

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GING SAM ALIAS TABA, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-4287. December 29, 1953*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b6f382cc6cfc/>**PER CURIAM:**

Ging Sam alias Taba alias Ah Pui Sy, Lee Tao alias Chang Tiam, Cenon Reyes y Cifra, Gregorio Gonzales y Guinto, Federico Badeo y Adiao alias Pedring, Arturo Basa y Diodela alias Turing, Ildefonso Santos y Barrios alias Ponching, Ong Giok Siu, Dee Chee Ping, Yao Ling alias Ong Guat, Claro de la Cruz alias Arong, Coling Doe and Benito Doe were charged in the Court of First Instance of Manila with the crime of kidnapping with murder in that, conspiring and confederating together and helping one another, with intent to extort ransom, they kidnapped in an automobile one Chan Teng and using treachery inflicted upon him serious physical injuries which directly caused his death.

Of the thirteen (13) defendants, five (5) have not yet been apprehended at the time the case was tried on the merits, namely: Ildefonso Santos y Barrios alias Ponching, Ong Giok Siu, Claro de la Cruz alias Arong, Nicolas Cruz alias Coling Doe, and Benito Doe alias Agapito Doe. The eight (8) available were tried and found guilty of the crime charged and were sentenced each to suffer the capital punishment of death. They were further sentenced to indemnify jointly and severally the heirs of the deceased in the sum of P5,000 and to pay their proportionate share of the costs. From this decision, the convicts interposed the present appeal.

Evidence for the Prosecution

Chan Teng, the victim in the crime before us, was a Chinese businessman of Ozamis City who used to come to Manila to attend to some business transactions. Sometime in May, 1950, he came once more to Manila with his wife and six minor children. He used to stay in the house of his parents-in-law on Elcano Street but because the house could not accommodate all the members of his family, he and his wife lodged at night at the Peace Hotel on Soler Street. Chan Teng used to transact business at the Kian Liong Exchange at 705 Teodora Alonzo under the management of his uncle Ong Pan where he used to withdraw money with which to make purchases for his store at Ozamis City.

On May 25, 1950, at about 9 o'clock at night, after coming from the office of his uncle where he obtained checks, money orders and some cash and while on his way to his hotel, he was accosted on the corner of Teodora Alonso and Soler streets by two men, Gregorio Gonzales and Cenon Reyes, telling him that they were taking him to Camp Crame on a charge of communistic activities. Gonzales posed as an honorary sergeant of the Manila Police Department and an agent of the Interior Department and Reyes as an honorary patrolman of Pasay City. Chan Teng was pushed into a waiting car then driven by Apolinario Pelaez whose services had been hired by Arturo Basa without informing him of the purpose for which the car would be used. Chan Teng was taken to an isolated house then occupied by Benito Camaya situated on M. de la Cruz street, Pasay City, where he was detained, his hands tied to a cot and his feet chained together. During his captivity in that house, he was fed by Camaya with coca-cola and bread. In the night of the next day, Chan Teng, making use of a trick, tried to escape but failed. He was caught and beaten up badly by Ildefonso Santos, one of his guards, who with the help of a companion.

Federico Badeo, subdued him and brought him back to the house where he was tied once more to the cot.

Early in the morning of May 28, Ging Sam arrived, who, with the help of Claro de la Cruz and Nicolas Cruz, carried Chang Teng, his feet still chained, and placed him inside the luggage compartment of a packard car. With Ging Sam at the wheel, Chan Teng was taken to a house at No. 13 Anak Ng Bayan Street, San Francisco del Monte, which Ging Sam sought to rent the day before. This house was under the care of one Co Che. On the day previous, Ging Sam, accompanied by Yao Ling and another unidentified person, approached Co Che trying to rent the house, and while Co Che was at first reluctant to agree, he was later persuaded to leave the house upon being given an advance payment of P50 and upon being assured that the owner had agreed to lease the premises. When on the next day Co Che found out that Ging Sam did not tell the truth, he returned to the house that same afternoon to find that there was no occupant. He noticed however that the galvanized iron sheet covering the opening of the air raid shelter had been removed. Suspicious that there was something wrong, Co Che reported the matter to the owner. The two notified the police, and when the place was investigated, the dead body of Chan Teng was found dumped into the air raid shelter. The body showed signs of violence and appears to have been dead for about 24 hours. The post mortem report states that the body had some ligature marks and many contused abrasions on the arms and legs, which were still chained, and hematoma on both sides of the occipital region and a wound on the head. The victim died of intracranial and meningeal hemorrhage.

Early in the morning of May 27, a note in Chinese characters was found at the door of the Kian Liong Exchange Office. The note was written and signed by Chan Teng and was addressed to Ong Pan, Chan's uncle and manager of the exchange. The note revealed that Chan was kidnapped by some Filipinos who were holding him for ransom in the amount of P50,000. As the amount was too much for him, Chan asked his uncle to help him. A second note, unsigned and dated May 29, was received by Ong Pan through registered special delivery in the afternoon of the same day. The note merely contained a notice that Chan Teng could be found in the air raid shelter of the house of Ko Bang Kiat at San Francisco del Monte.

