

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DALMACIO PAHIL Y PITALCO, ET AL., DEFENDANTS, DANTE LUCAS
Y DIOKNO, DEFENDANT-APPELLANT.**

G.R. No. L-30780. November 28, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appellant, Dante Lucas y Diokno, was charged with robbery with homicide in the Court of First Instance of Batangas, together with Dalmacio Pahil y Pitalco who pleaded guilty to the charge, and sentenced accordingly, and after trial on a plea of not guilty, he was sentenced to death, and to indemnify the heirs of the deceased, Raymundo Salazar, in the sum of P6,000.00, and to pay one-half of the costs.

According to the trial court, the following facts were established, the narration thereof as made by the court, having been reproduced in the People's brief[1] with page reference to the transcript of the stenographic notes as follows:

"From the evidence presented by the prosecution, it appears that on July 30, 1967 Raymundo Salazar, 65 years of age, was a resident of Taal, Batangas. He was a businessman with an average monthly income of P3,000 (p. 4, t.s.n., de Castro). This old man usually kept his money in his person so much so that he sleeps with his pants on (p. 4, t.s.n., id.). On July 29, 1967, after coming from the market where he had done his collections, this old man happened to display to Jose Noche, a good friend and neighbor, a thick roll of what appears to be 50-peso bills and which was calculated by Jose Noche to consist of P2,000.00 (pp. 6, 7, t. s.n., id.).

"In the morning of July 30, 1967, Jose Noche observed that the old man was unusually late in getting up because he saw the house and store were still closed (p. 8, t.s.n., id.). Suspecting that the old man must be suffering from some illness, Jose Noche went to the old mans house and knocked at the locked door but there was no answer from within (p. 8, t.s.n., id.). Fearing that something serious might have befallen the old man, Jose Noche called his nephew Romeo Alvarez and instructed him to enter the house through a window at the back (p. 8, t.s.n., id.). Romeo did as told and to his surprise, he saw the old man leaning on a bench apparently dead (p. 75, t.s.n., Limbaga). Romeo hurriedly reported his findings to his uncle who in turn told him to report the matter to the police authorities (p. 75, t.s.n., id.). Moments later, Romeo came back with Patrolman Abelardo Mismanos (p. 5, t.s.n., id.). This policeman also instructed Romeo to enter again the house through the back window and to open the door from within (pp. 32, 33, t.s.n., id.). After this was done, the policeman entered the house where he saw Raymundo Salazar sitting on the floor with his back leaning on a trunk. (p. 33, t.s.n., id.). The old man had stabbed wounds on the back and chest (p. 33, t.s.n., id.). He was dead. Two meters away from the cadaver was a buri hat (Exhibit "D"; p. 34, t.s.n., id.). The deceased was only in his shorts and in his pocket was found the amount of P400.00 (p. 34, t.s.n., id.). Policeman Mismanos also know that the deceased used to sleep with his pants on, so that he suspected that the criminals must have fled away with the pants containing the roll of bills (p. 35, t.s.n., id.). At this stage of investigation, Sgt. Sera arrived and Policeman Mismanos delivered to the former the P400.00 which he found in one of the pockets of the deceased (pp. 34, 35, t.s.n., id.). Sgt. Sera in turn gave said amount to Natividad Noche, a neighbor of the deceased (p. 35, t.s.n., id.).

"Further investigation disclosed that on the night of July 29, Natividad Noche and her husband heard shouts of "Huag, Huag!" (pp. 37, 38, t.s.n., id.). The husband of Natividad immediately flashed his flashlight at the surroundings, but saw nothing (p. 38, t.s.n., id.).

"The investigation also shows that upon questioning the neighbors of the deceased, they stated that they have never seen the deceased wearing a hat similar to Exhibit "D". These neighbors, however, stated that they have seen the accused Dalmacio Pahil, an ice cream vendor, wearing a similar hat (p. 36, t.s.n., id.).

"It also appears that while the investigation was in progress, Mayor Gahol also arrived as well as a photographer of a detective "magazine" and that with the pre-vious permission from the policeman, the photographer was able to get pictures of the victim (See Exhibits "F", "F-1 to F-4").

