

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
JACINTO RICAPLAZA @ TOTING RICAPLAZA,
DEFENDANT-APPELLANT.**

G.R. No. L-25856. April 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Jacinto Ricaplaza @ Toting Ricaplaza was charged with the crime of robbery in band with homicide in an information filed by the Provincial Fiscal of Cotabato, together with five other persons whose identities were, at the time of the trial, still unknown and at large, in the Court of First Instance of Cotabato.

After trial, the court found Jacinto Ricaplaza guilty beyond reasonable doubt of the crime of robbery with homicide only, as the number of the robbers was not established by the evidence. There being no modifying circumstance attendant in the commission of the crime, the accused was sentenced to suffer the penalty of *reclusión perpetua*, to indemnify the heirs Of the deceased, Francisco Poncardas. in the sum of P6.000.00. and P375.00 for the value of a shotgun, P120.00 for the value of jewelry, and P320.00 for the value of a transistor radio, all belonging to the deceased; and to indemnify Miss Glicería Ruellan the sum of P45.00 for her wrist watch, :P5.00 for the value of her goggles and cash amount of "P30.00, all of which were lost in the robbery committed on the night of June 18, 1962, and to pay the costs.

Hence, this appeal from the decision.

On June 18, 1962, at about 7:00 o'clock in the evening, Francisco Poncardas was lying down on the sofa that was in the sala of his house in Padidu, Glan, Cotabato. He had just taken supper with the members of his household, namely: Irinea Clarisan, his wife; Rufina Poncardas, daughter; Justiniano Poncardas and Lucia grandson and granddaughter, respectively; Josefina Bigapria, his ward; and Glicería Ruellan, a public school teacher boarding in the house. All of a sudden, a man entered the sala with a pistol pointed at Francisco Poncardas, and demanded where his money was. At that moment, Lucia was wiping the dining table which was about 3 meters from the sala; Josefina was washing dishes in the kitchen; Ruellan and Rufina were in the toilet, about 20 meters away from the house. Francisco Poncardas reacted to the demand by rising from the sofa and tried to wrest the gun from the intruder. Shots were thereupon fired at Francisco, from someone outside the house and by the intruder himself. As a consequence, Francisco suffered gunshot wounds, fell to the floor and died instantly.

After the robbers had fled, it was found that the wardrobe was forced open by a shot right at the key hole and things were scattered all over the room. The following articles were found missing: A shotgun worth "P375.00, jewelry worth "P120.00, and a transistor radio worth P320.00, all belonging to the deceased. Glicería Ruellan lost cash in the amount of P30.00, a wrist watch worth P45.00 and goggles worth "P5.00. Jose Poncardas, son of the deceased, also claimed that cash amounting to "P9,000.00 kept by the deceased in his *aparador* was missing. He said this amount represented the proceeds of the sales of *copra* made by the deceased.

At the time of the commission of the crime on June 18, 1962, Lucia Ferolino and Josefina Bigapria were living in

the house of Francisco Poncardas (TSN, pp. 15, 75, 82, 888, 107). Both were studying and being supported by the deceased, aside from the fact that Lucia is his granddaughter (TSN, pp. 15, 75, 82). Gliceria Ruellan was a school teacher boarding in the house of the deceased but she did not pay for her board and lodging (TSN, pp. 299-300). When Lucia and Josefina were called to testify in this case both were only 12 years of age (TSN, pp. 15, 88).

Lucia Ferolino testified that she first met appellant Jacinto Ricaplaza in May 1962, when he stayed for two days and two nights in the house of her grandfather Francisco Poncardas in Padidu, Glan, Cotabato. She said she served meals to him (TSN, pp. 105, 110, 111). On the night in question, after taking supper, she was wiping the dining table which was about 3 meters from the sala, when all of a sudden a man entered, pointed his gun to his grandfather, and asked: "Where is the key?" She recognized the intruder as Toting Ricaplaza. Her grandfather stood up and grappled with him. At once she heard a shot from the intruder. Then she saw one robber at the window shot her grandfather. As a consequence, her grandfather fell. (TSN, pp. 90-92) She wanted to go upstairs, but when she saw four legs in the stairs, she went instead to the kitchen and told Josefina that there were robbers in the house and that her grandfather was shot. (TSN, pp. 93-97). Lucia and Josefina then ran towards the door to escape, but they were blocked by appellant who, at gunpoint, ordered them to go inside, otherwise they would be killed. They obeyed and ran to the sala. Upon seeing Francisco Poncardas dead, they ran outside through the main door towards the evergreen. Josefina separated from her. She proceeded to the house of Melchor Poncardas. Lucia declared that she was positive it was Jacinto Ricaplaza who shot her grandfather because she saw his face. (TSN, pp. 98-102, 116-118.) When she and Josefina returned to the house of Francisco Poncardas after the shooting had stopped, they volunteered the information to the people there that it was Jacinto Ricaplaza who killed Francisco Poncardas. (TSN, p. 122.)

