

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NICOMEDES CASTRO, ET AL., ACCUSED AND APPELLANTS.***G.R. No. L-17465. August 31, 1964*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9fb3dd6f6144/>**PER CURIAM:**

This is an appeal from the death sentence imposed by the Court of First Instance of Ilocos Sur, in its Criminal Case No. 3714, upon the accused Nicomedes Castro, Godofredo Basuel, and Rufino Cinco for the double murder on 21 July 1959 of the then incumbent mayor of the municipality of Cabugao, Lucio Zabala, and his wife, Petra Serna.

At or about 7:30 o'clock in the evening of 21 July 1959, the Zabala family was taking supper at the fluorescent-lighted dining room in the ground floor of their house in the aforesaid municipality. Two armed men, one in a transparent raincoat and a narrow-brim buri hat and the other also with a buri hat, entered the house through the front door of the sala, passed by the sala, which was similarly lighted, and proceeded to the adjoining dining room.

"* * * . The mayor was at the head of the table with his back to the north heartily making jokes as the gracious meal was progressing. His wife Petra Serna was by his right Next to Petra Serna was her 23 year old daughter Luzvimin. On the left side of the table were seated the latter's sisters Lupcza and Erlinda. Beside Erlinda was their grandmother Lorenza Sosa (Exh. F). Libert, 10-year old son of Mayor Zabala, had just finished hits supper and was then in the sala playing marbles with other children, namely, Jovencio Cruz, 10-year old, and Ricardo Somera 9-year old. Mayor Zabala had nine (9) children but these named were the once in the house then." (Decision, pp. 7-8)

Upon seeing the intruders, the mayor invited them to eat, but, unexpectedly, he was answered by gunfire. He managed to stand; he received two shots more. His wife made a feeble attempt to grab the gun from one of the assailants, but she, too, was shot down. The rest who partook of the supper screamed and scampered, while the malefactors ran away, passing the same route where they entered.

An autopsy on the body of Mayor Lucio Zabala showed four (4) gunshot wounds, including a fatal one through the heart (Exhibit "A"). Gunpowder burns were found on the points of entry of two of these wounds. The wife Petra Serna expired at the provincial hospital at about eleven o'clock of the same night of two gunshot wounds, both with 1½ centimeters entrance, one lace-rating the apical portion of the left lung and the other perforating the small intestines and lacerating- the right external iliac vessel (Exh. "E").

At the time of the shooting, the local chief of police, Cristeto Serrano, was also at home taking supper. Upon hearing the burst of gunshots, he dressed; and when he was about to leave his house, he was informed by an approaching policeman that the mayor had been shot. They proceeded to the mayor's house and found the mayor dead. Serrano inquired from Petra Serna, who was sprawled west of the dining table, about the number of the assailants, but she could not speak; instead, she made a sign by using her two fingers. He had her sent to a nearby hospital. On his inquiry, Luzvimin Zabala told the chief of police that she could identify the gunman if shown to her; she gave him a description of one of the killers as a fellow of slender build, with fair complexion, "slight

chinito eyes", thin lips, and about 5 ft. 4 inches tall. At that moment, the provincial commander and some enlisted men arrived; policemen and PC soldiers were sent out to scour the town for the assailants, but the night's search yielded none. The following morning, the police and enlisted men started picking up several suspects from a list of police characters. The first group, consisting of four (4), were brought to the municipal building of Cabugao, made to wear raincoats and buri hats, and, through a hole, Luzvimin Zabala peeped at them one by one, Luzvimin rejected all these suspects and several others thereafter shown her, more or less fifteen (15) in all, until on 1 August 1959, in the afternoon, at the puericulture center near the municipal building, she identified one, now appellant Nicomedes Castro.

