

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOAQUIN PAMINTUAN, VICTORIANO MAGDAY ALIAS CENDONG,
SALVADOR GRANIL ALIAS CARDING, HIPOLITO TAGARRO ALIAS
POLIT, MACARIO C...**

G.R. No. L-48273. November 28, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Automatic review of the decision of the then Court of First Instance of Tarlac (now Regional Trial Court) in Criminal Case No. 544, finding herein accused (1) Joaquin Pamintuan, (2) Victoriano Magday, alias Cendong, (3) Salvador Granil, alias Carding, (4) Hipolito Tagarro, alias Polit, (5) Macario Catalan, alias Cario, (6) Bienvenido Gragasín, alias Ambin, (7) Ernesto Panag, alias Belleng, (8) Jose Gariles and (9) Leoncio Pascua, alias Lucio, "to be guilty beyond reasonable doubt of the special complex crime of robbery with double homicide, with the aggravating circumstances of nighttime, abuse of superior strength and by a band, they are each sentenced to the penalty of DEATH which, is the maximum period of the penalty of reclusion perpetua to death provided for under paragraph No. 1 of Article 294 of the Revised Penal Code, and jointly and severally required to indemnify the heirs of the late Florencio Ermitanio in the amount of Twelve Thousand Pesos (P12,000.00) and the heirs of the late Mariano Granil also in the amount of Twelve Thousand Pesos (P12,000.00), and to pay the costs." (pp. 59-60, Rollo)

Prosecution evidence shows that in the evening of May 8, 1972 the nine (9) accused and one Silvestre Granil went to barrio Amacalan, Gerona, Tarlac, fully armed. Proceeding to the place where the water pump of Florencio Ermitanio was located, they roused from his sleep Mariano Granil who tended the water pump. They tied his hands at his back and forcibly brought him along with them to the residence of Florencio Ermitanio. Granil was directed to call out his employer, which he did. Ermitanio left his bed and opened the door of the house. Thereupon, accused Victoriano Magday fired at him with a garand rifle. Ermitanio fell wounded but he managed to crawl to the bedroom where his wife and children were. His wife, Leonosa Ermitanio and their 14 year old daughter, Lourdes, rushed to his aid and they wiped the blood oozing from his wounded leg with a blanket. Lourdes then went out of the room to go to the kitchen but was not able to reach the place because Silvestre Granil and some of the accused, namely: Joaquin Pamintuan, Victoriano Magday, Salvador Granil, Hipolito Tagarro, Macario Catalan and Leoncio Pascua were already inside the house. Joaquin Pamintuan pointed the barrel of his gun at Lourdes while the others started ransacking the family's wardrobe. When Mrs. Leonosa Ermitanio was ordered to leave the place, she fled to her neighbor's house. Silvestre Granil tried to enter the room where the wounded Ermitanio was, but the latter fired at him with his gun which he somehow managed to get. At this juncture, Victoriano Magday entered the room and hit Florencio Ermitanio with the butt of his gun.

When the accused were ransacking the family wardrobe, Lourdes heard her father telling her to go down. Whereupon, she took her youngest brother and they sought refuge in a neighbor's house just as their mother did. However, Danilo Ermitanio, Florencio's son who was then only about 12 years old stayed in the house as he was

asked to remain by his father who was subsequently shot by Joaquin Pamintuan.

After the accused had taken from the wardrobe the things they wanted to take, Salvador Granil and Joaquin Pamintuan caused the "aparador" to fall down pinning the victim Florencio Ermitanio. Before leaving they took Ermitanio's gun, the wife's piggy bank containing loose coins and thereafter, left bringing along with them the body of their companion, Silvestre Granil and their hostage Mariano Granil.

After the accused had left, Danilo Ermitanio went to the house where his mother and sister Lourdes had sought refuge and informed them of the death of his father. They all stayed in the house of their neighbor until 4:00 in the morning when they returned to their house and found the body of Florencio Ermitanio pinned under the fallen aparador. The body of Silvestre Granil was found by the residents of barrio Santiago, Gerona, Tarlac under a tree, near a creek.

