

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AURELIO CRISTOBAL, JR. Y SARMIENTO, VICENTE DUNCIL Y MACALINO, AND FLORENTINO VALERIO, JR. Y LAZARO, DEFENDANTS-APPELLANTS.*G.R. No. L-32562. June 29, 1979*

Ponente: MELENCIO-HERRERA, J.

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This is an automatic review of the Decision of the Circuit Criminal Court (Manila) in CCC-VI-628 imposing the death penalty on the accused Aurelio Cristobal, Jr., Vicente Duncil and Florentino Valerio, Jr., who were found guilty of the crime of Robbery with Homicide with the aggravating circumstances of nighttime, abuse of superior strength and craft, without any mitigating circumstances to offset the same.

It has been established that on December 23, 1969, at about 1:00 o'clock in the morning, a hold-up occurred inside passenger jeepney driven by Melquiades San Jose. The jeepney was on its way from Malabon to Sta. Cruz, via Rizal Avenue. On the occasion of the robbery, Dominador Villanueva, a special police officer of the Bureau of Customs, was stabbed and killed. The other victim, Mario Fernandez, survived with a "punctured" wound on the chest.

One of the jeepney passengers, Mario Fernandez, narrated the incident in this manner: He boarded the passenger jeepney, which had one passenger, Dominador Villanueva, at Pulong Duhat, Malabon, Rizal. Four passengers, namely, the accused Aurelio Cristobal, Jr., Vicente Duncil, and Florentino Valerio, Jr., together with Canuto Pagaduan, boarded the jeepney near the Venus Hotel on Rizal Avenue Extension. Then another passenger boarded the jeepney. The position of the occupants inside the jeepney was as follows: an unidentified passenger and Valerio sat in the front seat beside the driver with Valerio sitting on the extreme right; on the left side of the jeepney, behind the driver, were Pagaduan and the witness, Fernandez, and opposite them on the right side of the jeepney, and behind Valerio, were Villanueva, Cristobal and Duncil, Villanueva being seated directly behind Valerio (Exhs. "1" and "M"). As the jeepney passed the traffic light at the inter-section of Aurora Blvd. and Rizal Avenue Extension, witness Fernandez was attracted by a commotion inside the jeepney when the victim, Villanueva, transferred to the opposite seat directly behind the driver, because of an attempt made by Duncil to grab his (Villanueva's) watch. Then, he saw Cristobal pulling a knife from the lower portion of the body of Villanueva and, at the same time, Fernandez's watch was grabbed by Pagaduan. Cristobal likewise stabbed witness Fernandez on the chest after which all the accused, together with Pagaduan, fled. Villanueva then moved in front of Fernandez and fired two shots at the fleeing men. Villanueva asked to be brought to the hospital but he expired before they could reach the Jose R. Reyes Memorial Hospital (JRRMH).

The foregoing testimony was corroborated in its essential details by the driver of the passenger jeepney, Melquiades San Jose. In addition, the driver stated that after the jeepney had passed the Victory Liner Station in Rizal Avenue Ext., Valerio leaned outside and kept looking towards the rear and he noticed the passengers at the back, who boarded together with Valerio, elbowing one another. As the jeepney reached the intersection of Rizal

Avenue and Samal Sts., Valerio told him to stop, and as the jeepney was slowing down, Valerio stood on the running board, hung himself on the side of the jeepney and grabbed Villanueva, the passenger seated behind him, by the waist. Villanueva immediately transferred to the opposite seat directly behind the driver, San Jose. As Villanueva rested his left hand on the iron railing behind the front seat, Valerio reached for Villanueva's left hand, and another hand grabbed Villanueva's wrist watch. The driver sped away and after the jeepney had travelled some six meters, Valerio and his companions jumped out and ran away. He stepped on the brakes upon seeing Villanueva with blood on his chest. Villanueva then drew his gun and fired two shots at the fleeing Valerio and his companions.

