

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISIDRO (BOY) BUSCATO NESTOR DALUD, DEFENDANTS-APPELLANTS.

G.R. No. L-40639. November 23, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by Isidro (Boy) Buscato and Nestor Dalud from the decision, dated August 22, 1974, of the Court of First Instance of Cotabato, convicting the said appellants of the crime of Robbery with Homicide and imposing upon them the penalty of reclusion perpetua. The dispositive portion of said decision reads as follows:

"WHEREFORE, in view of all the foregoing, the Court is convinced beyond the shadow of reasonable doubt that all the accused - Jabib Tan, Nestor Dalud, and Isidro Buscato - are guilty of the offense of robbery with homicide, defined in Article 294, paragraph 1, of the Revised Penal Code, and hereby sentences each of the accused to suffer a penalty of RECLUSION PERPETUA and to pay, jointly and severally, the heirs of Rodolfo Lim the sum of P1,400.00, the value of the articles stolen; to indemnify also the heirs of Rodolfo Lim the sum of P12,000.00; all without subsidiary imprisonment in case of insolvency, as ruled in the case of People vs. Doria, interpreting Republic Act No. 5465, and to pay the costs."

The foregoing is based on the following facts:

At about 8:30 o'clock in the evening of January 12, 1973, appellants Isidro (Boy) Buscato and Nestor Dalud, together with one Ricardo Rome, were drinking "tuba" at the residence of Nestor Dalud located at the Philippine Trade Center, Sultan Kudarat, Cotabato (now Maguindanao). After a while, Ricardo Rome excused himself from them, saying that he has to go home to take his supper. They told him to come back so that they could continue their drinking spree. Thereafter, Ricardo Rome, after eating his supper, proceeded to the house of Nestor Dalud. On the way, he met Manuel Largo whom he invited to join them in their drinking spree. Before reaching the house of Dalud, the two met a group composed of appellants Isidro Buscato and Nestor Dalud, together with Jabib Tan and Rodolfo Lim. All of them proceeded afterwards to the Samarano's Store where they had a drinking spree. After they consumed about one (1) gallon of "tuba" they decided to leave. Ricardo Rome and Manuel Largo went to the store of Bangoy opposite the Samarano's Store. Appellants Isidro Buscato and Nestor Dalud, upon the other hand, walked with Jabib Tan and Rodolfo Lim towards the direction of the Philippine Trade Center.

At around 7:00 o'clock the following morning (January 13, 1973), the cadaver of Rodolfo Lim was found at the river bank by Enrique Tagle, navigator of a tugboat, "Atlas". The tugboat was then moored at the wharf of the Philippine Trade Center.

Dr. Eduardo L. Mariano, Assistant Provincial Health Officer of Cotabato, conducted a post-mortem examination of the body of the deceased. His post-mortem findings revealed a stab wound in the body of Rodolfo Lim, 6" long, left lower abdomen, eviscerating, and a contusion at the left side of the back of the neck.[1]

On January 16, 1973, the Philippine Constabulary authorities in Cotabato City investigated the persons who were reportedly with the deceased Rodolfo Lim the previous night, namely Isidro Buscato, Nestor Dalud and

Jabib Tan. According to T/Sgt. Francisco Soriano, he investigated appellant Isidro Buscato who allegedly readily admitted his participation in the crime as the one who inflicted the stab wound on Rodolfo Lim. However, when his investigation was reduced into writing, Buscato refused to sign the same. In view of Buscato's refusal, he requested S/Sgt. Jorge Vargas to conduct a separate investigation of Jabib Tan and Nestor Dalud.

On the other hand, S/Sgt. Jorge Vargas declared that he conducted the investigation of Jabib Tan and Nestor Dalud with the aid of Pat. Julhusein G. Tagadaya, a policeman of Sultan Kudarat, who acted as interpreter. Both Jabib Tan and Nestor Dalud allegedly voluntarily confessed their participation in the slaying of Rodolfo Lim. Jabib Tan allegedly confessed to him that he participated in the planning of the killing and robbing of the victim. Nestor Dalud, on the other hand, admitted having struck the victim with a piece of bamboo, while Boy Buscato stabbed the victim with a Batangas knife and afterwards got the wallet and other valuables of the victim. They then placed the victim inside a sack. These confessions were reduced to writing and subsequently sworn to by Jabib Tan and Nestor Dalud before the Clerk of Court, Branch I, Court of First Instance of Cotabato.[2] Nestor Dalud also purportedly tape-recorded his confession.[3]

On January 18, 1973, Isidro Buscato, Nestor Dalud and Jabib Tan were brought by the investigators under the Quirino Bridge in Sultan Kudarat. At that place they were made to re-enact the slaying of Rodolfo Lim.

Francisco Lim, brother of the deceased, related that in the afternoon of January 12, 1973, his brother was intending to collect the account of MINRAPCO due to the Lim Auto Supply in the amount of P1,400.00. However, when he examined the remains of his brother the next day (January 13, 1973), he noticed that his brother's Rolex watch worth P500.00, a ring worth P35.00, a gold necklace worth P70.00, as well as the money which he was supposed to have collected, were missing.

All of the accused interposed the defense of alibi. During the hearing, both Nestor Dalud and Jabib Tan testified that after Rodolfo Lim paid the bill in the Samarano's Store, they separated ways, Nestor and Boy Buscato proceeding directly to the house of Nestor, where they slept, leaving Lim with Jabib Tan. They also repudiated their extrajudicial confessions alleging that they were compelled to sign the same by force, violence and intimidation. Isidro Buscato recounted his maltreatment by the PC soldiers from January 15 to 18, 1973.

