

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PETRONILO ESPEJO, ANSELMO TOLENTINO, JULIO ARZADON,  
ESTANISLAO MANDING, CONSTANCE CACHUELA ALIAS KISKI,  
JOVENCIO TABIOS, CONCH...**

*G.R. No. L-27708. December 19, 1970*

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**PER CURIAM:**

This is an appeal taken by Anselmo Tolentino, Julio Arzadon, Jovencio Tabios and Teresita Nolasco alias Tessie from the decision of the Court of First Instance of Ilocos Norte in its Criminal Case No. 4312-III of which dispositive portion reads:

WHEREFORE, AND IN VIEW OF THE FOREGOING, the Court finds the accused Anselmo Tolentino, Julio Arzadon, Jovencio Tabios and Teresita Nolasco alias Tessie guilty beyond reason-able doubt of the crime of Robbery with Homicide under Article 294, paragraph (1) of the Revised Penal Code as charged in the information and hereby sentences them as follows: accused Teresita Nolasco alias Tessie to suffer an indeterminate penalty of Six (6) years and One (1) day of prision mayor, as minimum, to Twelve (12) Years and One (1) Day reclusion temporal as maximum, with the accessories prescribed by law, accused Jovencio Tabios, to suffer reclusion perpetua, with the accessories prescribed law, and accused Anselmo Tolentino and Julio Arzadon to suffer the supreme penalty of death. The four (4) accused are also ordered to pay, jointly and severally the heirs of Ko Pian the sum of Five Thousand Two Hundred Sixteen Pesos (P5,216.00), the value of the properties taken by them and the further sum of Six Thousand Pesos (P6,000.00) far the death of said Ko Pian, and to pay the proportional costs. On reasonable doubt, accused Petronilo Eapejo and Cons-tante Cachuela alias Kiskis are hereby acquitted, with the proportional costs de oficio.

"The jeep (Exhibit B) used in the commission of the crime is hereby ordered forfeited in favor of the Government."

At about 9:25 o'clock in the evening of May 14, 1963, while Claudio A. Bagaoisan, the Chief of Police of Batac, Ilocos Norte, was driving his jeep on his way to the municipal hall, his attention was attracted by the head-lights of a vehicle running along the municipal dirt road leading to the national highway. He stopped at the junction to observe, a recent robbery in the locality having made him suspicious of vehicles going around at night. Upon reach-ing the highway the vehicle, which turned out to be a jeep, proceeded northward at a fast clip. Sensing something unusual, Bagaoisan have chase and signalled its driver to stop by blowing the police siren and firing a warning shot. The jeep slowed down somewhat, and as he was about to overtake it, one of the passengers looked back and shouted a question at him. Instead of stopping, however, the jeep shot forward and left him behind. But the brief interlude enabled the Chief of Police to observe that one of the passengers occupying the front seat was a woman and to note the facial appearance of the passenger who shouted at him. He also noted the jeep a registration plate No. 22274, Series 1963.

Realizing the futility of further pursuit Chief Bagaoisan turned back drove to a police station and then proceeded to the municipal hall. There he was informed by the guard that Petronilo Espejo of San Nicolas, Ilocos Norte had

called up by phone, requesting the Batac police to be on the look-out for a jeep with plate number 22274, which had allegedly been stolen from its owner. It was also requested that the message be relayed to the PC detachment at Badoc. Shortly after midnight Petronilo Espejo, Jovencio Tabios, a certain Ching Macadangdang and another unnamed companion arrived at the municipal hall. Espejo inquired whether a jeep with plate number 22274 had been seen in Batac. Bagaoisan related what he had seen earlier that evening and even described the passenger who had shouted at him, eliciting a remark from Espejo that he could surmise who that passenger was. The group then bade good night and left.

The following morning, May 15 1963, between six and seven o'clock, Ko Pian (also referred to as Co Piang in the record) a Chinese merchant was found stabbed to death inside his garage located at the back of his store just across the public market of Batac. The local police department was immediately notified and the initial investigation at the scene revealed that one of the dead man's steel safes and two (2) axes displayed at the store were missing while the other steel safe had been slightly pulled forward from its place and found with a piece of rope still tied to it.

The post-mortem examination conducted by the municipal health officer showed that the victim had received five stab wounds and five puncture wounds in the neck and chest and that he died from the resulting massive hemorrhage.

Suspecting that the persons riding in the jeep he pursued the previous night had something to do with the crime, Bagaoisan went to San Nicolas to check. There he learned from Ching Macadangdang that the jeep had been found. He then tried to contact Espejo but the latter had gone to Laoag. So he proceeded to the place, where he was able to locate Espejo. Questioned as to the identity of the jeep's passenger whom Bagaoisan described when they met in Batac, Espejo was at first hesitant but later on named Anselmo Tolentino. Bagaoisan then informed the PC head-quarters about his findings and requested the commanding officer to impound the said jeep and to pick up Anselmo Tolentino for questioning.