That same afternoon of 1 August 1959, Nicomedes Castro was investigated by the 131st PC Company in the office of the chief of police of Cabugao. His statement was taken, signed and sworn to by him before Justice of the Peace Santiago P. Corpus of Cabugao. In it he disclaimed knowledge of, and participation in, the brutal slaughter of; the spouses, but alleged that at the time of the killing he was at home in Lapog, all prepared and packed for a long-planned trip to Cagayan with his family; that the journey was intended to start at dawn on the first Maura Transit bus on 22 July 1959 but had to be cancelled upon his child's getting sick (Exhs. "7"- "7-a").

In another investigation held on 3 August 1959, this time at the headquarters of the PC Task Force Zebra at Mindoro, Vigan, Ilocos Sur, Nicomedes Castro signed a four-page confession, reciting and recounting, among others: that he had previously been convicted of, and has served sentence for, illegal possession of firearms; that on 17 July 1959, in the house of Rufino Cinco, he (Nicomedes Castro), Rufino Cinco, Godofredo Basuel, and Marcelino Basuel planned to kill Mayor Zabala on the promise of Santos Sabio to give them, through Simeon Sutler, P5,000 each; that Dianong Formoso furnished a jeep and driver and weapons; that he and Godofredo Basuel were the ones who entered the house of the mayor and killed him and his wife, while Rufino Cinco and Marcelino Basuel were left in front of the house as look-outs; that after killing their victims, they proceeded to the store of Ignacio Quitebis to wait for a bus to Cagayan; that they left a carbine wrapped in a rice sack and a plastic material at the back of the Cabugao Institute building; that he threw; his .45 caliber pistol to the other side of the fence of Quitebis for fear of being searched by patrolman Zabala, who dropped by at the store; that when no bus arrived after waiting an hour they left the place; that on 23 July 1959, Santos Sabio gave him P100, and requested him to talk things over after the burial of the mayor; that he and his wife went to Vigan where he bought a watch for her daughter, making his wife believe that he won the money in a monte game, that he used the diary of his daughter, Adelaida, but tore and threw away the page bearing the date of 21 July 1959 where he had inscribed the following: "pinapapatay ni mayor"; that his previous Incriminatory statement about Dianong Formoso was given out of political spite and not true, but the rest of his statement are true, and the real truth is that it was Santos Sabio who supplied the weapons on 17 July 1959, at 8:00 o'clock in the morning, in the house of Rufino Cinco (Exh. "B", "B-1", "B-2", "B-3").

The foregoing confession was sworn to on the same day before the Justice of the Peace of Cabugao. Below the jurat is handwritten the following:

"Questions by the Fiscal:

Q—Do you solemnly swear and affirm all what you have stated above in this sworn statement?

A—Yes, sir.

Q—Have you been forced, intimidated or threatened or promised anything in consideration of the statements given by you here?

A—No, I was not forced; I was not threatened and nobody promised me anything".

followed by the signature of Nicomedes Castro (Exh. "B-3") ; and at the back of the last page is another jurat, dated the 4th of August 1959, by the provincial fiscal (Exh. "B-4").

A diary was found in Castro's possession, but the page pertaining to 21 July 1959 is missing (Exh. "G").

On the same day and in the same headquarters, Rufino Cinco was also investigated. Thereat, he signed a four-page confession, stating, among others, his previous convictions for public scandal, physical injuries, and illegal possession of firearms; that the plan to kill Mayor Zabala was first confided to him; that Nicomedes Castro and Godofredo Basuel were the ones who entered the house of the Zabalas while he stood guard in front of the house on orders of Santos Sabio; that aside from those named, Simeon Suller, Irineo Santillan, Mariano Ascueta and two others were with them; that, after the job was accomplished, all the firearms were placed in the jeep of Suller; that he, Godofredo Basuel, Marcelino Basuel, and Nicomedes Castro waited at the store of Ignacio Quitebis at about midnight or one o'clock in the morning of 22 July 1959 for a bus to Cagayan, and, while waiting, patrolman Zabala arrived; that Quitebis came out to inquire who they were; that moments later, they went home; that he received no money; that he was with Godofredo Cinco, Godofredo Basuel, and Marcelino Basuel in the cigarette store of Maria Basuel in Pugos, Cabugao, at five o'clock in the afternoon of 21 July 1959 (Exhs. "C", "C-1", "C-2" & "C-3").

