

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO REVOTOC Y BELARMINO, SATURNINO DIAZ Y RESQUED AND FREDDIE DE VERA Y SEBEASTIAN, DEFENDANTS-APPELLANTS.

G.R. No. L-37425. July 25, 1981

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PER CURIAM:

MANDATORY REVIEW of the death sentence imposed by the Manila Circuit Criminal Court upon the accused Lito Revotoc y Belarmino, Saturnino Diaz y Resqued, and Freddie de Vera y Sebastian.

The record discloses that one Go Pun is the owner and manager of a restaurant located at 935 Tetuan Street, Binondo, Manila, where his elder brother Go Hio, his cook Aw Kim Soon, and their helper, herein accused Lito Revotoc, sleep. On February 13, 1973 at about 6:00 o'clock in the morning, Go Pun went to the restaurant and attended to the day's business. At about 4:00 o'clock in the afternoon, the accused Lito Revotoc asked permission from him allegedly to go home to Pangasinan, which was granted. Go Pun left the cafeteria at about 10:00 o'clock in the evening after counting the day's cash receipts, amounting to P300.00, which he put in a box inside an aparador, together with a Rado watch valued at P200.00. The next day, he went back to the cafeteria at about 6:00 o'clock in the morning, as was his wont. The restaurant was still closed. So he knocked at the door several times. But nobody opened the door. A police sergeant, who had just arrived at the restaurant, then told a boy to climb a window and enter the establishment. The boy did so and discovered the dead bodies of Go Hio and Aw Kim Soon. The boy was then, told to open the door. Then, Go Pun and the police sergeant went inside. On the mezzanine floor, they saw Go Hio and Aw Kim Soon lying side by side, both dead. The victims were clad in pajamas and their faces were bloody. There were also wounds on their hands.[1] Blood and bits of glass were on the floor. The drawer where Go Pun kept his money had been forced open and the money and the watch were no longer there. In like manner, the closet had also been forced open. Two (2) cartons of cigarettes, valued at P40.00 were no longer in a shelf where he last saw it. Some candies valued at P6.00 were also missing.[2]

Initial police investigations revealed that the accused Lito Revotoc and a companion were seen knocking at the kitchen door of the restaurant at about 10:00 o'clock in the evening of February 13, 1973. Accordingly, a search for Lito Revotoc and his companion was conducted. It was learned that Lito Revotoc was with a certain "Tisoy". "Tisoy" was picked up and he informed the police investigators that Revotoc was often times with one "Ninoy", whose real name was Saturnino Diaz. Upon investigation, Saturnino Diaz admitted that he was with Revotoc and Freddie de Vera on the night of the robbery, that he stood guard outside the door while Revotoc and Freddie entered the store.[3] When asked about his share in the robbery, he told the arresting officer that he hid part of the loot in his room. They brought Saturnino Diaz to his home at Baltazar St., Tondo, Manila, and Diaz got the money, which had been placed inside a stocking, from under the altar. The money amounted to P68.20.[4] They also recovered the "Rado" wrist watch (Exh. "G") which Go Pun identified as his.[5] Thereafter, Saturnino Diaz executed a sworn statement admitting his participation in the robbery. (Exh. "J".) Police investigators also picked up Freddie de Vera who, upon questioning, admitted that he was with Revotoc and Diaz.[6] He, likewise, executed an extra-judicial confession admitting his participation therein.[7] Meanwhile, a team of police

investigators was sent to Mangaldan, Pangasinan, to arrest Lito Revotoc. They were accompanied by one Loida, a townmate and co-employee of Lito Revotoc. They brought Revotoc to Manila and when informed that de Vera and Diaz had already been apprehended, Revotoc admitted that he took part in the killing of the Chinaman.[8] He also executed an extra-judicial confession.[9]

Accordingly, Lito Revotoc, Saturnino Diaz and Freddie de Vera were charged with the crime of Robbery with Multiple Homicide, committed as follows:

"That on or about February 13, 1973, at nighttime, purposely sought to better accomplish their criminal designs, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping one another, with intent of gain and by means of intimidation and violation against persons, to wit: by then and there entering a restaurant located at 935 Tetuan, Sta. Cruz, this City, which is at the same time being used as a dwelling place of Aw Kim Soon and Go Hio, did then and there wilfully, unlawfully and feloniously take, steal and carry away the following:

Cash money in coins and one-peso bills amounting to P300.00;

Two cartons of king size Philip Morris cigarettes valued at P40.00;

Candies amounting to P6.00; and

One Rado calendar men's wrist watch, nickle plate, with bracelet to match, valued at P200.00,

all valued at P546.00, belonging to Go Pun, against the latter's will, to the damage and prejudice of said Go Pun in the aforesaid sum of P546.00, Philippine currency; that on the occasion of the said robbery and for the purpose of enabling the said accused to take, steal and carry away the aforesaid cash money and articles and in pursuance of their conspiracy, the said accused, with intent to kill and taking advantage of their number and superior strength, willfully, unlawfully and feloniously treacherously attacked, assaulted and used personal violence upon Aw Kim Soon and Go Hio by then and there hitting said Aw Kim Soon several times on the neck and on the head with a piece of wood and hitting said Go Hio several times on the head with a lead pipe and an empty soft drinks bottle, thereby inflicting upon the said Aw Kim Soon and Go Hio mortal wounds which were the direct and immediate cause of their death soon thereafter.

"Contrary to law."

After trial, judgment was rendered, as follows:

"WHEREFORE, all of the accused are hereby found guilty beyond reasonable doubt as principals of the crime of robbery with homicide and there being proved the aggravating circumstance of nighttime, dwelling and the additional aggravating circumstance of craft or fraud with respect to Revotoc without any mitigating circumstance to offset the same, the Court sentences each one of them to DEATH; to jointly and severally indemnify the heirs of the deceased, Go Hio, the sum of P12,000.00 for the death of the latter, the sum of P10,000.00 for exemplary damages; the heirs of the deceased Aw Kim Soon the sum of P12,000.00 for the death of the latter, the sum of P10,000.00 by way of moral damages and the sum of P10,000.00 for exemplary damages.

"All accused are further ordered to jointly and severally indemnify victim Go Pun the sum of P231.80 representing the unrecovered amount and articles robbed from him and to proportionately pay the costs.

"Atty. Leonardo Kalinawan is hereby awarded an attorney's fee of P500.00 as counsel de oficio of accused Revotoc and de Vera.

"The coins recovered (Exhibits "H-1" to "H-15") and the watch (Exhibit "G") are hereby ordered returned to victim Go Pun.

"SO ORDERED."

By virtue of the death penalty imposed, the case is before this Court for mandatory review.

The prosecution presented in evidence the confessions of the accused wherein they admitted their culpability.

The defense on the other hand repudiated the extra-judicial confessions of the accused claiming that said confessions were extracted against their will. Accused Saturnino "Ninoy" Diaz said that he was boxed on his chest and back. And a gun was poked at him.[10] Accused Lito Revotoc testified that bread was placed inside his mouth; his face was covered with a towel and then water was poured on his face.[11] Accused Freddie de Vera told the court that while his feet and hands were tied, he was brought under a faucet, his face was covered with sack and thereafter, water was poured on him.[12] They also testified that they were not informed of their right to remain silent and to counsel. In addition, they interposed the defense of alibi. Accused Revotoc claimed that at 4:00 p.m. of February 13, 1973 he left Go's store, his place of work, to go home to Mangaldan, Pangasinan. He took a "Pantranco" bus and he reached Mangaldan a few minutes before 11:00 p.m.[13] Accused de Vera said that from 9:00 a.m. to 9:00 p.m. of February 13, 1973 he worked as a rig driver. And from 9:00 p.m. up to 7:00 a.m. of the following day, February 14, 1973, he slept in his house located at 2728 Liko St., Tondo, Manila.[14] Accused Saturnino Diaz testified that he also worked as a rig driver from 8:00 a.m. to 9:00 p.m. of February 13, 1973 and after working he stayed in his house located at 536 Baltazar St., Tondo, Manila.[15] This statement was corroborated by his wife.[16]