"It appears that upon representations of a certain Atty. Dictado, the CIS was requested to help in the investigation of the case and among those assigned to help in the investigation was Agent Jose Fortich. In the investigation conducted by the CIS agent, he learned that Jose Punzalan, a brother-in-law of the accused Dante Lucas was seen near the vicinity of the scene of the crime shortly before this incident happened. Hence, Fortich invited Punzalan for investigation purposes (p. 81, t.s.n., id.). At first Punzalan stated that on the date and time in question he was with his relatives in Tanauan and that in fact he slept there (p. 82, t.s.n., id.). Fortich then went to Tanauan to check from the relatives of Punzalan if Jose Punzalan really slept in Tanauan. The result of the investigation was otherwise. As a matter of fact, the relatives of Jose Punzalan scolded the latter for telling a lie. It was then when Jose Punzalan broke down and he was brought to Lipa City and in the presence of several officers and enlisted men of the constabulary he executed his affidavit Exhibit "G" wherein he stated among others that at about 7:30 of July 30, 1967 after hearing the news of the death of Raymundo Salazar, he went to his brother-in-law Dante Lucas to borrow a can which he intended to use in getting water; that upon his arrival at the house of Dante Lucas, he saw the latter cleaning a hunting knife which was smeared with blood; that when he asked Dante why the knife was smeared with blood, Dante replied that he and Dalmacio had stabbed the old man Undo (pp. 85-87, t.s.n., id.). Consequently, with those evidences on hand, the police authorities went after the two reported assailants. In the case of the herein accused Dante Lucas, the chief of police of Taal learned that said accused was in hiding (p. 89, t.s.n., id.). A hunt for him ensued until finally he was found in the house of his brother in Pasay City. The searching party first met the mother of the accused and in their conversation, the police learned that the accused was hiding in the roof (p. 12, t.s.n., id.). However, when the mother called for the accused, the latter came down and confessed to the commission of the crime (pp. 9, 10, t.s.n., id.)."

On August 4, 1967, following his arrest at Pasay City by Mayor Gahol of Taal, Batangas, appellant executed a statement (Exhibit "B")[2] which was sworn to before Judge Juan K. Solis, relevant portions of which are quoted hereunder:

"T -

Nalalaman mo ba kung bakit ka hinuli ng Mayor at Jefe ng Polisiya ng Taal doon sa Pasay City, sa bahay ng iyong kapatid?

"S -

Ako po ay nakasaksak.

"T -

Sino ang iyong sinaksak?

"S -

Si Ka Mundo po.

"T -

Sinong Mundo ang sinasabi mo na iyong sinaksak?

"S -

Si Ka Mundo po na nagtitinda sa palengke dito sa Taal.

"T -

Saan lugal mo sinaksak si Ka Mundo Salazar?

"S -

Doon po sa bahay.

"T -

Saan bahay, ang sinasabi mo?

"S -

Sa likod po ng palengke ng Taal.

"T -

Ang ibig mo bang sabihin ng bahay sa likod ng palengke ay iyon ang bahay ni Ka Raymundo Salazar?

"S -

Oo po.

"T -

Anong oras at fecha mo sinaksak si Ka Raymundo Salazar?

"S -

Noon po ay ang oras ay hindi ko na matandaan subalit noon po ay gabi ng Sabado Fecha 29 ng Julio, 1967.

"T -

Anong dahilan at iyong sinaksak si Ka Raymundo Salazar ng Sabado ng gabi?

"S -

Dahilan po sa noong aming panhikin ang bahay ng gabing iyon ay siya po ay nagsisigao at ako ay niyayapusan.

"T -

Bakin mo sinabi na (kaming), ikao ba ay mayroon kasama ng Sabado ng gabi ng panhikin mo ang nasabing bahay?

"S -

Mayroon po.

"T -

Sino ang kasama mo na pumanhik sa nasabing bahay?

"S -

Si Dalmacio po.

"T -

Sino itong si Dalmacio na sinasabi mo at taga saan siya?

"S -

Siya po ay si Dalmacio Pahil at siya ay visaya.

"T -

Saan nakatira itong si Dalmacio Pahil na sinasabi mo?

"S -

Sa Lemery po.