Josefina Bigapria testified that she was living in the house of Francisco Poncardas when the incident happened. The deceased was the one sending her to school. (TSN, p. 15) On the night in question, she was washing dishes in the kitchen when Lucia Ferolino came running and told her that there were robbers in the house and that her grandfather was shot. Before that, she heard gunshots inside the house. She (Josefina) and Lucia ran towards the door but they were blocked by appellant and pointed his pistol to them. They were told by appellant to go inside otherwise they would be killed. They ran to the sala and saw Francisco Poncardas dead. They went out running towards the evergreen. She heard many shots outside. On the road, they met Rufina Poncardas. They told her that Toting Ricaplaza blocked their way by the kitchen. Then she (Josefina) and Lucia parted ways. Josefina went running to the house of Melchor Poncardas where she met Lucia. When it was already quiet, she and Lucia went back to the house of Francisco Poncardas. There were many people inside the house. Without being asked, they told the people there that Toting Ricaplaza shot Francisco Poncardas. (TSN, pp. 23-24; 25-26; 36-39). Witness declared that she knew appellant before the night of the incident because he stayed in the house of Francisco Poncardas in May 1962 for two days and two nights and that she and Lucia served him food. (TSN, pp. 25, 26, 55).

When Lucia and Josefina were brought to jail to identify the assailant of Francisco Poncardas, they singled out appellant among three individuals in the jail as the person whom they saw on the night in question. (TSN, pp. 42, 131.) Josefina further identified appellant by the scars on his face: one in the right forehead and the other on his left cheek. She said she saw those scars during the night of the incident because she looked very well at appellant's face. Appellant did not wear mask at the time. (TSN, pp. 44, 45, 46, 50.) Both witnesses declared that appellant was wearing a cap. (TSN, pp. 84, 142.) They recognized appellant by the light of electric bulbs when they tried to escape towards the kitchen door but were blocked by appellant. (TSN, pp. 98-100.)

Gliceria Ruellan testified that when Francisco Poncardas was shot, she was in the toilet together with Rufina Poncardas. The toilet was about 20 meters from the house. They were about to return to the house but when they

saw men firing towards the house, they fled to the house of Melchor Poncardas. Five minutes later, Lucia Ferolino arrived and she told witness that Francisco Poncardas was killed by Toting Ricaplaza. (TSN, pp. 282-285.)

It is argued that having met the appellant occasionally, and considering the length of time that had elapsed since Lucia and Josefina first met him in May 1962 to June 18, 1962, when the crime was committed, it is not possible that these witnesses could print in their minds the look of appellant especially under a situation of fear and distress. The argument is untenable.

It is true that Lucia and Josefina met appellant only once before the commission of the crime on June 18, 1962, but their meeting was not merely casual. For two days in May 1962, appellant and the witnesses stayed together in the house of Francisco Poncardas. The children served meals to appellant during his two-days stay there. They ate together. They saw appellant converse with the deceased while they were eating. (TSN, pp. 26, 55, 65, 105, 110, 111.) They had all the time and opportunity to look at appellant's face. From May to June 1962, only a month had elapsed. It is not possible that these children could forget appellant's face for so short a time. Generally, children have good and retentive memory, especially at the ages of 12 like Lucia and Josefina. They said they were afraid, but not so much. They still remember appellant's face. (TSN, pp. 33, 116.)

Lucia and Josefina were subjected to rigid questioning on cross-examinations. Attempts were made by counsel to mislead them by suggesting that the one they saw on the night in question had a similarity to appellant, but despite long and tedious cross-examination, the children stuck to their testimony that it was appellant Toting Ricaplaza whom they saw and not another who looked like him. Never for a moment did they falter, waver or vacillate in their testimonies during their direct and cross-examinations. As the record shows, they testified in a clear, straightforward manner which can only mean that what they narrated in court was what they actually saw and observed on the night in question. Their story remained consistent and free from material contradictions.