THE TRIAL COURT'S EVALUATION

The trial court, however, was persuaded that the extra-judicial confessions of Nestor Dalud and Jabib Tan were voluntarily and freely given by them to the investigators. Thus, according to the trial court:

"Atty. Muñasque, the Clerk of Court before (whom) the said confessions were subscribed and sworn to testified that the said statements were freely and voluntarily given by the affiants. Likewise the investigators testified that the same were freely and voluntarily given by the affiants and they took the stand in rebuttal just to deny the allegation of force and maltreatment.

"Records will show that the affiants who alleged that they were maltreated have not presented any medical certificate to show the alleged injuries they suffered.

"They have not charged any one of those who allegedly maltreated them in court or before any authority.

"To show that they were maltreated, the only evidence they have presented are their own testimonies and the testimonies of their relatives, in-laws and friends.

"The defense of the three accused is one merely of denial and alibi. Records will show that the house of the victim and the place where the victim's body was found to the place where the accused were on the night of January 12, 1973 is just very near.

* * * * *

"The confessions of accused Nestor Dalud and Jabib Tan reveal spontaneity of the declarations by the affiants and are replete with facts which could only be possibly supplied by the accused.

* * * * *

"In the case at bar, the defense could not attribute any reason why the Clerk of Court before whom the confession was sworn to would testify the way he did in court and likewise no motive could be attributed to Sgts. Soriano and Vargas in preparing or typing a false confession if such was the case.

* * * * *

"In the case at bar the Court is convinced that all the three accused are guilty of the offense as charged not only by virtue of the confessions of the two which are interlocking and implicating accused Boy Buscato who also made an oral confession but also they all participated in the re-enactment of the crime and accused Nestor Dalud also has a tape recorded statement admitting his participation in the offense and the added fact, that when this case was submitted for decision accused Jabib Tan escaped from the Provincial Jail, which convinces the Court that he is really guilty otherwise why will he escape if he is innocent.

"The Court is convinced that there was also robbery in the case at bar as there is sufficient evidence on record that on the very afternoon previous to the incident, the deceased went to MIN-RAPCO to collect some amount and the following morning when Francisco Lim, brother of the victim, saw the dead body of his brother, he saw the watch, necklace and money worth around P1,400.00 were gone, even his shoes were gone. There is no question that the prosecution has proved the crime of robbery with homicide." [4]

APPELLANTS' ASSIGNMENT OF ERRORS

In their briefs, counsels for appellants contend that the lower court erred:

- (1) In convicting the afore-mentioned appellants on the basis solely of the repudiated "extra-judicial confessions" of Nestor Dalud and Jabib Tan; and
- (2) In taking into account the alleged escape of one accused, Jabib Tan, long after the case was submitted for decision, as a circumstance in convicting the appellants.

The basic issue determinative of the merits of the challenged judgment is the admissibility of the confessions and their sufficiency to sustain the conviction.

THE MANIFESTATION OF THE SOLICITOR GENERAL

The Solicitor General agreed with the appellants and submitted, in lieu of brief for the appellee, a manifestation recommending acquittal of appellants Nestor Dalud and Isidro Buscato. The thrust of the Solicitor General's contention is that the evidence of the prosecution does not fulfill the test of moral certainty and is not sufficient to support their conviction.

Thus, in support of the foregoing, Acting Solicitor General Hugo E. Gutierrez, Jr. [5] made the following manifestation:

* * * * *

Nestor Dalud's extra-judicial confession, Exhibit 'D'

"The issue to be resolved at this instance revolves on the evaluation of the extra-judicial confession of

appellant Nestor Dalud and his re-pudiation of the same at the trial. Will a denial by appellant of his participation in the commission of the crime of which he is charged be given more weight than his confession? Will Nestor Dalud's defense of alibi be given weight despite his extra-judicial confession?

* * * * *

"After a careful and dispassionate analysis of the testimonies of the witnesses for the prosecution and for the defense, we have come to the conclusion that Nestor Dalud's attack on the voluntary character of the confession finds support in the evidence on record.

"1. Nestor Dalud's recital of the means and methods employed by the investigators in extracting his confession cited specific overt acts as would preclude any notion that the same are merely products of his imagination. Moreover, he enumerated the names of those who had exerted overbearing pressure on him.

"He testified that on January 13, 1973, he and his co-accused were arrested and confined in the PC stockade in Cotabato City (tsn, pp. 79-80, Jan. 14, 1974); that for two days, they were not allowed to go out of the stockade (tsn, p. 81, *ibid*); that while they were at the stockade, the guard on duty would sometime call them one-by-one, and as soon as they reach the iron grills, the guard would pull their hands and then box them (tsn, p. 83, *ibid*); that on the morning of January 15, 1973, he and his co-accused were brought to the Office of the 454th PC Company (tsn, pp. 90--92, *ibid*); that he was investigated in the presence of his two co-accused (tsn, p. 93, *ibid*); that Sgt. Soriano was writing the answers given by him (tsn, p. 94, *ibid*); that at that time, Sgt. Soriano was drunk and in fact made Dalud drink the Tanduay liquor he had with him (tsn, pp. 95--96, *ibid*); that everytime he would refuse to answer, Sgt. Soriano would box him (*ibid*); that sometimes, Sgt. Soriano would slap him, (tsn, p. 97, *ibid*); that Sgt. Soriano was forcing him to admit that he and his companions were the ones who killed Rodolfo Lim and when he refused, he was boxed and pushed by Sgt. Soriano causing him to fall face flat on the cement floor (tsn, pp. 3-4, Jan. 14, 1974, afternoon session); that he became unconscious as a result thereof.

