

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABUNDIO DE LA CRUZ, ET AL., ACCUSED-APPELLANT.

G.R. No. L-33030. August 25, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The case before us on automatic review of a judgment sentencing the appellant to death is an uncommon one.

The killing of a prominent lawyer which led to the murder charge took place in 1944 during the Japanese occupation. The original information was filed in 1947. The accused were arrested in 1950. During the preliminary investigation of the three accused in 1951, the appellant and one co-accused jumped bail and disappeared. The third co-accused was tried in 1959, almost nine years later. He implicated his two missing co-accused, was found guilty, and was sentenced to life imprisonment. He has since been released on parole.

Meanwhile in 1969 or eighteen (18) years after he jumped bail, the appellant was arrested. He was charged in an amended information, tried, and sentenced to DEATH.

After a thorough review of the evidence on record, we are convinced that the accused-appellant was at the scene of the crime during its commission and that, contrary to his protestations, he had something to do with the killing. However, because of unavoidable difficulties or unfortunate lapses on the part of the prosecution, the only evidence directly incriminating the appellant – the confession of the co-accused convicted earlier – happens to be inadmissible against him. We are, therefore, constrained to acquit the accused-appellant and write *finis* to the 39-year old killing, not because the appellant had nothing to do with the crime but because the evidence adduced subsequent to his recapture 25 years after the crime, fails to overcome the constitutional presumption of innocence that an accused enjoys. The appellant is now more than 70 years old. If the letters to the Court interceding for his re-lease are to be believed, the appellant has led an exemplary life during his incarceration in the national penitentiary.

The original information for murder was filed on January 25, 1947 against six (6) accused persons. The information reads:

"The undersigned Provincial Fiscal hereby accuses Abundio de la Cruz, Ladislao Tayo, Tomas Tating, Francisco Tapar, Eriberto Cenon and Eufemia Litong of the crime of Murder, committed as follows:

"That on or about April 10, 1944, in the municipality of Viga, province of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and help-ing each other, with evident premeditation and with the decided purpose to kill, did then and there wilfully, unlawfully and feloniously, assault and attack Pedro Sorreta by beating him to death with blunt instruments, and by throwing afterwards his corpse into the sea.

"In the commission of the crime there was present the aggravating cir-cumstance of superior strength."

During the preliminary examination, no probable cause was found against Eufemia Litong. This led to the

dismissal of the case against her. The case was also dismissed with respect to Tomas Tating on the ground that his testimony was absolutely necessary for the prosecution. With the finding that Francisco Tapar had nothing to do with the commission of the crime, the case was likewise dismissed as to him.

The three remaining accused, namely – Abundio de la Cruz, Ladislao Tayo and Eriberto Cenon were arrested on November 29, 1950. Of the three, only Eriberto Cenon remained in the custody of the authorities as the other two posted bail and were subsequently released.

The preliminary investigation proper was set on February 2, 1951. Abundio de la Cruz and Ladislao Tayo failed to appear during the investigation. A motion for their arrest and the confiscation of their bail bonds was filed and duly granted by the Justice of the Peace.

The case was returned to the Court of First Instance for further proceedings because Abundio de la Cruz and Ladislao Tayo could not be apprehended while Eriberto Cenon had waived his right to preliminary investigation proper and the Justice of the Peace was of the opinion that the two other accused had also waived their right by their continued failure to appear.

At the separate trial conducted for Eriberto Cenon in 1959 or almost 9 years later, he was found guilty and sentenced to life imprisonment. No appeal having been filed, Cenon commenced serving sentence and during the trial of the appellant was already out.

Because of the failure to apprehend Abundio de la Cruz and Ladislao Tayo, the trial court directed that the case be sent to the files without prejudice to its subsequent prosecution when the accused or either of them were apprehended.

On December 16, 1968 or almost 10 years after the case was archived and 25 years after the killing, the trial court issued a new order of arrest for both the accused on the information that they were seen somewhere in the province of Quezon. Abundio de la Cruz was subsequently arrested on September, 1969. As to Ladislao Tayo, he has remained at large.