It appears that the security guard at the Jose R. Reyes Memorial Hospital reported the incident to the police. Upon being informed of the incident, Patrolmen Cesar Arsaga, Rolando Macabejo and R. Casupanan proceeded to Rizal Avenue Extension. Upon reaching the intersection of Abad Santos and Corregidor Sts., they spotted four persons trying to hide whenever a vehicle would pass. They accosted the suspicious-looking persons. Arsaga was able to take hold of Duncil and Macabejo took hold of Pagaduan, while Casupanan chased the other two but failed to apprehend them. Duncil was wearing a yellowish polo shirt with bloodstains. They frisked both Duncil and Pagaduan and found in the possession of Pagaduan an Omega wrist watch with a broken bracelet. They proceeded to the corner of Aurora Blvd. where the crime reportedly took place, which was three or four blocks away from the place of apprehension. As no one present there could give any information about the incident, they proceeded to the JRRMH to interview Fernandez. Fernandez failed to identify Duncil and Pagaduan but claimed as his the wrist watch taken by the police from Pagaduan. Duncil and Pagaduan were then brought to the police headquarters for investigation. At the investigation, Duncil and Pagaduan identified Cristobal and Valerio as their companions and informed the police of their whereabouts. Cristobal was thus apprehended at about 5:00 o'clock in the morning of December 23, 1969 at No. 2981 Bagbag, Corner Morong, Manuguit Subdivision, Tondo, Manila. Cristobal readily admitted his participation in the crime and a Seiko watch was found in a pocket of his pants. From Cristobal's abode, the police proceeded to Valerio's place at the squatter's area at the back of Greenfield Motel on Abad Santos, Tondo, Manila. Valerio voluntarily went with them. Cristobal and Valerio were then brought to police headquarters for investigation.

At the investigation conducted by Cpl. Brigido de Leos, the four accused gave statements essentially as follows:

1. Vicente Duncil - that at about 1:00 o'clock in the morning of December 23, 1969, he, Junior Canuto (Canuto Pagaduan), Nestor Bangkala (Aurelio Cristobal), and Junior Valerio boarded a passenger jeepney at 3rd Avenue, Grace Park, Caloocan City, on their way home to Manuguit, after a drinking session at International Cabaret. Suddenly, a commotion took place inside the jeepney and he immediately jumped out and ran towards Abad Santos St. where he was apprehended by the police. Before his apprehension, he saw Junior Canuto, Nestor Bangkala, and Junior Valerio running after him. He noticed Nestor Bangkala (Aurelio Cristobal) holding a knife with blood on it, who told him that he (Cristobal) had stabbed someone. He also saw Junior Canuto (Canuto Pagaduan) holding a watch. (Exh. "H")
2. Canuto Pagaduan - that at about 1:00 o'clock in the morning of December 23, 1969, he saw one Nestor (Aurelio Cristobal) at 3rd Avenue, Grace Park, Caloocan. He was asked by Nestor to join him and his two companions, whom he (Pagaduan) did not know, in their plan to stage a hold-up. They boarded a passenger jeepney and at the intersection of Rizal Avenue and Samal Sts., they asked the driver to stop the vehicle and he grabbed an Omega wrist watch of a passenger seated in front of him and he immediately thereafter jumped out and ran away. He met his companions at the corner of Abad Santos and Corregidor Sts. When he saw policemen chasing them, he threw the watch to the ground. He did not know about the stabbing incident inside the jeepney. (Exh. "I")
3. Aurelio Cristobal, Jr. - that on Monday evening, he, Junior Valerio, Junior Canuto and Enteng planned on

robbing jeepney passengers of their wrist watches. They boarded a jeepney and at the intersection of Rizal Avenue and Samal Sts., Valerio told the driver to stop the vehicle. He snatched a Seiko wrist watch from one of the passengers and stabbed him when the latter kicked him on his right thigh. Junior Canuto likewise snatched a wrist watch from another passenger, whom he (Cristobal) also stabbed. The knife used by him in stabbing was a knife used for cutting. He threw the knife at Samal Street. The police re-covered the wrist watch snatched by him from the left pocket of his pants. (Exh. "F")

4. Florentino Valerio, Jr. - that Nestor Bangkala, alias Aurelio Cristobal, suggested to him, Junior Kulot (Canuto Pagaduan) and Vicente Duncil, that they ride a passenger jeepney and stage a hold-up. They boarded a jeepney at 3rd Avenue, Grace Park. He sat in front, Nestor sat at the right rear side, while Junior Kulot (Canuto Pagaduan) and Duncil sat at the left rear side. Nestor had with him a knife. Junior Kulot snatched the wrist watch of a passenger. Another passenger resisted and was stabbed by Nestor (Cristobal). After the stabbing, all of them ran away. The incident occurred at 1:00 o'clock in the morning of December 23, 1969. He identified the Seiko and Omega watches as the ones snatched by them from the passengers. (Exh. "G")