"The maltreatment which Nestor Dalud had to undergo on January 15, 1973 was merely a prelude to more cruel and barbaric torture. Thus, he testified, to wit:

'Q - In what manner or in what way you were again maltreated the following morning of January 16, 1973, up in that guardhouse?

A - They made me lie down in the spring bed and tied my both hands and feet to it. Then, they got a block of ice, the size of the ice is like this (witness demonstrated) and placed it on top of my face. And after that they undressed me and they even inserted a piece of broom--stick into the uterus of my penis.

Q - How did they insert a piece of broomstick into your urethral part of your organ?

A - When my pants was taken off, and I could still remember the man who took off my pants, Juansing Legaspi. And after my penis was exposed, one of the soldiers arrived by the name of Cristy. And then he looked for a broomstick and he said, 'It is better that we play with him'. Then he handled my penis and after that he inserted that broomstick and when the broomstick was already inserted into my penis, he twisted the broomstick inside.

Q - At that time, was Sgt. Soriano also present?

A - Yes, sir, he stepped on my chest so that I could not move.

* * * * *

Q - And how long were you on that condition of unbearable pain and sufferings in the hands of your investigators who were PC soldiers and are supposed to give you the law and justice they being officer of the law?

A - Quite a long time, sir, because they started from 9:00 o'clock up to the time the siren sounded for 12:00 o'clock because I could still hear the siren sounded.

Q - And that ice which was being wrapped and placed on top of your head was made to melt all the way long?

A - Yes, sir, until the block of ice became small and when this be-came small already, Sgt. Soriano lifted it above my face and let it drip into my forehead.' (tsn, pp. 19-21, 22-24, *ibid*).

"Nestor Dalud, at this juncture, got a temporary reprieve when a soldier named Hicotani, who happens to be his friend and who chanced to witness the maltreatment, remarked: 'Why are you doing this to this person when this person is a good man?' (tsn, p. 26, *ibid*). Sgt. Soriano had an altercation with Hicotani but after they talked in Ilocano, they seemed to have patched up their misunderstanding and the latter embraced Dalud and asked him if he had already eaten (tsn, pp. 25, 26, 27, 28, *ibid*). Thereafter, Hicotani brought Dalud to the canteen and was given food (tsn, pp. 29-30, *ibid*).

"At around 10:00 o'clock in the evening of January 16, 1973, a drunk constable by the name of Maniano arrived and ordered everybody at the stockade to rise (tsn, p. 33, *ibid*). The inmates, including Nestor Dalud, were ordered to make fifty push-ups with admonition from Maniano that any-one who cannot make the required number of push-ups will be made to urinate and drink his own urine (tsn, p. 33, *ibid*). A Muslim who was not able to comply with Maniano's order was correspondingly meted the penalty (tsn, p. 36, *ibid*).

"On January 17, 1973, Nestor Dalud was taken out of the detention cell by Sgt. Vargas and brought to the office of the 454th PC Company (tsn, p. 43, *ibid*). Before he was interrogated, Dalud was brought to a room by Sgt. Vargas and the latter was forcing the former to admit his participation in the slaying of Rodolfo Lim and when he refused, Dalud was made to stand behind a wall and was made a 'punching bag' (tsn, p. 44, *ibid*). At one instance, while Dalud was covering his stomach with his hands, Sgt. Vargas suddenly hit him in his ears with open palms causing him temporary deafness (tsn, pp. 47-48, *ibid*). Thereafter, Nestor Dalud was made to sit near a table and Sgt. Vargas started his interrogation in English (tsn, pp. 49-50, *ibid*). Sgt. Vargas then started typing the alleged confession, Exhibit 'D', in the presence of Juan C. Nas, Sgt. Anito and Sgt. Soriano (tsn, pp. 50, 51, 53, *ibid*). Sgt. Vargas was at the same time trying to convince Nestor Dalud to become a state witness in order that the latter can be exculpated of the charges (tsn, p. 4, Jan. 15, 1974). After Sgt. Vargas had typed the question and the corresponding answer, he would read the same to Nestor Dalud and if the latter would not conform to the answer given, the former would again maltreat him (tsn, p. 6, January 15, 1974). After Sgt. Vargas had finished preparing Nestor Dalud's confession, he ordered the latter to sign it but having refused to do so, Sgt. Vargas pulled out his pistol, pulled out the magazine and took out the bullets and inserted the same between Dalud's fingers (tsn, pp. 37-38, *ibid*). Sgt. Vargas then got two handkerchiefs and tied it around Dalud's fingers (tsn, p. 39, *ibid*). Sensing the determination of his interrogators to have him admit his participation and accepting the futility of his resistance, Nestor Dalud capitulated and said, 'It is up to you, sir' (tsn, p. 40, *ibid*).

"Nestor Dalud was then brought to the Office of the Clerk of Court by Sgt. Vargas and another PC soldier by the name of Legaspi (tsn, pp. 40-41, *ibid*). On their way, Sgt. Vargas and Dalud had the following conversation:

'Q - Now, before you were brought to the Office of the Clerk of Court, by Sgt. Vargas and a PC soldier by the name of Legaspi, what did Sgt. Vargas tell you, if he told you anything?

A - While we were still walking on the road towards the Court, Sgt. Vargas told me 'You just signed this because this is good for you. This is the only way you can be released or safe.' But I told him, 'Why should I sign that when all that was written there is not true'. And Sgt. Vargas told me, 'It is up to you.'