The disappearance of Chan Teng was first brought to the attention of the Manila Police by his wife in the morning of May 26, who was alarmed when he failed to return home the night before. This notification coupled with the note received by Ong Pan informing him of the kidnapping, which was brought to the attention of the police, made the latter take steps to track down the persons responsible for the kidnapping. The first man apprehended was Apolinario Pelaez, the driver of the car used in carrying away the victim. At first he refused to talk fearing reprisal on the part of the Filipino members of the snatch gang, but when these were arrested he finally gave in and revealed the truth to the police. The following is the gist of his testimony: He was a driver of the "Flying 'A'" PU service with a garage on Georgia Street, Malate. Arturo Basa, with whom Pelaez lived in the same house during the enemy occupation, was a driver of the "Flying 'P' " PU service which used the garage of the "Flying 'A' ". On May 25, 1950, at about 6 o'clock in the evening, Pelaez was riding in a jeep when he saw Arturo Basa in another jeep on Taft Avenue. Basa motioned Pelaez to stop and then approached him to ask him if he could use his (Pelaez) car that night as the car assigned to him (Basa) was then out of order. Basa added that he would pay him on the "boundarihan" basis, that is, P9.00 for the whole night. At first Pelaez was reluctant to yield his car because he expected to earn more that night on account of the presence of many American sailors who had just gone ashore, but he finally agreed on condition that he be allowed to drive the car himself. To this Basa agreed and both drove toward Sta. Cruz to pick up Basa's passengers. When they reached the corner of Teodora Alonso and Soler streets, Basa alighted telling Pelaez that he will see his passengers. After Basa had gone, Nicolas Cruz, with whom Pelaez had once lived in a house at M. de la Cruz Street, Pasay, came along and asked Pelaez why he was there. Pelaez answered that he was in the company of Arturo Basa who had just alighted to see his passengers. Nicolas then asked Pelaez if Basa told him who his passengers were and when he answered in the negative, Nicolas said that they were the ones who talked to Basa and that Basa would be given P100. At this

juncture Basa returned and upon seeing Nicolas, Basa told him that as his car had not arrived he brought Pelaez along. Nicolas then left. While Pelaez and Basa were waiting in the car, Gregorio Gonzales and Cenon Reyes passed by. Pelaez asked Basa why those two were there and Basa answered saying that they were the companions of Ging Sam who would take a rich businessman to the province. After Reyes and Gonzales had left, Basa left also, leaving behind Pelaez alone in the jeep. Pelaez then fell asleep. Later he was awakened by someone who told him to drive ahead. After driving some distance along Soler street, he was told to stop where Gonzales and Reyes were standing with a Chinaman between them. Pelaez did so and open the rear door of his car. Then Gonzales was heard telling the Chinese to get into the car, but he refused and tried to escape, whereupon Reyes and Gonzales held him by both arms and forced him inside the car intimating that they were agents of the law. It was then past 10 o'clock in the evening. Before reaching the corner of Azcarraga and Rizal Avenue, Gonzales told the Chinaman that they were taking him to the Bilibid compound because he was a communist. To this the Chinaman protested saying that he was not. But when they reached the corner of Azcarraga and Avenida Rizal, Gonzales told Pelaez to proceed to Sta. Cruz bridge and then toward Dewey Boulevard. While in this place, when Gonzales noticed that the Chinaman was feeling uneasy, he cocked his pistol and warned him not to make any noise if he wanted to live. After passing several small streets in Pasay they finally reached an isolated place at M. de la Cruz, and stopped at the end of the street where there was a basketball court. They parked in front of the house of Benito Camaya where Claro de la Cruz, Nicolas Cruz and Federico Badeo approached them. Then Gonzales and Reyes alighted and brought down the Chinese. When Pelaez was about to leave, Claro de la Cruz, who was an acquaintance of Pelaez, told him to come back the following day for his pay. Pelaez did not pay much attention to what Claro had said, and drove his car back to M. de la Cruz, and upon turning to another street he saw Arturo Basa who apparently was going to the place where he dropped the three passengers. Basa asked Pelaez if he was paid. When he replied in the negative, Basa told him to wait for Ging Sam who will be the one to pay him. Pelaez, however, did not care to wait any longer but before leaving, he warned Basa that if he happens to be involved he will be the first person he would implicate. To this Basa answered that he should not worry because Ging Sam is influential with the police. It was 11 o'clock at night when Pelaez left the place. The following day, May 26, at 6 o'clock in the morning, Pelaez went back to M. de la Cruz to look for Basa and ask for money and upon going to the store where they used to meet, Pelaez saw Claro, Nicolas and Ging Sam on the stairway of Nicolas house. Claro approached Pelaez and asked him what he wanted. Upon learning that Pelaez wanted money, Claro went to Ging Sam and asked P15 to be given to Pelaez, who left after receiving the money. The next day, May 27, Basa went to Pelaez house and gave him another P15. Four nights later, while Pelaez was driving his car along Taft Avenue, he was hailed by some persons in a jeep following him. They were Ging Sam and Nicolas who motioned to him to stop his car near the curve. Pelaez did so and Nicolas and Ging Sam alighted from the jeep and boarded Pelaez' car. He then drove to M. de la Cruz street. At this juncture Ging Sam advised Pelaez that if he should get arrested he should merely tell the police that he did not know his passengers and, in any event, he (Ging Sam) will take care of him. Pelaez told Ging Sam that if he is caught he could not help but tell the truth, to which Ging Sam said that it was up to him.

