

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ORPILLA, ALIAS "TOTOY", AND JESUS TORIO, DEFENDANTS-APPELLANTS.

G.R. No. L-30621. December 14, 1981

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

For the killing of Marciana Garcia in the morning of April 24, 1967, inside her stall at the Public Market of Binalonan, Pangasinan, a complaint for murder was filed on June 23, 1967, in the Municipal Court of Binalonan, Pangasinan, against Jose T. Orpilla, alias "Totoy" and Jesus Torio.[1]

After the preliminary investigation, the Municipal Court on August 7, 1967 remanded the case to the Court of First Instance of Lingayen, Pangasinan, for further proceedings.[2] A reinvestigation was conducted by the prosecuting fiscal who found out that there existed a prima facie case for Robbery with Homicide against both accused Orpilla and Jesus Torio.[3] An information dated January 15, 1968 for Robbery with Homicide was filed, as follows:

"The undersigned, after having conducted a preliminary investigation under the provisions of existing laws, hereby accuses JOSE T. ORPILLA and JESUS TORIO of the crime of ROBBERY WITH HOMICIDE committed as follows:

"That on or about the 24th day of April, 1967 in the municipality of Binalonan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, cons-piring together and mutually aiding one another, with violence against and intimidation of person and with intent of gain, did then and there, wilfully, unlaw-fully and feloniously take, rob and carry away with them P1,860.00 cash, two rings and two pairs of err-ings valued at P3,500.00 and Spanish coins valued at P500.00 with a total value of FIVE THOUSAND EIGHT HUNDRED AND SIXTY PESOS (P5860.00) belonging to Marciana Garcia against her will and consent and to her damage and prejudice in the aforesaid amount of P5,860.00; and that on the occasion and by reason of said robbery and in furtherance thereof, the above named accused, pursuant to the conspiracy aforementioned and under the circumstances above narrated, with intent to kill did then and there, wilfully, un-lawfully and feloniously attack, assault and stab the offended party Marciana Garcia, thereby inflict-ing upon her a fatal incised wound in the neck which caused her death.

"Contrary to Art. 294 par. 1 of the Revised Penal Code."[4]

After trial, the lower court promulgated its decision dated April 30, 1969, convicting both the accused, with dispositive portion as follows:

"WHEREFORE, finding both accused Guilty beyond reasonable doubt of the crime of Robbery with Homicide charged in the information and in view of the absence of any mitigating or aggra-vating circumstances, both accused are hereby sentenced to suffer the penalty of Life Imprison-ment (Reclusion Perpetua) and to indemnify the heirs of the deceased Marciana Garcia, the sum of P13,860.00, without subsidiary imprisonment in case of insolvency and to pay the costs.

"SO ORDERED." [5]

Both accused appealed from the decision of the trial court. [6] Accused Jose T. Orpilla was granted temporary liberty under bail bond pending appeal. [7]

After this case was submitted for decision per resolution dated January 28, 1971, by this Court, [8] and after several requests for early decision by accused-appellant Jesus Torio [9] he was allowed to withdraw his appeal per resolution of this Court on July 1, 1978. [10]

The version of the prosecution is as follows:

Marciana Garcia, a 68-year old, married woman was discovered dead in the morning of April 24, 1967 at the kitchen of her stall situated inside the Public Market of Binalonan, Pangasinan. [11]

The Municipal Health Officer, Dr. Angel Rosario, conducted the post mortem examination on the cadaver of the deceased right inside her stall at about 10:45 a.m. that same morning. He stated that she must have been dead for about an hour, more or less. He also found that the cadaver was not yet in rigor mortis. [12]

The deceased was first seen by Matias Grafite, a jueteng collector, when he peeped inside the victim's store to get her bet in the jueteng. He saw her lying flat on her back on the cement floor, dead, with a washing basin (batya) placed over her stomach. Grafite went immediately to inform Patrocinio Garcia, a sister of the victim, who had a store inside the public market. Patrocinio Garcia, upon being informed; rushed to the stall of the victim to-gether with Grafite. Patrocinio then removed the basin over the body. This revealed her sister's stomach because her (patadyong) skirt was pulled down while her chemise was raised up. She also examined the waistline of the deceased for the belt which the latter used to keep her money and jewelry on her person, but the same was missing. [13]

Dr. Angel Rosario, the municipal health officer, arrived. He called for a photographer who took pictures of the victim and the surrounding area. [14]

He reduced into writing the result of his autopsy, [15] with these findings:

"Deep incised wound thru and thru, from left lateral to the right lateral side of neck. Point of entrance 2.8 cm., left lateral side neck, just below adam's apple directed hori-zontally to right of neck point of exit 2 cm. at right side of neck. Posterior upper trachea and left jugular vein was incised.

"Cause of death:

- a. Asphyxia
- b. Loss of blood, severe
- c. Stab wound, neck, thru and thru."

The victim used to live alone in her stall inside the public market of Binalonan where she was selling rice and corn derived from lands owned by her and her husband Jose Solis, located in Binalonan and San Manuel, Pangasinan. Her husband, although residing in Dagupan City with his two daughters with the victim, used to go to Binalonan every morning on week days, except Sundays, and used to return to Dagupan City in the evening. [16]

The week before April 24, 1967, the victim sold 40 cavans of clean rice at P46.50 per cavan, for the total amount of P1,860.00, which she kept in a belt she was wearing around her waist that morning of April 24, 1967, as was her wont, ever since there was a fire in Binalonan about a year prior to her death. [17]

C.I.S. Investigator Jose Fortich interviewed several witnesses who verbally told him they saw appellants Torio

and Orpilla on that morning of April 24, 1967, enter the stall of the victim. With that lead, Fortich investigated appellants.[18]

During the investigation, accused Torio admitted in an affidavit,[19] that about three days prior to the killing of the victim, appellant Jose Orpilla approached Torio and tried to convince the latter that they would rob the late Marciana Garcia because Orpilla was penniless and he needed money to buy the materials needed in his store, but Torio claimed he did not agree to the proposal.[20]

According to Investigator Fortich, Orpilla verbally admitted his participation in the crime while they were riding in a public bus to Camp Crame, but Orpilla refused to put down in writing said admission when they reached Camp Crame.[21]

The alleged confession of Orpilla, as narrated by Investigator Fortich, was that the plan to rob the victim Marciana Garcia was carried out on the morning of April 24, 1967, by appellants who entered at the backdoor when the deceased went out. When they gained entrance, they ransacked the place, but while doing so, the victim arrived. Upon seeing appellants inside, victim tried to run and call for help, but appellant Torio grabbed her, held her hands, neck and mouth, while Orpilla stabbed her throat with a pointed ice-pick. Thereafter, appellants came out thru the back door and entered the adjoining stall on the west owned by Orpilla. Witness Laluan saw them coming out of the stall of the deceased.[22]

On the strength of the evidence for the prosecution and dis-regarding the defense of alibi, the trial Court convicted the accused.