After the arrest of Abundio de la Cruz, an amended information was filed against him on May 12, 1970. The amended information reads:

"The undersigned accuses ABUNDIO DE LA CRUZ and LADISLAO TAYO of the crime of MURDER, committed as follows:

"That on or about April 10, 1944, in the Municipality of Viga, Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the said accused conspiring together and mutually aiding one another with treachery and evident premeditation and with deliberate intent to take the life of Pedro Sorreta, did then and there wilfully, unlawfully and feloniously assault and attack the said Pedro Sorreta by beating him to death with blunt instruments, and by throwing afterwards his corpse into the sea.

"That in the commission of the crime the following aggravating circumstances were present:

"1. Advantage was taken of superior strength or means were employed to weaken the defense;

"2. Committed at night time and in uninhabited place to facilitate commission of the offense;

"3. Offense was deliberately augmented by causing other wrong not necessary for its commission." (Record, p. 329).

On May 15, 1970, Abundio de la Cruz was arraigned and pleaded not guilty.

The facts found by the trial court, which led to the court's conviction of the accused Abundio de la Cruz are as

follows:

"The victim, Pedro Sorreta, was a practising attorney and formerly a member of the Provincial Board of Albay. In 1944, during the Japanese occupation, he lived with his family in the barrio of Tinago of the Municipality of Viga, Catanduanes. At the time of the incident his eldest son, Cenon Sorreta, now a practising attorney, was barely eighteen years old. His wife, Carmen, had just given birth to a child a few days before. The case was actively prosecuted by Cenon Sorreta in collaboration with the Second Assistant Provincial Fiscal.

"The substance of the testimony of mother and son shows that in the afternoon of April 10, 1944, they were in their house in Tinago, Viga, when Francisco Tapar came up the house. He had come to consult Atty. Pedro Sorreta about the wife of Ladislao Tayo. It seemed that the wife had become unfaithful to her husband while he was out of Catanduanes but the paramour had been killed recently and Tapar was asking Atty. Sorreta's advise as to whether Ladislao Tayo and his wife should be reconciled. Atty. Sorreta advised that since they were husband and wife they should live together again. While they were talking there were three men who could be seen through the window at some distance from the house. Atty. Sorreta inquired from Tapar who they were and Tapar answered that they were the men who killed the paramour of the wife of Ladislao Tayo in the barrio of Guinsaanan. Atty. Sorreta asked Tapar about their names and Tapar identified them as Ladislao Tayo, Eriberto Cenon and Abundio de la Cruz. Then Tapar casually asked Atty. Sorreta where he was going that afternoon and Atty. Sorreta said that he was going to the sea to fish. Tapar then asked permission to leave and Atty. Sorreta prepared to go out on his fishing trip. Mrs. Sorreta and Cenon saw Tapar go with the three men when he left.

"According to Cenon, his father loved to fish in Tinago Bay in the afternoon on clear days and usually came back at night. On April 10, 1944, after he saw him off at the seashore he never returned. They waited for him until morning. At about nine to ten o'clock when he had not yet returned he sent their houseboy to the sitio of Minaabat to look for him in the farm but he was not there. They searched the beach and found the boat afloat about fifty meters from the beach of Lusadan near the opening of Tinago Bay. They reported the matter to Barrio Lt. Ugalde and Councilor Tomas Tating who promised to help. They continued the search with Pio de Leon until April 12 but Atty. Sorreta could not be found. At about eight o'clock in the morning of April 13, Ignacio Ted, a resident of Lusadan came to their house and informed them that his father's body was seen being dashed by the waves to the beach in Lusadan. The information was relayed to the barrio lieutenant and they went to the place and found Atty. Sorreta dead. Cenon noted that his nape was black. When his body was turned upward he saw his teeth shattered and the chin swollen. There was hematoma on the right forehead and breast. The body was in a state of decomposition. Because of his condition Cenon agreed to have it brought to Tinago for speedy burial. It was taken to Tinago by a boat to the house of a relative, Pio de Leon, and was buried in the cemetery in the barrio. Cenon and his sister Elisa attended the burial. Their mother could not attend because she had just delivered a child on the seventh. Because of the condition of the times no death certificate was issued then.

"After the burial a novena was held in the house of the deceased every night. On the third night the three men, Abundio de la Cruz, Ladislao Tayo and Eriberto Cenon barged into the house. Eriberto Cenon went directly to Cenon and poked a gun at his breast and asked him to surrender his gun. Ladislao Tayo stood guard at the door while Abundio de la Cruz went inside his mother's room. Cenon protested that there was no fire-arm in the house. Abundio de la Cruz ordered the house ransacked but found no weapon. He searched their suit cases and clothes looking for a firearm and when he could not find any they went away.