Benito Camaya explained what took place in his house during the two days Chan Teng had been detained there until he was taken away by Ging Sam. He said that he knew Ging Sam, Lee Tao and Yao Ling because they live in that house for six months in 1948 who at that time were engaged in the business of making "bucayo". On May 25, 1950, at nighttime, while he was in front of the house, a car arrived with three passengers. They were Cenon Reyes and Gregorio Gonzales with a Chinaman whom he identified as Chan Teng. He knew both Reyes and Gonzales because they live on the same street. As Camaya approached the car, Nicolas Cruz and Claro de la Cruz, who were also known to him, came along and requested him to allow the Chinaman to stay in the house for a day or two, to which he consented. While the three were thus talking to each other, two persons, Federico Badeo and Ildefonso Santos, also known to Camaya, passed by. As Camaya agreed to their request Nicolas and Claro

brought the Chinese into the house. They asked Camaya if he had a cot, to which he answered affirmatively and gave them the cot. At this moment Cenon Reyes left leaving Nicolas, Claro and Gonzales who engaged in a conversation in the room. When Camaya approached them, Claro told him to leave the room and watch for any man who may come. After a while, the three came out of the room and Nicolas told Camaya to guard the Chinaman. To this remark Camaya reacted adversely saying that he could not possibly do what he was told to do because he had no money and besides his wife was still sick. In reply Nicolas told Camaya not to worry because they would get money from Ging Sam. The Chinaman, who was identified by Camaya as Chan Teng, was made to lie on the cot, his hands were tied to the sides of the cot, and his legs chained together. Claro, Nicolas and Gonzales departed but warned Camaya that his life would be in danger if he would allow the Chinaman to escape. Left alone, Camaya asked Chan Teng why he was brought there to which Chan Teng answered saying that he was being held for a ransom of P50.000 which he can not give. Camaya watched over the Chinaman the whole night and because he was so afraid of the kidnappers he was not able to sleep even for a minute. The following morning, May 26, Camaya waited for Ging Sam and his companions but they did not show up. So he went to a nearby sari-sari store operated by one Yawa to ask him to inform his "compadre" Ging Sam that he was already tired of guarding their captive. He also bought coffee, bread and sugar and a bottle of coca-cola with which to feed Chan Teng. At about 8:30 o'clock a. m. of that day, Camaya saw Federico Badeo pass by and requested him to tell his companions to relieve him (Camaya) in order that he may get some sleep. Federico told Camaya to go to sleep as he would watch the Chinaman in the meantime. Chan Teng called Camaya to the room where he was confined and after having asked for and drunk water, Chan Teng requested Camaya to untie one of his hands so that he could drive away the mosquitoes biting him. Camaya heeded the request and went to sleep. At about midnight Camaya was awakened by Federico to tell him that the Chinaman escaped. Camaya lighted a candle and went to look for the Chinaman in various parts of the house but failed. Then he went to the balcony and from there saw Ildefonso Santos below the house beating the Chinaman. Chan Teng was able to untie his hands and leave the room but his legs were still chained. Camaya advised Federico and Ildefonso to bring the Chinaman upstairs to avoid scandal in the neighborhood. Ildefonso heeded the suggestion and the Chinaman was brought back into the room and he was once more tied to the cot, this time more tightly so that he may not escape again. Observing that he had a wound on the right temple, Camaya asked the Chinaman who did it and the Chinaman answered that he was struck with a gun. The following day, May 27, Camaya went again to the store of Yawa to tell him that he could no longer keep on guarding the captive. Yawa answered saying that he had already talked to Ging Sam and that he would come any minute that morning. At about 5:30 o'clock the following morning, Ging Sam in fact showed up driving a packard car accompanied by Nicolas and Claro de la Cruz. The three went up the house and they untied the hands of Chan Teng. As he was too weak to walk, Ging Sam asked his two companions to carry him and place him in the luggage compartment of the car. This was done and Ging Sam drove away accompanied by Claro and Nicolas.

As to what happened in house No. 13, Anak Bayan Street, San Francisco del Monte, where Chan Teng was taken in the morning of May 28, 1950, no one was able to give a clear account except Co Che the caretaker of the house, who also testified for the prosecution. The substance of his testimony is as follows: He was the caretaker of that house which belonged to one Ko Bang Kiat. On May 27, 1950, at about 5 o'clock in the afternoon, Ging Sam came with Yao Ling and another companion to rent it. Co Che told Ging Sam to see the owner of the house. At about 6 o'clock the next morning, May 28, Ging Sam came back accompanied again by Yao Ling and another person and told Co Che that he had already talked with the owner who agreed to let him occupy the house. As Ging Sam could not produce any note from the owner, Co Che suggested that he get one which Ging Sam promised to do. Sometime later, Ging Sam came back still without the note but this time he gave the excuse that he was too busy to get one and insisted that Co Che accept the sum of P50 as advance payment telling him to get a receipt from the owner. On this occasion Ging Sam came in a car, which was preceded by a jeep. Ging Sam told

Co Che to vacate the house immediately as he was soon going to occupy it. As Co Che was leaving, he saw Yao Ling open the door of the ground floor of the house and the car was driven inside by Ging Sam. When Co Che returned the following day, May 29, to see if everything was in order, he found out that the persons who rented the house were gone. Co Che inspected the house and noticed that the galvanized iron sheet covering the air raid shelter had been removed. This aroused the suspicion of Co Che and immediately notified the owner of the house of what had happened. The two reported the matter to the police which resulted in the discovery of the dead body of Chan Teng dumped into the air raid shelter of the house.

