resting in a hut inside the plantation (p. 32, t.s.n., Oct. 9, 1975). Patrolman Iligan asked Tolentino if he had any participation in the stab-bing of Efren Bantillo. The latter said that it was his companion Albert Newman, who actually stabbed Efren Bantillo, (p. 5, t.s.n., Oct. 21, 1975). Tolentino pointed to Newman who was working some 200 yards away in the sugar plantation. Confronting Newman Pat. Iligan asked him, if he (Newman) was responsible for the stabbing of a PU driver, at Bo. Granada. Newman admitted that he was the one who stabbed the driver. Later, Newman stated that he took the watch of the victim. The policemen retrieved the watch from the pocket of Newman's trousers which he left on the front seat of his cargo truck (p. 7, t.s.n., Oct. 21, 1975). They also recovered from Dionisio Tolentino the driver's licence of Efren Bantillo, but they noticed that the ID picture of Efren Bantillo was already removed and substituted with the ID picture of Dionisio Tolentino (p. 37, t.s.n., Oct. 9, 1975). The policemen took the two accused with them to Bacolod City (p. 35, t.s.n., Oct. 9, 1975).

"Police investigator Jose Belocura declared that he was one of those who apprehended the appellants in the company of Cpl. Ramon Iligan (pp. 17-18, t.s.n., Nov. 20, 1975). He further declared that from the younger brother of Albert Newman they got the information that Albert washed his clothes with bloodstains in their house. He affirmed that after arresting the appellants and taking them to the Bacolod City Police Department, they investigated the two thoroughly (p. 21, t.s.n., Nov. 20, 1975). According to him, in the morning of March 22, 1975, they went to the scene of the crime together with the two appellants and some members of the police department. Appellants reenacted the crime with him acting as Efren Bantillo (p. 23, t.s.n., Nov. 20, 1975). Photographs taken during the reenactment were marked as Exhibits "Z", "AA" and "BB" (pp. 25-27, 29, t.s.n., Nov. 20, 1975). Upon their return to the office, the statements of the two appellants were taken (p. 33, t.s.n., Nov. 20, 1975).

"After the reenactment, Pat. Iligan took the written statements of the two accused. Before he took their statements, he informed them of their constitutional rights to remain silent and assistance of a counsel. Both however admitted that they knew their rights but were waiving them as they would only tell the truth. They agreed to sign a waiver of their rights to counsel or to remain silent. He first read the waiver, Exhibit "Q", to Albert Newman before the latter signed it (pp. 38-39, t.s.n., Oct. 9, 1975; p. 8, t.s.n., Oct. 21, 1975). Like Newman, Dionisio Tolentino also signed a waiver of his constitutional rights and manifested that he was giving his voluntary statement, Exhibit "R" (p. 30, t.s.n., Oct. 9, 1975). After the execution of the waiver, he took the statement of Albert Newman, Exhibits "S", "S-1" and "S-2" (pp. 41-42, t.s.n., Id.), and then the statement of Dionisio Tolentino. These statements were subscribed and sworn by them before Assistant City Fiscal Parreno. (pp. 44-45, t.s.n., Id.). Fiscal Parreno asked them if they were threatened or manhandled and they answered they were not (pp. 40-41, 44-45, t.s.n., Oct. 9, 1975).

"On the witness stand, assistant City Fiscal Parreno declared that on March 22, 1975 the appellants were brought to him to have their waivers and affidavits sworn to. He first asked the affiants whether they were apprised of their rights under the law; whether in giving their statement they were threatened by the investigating officers of the Bacolod City Police Department, and whether they were asked by the same investigating officer if they desired to have a counsel before giving their answers. He informed the appellants that the statement they were giving may be utilized against them and asked them if they understood what they were testifying to. Appellants affirmed to him that the statements they were giving were all voluntary (pp. 4, 15, t.s.n., Nov. 20, 1975). He asked if the appellants knew how to read and if they understood the contents of their affidavits. Appellants also answered in the affirmative. Then he told the appellants to affix their signatures on the affidavits, which appellants did in his presence (pp. 5, 15, 33, t.s.n., Nov. 20, 1975).