The nine accused proceeded to Laoang, Tarlac where most of them reside and upon reaching the boundary of Laoang and San Jose, they decided to kill their hostage Mariano Granil for fear that he might squeal. Mariano Granil was taken to the edge of the creek and in a semi-kneeling position, was hacked three times on the neck. When people found him after about two days, his body was already in a state of decomposition.

The bodies of Florencio Ermitanio, Silvestre Granil and Mariano Granil were autopsied and the following were the findings relative to the cause of their death -

Florencio Ermitanio

"CAUSE OF DEATH:

1. Gunshot wound thru and thru
2. Fracture of right mandible and maxilla
3. Hemorrhage, secondary." (p. 7, Rollo)

Silvestre Granil

"CAUSE OF DEATH:

1. Gunshot
2. Hemorrhage, secondary." (p. 8, Rollo)

Mariano Granil

"CAUSE OF DEATH:

1. Incise wound
2. Stab wound
3. Hemorrhage, secondary." (p. 8, Rollo)

A week after the incident, the nine accused were apprehended by the authorities and brought to the PC headquarters in Paniqui, Tarlac where they gave their statements to Sgt. Ricardo Dancel (Exhibits "F" to "N"). These statements were signed and acknowledged before the municipal judges of Paniqui and Gerona, Tarlac.

The defense is denial and alibi.

(1) Joaquin Pamintuan, after working in the repair of his house in barrio Laoang, Tarlac the whole day of May 8,

1972, was already in bed at 8:00 in the evening and woke up the following morning at about 6:00. He never left his residence on May 8 much less did he go to the house of Florencio Ermitanio in Amacalan, Gerona, Tarlac. His wife and children were with him that day.

On May 15, 1972, the barangay captain of Laoang invited him to go to Gerona, Tarlac where he was taken to the municipal building. He was brought up to the mayor's office where he was given fist blows in the mouth and in the stomach by PC Sgt. Benicta and Policemen Ermitanio and Antonio. Thereafter, he was put in jail until the following morning when he was transferred to the PC Camp in Paniqui. Sgt. Dancel made him sign a statement, Exhibit "L", the contents of which he did not know.

(2) Bienvenido Gragasín was in his house the whole day and night of May 8, 1972. In fact, he never left Laoang, Tarlac that day and night.

On May 15, 1972, he was taken by two policemen from Gerona and brought to the municipal building where he was locked in jail. He was maltreated and thereafter brought to the PC headquarters in Paniqui where he was again maltreated and later was asked his name and personal circumstances and thereafter made him sign his supposed statement (Exhibit "H").

(3) Jose Gariles was in Camiling, Tarlac, in the morning of May 8, 1972, attending the town fiesta. He was there the whole day up 6:30 in the evening. After having taken his supper in the house of Lacay Clemente, he took a Rabbit bus for his residence at Laoang. At 8:30 in the evening he was home and in bed at 9:00.

On May 14, 1972, he was in the house of the barangay captain of Laoang when five (5) policemen from Gerona arrived. He was brought to Camp Makabulos, then transferred to the municipal jail of Gerona. He was given fist blows by Sgt. Benicta and maltreated by Policeman Ermitanio for about half an hour. At the PC headquarters, Sgt. Dancel gave him the document Exhibit "F" for his signature. Without reading the same because he could neither read nor write except his name, he signed it.

(4) Macario Catalan, on May 8, 1972, at 7:00 in the evening, was already in his residence in Laoang with his family and children. He went to bed early and woke up about 6:00 the following morning.

On May 14, 1972, five PC soldiers arrived and like his co-accused he was brought to Camp Makabulos and then to the municipal building of Gerona where they were locked in jail. He was maltreated by the PC and policemen and they made him sign a statement the contents of which he also was not able to read.