Appellant Cinco's oath to the foregoing confession was administered by the provincial fiscal in Vigan on the 4th day of August 1959 (Exh. "C-3").

On 5 August 1959, the provincial fiscal filed an information in the court a quo, charging Nicomedes Castro, Rufino Cinco and others, who were unnamed, for the double murder of the deceased spouses. On the same day, in the PC Task Force headquarters in Mindoro, Vigan, Godofredo Basuel, in an investigation, admitted, in a signed confession, participation, as the companion gun-man of Nicomedes Castro. He stated therein that he had been convicted, in Camiling, Tarlac, of robbery in band and illegal possession of firearms, had agreed to the plan to kill Mayor Zabala on the promise of P1,500, and had stayed in Laoag, Ilocos Norte, until his arrest. (Exh. "D", "D-1", & "D-2"). The jurat was signed by the provincial fiscal on the 6th day of August 1959, below which is a signed handwritten admission in Ilocano by appellant Godofredo Basuel, that the fiscal translated to him his statement.

Whereupon, on 6 August 1959, the fiscal filed an amended information to include Godofredo Basuel, recommending no bail.

The inditees moved, through counsel, on 18 August 1959, for their transfer from the headquarters of the Zebra Task Force at Mindoro, Vigan, to the provincial jail on the grounds of better accessibility to counsel and the relatives of the accused. The court granted the motion. On arraignment on 21 August 1959, the three accused entered a common plea of "Not guilty", and verbally moved for a physical and medical examination, which was granted, likewise. The examination was undertaken on the same day by the assistant provincial health officer.

Found on Nicomedes Castro were five (5) scars,

"evidently the results of abrasion which have healed by primary or secondary intention. Such abrasions could have been caused by friction of sliding or by a blow from rough or "blunt instrument." (Exb. "6")

According to the doctor, the elongated scar at the forehead, right side, and the elongated scars on the medial and lateral surfaces of the first phalanx of the right middle finger could have been inflicted in 2 to 4 weeks from the date of the examination, and that the last-named scar could possibly have been inflicted by inserting a bullet between the fingers and applying pressure thereat; but it is also possible that all the scars of Castro could have been caused by falling from a jeep, intensely, on hard ground and trying to stand in a hurry.

On Rufino Cinco was found a "Scar, linear, slightly curved, 1 1/3 inches long, posterior chest, mid-scapular-line,

right, level of last intercostal space, which the doctor opines could not have been inflicted 16 or 17 days prior to the examination because the color of the scar is pale pink but could have been caused "much later than 2 weeks."

Godofredo Basuel complained from pain on deep inspiration at the left chest, but the doctors found no evidence or sign of external and internal injury at the time of examination; and concluded that;

"Had there been a blow or a series of blows from a round instrument such as clenched fist resulting in contusion would have been evident if they were inflicted twelve to fourteen days prior to the date of examination. * * * " (Exh. "6")

On all the accused, the doctor found no pain on deep pressure in their abdominal region.

The accused assign fourteen (14) errors in the appealed decision, which, however, may be grouped as pertaining to the admissibility of the confessions, the conspiracy, the identification of the accused, and, generally, on the appreciation, of evidence for both the prosecution and the defense, including those on the respective alibi of the accused.

With respect to the accused-appellant Nicomedes Castro, there is direct evidence that he was one of the killers of Mayor Zabala and his wife in the testimony of the mayor's daughter, Luzvimin Zabala. She narrated to the court how she was seated at her mother's right near the door of the dining room when she saw her appellant and another man shoot her parents. She mentioned Castro, and, although she did not know his name, was able to describe his features to the mayor when the latter questioned her shortly after the shooting. The speculation of the defense that surprise and terror at the sudden attack would have prevented her recognition of Castro is set at naught by the description she gave of the gunman's features; her assertion, right at the start, that she could identify him, if she ever saw him again and did, in fact, later point him out to the authorities, at the town puericulture center, where she was confronted by the appellant Castro. Her clear impressions and veracity are vouched for by her candid admission to the police that she did not recognize Castro's companion, and by her refusal to identify as the assassin anyone of the fourteen other police characters who were arrested on suspicion and previously brought to her, until she finally was faced by Castro.