The version of the defense is as follows:

On April 24, 1967, at about 9:30 a.m. when the victim Marciana Garcia was slain, accused Jose Orpilla was on board Pan-tranco Bus No. 809, which left Binalonan at about 6:00 a.m., bound for Manila. At about 12:51 p.m. of that day, Orpilla's time card at the Bureau of Census and Statistics in Manila showed that he punched in, indicating his half day presence in that Office in the afternoon. Therefore, appellant Jose Orpilla could not have been in and around the vicinity of the scene of the crime between 9:30 a.m. and 10:00 a.m. of April 24, 1967, when the victim was slain.[23]

On the aforementioned date when victim Marciana Garcia was slain, accused Jesus Torio was working as a house painter in Calumpang, Marikina, Rizal, and he could not have been in Binalonan, Pangasinan, on that morning of April 24, 1967. Torio was in Binalonan on March 23, 1967 during the Holy Week when he was on vacation and after Binalonan, he went to see his mother at Baloan, La Union, where he stayed two days.[24]

Accused Jose T. Orpilla denied the alleged verbal confession he made to Investigator Fortich inside a public bus that was boarded by them on their way to Camp Crame.[25]

Accused Jesus Torio denied that he voluntarily and intelli-gently signed his alleged confession Exhibit "F", wherein he al-leggedly stated that accused Jose Orpilla invited him to rob Marciana Garcia a few days before she was slain.[26]

The conviction of both accused is primarily anchored on cir-cumstantial evidence as no witness was presented who actually saw the crime committed. At best, the prosecution could present only a witness who allegedly saw both accused in the vicinity of the scene of the crime at about the time it was committed, and the alleged verbal confession of accused Orpilla and the recanted written confession of Torio, Exhibit "F".

Be that as it may, the determination of moral certainty in the guilt of the accused would primarily hinge on the credibility of the witness who allegedly saw and identified both accused in the vicinity of the scene of the crime

and the strength of the alibi put up by both accused.

As to the evidence on the time of victim's death, the pro-secution established beyond doubt that the victim met her death after 9:30 a.m. of April 24, 1967. On this score, prosecution witness Tommy C. Bolasoc testified that the recess in his school was at 9:30 a.m.[27] He stated that on April 24, 1967, at 9:30 a.m. he went to the stall of the victim Marciana Garcia to ask from the latter the winning number of a jueteng bet given by Tommy to her before going to school, and Tommy saw Marciana Garcia still alive.[28]

According to Dr. Rosario, who conducted the post mortem examination on the victim, Marciana Garcia must have been killed an hour or more before the autopsy at 10:45 a.m. of April 24, 1967, because rigor mortis had not yet set in and fresh blood was still flowing from the wound on the neck of the victim. Decedent must have been killed at about 9:45 a.m. on April 24, 1967.

Market Collector and prosecution witness Garcia corroborated Tommy Bolasoc's statement when he stated that around 10:00 a.m. of April 24, 1967, Mr. Grafite shouted that Marciana was dead. [29] Even the prosecuting fiscal opined that victim was killed after 9:30 a.m. [30]

However, prosecution witness Timoteo Laluan claimed that in the morning of April 24, 1967, just after 8:30 a.m., he saw both accused Orpilla and Torio come out of the victim's stall.

Timoteo Laluan is from Pozorrubio, Pangasinan and not Binalonan where the crime was committed. He and his wife have a stall in Baguio City where they sell vegetables. Three days a week, on Mondays, Wednesdays and Saturdays, witness and his wife used to buy "talong", "ocra, and "ampalaya" from the Binalonan Public Market to be sold in Baguio City. Binalonan, Pangasinan by bus, is more than two hours ride to Baguio City.

Witness Laluan stated that while standing on the other side of the street from victim Garcia's stall on April 24, 1967, in the morning he saw accused Torio come out of victim's stall followed by Orpilla, and both of them went to Orpilla's stall. Not long afterwards, witness heard shouts that Marciana Garcia was killed. He peeped through the door and saw the dead body of Marciana Garcia. Then his wife arrived and they immediately boarded a jeep and proceeded to the plaza of Pozorrubio, where his wife waited for a bus going to Baguio City.[31]

Witness Laluan, however, admitted that he did not know the names of both accused, showing that he was not familiar with them.[32] Laluan also stated that he did not tell anybody else about his alleged seeing the two accused come out of the stall of the victim that morning.[33] Laluan likewise stated that they left the market place of Binalonan about 15 minutes to 10:00 a.m. that morning of April 24, 1967.[34]

It is immediately observable that Laluan could not be depended upon as a credible witness who allegedly saw the accused Torio and Orpilla come out of the stall of the victim at about 8:30 a.m. of April 24, 1967, and immediately thereafter heard shouts that Marciana Garcia was dead, because the victim died according to prosecution's own evidence, after 9:30 that morning, whereas witness Laluan was sure it was 8:30 a.m. when he allegedly saw both the accused. Besides, if Laluan's wife had to sell in Baguio City vegetables bought from Binalonan, Pangasinan, (at least 2 hour's ride by bus) the couple would have left Binalonan at around 7:00 a.m. to reach Baguio City at about 9:00 a.m. to sell those vegetables.