The main issue to be resolved is whether the extrajudicial confessions of the accused are voluntary and if, together with the other evidence, they constitute sufficient grounds for their conviction.

The trial court has correctly observed that the extrajudicial statements of the accused are replete with details which the accused alone could have possibly known and could hardly have been supplied by the disinterested police officers. This circumstance shows voluntariness. It is stated in their affidavits that they met in the evening of February 13, 1973 at the corner of Espeleta and Alonzo streets as previously agreed upon; that they used the rig of de Vera in inspecting the store to see if it was already closed; that Revotoc and de Vera were the ones who knocked at the door; that while Revotoc and de Vera entered the store, Diaz stood guard at the door; that upon having entered the store, Revotoc went to the lavatory, and washed his face while de Vera went to the comfort room; that after de Vera came out of the comfort room he picked up a family size empty bottle of a soft drink and struck Ape (Go Hio) on the head; that the bottle was broken; that Ape, after being hit, leaned on the door and shouted for help; that while Ape was shouting for help Revotoc went upstairs and he saw Ang (Aw Kim Soon) awakened by the loud shout of Ape; that Ang immediately and hurriedly ran downstairs and fell down; Revotoc at that moment tried to look for something to beat their victims while de Vera went to Diaz who was standing on guard outside the store, and asked him for the lead pipe which Diaz used in fixing the wheel of his rig; that Revotoc found a piece of wood two inches wide, two inches thick and two feet long; that having provided themselves with weapons, Revotoc and de Vera attacked their victims; that Revotoc brutally struck Ang on the neck causing the latter to fall and Revotoc pitilessly hit him two times more at the neck and head; and that de Vera ruthlessly beat Ape with a lead pipe many times until the latter died. Ang also died from his injuries.

The trial court has aptly noticed that the affidavits contain answers more than what is called for by the questions asked. Again, this circumstance bespeaks of voluntariness.[17]

Anent the allegation of the accused that they were not informed of their constitutional rights:

a) the affidavit of accused Revotoc reveals the following:

"T - Ipinaalam ko sa iyo na sa ilalim ng ating bagong Saligang Batas ay karapatan mong huag magsalita,

naiintindihan mo ba ako?

S - Opo.

"T - Nais mo ba ng isang abogado bago ka magbigay ng salaysay na ito?

S - Hindi na po, sasabihin ko na po ang lahat. (Exhibit "I".)

b) the sworn statement of accused Diaz tells the following:

"T - Ipinaalam ko sa iyo na sa ilalim ng ating Saligang Batas may karapatan kang huwag magsalita kung hindi mo gusto at karapatan mo ring magkaroon ng manananggol bago ka sumagot sa mga itatanong ko sa ito. Nai-intindihan mo ba ang mga sinasabi sa iyong mga karapatan?

S - Opo. Hindi ko na po kailangan ang manananggol. (Exhibit 'J')."

c) the sworn statement of accused de Vera contains the following:

"T - Nais mo bang magbigay ng isang malaya at kusang loob na salaysay at sagutin ng boong katotohanan ang lahat ng aking itatanong sa iyo, na di ka namin pinipilit, tinatakot, sinaktan, o pinangakuan ng ano mang bagay na iyong ikabubuti, at dapat mong malaman na ang salaysay mong ito ay maaring gamitin laban sa iyo sa alin mang hukuman dito sa Pilipinas?

S - Opo.

"T - Nais mo ba ang tulong ng isang abogado bago ka magbigay ng salaysay na ito?