The evidence for the prosecution also shows that after the discovery of the dead body of Chan Teng the persons who took part in the kidnapping disappeared from their respective residences in Manila. Arturo Basa fled to Sorsogon, Sorsogon and when he saw that his arrest was imminent, he surrendered to the authorities on June 16, 1950. Ging Sam and Lee Tao fled to an isolated place in the municipality of Fajre, Cagayan where they were arrested on June 6, 1950. Yao Ling went to hide in an isolated place in barrio Iba, Silang, Cavite, where he was arrested on June 16, 1950. And Dee Chee Ping was found in the house of a relative in Caloocan on June 9, 1950. When arrested, he said that he went to the house of his relative because the police were looking for him and pointed to Ong Giok Siu as the mastermind. It appears that after the kidnapping was discovered, he, with another Chinese, went to seek refuge in the house of one Go Siong Li in Bataan on May 29, 1950, but Go Siong Li refused to admit them because of his suspicion that they had something to do with the kidnapping of Chan Teng. In fact, he admitted to Go Siong Li that he participated in the kidnapping. He also admitted to Ong Pan that he was the one who gave instructions to kidnap Chan Teng.

The prosecution also presented as evidence the written confessions signed by some of the accused in the course of the investigation conducted by the police following their arrest. These written confessions and the persons who had subscribed to them are: Dee Chee Ping, Exhibit P; Lee Tao, Exhibit Q; Yao Ling, Exhibit R; Gregorio Gonzales, Exhibits S and S-2; Federico Badeo, Exhibit T, and Cenon Reyes, Exhibits II and JJ. Ging Sam was also subjected to an investigation but refused to give any written confession. He, however, testified in his own defense at the trial of the case. The introduction of these written confessions was vigorously objected to by the defense on the ground that they were extorted thru third degree methods, but the objection was overruled.

Evidence for the Defense

It should be noted that the defendants do not entirely deny the participation imputed to them by the witnesses for the prosecution in the commission of the crime. Most of them admit the commission of the acts imputed to them but only up to certain extent. When it comes to the portion of the evidence of the prosecution which establishes their complicity in the commission of the crime they either completely deny such complicity or offer an explanation which would give the impression that they were ignorant of the acts they were called upon to perform, or the purpose for which they were utilized, thus making it appear that they were unwilling tools of the real criminals. And, as will be noted, the real criminals pointed to are not precisely those who had been apprehended but those who are still at large and their whereabouts unknown. These criminals are Ong Giok Siu, Nicolas Cruz and Claro de la Cruz. This is clearly reflected in the testimony given by defendants which for purposes of this decision will be presently discussed.

Arturo Basa testified that on May 25, 1950, as his car was being used by another and he had to take some passengers that day, he asked Apolinario Pelaez if he could take his passengers; that Nicolas Cruz had previously seen him at his house in Pasay telling him (Basa) that he would need his car to take some friends to a birthday party; that Pelaez asked him how much he would pay for the use of his car, to which Basa replied that it would be under the "boundarihan" system, which means that the car would be hired from 5:00 p. m. to 7:00 a. m. for P15; that Pelaez readily agreed to take his passengers and they proceeded to Soler and T. Alonso streets; that upon

reaching that place, Basa saw Nicolas and told him that as his car did not arrive he brought along the car of Pelaez; that Pelaez asked Nicolas how long he would use the car and Nicolas answered that he would use it for a short time; that at about 6:30 in the evening, Basa told Nicolas and Pelaez that he would leave them as he was going to a movie and so he left them. Basa denied having gone back to join Pelaez in the car, or having gone to meet Pelaez in Pasay after the latter had gone there to take some passengers. Basa also testified that he was sent by his grandmother to Bicol on May 25, 1950 to get some letters of administration from a lawyer; that while he was in Sorsogon he read in the newspapers that he was wanted by the police; and that when his uncle Geronimo Habelito arrived there with Lt. Morales he surrendered to them and was taken to Manila.

Gregorio Gonzales and Cenon Reyes practically testified to the same facts though they differed in some minor details. They said that they were invited to a party by Claro de la Cruz and Nicolas Cruz and so in the evening of May 25, 1950, they rode in a taxi to Soler and Gandara streets; that upon arriving Claro and Nicolas left to look allegedly for the Chinese who was giving the party: that when Claro and Nicolas returned they told Gonzales and Reyes to go ahead to the corner of Soler and T. Alonzo streets and wait there for them; that this they did and after waiting for sometime a Chinese named Yawa with two other Chinese came and asked them why they were there, and they answered telling them the purpose of their presence; that Yawa told them that he would look for Claro and Nicolas but returned without them and instead Yawa told Gonzales that Claro and Nicolas had already left; that, as one of his Chinese companions wanted to buy morphine in the house of Benito Camaya, Yawa suggested that, if they, Gonzales and Reyes, are ready to go home, they could go with them so that they could show the house of Camaya; that Gonzales and Reyes agreed to Yawa's suggestion and after a while the car driven by Apolinario Pelaez arrived; that Gonzales and Reyes boarded the car with Yawa and his two Chinese companions and drove to the house of Benito Camaya on M. de la Cruz St., Pasay; that upon arriving Nicolas and Claro appeared with Benito Camaya, and when Reyes and Gonzales asked Claro and Nicolas why they had left them behind in Manila without leaving a word the latter simply said that they would just carry out their party some other time; that thereafter Reyes and Gonzales left and went home.