Appellant maintains that: Lucia and Josefina were taught by the prosecution what to say in court and because of their tender age and relationship with the deceased, coupled with the fact that the expenses for their education were shouldered by the deceased, the said children had to adopt whatever coaching the prosecution should advise them to testify in court. And in the case of Miss Ruellan, appellant claims that she had to follow the suggestion of the private prosecutor if only to please the relatives of the deceased and to manifest in some way her debt of gratitude for having lived in the house of the deceased without expense.

Just because Lucia and Josefina were young in age and the former was the grand-daughter of the deceased and, like Miss Ruellan, were given free board and lodging, did not necessarily mean that they could allow themselves to be used as tools of the relatives of the deceased by perjuring themselves. This is specially true of Miss Ruellan who as a school teacher, is presumed to have a high regard for truth and to be conscious of the far-reaching results of her testimony. Anyhow, the contention is devoid of factual basis, and merits no consideration.

It has been consistently ruled that where no improper motive has been shown, relationship to the victim does not render the clear and positive testimony of witnesses less worthy of full faith and credit (*People vs. Tividad, et al.*, L-21469, June 30, 1967; *People vs. Santos, et al.*, L-17215-17, Feb. 28, 1967; *People vs. Reyes, et al.*, L-18892, May 30, 1966; *People vs. Villalba*, L-17243, August 23, 1966; *People vs. Asmawil*, L-18761, March 31, 1965; *People vs. Libed, et al.*, L-20431, June 23, 1965; *People vs. Miranda, et al.*, L-18508-09). In the case at bar, no improper motive has been proved on the part of the witnesses for the prosecution. It cannot be assumed that in seeking justice and the punishment of the assailant, they would indiscriminately, and without any motive, point to the wrong parties. (*People vs. Valera*, L-15662, August 20, 1962; *People vs. Tagaro*, L-18518, January 31, 1963; *People vs. Asmawil, supra*; *People vs. Constantino, et al.*, L-23558, August 10, 1967.)

The trial court, after having observed the witnesses on the stand, found them credible. The conclusion of the trial

court regarding the credibility of witnesses, command great respect and consideration, and appellate courts will not interfere with the conclusion of the trial court concerning the credibility of witnesses for the latter is in a better position to appreciate the same, having seen and heard the witnesses themselves and observed their behavior and manner of testifying during the trial. (People vs. Portuqueza, L-22604, July 31, 1967; People vs. Gumahin, L-22357, October 31, 1967; People vs. Jarawata, L-22029, August 15, 1967; Addenbrook vs. People, L-22995, June 29, 1967; People vs. Castro, L-20555 & 21449, June 30, 1967.)

Appellant assails the testimony of Lucia Ferolino to the effect that after the appellant had allegedly asked for the key, he immediately shot Francisco Poncardas without giving the latter a chance to say anything or answer the inquiry. This, appellant claims, is inconsistent with the ordinary course of events since the deceased and appellant were intimate and related to each other (the deceased was allegedly the second cousin of appellant's father). Appellant maintains that under the circumstances, the natural reaction would have been for the appellant to wait for the answer of the deceased before shooting him. He mentions some probable comments that the deceased could have made, thus: "What is the matter, Toting"; or "Why have you done this to me, Toting"; or "Don't you pity me, Toting"; or "Please don't kill me, Toting." This, the deceased never said, much more mentioned appellant's name, during his supposed distressed moments and, therefore, the reasonable inference is that the person who shot him was not known to him in any way.

Reduced to few words, appellant's theory is that what is not ordinary is not credible. Appellant's argument ignores the fact that different persons respond to crisis differently. Francisco Poncardas might have been a man of few words. Besides, the deceased treated appellant like a son (appellant testified that the deceased loved him very much, even gave him money (TSN, p. 822), and, as a father, he must have thought that he could stop appellant by simply getting the gun from him, sans any dialogue. And so, without much ado, he tried to wrest the gun from the appellant. It was perhaps this attitude of the deceased that provoked the appellant, so he shot his benefactor. This is not uncommon nowadays. Many cases there are when children are the masterminds of robbery committed against their own parents or against the persons who have given them shelter, food and education. Children have the temerity of shooting their own parents even for trifling reasons, as when they are refused money, or when they are scolded or prevented to do this and that. If children can do this to their own parents, what more of strangers?

