

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GORGONIO UBALDO, ET AL., DEFENDANTS. VALENTIN SUPERABLE,
SEVERO CAIGOY, VICENTE CALABIA, ANTONIO PACLI, CRISPIN
VILLABLANC...**

G.R. No. L-19490. August 26, 1968

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PER CURIAM:

This is an automatic review of the decision of the Court of First Instance of Leyte sentencing the appellants-reviewees to suffer the penalty of DEATH for the special complex crime of robbery in band with double homicide, with frustrated homicide, less serious physical injuries and direct assault upon agents of persons in authority.

The information filed with the court a quo charged nine persons of the offense, namely: Gorgonio Ubaldo, Valentin Superable, Norberto Lumpay, Alfonso Hembra, Severo Caigoy, Vicente Calabia, Crispin Villablanca, Jr., and brothers Antonio Pacli and Benjamin Pacli. During the pendency of the case, however, accused Gorgonio Ubaldo succumbed from the gunshot wounds sustained by him during and on the occasion of the robbery; accused Norberto Lumpay was shot to death on his second attempt to escape from confinement in the provincial jail where he was detained while the trial of the case was in progress; while accused Alfonso Hembra was later discharged from the information to become state witness.

Accordingly, trial proceeded with respect only to the remaining six accused, namely: Valentin Superable, Severo Caigoy @ Beroy, Vicente Calabia, Crispin Villablanca, Jr. @ Pengpeng, and the brothers Antonio Pacli and Benjamin Pacli. After due trial, on January 18, 1962, the trial court found each and everyone of the accused:

"x x x guilty of the crime of robbery in band with double homicide, frustrated homicide and less serious physical injuries and direct assault upon agents of persons in authority, and sentences each and everyone of them to suffer the penalty of DEATH, indemnify the heirs of the two deceased, Co Cui Hui and Margarito Cotoner, jointly and severally, in the amount of P5,000.00 each, indemnify Eng Wan the amount of P250.00, the value of the things robbed, without subsidiary imprisonment in case of insolvency, and to pay the proportional costs."

Crispin Villablanca, Jr. has appealed from the decision. The other accused are represented by counsel de officio for purposes of this review of this Court by law.

Our own examination of the record revealed that of the seven witnesses for the prosecution, only Alfonso Hembra, Marcial Glore and Jorge Go had direct and personal knowledge of the facts attending the commission of the robbery-killings in question. Alfonso Hembra was originally one of these charged in the information, but was later discharged to become state witness; Marcial Glore was then a policeman in the municipality of Tunga, Leyte, who, in the performance of his duties, sustained gunshot wounds on the occasion of the robbery; while Jorge Go was a member of the family whose store was robbed on the night of April 24, 1958. It appears indubitable in the record also, that immediately after the robbery, two lifeless bodies were left at the scene of the

crime - those of Co Cui Hui (mother of Jorge Go) and policeman Margarito Cotoner of Tunga.

A review of the evidence for the prosecution shows that at about 1:00 o'clock in the afternoon of April 24, 1958, a market day, accused turned state wit-ness Alfonso Hembra left his house in Jaro, Leyte, and went to the cockpit of the adjoining municipality of Tunga to see the cockfights. After staying there for about two hours, he left the cockpit and passed by the house of his friend, accused Antonio Pacli, located in the said municipality of Tunga, Leyte. There he found also the other accused - Benjamin Pacli, Norberto Lumpay, Severo Caigoy, Gorgonio Ubaldo, Vicente Calabia, Valentin Superable and Crispin Villablanca, Jr. - drink-ing tuba; and, he joined them in the "toma". In the course of their drinking spree, at about 5:00 o'clock in the afternoon, accused Antonio Pacli proposed to the group that they rob Eng Wan, owner of a store located along the provincial road. To the proposition, all the members of the group agreed, signifying their assent and concurrence to the plan with the words "go ahead". Then and there, they made preparations to execute the robbery. Antonio Pacli went to the back of his house and soon returned with several firearms which he dis-tributed among the members of the group. He gave a carbine to Lumpay, another carbine to Superable, a Thompson to Villablanca a .38 cal. revolver to Ubaldo, a .45 cal. pistol to Caigoy, and a pistol each to Calabia and Hembra. Meanwhile, they continued drinking.

At about 6:00 o'clock that evening, the group prepared to go to the store of Eng Wan. Accused Va-lentin Superable suggested that Lumpay, Ubaldo and Caigoy should enter the store while the rest would re-main outside as lookouts. They reached the store at about 7:00 o'clock and, as planned, they divided into three groups. As Lumpay, Ubaldo and Caigoy entered the store, Superable, Villablanca and Hembra posted them-selves on one corner of the road some ten meters from the store, while Calabia and the Pacli brothers stood watch at the other corner of the road eight meters from the said store of Eng Wan. Said lookouts stood guard in squatting or prone positions with their guns point-ing towards the direction of the store, ready for any eventuality.

When Lumpay, Ubaldo and Caigoy approached the store, Jorge Go, younger brother of Eng Wan, was stand-ing at the sidewalk passing away the time; and he was completely taken by surprise when he was suddenly com-manded by Ubaldo to get inside the store. At the same time, Lumpay aimed his gun at Mana Lilia, Go's sister-in-law. Caigoy went further inside the store, and when he came back, he had with him Co Cui Hui, Jorge Go's mother. Having hied the inmates together, Ubaldo com-manded them to point to the place where their money was hidden, and one of them readily pointed to the drawer where they kept their cash, as they had no safe. Ubal-do opened the drawer and took therefrom P200.00 in cash. From another drawer, Ubaldo obtained some P50.00 worth of jewelry.

Meanwhile that the drawers were being ransacked, Jorge Go slipped out of the store unnoticed. He went out of the store thru the door of Bodega A and proceeded towards the direction of the store Bodega B to hide. From there, he saw Caigoy came out of the door of Bodega A, conducting his mother, Co Cui Hui, by the neck of her dress. At about the same time, policeman Margarito Cotoner entered the store, followed by an exchange of shots between the policeman and Ubaldo. Outside the store, Caigoy also shot the Chinese woman Co Cui Hui who fell on the sidewalk between the canal of the road and the wall of the store.

