

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RESTITUTO JIMENEZ, PEDRO NAVAL, MACARIO FRANCISCO, MAMERTO MENDOZA, AND MARIO SALAZAR, DEFENDANTS-APPELLANTS.

G.R. Nos. L-36613-14. July 24, 1981

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PER CURIAM:

Automatic review of the Decision, dated October 15, 1971, of the Circuit Criminal Court of Pasig, Rizal, in Criminal Case No. CCC-VII-727, convicting Restituto Jimenez, Pedro Naval and Macario Francisco of Kidnapping with Murder with Direct Assault upon Agents of a Person in Authority and sentencing each of them to death.

Also convicted and meted an identical penalty in the same case but in another judgment, dated November 11, 1972,[1] was Mario Salazar, who was tried separately because he was apprehended only after the trial of the three accused first named.

In the same judgment of October 15, 1971, Jimenez, Naval and Francisco were convicted of Robbery in Criminal Case No. CCC-VII-726, which was jointly tried with Criminal Case No. CCC-VII-727, and sentenced to suffer two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, and to indemnify the heirs of NBI agents, Rogelio Domingo and Antonio Dayao, in the amount of P1,000.00 each. They did not appeal.

Mario Salazar was also convicted of Robbery and imposed an identical penalty in the same Criminal Case No. CCC-VII-726, but in another judgment dated November 11, 1972. On November 21, 1972, he filed a Notice of Appeal, signed by him, to the Court of Appeals (p. 227, Vol. II, CFI Record). When required to elevate the records, the Clerk of Court of the latter Court advised that the appeal had not been received (p. 452, Rollo). Hence, Mario Salazar must be deemed to have abandoned his appeal and a review of the robbery case becomes unnecessary.

The accused, Mamerto Mendoza, was acquitted for insufficiency of evidence in both cases.

The facts, gathered from the testimonies of NBI agents and from the extrajudicial confessions of the accused[2] follow:

On February 10, 1971, agents of the Narcotics Division of the National Bureau of Investigation, went to Malagasang, Imus, Cavite, to raid a marijuana plantation, arriving there about 7:00 o'clock in the morning. The team was headed by Supervising Agent Eligio Songco and was composed of Rogelio Domingo, Antonio Dayao, Juanito Cabling, Teodorico Lara, Guillermo Maglaya, Purification Sanchez, Cesar Gamalinda, Eduardo Balatbat, Alfredo Inosanto, driver Orlando, and photographer Bonifacio Acosta. Upon reaching Malagasang, Songco divided his men into two groups, the first, composed of himself; agents Dayao, Domingo, Sanchez, Gamalinda and the photographer, was to go to the plantation. The other team, composed of agents Cabling, Maglaya, and Lara, was to proceed to the house of the alleged planter. Before parting ways, Songco inspected the service

firearms of his men. He himself had a carbine and he issued another to agent Domingo in addition to the latter's .38 cal. service revolver. Dayao was also carrying a .38 cal. service revolver. As personal effects, Domingo had his watch, diamond ring, badge, wallet with money, and I.D. Dayao had his Rado watch, badge, lighter, wallet with money and I.D.

The two groups went their separate ways, each with its own mission. It turned out that the marijuana plantation was only about thirty to forty meters away from the house of the alleged planter. Upon reaching the plantation, Songco saw and verified approximately 100 marijuana plants. He then left his team to check on the other group. As the supposed owner was not at home, Songco instructed agents Cabling and Maglaya to go to the municipals building of Dasmariñas to fetch the PC and policemen so that they could witness the seizure of the marijuana.

It turned out that the marijuana plantation was being "protected" by the notorious bandit Leonardo Manecio @ Nardong Putik, who shared with its owner the sales of marijuana.[3] Upon being tipped by an informer that NBI or CIS agents were in the vicinity poised to raid the plantation, Manecio alerted and gathered his men in preparation for an encounter with the raiding team. Among the group were the accused Restituto Jimenez, Pedro Naval, Macario Francisco, Mario Salazar, Jacinto Ubod, Boy Aguinaldo, Nestor Ilosada, Jaime, Doming, Peles and Rene and several others still unknown. (The case against Boy Aguinaldo was dismissed without prejudice on March 14, 1973, due to absence of witnesses,[4] while that against the others was still pending investigation during the trial of these cases).

All in Manecio's group were armed at that time, with Manecio carrying an AK-47 as well as a .45 cal. pistol. Macario Francisco and Peles had an armalite each.[5] Pedro Naval was armed with a .22 caliber revolver, Mario Salazar, with a .45 cal. revolver, Jacinto Ubod, with a M-14 armalite while Rene, Nestor Ilosada, Jaime, Domingo and Boy Aguinaldo had a carbine each. An unidentified companion had a .45 cal. pistol.[6]

Manecio divided his men into three groups for strategy purposes.[7] The first group consisted of himself, Mario Salazar, Peles, and Jacinto Ubod. The second group was made up of Macario Francisco, Pedro Naval, Restituto Jimenez, Rene and an unidentified one. Doming, Jaime, Boy Aguinaldo, Nestor Ilosada and another one composed the third group.