We have serious doubts as to the actual presence of the witness Laluan in Binalonan on that morning of April 24, 1967, after 9:00 a.m.; and likewise his having seen the two accused on that occasion, not only because of the above stated reasons, but also because of his admitted failure to report to the authorities immediately what he allegedly saw. In fact, when the complaint for murder was filed with the municipal court on June 23, 1967, Laluan was not even mentioned as a witness, belying his statement that he reported the incident to Investigator Fortich, who filed the information in the municipal court. What increases Our doubt is witness Laluan's admission that he

was not personally acquainted with the accused. Furthermore, witness Lalan did not mention anything about Ben Custodio who according to the prosecution's version was one of the three perpetrators of the crime. Ben Custodio was not included as an accused because he was killed while in P.C. custody.

Witness Lalan also stated that when he saw the two accused on that morning of April 24, 1967, both doors of victim's stall were still closed, but victim's own sister testified that at 8:30 a.m. victim's stall was already open and there were customers already.[35]

The following circumstances cannot be ignored. After the information was filed on January 7, 1968 in this case, the pro-secution presented evidence during the hearings of February 6, 7; March 11 and 12, 1968. Investigator Fortich had been cross-examined and the hearing was scheduled for March 13, 1969. The remaining evidence for the prosecution was on minor matters, when the trial court intimated to the prosecution and Investigator Fortich that the evidence for the prosecution was not sufficient to support conviction as what Fortich testified to was information allegedly gathered from persons who refused to testify. Hence, the prosecution, to cover up the deficiency, presented witness Lalan, whose testimony cannot but be doubted.[36]

The uncorroborated testimony of witness Lalan that he saw both accused leave the stall of the victim at 8:30 a.m. of April 24, 1967, cannot be given weight, as it runs contrary to prosecution's own evidence. It is clear that the victim died after 9:30 a.m. and yet witness Lalan claimed that immediately after he saw both accused that morning, Matias Grafite discovered the victim already dead. That uncorroborated circumstantial evidence is certainly not sufficient for conviction of the accused, specially when the evidence itself is in serious doubt.[37] It is fundamental that to justify a conviction based on circumstantial evidence alone, the inferences to be derived from the established circumstances must be inconsistent with any reasonable theory of innocence.[38]

The allegation of Investigator Fortich that accused Orpilla verbally confessed to him while they were riding in a public vehicle on their way to Camp Crame, an alleged confession never placed in writing nor mentioned during the investigation, cannot be given much credibility.

We cannot ignore some circumstances tending to prove bias against the accused on the part of Investigator Fortich. The latter could not identify the eyewitnesses he mentioned who allegedly saw the crime because of the lame excuse that they refused to execute written statements because they could not be given security. He claimed he had documentary evidence to prove that accused Orpilla was absent from office the whole day of April 24, 1967, when he had none. He even stated that Orpilla "punch in" on April 24, 1967 at 12:51 p.m.[39]

Investigator Fortich also introduced as evidence Exhibit 1 allegedly signed by one Federico Mariano, a fictitious person never presented as witness, who claimed that accused Torio told the former that Torio with Ben Custodio and Orpilla were responsible for the victim's death. This exhibit was never identified.

Investigator Fortich also testified that he knew accused Orpilla did not punch his time record at 12:51 on April 24, 1967, because a woman watcher told him so, but that unidentified woman watcher never appeared as witness and allegedly disappeared according to Fortich.[40]

This investigator also suppressed the May 26, 1967 written statement of accused Torio. There were two statements made by the accused Torio. The first, Exhibit "G", was executed on May 26, 1967. The second, Exhibit "F", was executed on June 26, 1967. Fortich tried to make it appear that the second statement was the one executed on May 26, 1967.[41] The reason for the suppression must be the inconsistent statements appearing on both Exhibits "G" and "F".

As to the evidence for the defense, Exhibit I-Orpilla, proves that accused Orpilla timed in at his office at the Bureau of Census and Statistics in Manila on April 24, 1967 at 12:51 p.m. thus negating the possibility of

Orpilla's presence in Binalonan after 9:30 a.m. of that same day.[42]

The mere testimony of Investigator Fortich of the possibility that the time record might have been tampered with, unsupported by any concrete evidence that it was actually tampered with, cannot overcome the credibility of the documentary evidence which has in its favor the presumption of regularity of performance of official duties.

By and large, and for the reasons previously stated, We find it difficult to conclude that the requirements of evidence beyond reasonable doubt or moral certainty have been sufficiently met in this case.

WHEREFORE, the decision dated April 30, 1969 should be, as it is hereby REVERSED and SET ASIDE and another one entered ACQUITTING the appellant JOSE ORPILLA, alias "Totoy", of the charge against him. The Clerk of Court is hereby directed to forward a copy of this decision to the President of the Philippines, through the Ministry of Justice, for consideration of the propriety of extending to the other accused Jesus Torio, whose appeal had been withdrawn, the benefits of executive clemency. With costs de oficio.

SO ORDERED.

Barredo, Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.

Aquino, J., see dissent.

[1] p. 1, Original Record, Criminal Case No. 22985, CFI, Pangasinan, Branch II.

[2] p. 51, Id.

[3] pp. 55 to 58, Id.

[4] p. 59, Id.

[5] pp. 374-375, Id.

[6] p. 378, Id.

[7] pp. 386-398, Id.

[8] p. 261, rollo.

[9] pp. 268-281, rollo.

[10] p. 285, rollo.

[11] Exh. "D", p. 2, Original Record' pp. 62-63, t.s.n., Feb. 7, 1967.

[12] Exh. "D"; p. 5, t.s.n., March 11, 1968; p. 9, t.s.n., March 11, 1968.

[13] pp. 62-64, t.s.n., Feb. 7, 1968; p. 5, t.s.n., Feb. 6, 1968; pp. 8-9, t.s.n., Feb. 6, 1968.

[14] Exhibits "A", "B", "C", and "D", pp. 46-49, Original Record.

[15] Exh. "D", p. 2, Original Record.

[16] pp. 32-34, t.s.n., Feb. 6, 1968.

[17] pp. 39-40, t.s.n., Feb. 6, 1968; pp. 30-37, t.s.n., Feb. 6, 1968; p. 42, t.s.n., Feb. 6, 1968.

[18] pp. 23, 25, t.s.n., March 11, 1968.