The ensuing gunplay from the direction of Eng Wan's store called the attention of Marcial Glore, another policeman of Tunga, who was then eating supper with his family in his house about 300 meters from the store of Eng Wan. He immediately proceeded towards the store to investigate. But before he could reach the place, at a distance of 8 to 10 meters from the store of Eng Wan, he was fired upon. He focused his flash-light towards the direction of the place where the shot came from as he ducked, and saw accused Lumpay, Calabia and Villablanca in the middle of the road pointing their guns at him. Policeman Glore put out his flashlight and tried to load his gun which, unluckily, he failed to do, even as the second shot directed against him came from the place where the above-named accused were at the time. He noted that Superable, whom he previously saw a little farther away

than Lumpay when he flashed his flashlight, ran towards his back and there fired one shot, hitting him (Glore) at the right shoulder below the scapula. As policeman Glore fell, his carbine and his flashlight were thrown aside. Thereafter, the robbers left, one of them dragging a body towards the river not far behind the store. Still later policeman Glore managed to get up and return to his house. He was taken by his wife to Carigara for first aid treatment and then to the Leyte Provincial Hospital for more adequate treatment. He was discharged from the said hospital after 19 days, but had to report back for thirty days more before his wound was finally healed.

Lt. Gaudencio Ruiz, then investigating officer of the 57th PC Company with headquarters at Camp Bumpus, Tacloban City, was informed about the incident that same evening of April 24, 1958, at about 11:00 o'clock. Immediately, he proceeded to Tunga and was at the scene of the crime at about 1:00 o'clock the following morning together with the municipal mayor of the place and five PC soldiers. He placed a cordon around the area and began an investigation. At the store of Eng Wan, they found the lifeless bodies of policeman Cotoner and the Chinese woman, Co Cui Hui. Several empty shells were also recovered inside the store. Further investigation of the surrounding premises later led to the discovery of Gorgonio Ubaldo who was found half-submerged in the nearby river. And upon pulling him out of the water, it was learned that although he was still alive, he had been rendered helpless by a gunshot wound. A bullet had plowed through the lower part of his body, piercing one of his pockets which contained part of the money taken from the store of Eng Wan.

From the river, Gorgonio Ubaldo was taken to the municipal building of Tunga where he was first given treatment, and then investigated. Later, he was transferred to the Provincial Hospital in Tacloban City where he subsequently died. Before he died, however, he gave an ante mortem statement wherein he named his companions in the robbery. Said statement, taken on April 25, 1958, was reduced to writing and subscribed by Gorgonio Ubaldo before the justice of the peace of Tunga, Leyte.

In his ante mortem statement (Exh. C), Gorgonio Ubaldo affirmed that: he was 27 years of age; he was arrested by policemen and PC soldiers near the river of Tunga, Leyte, because he was with the group who robbed and killed a Chinese woman and a policeman in Tunga; his companions in the robbery were Valentin Superable, Berto Lumpay, Biroy Caigoy, Vicente Calabia, one Alfonso whose family name he did not know, Antonio Pacli @ "Tony" and his brother Benjamin Pacli @ "Ben"; the Pacli brothers were the ones who invited them to rob the store of Eng Wan; he (Ubaldo) and Caigoy went to the house of Tony (Antonio) and Benjamin Pacli before they went to the store of Eng Wan; he (Ubaldo) was carrying a revolver caliber .38, Caigoy carried a pistol caliber .45 and a Thompson sub-machinegun, Superable and Lumpay each had a carbine, and Hembra carried a pistol caliber .45; Antonio and his brother Benjamin were unarmed, but they were the ones who pointed to the store to be robbed; Caigoy, Lumpay and Calabia were the ones who entered the store, while he (Ubaldo) remained outside together with Superable and Hembra; it was Lumpay who shot the policeman who entered the store and the Chinese woman; after the shooting, his companions ran towards the direction of Jaro, Leyte; he (Ubaldo) was left behind because he was wounded; the leader of the group was Superable, but it was the Pacli brothers who planned the robbery; the firearm he carried that evening was taken by his companions; and Antonio Pacli's wife was present when they had their meeting in their house.

On the basis of the wounded Gorgonio Ubaldo's revelations, the persons named by him as his companions in the robbery were subsequently apprehended. They were brought before Gorgonio Ubaldo who positively identified them as his companions in the robbery. Later, they were all investigated in the form of questions and answers which were reduced to writing. Each gave his own version of the circumstances surrounding the robbery in question which, stripped of unessential details, we shall hereinafter set forth.

In his statement (Exh. I) executed before Sgt. Moreno of the PC and sworn to before Joaquin Hachang, Clerk, Court of First Instance of Leyte on April 26, 1958, accused Antonio Pacli declared that; he was 28 years of age;

with residence in Tunga, Leyte; he knew accused Superable since 1951; on April 24, 1958, he had visitors in his house, namely: Hembra, Superable, Ubaldo, Villablanca, Caigoy, Lumpay, Calabia and his own brother Benjamin Pacli; with the exception of Calbia, he knew them all, although Superable and Caigoy were his closest friends; in the house, firearms were distributed (describing the particular firearm each held); they drank in the house, consuming one and a half gallons of tuba; he did not know why they came to his house nor hear the topic of their conversation; he did not report to the authorities about their unlicensed firearms because they were his friends; what they told him was that they were going to hire the truck of Eng Wan; after they had left his house, he heard shots, so, he put out the light in the house because he was afraid that they may come back; after the firing, he saw people running in different directions, and he decided to close the doors of his house; the next morning, he went out and mingled with the people among whom there was common talk that the store of Eng Wan had been robbed; but while still in his house, he had been informed already that Gorgonio Ubaldo had been shot; he was later arrested by the PC in his own house.

The statement (Exh. D) of accused Benjamin Pacli was executed on April 25, 1958. It was taken by Lt. Ruiz of the PC and sworn to before Gerardo Tamaca, justice of the peace of Tunga, Leyte. Accused Benjamin Pacli declared in his statement that: he was 23 years of age, residing in Tunga, Leyte; he knew Gogoy (Gorgonio Ubaldo) and saw him in the house of his brother Tony Pacli on April 24, 1958, together with accused Caigoy, Superable, Lumpay, Pengpeng (Crispin Villablanca) and two others; they robbed the store of Eng Wan and killed a Chinese woman and a policeman; in the house of his brother (Tony), he saw all of them carrying firearms (describing the particular firearm each of them carried); his brother Antonio and the latter's wife and children were also in the house then; the group left the house just after darkness had set in, and he went with them to indicate the store of Eng Wan; but after pointing the store to them, "I proceeded my way to the other side of the river"; he did not know the purpose why they asked him to point to them the store of Eng Wan; once on the other side of the river, he joined several other persons drinking tuba in a store; it was then while he was drinking with these persons, that he heard gunshots near the store of Eng Wan, and believing there was a fight there, he decided to go home; he did not reach his house, however, because while passing the bridge, he met policeman Froilan Dadolia who "brought us to his house and we slept there in his house."