"T -

Sinabi mo na kayo ay umakyat ng Sabado ng gabi ni Dalmacio Pahil doon sa bahay ni Ka Raymundo Salazar, ano ang inyong layunin ng inyong pagkaakyat?

"S -

Dahil po sa sabi ni Dalmacio na may kuwartang P2,000.00 piso si Ka Raymundo Salazar ay kanilang aakyat in upang kunin o nakawin.

"T -

Maaari mo bang maisalaysay ang buong katotohanan at pangyayari ang tungkol sa inyong pagkaakyat sa nasabing bahay?

"S -

Oo po, noon po ay Sabado ng hapon fecha 29 ng Julio, 1967, ay si Dalmacio Pahil ay pumaron po sa aming

bahay sa calle Abella at kami ay nagusap. Ang napag-usapan po namin ay ang kinikita ko sa aking pagsosorbetes at ng malaman po na ako ay maliit lamang ang aking kinikita ay ako ay inalok na sumama sa kanya upang akyatin ang bahay ni Ka Mundo Salazar at nakawin ang kuarta na sinabi niya sa akin na P2,000.00 piso ang kuarta ng matanda. Ako po naman ay sumangayon at ng gabi nga ng arao ng Sabado fecha 29 ng Julio, 1967, ay aming pinanhik ang bahay na doon kami dumaan sa mi likod at ng kami po ay nasa bahay na ay nakita namin na si Ka Raymundo Salazar ay nakaupo at mayroong inaayos, ang ginawa po ni Dalmacio Pahil ay dinaisan si Ka Mundo Salazar at tinutukan agad ng laseta sa likod at ng kumilos po si Ka Mundo ay agad sinaksak at si Ka Mundo po naman ay nagsalita ng huag, huag at tuloy umistampera ang matanda at sinabi ko po naman ki Dalmacio na "Bakin mo naman sinaksak" at ako po naman ay akmang aalis o tatalon sa bintana subalit ako po ay may pumigil sa akin at ako ay niyapusan ng matanda na si Ka Undo at dahil sa gusto kong makaalis ay ang ginawa ko ay aking sinaksak si Ka Raymundo Salazar at tinamaan ng aking pagkakasaksak at ako nga ay nabitiwan niya. Tumalon na po ako at umuwi na sa amin.

"T -

Sa mga isinalaysay mo ay mayroon kang nabanggit na P2,000.00 piso na sinabi sa iyo ni Dalmacio, sino ang nakakuha ng kuwartang iyon?

"S -

Hindi ko na po nalalaman dahilan po sa ako ay nabigla at tumakbo na.

"T -

Sa iyo bang pagkakatakbo ay kasama mo rin si Dalmacio Pahil?

"S -

Hindi po.

"T -

Saan naroon si Dalmacio ng ikao ay tumalon at tumakas?

"S -

Naiwanan ko po siya sa bahay ni Ka Ondo.

"T -

Kayo ba ay nagpangita pa ni Dalmacio?

"S -

Hindi na po.

"T -

Matapos ba ng pangyayari, hindi mo ba siya pinagtangkaang hanapin upang kayo ay magkaunawaan?

"S -

Kinabukasan po na arao ng Linggo ay aking siyang hinanap sa Lemery upang kami ay magkaintindihan subalit hindi kami nagpangita.

"T -

Doon ba sa ginawa mong pagkakasaksak kay Raymundo Salazar ikaw ba ay mayroong napagta-patan ng iyong ginawa?

"S -

Mayroon po, ang akin pong Ina at ang akin pong bayaw.

"T -

Ano ang pangalan ng iyong Ina at ang iyong bayaw?

"S -

Ang akin pong Ina ay Adela Diokno at ang akin pong bayaw ay Jose Punzalan, alias Pepe.

"T -

Sapul ba ng gabi na inyong panhikin ang bahay ni Raymundo Salazar hanggang sa mga oras na iyong pagsasalaysay dito sa tanggapan ng Jefe ng Policia kayo ba ay nagkita na o nagkausap na ni Dalmacio Pahil?

"S -

Nagkita na po kami ngayon pero hindi pa po kami nagkakausap.

"T -

Mayroon ka pa bang gustong sabihin at ipaliwanag?