"In his affidavit, Newman admitted that he stabbed the victim. According to Newman, he and Dionisio Tolentino boarded PU-500 driven by Efren Bantillo at Gonzaga at about 7:00 or 8:00 p.m. They told Bantillo to proceed to Bo. Granada and to stop near the Lizares Elementary School at Bo. Granada. However, when they noticed that many people were going to and coming from the school where a dance was then being held, they told Bantillo to proceed to Hermilinda at the other side of the bridge. When they reached the place he had indicated. Newman asked Bantillo to stop. Then he told him that they had no money to pay for the fare. Dionisio Tolentino got out of the car. Albert Newman however was left inside because Bantillo held him by the shoulders. After a brief scuffle, Albert was able to extricate himself from Bantillo's hold and was able to get out of the car. He pulled out a stainless knife from his left side trouser pocket. Bantillo saw this and tried to wrest the knife from him. They grappled until both fell to the ground. Albert was able to stand up and was about to run away, when the victim held him again. Albert turned around and stabbed Bantillo at the stomach. They continued to grapple for the knife, until they fall on the ditch. Bantillo kicked Newman on the thigh and the latter stabbed him again, this time hitting him on the breast. When Bantillo climbed up the ditch, Dionisio Tolentino jumped at him. Bantillo bit Tolentino. Just then Albert Newman noticed. Bantillo's wallet on the ground. He picked it up and together with Dionisio Tolentino, ran towards the creek. The two proceeded to the school building. When Newman opened the wallet he found no money but Bantillo's driver's license inside. He gave Bantillo's license to Dionisio Tolentino and threw the wallet in a nearby sugar plantation. From there they went to the house of his uncle, Isidore Naranja in Bo. Arabay. In his uncle's house, he washed his clothes because it was smeared with blood. At about 4:30 a.m. the two left for the house of Albert Newman. Albert replaced the knife which he used for stabbing in the place where he got it, without telling anybody in the house about the incident. Afterwards, he proceeded to his place of work as driver in Hacienda Gerardo at Sitio Tabucol, Bago City. It was there where he was arrested by the Bacolod City policemen (pp. 56-57, t.s.n., Oct. 9, 1975; Exh. "S", pp. 117-119, Rec.)

"Antonio Blanco, a printer, friend and co-member of Efren Bantillo in the church of Iglesia ni Kristo, declared that the deceased who was his close friend borrowed his Ceba wrist watch about two weeks before the incident. The deceased had no watch and needed one badly to remind him of the time and avoid being caught by the curfew (p. 4, t.s.n., July 9, 1975). When he heard that Efren Bantillo was held up on March 19, 1975, he

visited the victim at the hospital the following day, but he did not see Bantillo wearing his watch. Then on March 22, 1975, he was called by the Bacolod City police investigator to identify the Ceba wristwatch taken from Newman. He identified the said watch to be his (p. 29, t.s.n., Aug. 27, 1975)."[3]

While both accused executed extra-judicial confessions on 22 March 1975, they have, however, repudiated them. The testimonies of the accused Dionisio Tolentino and Carlos Newman (father of the accused Albert Newman) make up the entire evidence for the defense. As summarized by the lower court, these testimonies are as follows:

"DIONISIO TOLENTINO:

In the evening of March 21, 1975, he was apprehended by the Bacolod Police at Hda. Gerardo in Bago City. The Police did not have any warrant of arrest at that time. He was loaded in the service car of the police and brought to the city hall where he was investigated. At about 8:30 o'clock in the morning of 22 March 1975, he was brought to Barrio Granada for the re-enactment of the crime. Before the re-enactment, he was not informed by the police about his constitutional rights. After the reenactment he was brought again to the Bacolod Police Department. Later he was let out of his cell and about three persons maltreated him. Then he was again brought inside his cell. Later he was brought upstairs, and when he arrived there he saw that they were already typing the statements. He was not asked any questions (t.s.n., February 2, 1976).