- [19] Exh. "F-5", p. 25, Original Record.
- [20] p. 38, t.s.n., March 11, 1968.
- [21] pp. 30-31, 41, t.s.n., March 11, 1968.
- [22] pp. 31-32, t.s.n., March 11, 1968; p. 113, t.s.n., March 12, 1968; pp. 151-152, t.s.n., March 21, 1968; p. 151, t.s.n., March 11, 1968.
- [23] Exh. 5-Torio, pp. 134-135, Original Record; p. 40, t.s.n., Aug. 23, 1968; pp. 41-43, t.s.n., Aug. 23, 1968; Exh. 7-Orpilla, p. 130, Original Record; p. 341, t.s.n., Sept. 27, 1968; pp. 343-355, t.s.n., Sept. 27, 1968; pp. 17-22, t.s.n., Aug. 23, 1968.
- [24] pp. 229-232, t.s.n., May 2, 1968; pp. 305-308, t.s.n., Aug. 1, 1968; pp. 320-325, t.s.n., Aug. 1, 1968.
- [25] pp. 332-334, t.s.n., Sept. 27, 1968; pp. 340-341, t.s.n., Sept. 27, 1968.
- [26] pp. 268, t.s.n., May 28, 1968; pp. 269-271, t.s.n., May 28, 1968, pp. 280-281, t.s.n., May 28, 1968.
- [27] p. 15, t.s.n., June 21, 1968.
- [28] Exhibit 5-Torio.
- [29] pp. 34, 51, Feb. 27, 1968.
- [30] pp. 21-22, t.s.n., June 21, 1968.
- [31] pp. 148-155, t.s.n., March 21, 1968.
- [32] p. 151, t.s.n., March 21, 1968.
- [33] p. 166, t.s.n., March 21, 1968.
- [34] p. 194, t.s.n., March 21, 1968.
- [35] pp. 164, t.s.n., March 21, 1968; pp. 22-23, t.s.n., Feb. 6, 1968.
- [36] p. 122, t.s.n., March 12, 1968; pp. 122-123, t.s.n., March 12, 1968.
- [37] Section 5, Rule 133, Rules of Court.
- [38] 4 Jones on Evidence, 5th Ed., pp. 1860-61.
- [39] pp. 103-104, t.s.n., March 12, 1968; Exh. 3-Orpilla, p. 85, rollo.
- [40] Exh. 3-Orpilla, pp. 108-109, rollo, Exh. 3-Orpilla, pp. 111-112, rollo.
- [41] pp. 34-35, t.s.n., March 11, 1968.
- [42] Section 24, Rule 132, Rules of Court.
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DISSENTING OPINION

AQUINO, J.:

I dissent. I find no ground for reversing the following findings of the trial court, convicting Jose T. Orpilla of murder:

"It is undisputed that on the morning of April 24, 1967, Marciana Garcia was found dead inside her stall in the public market of Binalonan, Pangasinan. The stall of Marciana Garcia is beside the unfinished stall of the accused, Jose Orpilla in the Public Market of Binalonan. At the time of her death and for sometime prior, thereto, Marciana Garcia was living in her market stall where she sold corn, rice and peanuts. Her husband, Jose Solis goes to that stall every morning from Monday to Saturday, returning to Dagupan City in the afternoon to take care of their two (2) daughters, who are living in Dagupan City.

"The dead body of Marciana Garcia was discovered at approximately 9:00 o'clock on the morning of April 24, 1967, by Matias Grafite, a jueteng collector, who went to the stall Marciana Garcia to get her jueteng bet. The door at the back of the stall was half-opened and when nobody answered his call for 'Nana Marciana', Matias Grafite peeped inside the stall and saw Marciana Garcia already dead, lying on the cement floor, near the kitchen. Matias Grafite hurriedly went to the stall of Patrocinia Garcia, sister of Marciana Garcia, also in the Public Market of Binalonan, and informed her that Marciana Garcia is dead.

"The matter was thereafter reported to the authorities of Binalonan and Dr. Angel G. Rosario, Municipal Health Officer of Binalonan, conducted an autopsy on the dead body of Marciana Garcia. The autopsy report (Exh. D) together with the pictures (Exhs. A, A-1 to A-6) show that Marciana Garcia was stabbed a little below the Adam's apple, which penetrated the neck and caused her death. According to Dr. Rosario, Marciana Garcia must have been killed an hour or more before the autopsy at 10:45, because rigor mortis has not yet set in and fresh blood are still flowing from the wound on the neck of Marciana Garcia.

"The evidence of the prosecution tends to prove that sometime before April 24, 1967, the accused Jose Orpilla was borrowing money from Marciana Garcia to complete the construction of his stall in the public market of Binalonan, beside the stall of Marciana Garcia. Jose Orpilla is a nephew of Marciana Garcia, because his mother is the cousin of Marciana Garcia. The accused Jesus Torio, cousin of his co-accused Jose Orpilla, is also a distant relative of Marciana Garcia. He always referred to Marciana Garcia as 'Tia Marciana'. When Jose Solis was informed by Marciana Garcia that Jose Orpilla was borrowing money from her, Jose Solis advised against it because according to Jose Solis when Jose Orpilla previously borrowed cement and hollow blocks from him, Jose Orpilla allegedly refused to pay and just told Jose Solis to forget it, as it was not much.

"The death of Marciana Garcia was finally referred to the CIS of the First Military Area for investigation, in the latter part of May, 1967, and Jose T. Fortich, CIS Investigator, was assigned to the case. On a certain occasion when Jose Fortich was in a restaurant in the municipality of Binalonan, he was informed that the two (2) accused, Jose Orpilla and Jesus Torio, had something to do with the death of Marciana Garcia. Upon receipt of this information, Jose T. Fortich went to the office of the Bureau of Census and Statistics in Manila, where the accused Jose Orpilla was employed, and there Fortich learned that Jose Orpilla was absent from office on the morning of April 24, 1967.

"Together with Jose Orpilla, Jose T. Fortich went to the residence of Jesus Torio in Lincoln Street, San Francisco del Monte. They did not find Jesus Torio who was at that time working as a painter in Pasay City. With a boy as their companion, Jose Orpilla and Jose T. Fortich went to Pasay City and found Jesus Torio in the construction work of Fernando Marquez and Associates. Both Jose Orpilla and Jesus Torio were then brought to Camp Crame by Agent Jose T. Fortich for investigation. According to Jose T. Fortich, while they were riding on a bus on the way to Camp Crame, the accused Jose Orpilla admitted to him that the killing of Marciana Garcia was accidental.