"The next day, at about six o'clock in the morning, the three came back. Abundio de la Cruz asked Mrs. Sorreta to sign a statement that the family would not complain about the death of Atty. Sorreta and if she would not sign they would be liquidated. Mrs. Sorreta fainted and they left the house. At about nine o'clock of the same day their houseboy came and told Cenon that the three men wanted to see him at the house of his cousin-in-law, Teofilo Cipriano, about a hundred meters from their house. Cenon had no choice because they were armed and he went to the house of Teofilo. When he arrived the three men were in the house with another

man who turned out to be Juan Tobtob. All of them were armed. Abundio de la Cruz asked Cenon to sign a statement that he would not complain about the death of his father or he and his family would be liquidated. Abundio de la Cruz, gave him a piece of paper and pencil and dictated the statement in Bicol dialect. Cenon signed it and gave it to the accused. After having signed the statement they allowed him to leave the house and go home.

"According to Cenon, while he was writing the statement in Teofilo Cipriano's house, Abundio de la Cruz kept on berating his father that he was a land grabber. He was then barely eighteen years old.

"After the signing of the statement the family of Atty. Sorreta stayed in Tinago for about two weeks. In the meantime, their relatives kept on informing Cenon that he would be the next victim. So, on a midnight, he rode on a sailboat with a certain Joaquin Abundo and sailed to Baras where he stayed with his grandmother. His mother and sister followed later.

"The testimony of Mrs. Carmen Sorreta and Cenon Sorreta is corroborated by Miguela de Leon, a niece of Atty. Sorreta, who is well acquainted with Abundio de la Cruz. In the afternoon of April 10, 1944, Miguela went to Tinago to visit Mrs. Sorreta who had just delivered. When she went up the house she passed by Abundio de la Cruz, Ladislao Tayo and Eriberto Cenon, who, according to Abundio, was a Constabulary soldier. They were in front of Atty. Sorreta's house. It was about four o'clock in the afternoon. Inside the house was Francisco Tapar who was talking with Atty. Sorreta. The whole family was in the house. Miguela did not stay long in the house and left while Tapar was still there. At about six o'clock on the same afternoon she went out to look for fish and when she passed by the house of Eufemia Litong, she saw Abundio de la Cruz, Ladislao Tayo and Eriberto Cenon in the house. They were drinking tuba. On the following day, April 11, at about four o'clock in the morning, while Eufemia and her husband were making salt near their house the three accused passed by. Later at around nine to ten o'clock Mrs. Sorreta sent word that Atty. Sorreta had not returned from his fishing trip and she and her husband went to Barrio Lt. Ugalde and asked him to help in looking for the attorney. They did not find him. On April 13, 1944, Ignacio Ted came and informed them that the body was seen in Lusadan being dashed to the shore by the waves. They went to the barrio lieutenant and they sailed to Lusadan and found the body. There was hematoma on the forehead, on the chest and on the nape. Atty. Sorreta had no more teeth. The body was taken to Tinago for burial. Miguela saw the three accused again on the 16th day of April, the third day of the novena for the deceased in his house. On that evening the three men barged into the house while they were saying their prayers. Eriberto Cenon poked a gun at Cenon Sorreta and Ladislao Tayo stood at the door blocking the way. Abundio de la Cruz ransacked the house looking for a gun but found nothing and they left.

"The evidence also shows that at about six o'clock in the afternoon of April 10, 1944, Isabelo Ugalde was going to the chapel in Tinago to ring the bell for the angelus. On the way he met Francisco Tapar who invited him to go to the sitio of Jolo to drink tuba. Ugalde acceded and they went to Jolo to the house of Higino Litong. Tapar went up the house while he stayed on the ground. Abundio de la Cruz was in the house and he heard him asking Tapar who his companion was and Tapar said that it was he Ugalde. Abundio de la Cruz said that he should come up and he went up the house. Ladislao Tayo and Eriberto Cenon were also in the house. They drank tuba together. After drinking all of them went down the house. Then Abundio said to Ugalde, 'Belo, you are being dominated here in Tinago by a great man.' Ugalde asked De la Cruz who the great man was and he answered. 'Do not make any noise, we will finish him tonight.' Ugalde prodded Abundio to tell him who was the great man and Abundio said it was Sorreta. After a while Ugalde left the group because the procession for the 'Aurora' would begin. Ugalde subsequently learned of the disappearance of Atty. Sorreta and when he was eventually found dead in the beach of Lusadan. Ugalde never informed anybody of his conversation with Abundio de la Cruz because of fear and the condition of the times. About two weeks later, however, he told Mrs. Sorreta about it because Abundio de la Cruz was no longer in Tinago.