"CARLOS NEWMAN:

He is the chief mechanic of the Bacolod City Fire Department. One of his friends told him that his son, Albert, was there. So he went to the place at about 8:30 o'clock in the morning of 22 March 1975, but he was not able to talk to his son because he was being investigated by the secret service. Neither was he able to talk to his son in the afternoon of the same day. The first time that he was able to talk to his son after his arrest was in the morning of 24 March 1975 (pp. 3-4, t.s.n. March 8, 1976)."[4]

The main thrust of the arguments of the accused-appellants for the reversal of the judgment and their acquittal from the offense charged, is that they had not been duly informed of their constitutional rights. They contend that their oral and written extra-judicial confessions and the photographs showing the alleged re-enactment of the crime, are inadmissible in evidence. They further claim that they were not accorded the right to due process.

The Court agrees with the contention of the appellants that the questioned extrajudicial confessions are inadmissible in evidence against them.

In Albert Newman's waiver of his right to remain silent and to counsel, he affirmed that, in connection with his investigation, he was first informed of his right to remain silent, his right to employ the services of a lawyer to assist him in the investigation, and that anything he would say in said investigation may be used against him. He further stated in said waiver that he understood these rights and would give his statement and answers to questions that would be asked of him; that he did not need the assistance of a lawyer, because he understood what he was doing; that he was not promised anything, threatened or forced by whatever means. This waiver was signed and subscribed to by him (Newman) before 5th Assistant City Fiscal Gil B. Parreno on the 22nd day of March 1975, in the City of Bacolod.[5] It was also on the same day that Newman executed and swore to his affidavit which contained his extrajudicial confession of guilt. The formal investigation of Newman was preceded by the following questions:

"Investigator:

You are now here under investigation for the crime of killing Efren Bantillo y de la Cruz. Before you are asked, you are reminded of your rights under our New Constitution, which are the following: You have the right to remain silent, whatever statement you will give may be used as evidence against you, you have the right to secure

your own lawyer, and if you cannot afford to get a lawyer you will be given a counsel to attend to you before you will be investigated. Do you understand all of your rights?

Albert Newman:

Yes, I understand all these.

Investigator: Shall we continue with the investigation?

Albert Newman: Yes.

Investigator: Even though you do not have a lawyer?

Albert Newman: Yes, because it is my desire to tell the truth about what really happened even though there is no lawyer to attend to me."[6]

A waiver in the same tenor as Newman's waiver was also executed by appellant Dionisio Tolentino.[7] The same questions and answers prefaced the formal investigation of the appellant Dionisio Tolentino.[8] The waivers and affidavits (confessions) were in the native Visayan dialect (Hiligaynon) which the appellants know and speak.

From all the foregoing, it would appear that the appellants were not properly apprised of their constitutional rights before their custodial examination took place. Hence, their extrajudicial confessions are inadmissible in evidence.

At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for his arrest, and he must be shown the warrant for his arrest, if any. Before his interrogation, he shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative or anyone he chooses by the most expedient means — by telephone if possible — or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made in writing and with the assistance of counsel. Any statement obtained in violation of the foregoing procedure, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.[9]

It can be gleaned from the record of the case that the advice as to constitutional rights of the accused, given by the investigating officer, was perfunctory and pro-forma, intended obviously to pay lip service to the prescribed norms, through a recitation by rote of the sacramental advice.[10] This stereotyped "advice" appearing in practically all extrajudicial confessions which are later repudiated, has assumed the nature of a "legal form" or model. Its tired, punctilious, fixed and artificially stately style does not create an impression of voluntariness or even understanding on the part of the accused. The showing of a spontaneous, free and unconstrained giving up of a right is missing.[11] In the case at bar, the two (2) extrajudicial statements and waivers carry the same quoted

prefatory statement. This, to the mind of the Court, indicates the lack of zeal and initiative on the part of the investigating officers to fully and truly inform the accused of their rights to remain silent and to counsel during the custodial investigation. The "informing" done by the police in the case at bar was nothing more than a superficial and mechanical act, performed not so much to attain the objectives of the fundamental law, as to give a semblance of compliance therewith.[12] The right of a person under interrogation to be informed of his rights to remain silent and to counsel, implies a correlative obligation on the part of the police investigator to explain and contemplates an effective communication that results in an understanding of what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the accused has been "informed" of his rights.[13]

The record also shows that the interrogations were conducted *incommunicado* in a police-denominated environment. When appellant Newman gave his confession, his companions in the room were police officers. And the only people with Tolentino when he "confessed" were also police investigators.[14] Indeed, the Court is far from certain or satisfied that the waivers of counsel and the subsequent confessions were indeed voluntary and free.