Ging Sam, alias Taba, gave the following explanation: Early in the morning of May 28, 1950, his employee, Lee Tao, woke him up telling him that Ong Giok Siu wanted to hire his car. Ging Sam informed Ong Giok Siu that his Packard car has already been turned over by him to the California Auto Exchange for sale. Upon insistence of Ong Giok Siu, who said that he had promised some friends to take them to Antipolo, Ging Sam was prevailed upon to get the car from the exchange. To this effect Ging Sam talked to the watchman of the exchange who at first was reluctant to give the car but Ging Sam finally got the car thru the help of one Chua who was influential with the owner of the exchange. Ging Sam upon indication of Ong Giok Siu drove the car to M. de la Cruz Street of Pasay to pick up a friend. They stopped the car in front of the store of Yawa, a "compadre" of Ging Sam, where Ong Giok Siu alighted and talked with Yawa. After a while Ong Giok Siu came and instructed Ging Sam to drive ahead until they reached the house of Benito Camaya. Ong Giok Siu went up the house and shortly thereafter came down accompanied by three persons. They all boarded the car and upon Ong Giok Siu's directions Ging Sam drove to Manila. Upon reaching the rotonda of España extension Ong Giok Siu said that he was mistaken in going that way for he meant to go to San Francisco del Monte to pick up a companion. While on their way to the latter place, the engine of the car developed trouble so Ging Sam went to a gasoline station to get water, but upon his return he discovered that one of his tires was flat. He told his companions that he would leave them for a while to get another tire. Ging Sam went to Magdalena street in a taxi to fetch one Chua Sua and as he could not be found, he thought of Yao Ling who used to drive Ging Sam's car. Upon Yao Ling's suggestion, they went to the house of one "Putol" also on Magdalena street from whom Ging Sam got a spare tire while Yao Ling obtained some tools from Chua. Thereafter Ging Sam hired a jeep and the two drove back to España street. Upon their arrival Ging Sam saw that only Ong Giok Siu was there who informed Ging Sam that their three companions had

gone ahead and shall wait for them at San Francisco del Monte. After changing the tire and repairing the engine of the car, they prepared to resume their trip, Ging Sam driving the car while Yao Ling driving the jeep. Ong Giok Siu boarded the jeep and told Ging Sam to proceed, but as Ging Sam said that he did not know where they were going Ong Giok Siu told Ging Sam to just follow the jeep. When they reached a certain house at San Francisco del Monte, the jeep parked in front of the house and the car in front of the jeep. Ong Giok Siu talked with Co Che, caretaker of the house and after their conversation Ging Sam evinced a desire to leave but Ong Giok Siu said that he would still need his car and suggested that he leave the car with him and use the jeep in going home. This arrangement was satisfactory and Ging Sam boarded the jeep with Yao Ling who, after taking Ging Sam home, returned the jeep to its owner. It was then 11 o'clock in the morning. At 3 o'clock in the afternoon Ong Giok Siu returned the Packard car to Ging Sam.

Yao Ling's testimony is substantially similar to that of Ging Sam as regards his participation as narrated by Ging Sam.

Lee Tao admitted having been an employee of Ging Sam since January, 1950. He corroborated Ging Sam's statement that he woke him up in the morning of May 28 to inform him that Ong Giok Siu wanted to hire his car.

Federico Badeo denied Benito Camaya's statement that he acted as guard of Chan Teng and helped in his recapture when he tried to escape. He admitted having known Claro de la Cruz, Nicolas Cruz, Ildefonso Santos, Reyes, Gonzales and Ging Sam.

Dee Chee Ping denied having had any participation in the kidnapping but admitted that he was an employee of the Kian Liong Exchange, that he lived in the same place where the exchange is located, and that he came to know Chan Teng because he used to transact business in that exchange. Although Dee disclaimed being a friend of Ong Giok Siu he admitted having dined often with him. On May 28, 1950, the two had dinner together and during their conversation Ong Giok Siu disclosed to him that it was he and some Filipino companions who kidnapped Chan Teng.

Findings

It can readily be seen from the foregoing exposition of the evidence both of the prosecution and of the defense that while defendants in their explanatory statements admitted their participation in the events that took place relative to the kidnapping of Chan Teng they have however denied the commission of the acts imputed to them by the prosecution which may render them guilty as confederates or co-conspirators in the perpetration of the act. As already stated elsewhere, when it comes to those portions of the evidence which conclusively establish their participation in the kidnapping they either completely deny such participation or gave an explanation which would exculpate them or would make it appear that they were unwilling tools of the real criminals. In other words, they set up a defense which may be characterized as confession and avoidance, confession as to acts which on the surface would give the impression that they acted merely as participants without knowing the purpose of the act they were called upon to perform, and avoidance as to matters which would tend to show that they were part and parcel of a plan to kidnap Chan Teng for the purpose of obtaining a ransom. The question therefore before us is whether the version given by the prosecution should be given credence in its entirety or should be restricted or qualified in the manner depicted by the defense through the testimony of the defendants-appellants. The determination of this question much depends upon the credibility of the witnesses which, under well-known precedents in this jurisdiction, is largely addressed to the sound discretion of the trial court.