"The testimony of Heracleo Tatad, another prosecution witness also shows that at about two o'clock in the afternoon of April 10, 1944, he was in his house after having arrived from fishing in the sitio of Sabang. When

he arrived he came upon Abundio de la Cruz and Ladislao Tayo and a third man unknown to him in the yard of his house. Later, Dorotea Tamillosa who was popularly known as 'Nana' arrived. After Dorotea arrived he noted a commotion and he observed her making the sign of the cross and mut-tering 'Jesus, Jesus.' He asked her what was the matter and Dorotea said that they were going to kill Atty. Sorreta. He asked her who were the people who were going to kill Atty. Sorreta and she answered that they were Abundio de la Cruz, and Ladislao Tayo. Tatad asked Dorotea to call them and she called Abundio de la Cruz who went up the house. Tatad advised Abundio de la Cruz not to pursue his plan but the accused answered, 'Don't make noise,' and Tatad did not say anything anymore." (Rollo, pp. 14-21; Decision, pp. 11-18).

Another factor which the trial court considered as indicative of the guilt of the accused was his having jumped bail in 1951. The lower court said:

"There is one last detail that points strongly to the guilt of the accused and that is flight. When he jumped bail in 1951 with Ladislao Tayo, in spite of so many orders of arrest and the search for him by the police authorities Abundio de la Cruz was never apprehended. It would be the height of naivete for the Court, to believe even for a moment, that Abundio de la Cruz was all the time in the places he claimed he was in his testimony bearing his true name and yet was never apprehended by the police authorities who were in search for him. And it is equally unthinkable and absurd to believe that he reported regularly to his bondsmen when he left Libmanan after he was bailed that they could have left him unmolested in spite of the forfeiture and confis-cation of the amount of his bond to the tune of P20,000.00 which was no mean sum in those days when the peso was the peso. His flight and continued disappearance for a period of almost twenty years could only mean one thing — he knew he was guilty of a heinous offense and was mortally afraid to face trial. But somehow destiny finally caught up with him and the law must take its course."

Accused-appellant's version of the facts places him in another province when the crime was committed. According to the appellant:

"On the evening of April 10, 1944, or thereabout, Pedro Sorreta, a resident of barrio Tinago, Municipality of Viga, Catanduanes, met his death. He was out alone at sea fishing that night. He never returned alive. On the morning of April 13, 1944, his body was found at Lusadan beach presumably having been dashed ashore by sea waves. No autopsy was taken.

"The barrio lieutenant, Catalino Ugalde, who examined the body, attested: 'I did not find anything in his body except that his body was already swel-ling and have a foul smell already. He was faced down and with both arms extended sideways and his head was submerged. I examined physically the body. First I took off the clothing and let him face upward, took off the pants and found nothing' (Pp. 195-196 t.s.n.).

"At the time of the incident, the accused-appellant, Abundio de la Cruz was in Malbogon, Libmanan, Camarines Sur, with his family.

"The prosecution would want it believed, however, that his death was due to a premeditated criminal act of the accused-appellant in conspiracy with others."

On November 24, 1970, a decision was rendered convicting the accused of the crime of MURDER and sentencing him to suffer the penalty of DEATH. The dispositive portion of the decision reads:

"WHEREFORE, in view of the fore-going considerations, the Court hereby finds the accused, Abundio de la Cruz, GUILTY beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code as charged in the amended information.

"Four aggravating circumstances are alleged in the amended information, to wit:

"(1) Advantage was taken of superior strength or means were employed to weaken the defense;

"(2) That the offense was committed during night time;

"(3) That it was committed in an uninhabited place;

"(4) That the offense was deliberately augmented by causing other wrong not necessary for its commission.