In the afternoon, Espejo Tabios and another unidentified person brought the jeep to the PC headquarters. When Tabios was investigated he admitted that he was the owner of said jeep, but claimed that it had been stolen from him. That evening Tolentino was apprehended by the PC, but he denied any participation in the robbery-killing. However when the Chief of Police of Batac was summoned he positively identified Tolentino to be the jeep's passenger who shouted at him during the chase the previous night.

The following day, May 16, Tabios went back to the PC headquarters and executed a sworn statement (Exhibit "1- Tabios") stating, among other things, that he was the owner of the jeep with plate number J-22274, S-63; that he lent it to Anselmo Tolentino at about 6:30 o'clock in the evening of May 14, 1963; that when Tolentino failed to return the jeep that same evening he, Tabios, went to see Petronilo Espejo in San Nicolas on the pretext of inquiring whether the latter had taken it; that he resorted to the foregoing pre-text because he was afraid Espejo might get angry with him for lending away his jeep although they had previously agreed to use it in their scheduled trip to Abra that night; that he and Espejo went to the San Nicolas municipal hall and reported the supposed loss of the vehicle that from there Espejo contacted the policeman on duty in Batac by phone and requested him to impound the said jeep if it should pass that way; that he, Espejo and Macadangdang went to Batac later that same night to make inquiries regarding the jeep; that at about 7:00 o'clock in the morning of May 15, 1963 he found the jeep parked near his wife's boarding house in Laoag; that after he was informed that it was the suspected get-away vehicle used by the persons who had robbed the Chinese store in Batac on May 14, he was constrained to reveal to Espejo that the jeep had in fact been borrowed by Tolentino and that it had not really been lost.

On the same day, May 16, Anselmo Tolentino gave a written statement (Exhibit "I"), which was sworn to before Judge Wenceslao Ortega of the Court of First Instance of Ilocos Norte, wherein he admitted participation in the commission of the robbery in Batac. He further declared among other things, that Petronilo Espejo was the master-mind; that he had three (3) companions, one of them a woman, but did not know their names although he could recognize them if presented to him; that he and his companions used the jeep of Jovencio Tabios in going to Batac, with himself doing the driving; that while in Batac he was left behind by his companions to guard the jeep; that when his companions returned they loaded something on it, after which they drove away, with somebody else at the wheel.

On the same day also Sgt. Jerez of the Philippine Constabulary filed with the Justice of the Peace Court of Batac a criminal complaint for robbery with homicide against Anselmo Tolentino, Petronilo Espejo and four others referred to as John Does and Mary Doe. After the preliminary investigation the corresponding warrants of arrest were issued against the two named accused. No bail was fixed for their temporary liberty. The second stage of the preliminary investigation was waived by them, and the case was remanded to the Court of First Instance of Ilocos Norte.

In the meantime, a reinvestigation of the case was conducted by the Philippine Constabulary. On June 25, 1963 Jovencio Tabios prepared personally in his own handwriting another statement (Exhibit "6-Tabios") in narrative form, wherein he admitted that on the night of May 14 he drove his jeep to and from Batac, with Julio Arzadon, Anselmo Tolentino, two girls named Chita and Tessie, and another person whose name he did not know as his companions. He further stated, among other things, that before leaving Batac, Anselmo, Julio and the unidentified companion loaded on his jeep some-thing like a square container placed inside a sack; that on their return trip they were pursued by another jeep which he was not able to identify; and that after the chase, Anselmo and Julio revealed to him that they had killed somebody.

On the same day, June 25, Conchita Topinio and Teresita Nolasco were picked up by PC operatives. Julio Arzadon was apprehended on the night of June 26. The PC recovered from the place indicated by Anselmo Tolentino in Barrio Tulnagan, Pasuquin, Ilocos Norte, the door (Exhibit "F") and the metal box (Exhibit "F-1") of the steel safe and one of the axes (Exhibit "E") taken from the store of the Chinaman. The next morning, June 27, Julio Arzadon gave a statement (Exhibit "J"; translation, Exhibit "J-1") confessing his participation in the crime. He said that his companions were Estanislao Manding, Anselmo Tolentino, Chita Topinio, Teresita Nolasco and Jovencio Tabios; that the jeep they used belonged to Jovencio Tabios; that the robbery was planned by Anselmo Tolentino and Chita Topinio, and that he saw them talking with each other, the latter explaining the sketch of the Chinaman's place; that they forcibly opened the steel safe in Pasuquin, Ilocos Norte; that according to Anselmo Tolentino the sum of P5,000.00, more or less, was found inside the safe; and that Anselmo Tolentino was the one who kept the money. In the afternoon, Teresita Nolasco gave her written statement (Exhibit "K" translation, Exhibit "K-1"). She stated, among other things, that Julio Arzadon, Conchita Topinio and she went together to rob Ko Pian; that Anselmo Tolentino, Conchita Topinio and Constante Cachuela planned the robbery but Cachuela did not go with them to Batac; that she saw Tolentino, Topinio, and Cachuela prepare at Topinio's house the sketch of the Chinaman's place which they were going to rob; that on the night of May 14, 1963, upon instruction of Mang Chita, she bought "chicklet" (chewing gum) from the store of the Chinaman and told him that Chita and she would enter the house through the back door; that after giving the chewing gum to Chita, the two girls went to the said door, which Ko Pian opened to let them in; that when they were about to leave the place; Tolentino, Arzadon and Manding entered the store; and that she saw Julio Arzadon and Anselmo Tolentino stab the Chinaman.