We have noticed that the trial court has made a careful study of the evidence and has well weighed its credibility and consistency and has taken a painstaking effort in analyzing the particular part each of the defendants had had in the commission of the crime. We have also examined carefully the arguments of counsel for the defense in their

efforts to find flaws and weak points in the findings and conclusions drawn by the trial court in its decision, but, while the efforts they had made in defense of their clients are praiseworthy and should be commended, we have not been able to find any fact or circumstance of weight and influence which can be said has been overlooked by the trial court as to warrant a reversal of the findings it has reached, with the only exception we will hereafter point out. We are of the opinion that these findings are correct and should not be disturbed even if we disregard the extrajudicial confessions subscribed by the defendants whose admissions are now vigorously opposed on the ground that they had been extorted thru third degree methods.

The lower court, as above pointed out, gave credence to the witnesses for the prosecution more than to those of the defense and we believe that it did not err in doing so for after all a substantial portion of the testimony of the former has been confirmed to be true by the defendants themselves who, for obvious reasons, denied or varied those parts which directly implicated them. Moreover, no adequate motive has been shown why the witnesses for the prosecution should testify falsely against the defendants in order to foist upon them a crime so serious as the one charged. With regard to witness Co Che, caretaker of the house where Chan Teng was found dead, and witness Lucas Matulac, a neighbor, no improper motive has been advanced that might have induced them to testify against the defendants. The motives imputed to Benito Camaya by some of the defendants are so flimsy that they can hardly be considered. As to Apolinario Pelaez, the driver of the car used in the kidnapping, while he may have a criminal record, and to a certain extent an accomplice of the act, it cannot be said that his testimony is wholly unworthy because, in the first place, his car was merely hired by Arturo Basa who by the way did not inform him the purpose for which it would be used, and, in the second place, a substantial portion of his testimony appears corroborated by the defendants themselves. As to Go Siong Li, to whom Dee Chee Ping admitted his participation in the kidnapping and murder of Chan Teng, the defense tried to discredit him on the flimsy pretext that he got peeved because Dee Chee Ping insisted in collecting from him a debt of P100. There is therefore no plausible motive for the lower court to brush aside the testimony of the important witnesses for the prosecution.

On the other hand, the respective versions given by the defendants in an attempt to exculpate themselves are too absurd and unnatural to deserve credence. Thus, Cetion Reyes and Gregorio Gonzales testified that they were merely invited by Nicolas Cruz and Claro de la Cruz to a birthday party in a downtown restaurant in the evening of May 25, without knowing that their plan was to kidnap Chan Teng. If Nicolas and Claro had that plan there is no sense for them to invite Reyes and Gonzales to be told later that the blowout would not be carried out. In fact, according to Gonzales and Reyes, their going to Soler street was futile because Claro and Nicolas left them without even informing them that the party was called off. Besides, if it is true that there was that plan of kidnapping Chan Teng it is foolish for Nicolas and Claro to invite persons who are strangers to the plan thus exposing them to the risk of being discovered. The fact is that there was no such blowout and Reyes and Gonzales knew well why they had been invited to that place for it is a fact clearly proven that they lent themselves to be used as willing tools because of their connection with the police offices of Manila and Pasay City. Their participation proved useful because by making use of their police badges they succeeded in impressing upon the victim that he was being taken to Camp Crame in connection with his alleged communistic activities.

The explanation of Ging Sam that he had no knowledge of the kidnapping and that his car was simply hired by Ong Giok Siu who wanted to take some passengers to Antipolo, was not given credence by the lower court because it conflicts with the conduct he has observed later which in itself constitutes its best refutation. Thus, it appears that it was he who gave the money to Arturo Basa with which the latter paid Apolinario Pelaez for the use of his car. It was he who directed that Chan Teng be wrapped up and placed in the luggage compartment of his car and who drove the car toward the house at No. 13 Anak Ng Bayan of San Francisco del Monte which he, with Yao Ling and another person, had visited and sought to rent the day before. It was also he who paid Co Che the sum of P50 as partial payment of the rent with the assurance that the owner had agreed to lease the house. And,

finally, after the kidnapping of Chan Teng, and while Pelaez was driving his car along Taft Avenue, it was he who hailed Pelaez and advised him to tell the police if he should get arrested that he did not know his passengers promising that if he would be in trouble he would help him. These facts cannot but argue against the claim of Ging Sam that his participation in the whole mess was without any knowledge of the criminal plan. And if there is still any doubt as to his alleged participation this is dispelled by his sudden flight with his family to a far away barrio in the municipality of Fajre, Cagayan immediately after the discovery of the dead body of Chan Teng abandoning his store at Singalong, Manila.