(5) Ernesto Panag, a resident of barrio Laoang was reaping palay in a landholding about 3 kilometers from his house the whole day of May 8, 1972. After sunset, he went home to cook supper and after resting for awhile, slept with his family until the following morning.

On May 14, 1972, the barrio captain and 2 policemen from Gerona, Tarlac brought him to Camp Makabulos and then transferred to the municipal building of Gerona, Tarlac. Inside the mayor's office he was maltreated by Sgt. Benicta and policeman Ermitanio causing him to lose consciousness. The following morning he was brought to the PC camp in Paniqui, Tarlac where he was given fist blows in the stomach and in his breast. Thereafter, he was investigated but would only give his name and personal circumstances. He refused to sign the statement (Exhibit "G"), which was shown to him, although his thumbmark appeared therein.

(6) Victoriano Magday, also a resident of Laoang was in his house the whole day of May 8, 1972 splitting bamboos for the wall of his house. It was already sunset when he stopped working and after his wife had cooked supper, they ate together and slept until 6:00 the following morning.

On May 14, 1972, Barrio Captain Gregorio Valeté, in company with 2 policemen and PC soldiers from Gerona

brought him to Camp Makabulos following which he was transferred to the Gerona municipal building. Like his co-accused, he was maltreated by the PC officers and after much suffering which he could no longer endure, he placed his thumbmark in the document marked as Exhibit "M" however, he never read at all much less did he appear and swear before the municipal judge.

(7) Leoncio Pascua, also a resident of Laoang, was in his house the whole day chopping wood. After supper, he slept and woke up at about sunrise the following morning. He did not leave his house the whole night.

About the middle part of May 1972, the barrio captain and some PC soldiers arrived and they brought him at the PC camp in Paniqui, where he joined his co-defendants and other persons he did not know. In the evening, he was brought out by 3 PC soldiers and under a tree about 25 meters away from the stockade he was maltreated by them saying that he was one of those who went to Amacalan and killed Florencio Ermitanio. Later on, he was ordered to affix his thumbmark on a piece of paper which now appears to be Exhibit "N".

(8) Salvador Granil was with Hipolito Tagarro at the latter's house in barrio Cardona, Gerona, Tarlac in the evening of May 8, 1972. Silvestre Granil arrived and invited them to go with him and his New People's Army companions at Amacalan. They would not want to go but because they were afraid of the NPA companions of Silvestre Granil, they acceded. He (Salvador Granil), upon reaching the fields, managed to escape from the group and went home directly. He was already in his house when he heard the firing of a gun. The following morning, he came to know that Florencio Ermitanio had been killed.

Salvador Granil was arrested by Sgt. Benicta and brought to Camp Makabulos where he met several persons who, he was told, were his companions in the killing at Amacalan.

He was then brought to the PC headquarters at Paniqui where he was maltreated and then investigated and ordered to sign a statement, the contents of which he had never read much less knew.

(9) Hipolito Tagarro was with his brother-in-law, Salvador Granil that evening of May 8, 1972 when Silvestre Granil arrived with several companions, armed with deadly weapons. Silvestre Granil asked him to accompany them to the residence of Florencio Ermitanio. He was forced to do so because of fear. However, upon reaching the place, Silvestre Granil and his companions allowed him to go home. He was at his residence when he heard the firing of guns.

Like his co-accused, Hipolito Tagarro was brought to the headquarters, maltreated and made to sign a statement (Exhibits "J" and "J-1"). He signed the same for fear of bodily harm and because the judge himself insisted that he sign it.

The common defense is that accused-appellants are poor and unschooled farmers who do not know how to read and can only write their names; that the extra-judicial statements were extracted by force and intimidation and therefore should be discredited and held inadmissible in evidence; and, that they were not at the scene of the crime at the time it happened.