On June 29, 1963 Anselmo Tolentino gave an additional statement (Exhibit "1-Espejo"), wherein he named

Conchita Topinio, Teresita Nolasco, Julio Arzadon, Estanislao Manding, and Jovencio Tabios as his companions in the robbery and admitted having stabbed the victim on the chest with an ice pick three or four times. He also stated that Conchita Topinio and Constante Cachuela planned the robbery and that what he had said before regarding the participation of Petronilo Espejo was not true.

The statement of Teresita Nolasco and the additional statement of Anselmo Tolentino were sworn to, respectively, before Fiscal Honorio Reyes on June 29, 1963. The investigation having been terminated, the PC referred the case to the Provincial Fiscal, who in turn filed on July 2, 1963 the information accusing Petronilo Espejo, Anselmo Tolentino, Julio Arzadon, Estanislao Manding, Constante Cachuela, Jovencio Tabios, Conchita Topinio, and Teresita Nolasco of the crime of robbery with homicide committed as follows:

"That on or about the 14th day of May, 1963, in the municipality of Batac, pro-vince of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, and with the use of a motor vehicle, did then and there wilfully, un-lawfully and feloniously, by means of violence against and intimidation of person, with intent to gain, and against the consent of the owner thereof, Co Piang, take and carry away the following, to wit:

One (1) steel safe valued at

P 200.00

Cash money in the amount of

5,000.00

Two (2) axes valued at

16.00

Total amount

P5,216.00

belonging to the said Co Piang with a total value of P5,216.00, Philippine currency to the damage and prejudice of the said owner in the aforementioned sum.

That on the occasion of the said robbery and for the purpose of facilitating the commission of the same, that is, to take, steal, carry away the articles above-mentioned, the said accused in pursuance of a preconceived plan, did then and there wilfully unlawfully and feloniously with evident premeditation and treachery, assault and use personal violence upon Co Piang by stabbing him with ice picks and other sharp pointed instruments, thereby inflicting upon said Co Piang several stab wounds in different parts of his body which injuries caused the death of said Co Piang immediately thereafter.

That the crime was committed with the following aggravating circumstances:

1. Use of motor vehicle
2. Night time;
3. Treachery; and
4. Superior strength

CONTRARY TO LAW."

When the case was called for arraignment on July 8, 1963, all accused were present except Estanislao Manding,

who was still at large. Upon petition of accused Anselmo Tolentino, Julio Arzadon, Constanter Cachuela, and Conchita Topinio, the trial court appointed Attys. Santiago Rañada, Sixto Pedro, Herman Coloma and Guillermo Passion as their counsel de oficio, respectively. To give them time to go over the records of the case and to confer with their respective clients, the trial Judge suspended the proceeding. When the case was called anew, all the accused, assisted by their respective counsel pleaded "not guilty". In an order issued on the same day the trial court set the hearing of the case for August 8, 9, and 10, 1963. However, upon motion of the Provincial Fiscal dated August 2, the trial was postponed to August 27 and 28.

Before the prosecution could present its evidence on the first day of hearing, August 27. Anselmo Tolentino and Julio Arzadon, through their respective counsel, moved that they be permitted to withdraw their former plea of "not guilty" and to substitute it with that of "guilty". The trial court granted the motion and upon being arraigned anew the two accused pleaded "guilty" to the charge. Considering, however, that the plea was to a capital offense the trial court withheld judgment until after the presentation of the evidence.

In the course of the trial, Conchita Topinio was discharged as defendant and utilized as witness for the prosecution. In substance her testimony is as follows: On April 25, 1963 she played mahjong in the house of one Mateo Reyes in Laoag, Ilocos Norte. When she was about to leave the place Constanter Cachuela came and confided to her that he and his companions were planning to rob the house of Ko Pian in Batac and that they needed her cooperation because she was a known friend of the Chinaman. However, she told Cachuela that she was afraid. After their conversation, she left the place.

On the following day Conchita met Petronilo Espejo in front of the Tobacco Monopoly monument at the public plaza and the latter inquired from her whether Cachuela had gone to her house. She answered no, but added that Cachuela did tell her something at the mahjong place. Espejo then asked her whether she had agreed, and she replied she had not because she was afraid. Before parting Espejo told her that he would send Cachuela to her house so that they could talk about the matter again.

On May 2, 1963, at about eight o'clock in the morning, Cachuela and Anselmo Tolentino went to Conchita's house. Cachuela introduced Tolentino and reiterated to her what she had been told at the mahjong place. When she insisted that she was afraid to cooperate, they threatened her with death.