The defense also attempted to nullify Castro's identification through the testimony of the constabulary agent, Cardines, Jr., who affirmed that, prior to the confrontation at the puericulture center, Castro was brought to Luzvimin at her father's house; that the chief of Police talked to her but she shook her head, and later told the agent that he (or they) had better look for another witness. This testimony of Cardines appears unworthy of belief, considering that the Chief of Police denied that Castro was brought to Luzvimin at her father's house; before both met at the puericulture center, and the admission of Cardines that he did not hear her talk with the Chief of Police nor call the Chief's attention to the alleged gestures and words of Luzvimin that gave him (Cardines) the impression that she did not recognize Castro. At any rate, the negative gestures of the girl, given in response to a question that Cardines did hear, admit of other explanation, while her identification of Castro at the puericulture center and in court were straightforward and positive.

Luzvimin's identification was supported by that of her brother, Libert Zabala, a young boy of ten who pointed to appellants' house on the fatal night, passed by the sala, where the boy was playing, on the way to the dining room, and met him again in going out after the shooting. The confession of Castro and Basuel, signed before the justice of the peace and reaffirmed before Provincial Fiscal Juvenal Guerrero, likewise confirm the testimony of the late mayor's children. Indeed, Castro, in his confession (Exhibit "B"), narrated how after committing the crime he aimed his gun at the boy Libert, but was prevented by his companion from adding a third victim to those killed in the dining room.

The defense, to be sure, exerted mighty efforts to discredit the confessions by attempting to prove that they were

extorted by torture and maltreatment of the appellants. After detailed consideration, the trial judge rejected their claim and admitted the confessions; and our own study of the record reveals that no error was committed in so doing. As the trial court remarked in its decision, the confessions are not only replete with details that the police, Constabulary and CIS agents could not have known, and gave names of minor characters that the investigators had no reason to include or be interested in; but the confessions of Castro, Cinco, and Basuel are different in details, such as who shouted the command, *Icammo !*" (give it to him) that preceded the massacre, and the wanderings of the assassins before and after the shooting. Even more there are features that reveal the spontaneity of the declarations. Thus, in his own statement (Exhibit "B") appellant Castro declared that the weapons and jeep in which the assassins rode, on August 21, the night of the crime, were furnished by one "Dianong Formoso"; but later, in the same statement, he manifested that this detail was not true, but that he named Formoso out of revenge (Exhibit "B-2"). Just what interest could the agents have to include these details in the statement is difficult to imagine. Again, the confession of Castro is to the effect that the rifle used in the murder had been left behind the schoolhouse; the agents had found one in the place indicated and sent it to Manila, where the ballistic tests showed that it was not the murder weapon. If the agents, as hinted by the defense, had planted this weapon, they would have taken care not to have it subjected to ballistic tests, knowing, as they must have, that it had no possible connection with the murder. A third instance is the revelation in the confession of Castro that the 45 caliber pistol with which Mayor Zabata and his wife had been shot was thrown away by him in the yard of Ignacio Quitebis the very night of the murder, leading the CIS agents later to bring Castro to that yard in a vain search for the pistol. Why should they make that search if the confession had been manufactured by them? It is against common sense that the agents of the law should chase their own imaginings.

The foregoing are adequate samples to establish beyond doubt that the contents of the confessions were not concocted or dictated by the police or the constabulary officers but are truthful revelations made by these appellants.