It is argued that robbers do not usually commit robbery in a place where they are well known, and more so, when the place is well lighted, and that robbers instinctively commit robbery with the highest precaution in order that nobody may recognize them. This theory does not hold true anymore. Time has changed a great deal. Now, robberies are committed left and right in broad daylight, in the midst of crowds, and under the very noses of police authorities. Even if their identities are known, the robbers can get away with the robbery; they hide in far away places where they are not known and with assumed names, they enjoy their loot. Before they are caught, if ever they can be discovered, they have pulled another robbery and disposed of their loot. Like in the case at bar, among the robbers who participated in the commission of the crime, only appellant was apprehended and brought to trial; the others, who presumably hold the stolen goods and money, have not yet been apprehended and are scot free.

It is also contended that the trial court erred in considering as part of the *res gestae* the statement of Lucia Ferolino that immediately after she arrived in the house of Melchor Poncardas, to where she fled during the time of the robbery, Lucia told Ruellan, that Francisco Poncardas was killed by a person named "Toting", because appellant claims that when Lucia returned to the house of the deceased after the robbers had left, she did not mention this information to anybody, more so to the police officers who were investigating the case. (TSN, pp. 283-285; 298-299.)

Appellant doubts that this information connecting him to the crime had really been relayed to Ruellan, otherwise,

as appellant claims, she would have reiterated the statement to the authorities. The failure of Miss Ruellan to inform the police officers about the statement does not make her an incredible witness. In the first place, she was not asked about the statement. And since Lucia and Josefina, who have actually witnessed the incident, had already volunteered the information to the people inside the house of Poncardas. (TSN, p. 122), there was no need for Miss Ruellan to repeat the same statement.

There are three requisites for the admission of evidence of *res gestae*: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive or devise; and (3) that the statements must concern the occurrence in question and its immediately attending circumstances. (Moran, Comments on the Rules of Court, Vol. 5, 1963 Ed. 36). There is no question that robbery with homicide is a startling occurrence so as to produce nervous excitement. The declaration of Lucia Ferolino that appellant shot her grandfather, no doubt, concerned the occurrence in question. The question then to determine is whether the statement, made after the robbery and homicide had ended, was made before the declarant had time to contrive or devise anything contrary to the real fact that occurred.

Lucia Ferolino testified that after she saw Toting Ricaplaza shoot her grandfather, she ran to the kitchen and informed Josefina Bigapria about the incident. Then the two of them went out running towards the evergreen, hide for a while, and then proceeded to the house of Melchor Póncardas. Upon arrival there, Lucia immediately informed Miss Ruellan that the person who shot her grandfather was Toting Ricaplaza. The intervening time between the act and the declaration relating to it is so short that it may not be deemed to have relieved the declarant from the exciting influence of the startling occurrence. No other circumstance had intervened which might have removed from Lucia's mind the startling incident. The identification of appellant may, therefore, be considered as part of the *res gestae* since it was made before the declarant could contrive or devise a plan to incriminate him. But, even if the statement of Miss Ruellan admitted by the trial court as part of the *res gestae* is excluded, still the evidence in respect to the participation of the appellant in the commission of the crime is convincing.

The appellant vigorously assails the decision because the trial court did not accord credence to his defense of alibi.

Appellant denied the charge that he was one of those who robbed and killed Francisco Poncardas on the night of June 18, 1962. While admitting having been at the house of the deceased in May 1962, he denied, however, that he had been served his meals there by Lucia and Josefina (TSN, pp. 794-795). To determine the truth of appellant's alibi, it is important to enumerate here his activities before and after the commission of the crime.

Appellant testified that on June 18, 1962, from morning up to 4:00 o'clock in the afternoon, he was busy working in the fishpond of Dionisio Liong in Balangonan, Jose Abad Santos, Davao, many kilometers away from Padidu, Glan, Cotabato. From the fishpond, he went to the house of Dionisio Liong where he sat by the balcony and listened to the radio up to 6:00 o'clock, when he was asked by one Leonardo Saavedra to help him catch pigs (TSN, pp. 805, 808-809, 874-875). The catching of pigs lasted for about half an hour, after which he was ordered by Dionisio Liong to close the gate of the fishpond and repair the dikes. He left the fishpond at about 10:00 o'clock in the evening (TSN, pp. 811, 874-875).