The trial court, sustaining the allegations of the information, said:

"An examination of the confessions of each of the nine accused reveals that while each statements is different from the others with no two of them exactly alike and with certain significant variances among them, they all dovetail on certain material aspects of the case, saying so expressly or at least implicitly, which are: (1) the determination or plan to rob the house of Florencio Ermitanio on the evening of May 8, 1972; (2) rousing (by them) of Mariano Granil who was the farm helper of Florencio Ermitanio from sleep in a shed housing a water pump, tying his hands behind his back, marching him to the house of Ermitanio, and making him call out for Florencio Ermitanio; (3) Florencio Ermitanio being awakened or responding to the call of the farm helper

Mariano Granil; (4) Florencio Ermitanio being fired upon and wounded while in the bangsal or kitchen of his house and being killed later that evening; (5) the entry into Ermitanio's house by some of the accused; (6) Silvestre Granil who was one of the culprits barging into the house ahead of the others being fired upon by Ermitanio with a .38 caliber revolver and being slain inside the house, his corpse being brought down the house by some of his companions and later taken to the Tarlac River and from the Tarlac River being taken on board a sledge to Laoang, Tarlac, Tarlac; (7) the ransacking of the house and the taking of a piggy bank containing coins and the .38 caliber revolver of Ermitanio; and (8) the slaying of Mariano Granil in order to prevent him from identifying any of the accused, with the use of a bolo owned by Hipolito Tagarro applied for three (3) times on the neck.

"There are other important matters to be observed in the confessions which are: (1) The confessions are replete with details and the answers given to most of the questions far exceeded what were called for in the questions; (2) the questions were varied, not uniform, in certain cases jumping to unrelated points but the answers although varied and never repeating what the others said, and although still containing outright variances, gave a oneness in the totality of the happening; (3) there were variances on many points like on the one who tied Mariano Granil's hands and even on the one who hacked Mariano to death; on the one who fired at Florencio Ermitanio although most of statements pointed to Victoriano Magday and which fact of having shot Ermitanio was admitted by Victoriano Magday himself, even on the original purpose of going to Amacalan, some claiming the motive was to kill Ermitanio and some was to rob Ermitanio, but the variances only appeared to strengthen rather than weaken the fact of the happening of the robbing and the killing; (4) the confessions of Pamintuan and Magday of having taken money in the house of the deceased in the amount of P34.00 in coins of P0.10 and P0.25 denominations which they divided between the two of them, being confirmed by the finding of the amounts of P17.00 each in the house of Pamintuan and Magday, "O" & "P"; (5) the Springfield rifles, Exhs. "D" & "E", confessedly held by Jose Gariles and Ernesto Panag being recovered in places they indicated to the investigators.

"With the foregoing observations, this Court cannot but arrive at the conclusion that the statements were spontaneously given by the accused and that far from being coerced or from having been given under duress, said statements were in fact freely given.

"Another aspect of the case which strongly militate against the claim of coercion or force being allegedly used in the taking of the confessions was that the said statements were sworn to by the declarants before two municipal judges. Both Judges de Gracia and Cabarios testified that they read the statements aloud and explained to the accused their contents and the accused having confirmed the contents, had been made to take oath thereon and thereafter had signed them. And although PC soldiers accompanied the accused when they swore to the statements, the accused in the presence of the judge could have communicated their disagreement or could have disowned them, but they did not, which strongly indicate the falsity of the present claim of the accused.

"The defense in repudiating the statements ascribed to them, in effect raised the question of conspiracy. The concerted action of the accused in getting the farm helper who was staying in a shed housing a water pump located some distance away from the house of Florencio Ermitanio in order to use the farm-help to lure Ermitanio to open his house, firing at Ermitanio and killing him, getting inside the house in search of money, and thereafter getting out of the house, disposing of the body of their companion Silvestre Granil, and slaying Mariano Granil in order to prevent him from testifying against the accused, in all of which none of the accused had made any move to prevent any of them from carrying out their apparent plans, is proof of the existence of conspiracy. For direct proof of the planning or the conspiracy among the parties is not required. Direct proof in fact is not always available inasmuch as conspiracy or the planning of the commission of a crime is obviously made in secret and circumstantial evidence is sufficient to establish the conspiracy (P. vs. Peralta, 25 SCRA 759). The members of a band or group having decided to commit robbery in band are equally liable for the act committed by any of them in the course of the robbery or on the occasion thereof (P. vs. Pelagio, 20 SCRA

153).