The next morning, May 3, Cachuela and Tolentino, together with Julio Arzadon, Jovencio Tabios and Estanislao Manding returned to Conchita's house and advised her that they were going to Batac on that day. At past six in the evening the group composed of Teresita Nolasco, Anselmo Tolentino, Julio Arzadon, Jovencio Tabios, Estanislao Manding and Conchita Topinio proceeded to Batac in a jeep driven by Tabios. Cachuela had declined to go with them on the pretext that he was known in Batac. Teresita Nolasco knew why they were going to Batac, as she was at Conchita's house the first time Cachuela came. On their way, her companions talked about how they could enter the store and how they could get out. When they reached Batac she pointed to them the house of the Chinaman. She also showed them the door at the back of the store. Jovencio Tabios, who was at the wheel, said that there was an exit westward, and forthwith drove in that direction, then turned south of the municipal hall, and circled back again to the rear of the store. Having reconnoitered the place, the group returned to Laoag. On the way they passed near the house of certain Dr. Aoigan, and Anselmo Tolentino remarked that said house had recently been robbed but that it should not give them cause for worry because the culprits were his companions and were still at large. About one kilometer farther on the way, Anselmo asked Tabios to stop the jeep for a while and said that once they were inside the store they should not touch anything in order not to leave fingerprints by which they could be identified. The next morning, Anselmo Tolentino and Julio Arzadon went to her house and showed her a sketch of the store of the Chinaman in relation to the national road and the public market. Before leaving, they told her that they would commit the robbery on May 9, 1963.

On the last mentioned date, at about six o'clock in the evening, Anselmo Tolentino, Jovencio Tabios, Julio Arzadon, Estanislao Manding, Teresita Nolasco and Conchita Topinio left for Batac in a jeep driven by Tabios. On their way Conchita and Teresita were told not to touch anything in the store, nor carry any handkerchiefs which might be left at the place. When they arrived in Batac the store of the Chinaman was already closed. Upon instruction of Anselmo Tolentino, Conchita got off the jeep and knocked at the door, but no response came from inside. Tolentino then decided that they should leave and return on May 12, 1963. However, when the day came the plan could not be carried out because there was no available jeep. They postponed its execution to May 14.

Between eleven o'clock and twelve o'clock noon of May 14 Anselmo Tolentino went to Conchita's house and reminded her about their scheduled trip to Batac. She was instructed to go to his boarding house at 5:30 o'clock in the afternoon with Teresita Nolasco. When they arrived there they were met by Julio Arzadon. After a while, Jovencio Tabios and Estanislao Manding arrived in a jeep. Anselmo Tolentino, Julio Arzadon, Teresita and Conchita joined them in the jeep and they proceeded to Batac. Near the public market Conchita and Teresita were ordered to get off. They entered the market through the southern gate and then proceeded to the western gate in front of Ko Pian's store, where they stayed for a while. Since the Chinaman would not let them enter his place without pre-vious notice, Conchita sent Teresita to the store to buy "chicklet" and to inform him that they were already there and would pass through the back door. When Teresita came back she told Conchita that Ko Pian had agreed. The two girls then repaired to the rear of the store and sought cover near the fence. After a while Ko Pian let them in and the three of them went upstairs together. The China-man and Teresita entered his bedroom, leaving Conchita outside. The two remained inside the bedroom for about ten minutes, and as soon as they came out the three went downstairs. Ko Pian opened the door to let them out, and it was then that Anselmo Tolentino, followed by Julio Arzadon and Estanislao Manding, suddenly barged in. Tolentino covered Ko Pian's mouth with his hand while Manding held him by the body. Arzadon then stabbed the helpless victim in the neck with a double-bladed weapon, after which they laid him on the ground. Tolentino then stabbed him several times with an ice pick. The wounded man, moaning and bleeding, was left to die in that posi-tion, while Tolentino and Arzadon carted away a steel safe and loaded it on the jeep. They tried to bring out the other safe also but were not able to lift it. They then took two axes from the store and after pushing the girls inside the jeep, they sped away. The original plan was to open the safe near the river in Sarrat, Ilocos Norte, but on the highway they were pursued by another jeep. Tolen-tino ordered Tabios to drive faster, but the other vehicle was able to close the distance. Tolentino then told Tabios to slow down, and when the other jeep was already abreast he leaned outside and shouted at the driver. At that moment Tabios stepped on the gas and left the other jeep behind. When they heard a gunshot, Tolentino loaded his gun and warned his companions to get ready, but the pursuit was not pressed.

Upon reaching the town of San Nicolas the group took a sideroad where their jeep developed engine trouble and stopped. They had to push it until the motor started again. When they arrived at a place north of the provincial capitol in Laoag, the two girls asked permission to get off. Tabios agreed and added that he would report that his jeep had been stolen. The two girls then went to a restaurant to eat.

In addition to the testimonies of its witnesses, the prosecution submitted as evidence, among others, Exhibit "I", the sworn statement of Tolentino dated May 16, 1963; Exhibit "J", the sworn statement of Julio Arzadon; Exhibit "K", the sworn statement of Teresita Nolasco; Exhibit "B", the jeep with plate No. 22274; Exhibit "F", the door of the steel safe Exhibit "F-1", the metal box of the safe; and Exhibit "E", one of the axes taken from the store of the Chinaman.