S - Hindi na po kailangan. Sasabihin naman sa iyo ang totoo. (Exhibit 'K')."

The testimonies of the accused that violence was inflicted upon them in the process of obtaining their confessions are uncorroborated. Their testimonies, standing alone, cannot withstand the unyielding strength of the settled rule that an extra-judicial confession is presumed to have been willingly and freely given until the contrary is clearly and fully shown. And the record is bereft of any evidence to rebut this presumption. Hence, the extra-judicial statements must be conclusively held to be voluntary.

The alibi put up by the accused deserve scant consideration. Aside from the fact that alibi is one of the weakest of defenses and can easily be concocted, the evidence against the accused is so clear and strong that it cannot be overcome by mere alibi.

We have ruled in *People vs. Reyes, et al.*[18] that a confession extra-judicially given is sufficient ground for conviction of the crimes charged if corroborated by evidence of corpus delicti. The evidence of record proves satisfactorily the fact of loss sustained and the fact of death. The fact of loss was testified to by Go Pun. He said that the drawer where he kept his wrist watch worth P200.00 and cash in the amount of P300.00 was forced open. Said belongings together with two cartons of cigarettes valued at P40.00 and candies valued at P6.00 were all missing.[19] This testimony of Go Pun is corroborated by the investigating policeman Patrolman Cenon Onggoco who saw the drawers on the ground floor of the store.[20] One of the drawers found on the floor was where the wrist watch and cash were kept. And Cpl. Aurelio A. Mercader who searched the house of accused Diaz mentioned, on the witness stand, that the alleged lost watch was found in the possession of Diaz who admitted having stolen it. The watch was properly identified by Go Pun to be his.[21] The fact of death is demonstrated by the certificates of death marked as Exhibits "B" and "E" and by the Postmortem Findings of the Medico-Legal Officer of the Manila Metropolitan Police marked as Exhibits "C" and "F".

The crime committed is the special complex crime of robbery with homicide defined and penalized in Article 294 of the Revised Penal Code. The term "homicide" in paragraph one thereof should be understood in its generic

sense[22] and covers the two killings. No doubt, the killing of the two Chinese was perpetrated by reason of the robbery. And no matter how We view the case in the most favorable light, the death penalty can not be avoided. Against the three accused, We hereby appreciate the aggravating circumstances of nighttime, abuse of superior strength and craft.

The aggravating circumstance of dwelling is also appreciated against the accused Saturnino Diaz and Freddie de Vera, but not against the accused Lito Revotoc inasmuch as he also lived in the same dwelling as the victims. The offenders executed the felony at 10:00 p.m. to make sure that there would be no people in the premises who may witness their act and that the store would already be closed. So nighttime was purposely sought by the accused to facilitate the commission of the offense. The defenseless and unarmed victims who had just awakened from their sleep were attacked by their killers, armed with a lead pipe, a bottle and a piece of wood. So there was abuse of superior strength. Accused Revotoc asked permission from his employer allegedly to go home to Pangasinan at 4:00 p.m. on the day the offense was committed. He even borrowed P50.00 from his employer. He brought with him his clothes placed in a travelling bag. At 10:00 p.m. of the same day, he went back to the store with his co-accused. He knocked at the door and when asked who he was he mentioned his name. To place the victims off-guard and to gain entrance at that unholy hour, he pretended that he was going back to the store because he failed to take a ride to Pangasinan. By reason of his pretention, the unsuspecting Chinese opened the door to welcome him. Thereafter, Revotoc and de Vera entered the place, and with Diaz standing as guard, they perpetrated the crime. The aggravating circumstance of craft is therefore present.

ACCORDINGLY, modified as thus indicated, the judgment is hereby AFFIRMED in all other respects.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Barredo, J., concur in the opinion of J. Teehankee.

Teehankee, J. see separate concurring opinion.