Accused Severo Caigoy also executed a statement (Exh. F) before Sgt. Moreno of the PC. He signed the statement, but failed to swear to it. In that statement, he declared as follows: he was 29 years old, a resident of Jaro, Leyte; when he was arrested by the PC soldiers in his house, they found in his possession an unlicensed caliber .45 revolver which (upon being shown to him during the investigation) he admitted to be the firearm the PC confiscated from him; at about 6:30 p.m. on 24 April, 1958, he was in the house of accused Antonio Pacli where he met accused Ubaldo, Villablanca, Superable, Calabia, Hembra, Lumpay and Benjamin; he did not have any conference with Superable at the cockpit on April 20, 1958, regarding the plan to rob the store of Eng Wan, for the agreement to rob the store of Eng Wan was made in the house of Antonio Pacli upon the suggestion of the latter and Superable during their drinking spree; it was there agreed that the raid will be made at 7:00 o'clock on the night of April 24, 1958; his companions were all armed then (describing the firearm each held and carried), and Superable was their leader; Benjamin Pacli was the one who conducted them to the store of Eng Wan; Lumpay, Ubaldo and he (Caigoy) were the ones who entered the store; Lumpay and Ubaldo asked the Chinese woman to show the place where they kept their money; Ubaldo opened the drawer, while Lumpay went up the second floor with the Chinese woman; then he saw a policeman enter the store, and Ubaldo shot the policeman and the Chinese woman; he then ran away after the shooting and proceeded towards Jaro, Leyte, arriving at the place at about 11:00 o'clock that same evening.

In his statement (Exh. J) executed before Sgt. Moreno of the PC and sworn to before the Clerk of Court of First Instance of Leyte on April 25, 1958, accused Norberto Lumpay gave his own version, to wit: he was 30 years of

age, a resident of Jaro, Leyte; he was arrested by the PC soldiers and the chief of po-lice of Jaro in his house on April 25, 1958; he was arrested because he was a member of the group of per-sons who robbed and killed some persons in the house of Eng Wan on April 24, 1958; the PC soldiers found in his possession at the time of his arrest, a carbine with one magazine and three rounds of ammunition which were given to him by Superable the day before; he went to the house of Antonio Pacli on that day of April 24, because on 20 April, he met Superable at the cockpit and told him to go to the said house where they would plan the robbery of Eng Wan; he was acquainted with Superable since 1953; Antonio Pacli did not go with them to the house of Eng Wan, he remained in his house; arriving at the house of Eng Wan, the first to enter the store was Caigoy, followed by Ubaldo and he (Lumpay); Superable, Hembra, Villablanca and Calabria stayed on guard outside the store, while Benjamin Pacli left immediately after conducting them to the store; once inside the store, Caigoy closed the door of the store facing Jaro; Ubaldo opened the drawer and took the money; he (Lumpay) conducted the Chinese woman to the second floor of the house and ordered her to open the drawer there, but the Chinese woman explained that she could not because the keys were in the possession of her husband, so they went down again; while they were descending the stairs, the policeman inside the store fired at him; he returned the shot, hitting the policeman; then he ran away towards Jaro; he did not know who killed the Chinese woman; the policeman he shot was in uniform, but he did not know his name.

State witness Alfonso Hembra appears to have executed also a statement (Exh. E) before the PC officers on April 25, 1958, wherein he substantially corroborated the statements of accused Caigoy and Ubaldo. During the trial, after his discharge from the information, he reiterated the contents of his extra-judicial statement on material points, and named and identified the other accused with pinpoint accuracy, as his companions in the commission of the robbery. He described in detail the respective roles each had in the robbery-killings in question, his account of which, was substantially corroborated by the testimony of policeman Marcial Glore and Jorge Go. The same was further substantiated by the facts and evidence found at the scene of the crime as testified to by Lt. Ruiz and Pvt. Verutiao of the PC.

For their defense, all the accused disclaimed any participation in the commission of the offense charged, and interposed separately their respective alibis. Without exception, each one attempted to prove that he was somewhere else when the crime was committed.

EVIDENCE FOR ANTONIO PACLI:

Accused Antonio Pacli admitted that he signed his statement (Exh. I). He claimed, however, that he did so, only because he was maltreated by Sgt. Moreno of the PC who struck him several times with the butt of a carbine. He denied that the other accused were his visitors on April 24, 1958, although he admitted that he was present when Gorgonio Ubaldo who had implicated him, was investigated by Lt. Ruiz of the PC as gleaned from the following portion of his testimony:

"Q. - You said, you heard some questions and answers. How many questions and answers did you hear?

"A. - I heard them but I do not remem-ber them now." (TSN, p. 5, Sept. 1961.)

And this is further supported by the testimony of Lt. Ruiz who, in this connection, testified as follows:

"Q. - What did you do when Antonio Pacli and Benjamin Pacli saw Gorgonio Ubaldo?

A. - I had both of them identified by Gorgonio Ubaldo.

Q. - Will you tell us the manner of identification made by Ubaldo?

A. - I took Antonio Pacli beside me and asked Ubaldo who is this per-son, and he said, "That is Anto-nio

Pacli.' In the same way, I took Benjamin Pacli beside me and in the same way asked him who is this person, and he also answered, 'That is Benjamin Pacli.'

Q. - Did you also notice the faces of Antonio Pacli and Benjamin Pacli at the moment when Gorgonio Ubaldo pointed to them as his companions?

A. - Yes, sir, they became pale and they did not say anything." (TSN, pp. 176-177)

Anotnio Pacli denied that he took part in the commission of the robbery, claiming that the whole evening of April 24, 1958, he was in his house, on a cot. Thus, he testified:

"A. - I was lying on my cot when I heard a gun shot. x x x.

Q. - What did you do when you heard the shot?

A. - I was awakened by my wife.

Q. - What did you do after you were awakened by your wife?

A. - I closed all the windows in my house. x x x.

Q. - That whole evening of April 24, 1958, where were you?

A. - I was in my house."

He testified that on April 25, 1958, he went to the river bank because there was news that a Hul???lahap had died near the river. There, he saw Ubaldo lying on the ground on his back. And while Ubaldo was being investigated by Lt. Ruiz in the municipal building, he helped and held him in his arms.

Rosa Aguja Pacli, wife of accused Antonio Pacli also testified for the defense of her husband. She declared that Antonio Pacli was in the house on April 24, 1958. At about 5:00 o'clock in the afternoon of that day, she sent for Evarista Peñaranda, a "hilot", to administer prenatal massage to her, and Peñaranda left at about 7:00 o'clock that evening. Her husband did not leave the house that evening. He was asleep, and was only awakened by her when she heard the gunshot.

"Q. - For how long did she (Peñaranda) remain there?

A. - At 7:00 o'clock she was no longer there."

Evarista Peñaranda tried to corroborate the story told by Antonio Pacli and his wife, declaring that at about 6:00 o'clock in the evening of April 24, 1958, she was in their house because she massaged Pacli's wife; that as she was massaging Aguja, she heard a gunshot, immediately followed by continuous firing; that because of the incident, she did not go home anymore that evening, and slept in the house of Pacli.