Accordingly, Cristobal, Duncil, Valerio and Pagaduan were charged with the crimes of 1) Robbery, docketed as CCC-VI-627, for having allegedly conspired together in taking away an Omega wrist watch valued at P600.00 by the use of violence upon the person of Mario Fernandez, and 2) Robbery with Homicide, docketed as CCC-VI-628, for having allegedly conspired together in taking away a Seiko wrist watch valued at P180.00 belong to Dominador Villa-nueva and, on the occasion of said robbery, for having stabbed the latter on the chest with a "balisong" knife causing his death.

Before the trial of the two cases started, Pagaduan withdrew his previous plea of not guilty to the crime of Robbery in CCC-VI-627, and substituted it with a plea of guilty. The imposition of the sentence upon Pagaduan in said case was, however, deferred until after joint trial on the merits of the two cases.

Each of the accused testified in his own defense as follows:

1. Canuto Pagaduan, Jr. - that at about 10:00 o'clock in the evening of December 23 (should be 22) 1969, he was alone in front of the old Avenue Dancing School between 3rd and 4th Avenue, Caloocan City, thinking of grabbing a watch from somebody; that at about midnight, he boarded a jeepney; that on 3rd Avenue, the other three accused, whom he did not know, boarded the jeepney; that he grabbed the watch of Mario Fernandez, a passenger in the jeepney, after which he immediately jumped out of the jeepney and ran; that he did not know of any commotion inside the jeepney; that he ran towards Abad Santos Street; that after running a distance of two electric posts, he heard two shots and when he looked back he saw persons, whom he thought were chasing him, so he ran faster; that after running halfway through Abad Santos Street, he let the persons running behind him pass and he crossed the street; that a police mobile car passed and he was arrested by a policeman; that he threw the watch he grabbed from Fernandez to the ground; that another person whom he did not know was likewise arrested by the police; and that he knew nothing about his alleged statement, Exhibit "1", which he signed only when he could no longer endure the bodily harm inflicted on him by the police. He admitted having tattoo marks "Sigue-Sigue Sputnik" on his right hip.[1]

2. Vicente Duncil - that at about 10:00 o'clock in the evening of December 22, 1969, he and his co-accused Florentino Valerio, Jr. went to the International Cabaret where they stayed for two hours; that at about midnight, they boarded a jeepney at the corner of Rizal Avenue Extension and 3rd Avenue; that there were five passengers inside the jeepney; that he sat at the back while Valerio sat in front; that when the jeepney reached Aurora Boulevard, a commotion occurred inside the jeepney and he immediately got out of the jeepney and ran towards Abad Santos Street; that upon reaching the corner of Abad Santos and Corregidor Streets, a mobile patrol car

passed by and he was stopped by two policemen; that he was brought to Precinct No. 1 where he was investigated; that the answers appearing in his statement (Exh. "H") were not given by him but were prepared by the police who forced him to sign the same; that he did not grab the watch of Villanueva as, in fact, nothing was recovered from him by the police; that no blood stains were found on his shirt when he was apprehended; and that he does not know his co-accused Cristobal and Pagaduan. He admitted having tatoo marks "Sigue-Sigue Sputnik" on his right thigh.[2]

3. Florentino Valerio - corroborated the testimony of Duncil stating that when he noticed a commotion inside the jeepney, he likewise got out and ran towards Pampanga Street; that he was apprehended by the police at his residence in the early morning of December 23, 1969 and was brought to Precinct No. 1 where he was maltreated; that he had nothing to do with his alleged statement, Exh. "G", which he was made to sign; that he did not ask the jeepney driver to stop his vehicle before reaching the traffic signal lights at Aurora Boulevard; and that he did not stand on the running board to grab Villanueva by the waist. He admitted having tatoo marks "Sigue-Sigue Sputnik" on his lower back torso.[3]