Fernando, C.J., took no part.

[1] Aw Kim Soon sustained the following injuries:

"EXTERNAL INJURIES:

- (1) A group of eight (8) contused lacerated wounds on the left side of the face involving the eyebrow, malar, nasal, lip and lower jaw. The eyeball is basked in and the fractured malar bone is protruding with palpable fracture of the lower mandible and alveolar process of the upper front teeth.
- (2) A group of five (5) contused wounds in the left side of the anterior surface of the neck and left infra-clavicular region. The neck is swollen with palpable fracture of the larynx.
- (3) Purplish contused area over the midsternum.
- (4) Contused lacerated wound of the scalp at the left occipital region of the head, with extended linear contusion over the left side of the nape of the neck behind the left ear.

"INTERNAL FINDINGS:

Fracture of the"

- Sternum at the level of the 5th ribs;
- 3-5th ribs, left' 2-5th ribs, right;
- Complete comminuted fracture of the thyroid cartilage;
- Complete fracture of the 7th cervical vertebra;
- Comminuted fracture of the left lower mandible, left;
- Malar bone and alveolar process of the upper left tooth.

"MISCELLANEOUS:

P.T.B. apex of both lungs.

No brain injury

Stomach is empty of food contents, but contains dark blood.

"CAUSE OF DEATH:

Traumatic fracture of the left molar and left lower mandible of the skull, cervical vertebra, ribs and sternum, with complete fracture of the crico thyroid cartilage of the larynx. (Exh. 'C').

Go Hio sustained the following injuries:

"EXTERNAL INJURIES:

- (1) Contused lacerated wound of the scalp in the hairline over the mid-frontal region of the head.
- (2) Superficial lacerated wound over the right eyebrow.
- (3) Contused abrasion with a linear-contusion extending from the temporal to the malar region of the face. There is periorbital hematoma, left eye.
- (4) Lacerated wound, mucosa of the right lower lip.
- (5) Contused lacerated wound with five (5) linear abrasions perpendicularly directed across the wound, at the left side of the chin.
- (6) Purplish swelling (hematoma) of the anterior neck with palpable fracture of the larynx.
- (7) Contused areas at the right anterior shoulder extending to over the clavicular region.
- (8) Contused areas in the upper lateral surface of the right arm.
- (9) Avulsion of the skin on the lateral surface of the right forearm and lateral side of the left knee.
- (10) Contused lacerated wound of the scalp over the posterior parietal region of the head.
- (11) Contused laceration of the pinna of the left ear extending to the mastoid and left occipital region of the head.
- (12) Three (3) irregularly shaped lacerated penetrating wounds on the lateral side of the left side of the neck just below the mandible, with surrounding extensive contusions and contusion, abrasion at the supra-clavicular region.

There is palpable fracture of the lower jaw (mandible).

(13) Avulsion of the skin at the dorsal surface of the left forearm.

(14) Ecohymesis, upper posterior chest.

"INTERNAL FINDINGS:

(1) Subarachnoid hemorrhage all over the brain but mere severe in the fronto-parietal and left temporal region.

(2) Fracture of the skull; linear fracture of the cranium on the frontal and parietal bones in the midline; linear fracture involving the left incisive fossa and depressed fracture on the left posterior fossa. Fracture of the crico-thyroid cartilage in the left side. Fracture of the left lower mandible.

(3) Petechial hemmorrhage in the mucosa of the larynx, over the crico-thyroid cartilage.

(4) Stomach contains partly digested meal.

"CAUSE OF DEATH:

Traumatic fracture of the skull with severe subarachnoid hemorrhage and compression fracture of the crico-thyroid cartilage causing asphyxiation. (Exh. 'F')."

[2] T.S.N. of March 16, 1973, pp. 12-19.

[3] t.s.n. of April 25, 1973, pp. 21-22.

[4] t.s.n. of May 14, 1973, pp. 12-14.