On the question of the voluntariness of their confessions, accused-appellants have supplied in their testimony a harrowing picture of barbaric torture allegedly inflicted upon them by the constabulary and CIS personnel because the accused would not sign the statements prepared by the agents of the law; but close scrutiny thereof reveals inconsistencies and improbabilities that render the story unworthy of belief. Thus, appellant Castro testified that he was maltreated to make him admit the authorship of the crime at the town puericulture center, even before he was identified by Luzvimin Zabala, the only witness to connect him to the foul deed. Castro further asserted that he was successively maltreated, given electric shocks and the "water cure", and battered to insensibility in five different rooms (referred to as Rooms number one to five) of the headquarters of Task Force Zebra in Mindoro, Ilocos Sur, until he finally signed his confession. We find it difficult to believe that Task Force should maintain as many as five different rooms for torture purposes, when the tortures described by the accused could certainly have been inflicted on them in one and the same room. Accused Castro and Cinco both further attested that as a result of the maltreatment blood spurted from their noses and mouths and stained their clothes and handkerchiefs, and that this clothing was later delivered by the agents in exchange for clean raiment to Castro's wife, Victoriana Cinco, who preserved and exhibited them at the trial. Why should the police agents surrender blood-stained clothes without first attempting to clean the stains, unless bent on convicting themselves? Castro further asserted that as a result of the torture, he suffered abrasions in different parts of his body, the scars of which were examined by Dr. Jose Florendo, the assistant health officer, at the request of the Provincial Fiscal, on 21 August 1964, about three weeks after this appellant was taken into custody. The doctor, however, was unable to certify whether these scars were due to maltreatment, and admitted the possibility that they could have been self-inflicted or else caused by Castro's falling to the ground when he admittedly jumped from the agent's running jeep in a vain effort to escape. What is certain, however, is that at least the scar on the first phalanx of the right; middle finger of

Castro, can not be attributed to the agents' forcible squeezing of his light hand while cartridges or bullets were inserted between the fingers, as claimed by him; because the scar is found on the side of only one finger. The cartridges or bullets inserted, as described by the accused, must have been hard on one side and soft on the other in order not to cause abrasion on the opposite finger.

These details, coupled with the evident firmness and speed with which the signatures to the confessions were written, the failure of all appellants to complain to the justice of the peace before whom the confessions were sworn to, the written denials of force, intimidation or promise appended thereto by the accused and feigned in the presence of the Provincial Fiscal, and the improbability that the details appealing in the confessions were suggested or concocted by the police (as has been previously discussed), impel this Court to reject the claim that the confessions are involuntary. It may be added that some of the persons mentioned in Castro's confession (Exhibit "B") and in those of Cinco (Exhibit "C") and Basuel (Exhibit "D") were also investigated, and no proof is on record that they were intimidated, hurt, or coerced in any way.

As to appellants Basil el and Cinco, whose descriptions of the torture they had undergone is plainly copied from that of Castro, it is enough to note that neither showed any traces of maltreatment detectable by the examining physician. Cinco, moreover, stated under oath in Exhibit "I" (executed only 2 days after the challenged confession, Exhibit "C") that he was under Constabulary custody at his own request; that he was repentant and willing to turn state's witness.

Of course, we agree with the defense that, while from the purely evidentiary standpoint, a confession may be truthful even if coerced; yet it must not be overlooked that extraction of such a confession infringes the constitutional guarantees of due process and the inhibition against compulsory self-incrimination (Const., Art. III, sec. 1 (1 and 18) that are among the touchstones dividing democratic from totalitarian methods, and that the violation of these Constitutional prescriptions suffices to render the coerced confession objectionable. However, the burden of proof to clearly show involuntariness is on the accused, and in the case at bar it has not been adequately met.