4. Aurelio Cristobal, Jr. - denied having given a voluntary statement (Exh. "F") to Pat. Brigido de Leos stating that the police investigators were the ones who supplied the names of Valerio, Duncil and Canuto and claimed that no knife was found in his possession upon his apprehension by the police. He admitted having on his right knee tatoo marks "Sigue--Sigue Sputnik".[4]

On May 30, 1970, the Circuit Criminal Court rendered judgment, dispositively stating:

"WHEREFORE, judgment is hereby rendered as follows:

A. IN CCC-VI-627:

"(1) Finding accused Canuto Pagaduan, Jr. y Sueco guilty beyond reasonable doubt as principal of the crime of robbery, and there being proved the mitigating circumstance of plea of guilty, without any aggravating circumstance to offset the same, the court sentences him to an indeterminate penalty ranging from one (1) year and one (1) day of prision correccional as minimum to five (5) years and one (1) day of prision correccional as maximum;

"(2) Finding accused Aurelio Cristobal, Jr. y Sarmiento guilty beyond reasonable doubt as principal of the crime of robbery and there being proved the aggravating circumstances of nighttime and craft without any mitigating circumstance to offset the same, the court sentences him to an indeterminate penalty ranging from four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor as maximum;

"(3) Acquitting Florentino Valerio, Jr. y Lazaro and Vicente Duncil of the crime of robbery for failure of the prosecution to prove their guilt beyond reasonable doubt, with costs de oficio;

"(4) No pronouncement as to the civil liability it appearing that the watch (Ex-hibit 'E') had been recovered which is hereby ordered returned to the victim, Mario Fernandez; and

"(5) Accused Canuto Pagaduan, Jr. and Aurelio Cristobal, Jr. to pay proportionately the costs.

"B. IN CCC-VI-628:

(1) Finding accused Aurelio Cristobal, Jr. y Sarmiento, Vicente Duncil and Florentino Valerio, Jr., guilty beyond reasonable doubt as principals of the crime of robbery with homicide and there being proved the aggravating circumstances of nighttime, abuse of superior strength and craft without any mitigating circumstance to offset the same, the court sentences each one of them to DEATH, to jointly and severally indemnify the heirs of the deceased Dominador Villanueva the sum of P12,000.00 for the death of the

deceased; the sum of P10,000.00 for moral damages and P10,000.00 for exemplary damages;

“(2) Acquitting Canuto Pagaduan, Jr. of the crime of robbery with homicide for failure of the prosecution to prove his guilt beyond reasonable doubt, with costs de oficio;

“(3) No pronouncement as to the civil liability it appearing that the wrist watch (Exhibit 'F-1') had been recovered which is hereby ordered returned to the heirs of the deceased Dominador Villanueva; and

"(4) Accused Aurelio Cristobal, Jr., Vicente Duncil and Florentino Valerio, Jr. to proportion-ately pay the costs.

Atty. Amado de la Merced is hereby awarded an attorney's fees of P500.60 in the two cases as counsel de oficio for accused Canuto Pagaduan, Jr.

"SO ORDERED."[5]

Before us, Cristobal, Duncil and Valerio, in Criminal Case No. CCC-VI-628 have come forth with these

"ASSIGNMENTS OF ERROR:

The lower court erred in –

1. Finding that the Seiko watch (Exh. F-1) was the watch that was snatched from the deceased Domina-dor Villanueva.
2. Finding that the accused-appellant Vicente Duncil robbed the deceased Dominador Villanueva of his (Villanueva's) watch.
2. Finding that the accused appellant Aurelio Cristobal, Jr. stabbed the deceased Dominador Villanueva.
3. Admitting the alleged Con-fessions of the accused- appellants (Exhibits F, G, and H) and giving them undue weight.
4. Finding the accused-appellants guilty of robbery with homi-cide beyond reasonable doubt.
5. Finding that the aggravating circumstances of nighttime and abuse of superior strength attended the commission of the offense.
6. Finding that the accused-appellants had intimidated the witnesses Mario Fernan-dez and Melquiades San Jose."

We shall discuss the assigned errors in seriatim.

1. The accused claim that no evidence was presented by the prosecution to the effect that the Seiko watch (Exh. "F-1"), found in the possession of Cristobal when he was apprehended, belonged to and was snatched from Dominador Villanueva.