Q - When Sgt. Vargas told you it is up to you, what did you understand of that statement?

A - When he said it is up to you, I understood that as soon as we returned to the PC stockade, he would again subject me to punish-ment. So that is why I was af-raid.' (tsn, pp. 42-44, *ibid*; Italics supplied.)

"Thus, forewarned, Nestor Dalud meekly sign-ed his confession before the Clerk of Court. He knew his fate depended upon how much he cooperated with the authorities.

"Two days after he signed his confession, Nestor Dalud was made to tape-record his confes-sion by Sgt. Vargas (tsn, pp. 44-46, *ibid*). Nes-tor Dalud was' reading his answers from a script given to him by Sgt. Vargas (tsn, pp. 46-47, *ibid*). Although Sgt. Vargas denied that Nestor Dalud was merely reading his answers from a copy of the written investigation, the court aquo made the observation 'that the confession and the tape record dovetail with each other' (p. 147, July 26, 1973, *ibid*).

"On the other hand, examination of the tes-timony of Sgt. Jorge Vargas seems to convey that Nestor Dalud had no qualms in admitting his part-icipation in the commission of the crime (tsn, pp. 10-11, July 25, 1973). Yet, it must be noted that Nestor Dalud was initially investigated on January15, 1973 and it was only on January17, 1973 that he signed his confession. What turned Nestor Dalud into a dove when for two days that he was in custodial interrogation, he refused to admit participation in the crime? Was it not due to an overpowering pressure which finally subdued his will?

"Lourdes Dalud, sister of Nestor Dalud, tes-tified that on January 13, 1973, she went to PC Headquarters in Cotabato City to visit her brother but Sgts. Soriano and Vargas refused to allow her to talk to her brother (tsn, pp. 27-29, Oct. 18, 1973). The following day, she again visited her brother and this time she was able to talk to him (tsn, pp. 33-34, *ibid*). She noticed that Nestor Dalud had swellings on the lower portion of his left eye and on his lower lip (tsn, p. 35, *ibid*). Nestor Dalud also confided to her that his chest was painful and he had difficulty in breathing and exhibited the swellings on his left breast (tsn, pp. 36-38, *ibid*). He also told her that everytime he was made to confess, bullets were inserted bet-ween his fingers (tsn, p. 38, *ibid*).

"Ricardo Ocampo, who accompanied Lourdes Dalud to the PC Headquarters in Cotabato City, corroborated her testimony, vizaviz, the external manifestations of violence inflicted on Nes-tor Dalud.

"Dick Dalud, father of Nestor Dalud, also testified that on January 18, 1973, he was arres-ted by PC authorities and placed in the stockade at the PC Headquarters in Cotabato City (tsn, pp. 41-42, Oct. 30, 1973). He saw his son sporting a swollen face and everytime Nestor Dalud would cough, he (Nestor) would vomit blood (tsn, p. 47, *ibid*).

"It is true that the said witnesses are re-lated to Nestor Dalud (Ricardo Ocampo is Nestor Dalud's brother-in-law) but mere relationship to the accused does not destroy a witness' credibi-lity. Their narration of fact bears no positive indication of exaggeration or falsity. We find in the records no fact nor circumstance that im-pels us to doubt or reject their testimonies. Moreover, the lower court did not make any con-clusion concerning their credibility, hence, there is no reason not to accept their testimonies at face value.

"The above circumstances notwithstanding, the lower court still looked upon the confession as free of infirmity. Clearly, that was error. The constant course of decisions of this Honor-able Court forbids the admission of any confes-sion obtained under such circumstances. A con-viction resting on such proof, and such proof alone, certainly cannot be allowed to stand.

"2. The failure of Nestor Dalud to complain to Clerk of Court Benjamin Muñasque of the torture he had undergone is not a guarantee of the volun-tary character of his confession. He was appraised beforehand by Sgt. Jorge Vargas of the consequence of his failure to sign the confession before the Clerk of Court. * * *

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"3. The extra-judicial confession suffers from an additional infirmity in that Nestor Dalud signed the same upon the representation of Sgt. Jorge Vargas that he would be utilized as a government witness. * * *

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"Verily, Nestor Dalud could have signed the confession to obtain the promised concession.

"4. No less significant is the tape-recorded confession of Nestor Dalud. It is stated therein that Isidro Buscato ordered Nestor Dalud to strike the deceased with bamboo pole but the latter hesitated because the intended victim was his boy-hood friend (p. 15, Replay of Tape Record). Isidro Buscato thereafter poked his knife at Dalud, thus leaving the latter no other choice but to follow the former's command (pp. 15-16, *ibid*).

"The picture presented by Nestor Dalud has clearly in his favor the exempting circumstance delineated under Article 12 (6) of the Revised Penal Code which exempts from criminal liability 'any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.' He could have stuck to his confession and still be acquitted. He need not have repudiated his confession since it recited facts which could exculpate him from criminal liability. This is a further circumstance which militates against the voluntary character of Nestor Dalud's confession.

"5. Nestor Dalud's explanation as to why he did not avail of the services of a doctor to treat him of injuries resulting from the torture he had undergone was explained by him, as follows:

'Q - But in spite of all those maltreatments, you were never able to ask or request for the services of a doctor to treat you?

A - No more, sir, because no one would come there and if I also report to the soldiers, I think it will not be good because it was the soldiers who apprehended me.' (tsn, p. 42, Jan. 29, 1974)

* * * * *

Alleged voluntary re-enactment of the crime.