"Their real purpose was only to rob and not to kill Marciana Garcia. Jose Orpilla also allegedly admitted that he and Jesus Torio have previously tried to enter the stall of Marciana Garcia at night but they failed to enter

the stall because the door was tightly locked. So on the morning of April 24, 1967, when the door was opened because Marciana Garcia went out to buy food, Jose Orpilla, Jesus Torio and Ben Custodio, entered the stall and ransacked the place.

"When Marciana Garcia arrived and saw What they were doing, she was about to run when Jesus Torio grabbed her and held her on the mouth and neck while Ben Custodio held both of her feet. In that position, Marciana Garcia was stabbed on the neck, with an ice-pick. Ben Custodio herein referred to, was also arrested but he was mysteriously killed while he was detained at the PC Headquarters in Lingayen.

"While in Camp Crame, Jesus Torio and Jose Orpilla executed their respective affidavits. Jose Orpilla executed his affidavit (Exhs. G, G-1 to G-2) dated May 26, 1967 and a second affidavit (Exhs. H, H-1 to H-4) on June 21, 1967, while Jesus Torio executed an affidavit dated June 26, 1967 (Exhs. F, F-1 to F-4). In their affidavits, both accused denied any participation in the killing of Marciana Garcia on April 24, 1967.

"However, in some portions of his statement which is marked Exhibit F-5, Jesus Torio declared that his cousin and co-accused Jose Orpilla, had planned to rob Marciana Garcia and even induced him (Jesus Torio) to participate in robbing Marciana Garcia. Jesus Torio, however, refused. In his answer to Question No. 31 (Exh. F-5) of his statement, Jesus Torio stated as follows:

X X X X X X X X

'Ito ang buong katutuhanan, 'antis na mamatay ang aming Tiya Marciana, mga tatlong araw, nagpunta sa akin si Totoy Orpilla at kinukumbensi niya akong looban at nakawan lamang namin si Tiya Marciana. Tumanggi naman ako kaya hindi ako nakasama sa kanya. Ang Sabi ni Totoy sa akin kong ayaw kong sumama sa kanya, kukuha ng kapalit ko. Ang dahilan na ibig looban ni Totoy si Tiya Marciana, ay wala daw ang cuartang gamitin ni Totoy sa pamili ng paninda niya sa kanyang puesto, at kasangkapan gamitin nila sa puesto, at pagayos sa bahay niya.' 'Matapos ng mga ilang araw, patay na ang Tiya Marciana, kaya nga nagpunta sa amin at siya ang nagsabing patay na ang akong tiyahin na si Marciana Garcia.'

X X X X X X X X

"The presence of Jesus Torio on the morning of April 24, 1967, at the scene of the incident, is testified by Arsenio Garcia, market collector of the Public Market of Binalonan. He declared that on the morning of April 24, 1967, when he went to the stall of Marciana Garcia to collect her rent for that month, he saw Jesus Torio standing behind the stall of Marciana Garcia. When Marciana Garcia did not answer his call, Arsenio Garcia left and proceeded to make his collections in other parts of the mar-ket. When Arsenio Garcia again peeped by the stall of Marciana Garcia, the back door of the stall of Marciana Garcia at that time was slightly opened. He tried to push the half-opened door but the door was strongly being pushed back to him by someone who was inside in the stall. Then he left and resumed his collec-tions. After a while, he heard the shouts of Matias Grafite (jueteng collector) that Marciana Garcia was killed. Arsenio Garcia then informed Ruperto Garcia, brother of Marciana Garcia about the death of the latter.

"The presence of Jesus Torio in Binalonan on April 22 and 23, 1967, is likewise testified to by Juanito Ronquillo, who owns a restaurant a few meters from the stall of Marciana Garcia. According to this witness, on the morning of April 22 and 23, 1967, he saw Jesus Torio passed by the stall of Mar-ciana Garcia.

"Timoteo Lalan, witness for the prosecution, testified that on the morning of April 24, 1967, he and his wife were behind the stall of Marciana Garcia, to buy vegetables which his wife will bring to and sell in Baguio City; Three (3) days a week, i.e., on Monday, Wednesday and Saturday, he and his wife used to buy talong, oca and ampalaya, from the Binalonan Public Market to be sold in Baguio City. The sketch (Exh. 3) shows the place of the stall of Marciana Garcia and the place marked 'X' in the sketch, just across the road from the stall of Marciana Garcia, is the place where Timoteo Lalan was seated when he saw the two (2) accused come out from the back door of the stall of Marciana Garcia.

The first to come out was Jesus Torio, followed by Jose Orpilla. Then they entered the adjacent stall of Jose Orpilla and Jesus Torio closed the door. Timoteo Laluan has known Jesus Torio, having seen him on several occasions in the public market and in the plaza of Binalonan. He also knows Jose Orpilla having seen him in the stall adjacent to the stall of Marciana Garcia, which Jose Orpilla was constructing.

"Also, according to Timoteo Laluan, not long after he saw the two (2) accused come out from the stall of Marciana Garcia, he heard shouts that Marciana is Garcia was killed. He peeped thru the door and saw the dead body of Marciana Garcia. When his wife arrived, Timoteo Laluan and his wife immediately boarded a jeep and proceeded to the plaza of Pozorrubio, where his wife waited for a bus going to Baguio City.

"As stated above, Marciana Garcia sold rice, corn and peanut in her stall. Prior to April 24, 1967, Marciana Garcia has already sold 40 cavans of rice out of the palay harvested from their lands, at the rate of P46.00 per cavan, amounting to P1,860.00. The proceeds from the sale of their rice and other moneys of Marciana Garcia were kept inside a leather belt tied around the waist of Marciana Garcia. When she was found dead on the morning of April 24, 1967, that belt was missing. The chemise of Marciana Garcia was raised and her 'patadiong' was pulled down. All these appear in the photographs (Exhs. A, A-1, A-2 and A-3).