The same is without merit. Melquiades San Jose, the jeepney driver, testified that after Villanueva changed seats, Valerio held Villanueva's left hand which was resting on the iron railing behind the front seat, and that another hand snatched Villanueva's wrist watch.[6] Moreover, in his extra-judicial confession (Exh. "F"), Cristobal identified the Seiko watch as the one which he had grabbed from a passenger in the jeepney. While it may be that Cristobal assails the validity of his extra-judicial confession on the ground that the same was not given voluntarily, however, he did not deny the fact that a Seiko watch was recovered from him at the time of his apprehension.

But the accused would further impugn the testi-monies of the eye-witnesses, Melquiades San Jose and Mario

Fernandez, in that San Jose could not have been definitive about the actuations of Valerio as he (San Jose) was driving the jeepney and his eyes must have been fully focused to the front, and considering that the actuation of Valerio in stepping on the run-ning board of the jeep and at the same time grabbing the waist of Villanueva was apparently not noticed by Fernandez.

We attach no significance to the foregoing. Proof that the Seiko watch belonged to Villanueva is shown by the identification made by accused Cristobal and Valerio, in their confession, (Exhs. "F" and "G") of the Seiko watch which was snatched by them from a passenger in the jeepney. This was corroborated by San Jose and Fernandez who testified that the deceased Villanueva had a watch on his left wrist and which was snatched from him. That Fernandez did not notice the actuations of Valerio prior to the actual 'snatching must have been due to the fact that he was not then looking in the direction of Valerio as he noticed the commotion only when Villanueva changed seats.[7] On the other hand, San Jose could have easily observed the actuations of Valerio as the latter was seated in front, so that when Valerio leaned outward and looked at his companions seated at the back and who elbowed one another, he (San Jose) already became suspicious.[8] Having become suspicious of Valerio and his companions, San Jose must have then been silently observing their actuations, which must not have been noticed by Fernandez, who was seated on the extreme left rear side.

2. The accused claim that the trial Court re-sorted to inference unsupported by evidence when it concluded that Duncil was the one who grabbed the watch of Villanueva considering the following:

a) Melquiades San Jose merely testified that he saw a hand snatch Villanueva's wrist watch but did not identify it to be the hand of Duncil; (b) Mario Fernandez only witnessed the attempt made by Duncil to grab the watch of Villanueva but not the actual taking of said watch; (c) as appearing in the sketch showing the seating arrangement of the passengers in the jeepney (Exhs. "M" & "I"), Duncil was seated at the extreme rear on the right side of the jeepney so that for him to have grabbed the watch of Villa-nueva after the latter transferred to the left side of the jeep immediately behind the driver, required that he reach across the full length of the jeepney; (d) the watch was not recovered from Duncil although he was apprehended almost immediately after the in-cident; (e) Cristobal, whose statement (Exh. "F") was given full credence by the trial Court, declared that he was the one who snatched the watch of Villanueva; and (f) Fernandez was not able to identify Duncil when the latter was brought before him for confront-ation at the hospital nor was he able to pinpoint Duncil as the one who grabbed the watch of Villanueva in his statement given to the police (Exh. "E") only a few hours after the incident.

As found by the trial Court, however, there was conspiracy among Cristobal, Duncil and Valerio to rob Villanueva. It is a cardinal principle that where there is conspiracy, the act of one is the act of all. It then makes no difference as to who among the three accused did the actual grabbing of the watch of Villa-nueva. The fact that Duncil was seated farthest from Villanueva could not have prevented the former from grabbing the latter's watch as he (Duncil) could have moved directly in front or by the side of Villanueva. Likewise, the fact that the police was not able to re-cover the watch from Duncil upon his apprehension could have only meant that he had passed the same to Cristobal, from whom the watch was ultimately recovered. Anent the alleged failure of witness Fernandez to identify Duncil in the hospital, this could be attributed to the fact that Fernandez was in pain because of the wound he had received on his chest, although Fernandez did identify Duncil in open Court.[9]