"Heavy emphasis was given by the lower court on the participation of all the accused in the re-enactment of the crime. This circumstance draws its strength or weakness on the issue of voluntariness of the confession. Thus, in order that the re-enactment may be given evidentiary weight, the validity and efficacy of the confession must first be shown.

"It is to be noted that all the accused were unanimous in denouncing the re-enactment as 'written, produced and directed' by their torturers. This is not an empty assertion. They had already been subjected to cruel and painful punishments occasioned by their earlier refusal to admit their participation in the commission of the crime. In their determined quest to 'solve' the crime, the authorities had virtually reduced all the accused to mere robots, having sapped their will of strength, by torture.

"T/Sgts. Francisco Soriano and Jorge Vargas testified, on rebuttal, that they never laid their hands on any one of the accused, much less, torture them. However, it is significant to note that Emilio Buscato, father of Isidro Buscato, denounced T/Sgt. Francisco Soriano's maltreatment of his son in a letter-complaint sent to no less than the President of the Philippines himself (tsn, p. 35, August 30, 1973; Exhibit '2', p. 186, Rec.). Sgt. Soriano admitted that the letter complaint was endorsed to the 454th PC Company to which he belongs (tsn, pp. 44-45, March 5, 1974). Surprisingly, the investigation was conducted by the unit of which Sgt. Soriano was the head, with Sgt. Cang, a member of his team, conducting the investigation (tsn, pp. 45-48, *ibid*). Here is, therefore, a situation where a subordinate was investigating his superior. Surely, Emilio Buscato cannot expect an impartial investigation of his complaint. Thus it is that the investigation ended with Emilio Buscato

executing an affidavit of desistance (tsn, p. 25, *ibid*).

Death Certificate of Rodolfo Lim

"Both the prosecution and the defense agree in one thing on this case; that Rodolfo Lim is dead. Yet, a discussion of this case would not seem complete without mentioning the death certificate of Rodolfo Lim which was accomplished by Dr. Eduardo Mariano.

"Dr. Mariano testified that he conducted a post-mortem examination of Rodolfo Lim's body near the river where the same was found (tsn, pp. 6-7, May 29, 1973). The result of his findings were handwritten by him and, subsequently, copied by typewriter when he went back to his office (tsn, pp. 12-13, *ibid*). However, it is significant to note the entries on the handwritten and typewritten death certificates (Exhibits 'A' and 'B', '1-Buscato', pp. 3, 185, Rec.) do not coincide and in fact, the trustworthiness thereof is suspect, if we consider the following circumstances:

"1. The Certificate of Death, accomplished in Dr. Mariano's own handwriting, stated that the cause of death is, to wit: wound, stab, 6", left lower abdomen eviscerating, abrasions and contusions, arm and forearm bilateral, contusion, back of the neck (Exhibit 'B', '1-Buscato', p. 185, Rec.). All the entries therein are handwritten except the 'contusion at the back of the neck' which was typewritten. On the other hand, the typewritten Certificate of Death did not include 'abrasions and contusions, arm and forearm bilateral' (Exhibit 'A');

"2. All the entries in the typewritten Certificate of Death (Exhibit 'A') were made on the same typewriter except the entry referring to 'contusion, back of the neck', which obviously, was entered through another typewriter;

"3. The typewritten words 'contusion, back of neck', as appearing both in Exhibits 'A' and 'B' appears to have been made through the same typewriter.

"The explanation of Dr. Mariano on the discrepancies afore-mentioned does not inspire belief. Thus, he testified on cross-examination, as follows:

'Q - Do you have that original certificate of death with you now?

A - Yes, I have it here.

Q - In your findings here, there are two entries, one is stab wound, 6" or 6 inches and the other is contusion, is that correct?

A - Correct.

Q - When you made the entry, did you make it one at the same time?

A - Yes, sir.

Q - It appears that the entry 'Wound stab, 6" long, left lower abdomen eviscerating' and the other entry 'contusion, left neck' are not the same in type, what can you say about this?

A - Probably when I found out that the typewriter ribbon was not functioning well, I think I transferred to another typewriter, I do not exactly remember now.

Q - And after transferring to the other typewriter just to type down the following words 'contusion, left neck', you went back to the former typewriter to type down the subsequent entries such as date 'Jan. 12, 1973' and others as it appears to be the same from the above entries up to 'EDUARDO L. MARIANO, MD, CPH' which are lightly imprinted than the words 'Contusion, left neck', can you explain this?

A - Well, that is right, 'I returned to the former typewriter when the ribbon was already fixed.' (tsn, pp. 14-15,

May 29, 1973; Italics supplied.)

"It is well to remember that the finding that there was a contusion on the left neck of the deceased would be vital in this case as this would corroborate Nestor Dalud's 'confession' that he struck the deceased on the neck with a bamboo. Could it be that the inclusion of this particular item was a mere afterthought, considering that in the Certificate of Death accomplished by Dr. Mar-iano at the recovery site of the victim's body, there was no handwritten entry as regards the contusion on the left neck? Moreover, the expla-nation of Dr. Mariano as to why he had to use two typewriters in accomplishing Exhibit 'A' taxes credulity. If it is true that the ribbon of the first typewriter was not functioning well, then why did he not type the rest of the entries on the second typewriter instead of merely the entry 'contusion, left neck'?"

"As earlier stated, the fact of death of Rodolfo Lim is uncontested. However, there is serious doubt as to the existence of contusion on his left neck.

Oral confession of Isidro Buscato

"The law on evidence does not require that a confession be in writing. It is sufficient that it be made in the presence of reliable and disin-terested witnesses (People vs. de Castro, 89 Phil. 747).