"S -

Wala na po." (Exhibit "B", pp. 9-10, Folder of Exhibits)

While in the lower court, appellant interposed the defense of alibi claiming that from July 27 up to August, 1967, he was in his brother's house in Pasay City and never left it, until he was arrested on August 4, 1967 by Mayor Pedro Gahol of Taal, Batangas, appellant has not seen fit in the present appeal to press on his defense of alibi too strongly, merely claiming that the evidence of the prosecution fails to establish his guilt beyond reasonable doubt.

Principally relied upon by the trial court, for appellant's conviction is his extra-judicial confession (Exhibit "B") in which he admitted his participation in the commission of the crime. However, appellant claims that he was forced to sign his confession because of the severe maltreatment he received from Mayor Gahol during the interrogation which even caused him to lose consciousness.

If not given voluntarily, appellant's extra-judicial confession would not be admissible, and his acquittal would be

in order. But from the evidence, We find no error in the trial court admitting the extra-judicial confession, after rejecting appellant's totally uncorroborated testimony on his alleged maltreatment.

The testimony of the Municipal Judge of Taal, Juan Solis, that when appellant was brought before him for the signing under oath of his extra-judicial confession, he took steps to insure the voluntariness of the act, merits full faith and credence. No reason or motive was shown why he should falsify his testimony to send appellant behind bars for a life-long stretch, if not to the execution chamber. Thus, Judge Solis testified that he repeated the question found in the written statement (Exhibit "B") for appellant to give his answers thereto before him. Appellant's answers were, practically the same as already set forth in the extra-judicial confession. After repeating the questions and getting appellant's answers as aforesaid, Judge Solis read to appellant the contents of the written statement of the latter which on being asked, appellant confirmed as true and correct.[3]

Judge Solis also testified as to appellant's physical condition for possible signs of violence or force in the taking of the statement, and he found none. He assessed appellant's mood at the time as lively, and his manner of answering the questions as intelligent. Signed and sworn to with all the safeguards against a forcible extraction of an extra-judicial confession as taken by Judge Solis, appellant's pretension of involuntariness in the taking of his statement cannot but be rejected as totally unconvincing.

Not only the local magistrate testified on the absence of any sign of maltreatment as allegedly dealt appellant, but also a physician, Dra. Dorotea Coronel who examined the appellant upon the request of his mother. She testified there was no external sign of injury on the person of appellant, which surely would have been visible if it was true, as appellant claimed, that he was beaten by Mayor Gahol with a leather-wrapped piece of iron and was kicked on the forehead which sent him to unconsciousness.

From the extra-judicial confession itself, indicia of voluntariness may be found in the abundance of details contained therein, which only appellant could have supplied.[4] With the overwhelming evidence of voluntariness of appellant's extra-judicial confession (Exhibit "B"), his bare and wholly uncorroborated claim to the contrary cannot stand.[5]

Appellant's claim of denial of his constitutional right against arrest without warrant, after his claim of maltreatment in the taking of his confession, or that his confession is otherwise not voluntary, has been discredited, can neither stand, with the testimony of Mayor Gahol that appellant was placed under arrest only after his admission of his culpability of the crime in question. There would then be no violation of any of his constitutional right as an accused which might have boosted his bid for acquittal.

As previously intimated, appellant's defense of alibi is not being pressed strongly in this appeal, except perhaps by his contention, but based on a wrong premise, that only one single person killed the deceased and only one instrument was used in the killing. The premise is wrong because the testimony of Dra. Dorotea Coronel was twisted by appellant when he stated in his brief[6] that Dra. Coronel allegedly admitted that the wounds of the deceased were inflicted by a single person and by means of a single instrument. What actually Dra. Coronel said is that while it was possible that one person alone could have inflicted the wounds, it also was probable that two persons could have done so.[7]

In the face of his extra-judicial confession (Exhibit "B") already established as legally admissible, in which he admitted inflicting the wound on the breast, his attempt at exculpation as above indicated by showing that the crime was a one-man job, and that man is Dalmacio Pahil who, from the start, pleaded guilty, and who, after his incarceration to serve his sentence, executed an affidavit[8] dated January 24, 1970 and subscribed and sworn to on the same date before the Municipal Judge of Panabo, Davao del Norte, averring that he was alone when he committed the crime, but he was only forced to implicate appellant by the policemen of Taal, Batangas. With this

affidavit, appellant moved for a new trial[9] but which motion for new trial by Resolution of March 2, 1970, this Court deferred for action until the case is taken up on the merits.[10]