"The confessions or admissions made by the accused in their statements in which they admitted having planned the commission of the crime taken in conjunction with the fact of the crime, is (sic) proof of the existence of the said conspiracy.

"In their defense the accused claim that they were never at the scene of the alleged robbery. Only Salvador Granil and Hipolito Tagarro had admitted in their testimony in Court that they were anywhere near or around the house of Florencio Ermitanio on the evening of May 8, 1972. But they were forced to go by a group of armed men who were NPAs not known to them and with whom they went upon the urgings of Silvestre Granil who had been asked by the armed men to take them to the house of Florencio Ermitanio on the evening in question. They reluctantly went with the group, but as soon as they can leave without being detected, they had gone back to their respective homes and they did not know anything else although they later learned that Silvestre Granil had been slain and that Florencio Ermitanio had also been killed when his house was entered and robbed. Alibi requires a greater depth or measure of proof than a bare claim that they in whose behalf such defense is raised were in another place. For alibi can be so easily concocted and on the face of overwhelming proof to the contrary, such defense cannot hold." (pp. 151-156, Rollo)

Going over the confessions of herein appellants (Exhibits "F", "G", "H", "I", "J", "K", "L", "M" and "N"), it is apparent that the constitutional guarantee of the right to counsel and to remain silent has not been followed. However, considering that said statements of appellants were obtained before the effectivity of the New Constitution on January 17, 1973, this matter has been settled in the case of *Magtoto vs. Hon. Miguel Manguera*, 63 SCRA 4 when the Court ruled that:

"A confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date.

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"The history behind the new right granted to a detained person by Section 20, Article IV of the New Constitution to counsel and to be informed of said right under pain of a confession taken in violation thereof being rendered inadmissible in evidence, clearly shows the intention to give this constitutional guaranty not a retroactive, but a prospective, effect so as to cover only confessions taken after the effectivity of the New Constitution."

Thus, the objections of appellants to the admissibility of said confessions cannot be sustained.

Further, it has not been shown from the evidence presented and from the testimonies of appellants that they were physically examined, much less treated by a physician regarding their alleged injuries suffered at the hands of the peace officers. Their testimonies regarding the alleged maltreatment by the Philippine Constabulary and police officers were uncorroborated.

Aside from the confessions of these appellants, Danilo Ermitanio and Lourdes Ermitanio, ages 12 and 14, respectively, at the time of the incident, testified and identified the following appellants, namely: Victoriano Magday, Joaquin Pamintuan, Salvador Granil, Hipolito Tagarro and Silvestre Granil. Hereunder is the testimony of Danilo Ermitanio:

"Q How many particularly, did you see inside your house?

A Perhaps around 10, sir.

Q All right, what were these people doing inside your house at the time your father was bleeding?

A They were ransacking our aparador, sir.

Q What kind of persons did you see ransacking your aparador, were they males or females?

A They were males, sir.

Q How many males did you see ransacking or destroying your aparador?

A They were two (2), sir.

Q Did you have a clear vision of these two whom you saw were destroying your wardrobe?

A Yes, sir.

Q If you see them again, will you be able to recognize them again?

A Yes, sir.

Q Will you look around and see if these two persons whom you saw ransacking your wardrobe are here inside the courtroom?

INTERPRETER

At this juncture, the witness is pointing to a person seated on one of the benches of the court who, when asked his name, answered Joaquin Pamintuan, and also pointing to one seated on the same bench who, when asked his name, answered Victoriano Magday.

FISCAL:

Danilo, when these two persons Victoriano Magday and Joaquin Pamintuan were ransacking your wardrobe, what were they holding, if any?

A They were holding guns, sir.

Q What kind of firearms or guns were each holding?