"T/Sgt. Francisco Soriano testified that on the afternoon of January 16, 1973, he investigated Isidro Buscato and that the latter admitted to him that he had stabbed Rodolfo Lim (tsn, p. 15, July 17, 1973). After he had reduced Buscato's confes-sion in writing. Soriano asked the latter to sign the same but Buscato requested to have time to think it over (tsn, p. 16, *ibid*). On the next day, when Buscato was again asked to sign his confess-ion, he refused to do so (*ibid*). Except for Sor-iano, no other witness was presented to testify on the substance of Buscato's alleged confession.

"Admittedly, an accused who had confessed voluntarily would have no objection to reducing the confession to writing, to be signed by him, which, in this case, Isidro Buscato refused to do. What could have spurred Buscato's decision not to sign his 'confession'? Or better still, did Isidro Buscato really make a 'confession'?"

"Isidro Buscato denied that he ever made a confession. In fact, all throughout the investi-gation and despite the maltreatment he underwent, he stoutly maintained his innocence. Like Nestor Dalud, he named names and recited specific overt acts in his painful recollection of the methods employed to extract his confession. Isidro Busca-to's testimony, taken in relation to that of Nes-tor Dalud, show that the PC investigators have an impressive array of third-degree methods in ex-tracting confessions. Without necessarily imply-ing that Isidro Buscato was subjected to a lesser degree of torture than Nestor Dalud, we beg to quote the more significant portions of his testi-mony, vizaviz, the inhuman and barbaric methods employed by the investigators, to wit:

'Q - What did they do to you that morn-ing?

A - They made me punching bag.

Q - Who were they?

A - Sgt. Soriano, Legaspi, Abobo and visitation. Those are the only ones whom I know. There are many others but I do not know them be-cause they are civilians.

Q - You said you were made a punching bag. Will you please tell us how you were made a punching bag?

A - First, they let me stand and tied me to a post. And then, they un-dress me, took off my pants and my shirt. They told me if I will confess, they would not harm me. And because I would not confess, they started hitting my body and even kicked my knees with their combat shoes. By noontime, they stopped and let me rest. So, they untied me and then they re-turned me to the stockade. By one o'clock in the afternoon, they again took me out.

* * * * *

Q - And while you were lying down on a small bench, what happened?

A - Sgt. Soriano got a towel. He wet this towel and covered my face with this towel at the same time they kept on hitting my bo-dy.

Q - You mean you were being hit while lying down on a bench?

A - Yes, sir, because I would not confess.

Q - While the wet towel was placed on your face?

A - Yes, sir, it was pressed against my nose and I could even hardly breath.' (tsn, pp. 32-35, January 30, 1974; Italics supplied).

* * * * *

Q - What were the maltreatment in-flicted on you that evening of January 17, 1973?

A - The same, sir. They again let me lie down on a bench because they were drinking Tanduay, Sgt. Soriano told me to confess be-cause if I will not confess they will pour Tanduay into my nose. And because I would not confess, they poured Tanduay into my nose. And after all the contents of the Tanduay were consumed, they struck me on the chest with the bottle.' (tsn, pp. 41-42, ibid)

* * * * *

Q - What kind of maltreatment did they effect on you from 2:30 of January 18 to one o'clock A.M. of January 19?

A - While they investigated me, I was sitting and then they let my hand lay on the table with open palm and made it as an ash tray. They put cigarretes which are lighted and put out the lights of the cigarettes on my palm used as ash tray and they insisted me to confess but I did not confess. Some of them hit me with the butt of the garand at my back.

* * * * *

Q - Did they inflict any injuries on your body?

A - They again inflicted harm on my body so that I would confess but I said to them that I cannot con-fess because I have not done any-thing wrong. Because of that, Visitacion squeezed my testicle and Sgt. Maniano who is now as-signed in Ilocos Sur poked a piece of wire from a battery of the telephone and connected that wiring to my testicle, with el-ectric current, and then I trembled when I was electrocuted with the wire of the battery of the telephone. So, I lost conscious-ness because at the same time they kept on boxing me.

Q - Who were the PC soldiers who were maltreating you that evening of January 18, 1973, if you know?

A - Sgt. Soriano, Zapanta, Legaspi, Abobo, Visitacion and others whom I did not know because they have no nameplates on their shirts and they were only wearing mili-tary undershirts.' (tsn, pp. 45--48, ibid).

"Isidro Buscato's testimony on this point finds corroboration on the letter-complaint sent by Buscato's father to the President of the Phil-ippines denouncing the PC investigators for mal-treating his son (Exhibit '2', p. 186, Rec.).

"Clearly, the court aquo erred in giving weight to the alleged oral confession of Isidro Buscato.

"The following circumstances further puts grave doubts on Isidro Buscato's participation in the commission of the crime:

“1. The prosecution's version of the incident, as established in the repudiated extra-judicial confession of Nestor Dalud and Jabib Tan (Exhibits 'C' and 'D', pp. 7-12, Rec.), is that Isidro Buscato stabbed Rodolfo Lim and after Buscato had divested the deceased of his money and watch, Buscato brought the body of the deceased towards the middle of the river to be carried away by the current of the river. After the arrest of Buscato, two blue denim pants belonging to him were sent to the National Bureau of Investigation and upon request of Fiscal Aquiles Navajos, was examined to determine the presence of human blood. As per the Biology Report of the NBI, the examination yielded a negative result (Exhibit '3', Buscato, p. 187, Rec.). Considering the wound of the deceased, there must have been profused bleeding. Yet, despite the fact that Buscato allegedly brought the body of the deceased to the middle of the river, there was no trace at all of human blood in Buscato's pants;

“2. The crime was supposed to have been committed between 10:00 o'clock to 12:00 o'clock in the evening of January 12, 1973. Isidro Buscato was alleged to have taken the money, watch and necklace of the deceased. It further appears that Buscato was apprehended at 9:00 o'clock in the morning of January 13, 1973 (tsn, p. 21, January 30, 1974). There was, therefore, no opportunity for Buscato to spend the money allegedly taken by him from the deceased nor to dispose of the watch and the necklace. Yet the crack PC investigators were not able to recover any of the stolen articles.