The claim of Arturo Basa that he was not a party to the conspiracy to kidnap Chan Teng because he merely endorsed his passengers to his co-driver Apolinario Pelaez and that after Basa had accompanied Pelaez to meet his passengers at the designated place, Basa left and went to a movie and did nothing more leading to the commission of the crime, cannot also be entertained. It appears that, after Pelaez had driven Chan Teng, held by Gonzales and Reyes, to the house of Benito Camaya, Pelaez met Arturo Basa who asked him if he had already been paid. Basa told Pelaez to wait for Ging Sam who would pay him. The next day Pelaez went back to look for Basa and it was then that, thru the intervention of Basa, Pelaez was paid the sum of P15.00. Then, one day later, Basa went to Pelaez house and gave him another P15, and when Pelaez warned Basa that if he would get involved it was Basa he would point to, Basa assured him not to worry because Ging Sam was influential with the police. It is not therefore true that Basa did not have any part in the conspiracy to kidnap Chan Teng.

The participation of Yao Ling also appears established. This is apparent in at least the testimony of two witnesses, Co Che and Lucas Matulac. These witnesses pointed to him as the companion of Ging Sam when the latter brought Chan Teng to the house in San Francisco del Monte and as the person who opened the door of the ground floor where the car was placed. The explanation given by Yao Ling of his presence to the effect that he was merely invited by Ging Sam to help him fix the tire of his car cannot be given much importance because, if true, no valid reason is seen why after having fixed the tire and repaired the engine of the car of Ging Sam somewhere on España extension, he did not return home and instead he accompanied Ging Sam and otherwise followed his directions in going to the fatal house. At that time Chan Teng was already inside the luggage compartment of the car of Ging Sam and it is not reasonable to suppose that all that time he was never informed of the presence of Chan Teng in that compartment.

With regard to Dee Chee Ping, it is true that none of the principal witnesses for the prosecution has actually indicated his participation in the kidnapping and murder of Chan Teng, but there is enough evidence to show that he is one of those who planned the act in view of his knowledge of the movements of the victim being an employee of the Kian Liong Exchange. This is shown from the testimony of Ong Pan, uncle of the deceased, who said that at about 11:30 p.m. of May 30, 1950, Dee Chee Ping came to his house requesting protection because two Filipino thugs wanted to do him harm but that he refused to give him shelter because of his involvement in the kidnapping. This is corroborated by Francisco Chua who accompanied Dee Chee Ping to the house of Ong Pan and overheard their conversation. Chua even said that on that occasion Dee Chee Ping confessed as the one who gave instructions to kidnap Chan Teng. On the other hand, Go Siong Li testified that on May 29, 1950, Dee Chee Ping went to his house in Bataan accompanied by a Chinaman and a Filipino to beg him to be allowed to stay in the house for two weeks or more, but when Dee Chee Ping informed Go Siong Li that the purpose of his trip was because he was involved in the conspiracy to kidnap Chan Teng, the latter refused to give him shelter. It is for this reason that Dee Chee Ping was arrested in the house of a relative in Caloocan on June 9, 1950.

It cannot also be denied that Federico Badeo has had a direct participation in the kidnapping. Benito Camaya, star witness for the prosecution, was most emphatic in pointing to him as one of those who guarded Chan Teng during his detention in his house on the night of May 26, 1950. The incident that took place that night was somewhat

pathetic. When because of the entreaty of Chan Teng, Camaya untied one of his hands so that he could drive away the mosquitoes biting him, Chan Teng was able to escape but it was Badeo and one Ponching who caught him and subdued him and brought him back to the same room where he was confined. Badeo therefor could not ignore that Chan Teng was a captive and the purpose why he was being detained. Moreover, he knew well his co-accused, principally Reyes, Gonzales, Nicolas, Claro and one Ponching which shows that he is one of their companions. His imputation that Camaya's grudge is due to the latter's desire to have illicit relations with Badeo's wife to which Badeo stubbornly refused is too flimsy to be believed.

But we entertain serious doubt as to the involvement of Lee Tao in the case. We have examined carefully the evidence in an effort to justify his complicity and conviction but we have failed to find any evidence of merit that may warrant such a conclusion. None of the witnesses for the prosecution has ever linked his name or pointed to him as one of those who took part in the kidnapping in one way or another even if the lower court has mentioned him as the companion of Ging Sam on the occasion Chan Teng was taken from Pasay to San Francisco del Monte as the culminating act of the kidnapping. This finding of the court does not find any support in the evidence other than perhaps the written confession of Lee Tao himself where he admitted having acted as a guard of Chan Teng during his confinement in Camaya's house. But this confession was repudiated, and while this repudiation was denied by Detective Morquerza, it is a dangerous precedent to pin the liability of an accused convicted of capital punishment on such a weak and inconclusive evidence. Of course this accused was also implicated by his co-accused in their extrajudicial confessions but we doubt if this could be of much help considering that these confessions had been repudiated and there are clear indications that they had been extorted through the application of third degree. The circumstance that this accused accompanied Ging Sam in his flight to Faire, Cagayan, is not of importance on the face of the fact that he was merely an employee of Ging Sam. He might have gone with his master due merely to his bidding which he cannot refuse.