"The first three appear to be fully sustained by the evidence. Abundio de la Cruz, Ladislao Tayo and Eriberto Cenon ganged up upon the attorney who was alone and overwhelmed him by sheer strength of numbers. He was ambushed in the open sea and the conspirators sought the cover of darkness to perpetrate the crime with impunity. Upon the other hand, the injuries suffered by the deceased are merely the natural result of the aggression upon his person and it does not appear that any of them was inflicted in order to deliberately augment his suffering or that it was not necessary in order to consummate the offense. With three aggravating circumstances and no mitigating, the mandatory penalty is DEATH.

"Accordingly, the Court hereby sentences the accused, Abundio de la Cruz, to suffer the supreme penalty of DEATH.

"The accused is further condemned to indemnify the heirs of the deceased in the sum of TWENTY THOUSAND (P20,000.00) PESOS and the costs."

The defendant-appellant assigned the following alleged errors of the lower court in his brief:

First Assignment of Error

THE LOWER COURT ERRED IN FINDING THE ACCUSED APPELLANT GUILTY OF MURDER BEYOND A REASONABLE DOUBT ON THE BASIS OF THE EVIDENCE PRESENTED BY THE PROSECUTION.

Second Assignment of Error

THE LOWER COURT ERRED IN CONCLUDING THAT CONSPIRACY HAD BEEN ESTABLISHED AND IN CONSIDERING THE CONFESSION EXH. 'C' EXECUTED BY ONE ERIBERTO CENON WHO WAS NOT PUT TO THE WITNESS STAND.

Third Assignment of Error

THE LOWER COURT ERRED IN FINDING THAT THE LATE PEDRO SORRETA'S DEATH WAS DUE TO FOUL PLAY.

Fourth Assignment of Error

THE LOWER COURT ERRED IN FINDING THAT MOTIVE WAS SUFFICIENTLY ESTABLISHED.

Fifth Assignment of Error

THE LOWER COURT ERRED IN IMPOSING THE DEATH PENALTY.

Analyzing the assigned errors and the corresponding arguments in support thereof, the common ground of error refers to the admissibility and the weight of the evidence presented by the prosecution as well as the defense.

We agree with the trial court that the appellant's defense of alibi deserves scant consideration.

According to the appellant, his parents left Barrio Tinago in Viga, Catanduanes in 1936 or 1937 for Libmanan Camarines Sur, and he went with them. He claimed that he never returned to Catanduanes until he became an accused and was tried for the case. The appellant's evidence showed that he was called to army duty during the 1940 general mobilization, that he served in Bataan and returned to Libmanan sometime after its fall in 1942. He was in barrio Malbogon in 1943 and 1944. The appellant alleges that he could not have been in Catanduanes in

April 10, 1944 when Atty. Pedro Sorreta was killed because he was in Camarines Sur. He could not leave Malbogon as the Japanese had zoned the place.

The evidence clearly shows that the appellant was in Tinago, Viga, Catanduanes in the period before and after April 10, 1944 walking around with an armed group and threatening people. To use the words of the lower court, Abundio de la Cruz and his group of armed men were flushed with the arrogance of power which was common among roving guerrilla bands during the Japanese time.

The testimonies given by Heracleo Tatad, Isabelo Ugalde, Cenon Sorreta, and Mrs. Carmen Vda. de Sorreta show that Abundio de la Cruz was clearly and positively identified, not only as having been in Tinago, Viga, Catanduanes at the time but also as being associated with the killing.

According to the testimony of Heracleo Tatad, on April 10, 1944 at 2:00 o'clock in the after-noon, he came across the persons of Abundio de la Cruz, Ladislao Tayo and an unidentified person in front of his house. When Dorotea Tamilloso arrived, Tatad observed that she was frantic about something. Tatad, asked Tamilloso what happened and the latter told him that Abundio de la Cruz and his companions were planning to kill Attorney Sorreta. Upon hearing this, Tatad summoned Abundio de la Cruz to advise the latter not to pursue his criminal design against the lawyer. The reply of Abundio de la Cruz was "Don't make noise." (T.S.N., pp. 48-51).