"Q. - That evening where did you spend the night? Where did you sleep?

A. - I slept with them in their house.

Q. - Why did you not go home?

A. - Because I could not go home alone as the street was quiet.

Q. - So, what if the street was quiet? Why did you not go home?

A. - Because I was afraid to go alone, x x x.

Q. - During the period from about 6:00 o'clock in the evening of April 24, 1958, until early in the morning of

April 25, where was Antonio Pacli?

A. - He was in the cot. x x x.

Q. - How many gun retorts did you hear while you were in the house of Antonio Pacli?

A. - At first, there was only one gunshot followed immediately by two shots, and there were more continuous firing of guns.

Q. - Antonio Pacli was awakened after the last gunshot that you heard?

A. - Yes, when he closed the window.

Q. - How far is the house of Antonio Pacli to the store of Eng Wan?

A. - About 200 meters from that place." (TSN, pp. 84-89)

We find it hard to believe Antonio Pacli's alibi because of its inherent incredibility. It must be noted that according to Peñaranda, she heard continuous firing of guns from a place less than 200 meters to Pacli's house. Incredibly, however, he was not awakened by the shots nor was he bothered by the same, while he was overly sensitive to the voice of his wife who woke him up to close the windows. The testimonies of his wife and Peñaranda are likewise incredible, for they are glaringly contradictory. And considering that Pacli's house was less than 200 meters from the store of Eng Wan; and there was continuous firing, it is unbelievable that Aguja should hear only one shot. She was not as-leep at the time, for according to her own testimony, Peñaranda was then administering prenatal massage to her. She must have a reason for so saying; and we surmise that she simply wanted to make natural the beha-vior of her husband in remaining on the cot the whole right without bothering to find out of curiuosity at least, the cause of the unusual incident. Moreover, the voluntariness of his extra-judicial statement (Exh. I) had been conclusively established by the pro-secution, and implicit therefrom is the unreliability of the evidence with which his alibi is now sought to be established.

EVIDENCE FOR BENJAMIN PACLI:

Testifying for the defense of Benjamin Pacli, Margarita Matilla declared that on the afternoon of April 24, 1958, she was in the house of Sabina Pano opposite the house of Eng Wan across the river. Pano had a store in her house where tuba was sold, and at about 6:00 o'clock that evening, she was already there drinking tuba with Francisco Salvacion and Mimi Miralles. Benjamin Pacli was also there drinking on the same table. She later heard the firing of guns, and she was later told that the shots came from the direct-ion of Eng Wan's store across the river. Benjamin Pacli stayed there for about 30 to 45 minutes, after which he left the store of Pano. Later, they all left the place also. As to the place where accused Benjamin Pacli went after that time, Margarita Matilla declared that she did not know whether or not he went home after leaving the place of Pano.

Trinidad Cadorna, a farmer, also testified to bolster the defense proffered by Benjamin Pacli. He declared that on April 24, 1958, he was in the farm in Tunga, Leyte, with Brigido Pacli, father of Benja-min, who hired him to gather coconuts. Benjamin was there in the field also with them. They stayed there the whole day, gathering the nuts which he brought through a sledge pulled by his carabao. They returned to the town only at about 5:30 in the afternoon. When they arrived at the bridge in town, a person in the nearby store invited him to join him in drinking tuba to which Benjamin acceded. They drank tuba in the said store for some time while Trinidad stood by, after which they continued their way home. While crossing the bridge, they heard guns firing, and they stopped. A policeman soon came who advised them not to continue their way because there were Huks and they were killing people. Upon said information and advice then, he decided to part ways with Benjamin Pacli and proceeded to the house of his brother, while Benjamin went with the policeman to the house of the latter. He

admitted, however, that he did not recognize the policeman for it was then getting dark.

For his part, Benjamin Pacli denied participation in the crime of which he was charged, claiming that the whole day of April 24, 1958, he was in his farm at Hiagsam, about 3 kilometers from Tunga, in company with Trinidad Cadorna. On their way home in the afternoon of the same day, they passed by the store of Panao where he met Margarita Matilla, Francisco Salvacion and Mimi Miralles drinking tuba, and he joined them. He was with the group drinking when they heard the shots from across the river, after which he stood up and decided to go home. As he was walking across the river, however, he met policeman Froilan Dadolia who warned him not to continue his way as it would be dangerous due to a recent killing perpetrated just across the river. Dadolia invited him to spend the night in his house which he did. He went home only the following morning.

The alibi offered by Benjamin Pacli did not merit any consideration from the court below. Thus, it made the following observation:

"This defense as presented by him is not worthy of credit. If it is true that there was a police whom he met, there is no reason why this policeman will not comply with his duties and go to the place to save the people from being attack-ed by the Huks. Much more, this policeman was not presented to cor-roborate his testimony. Taking into consideration the distance from the place, it is not a surprise that after three minutes, he can be in the place where the crime was committed."

We find no cogent reason to disturb that finding of the trial court. From the evidence for the prosecution already set forth, there is no doubt that the presence of Benjamin Pacli at the scene of the crime had been clearly established. Above all, the stubborn fact stands out in the record that soon after the wound-ed Gorgonio Ubaldo was found in the river, he revealed the names of his companions in the robbery as set out in his ante mortem declaration, and when Benjamin Pacli and Antonio Pecli were brought before him, he pointed to them as the ones referred to in his statement; and both Antonio and Benjamin did not even protest against the imputation.

Nor do We give any credence to the claim that the PC soldiers had maltreated Benjamin Pacli and his brother Antonio, for it appears that the officials be-fore whom their statements were sworn to by them tes-tified during the trial of the case, and We find no reasonable ground to doubt, after examining their de-clarations, that their actuations were above suspicion. As so aptly noted by the trial court:

"x x x (Atty. Hachang and Judge Tamaca) testified clearly and categorically that the res-pective admissions made before them by the accused were volunta-rily given as before making them signed their statements and sub-scribed before them, the same were read before the accused and admitted their contents to be true. There are no valid motives to question their sincerity as to their testimonies in open court."