From what has already been stated above, the Court is constrained to deny the motion in the face of the evidence of the prosecution as already reviewed and evaluated. The existence of a wound at the back inflicted by Dalmacio Pahil, (as he so admitted in his confession)[11] when he pressed the knife which he pointed at the back of a victim into the body of said victim when the latter made a movement, and another wound inflicted on the breast, persuasively shows that another person with his own knife stabbed the victim from the front. In his confession, appellant admitted that after Pahil stabbed the victim, he wanted to escape immediately, but because the victim held on to him, to free himself from the grip of the victim, he was forced to stab the latter in the breast. On the other hand, Pahil stated in his confession that upon entering the house of the victim with appellant, he (Pahil) pointed his knife at the back of the deceased, but when the latter made a movement, he pressed the knife into the victim's body. The interlocking nature of the confession is made very evident, to destroy, together with other facts and circumstances as already adverted to, the claim of appellant that his extra-judicial confession should not have been admitted for having been forcibly extracted from him.

The penalty imposed by the trial court does not include indemnity for the sum of money allegedly stolen from the deceased. This is evidently because the evidence fails to establish that appellant took the money from the deceased. His confession only states that he and Dalmacio Pahil agreed on the proposal of the latter to rob Raymundo Salazar of his money amounting to P2,000.00. He, however, disclaimed having received any share of whatever amount was taken by Dalmacio Pahil, who, having pleaded guilty to the information, is deemed to have admitted all the allegations including the stealing of the aforesaid sum. Conspiracy being patent from his extra-judicial confession, appellant would then be equally liable as Dalmacio Pahil.

In the commission of the crime of robbery with homicide, treachery, which would absorb nighttime and abuse of superior strength, attended the commission of the crime, without any mitigating circumstance to offset it. For lack of the necessary votes, however, the death penalty may not be imposed, only eight members of the Court having voted for said penalty, one of whom even finding that the crime committed by appellant is only murder, not robbery with homicide as charged, while two other members hold that only homicide was committed by appellant. Only seven members find that appellant was also guilty of robbery.

WHEREFORE, the judgment appealed from should be, as it is hereby modified, holding the appellant guilty of murder, not robbery with homicide, and imposing upon him the penalty of reclusion perpetua, and raising the indemnity for the heirs of the deceased from P6,000.00 to P12,000.00,[12] with proportionate costs.

SO ORDERED.

Makasiar, Concepcion, Jr., Fernandez, Guerrero, and Abad Santos, JJ., concur.

Fernando, C.J., and Teehankee, J., in the result.

Barredo, J., dissents in a separate opinion.

Aquino, J., see attached dissent.

Melencio-Herrera, J., see partial dissent.

[1] pp. 2-5, Appellee's brief.

[2] pp. 9-10, Folder of Exhibits.

[3] *People vs. Dayday*, 14 SCRA 935.

[4] *People vs. Casillar, et al.*, L-28132, November 25, 1969, 30 SCRA 352; *People vs. Paras, et al.*, 56 SCRA 248 (1974); *People vs. Ventura*, 1 PHILAJUR 292 (1977); *People vs. Navasca, et al.*, 76 SCRA 71 (1977).

[5] *People vs. Baluran, et al.*, L-28582, March 25, 1970, 32 SCRA 71; *People vs. Ty Sui Wong*, 83 SCRA 125 (1978); *People vs. Bautista*, 65 SCRA 460 (1975); *People vs. Pingol*, 33 SCRA 73 (1970); *People vs. Manuel*, 29 SCRA 337 (1969); *People vs. Alcantara*, 21 SCRA 906 (1967).

[6] Page 8, Appellant's Brief.

[7] Page 8, t.s.n., Limbaga.

[8] Page 88, Rollo.

[9] Pages 79-81, Id.

[10] Page 94, Id.

[11] Pages 11-12, Record.