Teresita Nolasco's defense is that she was not aware of the criminal intent of her co-accused when they went to Batac on May 14, 1963 and that her purpose in going there was merely to verify the result of her application as a salesgirl in Ko Pian's store. She denied the truth of most of the answers given by her in her sworn statement

(Exhibit "K") and said that she signed it twice, first at the barracks and later at the office of the Provincial Fiscal, because the Constabulary soldiers threatened to rape her if she did not do so.

On his part, Jovencio Tabios testified that he was not aware of any plan on the part of his co-accused to commit the said crime, nor did he participate in its commission. While admitting that he was the one who drove his jeep on which Tolentino, Arzadon, Manding, Nolasco and Topinio rode on May 3, 9 and 14, 1963, he alleged that Tolentino had hired his jeep only to go out on dates with girls, paying him the sum of P20.00 per trip. He further claimed that he came to know for the first time that some-body had been killed by Tolentino and his companions when he was driving the jeep back to Laoag.

Petronilo Espejo and Constante Cachuela, on their part, made a blanket denial of the facts imputed to them relying on their respective alibis, and were acquitted on reasonable doubt.

With regard to Anselmo Tolentino, his counsel de oficio at first reserved the right to present evidence to prove mitigating circumstances in his favor, but subsequently waived said right and instead submitted a memorandum relative to the aggravating circumstances alleged in the Information.

On August 24, 1966 the trial court promulgated its decision with respect to accused Petronilo Espejo, Anselmo Tolentino, Julio Arzadon, Jovencio Tabios, and on September 23, 1966 with respect to accused to Teresita Nolasco.\* Thereupon, Tolentino, Arzadon, Tabios and Nolasco instituted the instant appeal.

#### Appeal of Anselmo Tolentino and Julio Arzadon

Appellant Anselmo Tolentino avers that the trial court erred: (1) in denying the motion of his counsel de oficio for time to prepare for trial - an error or irregularity violative of his constitutional right to due process; (2) in admitting his plea of guilty, which was given improvidently; and (3) in imposing upon him the penalty of death.

Appellant Julio Arzadon joins Tolentino in his third assignment of error.

Under the first assigned error, Tolentino contends that considering the repeated manifestations of his counsel that he was not prepared to enter into trial, the Court's actuation in continuing with the hearing of the case on August 27, 1963, which resulted in his hurried and improvident plea of guilty, was clearly an abuse of discretion prejudicial to his rights as provided in Section 5 Rule 116 and Section 7, Rule 118 of the Rules of Court.[1] He maintains that the plea of his counsel for a separate trial was an implied request for postponement and should have been granted, or that the court, even *motu proprio*, should have postponed the trial in accordance with Section 2, Rule 119,[2] the unpreparedness of counsel being a valid ground therefor.

The contention cannot be sustained. It appears from the record that on July 8, 1963 the trial court appointed Atty. Santiago Rañada, Sr. as Tolentino's counsel de oficio; that on the same date, with the assistance of said counsel, he entered the plea of "not guilty"; that on July 30, 1963 Atty. Loreto U. Bautista formally entered his appearance also as counsel for the same appellant; and that on August 27, 1963 trial was started. Evidently, the appellant had more than two days as provided for in the Rules, to prepare for trial. His counsel even admitted that he was given fifteen (15) days to study the case. Under the circumstances, even if an express request for postponement had been made, the trial court would not have erred in denying the same.[3]

With respect to the second assigned error, the appellant claims that the trial court did not sufficiently or adequately explain to him the meaning and consequences of a plea of guilty to the offense charged. The claim is unfounded. It appears from the transcript of stenographic notes that after conferring with his client Atty. Rañada manifested that the latter decided to plead guilty to the charge reserving his right to prove mitigating circumstances at the proper time. Thereupon, the trial court questioned the appellant thus:

"COURT to ACCUSED ANSELMO TOLENTINO:

"Q. You speak English, you heard the manifestation of your counsel. Your counsel is praying permission for you to be allowed to withdraw your former plea of not guilty and substitute it to that of guilty, did you hear that?

"ACCUSED A. TOLENTINO:

"A. Yes, your Honor.

"Q. Do you realize that your penalty of the offense with which you are charged is life imprisonment to death?

"A. Yes, your Honor.

"Q. Do you realize that by pleading guilty, you will be sentenced in accordance with law?

"A. Yes, your Honor.

"Q. And you are willing to withdraw your former plea of not guilty to substitute it for that of guilty?

"A. I am going to plead guilty, your Honor.

"COURT:

Let the accused be arraigned anew. (The Deputy Clerk of Court read the Information to the accused Anselmo Tolentino.) Anselmo Tolentino pleaded "guilty" to the Information.

"COURT:

Make of record that the accused, Anselmo Tolentino, pleaded guilty and the Court is reserving its decision."