The gist of the testimony of Isabelo Ugalde was to the effect that on April 10, 1944 he drank tuba with Abundio de la Cruz, Ladislao Tayo, Eriberto Cenon and Francisco Tapar. During their conversations, Abundio de la Cruz revealed to Isabelo Ugalde his plan to eliminate Attorney Sorreta. (T.S.N., pp. 10-12)

The testimonies of Cenon Sorreta and Mrs. Carmen Vda. de Sorreta narrate that Abundio de la Cruz, Ladislao Tayo, and Eriberto Cenon were with Francisco Tapar when the latter went to the house of Attorney Sorreta on the afternoon of April 10, 1944 to seek advice regarding the marital problem between Ladislao Tayo and his wife who had a paramour. During the conversation, Attorney Sorreta asked Francisco Tapar for the identity of his companions. Tapar named them as Abundio de la Cruz, Ladislao Tayo, and Eriberto Cenon and identified them as the killers of the paramour of Ladislao Tayo's wife. After hearing the advice of Attorney Sorreta, Tapar asked the lawyer where he was going that after-noon. Attorney Sorreta replied that he will go fishing. True to his word, Attorney Sorreta went fishing that afternoon of April 10, 1944 but he never returned alive. A search was conducted but the lawyer could not be found. On April 13, 1944 at about 8:00 o'clock in the morning, Cenon Sorreta was informed that Attorney Sorreta's dead body was found in the beach of Lusadan. Inspecting the cadaver, Cenon Sorreta saw that it had a black nape, swollen chin, shattered teeth and hematoma on the right forehead and breast. Due to the condition of the body, it was buried speedily. On the third night of the novena held for the repose of the soul of the deceased lawyer, Abundio de la Cruz, Ladislao Tayo and Eriberto Cenon forced their way into the house of the deceased allegedly looking for a gun. The house was ransacked and suitcases turned upside down to find one, while a gun was poked on the breast of Cenon Sorreta. At about 6:00 o'clock the following morning, they came back demanding that Mrs. Carmen Vda. de Sorreta sign a statement that she would not report the matter to the authorities or else they would be killed. The widow was not able to sign because she fainted out of fear. On the same day at about 9:00 o'clock in the morning, Cenon Sorreta was ordered by Abundio de la Cruz, Ladislao Tayo and Eriberto Cenon to come and see them at the house of a certain Teofilo Cipriano. For fear of his life, Cenon Sorreta obeyed and was forced to sign a statement in Bicol to the effect that he will not report the death of his father to the authorities otherwise he will be killed together with his family. Almost everyday afterwards, the family of Cenon Sorreta received messages that they were going to be killed next thereby prompting them to leave Tinago, Viga, Catanduanes. (T.S.N., pp. 111-115; T.S.N., pp. 65-69)

The testimony introduced by the prosecution is not the kind of clear, positive, and con-vincing evidence required

by the serious nature of the capital offense charged.

Heracleo Tatad was told by Dorotea Tampiloso of the plan to kill Atty. Sorreta. Later, Tatad asked Abundio de la Cruz not to pursue the planned killing. The response of Abundio de la Cruz was "Don't make noise." The prosecution failed to show who Tatad was, for him to fearlessly counsel the leader of an armed group who had just killed a paramour of a married woman and who were planning to kill a big man in their barrio.

The testimony of Ugalde shows Abundio de la Cruz confiding to him that the great man Sorreta would be killed that night. After hearing this information, Ugalde went home for a procession.

The testimonies of Ceno Sorreta and his mother are more convincing but the inculpatory portions refer to the acts of Abundio de la Cruz after the killing. The crime was committed on a dark night while both the victim and the culprits were out at sea. Not one of those who testified witnessed the commission of the crime. And yet one of the eyewitnesses, himself a participant could have been put on the witness stand had the necessary efforts been taken.

The only evidence directly showing how Sorreta was killed and which narrates the participation of the appellant in the crime is the December 4, 1950 confession of a co-accused Eriberto Cenon, subscribed and sworn to before the Justice of the Peace of Virac, Catanduanes. The statement has 17 paragraphs but paragraphs 6 to 10 are sufficient for purposes of this decision.' They are:

xxx xxx xxx

"6. That around 10:00 o'clock in the evening of April 9, 1944 we were served by Eufemia Litong of our supper having good chow with chicken soup. After our meal I went down because I was perspiring and Abundio de la Cruz and Francisco Tapar were talking of a certain boat which Abundio de la Cruz requested. After three minutes Francisco Tapar went down and left the house of Eufemia Litong. After ten minutes had passed Francisco Tapar went back and approached Abundio de la Cruz, and Abundio de la Cruz told us that we will be going home to Sicmil, Viga, Catanduanes. I answered him how we could go home when it is very dark and he answered in return that we will go on sailing. Then we proceeded to the seashore where we found the boat ready with two (2) paddles and we boarded the boat.