3. The accused assail the findings of the trial Court that Villanueva was stabbed by Cristobal on the basis of the testimony of witness Fernandez which, they claim, was replete with inconsistencies and un-certainties in substantial matters as to be unworthy of credence, to wit: (a) Fernandez testified that he saw Cristobal in the act of pulling out a knife from the lower part of the body of Villanueva, somewhere in the abdomen, when the death certificate shows that Villanueva sustained a stab wound on the chest (Exh. "C"); (b) Fernandez declared in his statement (Exh. "J") that the person who took his watch was also the one who stabbed him, meaning Cristobal,

whereas at the trial, he stated that the one who grabbed his watch was Canuto Pagaduan and his allegation that he made the statement during the investigation because he was confused and he wanted to go home already; (c) Fernandez declared that Cristobal, together with Duncil, was presented to him at the hospital for identification when the truth is that it was Pagaduan, together with Duncil, who was brought by the police to the hospital.

Again, we find no merit in the foregoing contention. The fact that Fernandez was mistaken with regard to the part of the body, where Villanueva was stabbed does not affect his main testimony to the effect that Villanueva was stabbed by Cristobal, considering that the incident was a startling one and must have transpired very fast. Moreover, Cristobal did not deny the imputations made by Fernandez in his regard but merely claimed that his statement (Exh. "F") was not given by him voluntarily and that it was the police who supplied the names of Valerio, Duncil and Canuto appearing therein.[10] Regarding Fernandez' statement as to the identity of the person who grabbed his watch, he explained that he thought that the person (Cristobal) who stabbed him was also the one who grabbed his watch, because his attention was on the knife and that the stabbing and grabbing took place almost at the same time.[11] Besides, considering the conspiracy among the accused, the exact participation of each becomes of minimal importance.

The error of Fernandez in stating that Cristobal, together with Duncil, was brought by the police to the hospital whereas Pat. Arsaga declared that it was Pagaduan, together with Duncil, whom they brought to the hospital for Fernandez to identify them, is not such as to destroy the credibility of Fernandez' testimony in respect of the robbery itself.

4. In support of their argument that their confessions (Exhs. "F", "G" and "H") were not voluntarily given, the accused capitalize on the statement in the police report (Exh. "K") that Duncil and Pagaduan were subjected to "relentless questioning", as, in fact, their statements were taken several hours after their apprehension, and the failure of Pat. Brigido de Leos to properly state the order in which the accused and witness Fernandez were investigated. However, the fact that the investigation of the accused was conducted in a "relentless" manner in no wise implies the employment of coercion or improper methods on them as to make their confessions involuntary. Moreover, while the accused insist that these statements were prepared by the police investigators and that they were forced to sign the same, yet, they did not explain the nature of the mal-treatment suffered by them in the hands of the police investigators other than Valerio's allegation that he was boxed by a corporal who was a big man.[12] Thus, the trial Court correctly observed:

"Valerio, Cristobal and Duncil likewise denied that their respective statements were voluntarily given. As has been said before, however, their testimonies on this score, were given in a timid and hesitant manner which do not generate any belief at all. Furthermore, had it been the intention of the police to implicate all these three accused in this heinous crime of robbery with homicide, then the statement of Duncil (Exhibit 'H') would also contain admission of his participation. But the fact that Duncil did not like to give a statement inculpatory to him but allowed to give a statement negating his liability shows that it is not the desire of the police to get statements from the accused thru force or intimidation. It is also worth-while to note that the statement of Cristobal contained details which could have been known to him alone and for which the police could not be much interested, like for example, the breaking into three pieces of the bracelet of the watch; the throwing of the knife at Samal Street; that the knife is used for cutting; that the watch was taken from his pants and that one of those persons whom he robbed kicked him on his hip which caught him by surprise and that is the reason why he stabbed him. The statement of Valerio likewise contained details that he decided to stay in the front seat; that Nestor was the one who carried a bladed instrument and that one passenger fought back, and, therefore, stabbed by Nestor and they all ran away. Settled is the rule that where the confession is rich in details about which the police authorities could not be much interested and which could have been known to the declarant alone, the conclusion is that no pressure was brought to bear on the appellants and their admissions were voluntary (People vs. Baquino alias Mirong, G.R. No. L-390, Phil. March 5, 1961)."

As to the failure of Pat. de Leos to correctly state the order in which the accused were investigated, the same does not imply involuntariness on the part of the accused, nor is it of crucial importance. Said police officer could not be expected to remember such a minor detail after more than a month from investigation.