Rebuttal testimonies Sgt. Soriano and Vargas do not destroy appellant's claim of maltreatment.

"Appellants Nestor Dalud and Isidro Buscato mentioned by name nine members of the Philippine Constabulary who maltreated them with the sole purpose of extracting their confessions, namely: Sgt. Soriano, Sgt. Vargas, Juansing, Legaspi, Cristy, Maniano, Abobo, Zapanta and Visitacion (tsn, pp. 19-21, 33, Jan. 14, 1974, Dalud; tsn, pp. 45-48, Jan. 30, 1974, Buscato). However, only Soriano and Vargas were presented to rebut the testimonies of herein appellants. They denied the appellants' allegation of maltreatment.

"Assuming, arguendo, that Soriano and Vargas did not inflict bodily harm on the appellants, how about the others? Not only were they not presented on rebuttal, there is nothing in the testimony of Soriano and Vargas that would indicate that the said persons were not present during the interrogation conducted on the appellants or that there is nobody in their unit carrying such names. The failure of the prosecution to present the said persons certainly lends authenticity to the appellants' claim of maltreatment.

"Thus, notwithstanding the rebuttal testimony of Soriano and Vargas, the claim of Nestor Dalud and Isidro Buscato that they were physically abused by the afore-mentioned persons still stand firm. * * *"[6]

Moreover, as indicated by the counsel for the appellants, the extrajudicial confession of Nestor Dalud contained statements that are so inherently improbable that they could not have reflected the truth. Thus, according to the alleged extrajudicial confession, after placing the victim in the sack under the Quirino Bridge, Boy Buscato then pulled the sack into the middle of the river and left it to float with the current of the river. Counsel for the appellants, however, showed that the depth of the Rio Grande River near the bank during low tide is about two (2) fathoms. Consequently, it was physically impossible for a man of the height of Boy Buscato to have waded into the middle of the river with the body of the deceased in tow. This is especially true considering that the Rio Grande River is a very wide navigable river and that at the bank near the Philippine Trade Center where the incident was supposed to have happened, is quite deep since it is used as a berthing place of motor launches to load and unload their cargoes. Appellants have likewise shown the improbability that the body of the deceased could have floated downstream during the interval of about nine (9) hours for a distance of about one kilometer, considering that according to medico-legal authorities, a dead body does not immediately float because of its natural tendency to sink under water and it is only after the body undergoes bacterial decomposition and thus accumulates gases that it rises to the surface of the water and floats. It has been observed that "bacterial decomposition makes its appearance in the first two days after submersion during the summer months." [7] There

is no medical testimony, how-ever, to the effect that the body of the deceased was found in a stage of decomposition or in a bloat-ed condition.

On the basis of the record, We, therefore, find that the position taken by the Solicitor Gene-ral is fully justified. As early as the case of U. S. v. De Leon,[8] this Court emphasized that Courts "are slow to accept extrajudicial confessions when they are subsequently disputed, unless they are corroborated by other testimony." Here, independent of the afore-mentioned extrajudicial confessions, there is no other evidence which would directly link the herein appellants to the crime. It appears, moreover, that such confessions were procured by force, violence or threats. They are, therefore, inadmissible and cannot be used as evi-dence to prove the guilt of the appellants.

THE RIGHT AGAINST SELF-INCRIMINATION

The constitutional right of a person against self-incrimination precludes the use of confessions obtained from him thru force, violence, threat, in-timidation or any other means which vitiate his free will.[9]

The doctrine that one accused of crime cannot be compelled to testify against himself is predica-ted upon principles of humanity and civil liberty. The maxim Nemo tenetur seipsum accusare had its origin in the protests against the abuses and mani-festly unjust methods of interrogating accused per-sons in the inquisitorial Court of the Star Chamber. It was erected as an additional barrier for the protection of the people against the exercise of arbitrary power. As observed in an early case:[10]

" * * * While the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incrimi-nating evidence, if an accused person be asked to explain his apparent connection with a crime under investigation, the case with which the questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluc-tant, to push him into a corner, and to entrap him into fatal contradictions, * * * made the system so odious as to give rise to a demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular demand. But, however adopted, it has become finally embedded in English as well as in American jurisprudence. So deeply did the iniquities of the ancient system impress them-selves upon the minds of the American colonists that the states, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim which in England was a mere rule of evidence, became clothed in this country with the impregnability of a constitutional amendment." [11]

The constitutional foundation underlying the privilege against self-incrimination "is the respect a government * * * must accord to the dignity and integrity of its citizens. To maintain a 'fair state-individual balance', to require the government 'to shoulder the entire load,[12] to respect the inviolability of the human personality, our accusa-tory system of criminal justice demands that the government seeking to punish an individual procure the evidence against him by its own independent la-bors, rather than by the cruel, simple expedient of compelling it from his own mouth." [13]

As explained in U.S. v. Navarro,[14] this pro-vision against self-incrimination was established on grounds of "public policy and humanity -- of policy, because if the party were required to tes-tify, it would place the witness under the strong-est temptation to commit perjury, and of humanity, because it would prevent the extorting of confess-ions by duress."