"7. That while we were in the boat Abundio de la Cruz was the so-called pilot of the boat and I took the other paddle and sat in the middle of the boat, so that Ladislao Tayo was in front. From Tinago we dropped in the house of Cipriano Belda at sitio Bayangan, Viga that was about 11:00 o'clock in the evening of April 9, 1944 and we prepared local cigarette for our smoke. After that we proceeded on our way home. In the course of our sailing when we reached the point of Bayangan, we saw someone sailing, and Abundio de la Cruz went direct to the one sailing. When we reached that man sailing, Abundio de la Cruz told us to stop the boat and we did as he alleged that he will talk with that man. We went ahead of the other boat to block it. Abundio de la Cruz immediately pinned down the right balance of the said boat causing tilting (sic) it. At that instance Atty. Sorreta asked why they are doing that way, and he asked further 'If I have done anything wrong we can talk that over' and Abundio de la Cruz replied 'What more talking and this is our time now.' The boat of Atty. Sorreta was caught by the wave and he was thrown on the sea and Abundio de la Cruz strike Atty. Sorreta with his paddle hitting the latter on the head and at the second time he was hit on the neck and the boat was filled with water. After the two blows given by Abundio de la Cruz to Atty. Sorreta he told us what we are doing more, if we want to be the next, holding his pistol on the right hand and the paddle on the left hand. After that Ladislao Tayo and myself jumped on the sea, then Abundio de la Cruz returned his pistol on his belt and took hold of the paddle again. While we were still on the sea swimming he gave another blow to Atty. Sorreta hitting the latter somewhere on the arm and the breast. Then Ladislao Tayo and myself proceeded swimming to the boat of Atty. Sorreta with the order of Abundio de la Cruz to help kill Atty. Sorreta. When we reached Atty. Sorreta I found out that he was already dead, and I told Abundio de la Cruz that he was already dead. Then Abundio de la Cruz ordered us to board on his boat and proceeded home. In the boat, Abundio de la Cruz

said these words (NAGBAYAD KA MAN GUIRARAY RAN DINAYA MONG DAGA, ASIN MAKI HAPON). (You have at last paid for the land you grabbed, pro-Japanese.) [English translation supplied.] Then Abundio de la Cruz turned the boat bound for Tinago, and I asked him why we will go back to Tinago, and he answered that he has forgotten some-thing which is very important. When we were near the shore I asked him who was that man whom he killed and he answered me that he is Atty. Sorreta. Abundio de la Cruz further states that we will not be included in that inci-dent as he will take all the risk on what had happened. Then we reached the shore of Tinago, having two small fish which I took from the boat of Atty. Sorreta which was floating on the sea.

"8. That at about 1:00 o'clock in the morning of 10 April 1944 we went to the house of Eufemia Litong together with Abundio de la Cruz and Ladislao Tayo and Abundio de la Cruz requested Eufemia Litong to give us light as we will change our clothes we being wet. Then we went up the house and Abundio de la Cruz were conversing in English with Eufemia Litong and I proceeded to the kitchen to change my wet clothes. After I changed my clothes I passed by Eufemia Litong and Abundio de la Cruz conversing each other, Eufemia Litong gave smile to Abundio de la Cruz. Then she served food for us that morning. After that I made local cigarette and lighted it and go to sleep.

"9. In the morning after eating our breakfast at about 7:00 o'clock of April 10, 1944, Francisco Tapar came to the house near the yard of Eufemia Litong and talked with Ladislao Tayo, and at last Tayo requested Tapar to fetch his wife in Mayngaway, Calolbon, Catanduanes. Then Abundio de la Cruz and Eufemia Litong shook hands, and Ladislao Tayo also shook hands with Francisco Tapar, and I shook hands with Francisco Tapar. After that Abundio de la Cruz, Ladislao Tayo and myself proceeded to Sicmil by walking arriving thereat at about 1:00 o'clock in the afternoon, April 10, 1944 and we stopped at the house of Mauricio Tud (father-in-law of Abundio de la Cruz). At the same time we were served of our dinner that house. After the dinner I told Ladislao Tayo to proceed with me to Gigmoto, Baras, Catanduanes. With the information received by Ladislao Tayo that his wife was already in Bayangan, Viga, Catanduanes, he refused to go with me to Gigmoto. Then I proceeded along leaving Abundio de la Cruz and Ladislao Tayo in Sicmil.