Furthermore, the statements signed by the Pacli brothers, far from being in the nature of complete ad-missions of their participation in the commission of the robbery in question, were actually exculpatory in essence. Antonio Pacli admitted in his statement that the other accused were his visitors in his house in the afternoon of April 24, 1958, and that firearms were actually distributed in his house; but he was careful in his declaration, and did not admit that he was the one who distributed the firearms to them. He was, likewise, careful in stating that he knew nothing about the subject of their conversation when the group engaged in a drinking spree in his house, and never revealed the fact that he joined them when they left later and pro-ceeded to the store of Eng Wan. Benjamin Pacli, on the other hand, admitted in his extra-judicial statement that he was with Superable and his companions in the house of Antonio Pacli in the afternoon of April 24, 1958, and that Superable and his companions robbed the store of Eng Wan. But he never admitted in said statement of his, that he was with them in the robbery, claiming that he immediately left the place and went across the river as soon as he had pointed to them the store of Eng Wan. No reasonable mind would swallow such versions in the light of their pretenses that they signed their said statements only because they were maltreated by the PC soldiers. Had they really been maltreated, their respective statements

would have contained more serious incriminatory matters which could later be effectively used against them; but as it is, their statements were but narrations of the events that led to the commission of the robbery by the other accused, without making any direct acknowledgment of their participation therein. Indeed, it defies logic and common sense that seasoned investigators would have to resort to violence to make them sign such statements which are relatively harmless insofar as they are concerned which, to our mind, discards the theory of Ben-jamin and Antonio Pacli that the investigators had attempted to incriminate them. As we read their state-ments, We find that they reflect spontaneity and co-herence, supplied with details which they alone could have known at the time, which cannot be associated with a mind to which violence and torture had been applied.

EVIDENCE FOR SEVERO CAIGOY:

Severo Caigoy, testified that on April 24, 1958, he was in the market of Jaro waiting for fish to take to their five workers plowing their farm in barrio San Roque. Having obtained the fish he wanted, he left the poblacion of Jaro at about 8:00 o'clock in the morning and proceeded to San Roque, four kilometers away, arriving thereat at 10:00 o'clock the same morning. He returned home to the poblacion later in the evening, stating that he was delayed since he spent time drinking tuba with Esco Fuentes, Mateo Caigoy, Agudo Capatoy and Doroteo Caigoy. Caul (Ulpiano) Sosaya pass-ed by later and he was also invited and prevailed upon to partake with the tuba. Sosaya was Caigoy's alleged companion when the atter went home that night.

Although he admitted having known state witness Alfonso Hembra, he denied the truth of Hembra's testi-mony. Likewise, Caigoy completely repudiated the vera-city of the contents of the statement that he signed. (Exh. F)

Inspite of the corroborating testimony of Ulpiano Sosaya who affirmed Caigoy's alibi, We honestly feel that accused's alibi does not merit serious consideration. After carefully going over the records, We are of the opinion that appellant's alibi is shaky and cannot be allowed to prevail over his signed confession, which has been adequately found to have been voluntarily given.

"No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused has been sufficiently and positively es-tablished by eyewitnesses to the crime. When nothing supports it except the testimonies of rela-tives and friends and the defend-ant's own urging of the same, the said defense weighs and is worth nothing." (People vs. Pelagio, G.R. No. L-16177, May 24, 1967)

Caigoy has been positively identified by the vic-tim's own son who saw with his own eyes the useless and treacherous fatal shooting of his mother. One whose own mother was killed right before his eyes would unlikely forget the face of the perpetrator. In all likelihood, the ugly scene would remain etched in his memory for long time. Furthermore, the evidence shows that there was sufficient light between Bodega "A" and Bodega "B" where witness Go was hiding to enable Go to obtain and retain in his memory a correct mental picture of the accused to the extent of overcoming the presumption of innocence that the law extends to the appellant.

"In the face of an air-tight alibi, testified to by witnesses whose credibility is apparent and positive, doubt may be engendered to an extent favorable to the accused; but when proof there-of is too general, improbable, and incoherent, the result is otherwise, the evidence for the prose-cution is reaffirmed and strength-ened, and the truth of its theory assured beyond moral certainty." (People vs. de los Santos, et al. 93 Phil. 83, 90)

EVIDENCE FOR VALENTIN SUPERABLE:

Tomas Fontillas declared that he was a resident of barrio Buenavista, Jaro, Leyte; that he knew Valentin Superable since birth; at about 1 o'clock in the after-noon of April 24, 1958, he went to Tunga, Leyte, to attend the cockfight there, and "A. - I went home at five o'clock in the afternoon by jeep, arriving at Jaro at 5:30"; at six

o'clock that same afternoon, he saw Superable "in the machinery where he was the watchman of the crane", which was about 80 meters to his house, and the distance from the place where the crane was to the poblacion of Tunga is 7 kilometers; the last time he saw the crane at its place was on April 18, 1958, which was then removed and taken to Tacloban, Leyte.

"Q. - When was the last time you saw that crane near your house?

A. - April 18.

Q. On April 18, you saw that crane for the 1st time, you know where it went?

A. - I know.

Q. It was brought to where?

A. - To Tacloban." (TSN p. 36, June 23, 1960.)

Fontillas was able to remember and give an account in detail of the whereabouts of Superable on April 24, 1958; however, when he was asked, what made him remember where was Superable in the afternoon of that day, he said:

"A. - I only remember that April 24, 1958, for that was tabo day (day of cockfight) and market day.

Q. - Mr. witness, my question is, on the third week of April 1958, can you tell us if you can remember that date when there was tabo and cockfight in Tunga?

A. - On April 24 1958, Thursday, that I can remember.

Q. - But I am asking you the third week of April 1958. You do remember also?

A. - I remember April 24.

Q. - You remember April 24 but you do not remember the date immediately preceeding that date when there was tabo and market day in Tunga?

A. - I remember April 24, that was Thursday.

Q. - The date immediately preceeding the date of the market day and cockfight preceeding April 24, 1958, you do not remember?

A. - It was April 24.

Q. - You are always remembering April 24, I am asking you what date was that immediately preceeding the market day and cockfight on the 24th day of April 1958?

A. - April 24.

COURT:

Q. - What date?

A. - I do not know.

Q. - So you only remember April 24?

A. - I remember only that date when I went to Tunga.

Q. - You do not remember the date yesterday?

A. - I do not know because I have no calendar. (TSN p. 37, June 29, 1960.)

Valentin Superable declared that on April 24, 1958, he was a watchman for the government in the construction of a bridge at Naliwatan river in Jaro Leyte; at 6:00 o'clock in the afternoon of that day, he was still at his place of work watching the crane; he saw Fontillas at that hour who went to the river to find out if the river was swollen; Fontillas even helped him lift some pieces of lumber in the river to the bank; he denied having committed the crime charge, as he was watching the crane; from that place where the crane was, to the poblacion of Tunga, the distance is 7 kilometers; when he was arrested, he told the arresting officers that he committed no crime; he knew Alfonso Hembra; he had a grudge against him and that is the reason he testified against him, although when they were together in jail, Hembra told him that he will not testify against him; he knew Gorgonio Ubaldo; he also had a grudge against him, because when Ubaldo was courting his present wife, at one time, they were seated together at a table, and Superable touched the hands of the girl friend of Ubaldo, and the mother of the girl became angry with Ubaldo.