The next day, June 19, appellant learned of the tragedy. He felt worried and wept because the deceased was to him like his father who loved him very much and even gave him money (TSN, pp. 815, 822). On June 23, he left Balangonan for Dadiangas. He declared that although in going to Dadiangas, he had to pass Glan, he did not bother to stop there because his wife and children were waiting for him in Dadiangas where they intended to take a bath at the beach there on June 24 - St. John the Baptist Day (TSN, pp. 823-825; 851).

Appellant presented witnesses to corroborate his claim: Capt. Jose Momongan who was then the Commanding Officer of the 101st P.C. Company stationed at General Santos, Cotabato; Sgt. Salvador Garcira of the same company; Dionisio Liong, Leonardo Saavedra and Hilario Tubuan.

Captain Jose Momongan testified that he first met appellant in May 1962, in General Santos, Davao. He met him again in Balangonan on June 16, 1962, where he went to investigate the boundary dispute between Glan and Abad Santos regarding Batulaki and to see the fishpond offered to him by Dionisio Liong (TSN, pp. 342-346). He did not know appellant's, real name. He merely called him Ting. On June 18, 1962, at about 6:00 to 6:30 in the afternoon, appellant, with two others, was ordered by Dionisio Liong to catch pigs. The catching of pigs lasted up to 7:00 o'clock in the evening. Witness saw appellant again while he and Dionisio Liong were eating supper about 7:30 o'clock that evening. Appellant ate supper during the second serving (TSN, pp. 352-354). After eating, appellant went to the fishpond together with the other employees of Liong. That from the veranda of Liong's house, he could see appellant and his companions in the fishpond until they returned to the house at 10:00 o'clock in the evening (TSN, pp. 356, 357). He further declared that appellant was wearing white shirt and maong pants with a red cap on the day in question. The next day, June 19, he saw appellant early in the morning in the beach of Balangonan wearing the same cap (TSN, pp. 357-358).

Dionisio Liong testified that appellant is a relative of his wife. He first met him in May 1961 in Dadiangas, Cotabato. The second time he met him was on June 15, 1962, when appellant applied for a job in his fishpond. He immediately appointed him as supervisor of his fishpond although he knew that he had no experience in fishpond business. Before appellant's appointment, there was a regular supervisor of the fishpond (TSN, pp. 726-728, 745-746). Witness declared that appellant arrived in Balangonan in the morning of June 15, 1962. He said the distance between Balangonan and Padidu Glan can be negotiated by boat in 3 to 4 hours (TSN, pp. 751, 769). In the afternoon of June 18, 1962, appellant emptied the fishpond up to 6:30 o'clock. Afterwards, he chased hogs with two other companions. The chasing of hogs lasted until 7:00 o'clock. The last time he saw appellant was at 10:00 o'clock that same evening (TSN, pp. 733-735).

Witness testified that he knew Capt. Jose Momongan since 1961. He said he did not offer his fishpond to Capt. Momongan; it was the Captain who wanted to buy it. And the Captain went to Balangonan not to convince him to sell his fishpond but to investigate the boundary dispute regarding Batulaki (TSN, pp. 754-759). On June 18, 1962, after lunch, the Captain took his siesta. After he woke up, witness and the Captain conversed off and on inside his house until 10:00 o'clock in the evening. The Captain did not go out of the house from the time he woke up from his siesta (TSN, pp. 765-766).

In the preliminary investigation before the Justice of the Peace Court, appellant testified as follows: Appellant arrived in Balangonan on June 16, 1962, at 12:00 o'clock noon. On June 18, 1962, after chasing pigs, appellant took his supper with Captain Momongan at about 8:00 o'clock or more. Afterwards, appellant slept. That the distance between Balangonan and Padidu Glan can be travelled in one and a half hours using a boat with 40 horse power engine.

Sergeant Salvador Garcira testified that he saw appellant about 6:00 o'clock in the afternoon of June 18, 1962, before chasing the hogs. He saw him again at 6:40 after catching the pigs. That was the last time he saw appellant (TSN, p. 665). In the preliminary investigation, however, witness declared that the last time he saw appellant was on June 18, 1962, at 5:15 in the afternoon (TSN, pp. 683-689).

Appellant's alibi must fail.