"The defense of the accused is an alibi. According to the accused Jesus Torio, he was working as a painter for Fernando Marquez and Associates, on April 24, 1967 and for sometime before that date. Particularly on April 24, 1967, Jesus Torio declared that he and his companions, Alejandro Vicente and Ciriaco Bestida, were painting the house of a certain Nadora in Bo. Calumpang, municipality of Marikina, which was completed in May.

"Jesus Torio also declared that he did not go to Binalonan in April, 1967, although he passed by Binalonan in March 1967 during the Holy Week, when he went to visit his mother in Bolaon, La Union. On his way back to Manila after he visited his mother, Jesus Torio passed by Binalonan and a sister of Jose Orpilla gave Jesus Torio five (5) gantas of rice. Jesus Torio denied the truth of the contents of his statements (Exhs. F, F-1 to F-4) and claim that its contents were not read to him and that he was merely asked by Jose T. Fortich to sign it so they can go to Binalonan.

"The accused Jose Orpilla admitted that in the morning of April 24, 1967, he was in Binalonan. He claims, however, that at about 6:00 o'clock in the morning of that day, he boarded a bus and proceeded to Manila, arriving in Manila at 11:00 o'clock that same morning. At 12:15 in the afternoon of that day, he reported for work. His attendance at 12:15 p.m. in office is shown by his time record (Exh. 2).

"Jose Orpilla, however, admitted that before he boarded a bus in the morning of April 24, 1967, he was with his children who were going to school and that he even changed his P5.00 to coins to give some of it to his children, who were on their way to go to school. Then, he proceeded to his stall in the public market to measure a cabinet because he intended buy a glass to be placed in that cabinet. After taking the measurements of the cabinet, Jose Orpilla boarded Pantranco Bus No. 809 and went to Manila. On the bus, he saw a boyhood friend, Engineer Tacderas, who was with him in the bus until they reached Manila. The pertinent portions of the testimony of Jose T. Orpilla on this point, is as follows:

x x x x x x x x

'Q. At 6:00 o'clock in the morning of April 24, 1967, you boarded the bus of Pantranco stationed in Binalonan?

-A. When I boarded the bus I did not look at my watch but when I left our house together with my children, I looked at my watch and it was 20 minutes to 6:00 o'clock.

'Q. And you have to pass only by a store to change some coins and give it to your children, before you boarded the Pantranco bus at the station? - A. I also went inside our store to measure a certain cabinet because I was then looking for a scale to measure that piece of cabinet because I was intending to buy glass sheets to cover the cabinet and so after we left our house we walked to the store. I exchanged a P5.00 bill to loose coins for the

'baon' of my children, and when I finished giving them I went to the store and got the measurement of that piece of cabinet and then I left and that is the time I boarded the bus.

'Q. Was the bus already at the Pantranco station in Binalonan when you boarded it? - A. It was arriving, sir.

'Q. Now, my question is, in your testimony, you mentioned that you boarded that bus at 6:00 o'clock in the morning? -A. At about that time, sir.' (pp. 17-18, t.s.n., Session of Sept. 27, 1968.

x x x x x x x x

"The alibi of Jose Orpilla is sought to be substantiated by the testimony of his co-employee in the Bureau of Census and Statistics, Albino V. Ariel, who testified regarding the time records (Exhs. 1 and 2), to show that Jose Orpilla re-ported for work at 12:15 p.m. on April 24, 1967. This witness declared that he was not the one who prepared the original of those time records.

x x x x x x x x

"As to the accused Jesus Torio, the presence of said accused in Binalonan on April 22 and 23, 1967, was duly established by the testimony of Juanito Ronquillo, owner of a restaurant, a few yards away from the stall of Marciana Garcia. According to this witness, he saw Jesus Torio passing by the stall of Marciana Garcia between 5 to o'clock in the morning of April 22 and 23, 1967. This is affirmed by his own statement taken on June 17, 1967 and was even marked Exhibits 2, 2-A for the accused, Jesus Torio. The presence of this accused in Binalonan on the morning of April 24, 1967, is likewise testified by Arsenio M. Garcia, the market collector, who saw the accused Jesus Torio standing in front of the half-opened door, at the back of the stall of Marciana Garcia, on the morning of April 24, 1967, and finally by the testimony of Timoteo Lalan, who saw Jesus Torio together with his co-accused Jose T. Orpilla, when they came out of the stall of Marciana Garcia on the morning of April 24, 1967.

"Shortly thereafter, Marciana Garcia was found dead by Matias Grafite, the 'jueteng' collector. The evidence regarding the presence of Jesus Torio in Binalonan on April 22,23 and 24,1967, completely and absolutely destroy the alibi of said accused, that on those dates he was working in the municipality of Marikina, province of Rizal, as a painter of Marquez Construction. These witnesses mentioned above, have known Jesus Torio before the incident in question and no reason or motive has been shown why they should testify falsely against said accused. Consequently, their testimonies are entitled to full faith and credit. (People v. Valera, G. R. No. L-15662, Aug. 30, 1962; People vs. Iman Sawah, G. R. No. L-15333, June 29, 1962.)

"There is no dispute as to the ability of these witnesses to identify said accused because he is known to them. 'When one meets a person known to him, identification takes place at first sight, so the testimony of the prosecution witnesses identifying the appellants who were known to them, as the authors of the crime should be accepted'. (People v. Avonon, G. R. No. L-16664, March 30, 1962). And finally, the identity of persons involved in exciting incidents (such as the killing of Marciana Garcia) 'must have been literally buried into the memory of the prosecution witnesses to enable them to identify subsequently with confidence'. (U. S. v. Requena, et al., 41 Phil. 506, 512).

"Hence, insofar as the accused Jesus Torio is concerned, the court finds that his defense of alibi cannot overcome the positive identification of said accused by the witnesses for the prosecution, as to his presence at or about the time Marciana Garcia was killed on April 24, 1967, and particularly as one of those two (2) persons who came out from the stall of Marciana Garcia immediately before her dead body was discovered.

"As to the accused Jose T. Orpilla, as shown from his testimony, portion of which is quoted above, he went to his stall in the Public Market of Binalonan early on the morning of April 24, 1967, which is adjacent to the stall of Marciana Garcia, where she was killed. Said accused, however, claims that at about 6:00 o'clock in the morning of that day, he boarded a Pantranco bus for Manila, arriving at Manila at 11:00 o'clock and reported for work in his office at the Bureau of Census and Statistics at about 12:51 p.m. This is sought to be

corroborated by his time record (Exh. 2).