Aquilino Quimbo declared that he is a government employee in the construction and repair of roads and bridges; on April 24, on his way home, he passed by the Langcawisan bridge; he knows Valentin Superable; "on April 24, 1958, Superable was at the Naliwatan bridge in the crane"; "he (Superable) was watching the crane"; at about 6:00 o'clock in the evening, he reached Naliwatan river, and asked Superable "which part of the river was shallow and which was passable by man"; Superable was then watching the crane; he (witness) was "at the other side of the river", and from there, he asked Superable, who was at the other side of the bank of the river, "which part of the river is deep and which is shallow"; Superable answered that "you go about 20 meters upstream"; he went to the place indicated by Superable, and he crossed the river. On cross examination, he was asked the following questions:

"Q. - Did you see that crane on April 18, 1958 at the Naliwatan river?

A. - I saw it on working days.

Q. - My question is, whether you saw that crane on April 18, 1968?

COURT: Answer the question.

A. - I cannot answer that question.

Q. - Have you seen that crane on April 19?

A. - I cannot answer also

Q. - On April 20, 1958, have you seen that crane at the Naliwatan river?

A. - I cannot answer unless I see the day.

Q. - On April 21, did you see that crane?

A. - I used to see it except on Saturdays and Sundays. (TSN pp. 68-69, June 23, 1960.)

Upon the foregoing evidence for Valentin Superable, it is clear that his defense centers around the proposition that he could not have been at Eng Wan's store at about 7:00 o'clock in the evening of April 24, 1958, because he was at his place of work at the Naliwatan bridge. Assuming, however, that he was really seen at his place of work earlier that day, as testified to by his witnesses, this does not preclude the possibility that he left his work and went to Tunga for the distance between the two places is scarcely about 6 or 7 kilometers which could easily be negotiated within a short time. Moreover, one of his own witnesses admitted that the crane near the bridge had been removed and taken to Tacloban, Leyte, on April 18, 1958, which discredits the testimony of Superable and

his other witnesses that on April 24, he (Superable) was at his place of work guarding the said crane. Above all, his alibi cannot prevail over the positive testimony of policeman Marcial Glore that Superable was the one who shot him on the night of the robbery. Between the positive identification made by one who had no reason to put a man's life in jeopardy and an alibi whose only claim to truth is anchored on the testimony of solicited witnesses to corroborate accused story, the former must prevail, and the defense of alibi must be disregarded.

EVIDENCE FOR VICENTE CALABIA:

Vicente Calabia testified that on April 24, 1958, he was at his place of work at the Naliwatan Bridge that was then under construction. He left his house at Sta. Cruz, Jaro, Leyte, at about 6:00 o'clock in the morning of that day and arrived at the place of construction, 5 kilometers distant from his residence, at 8:00 o'clock. After the day's work at 5:00 o'clock in the afternoon, he returned to his house which he reached at about 6:00 o'clock in the evening. He changed his wet clothes, then went to the house of Basilio Carson about 50 meters away where a little party was then being held on the occasion of the close of a novena for Nuestra Señora de Salvacion. There, along with the other guests of the house, he partook of the food and drinks offered by Basilio Carson. He went home at about 9:00 o'clock that evening and slept until the following morning. His alleged presence in the house of Basilio Carson that evening was confirmed by the latter who said that he had to go back to the house of Vicente Calabia to invite him that evening because he failed to find him in his house the first time he went there. To the same effect was the testimony of Benedicta Barraza who declared in court that she was also present in the house of Basilio Carson to help in the preparation of the food for the guests and saw Vicente Calabia there that evening of April 24, 1958. Basilio Carson and Benedicta Barraza were one in their declaration that Vicente Calabia never left the party between 6:30 and 9:00 o'clock that evening, for that was the time that the foods and drinks were served, and all the time they saw Vicente Calabia there. Calabia's claim is supported further by the testimonies of Aquilino Quimbo and Juan Puntilla, the one declaring that he saw Vicente Calabia at his place of work near the Naliwatan Bridge at about 5:00 o'clock in the after-noon of April 24, 1958, and the other testifying to the effect that he knew Vicente Calabia had walked the long way from the Naliwatan Bridge to his house in Sta. Cruz, Jaro, Leyte that same afternoon because he walked part of the distance with him.

The Court is persuaded to disregard the story told by Vicente Calabia, notwithstanding the cumulative evidence he proffered to shore up defense of alibi. Inherently weak, and easily manufactured, alibi must rest upon stronger evidence to overturn the testimony of equally credible witnesses for the prosecution. For it to prosper, it is not enough to prove that defendant was somewhere else when the crime imputed to him was committed, but he must, likewise, demonstrate that it was physically impossible for him to have been at the scene of the crime at the time. And when, as here, the perpetrators of the crime had been positively identified by eye-witnesses, alibi, as a defense, becomes valueless. (People vs. Pelagio, et al., G.R. No. L-16177, May 24, 1967; People vs. Estrada, G.R. No. L-26103, January 17, 1968.) A careful examination of the evidence revealed that Vicente Calabia was named by Gorgonio Ubaldo in his ante mortem statement as one of the perpetrators of the crime; his participation in the robbery was sufficiently described by state witness Alfonso Hembra; and he was also clearly identified by policeman Marcial Glore as one of the armed men he saw outside the store of Eng Wan pointing their guns at him when Valentin Superable shot him. Indeed, the weight of these evidence cannot be overcome by Vicente Calabia's alibi that at the time of the robbery, he was at home in Jaro, Leyte, which, any way, adjoins the town of Tunga where the crime was committed.

EVIDENCE FOR CRISPIN VILLABLANCA, JR.:

Crispin Villablanca, Jr., testified that on April 24, 1958, he was engaged in his customary work-driving a passenger truck owned and operated by his father-in-law, Toribio Campo. He made three trips that day from Pastrana to Tacloban. As usual, the last trip he made was from Pastrana to Palo (along the route to Tacloban)

where he and Toribio Campo resides, and where he use to park the bus for the night. He recalled that among the passengers on the bus during that trip from Pastrana were ex-mayor Francisco Villablanca, Julian Reandino and his wife, and his (Crispin's) parents, who went to Palo that afternoon to the house of his father-in-law, Toribio Campo, to attend a birthday party. They arrived in Palo at about 5:30 in the afternoon of that day. Dinner was served at about 8:00 o'clock in the evening, and the party lasted up to 1:00 o'clock the following morning. As soon as the visitors dispersed, Crispin Villablanca, Jr., brought back the guests from Pastrana on the same bus owned by his father-in-law, arriving in Pastrana at about 2:00 a.m. Thereafter, he re-turned to Palo to the house of his father-in-law at 3:00 o'clock in the morning. He declared that from 6:00 o'clock in the evening of April 24 to 1:00 o'clock in the morning of April 25, 1958, he never left the house of his father-in-law in Palo during that birthday celebration, and thus maintains that he could not have been in Tunga (32 kilometers away) at the time of the robbery.