5. In finding the accused guilty of the crime of Robbery with Homicide, the trial Court made the following observations:

"x x x From the testimony of Fernandez and San Jose, it is clear that the persons who helped one another in robbing Villanueva were Cristobal, Duncil and Valerio. Apparently, to rob Villanueva, the intention of Valerio was to pin him down first in his seat, hence, he grabbed his waist, but he failed, as Villanueva was able to transfer to the opposite seat. Valerio still grabbed Villanueva's hand but failed again. At this precise moment, Duncil grabbed the wrist of Villanueva and that was the hand seen by San Jose in midair with a bracelet. But since Villanueva was offering resistance, Cristobal stabbed him. The afore-said concerted actions of these said three accused in robbing Villanueva show that there was conspiracy among the three persons to rob him. The fact that these three accused boarded the jeepney together and ran away together after the happening of the incident with one Canuto Pagaduan strengthen again the conclusion that there was Conspiracy among them. Besides, the statements (Exhibits 'F' and 'G') of the two accused, Valerio and Cristobal, show that they conspired to rob and that they actually participated in robbing Villanueva. The fact that Cristobal, Valerio and Duncil are all members of the 'Sigue-Sigue Sputnik' as shown by the tattoo on their bodies gives additional weight to the conclusion that there was conspiracy among them." [13]

Indeed, the infallible earmarks of a conspiracy are present. All the accused were together in the evening of December 22, 1969, having a drinking session at the International Cabaret on 3rd Avenue, Grace Park, Caloocan City. On their way home at about one o'clock in the morning of the following day, they decided to stage a hold-up. They boarded a passenger jeepney at the same time. Valerio, who sat in front, leaned out-side and kept looking at his companions who were seated at the back. After Villanueva transferred seats and rested his left hand on the iron railing behind the front seat, Valerio reached for Villanueva's hand, whereupon Duncil grabbed Villanueva's wrist watch and Cristobal stabbed Villanueva. Immediately thereafter, they all jumped out of the jeepney and ran. They were still together when spotted by policeman, trying to hide whenever a vehicle would pass, at the intersection of Abad Santos and Corregidor Sts., about three or four blocks away from the scene of the crime. Significant is it also to recall that it was information furnished to the police by Pagaduan and Duncil themselves that led to the apprehension of Valerio and Cristobal. In other words, the conduct of the accused before, during and after the commission of the crime clearly shows that they acted in concert. [14] More-over, the fact that all three accused are members of the "Sigue-Sigue Sputnik" gang, as evidenced by tattoo marks on their bodies, strengthens a finding of community of design among them. The trial Court, therefore, correctly rejected the claim of Duncil and Valerio denying participation in the robbing of Villanueva alleging that they immediately got out of the jeepney and ran away when a commotion broke out inside the jeepney.

The accused, Valerio and Duncil, further urge that inasmuch as the stabbing of Villanueva was not part of the conspiracy to rob him, they can not be held to answer for the death of Villanueva, citing *People vs. Pelagio*, [15] wherein it was held that "where the appellant conspired to commit robbery and he acted as lookout during the commission of the robbery, but after the robbery was consummated and as the other conspirators were leaving the scene of the crime (and the lookout himself had fled), they encountered a policeman, whom they killed, the look-out is guilty only of robbery with intimidation and not of robbery with homicide."

It is apparent, however, that the factual situation therein described is essentially dissimilar from the case at bar. Herein, both Valerio and Duncil were still inside the jeepney when Cristobal stabbed Villanueva, who resisted the grabbing of his watch by Duncil as his (Villanueva's) left hand was held by Valerio. Applicable to the accused, therefore, is the rule that where the conspiracy to commit robbery is conclusively shown by the

concurrent and coordinate acts of the accused, and homicide is committed as a consequence or on the occasion of the robbery, all of the accused are guilty of robo con homicidio, whether or not they actually participated in the killing,[16] unless it appears that they endeavored to prevent the homicide.[17] As the homicide was committed by reason or on the occasion of the robbery, and there being conspiracy among the accused, each one of them is liable for the crime committed by anyone of them, regardless of the degree of their respective participation in the execution of the act.[18]