According to appellant, his uncle Francisco Poncardas loved him very much. Yet when he learned of his uncle's tragic death in Padidu Glan, he did not even bother to go there and pay his last respects to the deceased or condole

with his bereaved family. And all because his wife and children were waiting for him in Dadiangas where they intended to take a bath at the beach there. Appellant explained later that he did not go to Glan anymore because he was being suspected as the mastermind of the robbery and homicide. For more reason he should have presented himself to the family of the deceased and to the authorities as well in order to clear his name, if indeed, he had nothing to do with the commission of the felony. This is the most logical thing that an innocent man would have done under the circumstances. Appellant's behavior is unusual and inconsistent with human experience. His actions betray his guilty conscience.

Appellant had chosen the time between 6:30 and 7:00 o'clock in the evening to catch pigs. The reason he gave for so doing is that the pigs during day time go to the mountains and come back late in the afternoon. He said the pigs were domesticated. This is a very peculiar excuse. Domesticated pigs do not usually go far but remain within the premises of the house. If ever they go far and get lost, they would not know how to come back, unlike the dogs and cats. And if the pigs were really that tamed as suggested by appellant, there was no need for him to chase them. While eating, the pigs can be caught without difficulty. There is evidence that the house of Dionisio Liong is surrounded by coconut trees and forest (TSN p. 895). This piece of evidence renders more unconvincing appellant's excuse. Chasing pigs in open space crowded with trees at nighttime is a departure from the ordinary way of catching them.

It will be observed that the testimonies of defense witnesses dovetailed in nearly every detail as to where and what appellant did prior to, at the time of and even after the commission of the crime. The things related by the witnesses seemed to be very fresh and vivid in their minds despite the lapse of time. The exact and uniform time given by said witnesses, their having noticed said time without special reason for doing so, and their close association with appellant, render their testimonies unconvincing. (People vs. Fontanosa, et al., L-19421, May 29, 1967; People vs. Raquel, L-17401, November 28, 1964.)

It is also worthy to note that the aforesaid testimonies suffer from flaws and inconsistencies. Thus, Captain Momongan declared that in the afternoon of June 18, 1962, he stayed in the veranda of Dionisio Liong's house from where he witnessed the chasing of the hogs. From there, he also saw appellant and his companions while they were working in the fishpond. He also stated that he and Dionisio Liong ate their supper ahead; appellant ate his supper during the second serving. On the other hand, Dionisio Liong testified that Captain Momongan did not leave the house from the moment he woke up from his siesta; they were conversing off and on inside his house up to 10:00 o'clock in the evening. He also denied the Captain's claim that he offered his fishpond to him. While the variance may pertain only to minor matters of the incident, they surely affect witnesses' credibility.

To establish an alibi, it is not enough to prove that the defendant was at some other place when the crime was committed but must, likewise, demonstrate that it was physically impossible for him to have been at the scene of the crime at such time. (People vs. De los Santos, et al., L-19067-68, July 30, 1965; People vs. Libed, et al., L-20431, May 27, 1966; People vs. Noril Sampang, L-15743, March 31, 1966; People vs. Sinaon, L-15631, May 27, 1966; People vs. Constantino, L-23558, August 10, 1967; People vs. Pelagio, et al., L-16177, May 24, 1967.)

Assuming that appellant was really in Balangonan on the day in question - June 18, 1962, there is evidence that it was not physically impossible for him to be at the place of the crime at the precise time the robbery and homicide were committed. During the preliminary investigation, Sgt. Garcira testified that the last time he saw appellant was at 5:15 in the afternoon of July 18. And Dionisio Liong declared that the distance between Balangonan and Padidu Glan could be negotiated in one and a half hour by boat. The crime at bar was committed at about 7:00 o'clock in the evening of June 18, 1962. It is true that Liong tried to change his testimony in court (TSN pp. 736, 737, 743) but between his testimony at the trial and his testimony at the preliminary investigation, the latter should be given credence because it was made when declarant had not had sufficient time to meditate or concoct

what to say in court.