[12] *People vs. Pantoja*, L-18793, October 11, 1978, 25 SCRA 468; *People vs. Navasca*, 76 SCRA 70, 81 (1977); *People vs. Herila*, 51 SCRA 31, 39 (1973); *People vs. Cajandab*, 52 SCRA 161, 166 (1973); *People vs. Abboc*, 53 SCRA 54, 63 (1973); *People vs. Besana, Jr.*, 64 SCRA 84, 89 (1975).

DISSENTING OPINION

BARREDO, J.:

As the evidence in this case appears to me, this is an unusual instance of two persons conspiring to commit robbery and then ending up with one of them pleading guilty to a charge of robbery with homicide to merit from the trial court a penalty of reclusion perpetua and the other, herein appellant Dante Lucas, being sentenced to death, not having pleaded guilty and undergone trial, but without there being any legally reliable evidence that he had committed any robbery or taken away anything from the deceased whom he, however, admits to have stabbed in his effort to free himself from the grasp of said deceased, thereby inflicting upon him the fatal wound. In fact, in his supposed confession upon which his conviction was based by the trial court, what clearly appears is that, although he had agreed with his co-accused to rob the old man Ka Raymundo Salazar, he did not like the idea of his said companion poking a knife at the back of Ka Mundo thus:

"(n)g kami pa ay nasa bahay na ay nakita namin na si Ka Raymundo Salazar ay nakaupo at mayroong inaayos, ang ginawa po ni Dalmacio Pahil ay dinaisan si Ka Mundo Salazar at tinutukan agad ng la(n)seta sa likod at ng kumilos po si Ka Mundo ay agad sinaksak at si Ka Mundo po naman ay nagsalita ng huag, huag at tuloy umistampera ang matanda at sinabi ko po naman ki Dalmacio na 'Bakin mo naman sinaksak' at ako po naman ay akmang aalis o tatalon sa bintana subalit ako po ay may pumigil sa akin at ako ay niyapusan ng matanda na si Ka Undo at dahil sa gusto kong makaalis ay ang ginawa ko ay aking sinaksak si Ka Ray-mundo Salazar at tinamaan ng aking pagkakasaksak at ako nga ay nabitiwan niya. Tumalon na po ako at umuwi na sa amin.

"T -

Sa mga isinalaysay mo ay mayroon kang nabanggit na P2,000.00 piso na sinabi sa iyo ni Dalmacio, sino ang nakakuha ng kuwartang iyon?

"S -

Hindi ko na po nalalaman dahilan po sa ako ay nabigla at tumakbo na."

No evidence, indeed, exists that any robbery at all took place. The plea of guilty of Pahil could not legally be evidenced against Lucas, much less whatever confession of such robbery the former might have given which, for reasons not disclosed, was not even offered as evidence.

I agree, therefore, with Justice Aquino that there is no proof of robbery in the record insofar as Lucas is concerned. So does Justice Melencio-Herrera opine. I am also in agreement with the conclusion that the stabbing of the old man Ka Undo by Lucas was an act on the spur of the moment, hence not treacherous in law. My impression is that Lucas recoiled at the sight of Pahil stabbing the old man and desisted from his original criminal intent. The most, therefore, he can be guilty of is homicide, with the aggravating circumstances of nocturnity and dwelling, as observed by Justice Aquino.

My vote is to find the appellant Lucas guilty only of homicide with the aggravating circumstances of nocturnity and dwelling and sentence him to an indeterminate penalty of twelve (12) years of prision mayor to twenty (20) years of reclusion temporal.

DISSENTING OPINION

AQUINO, J.:

Dalmacio Pahil, 23, and Dante Lucas, 22, as co--conspirators, were charged by the chief of police in the municipal court with robbery with homicide for having entered through the window of the residence of Raymundo Salazar in Taal, Batangas on the night of July 29, 1967, robbed him of two thousand pesos, and killed him on that occasion with their hunting knives.

On August 4, 1967, after Pahil and Lucas were arrested, they executed before the chief of police confessions in Tagalog which were sworn to before the municipal judge.

In his confession, Pahil stated that he and Lucas killed Salazar and took from him the money kept in a piece of cloth tied to the victim's waist, the amount of which Pahil did not know. Lucas allegedly gave him fifty pesos as his share of the loot.

Pahil admitted in his confession that he and Lucas had committed since May, 1967 five other robberies in certain houses in Taal. His confession was not presented in evidence.