Conspiracy and Conclusion

The remaining question to be determined is: Is there conspiracy in this case? According to our law, "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." (Article 8, Revised Penal Code.) This law apparently requires that for conspiracy to exist there must be an agreement concerning the commission of a felony. But this requirement does not actually mean that the agreement must be in writing or be expressly manifested it being sufficient that it be implied from the acts of the conspirators tending to show their common design to commit the crime. Previous acquaintance among the conspirators is not even necessary, nor is it required that each takes part in every act, or that all shall know the exact part to be performed by the others in the execution of conspiracy. The only thing required is that there be a common purpose or design to commit the act, the means employed or the parts executed by each being immaterial. (12 C. J., 544-545.) In this respect, we find correct the following findings of the lower court:

"Dee Chee Ping, clerk in the Kian Liong Exchange of Ong Pan at 705 Teodora Alonso, was the one who communicated to his co-defendants Ging Sam and Ong Giok Siu the movements of their victim Chan Teng; the time he usually goes to the Exchange office and the time he leaves and retires to his hotel on Soler street. Ging Sam alias Taba directed the execution of the plan and employed Cenon Reyes and Gregorio Gonzales, "honorary" policemen who picked up Chan Teng on a pretext that he was to be taken to a Police Station for an alleged investigation on communistic activities. Ging Sam was also the one who selected the isolated house of Benito Camaya at M. de la Cruz street Pasay, where he (Ging Sam) and his co-accused Lee Tao and Yao Ling lived for eight months in 1948. Federico Badeo alias Pedring with the help of Benito Camaya was employed as guard to watch captive Chan Teng in the said house; and Yao Ling together with Ging Sam, Ong Giok Siu and Lee Tao, Arong and Coling brought Chan Teng to another isolated place at No. 13 Anak Ng Bayan, San Francisco del Monte, where his dead body was found by the police. Ging Sam in company with Lee Tao and

Yao Ling was also the one who rented the house at San Francisco del Monte on May 27th, the day before Chan Teng was taken there.

"The individual acts of the said defendants clearly point to a single criminal intent, one performing one part of the act and the others another part of the same act, so as to complete it with a view to the attaining the object which they are pursuing, to wit; to kidnap Chan Teng for purposes of ransom, to carry him to a secluded place in order to better secure his consent through fear to pay the ransom, and kill him with certain sense of impunity if the captive refuse to accede to their demand. All of these individual acts are so synchronized that leaves no room for any doubt that there was conspiracy and connivance among all the defendants.

'In conspiracy no formal agreement between the parties to do the act charged is necessary. It is sufficient that the minds of the parties meet understandingly so as to bring about an intelligent and deliberate agreement to do the acts and to commit the offense charged, although such agreement is not manifested by any formal words. A mutual implied understanding is sufficient, so far as the combination or confederacy is concerned, to constitute the offense.

'Previous acquaintance is unnecessary, and it is not essential that each conspirator shall take part in every act, or that he shall know the exact part to be performed by the other, conspirators in the execution of the act of conspiracy. Conspiracy implies concert of design and not participation in every detail of execution * * * If the object of the combination is unlawful, the means contemplated to effect such object is immaterial, * * * and it is not even necessary that the means should have been agreed on, or that any time should have been set for the accomplishment of the design.' (12 C. J., pages 544-545) (Italics supplied).

'The general rule is well settled that, where several parties conspire or combine together to commit any unlawful act, each is criminally responsible for the acts of his associates or confederates committed in furtherance of any prosecution of the common design for which they combine. In contemplation of law the act of one is the act of all. * * * It is immaterial, as affecting the question of co-equal responsibility, that one or more were not actually present at the consummation of the preconceived design.' (12 C. J. pages 577-578) (Italics supplied).

"The conspiracy among the defendants did not only exist before and during the commission of the crime. Even during the trial of the case such conspiracy and understanding were very apparent. The testimonies of defendants Ging Sam, Dee Chee Ping, Lee Tao, Cenon Reyes and Gregorio Gonzales pointing to and laying the blame on, their co-accused Ong Giok Siu, Coling and Arong, who are still at large, clearly reveal their understanding and concert of mind to incriminate those whose whereabouts could no longer be located and to exculpate themselves."

The crime was committed with aggravating circumstances of evident premeditation, nighttime, use of motor vehicle, taking advantage, of public position on the part of Gregorio Gonzales and Cenon Reyes, and of having received a price on the part of said Gonzales and Reyes, Arturo Basa and Federico Badeo, which can hardly be offset by the mitigating circumstance of voluntary surrender on the part of Arturo Basa and Federico Badeo.

The penalty provided for the crime charged is death. This is the penalty that should apply to the defendants as a consequence of the conspiracy with which the act has been committed. However, the court, considering the gravity of the penalty, took pains in determining the degree and nature of the participation had by each and every defendant in the execution of the crime, and having in mind this point of view, some members of the court expressed the opinion that the capital punishment would be too harsh if applied to all and that the ends of justice would be served if life imprisonment is imposed as to some of them. We are of the opinion that of those who have been actually apprehended the most guilty of the crime are Ging Sam, Gregorio Gonzales and Cenon Reyes. As to the rest we believe that life imprisonment would be a commensurate penalty.

Wherefore, the judgment appealed from is affirmed with regard to Ging Sam, Gregorio Gonzales and Cenon

Reyes, and is modified by imposing the penalty of reclusion perpetua upon the rest to wit: Arturo Basa, Dee Chee Ping, Yao Ling, and Federico Badeo, with the proportionate share of the costs. In all other respects, the judgment is affirmed. Lee Tao is acquitted with costs de oficio.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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