"In order to determine the existence of the crime of robbery with homicide, it is enough that a homicide would result by reason or on the occasion of the robbery and it is immaterial that the death would supervene by mere accident provided that the homicide be produced by reason or on occasion of the robbery inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration." [19]

6. We agree with the accused that the trial Court erred in considering nighttime as an aggravating circumstance inasmuch as the conspiracy to commit robbery was conceived only shortly before its commission.[20] It appears from the extrajudicial statements of the accused that they decided on the commission of the robbery only when they were on their way home at about one o'clock in the morning after a drinking session at International Cabaret at 3rd Avenue, Grace Park, Caloocan. It is thus clear that nighttime was not especially sought for, considering further the fact that the jeepney, where the robbery took place was well-lighted.[21] The fact that the offense was committed at night will not suffice to establish "nocturnidad".[22]

Neither do we find that the accused took advantage of superior strength. For, to do so means "to use purposely excessive force out of proportion to the means of defense available to the person attacked (Albert)".[23] This essential element is absent herein. The stabbing of Villanueva by Cristobal was precipitated only because Villanueva kicked Cristobal and resisted the hold-up. In the stabbing, the accused did not cooperate in such a way as to secure advantage from their combined strength. While in the commission of the robbery, it was not superior strength that the accused took advantage of but dexterity and speed. The mere fact of superiority of numbers is neither sufficient to bring the case within this provision.[24] The accused must take advantage of it.

The aggravating circumstance of craft, however, must be held to be present as the accused pretended to be bona fide passengers of the jeepney in order not to arouse the suspicion of the other passengers.[25]

7. Anent the statement of the trial Court regarding the alleged intimidation by the accused on witnesses Fernandez and San Jose, suffice it to say that said circumstance had nothing to do with their conviction. The guilt of the accused beyond reasonable doubt has been proven independently of such circumstance.

The penalty for the crime of Robbery with Homicide is reclusion perpetua to death under Article 294(1) of the Revised Penal Code. The commission of the offense was attended by the aggravating circumstance of craft which is not offset by any mitigating circumstance. In consonance with Article 63(1) of the same Code, the accused should be sentenced to the capital punishment. However, as the required number of votes for the imposition of the capital penalty has not been obtained in this case, the penalty to be imposed is the next lower in degree or reclusion perpetua.[26]

WHEREFORE, as thus modified, the judgment appealed from, in Criminal Case No. CCC-VI-628, being in accordance with law and the evidence, is hereby affirmed.

Costs against accused-appellants.

SO ORDERED.

Fernando, (Acting C.J.), Teehankee, Barredo, Makasiar, Antonio, Concepcion, Jr., Santos, Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.
Aquino, J., no part.

[1] T.s.n., May 21, 1970, pp. 48-53.

[2] Id., pp. 57-61.

[3] Id., pp. 63-67.

[4] Id., pp. 71-72.

[5] pp. 96-98, Original Record.

[6] T.s.n., May 5, 1970, pp. 7-8

[7] T.s.n., May 5, 1970, p. 21.

[8] Id., pp. 4 and 6.

[9] T.s.n., May 5, 1970, p. 22.

[10] T.s.n., May 21, 1970, p. 71.

[11] T.s.n., May 5, 1970, p. 35.

[12] T.s.n., May 21, 1970, p. 70.

[13] pp. pp. 88-89, Original Record.

[14] People vs. Cabiltes, 25 SCRA 112 (1968).

[15] 20 SCRA 153 (1957).

[16] People vs. Lingad, 98 Phil. 5 (1955).

[17] People vs. Puno, 56 SCRA 659 (1974).

[18] People vs. Reyes, 17 SCRA 309 (1966).

[19] People vs. Mangulabnan, 99 Phil. 992 (1956).

[20] People vs. Pardo, 79 Phil. 568 (1947).

[21] T.s.n., May 5, 1970, p. 28.

[22] People vs. Boyles, 11 SCRA 88 (1964).

[23] I, Luis B. Reyes, Revised Penal Code, 1977 ed., p. 398.

[24] U.S. vs. Devela, et al., 3 Phil. 625; People vs. Ybañez, Jr., 56 SCRA 210 (1974).

[25] People vs. Daos, et al., 60 Phil. 143 (1934).

[26] Sec. 9, Republic Act No. 296, as amended.

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