Nevertheless, we think that judges, justices of the peace and fiscals, to whom persons accused are brought for swearing to the truth of their statements, would do well to adopt the practice of having the confessants physically and thoroughly examined by independent and qualified doctors before administering the oath, even if it is not requested by the accused. Or, if no doctor is immediately available, the swearing officers should themselves examine the entire bodies of the confessants for marks of violence, particularly the portions covered by their clothing. Such examination, if regularly required, and the results officially noted, would not only deter attempts to secure confessions through violence, but ultimately shorten and speed up criminal trials (where accused persons almost invariably repudiate their confessions) by precluding future controversies on whether the statements were obtained through torture or not. Common sense advises that the swearing officers should not be content with affirmations by the accused that their statements are voluntary, nor with denials that they were improperly procured. Manifestations of this kind are to be expected if the accused is to return to the custody of the agents who obtained the confessions, since repudiation of the statement would only result in the infliction of further punishment by those charged with improperly extracting the challenged statements.

Likewise, the practice of bringing suspects or witnesses for examination, away from their towns, their acquaintances and friends, is to be deplored, as it usually engenders suspicion that the subjects have been coerced in the course of their investigation, thereby alienating the confidence and goodwill of inhabitants toward the law enforcement agencies.

All the three accused interposed alibis that were discredited by the evidence on record. Castro's contention is that

he stayed in his house the whole night of 21 July, 1959, because although he had planned to go to Cagayan with his family to look for cheap rice, and had so advised his close friends, almost brothers, Nestor and Eugenio Fontilla, he was unable to do so because his second youngest child developed a severe cold and high fever, so that when the Fontillas passed by his house at midnight, the accused and his wife advised them that "if the child would recover, we would see each other in Cagayan". Against this is the testimony of Ignacio Quitebis that he saw both Castro and accused Rufino Cinco (his brother-in-law), in front of his store in the early morning of 22 July 1959, and so did Patrolman Fernando Zabala a short while later. Mercedes Cinco, Castro's wife, informed the court, in turn, that the sick child was nearly two years old, and had to be taken to the local dispensary for treatment. Yet the dispensary records (Exhibit "8"), produced to support the atibi, refer to a one[^]month old child named Romeo Castro.

As to Godofredo Basuel, who was a resident of Camiling, Tarlac, he claimed to have gone to Cabugao, Ilocor Sur, on 20 July 1959 to look for his father, and that he spent the whole night of 21 July, after playing with the children of his cousin Pacita Cinco, at her house, where he stayed until 25th July. That day he left for Laoajr to look for one Arce, who promised him work, and was arrested at a restaurant by CIS agents, from whom at first he tried to conceal his identity by churning that he was named David. At the trial, Basiwl Rave the ridiculous explanation that he used the name of David because he became sick whenever he used Ilu; name Godofredo.

Rufino Cinco, for his part, alleged that he spent the night of 21 July with his witness, Gregorio Magrubang, celebrating the tatter's birthday, the prosecution established that Magrubang's true birthday, as shown by his birth certificate (Exhibit "K"), was 14 November, and not 21st July. In addition, this accused, who had confessed to having acted as lookout for the others, subsequently executed an affidavit (Exhibit "I") manifesting his repentance and his willingness to turn state's evidence, although he seems to have changed his mind later on, and denied guilt. His explanation that he was tricked by the agents into signing Exhibit "I" is plainly incredible, for the agents of the law did not need Exhibit "1", as they already held Cinco's previous confession, Exhibit "C".

These alibis of the appellants, supported only by the testimony of close friends and relatives, who could re-member distinctly only the events of the night of 21 July (the night of the murder), Tail to cast reasonable doubt on their culpability.

The defense likewise dispute the finding of conspiracy that renders each one of the accused responsible for the acts of his companions in the commission of the double murder. While no direct evidence was produced that a previous agreement was had among them, their concerted action in going armed and together to their victim's house, and there, while one stayed as a lookout, the other two entered and shot the mayor and his wife, leaving again together afterwards, admits no other rational explanation but conspiracy (People vs. Upao, L-6771, 28 May 1957, and cases cited).

We, therefore, find no error in the decision appealed from, and the same is hereby affirmed. However, for lack of sufficient votes, the death penalty imposed is reduced to reclusion perpetua, in accordance with law.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Regala and Makalintal, J.J., concur.

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