Pedro Dorango, a tuba gatherer, testified that he was one of the guests in the house of Toribio Campos on the night of April 24, 1958. He declared that he arrived at the place at 6:00 o'clock in the evening, and at the time he already saw Crispin Villablanca, Jr. there. He ate the foods and drank tuba which were served before 9:00 o'clock, after which he went home; and although he was not sure of the time they were through eating, he was positive, however, that up to the time he left later, Crispin Villablanca, Jr. was still there. Villablanca's claim was also further corroborated by a number of other witnesses, among them, his father-in-law and his (Crispin's) wife, who were one in their declaration that Crispin Villablanca was present during the party in Palo from 6:00 o'clock in the evening of April 24, 1958, up to 1:00 a.m. of the following day, leaving the place only after the visitors had dispersed to conduct some of the guests and his parents back to Pastrana.

Again this Court has to turn down the foregoing defense of Crispin Villablanca, Jr. His alibi did not overcome the positive identification of him by the witnesses for the prosecution as one of the perpetrators of the crime. Our attention is called to the fact that Crispin Villablanca, Jr. was not mentioned by Gorgonio Ubaldo in his ante mortem statement - a circumstance pointed out by Villablanca in his brief and heavily relied upon by Villablanca in this appeal; however, We find upon the evidence that the inculpatory facts have established beyond any cavil of doubt the participation of Villablanca in the crime. When the wounded Gorgonio Ubaldo was discovered lying prostrate near the bank of the river in the vicinity of the scene of the crime, and was investigated, Ubaldo readily admitted participation in the commission of the robbery, naming his companions in the perpetration of the crime, among them appellant Villablanca. On the basis of his revelations, the other accused were subsequently arrested, majority of them on that very day; their extra-judicial statements were taken then and there, and they were one and all in their declaration that herein appellant Crispin Villablanca, Jr. (Pengpeng) was with the group that effected the robbery; accused Alfonso Hembra revealed in open court how he and his co-accused, including Villablanca, Jr., had committed the crime; and his identification of herein appellant Villablanca, Jr. was convincingly corroborated by the testimony of policeman Marcial Glore who was fired upon and wounded on the occasion of the robbery. Crispin Villablanca, Jr. had tried to show that Alfonso Hembra had an axe to grind against him (Villablanca appears to have begotten a child with Hembra's sister-in-law) which could have been a strong motive for Alfonso Hembra to implicate Villablanca to get even with him; but no such ill motives had been shown on the part of the other accused and policeman Marcial Glore which might have impelled them to incriminate him. The circumstance that the other accused repudiated their extra-judicial statements later, affords no relief to Villablanca, Jr. either, for the Court finds no truth in the alleged maltreatment they claimed to have induced them to execute their respective extra-judicial statements. The fact that herein appellant Villablanca, Jr., along with Valentin Superable and Vicente Calabia, were not forced by the investigating officers into making any extra-judicial statements, as a matter of fact, militates against the claim of the other accused that they executed their statements involuntarily. On the other hand, the fact that the extra-judicial statements corroborate one

another, describing in detail the steps taken in the perpetration of the robbery, is a circumstance that may be taken and relied upon by the Court in accepting the credibility of state witnesses testimony.

Besides the respective alibis advanced by appellants, the defense, likewise, presented one Lucio Palconit, a detention prisoner in the provincial jail, who voluntarily owned the robbery-killing subject matter of this case, pointing to Gorgonio Ubaldo and Norberto Lumpay who are now both deceased, and to certain Carling Miralles and Jose Cataga as his companions in the commission of the crime. The trial court, however, viewed with grave suspicion the evidence elicited from this witness and refused to give it any weight. Thus, it observed:

"The testimony of Lucio Palconit, a prisoner detained in the provincial jail, is, in the opinion of the Court, not only fantastic but also extraordinary and a frame-up one. The way he came to know Gorgonio Ubaldo, one of the accused in this case, did not convince the Court that he had an intimate relation with Gorgonio Ubaldo. This witness was convicted in accordance with Criminal Case No. 1774 of this Court for illegal possession of fire-arm, on March 21, 1961, and is again accused of another serious crime of robbery in band and has been detained in the provincial jail already for a long time. What he alleged that he was invited by Gorgonio Ubaldo to go to the house of the latter located behind the Aztec Theater, and for that he went to Tacloban City and arrived there on April 23, 1958, is devoid of truth. If it is true that he was written a letter, yet, that letter was not even exhibited in Court. One thing more which the Court does not believe in his testimony is, that when he arrived in Tacloban City in the house of Gorgonio Ubaldo, he did not meet him in the house, and the father of the latter pointed him to go to the Shamrock Hotel to look for him there, and there he met Norberto Lumpay and was introduced to him by Gorgonio Ubaldo. In that place, they planned the robbery. To the Court, this is a story coming from a polluted source, and for that, its veracity is doubtful. From that place they went to the Coca-cola Plant, and then to Tunga riding in a jeep up to barrio Baliri to pick up their companions by the name of Carlin Miralles and Jose Cataga. To the Court, this is an invented story, imaginative in its nature. These two persons, Carling Miralles and Jose Cataga, were never mentioned in the information nor in the evidence presented by the prosecution. It was not even mentioned in the testimony of the witnesses of any of the accused. This fact does not reconcile with the defense presented by Crispin Villablanca, that Gorgonio Ubaldo is not from Tacloban but from Pastrana, Leyte. He alleged further that it was Carling Miralles who brought the weapons that were distributed to them in Barrio Baliri but there is no evidence at all to corroborate this fact, nor Carling Miralles was ever presented to make the necessary corroboration. Jose Cataga was not even presented to testify for the accused. The Court believes and so opines, that these persons never exist. The Court is surprised why this witness was presented to tell a suicidal story and incriminating himself before the Court for so serious a crime of robbery in band with double homicide, etc. When this witness was asked on cross-examination, he manifested, that he did not know the whereabouts of Jose Cataga and Carling Miralles. This confirms the doubt of the Court as to the existence of these persons. He further alleged that while he was detained in Tacloban for seven months and did not reveal anything that happened for Norberto Lumpay threatened to kill him if he will do so. This witness, while testifying in court in this case, is detained as above-mentioned for the crime of robbery in band. The Court is at a loss to give credit to his testimony as he said, he was afraid of Norberto Lumpay as the latter admonished him not to make it known to other persons about the robbery. Yet, the records show that this witness was testifying while Norberto Lumpay had already made an escape from the provincial jail, at large and is free to make some harm if he desires to make any revelation as what he stated. This fact makes the Court to doubt its veracity and qualifies the story as real fantasy. He wanted to be crucified to save the real enemies of mankind."