[5] Id., p. 5

[6] t.s.n. of April 25, 1973, p. 23.

[7] Exhs. "K" and "K-1".

[8] t.s.n. of April 25, 1973, pp. 12-13.

[9] Exh. "I".

[10] pp. 30-31, t.s.n., May 14, 1973.

[11] pp. 14-16, May 31, 1973.

[12] p. 24, t.s.n., May 31, 1973.

[13] pp. 21-22, t.s.n., May 31, 1973.

[14] pp. 24-25, t.s.n., May 31, 1973.

[15] pp. 26-27, t.s.n., May 14, 1973.

[16] pp. 3-4, t.s.n., May 31, 1973.

[17] In the affidavits of accused de Vera, the following are stated:

T - Maaari bang sabihin mo sa amin kung ano ang kina-laman mo sa mga pangyayari sa tindahan noon sa Tetuan na kanamatayan ng dalawang intsik?

S - Ganito po. Si Ninoy po at si Lito ang nagplano na sila ang gagawa ng pagnanakaw sa tindahan ng maga intsik

sa Tetuan. Dahil sa dadalawa sila ay sinabi sa akin ni Ninoy na may plano sila at kai-langan ang tulong ko.

x x x x x x x x

T - Ng buksan ng intsik ang pintuan ano ang nangyari?

S - Pumasok si Lito at tinawag ako kayat pumasok rin ako. Naghilamos si Lito at ako ay umihi naman sa kubeta. Ng makita ko na hindi pa pinapalo ni Lito iyong intsik ay sinabi ko sa kaniya sa wikang Pang-asinan, "Bakit hindi mo pa paluin. Sabi mo ikaw ang papalo." Ang sagot ni Lito ay sa akin na iyong intsik sa ibaba at sa kaniya iyong intsik na nasa itaas ng bahay. Umakyat si Lito sa itaas at di nagtagal ay narinig ko si Lito na sabi, "Sigue paluin mo na iyang nasa ibaba at niyari ko na itong nasa itaas." Ang ginawa ko ay kumuha ako ng bote ng pepsi at aking pinalo iyong intsik sa ibaba.

T - Ano ang nangyari sa intsik sa ibaba?

S - Ng tamaan ko sa ulo ay nagsisigaw iyong intsik at tumakbo paitaas ng bahay. Ng tumakbo pa-itaas ang intsik ay tumakbo ako palabas at sumakay ako sa kalesa ni Ninoy. Sabi ko tara na at sumigaw iyong intsik. Sabi ni Ninoy kung nasaan si Lito. Sabi ko ay iniwanan ko. Sabi ni Ninoy ay kung bakit ko iniwanan. Nagsisigaw ika ko. Sabi ni Ninoy ay ganito, "Paano kung mahuli si Lito ay di isisigaw tayo". Pagdating namin sa Ongpin sa may Tokyo Hotel ay bumaba na ako at sumakay ako ng Taxi at nagpahatid ako sa Blumintritt. Iniwan ko si Ninoy sa Ongpin. (p. 56, Original Record).

x x x x x x x x

The affidavit of accused Diaz contains the following:

T - Kailan kayo nagplano sa nasabing pagnanakaw na may kasamang pagpatay?

S - Kami ni Lito ang nagplano mayroong isang Linggo na. Ngayon kinausap ko si Fred na tumulong sa aming gagawin at pumayag naman si Fred. Nag--usap kami noong Lunes ng gabi. Ang pinagusapan namin ay sa Martes ng gabi namin gagawin. At ng magkita nga kami ng Martes ng gabi ay sumakay silang dalawa ni Lito sa aking kalesa at nagpa-ikot-ikot kami sa may Alonzo at Tetuan at Espe-leta. Ng mga alas 11:00 ng gabi na ay dinala ko na sila sa tindahan. Sa malayo ay pinarada ko ang kalesa at bumaba silang dalawa. Nagtuloy sila sa tindahan. Kumatok si Lito at ng buksan ng nasa loob ay pumasok rin si Fred. Nakita ko ng paluin ni Fred iyong intsik sa ibaba at ako naman ay sumakay na agad sa aking kalesa at sa loob ay narinig ko na parang nababasag na bote. Lumabas sa tindahan si Fred at sumakay sa akin. Tinanong ko nga kung bakit niya iniwanan si Lito sabi ay nandoon sa loob ng tindahan si Lito.