"10. That after four or five days had elapsed Abundio de la Cruz and Ladislao Tayo went to Gigmoto, Batas, Catanduanes at about 5:00 o'clock in the afternoon 14 or 15 April 1944. While they were there they held a dance in the house of Cefirino Santillan. In the course of the dance Abundio de la Cruz intervened in a certain trouble of the youngsters on the bailarinas and settled it amicably. At the same time he gave a short talk to the invited guests of the dance stating the following: 'I AM AN AUTHORITY OF THE BARRIO, AND FURTHER STATES THAT EVEN BIGWIGS LIKE ATTORNEY SORRETA CAN BE CONTROLLED BY ME, HOW MUCH MORE FOR YOU PEOPLE OF THIS BARRIO.' Of course the barrio folks gave respect to Abundio de la Cruz having the knowledge that he is really an authority."

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If the above confession were merely corroborative of other facts which tend to establish the guilt of the appellant, then it could be admitted against him. (People v. Puesca, 87 SCRA 130). It could also be allowed as circumstantial evidence to show the probability that the appellant actually participated in the commission of the crime. (People v. Lumahang, 94 Phil. 1048).

The confession of Eriberto Cenon, however, is not simply corroborative but is the principal evidence against Abundio de la Cruz. It was not utilized by the lower court merely as circumstantial evidence.

Consequently, we apply the rule that extra-judicial statements of an accused implicating a co-accused cannot be used against the latter unless repeated in open court. (People v. Izon, 104 Phil 690; People v. Serrano, 105 Phil. 531; and People v. Frage, 109 Phil. 241.) The right to confrontation of witnesses found in Section 19, Article IV, Constitution is violated.

We stated in *People v. Valerio* (112 SCRA 308, 230):

“x x x A written extrajudicial statement of a person who was not presented as a witness to be cross-examined on his sup-posed statement is not admissible in evidence (*People vs. Clores*, 100 SCRA 227, 1980 under the principle of 'res inter alios alteri nocere non debet'. (*People vs. Alegre*, 94 SCRA 109, 1979) As this Court, speaking through Chief Justice Fernando, held in *People vs. Lavarias*, 23 SCRA 1301 (1968).

“The decision appealed from would thus predicate a conviction on affidavits executed by two alleged eyewitnesses who thereafter repudiated the same. Independently of the motives, that must have occasioned such a change of heart, the conviction of appellant cannot be sustained. The constitutional rights guaranteed the accused stands in the way of the affirmance of the appealed decision. It is elementary that in all criminal prosecutions, there is a presumption of innocence in his favor and he has the right to the confrontation of witnesses.”

As far as the appellant is concerned, the confession which helped send Eriberto Cenon to jail for life is hearsay. (*People v. Peruelo*, 105 SCRA 226; *People v. Obedoza*, 105 SCRA 694.)

If the prosecution exerted enough efforts it could probably have brought Eriberto Cenon to the trial to be examined. Upon the information that Cenon was serving sentence in the Davao Penal Colony, a continuance of the hearing was granted to allow him to be fetched. It was later ascertained that during the trial of the accused-appellant, Eriberto Cenon was already released on parole. Still this would not have prevented his whereabouts from being ascertained through the parole officer. As it is, the Court in a 1970 trial chose to rely on a confession taken twenty (20) years earlier in 1950 without giving the accused an opportunity to question the author about its contents. We, therefore, find the extrajudicial statement inadmissible. With this finding of inadmissibility, the other evidence linking the accused-appellant to the killing becomes inadequate to establish his guilt.

WHEREFORE, the judgment of the lower court finding Abundio de la Cruz guilty of murder and sentencing him to suffer the supreme penalty of DEATH is hereby REVERSED and SET ASIDE. The accused-appellant is ACQUITTED for insufficiency of the evidence to establish his guilt beyond reasonable doubt. He is ordered immediately released from detention, unless otherwise held for some other lawful cause.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Vasquez, and Relova, JJ., concur.

Makasiar and Aquino, JJ., no part.

Abad Santos and De Castro, JJ., on leave.

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