On the other hand, Lucas in his confession recounted that in the evening of July 29, 1967, after he and Pahil had agreed to rob Salazar of the sum of two thousand pesos, supposedly possessed by the latter, they entered his house. Once inside the house, Pahil poked a knife at the back of Salazar and stabbed him. When Lucas allegedly inquired why Pahil stabbed Salazar and when he, Lucas, was about to leave the place, Salazar allegedly embraced him. To free himself from the clutches of Salazar, Lucas stabbed him and when he loosened his grip on Lucas, the latter jumped out of the window.

Lucas declared in his confession that he had no knowledge about the taking of the two thousand pesos because "ako ay nabigla at tumakbo na", leaving Pahil in the house.

At the arraignment of Pahil and Lucas on August 5, 1967 in the municipal court without the assistance of counsel, they pleaded guilty (Exh. C).

The autopsy disclosed that Salazar sustained a wound on the back below the curve of his left shoulder (not fatal) and a wound in the chest, four and a half-inches deep, which injured the heart and caused his death.

The fiscal filed on August 30, 1967 an information for robbery with homicide which is substantially the same as the complaint in the municipal court. The only important difference is that treachery was alleged in the information as having aggravated the homicide.

At the arraignment, Pahil pleaded guilty and was sentenced to reclusion perpetua and ordered to pay to the heirs of the victim the sum of two thousand pesos plus an indemnity of five thousand pesos. He did not appeal from that judgment.

On the other hand, Lucas pleaded not guilty. After trial, he was convicted of the same offense, sentenced to death and ordered to pay an indemnity of six thousand pesos to the heirs of Salazar. No indemnity for the robbery was imposed. Lucas did not appeal. The trial judge ordered the elevation of the record to this Court for review of the death sentence.

The principal evidence against Lucas is his confession. The municipal judge and the chief of police testified on the voluntariness of the confession. The municipal mayor denied on the witness stand the imputation that he maltreated Lucas.

The trial court correctly ruled that the alibi of Lucas could not be accorded any credence. However, it failed to explain why Lucas should be convicted of robbery with homicide.

On the basis of his confession, Lucas is guilty only of homicide. He inflicted the fatal wound on the victim. Treachery cannot be appreciated as an aggravating circumstance. According to the confession of Lucas, his assault on the victim, although unexpected, was not deliberate. It cannot be regarded as treacherous.

The prosecution did not present any eyewitness to the robbery. As already stated, Lucas did not admit the robbery in his confession. It cannot be taken for granted that Lucas took part in the robbery. Pahil's confession, which imputes the robbery to Lucas, was not presented in evidence and is hearsay as to the latter.

But nocturnity and dwelling can be appreciated as aggravating circumstances as to Lucas.

Hence, the death penalty imposed on Lucas should be set aside. He should be convicted of homicide and sentenced to an indeterminate penalty of twelve years of prision mayor as minimum to twenty years of reclusion temporal as maximum and ordered to pay an indemnity of twelve thousand pesos to the heirs of the victim.

DISSENTING IN PART

MELENCIO-HERRERA, J.:

I believe that in so far as the accused Dante Lucas y Diokno is concerned, robbery has not been conclusively established by the evidence. Without separate proof of corpus delicti, his extrajudicial confession will not support his conviction for Robbery (sec. 3, Rule 133, Rules of Court; *People vs. Manobo*, 18 SCRA 30 (1966)). Dalmacio Pahil's plea of guilty to the charge of Robbery with Homicide, although a judicial admission of his own guilt and of the material allegations in the Information, is not admissible in evidence against appellant, Dante Lucas, to prove conspiracy between them. Conspiracy must be shown to exist as clearly and convincingly as the commission of the crime itself (*People vs. Custodio*, 47 SCRA 289 (1972); *People vs. Llamera*, 51 SCRA 48 (1973); *People vs. Geronimo*, 53 SCRA 246 (1973); *People vs. Tumulip*, 60 SCRA 303 (1974); and *People vs. Macatanaw*, 62 SCRA 516 (1975)).

Robbery not having been proved, the slaying of the victim must be considered as Murder qualified by treachery and attended by the aggravating circumstance of dwelling. The penalty imposable, therefore, would still be the

capital punishment.

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