T - Totoo be na tina(n)ong mo kay Fred kung bakit niya iniwanan at baka mahuli at isasabit kayo?

S - Tina(n)ong ko nga po. Ang sagot niya ay sumigaw iyong intsik. Umalis kami at sa Ongpin ay ibi-naba ko siya. Omowi na ako. Sa Azcarraga ay n(a)kita ko si Lito sa isang kalesa at isinakay ko at inoiwi sa amin. Nitong umaga ay inihatid ko sa Azcarraga at sasakay raw siya sa Pantranco. Iyon and huli naming pagkikita. (p. 53, Original Record)

x x x x x x x x

And the affidavit of accused Revotoc contains the following"

T - Maari bang sabihim mo sa aming kung ano ang kina-laman mo sa mga pangyayari sa tindahan sa Tetuan at Misericordia na kinamatayan ng dalawang intsik?

S - Mga tatlong lingo bago nangyari ang patayan kina-usap ako ni Ninoy na hoholdapin nila ang tindahan.

Ipinatuturo sa aking ang kinalalagyan ng pera at pinangako sa akin na bibigyan ako raw ng kalahati nang makukuha nilang pera basta huwag akong mag-susumbong. Kung magsusumbong papatayin ako raw. Sa takot ko naman hindi ko nasabi sa maykapang-yarihan. Noong Lunes nagkita kaming tatlo sa tin-dahan at sinabi nila sa aking na bukas na nang gabi titirahin mangyari alam nilang aalis ako at uuwi sa Pangasinan sapagkat maysulat sa aking ang misis ko na pinauuwi ako. Ang ginawa ko bumale ako ng P50.00 kay kabesi at nagpaalam akong uuwi sa aming bayan sa Pangasinan noong alas 4:00 ng hapon ng Martes. Nang mabigyan ako ng pera noong alas 4:00 ng hapon ng Martes nag-paalam ako dala ko ang mga damit sa traveling bag at nanood muna ako ng sine sa King's Theater sa Ongpin. Nang mga 8:30 ng gabi lumabas ako at tumuloy sa kinu-kunan ng pagkain ng kabayo sa Espeleta at Teodora Alonzo dahil sa usapan naming hihintayin nila ako doon. Pagdating ko doon naroon na silang dalawa ngunit may pasahero pa si Ninoy sa kanyang kalesa at ang sabi ihahatid muna niya at niyaya naman ako ni Fred na maginuman muna kaming dalawa. Tumuloy kami ni Fred sa maliit na restoran sa Teodora Alonzo sa tabi ng Delicious Restaurant at uminom si Fred ng San Miguel gin at ako naman ay uminom ng isang boteng beer na mayhalong gin. Pagkatapos naming uminom bumalik kami ni Fred sa Espeleta at nandodoon na si Ninoy naghihintay at mga alas 10:00 na nang gabi noon. Nagpaalam si Ninoy na iikot muna sa Tetuan at titingnan ang tindahan kung sarado na. Pagkaraan ng may kala-hating oras dumating si Ninoy at ang sabi ay sarado na raw ang tindahan at sumakay na kami ni Fred sa kalesa at umikot kaming dalawang beses sa Tetuan at sinisiguro namin na wala ng mga taong sa paligid ng tindahan. Umistanbay kami sa may massage clinic sa Tetuan at inabangan namin ang pagalis ni kabesi sa restoran. Si Fred nagpamasahé, ako naman ay nakipagusap lang sa mga babae doon at si Ninoy ang nagaabang sa pagalis ni kabesi. Malapit ng mag eleven o'clock nang umalis si kabesi at tinawag na kami ni Ninoy. Sumakay kami sa kalesa ni Ninoy at umikot uli kami at titingnan kung yong guardiya na binigyan namin ng gin ay naroon pa sa kanyang puesto at nang makita namin na wala na sa puesto ang