"There is a dispute in the evidence, as to the exact time Marciana Garcia was killed, whether it was between 8 and 9 or between 9 and 10 o'clock in the morning of April 24, 1967. The accused Jose T. Orpilla gave much emphasis on the time Marciana Garcia was killed, in view of his time record (Exh. 2) where it is shown that he reported for work in his office at 12:51 p.m. on April 24, 1967. In short, this accused wanted the court to believe that he left Binalonan at 6 o'clock in the morning of April 24, 1967, so he could not have been present at the time when Marciana Garcia was killed, either between 8 and 9 o'clock, or 9 and 10 o'clock in the morning of that same date. For otherwise, or had he left Binalonan later than 6:00 a.m., he would not have been able to arrive and report to his office at 12:51 in the afternoon of April 24, 1967, as evidenced by his time record (Exh. 2).

"The evidence as to the exact time Marciana Garcia was killed is uncertain. The testimony of witnesses as to the time Marciana Garcia was found dead; the time when the accused Jesus Torio was seen standing behind the stall of Marciana Garcia and, the time that the two (2) accused were seen coming out from the back door of the stall of Marciana Garcia, were based on mere estimates or calculation. Hence, it is not conclusive.

"For nothing is generally so unsatisfactory in the course of judicial investigation as to attempt to fix so fleeting a thing as time. Unless the attention of a witness is called to the exact period of time when the event occurs, or unless he is enabled to estimate from a given point the period at which a subsequent event occurred, very little value is to be attached to the effect of his memory.' (People v. Judson, 11 Daly (N.Y.) 1, 81; Evidence by Francisco, p. 1135).

"The presence of the accused Jose T. Orpilla, at the time of the killing of Marciana Garcia and his participation in the killing of said deceased, is duly established.

"First, by his co-accused Jesus Torio, who declared in his statement (Exh. F; Exh. F-5) that he was invited by his cousin and co-accused Jose T. Orpilla to rob Marciana Garcia because Jose T. Orpilla needed money to finish the construction of his stall. And, when Jesus Torio refused to join him Jose T. Orpilla allegedly said that he would look for someone to substitute Jesus Torio. This statement of Jesus Torio (Exh. F) is corroborated by the fact that when Marciana Garcia was killed on April 24, 1967, she was really robbed, because the leather belt tied around her waist where she kept her money was missing and was never recovered. This statement (Exh. F; Exh. F-1) of Jesus Torio is admissible against the accused Jose T. Orpilla to corroborate the other evidence which points to the guilt of said accused. 'While it is true that extrajudicial confessions are admissible only against the persons who made them, it is, however, the rule that they may be admitted as corroborative evidence of other facts that tend to establish the guilt of the other defendants.' (People v. Simbajon, et al., G. R. Nos. L-18073-75, September 20, 1965). 'Although an extrajudicial confession as a rule is evidence only against the person making it, nonetheless, the same may serve as a corroborative evidence if it is clear from, other facts and circumstances that other persons had participated in the perpetration of the crime charged and proved.' (People v. Sta. Maria, et al., G. R. No. L-19919, Oct. 30, 1965).

"Secondly, the admission made by Jose T. Orpilla to CIS Investigator Jose Fortich, while riding in the bus that he and his co-accused Jesus Torio previously attempted to rob Marciana Garcia but failed because the door of the stall of Marciana Garcia was tightly locked but they were able to enter the stall of Marciana Garcia on the morning of April 24, 1967, after the latter left to buy food when the door was left opened; that he and his co-accused ransacked the stall of Marciana Garcia and when Marciana Garcia unexpectedly arrived and was about to run and call for help, Marciana Garcia was seized by Jesus Torio on the mouth and stab her on the neck, while Ben Custodio held Marciana Garcia by the feet.

"This admission was of course denied by the accused Jose T. Orpilla on the witness stand. This is to be expected, for as a rule, 'very seldom does an accused admit the commission of a crime fully and completely.' (People v. Abella, et al., G. R. No. L-4219; People v. Abris, G. R. No. L-4218, May 19, 1952). There is nothing, however, for the court to doubt the truth of the testimony of Jose Fortich.

"Said witness is an officer of the law, a peace officer and the presumption is that he had performed his duties regularly and properly. 'Evidence of improper tactics must be very strong to overcome the presumption that peace officers have acted within the bounds of law in the discharge of their duties.' (People v. Ciscer, G. R. No. 7369, Jan. 13, 1943; People v. Almazan, CA-G. R. No. 02851-R, Feb. 22, 1963). Nothing unsatisfactory can be said about the actuation of Jose Fortich in his investigation of this case.

"When he took the statement of Jesus Torio (Exh. F) and the statement of Jose T. Orpilla (Exh. G) they were neither forced or coerced to make said statements. The accused Jose T. Orpilla was assisted by Attys. Decepeda and Duca, when he gave his statements. And, when he refused to reaffirm in his written statement (Exh. G) the admission he made to Jose Fortich regarding his participation in the killing of Marciana Garcia, Jose Fortich did not do anything about it. The statement of Jesus Torio (Exh. F) has all the earmarks of voluntariness. It contained exculpatory statements and details which he alone could have furnished. It is, therefore, incredible as Jesus Torio would like the court to believe that he simply signed his statement (Exh. F) without knowing its contents.

"Finally, and most important of all is the identification by Timoteo Lalan, who saw both accused coming out from the half-opened door of Marciana Garcia, immediately before her dead body was found on the morning of April 24, 1967. This witness had sufficient opportunity to see and recognize both accused, as he was just across the street from the back of the stall of Marciana Garcia where he was waiting for his wife who went to buy some more vegetables to be taken to Baguio City, as the vegetables supplied by their customers were not enough.

"He knew both accused having seen them in the Public Market of Binalonan, when this witness and his wife used to buy vegetables regularly three (3) days a week, namely, Mondays, Wednesdays and Saturdays. The testimony of this witness has not been impeached and there is no reason and nothing has been shown to doubt the truth of his testimony. He readily agreed to testify when he was cited as a witness, as he previously informed Fortich that he saw the incident.