Then, too, appellant's alibi deserves scant consideration for it is supported only by friends and relatives. That Captain Momongan is a friend of appellant can be gleaned from the following facts: Captain Momongan played the role of defense counsel for appellant and even asked the court to let him act as *amicus curiae* at the preliminary investigation. He made representations to the Mayor of Glan and to the relatives of the deceased that appellant was not guilty of the crime charged. (TSN p. 521.) And he even approached important people to have the case against appellant dismissed. (TSN p. 529.) He did not also make any effort to examine appellant or take his testimony in writing despite his knowledge that two witnesses positively identified and linked him to the crime. He also failed to determine the identity of the persons who may shed light to the commission of the crime and the authors thereof. And, notwithstanding that there was already a warrant for the arrest of appellant, Captain Momongan still allowed him to go to Glan as a free man. (TSN pp. 528-529.) Witness claimed that he had no familiarity with appellant; in fact, he declared that he knew of appellant's real name only when he was implicated in the crime. But from the very start of the case up to its termination, Captain Momongan has shown extraordinary interest to have him cleared of the crime charged. His interest had.- assumed a personal character.

The other witness, Dionisio Liong, is related to appellant by affinity. He admitted that he hired appellant as supervisor of his fishpond although he knew very well that he had no experience whatsoever in its management. It is strange that appellant was hired just a few days before the commission of the crime and immediately thereafter he hurriedly left. His employment, therefore, may be said to have another purpose than the mere taking care of the fishpond. He had chosen this place as a convenient start for his journey to Glan, Cotabato, to commit the murder and the robbery.

There is one circumstance which clinches the certainty of the identification of the accused. Josefina Bigapria stated without being asked that the man who entered the sala of Francisco Poncardas was wearing a cap. When Captain Momongan was testifying in turn for the defense, he volunteered the information that appellant was wearing a cap on the day in question and also the next day when he saw him at the beach of Balangonan. (TSN pp. 357-358.) This extraordinary coincidence attests to the reliability of the identification made by Josefina Bigapria.

The rule is that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime. And since alibi can easily be fabricated, the same must be established by clear and positive evidence, free from doubt and bias, and that purely oral evidence presented to prove it cannot prevail over positive evidence showing the presence of the defendant at the scene of the crime and his participation in the commission thereof. (People vs. Reyes, et al., L-18892, May 30, 1966; People vs. Contante, L-14639, December 29, 1964; People vs. Sagario, et al., L-18659, June 29, 1965.) Appellant's evidence on this point is not sufficient to overcome the positive identification made by the prosecution witnesses — Lucia Ferolino and Josefina Bigapria - that he was the very man who shot Francisco Poncardas.

Finally, the appellant contends that the trial court erred in not considering the confessions of Alfredo Fernandez and Remigio Arzula admitting their participation in the commission of the crime at bar, and exonerating by reason thereof.

The confessions of Alfredo Fernandez and Remigio Arzula (Exhibits 1 and 2), were submitted as evidence for the defense. In said confessions, Fernandez and Arzula admitted their participation in the commission of the crime charged, naming their companions but not in any way mentioning the name or nickname of appellant. The theory of the defense is that not having been mentioned in the aforesaid confessions, appellant has no participation at all

in the felony; otherwise, the declarants would have made mention of appellant as a participant in the commission thereof.

Before Alfredo Fernandez and Remigio Arzula were brought to the constabulary headquarters, they were confined in the provincial jail in General Santos charged with vagrancy. They were interviewed on June 25, 1962, but their testimonies were reduced into writing only the next day, June 26th. The reason, according to Captain Momongan, is that the declarants at first denied their participation but through the use of diplomatic techniques, he was able to persuade the suspects to admit their guilt. What these techniques are, the Captain did not clearly explain. First, he said, he appealed to the suspects' civic consciousness and moral duty. Then he said, he employed the persuasive technique which took long hours to make. What he did, he declared, is to make the two suspects disagree on certain facts resulting first to the confession of Arzula, followed by Fernandez. (TSN, pp. 515-520.) True, there was a re-enactment of the crime but it was made to fit the statements narrated in the confessions. (TSN pp 382-383.)

The confessions, Exhibits 1 and 2, consisted of 30 questions. Only 15 questions relate to the killings of Glan. The suspects were questioned for several hours for two days before the written confessions were secured. While there is no claim or evidence of physical torture, the above circumstances show beyond doubt that pressure was applied to subvert the declarants' freedom of will, thereby making their confessions involuntary. The trial court shared with this view when it dismissed the case against Alfredo Fernandez and Remigio Arzula.

Upon the foregoing considerations, the decision appealed from being in accordance with law and the evidence, the same is affirmed, with costs against the appellant.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.

Judgment affirmed.

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