guar-diya, pinarada ni Ninoy ang kalesa sa tapat ng pintuan ng kusina ng tindahan sa Tetuan at buma-ba na kaming tatlo. Kimatok ako sa pintuan at si Fred ay kumatok din at sumagot yong matandang intsik na nasa loob at itinanong kung sino kami. Ang Sabi ko naman na ako si Lito at ang pinto ay binuksan. Sabay kami ni Fred na pumasok at sinabi kung hindi ako nakasakay. Itinanong noong Intsik kung sino si Fred at ang sagot ko kasama ko. Nag-hilamos ako sa lababo at si Fred ay umihi sa kubeta. Paglabas ni Fred sa kubeta nakita kung dumampot ng boteng walang laman ng family size na soft drink at pinalo yong Intsik na kapatid ng may-ari na kung tawagin namin si Ape (referring to Go Hio). Napasandal yong si Ape sa may pintuan. Nagsisigaw si Ape sa wikang Intsik at tumakbong paakyat sa itaas. Ako naman nauna nang umakyat. Si Ang (referring to Aw Kim Soon) na natutulog sa itaas na nagising sa sigaw ni Ape, ay nahulog sa hagdanan sa pagmamadali. Ang ginawa ko ay naghanap ng maipapalo at nakadampot ako ng kapisang kahoy na dos por dos na may dalawang piye ang haba. Nakita kung umaakyat ang dalawang Intsik sa habol ni Fred. Pagdating nila sa itaas, tumakbo ako papunta sa may cuarto ko at napansin kung si Ang ay parang naghahanap ng pamalo kaya ang ginawa ko ay pinalo ko siya sa leeg. Bumagsak si Ang at pinalo ko uling dalawang beses sa leeg at sa ulo. Si Ape naman pagdating sa itaas ay pinag-papalo ni Fred ng tubo hanggang sa hindi na gumagalaw. Pagkatapos bumaba na si Fred. Ako ay na-iwan sa itaas at pinatay ko ang ilaw. Pagbaba ko wala na sila Fred at Ninoy. Naglakad ako hanggang makasakay sa kalesa. (p. 50, Original Record)."

[18] No. L-19894, May 27, 1966, citing therein Sec. 3, Rule 133 of the Rules of Court.

[19] pp. 17-20, t.s.n., March 16, 1973.

[20] pp. 19-20, t.s.n., April 25, 1973.

[21] p. 5, t.s.n., May 14, 1973

[22] *People vs. Saquing*, L-27903, Dec. 26, 1969, 30 SCRA 834, cited in *People vs. Roncal*, Nos. L-26857-58, Oct. 21, 1977, 79 SCRA 509.

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CONCURRING OPINION

TEEHANKEE, J.:

Concurred in the affirmance of the death sentence, it appearing that sufficient evidence exists without the repudiated extrajudicial confessions to establish the accused's guilt. The said extrajudicial confessions should be held inadmissible, pursuant to the accused's averment that they were not informed of their constitutional rights to silence and to counsel. The alleged perfunctory waiver made by the accused (at pages 12 - 14 of the decision) fall far short of the criterion set by the Court in *People vs. Caguioa* (95 SCRA 2, 9) that "statements made during the period of custodial interrogation to be admissible require a clear intelligent waiver of constitutional rights, the suspect being warned prior to questioning that he has a right to remain silent, that any utterance may be used against him, and that he has the right to the presence of a counsel, either retained or appointed."

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