The rejection of the extrajudicial confessions in the case at bar is called for under the provision in the 1973 Constitution, specifically, Art. IV, Sec. 20 which includes, among the rights of the accused "the right to remain silent and to counsel and to be informed of such right." Any confession obtained in violation of the provision is inadmissible in evidence against him. Thus, even if the confession of the accused speaks the truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given.[15] Conviction, therefore, cannot be based thereon.

As to the reenactment of the crime, the Court notes that appellant Dionisio Tolentino testified that he participated in such reenactment after he was directed to do so by the policemen. Such reenactment was scripted, to say the least. Besides, pictures reenacting a crime which are based on an inadmissible confession are themselves inadmissible.[16]

With the exclusion of the confessions of Newman and Tolentino, there is no necessity to deliberate on the appellants' allegations of intimidation and maltreatment which attended their execution.

All the foregoing notwithstanding, the guilt of the appellants has been proved beyond reasonable doubt. Their conviction must be affirmed.

Recovered from the accused Newman at the time of his arrest by the police officers was a watch borrowed by the victim from his close friend Antonio Blanco; on the other hand, taken from the accused Tolentino was the Driver's license of the deceased Bantillo but whose picture (ID photo) was replaced with the picture of Tolentino.[17] In other words, the accused-appellants were positively identified as the persons in possession of the stolen properties — the watch and the Driver's license. Both accused offered no satisfactory explanation as to the fact of their possession of the stolen properties.[18] Such evidence abundantly incriminates them and proves that they took them with *animus lucrandi*. A disputable presumption exists that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.[19] Appellants offered no evidence to overcome or contradict such presumption. Not even an alibi was presented for their defense.

It is not also disputed that the victim, before he died, told both Rosita Empio and Patrolman Yanzon that he was held-up by two men - one was tall and stout and the other was a short fellow with long hair - descriptions which fit the two (2) accused; that he was stabbed twice; and that P60.00 were forcibly taken from his person.[20] The ante-mortem statement, taken together with the other evidence, specially, the stolen watch and the driver's license of the victim found in the possession of the accused, points to a conclusive finding that indeed the accused are guilty of the crime of robbery with homicide.

The appellants contend, however, that the dying declaration was not made by the deceased under consciousness of an impending death. The Court holds otherwise. The victim was brought to the hospital in a very serious condition.[21] The nature of the two (2) stab wounds was fatal.[22] When the victim opened the bandage (towel given by Rosita Empio) his intestines came out.[23]

The connection between the appellants' unexplained possession of the stolen personal properties taken from the victim and the homicide committed or the attack on Efren Bantillo, is too close and too obvious. It can only lead to the inevitable conclusion that the men who stole the wristwatch and driver's license of deceased Bantillo were the very same persons who stabbed and killed him. Logic and experience easily allow such inference.

In one case,[24] Tan who was still alive when asked who attacked him, was able to answer that "Kagui" (the name by which the accused was known) was responsible. When the accused was searched, the pocketbook of the dead man, with P92.00, his identification card and his memorandum book were found in Kagui's person. It was held that in the absence of an explanation as to how one has come into possession of stolen effects belonging to a person wounded and treacherously killed, he must necessarily be considered the author of the aggression and death of the victim and of the robbery committed on him. A presumption of guilt arises if the effects belonging to a person robbed and killed are found in the possession of another.

Still in another case,[25] it was held that evidence which shows that certain jewelry and money that were found to be missing from the house of the deceased a short time after the homicide and that they were subsequently found at a place indicated by the accused is sufficient to support the inference that the same person who committed the homicide also committed the robbery.