As noted by the Wickersham Commission in its report in 1931, "not only does the use of the third degree involve a flagrant violation of law, but it involves also the dangers of false confession, and it tends to make police and prosecutors less zealous in the search for objective evidence. * * * The third degree brutalizes the police, hardens the pri-soner against society, and lowers the esteem in which the administration of justice is held by the

public."[15]

THE CRITERIA OF JUDICIAL INQUIRY

The constitutional inquiry is not whether the conduct of the police officers in obtaining the confession was shocking, but whether the confession was free and voluntary; that is, it must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, nor by the exertion of improper influence.[16] It has been recognized that "coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." [17] As stated by Justice Fernando in *People v. Bagasala*, [18] any form of coercion whether physical, mental or emotional renders a confession inadmissible. "What is essential for its validity is that it proceeds from the free will of the person confessing." In other words, the person must not have been compelled to incriminate himself. As early as the case of *U. S. v. De Los Santos*, [19] this Court, speaking thru Justice Trent, explained the rationale for the rule rejecting the admissibility of forced confessions, thus:

"If a confession be free and voluntary - the deliberate act of the accused with a full comprehension of its significance, there is no impediment to its admission as evidence and it then becomes evidence of a high order; since it is supported by the presumption -- a very strong one -- that no person of normal mind will deliberate and knowingly confess himself to be the perpetrator of a crime, especially if it be a serious crime, unless prompted by truth and conscience.

"* * * But if the accused shows that the confession was involuntary, as that term is used with reference to confessions, the confession cannot be considered as evidence of the guilt of the accused. His conviction must depend upon other evidence. Involuntary confessions are rejected by all courts -- by some on the ground that a confession so obtained is unreliable; and by some on the grounds of humanitarian principles which abhor all forms of torture or unfairness toward the accused in criminal proceedings. But either theory arrives at the same goal. Such a confession is not legal evidence and must be rejected. If the accused satisfactorily shows that it was made involuntarily, the confession stands discredited in the eyes of the law and is as a thing which never existed. * * *"

It may be relevant to reiterate here the admonition to police authorities emphatically expressed by Justice Fernando, while speaking for the Court, in *People v. Bagasala*, supra:

"It is likewise timely to impress anew on police officials that the imperative requirements of truth and humanity condemn the utilization of force and violence to extract confessions from unwilling victims. Crimes must be punished and the guilty must not be allowed to escape. A desirable end cannot, however, be attained by unconstitutional means. There should be less than full respect for the law if in the process of enforcing it lawless methods are employed. * * *" (at p. 244.)

This right against self-incrimination guaranteed in the fundamental charter cannot be abridged. "If the government becomes a lawbreaker", once observed Justice Brandeis, "it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means * * * would bring terrible retribution." [20]

There is no question that cruel or degrading treatment to secure confessions from one suspected of a crime seriously violates his fundamental human rights, the protection of which is basic in a regime of law and justice.

We thus conclude that without such extrajudicial confessions the evidence of the prosecution has failed to overcome the constitutional presumption of innocence in favor of the appellants. [21]

ACCORDINGLY, the appealed decision is reversed and appellants Isidro (Boy) Buscato and Nestor Dalud are

ACQUITTED. No costs.

Let a copy of this decision be furnished the Hon-orable, the Secretary of Justice, for the institution of appropriate action against the persons responsible for the maltreatment of appellants.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Exhibit "A", p. 3, Original Record.

[2] Exhibits "C" & "C-1", statement of Jabib Tan dated January 16, 1973, pp. 7-8, Ibid.; Exhibits "D" & "D-1", state-ment of Nestor Dalud dated January 17, 1973, Ibid., pp. 12-13.

[3] Exhibit "H". Transcript of the same was made by Stenog-rapher Mateo Bacatan and attached to the folder of transcript of the stenographic notes.

[4] Original record, pp. 294-297.

[5] He was assisted by Assistant Solicitor General Nathaniel P. de Pano, Jr. and Trial Attorney Luisito P. Escutin.

[6] Pp. 8-29, Manifestation in Lieu of Brief filed by the Acting Solicitor General, pp. 314-335, SC Rollo.

[7] Gonzales, Vance, Helpen, Umberger -Legal Medicine and Toxicology, 2nd Ed. (1954), p. 486.

[8] 27 Phil. 506, 511.

[9] See Section 1 [18] of Article III of the 1935 Constitution. Article IV, Section 20, of the New Constitution provides:

"SEC. 20. No person shall be compelled to be a witness against himself. Any person under in-vestigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, vio-lence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

[10] Brown v. Walker, 161 U.S. 596.

[11] Bram v. United States, 168 U.S. 42 L. Ed. 568.

[12] 8 Wigmore, Evidence 317 (McNaughton rev 1961).

[13] Chambers v. Florida, 309 U.S. 227, 235-238, 84 L. Ed. 716, 721, 722, 60 S. Ct. 472 (1940) cited in Miranda v. Arizona, 384 U.S. 436, 16 L. ed. 2d. 694,715.

[14] 3 Phil. 143, 192 (1904).

[15] Miranda v. Arizona, supra.

[16] People v. Alto, 26 SCRA 364.

[17] Blackburn v. Alabama, 361 U.S. 199, 206, 4 L. Ed. 2d. 242.

[18] 39 SCRA 236.

[19] 24 Phil. 358, 359.

[20] Olmstead v. United States, 277 U.S. 438, 485, 72 L. Ed., 944, 959.

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