Considering that the appellant was assisted by counsel and that he was a college student at that time, we are convinced that the explanation made by the court as to the meaning and consequences of a plea of guilty was sufficient, and that he entered his plea with full knowledge of its significance. The plea was made on August 27, 1963, and sentence was promulgated on August 24, 1966. During the intervening period of three years he could have complained to the court that his plea had been improvidently made. He did not do so; on the contrary, there appears in the record a letter dated November 24, 1964, addressed by him to the Presiding Judge, pleading for a "humanitarian decision" inasmuch as he had pleaded guilty to the charge.

The appellant suggests that at the time he pleaded the trial court entertained a reasonable doubt as to his guilt. The suggestion has no basis. In fact the court did not even fix bail for his temporary liberty. More-over, when the appellant offered to plead guilty to the lesser offense of homicide the court turned him down, "considering the facts and circumstances appearing on the record of the case."

As regards the third assignment of error the two appellants Anselmo Tolentino and Julio Arzadon first contend that the trial court should not have considered the aggravating circumstances of "use of motor vehicle" in the determination of the penalty to be imposed because the same was not alleged in the information as a means by which the crime of robbery with homicide was committed. They point out that the information merely alleged that a motor vehicle was used by the accused in carrying away the personal properties belonging to the victim, and that by then the offense had already been consummated. They maintain that the use of motor vehicle after the commission of the crime is not what the law<sup>[4]</sup> considers as an aggravating circumstance but rather its use as a means to commit the same.

The contention is untenable. The information recites that the crime was committed with several aggravating circumstances one of which was "use of motor vehicle." Since a plea of guilty admits all the material averments

in the information including the aggravating circumstances alleged therein,[5] the appellants cannot now question the actuation of the trial court in appreciating "use of motor vehicle" as an aggravating circumstance. Besides, it has been established during the trial that the accused used the motor vehicle in going to the place of the crime in carrying away the effects thereof, and in facilitating their escape.

The two appellants claim that the trial court mis-applied Article 63, paragraphs 2 and 4 of the Revised Penal Code[6] by offsetting only the aggravating circumstance of treachery (which according to the trial court absorbed "nighttime" and "superior strength") with the mitigating circumstance of "plea of guilty," leaving the aggravating circumstance of "use of motor vehicle" to justify the imposition of the death penalty. They maintain that said plea should have been weighed against both aggravating circumstances, considering its importance and moral value.

We find no error in the application of the article cited by the appellants. The facts of the case particularly the manner the victim was repeatedly stabbed and the utter senselessness of the killing itself show the correctness of the court's ruling. Since there is still one aggravating circumstance left the penalty of death was properly imposed by the trial court on the two appellants.

### APPEAL OF JOVENCIO TABIOS

In his brief appellant Jovencio Tabios alleges that the trial court erred: (1) in finding him guilty of the crime of robbery with homicide and (2) in sentencing him to suffer the penalty of reclusion perpetua with the accessories prescribed by law to pay jointly and severally with his co-accused Anselmo Tolentino, Julio Arzadon, Teresita Nolasco, alias Tessie, the heirs of Ko Pian the sum of P5,216.00 representing the value of the properties allegedly taken and the additional sum of P6,000.00 for the death of said Ko Pian; and to pay the proportional costs.

This appellant contends that the prosecution has failed to establish by strong, clear and convincing evidence that he participated in the conspiracy to commit the crime of robbery with homicide. According to him the only evidence against him on this point is the testimony of Conchita Topinio, which does not deserve the credence accorded to it by the trial court because the witness was herself a co-conspirator, and a woman of low morals besides. The trial court did not overlook the so-called questionable morals of the state witness nor the fact of her being a co-conspirator. The Court said:

"In the evaluation of the evidence for the prosecution, this Court is aware of the low morality of witness Conchita Topinio alias Chita and of her being a co-conspirator in the commission of the crime charged. However, after examining her testimony with a jealous care and with a watchful scrutiny, the Court finds it consistent in its details and harmonizes so well with the surrounding circumstances, and it is further corroborated not only by the interlocking confession and/or admission of accused Anselmo Tolentino, Julio Arzadon, Jovencio Tabios, and Teresita Nolasco alias Tessie (Exhibit "1-Tabios"; "6-Tabios"; "7-Espejo"; "I"; "1-Espejo"; "J" and "K") but also by other evidence on record. Her testimony deserves full credence."

It is a settled rule that where the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that if considered, might affect the result of the case.[7] In the instant case we find no cogent reason to disagree with the trial court.

As to appellant Tabios' participation in the conspiracy the testimony of Conchita Topinio finds corroboration in the interlocking confessions of appellant Julio Arzadon and Teresita Nolasco, showing that on May 3, 1963, said appellant drove his jeep with them to and from Batac for the purpose of surveying the scene of the projected robbery; that on their way to Batac they discussed how they could enter the store and how they could get out; that

appellant even told his companions about an exit westward and in fact drove the jeep in that direction; that on the night of May 9, he again drove his jeep to Batac with Tolentino, Arzadon, Topinio, Nolasco, and Manding as his companions for the purpose of carrying out their plan but failed to do so because the Chinaman did not open the door of his store; that on May 14, the same group went to Batac again on appellant's jeep, some of them armed with an ice pick, a bladed weapon and a pistol; that all of them fully understood what each had to do; that appellant parked his jeep about 100 meters from the store, ready to pick up his companions at a moment's notice; that when he was fetched by Arzadon he drove his jeep towards the rear of the store to load the articles taken therefrom, and that he drove the jeep in escaping from the scene of the crime. Thus the appellant's participation in the conspiracy has been fully established. In the case of *People vs. Estrada*,<sup>[8]</sup> this Court said:

"To establish conspiracy, it is not necessary to prove previous agree-ment to commit a crime if there is proof that the malefactors have acted in concert and in pursuance of the same objective. This Court has repeatedly decided that conspiracy may be inferred from the acts of the accused themselves when such acts point to a joint purpose and design. Their action must be judged by what they do and not altogether by what they say; for what men do is the best index of their intention."

Tabios now contends that even granting that he was aware of the plan of his co-accused to commit the crime of robbery, he should not be held liable for the crime of robbery with homicide because the killing of the Chinaman was not a part of the conspiracy, invoking the case of *People vs. Basisten, et al.*, 47 Phil. 493, where-in this Court held:

"Where it appears that only one of the defendants committed homicide at the time of perpetrating the robbery, said homicide not having been the sub-ject of the conspiracy, nor the others having had any intervention in said homicide, the author of the homicide is the only one responsible for the complex crime of robbery in band with homicide, the other defendants being responsible only for the robbery in band."

In *People vs. Rogel*, G. R. No. L-15318, March 31, 1962 (4 SCRA 807) where the accused also invoked the ruling in *People vs. Basisten*, this Court rejected his view, thus:

"We do not share appellant's view, in this respect; for as early as 1926, one year after We enunciated the ruling in the *Basisten* case supra. We decided to revert to the former doctrine laid down in *U.S. v. Macalalad*, 9 Phil. 1, in the following language: -

x x x The Supreme Court of Spain, interpreting the provisions of the Penal Code touching the complex crime of ROBO CON HOMICIDIO, has frequently decided that, where the complex crime has been committed, all those who took part as principals in the commission of the robbery are guilty as principals in the commission of the crime of ROBO CON HOMICIDIO, unless it appears that they endeavored to prevent the unlawful killing. (Decisions of the Supreme Court of Spain, April 30 and February 23, 1872, and June 19, 1890. See also Viada, Vol. 3, pp. 347, 354, and 356.)" (Italics supplied).

Thus, in *People vs. Bautista et al.*, 49 Phil. 389, (1926), We held that -

‘x x x Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide (*U.S. Macalalad*, 9 Phil. 1)." (Italics supplied)

The same ruling was applied in many subsequent cases, among them *People vs. Atencio*, G. R. No. L-22518 (Jan. 17, 1968), where this Court held that while the appellants therein might not have participated in the slaying of the victims, nevertheless, they were liable for the crime actually committed, for the rule is settled that when homicide takes place as a consequence or on the occasion of a robbery, all of those who took part in the robbery shall be

guilty as principals of the complex crime of robbery with homicide, unless there is proof that they had endeavored to prevent the killing, citing the cases of *People vs. de la Rosa*, 90 Phil. 365; *People vs. Libre*, 93 Phil. 5; *U.S. vs. Macalalad*, 9 Phil. 1; *U.S. vs. Santos*, 4 Phil. 189. The same ruling was reiterated in *People vs. Pujinio*, G. R. No. L-21690, April 29, 1969, (27 SCRA 1185) citing *People vs. Morados*, 70 Phil. 558; and *People vs. Carunungan, et al.*, G. R. No. L-13283, September 30, 1960.

Since it has been established that the appellant in the instant case was a co-conspirator and that he performed overt acts in furtherance of the conspiracy the lower court correctly held that he was liable for the crime of robbery with homicide as a co-principal.

When a group of malefactors conspire to commit robbery and arm themselves for the purpose, no member of the group may disclaim responsibility for any act of violence that is perpetrated by reason or on the occasion of the robbery. Such violence is always reasonably to be expected either to overcome active opposition or to forestall it altogether by disabling the victim at the very outset, or even to silence him completely thereafter. In the instant case the group that set out for Batac to rob Ko Pian was provided with lethal weapons - a dagger, an ice pick and a gun. These instruments were intended to facilitate the commission of the robbery, and if their use resulted in homicide, the liability therefor attaches to the entire group. The only exception recognized in the decisions of this Court presumably drawing an analogy with the situation provided for in Article 296 of the Revised Penal Code, concerning robbery by a band, is when a co-conspirator in the crime of robbery tried to prevent the homicide or the other acts of violence committed by reason or on the occasion of the robbery. In robbery by a band punished under the said Article, of course, proof of conspiracy is not required so as to hold all members of the band liable for any of the assaults committed on the occasion of the robbery, whereas such proof is necessary where several accused, not constituting a band, are charged with the offense of robbery with homicide under Article 294.