ATTY. LIM:

Which of these persons? They are two.

FISCAL:

Both of them.

A The guns were long, sir.

Q What kind of gun was held or, what was Victoriano Magday holding at that time?

A A long gun, sir.

Q How about Joaquin Pamintuan, what kind of firearm was he holding then?

A A small gun, sir.

Q What do you mean 'small'?

A I do not know the name, sir.

Q All right. Other than ransacking your wardrobe, what else did Victoriano Magday do, if any?

A They pounded the face of my father, sir.

Q Who among the two pounded the face of your father?

A The witness pointing to Victoriano Magday.

Q With what did he use in pounding the face of your father?

A A long gun, sir.

Q What was your father doing at the time Victoriano Magday pounded his face?

A He was talking, sir.

Q To whom was your father talking at the time?

A I, sir.

Q What was he telling you?

A 'Don't leave me my son', he said.

Q When your father was telling you that you should not leave him, what was his condition?

A Hit face was shattered, sir.

Q Did you leave your father?

A When I felt that my father was already cold, I left him, sir.

Q Now, after Victoriano Magday pounded the face of your father with a long firearm or gun, what else happened, if any?

A Our clothes were scattered at that time, sir.

Q Who scattered your clothes?

A The witness pointing to the two persons, namely Victoriano Magday and Joaquin Pamintuan.

Q Do you know the reason why they scattered your clothes?

A No, sir.

Q Now, you said that they ransacked your wardrobe before the contents were scattered. Do you know what happened to your wardrobe?

A Yes, sir.

Q What?

A It was destroyed, sir.

Q What did they take out from your wardrobe?

A Money, sir.

Q Why do you know that money was taken from your wardrobe?

A Because I saw the piggy bank of my mother that they took, sir.

Q Now, after ransacking your wardrobe, the time that your father was pounded by Victoriano Magday on the face by a firearm, what else happened?

A There was, sir.

Q What else happened?

A They pinned my father with the aparador, sir.

Q Who caused the aparador to fall on your father?

A The witness pointed to a person seated on the bench of the court who, when asked his name, answered 'Salvador and Granil' also pointed to Joaquin Pamintuan.

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Q Did you ever come to know who was this man that was shot by your father?

A Yes, sir.

Q Who was he?

A Silvestre Granil, sir." (tsn., pp. 217-224 & 235, April 23, 1974 hearing)

And, Lourdes Ermitanio testified as follows:

"FISCAL:

For purposes of clarification, how many men did you see entering when you were going to the kitchen?

A What I saw, sir, were 3 persons the first time and immediately thereafter, and then suddenly, one person appeared.

Q Now, were all these four persons armed at the time you saw them?

A Only two of them, sir, were armed.

Q Who among these four men were armed?

A The person who pointed his gun towards my face, sir. (Witness at the same time pointing to her cheek).

Q If you see these persons again ...

A and the person that my father killed, sir.

COURT:

Now, if you will be asked to point on that person who pointed his gun towards you, can you point to him?

WITNESS:

Yes, sir.

COURT:

Will you point to the court?

INTERPRETER:

The witness upon turning her back pointed to a person seated on the bench who, when asked his name, answered 'Joaquin Pamintuan.'

COURT:

How about those three persons that went to where your father was, can you point to the court?

WITNESS:

Yes, sir, but the other one is already dead.

COURT:

All right, you point those who are present in court now.

INTERPRETER:

The witness upon turning her back from the witness stand, pointed to two persons who were seated together on the bench and when asked their names, the other who is dressed with a T-shirt, a striped T-shirt with yellow color, answered 'Hipolito- Tagarro', and his companion which was also pointed by the witness dressed up with a blue T-shirt who, when asked his name, answered 'Victoriano Magday.'

COURT:

Proceed.

FISCAL:

You pointed to three persons already and you just stated that only two of them were armed. Who among the three were armed at the time they were in your house?