"There is nothing in the time record (Exh. 2) to establish conclusively the alibi of the accused Jose T. Orpilla. It is to be noted that Exhibit 1 is a photostat of its original, which does not contain entries found in Exhibit 2. Exhibit 1 was, according to Jose Fortich, given to him by the Administrative Officer of the Bureau of Census and Statistics, a week after he started the investigation of this case, some-time in the month of May, 1967. Its feature and appearance is very different from Exhibit 2, which contains additional details which do not appear in Exhibit 1. The incident took place in the month of April 24, 1967 and Exhibit 1 was given to Jose Fortich in May, 1967. Yet, there are additional details appearing on Exhibit 2, another time record of Jose T. Orpilla, which do not appear on Exhibit 1. There is reason to believe that it was 'conveniently prepared' to corroborate the alibi of the accused, Jose T. Orpilla.

"The court believes that had the original of the time record (Exh. 2) been produced and subjected to closer scrutiny, erasures and alterations, could have been detected, as changes must have been made. Instead, a 'certified' copy therefor marked Exhibit 2 was presented by Albino Ariel, the Custodian of said document, to avoid any possible detection of the alterations of the time record of Jose T. Orpilla, for the month of April, 1967.

"At any rate, time records are easy to fabricate and they have never been considered as conclusive proof as to the truth of its contents. It is a common practice that in government offices, time records are slackishly prepared by persons other than the employee himself, specially in Bundy Clock where the handwriting of the employee cannot be detected.

"Jose Fortich even testified that he observed how time records are prepared in the Bureau of Census and Statistics for 2 or 3 days and he noticed that only one or two employees were punching the time records for the other employees. So in discovering such irregularity he reported the incident to Atty. Decepeda, the Administrative Officer, and the employee concerned, was immediately removed. This testimony of Jose

Fortich was not disputed by the accused.

"As documentary evidence, a time record regarding the hours of work, is given less value than parol evidence. (Mosso vs. Uy Kee Beng, CA-G. R. No. 30753-R, Oct. 15, 1963). In Mallorca Taxi versus Roman Guaniao, et al., G. R. No. L-8613, January 30, 1957, the court did not give any conclusive effect on a time record, when it held in part that 'The time record of Gonzalo Guanlao presented in evidence by the petitioner, had not been punched in at 1:00 o'clock on November 15, 1952, thereby showing that his failure to do so which is due to the accident which occurred before 1:00 o'clock cannot have any conclusive effect, specially because there is sufficient oral evidence to the effect that the accident took place between 1:30 and 2:00 o'clock in the afternoon.' In People v. Baysican, G. R. No. 13486, Oct. 31, 1962, a police blotter was exhibited to corroborate the defense of alibi. The court ruled that a police blotter even if it were a public document is doubtful and made conveniently on a later date to corroborate the defense of alibi.

"The same can be said that the time record (Exh. 2) was later conveniently prepared to corroborate the defense of alibi; that it is of recent preparation, considering specially that it was Exhibit 1, not Exhibit 2 which was shown to Jose Fortich, by the Administrative Officer of the Bureau of Census and Statistics, when he was investigating this case in the later part of May 1967.

"The authenticity of the time record (Exh. 2) is further put in doubt by the testimony of Mrs. Remedios Galinato who solemnly affirmed that three (3) days after the death of Marciana Garcia or more particularly on April 26, 1967, the accused Jose T. Orpilla arrived in Binalonan and inquired from her about the death of Marciana Garcia. In Exhibit 2, it was made, to appear that Jose T. Orpilla was out on official business, when in fact he was in Binalonan making inquiries about the death of Marciana Garcia.

"There is no reason for the court to doubt the truth of the testimony of Mrs. Remedios Galinato on this point, which she disclosed not only during the trial but also during the early stage of the investigation of this case by CIS Investigator, Jose Fortich. Finally, Engineer Calderas, who was allegedly with the accused Jose T. Orpilla in the Pantranco bus to Manila was not presented as witness to bolster the alibi of this accused.

"To enable the accused Jose T. Orpilla to leave Binalonan at 6:00 o'clock in the morning of April 24, 1967, as he claims, he must have left his house together with his children who are going to school either at 5:00 o'clock or at the latest at 5:30. Considering that said accused will have to be absent from his office that morning, the court does not find any plausible reason for said accused to wake up his children at 5:00 o'clock in the morning and accompany them to give them some loose coins, for their 'baon'. As the classes of elementary school children start either at 7:30 or 8:00 o'clock in the morning, the most that can be said is that the accused Jose T. Orpilla with his children left their house either at 6:30 or 7:00 o'clock and after giving coins to his children, said accused proceeded to his stall in the market place in Binalonan to measure the cabinet, he intended to cover with glasses. Under the circumstances, he could not have left or boarded the Pantranco bus at 6:00 o'clock in the morning of that date.

"The court does not find any evidence to substantiate the view of the accused that Jose Solis could have something to do with the death of Marciana Garcia, with whom he is living as common-law husband, simply because Jose Solis was also cohabiting with Patrocinio Garcia, sister of the deceased. According to the evidence, Jose Solis had two (2) daughters with Marciana Garcia, who are both living in Dagupan City and it is precisely because Jose Solis was looking after their two (2) daughters that he cannot stay permanently with Marciana Garcia at their stall in the public market of Binalonan. Had he wanted to kill Marciana Garcia because of his relations with Patrocinio Garcia, he could have done so long ago.

"At any event, no evidence of sufficient weight and importance have been introduced by the accused to substantiate the belief that Jose Solis had something to do with the death of Marciana Garcia. As to the money or jewelries which were taken from the deceased Marciana Garcia, the court finds that only P1,860.00 were in her possession at the time of the robbery. This is the amount which represents the proceeds from the sale of rice in her stall. The jewelries mentioned in the information were, according to Jose Solis, purchased for

their children, so they may have been in the possession of their children and no longer in the possession of Marciana Garcia, at the time of the robbery."

The foregoing findings and conclusions of the learned trial judge, Antonio C. Masaquel, are supported by the evidence. Oropilla's guilt was proven beyond reasonable doubt. His deceptive and fraudulent alibi does not deserve any credence.

I vote for the affirmance of the trial court decision.

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