With this view we take of the case of appellant Jovencio Tabios, strictly speaking he should suffer the same penalty as that imposed upon Anselmo Tolentino and Julian Arzadon. Some members of the Court, however, are of the opinion that a distinction should be made as far as the penalty is concerned, considering that Tabios although co-conspirator, was not in the immediate scene of the crime but guarding the jeep some distance away, and had no direct hand in the killing of the victim. For lack of the required number of votes to impose the maximum penalty, that meted out by the trial court on this appellant stands affirmed.

### APPEAL OF TERESITA NOLASCO

Three errors are assigned by this appellant, namely (1) in not acquitting her on the ground of reasonable doubt; (2) in considering only the inculpatory portions of her sworn statement (Exh. "K") and disregarding the exculpatory portion thereof; and (3) in not dismissing the case upon motion of the defense after the Provincial Fiscal had finished presenting its evidence.

The trial court committed none of the errors assigned. Although Conchita Topinio testified during the cross-examination, as found by the trial court, that she did accompany this appellant to the store of Ko Pian to apply for a job as a sales clerk three weeks prior to May 14, 1963, that fact does not negate appellant's knowledge of the criminal intent of her co-accused nor her participation in the crime charged. Topinio's testimony, corroborated by appellant's sworn statement, clearly shows not only her knowledge of the purpose of the trip to Batac on May 14 but also her own overt acts in furtherance of the conspiracy. She quotes the following portion of her sworn statement which she says was not considered by the trial court:

"Q. Who among you planned to rob the said Chinese then?

A. They were Anselmo Tolentino, Conchita Topinio and Constante Cachuela alias Tante but he did not

follow.

Q. How did you know that they were the ones who planned?

A. I saw them make the map or sketch of the place where we were going to rob."

Knowing the plan as she did she still went with the group, and actively cooperated by facilitating the entry of her companions through the back door so that the robbery could be carried out.

In the computation of the penalty to be imposed on appellant Teresita Nolasco, the trial court appreciated in her favor the mitigating circumstance of "lack of intent to commit so grave a wrong as that committed." This is error. She being part of the conspiracy the intentional act of her co-conspirators of stabbing the victim to death is considered as the act of all. (People vs. Bautista, G. R. Nos. L-23303-23304, May 20, 1961, 28 SCRA 184). However, taking into account that Teresita Nolasco was 15 years and 5 months old at the time of the commission of the crime, the penalty next lower in degree than that prescribed by law should be imposed in its proper period. The penalty for robbery with homicide being reclusion perpetua to death, one degree lower than said penalty is reclusion temporal (Article 61, par. 2 and Article 71, Scale No. 1). Since there are two aggravating and no mitigating circumstances in her case, the penalty should be reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, she should be as she is hereby sentenced to suffer the penalty of from 10 years and 1 day of prison mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum.

Wherefore, the judgment appealed from is affirmed with respect to the penalty of death imposed upon appellants Anselmo Tolentino and Julio Arzadon, and with respect to the penalty of reclusion perpetua imposed upon appellant Jovencio Tabios modified as above indicated with respect to the penalty imposed upon appellant Teresita Nolasco and further modified as to the amount of civil indemnity for the death of Ko Pian which is raised from P6,000.00 to P12,000.00. Costs against appellants.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Dizon and Makasiar, JJ., on leave, did not take part.

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\* The other accused, Constante Cachuela, died on March 25, 1966 per Certificate of Death submitted to the trial court.

[1] Sec. 5. Time for counsel de officio to prepare or arraignment or trial. - Whenever an attorney de officio is employed or assigned by the court to defend the accused either at the arraignment or at the trial, he shall be given a reasonable time to consult with the accused and prepare his defense before proceeding further in the case, which shall not be less than two (2) hours in case of arraignment and two (2) days in case of trial, but the court may, for good cause shown shorten or extend the time. (RULE 116)

SEC. 7. Time to prepare for trial. - After a plea of not guilty, except when the case is on appeal from the justice of the peace, the defendant is entitled to at least two (2) days to prepare for the trial unless the court for good cause shown shall allow further time. (RULE 118)

[2] SEC. 2. Continuance or post the trial. - The court on the application of either party or on its own motion, may in its discretion for good cause postpone the trial of the case for such period of time as the ends of justice and the right of defendant to a speedy trial require. (RULE 119)

[3] U. S. vs. Santos, 4 Phil. 419; People vs. Silerio, 81 Phil. 124.

[4] Article 14. Aggravating circumstances. - The following are aggravating circumstances:

x x x x x x x x

20. That the crime be committed with the aid of persons under fifteen years of age or by means of motor vehicles airships or other similar means. (Revised Penal Code.)

[5] People vs. Arpa, G. R. No. L-26789 April 25, 1969 (27 SCRA 1037) citing People vs. Boyles, G. R. No. L-15308, May 29, 1964 and cases cited.

[6] Article 63. Rules for the application of indivisible penalties. - x x x x x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x x x x x

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules according to the result of such compensation.

[7] People vs. Sinaon, G. R. No. L-15631, May 27, 1966 (17 SCRA 260) and the cases cited.

[8] People vs. Estrada, G. R. L-26103, Jan. 17, 1968 (22 SCRA 111, 126)

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