A (The witness pointing to a person who is seated and when asked his name answered 'Joaquin Pamintuan') And the other one, sir, I was not able to recognize his face, sir." (tsn., pp. 318-321, July 17, 1974 hearing)

Thus, the claim of appellants that the extra-judicial confessions are not corroborated by evidence is devoid of merit. Danilo and his sister Lourdes had positively identified some of them as among the perpetrators of the crime.

There is also no merit to appellants' contention that the trial court erred in holding that there was conspiracy among them in the commission of the offense. They argue that their extrajudicial confessions are not sufficient to establish conspiracy since the confession of one is not admissible as evidence against the other. As held in the case of *People vs. Castelo*, 11 SCRA 194, conspiracy may be inferred from the individual confessions of the defendants. "These confessions are so intimately interwoven that it is hard, if not impossible, to draw a line with a view to sifting the individually admitted facts. In the absence of collusion among the declarants, their confessions should be read together, in order to form a complete picture of the whole situation, and to consider them collectively merely as corroborative and/or confirmatory of the evidence independent therefrom."

The fact that two victims died in connection with a robbery, in the complex offense of robbery with homicide, does not destroy the essential unity of the crime, nor make two offenses where otherwise there would be only one. The number of victims is immaterial. Thus, in the case of *People vs. Manuel*, 44 Phil. 333, "attention may properly be here directed to the rule - also elemental in this branch of the law that an offense of the character of that now under consideration is nonetheless a complex offense by reason of the fact that double homicide (or murder) is committed instead of a single homicide (or murder), the number of the victims being immaterial (*Viada*, 4 Supp., 413)."

Finally, the lower court did not err in appreciating the aggravating circumstances of nighttime and abuse of superior strength. Appellants specifically sought night-time to facilitate the commission of the crime. As aptly

stated by the Solicitor General in his brief, appellants "could not have just held captive Mariano Granil and reached the residence of Florencio Ermitanio at Amacalan, Gerona, Tarlac, coming from the neighboring barrio of Cardona, of that same municipality, during the daytime carrying various firearms without risking being seen or detected by at least the residents in the area where they passed through. The rule is settled that to take advantage of a fact or circumstance in committing a crime clearly implies an intention to do so, and one does not avail oneself of the darkness unless one intended to do so (People vs. Apduhan, G.R. No. L-19491, Aug. 30, 1968, 24 SCRA 800)."

On July 24, 1979, this Court issued a resolution as follows:

"L-48273 (People vs. Joaquin Pamintuan, et al.). - Considering the letter of the Acting Director of Prisons, Vicente R. Raval, dated March 14, 1979 informing the Court of the death of appellant Macario Catalan y Balmores alias 'Cario' on February 2, 1979 and the comment of the Solicitor General on aforesaid letter, the Court Resolved to DISMISS the case against said appellant but only insofar as his criminal liability is concerned."

WHEREFORE, except for Macario Catalan y Balmores alias "Cario" who is now dead and therefore the case against him is dismissed, but only insofar as his criminal liability is concerned, the judgment appealed from is hereby MODIFIED in the sense that for lack of the necessary number of votes, each of the appellants is sentenced to reclusion perpetua instead of death. Further, aside from the indemnity of P12,000.00 which they are to pay the heirs of the late Florencio Ermitanio and P12,000.00 to the heirs of the late Mariano Granil, they are to indemnify the heirs of Florencio Ermitanio the sum of P34.00 and to return to them the .38 caliber revolver. Costs against appellants.

SO ORDERED.

Fernando, C.J., Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Teehankee, J., took no part.

Makasiar, J., joins J. Aquino in his concurrence.

Aquino, J., the nine confessions of the accused, Exh. F to N, prove the crime beyond reasonable doubt. In addition to nocturnity and abuse of superiority, craft, dwelling and band are aggravating. It is alright to have compassion for the misguided and ignorant malefactors impelled by poverty to commit robo con homicide. But one should not forget the hapless victims and their heirs. Death is the just retribution for the horrible crime in this case.

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