Appellants' claim of absence of conspiracy is without merit. Conspiracy need not be proved by direct evidence, it may be inferred from the acts of the assailants.[26] The circumstances of riding the PU Minica together as passengers; the taking along with them of a stainless knife of Newman; the militant dispatch and precision in stabbing the victim; their hiding together in Newman's place of work; the finding that they were together immediately preceding the commission of the crimes up to the time of their arrest two days later; their apparent haste in departing from the crime scene after its perpetration to the point of leaving behind the wallet of the victim containing P50.00; and the simple fact that they were present together during the commission of the crimes, thus giving unto each other moral and physical aid and assistance — taken together — clearly manifest a concerted action in the pursuit of a common design to kill and, subsequently, to steal.

The finding that there were two (2) fatal and penetrating stab wounds of three (3) to four (4) inches deep, one in the chest and the other just below the navel, plus the stab wound in the left forearm and incised wounds at the finger and thumb of the deceased,[27] would strongly indicate that one accused was evidently holding back the victim to immobilize him while the other accused was stabbing him; or at least such a circumstance would reveal that appellants helped each other during the commission of the crime. Such method of attack or manner of killing clearly indicates the, indispensable cooperation and spontaneous coordination between the appellants. That the two (2) appellants divided the "loot" between them — the wristwatch was taken by Newman while the Driver's License of Bantillo was appropriated by Tolentino — is another indication of conspiracy to commit the crime. The closeness of personal association, the community of purpose and the concurrence of sentiment are plainly inferable from the circumstances above narrated.

Conspiracy being present, it does not really matter that the prosecution had failed to show who as between the two (2) accused actually stabbed, the victim. Both Newman and Tolentino are liable as co-conspirators since the act of a co-conspirator is the act of the other regardless of the precise degree of participation in the act.[28]

WHEREFORE, the judgment of the Court of First Instance of Negros Occidental in Criminal Case No. 1572 is

hereby AFFIRMED with the modification that the indemnity, to be paid by the accused-appellants, jointly and severally to the heirs of the deceased Efren Bantillo, is increased to P30,000.00. With costs against the accused-appellants.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Sarmiento, JJ., concur.

[*] Penned by Judge Ramon B. Britanico.

[1] Information, Rollo at 5.

[2] Trial Court Decision, p. 27, Rollo at 33.

[3] Brief for the Appellee, pp. 2-12, Rollo at 106.

[4] Trial Court Decision, pp. 17-18, Rollo at 23-24.

[5] Exh. "Q" - Waiver of Albert Newman, Original Record, pp. 107-108.

[6] Exh. "S" - Extrajudicial Confession of Albert Newman, Original Record, pp. 117-119, 120, 124.

[7] Exh. "R", Original Record, pp. 110, 115.

[8] Exh. "X", Original Record, pp. 126, 129-134.

[9] People v. Galit, 135 SCRA 465.

[10] See People v. Pecardal, 145 SCRA 648.

[11] People v. Jara, 144 SCRA 516.

[12] People v. Escobar, G.R. Nos. 69564 and 69658, January 29, 1988.

[13] People v. Quizon, 142 SCRA 362.

[14] Appellant's Brief, pp. 12-13; Rollo at 84; tsn of March 8, 1976, pp. 13-14.

[15] People v. Pineda and Garcia, G.R. No. 72400, January 15, 1988; People v. Guarnes, G.R. No. 65175, April 15, 1988.

[16] People v. Jara, *supra*.

[17] tsn of October 9, 1975, pp. 335, 349-350

[18] tsn of February 2, 1976, pp. 59-60.

[19] See Sec. 5(j), Rule 131 of the Revised Rules of Court.

[20] tsn of August 11, 1975, pp. 3-4, 7-11.

[21] tsn of July 24, 1975, pp. 17-18.

[22] tsn of October 9, 1975, pp. 303-305.

[23] tsn of July 24, 1975, pp. 17-18.

[24] People v. Malasugui, 63 Phil. 221.

[25] U.S. v. Merin, 2 Phil. 88.

[26] People v. Abueg, 145 SCRA 622.

[27] tsn of October 9, 1975, pp. 303-305, 317-319.

[28] People v. Valdez, G.R. No. 75390, March 25, 1988.

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