This self-sacrifice bravely assumed by Lucio Palconit in owning direct participation in the commission of the offense charged thereby inferentially absolving the other accused from criminal liability is, to our mind, hardly believable. It must be noted that Palconit's alleged participation in the robbery homicide surprisingly surfaced into the open only after the lapse of more than three years from the date of the commission of the offense. We cannot give credence to Palconit's lame excuse that he had not been able to come forward much earlier to supply such vital information because he was afraid of Norberto Lumpay who had previously threatened to kill him

should he confess. Rather, We entertain a very strong hunch that Palconit must have been persuaded to admit the offenses charged in view of the fact that he had very little to lose. Palconit was a consistent law-breaker, having to his credit a string of criminal charges for robbery aside from one confirmed conviction. Furthermore, We cannot conceive of Palconit to be overly apprehensive about Norberto Lumpay's threat to kill him should he confess and at the same time be extremely courageous to own direct participation in an offense with which he was clearly aware could mete him the death penalty.

Likewise militating against the truth of Palconit's confession is the fact that nowhere in the investigation conducted by the police authorities nor in the preliminary statements given by the accused had Palconit's participation been slightly connected. This glaring non-inclusion could obviously only mean that Palconit was actually not with the group which perpetrated the acts leading to the filing of this instant charge.

After carefully examining the voluminous record of this case, a larger part of which faithfully recited appellants' respective defenses and testimonies, the Court has arrived at the conclusion that the alibis set up by Antonio Pacli, Benjamin Pacli, Valentin Superable and Severo Caigoy do not impair in the least the evidence adduced by the prosecution. The members of the Court are unanimous in the opinion that the trial court did not err in not giving credence to the evidence they have respectively presented. The conclusion has, likewise, been reached that the guilt of Vicente Calabia and Crispin Villablanca, Jr. has been proven beyond reasonable doubt.

The precision which characterized the movements of the accused in carrying out their plan to rob the victim, strongly suggests a unity of purpose and design to the end that the accused' intent may be expeditiously consummated. As planned and later on carried out, three of the accused, namely: Gorgonio Ubaldo, Norberto Lumpay and Severo Caigoy entered the store in order to secure things of value; Superable, Villablanca, Jr. and Hembra posted themselves on one corner of the road while Calabia, Antonio Pacli and Benjamin Pacli stood guard on the other corner of the street to insure protection against any interference from the outside that may hamper the success of the whole operation. They acted accordingly, primarily obsessed with the unity of their intent to gain from the undertaking. Thus, Ubaldo shot and killed policeman Cotoñer even before the latter could render any help to the victims of the robbery; while the lookouts posted on opposite corners of the road fronting the store effectively halted policeman Glore by wounding him even before he could come near the store and assess the gravity of the situation. Such precision displayed by them in the execution of the robbery, coupled with the evidence that they came together to the house of Antonio Pacli earlier that afternoon and agreed to commit the same against Eng Wan, leave no room for doubt that they have acted pursuant to a conspiracy. Consequently, it is not absolutely necessary to pinpoint specifically, who fired the shot that killed either policeman Cotoñer or the Chinese woman Co Cui Hui; all the conspirators are liable irrespective of the fact that some had limited themselves to the act of robbery while the others participated in the act of homicide and less serious physical injuries.

Crispin Villablanca, Jr. pleads, in this connection, that even the evidence for the prosecution tends to show that he escaped from the scene of the crime shortly after the appearance of policeman Marcial Glore near the premises of the store of Eng Wan. This circumstance, he argues, shows voluntary desistance on his part from the consummation of the robbery and should entitle him to an acquittal. This pretense deserves no serious consideration. The evidence is conclusive, that policeman Marcial Glore went to the scene of the crime only after hearing several gun reports from the direction of Eng Wan's store. Apparently, the shots he heard from the place, were those that emanated from the exchange of fires between Ubaldo and policeman Cotoñer and the shot with which Caigoy killed the Chinese woman Co Cui Hui. At the time, the robbery and killings had fully been consummated before the arrival of policeman Marcial Glore at the scene of the crime, and Crispin Villablanca, Jr. cannot exculpate himself from liability simply because he left shortly thereafter. If he did escape from the place

without waiting for his companions, it was not by reason of any desistance anymore, but with a desire to evade the hands of the law which he must have then realized would soon be out to get him.

The crime committed by the accused is robbery in band with double homicide. The penalty provided for by Article 294 of the Revised Penal Code is reclusion perpetua to death. In view of the provision of Article 296, as amended, of the Revised Penal Code which provides:

"Art. 296. Definition of a band and penalty incurred by the members thereof. - When more than three armed malefactors take part in the commission of robbery it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

"Any member of a band who is present at the commission of a robbery by the band shall be punished as principal of any of the assaults committed by the band unless it be shown that he attempted to prevent the same. (As amended by Republic Act No. 12, Sec. 3)."

the penalty to be imposed upon them is the maximum penalty, that is, DEATH even without the concurrence of any aggravating circumstance (see *People vs. Valeriano, et al.*, 90 Phil. 15). For this reason, We do not find it necessary to discuss separately and in detail the aggravating circumstances alleged and proved by the prosecution during the trial. What is significant is that We do not find nor has the defense attempted to prove any mitigating circumstance. Likewise, there is no further need to consider the frustrated homicide, less serious physical injuries and the direct assault upon agents of persons in authority which were all alleged in the information and subsequently proved during the trial to have been committed by the accused on the occasion of the robbery, for purposes of determining the proper penalty to be imposed. Anyway, with or without such consideration, the conclusion would be the same - the accused should be sentenced to the maximum of the penalty provided by law.

Accused Valentin Superable, Severo Caigoy, Antonio Pacli and Benjamin Pacli, as shown by the degree of their participation in the commission of the atrocious horrible crime of which they now stand convicted, have proved themselves dangerous enemies of the decent members of society. The law ordains that they should pay with their lives in retribution for their offense. In these days of rampant violence and criminality, this decision is calculated to have a most salutary effect upon the elements that threaten to set the law at naught and break the social order; it should serve as a reminder to those who are criminally minded that crime does not pay; and above all, it should make them realize once again that courts will not shrink their disagreeable duty to impose the death penalty in cases where the law so provides.

Some members of the Court believe, however, that Vicente Calabia and Crispin Villablanca, Jr. have shown less perversity in view of the lesser extent of their participation in the commission of the robbery, for which reason they have voted against the imposition of the supreme penalty on them.

WHEREFORE, the appealed decision is hereby affirmed with respect to the imposition of the death penalty upon Valentin Superable, Severo Caigoy, Antonio Pacli and Benjamin Pacli; for lack of the necessary number of votes to impose the death sentence upon Vicente Calabia and Crispin Villablanca, Jr., they are hereby sentenced to reclusion perpetua. With this modification, the decision appealed from and reviewed is affirmed in all other respects.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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