The three groups went their separate ways to look for the raiding team ready for a showdown.[8]

Meanwhile, Songco returned to the plantation from the alleged owner's house and found only agents Sanchez, Gamalinda and the photographer. He found out that agents Domingo and Dayao decided to conduct further investigation and surveillance on their own and had left the plantation. At this point, agent Lara called Songco's attention to the presence of around 12 armed men about 200 to 300 yards away. The group had two captives whose hands were placed at the back of their neck whom they recognized as agents Dayao and Domingo because of their clothes. Songco forthwith instructed Lara to get PC reinforcements. While waiting, Songco uprooted the marijuana plants. When reinforcements were not forthcoming, Songco himself went to the PC headquarters in Imus and found that Col. Dumpit was already assembling his men. He likewise made a long distance call to the NBI Director and informed him of developments. When he returned to the plantation, Col. Dumpit and his men were already regrouping because they had heard a burst of gunfire in the vicinity.

Col. Dumpit divided his men into two groups and proceeded towards the direction of the shots. At about 11:45 in the morning, they came upon the dead bodies of agents Dayao and Domingo at the pit of a dry creek in Barrio Navarro, General Trias, Cavite. The agents had been divested of their shirts, firearms and personal belongings. Pictures of the deceased were taken.[9] The PC also recovered from the area ten empty shells, five of which were carbine shells.

Necropsy reports[10] showed that the two agents died from multiple gunshot wounds on the head and different parts of the body. Domingo's brain was reported to have been "extensively lacerated and macerated." Fragmented lead was recovered from different parts of his body. His third and fourth fingers in the left hand were amputated. In respect of Dayao, fragmented lead and a jacketed bullet were also recovered from different parts of his body.

As events transpired and as fate would have it, when agents Dayao and Domingo strayed away, they met with, and were ultimately captured by, the group of Manecio, Peles, Mario Salazar and Ubod. At the time of their capture, Manecio's group was being "covered" by the group composed of Boy Aguinaldo, Jaime, and Doming.[11] Manecio and his men took the service revolvers of agents Domingo and Dayao, Domingo's carbin, as well as their personal effects.

The two captives were then taken to a creek with their hands on their nape. Nestor Ilosada and Doming held Domingo, while Dayao was held by Rene and an unidentified companion.[12] Upon reaching the creek, the two NBI agents were ordered to kneel.[13] They were likewise ordered to take off their clothes, watches wallets, rings and all personal effects worth P1,000.00 for each victim, all of which were taken by different individuals in the group.[14] Domingo and Dayao begged Manecio not to kill them.[15] Dayao pleaded for the sake of his children, while Domingo for his wife, who was then on the family way. The two agents added that they were-merely performing their duty. But Manecio paid no heed and instead fired his AK-147 at Domingo.[16] Macario Francisco also fired with his armalite, Ubod with his armalite and Boy Aguinaldo with his carbine. The group fired indiscriminately at the two victims and killed them on the spot.[17] Thereafter, Nestor Ilosada and Boy Aguinaldo kicked the lifeless bodies of the victims into the creek after which Ubod still fired his armalite at the two agents.[18]

Accused Pedro Naval was apprehended three days later in the early morning of February 13, 1971 in his house at Barrio Magsaysay, Tondo, Manila.[19] Restituto Jimenez, who resided in the same place, was also arrested that same morning. The authorities picked up Macario Francisco on February 15, 1971.[20] Accused Mario Salazar was taken by the NBI men on October 7, 1971 from the provincial jail of Olongapo City.

An Information for Kidnapping with Murder with Direct Assault Upon Agents of a Person in Authority was filed approximately a month later, or on March 8, 1971, against Restituto Jimenez, Pedro Naval, Macario Francisco and Mamerto Mendoza in the Circuit Criminal Court of Pasig, Rizal (Criminal Case No. CCC-VII-727). This was amended on March 9, 1971 to Murder with Kidnapping with Direct Assault Upon Agents of a Person in Authority, and again on May 29, 1971 to include Leonardo Manecio @ Nardonq Putik, Mario Salazar, Rene, Peles, Doming, Jaime, Jacinto Ubod, Boy Aguinaldo, Pat. Nestor Ilosada and other John Does.

An Information for Robbery, docketed as Criminal Case No. CCC-VII-726, was also filed against said accused in the same Court, which was amended on May 31, 1971 to include the additional accused aforementioned.

On March 16, 1971, accused Restituto Jimenez, Pedro Naval, and Macario Francisco were arraigned, and they all entered pleas of Not Guilty. At the trial, the prosecution presented their confessions[21] wherein they admitted participation in the killing of the two NBI agents. The three accused repudiated their respective confessions alleging that they were coerced into signing the same.

For their defense, the accused interposed alibi. Restituto Jimenez stated that on the date of the incident, he was at the pondohan of fish in Barrio Magsaysay, Tondo, Manila. Pedro Naval, who used to live near the house of Restituto Jimenez, also claimed that he was at the pondohan on the same day. Their testimonies were corroborated by witnesses Jose Limpin and Vicente Valenzuela. Macario Francisco alleged that he went to Manila in the morning of February 10, 1971 with his uncle Salustiano Francisco, cousin Justiniano Francisco and Bernardo Ramirez. They rode in a jeep. His uncle alighted at the pier, while he and his companions proceeded to Navotas,

Rizal, to see the body of a stainless jeep. Witnesses Bernardo Ramirez and Salustiano Francisco corroborated his testimony.

On October 15, 1971, the trial Court convicted Jimenez, Naval and Francisco, thus;

"In Criminal Case No. CCC-VII-727-Cavite, the Court finds the accused, namely: Restituto Jimenez, Pedro Naval, and Macario Francisco, all GUILTY, beyond reasonable doubt of the crime of Kidnapping with Murder with Direct Assault Upon Agents of a Person in Authority, under Article 267 of the Revised Penal Code, in relation to Article 248, 148 and 48 thereto, as charged in the Amended Information, and hereby sentences each one of them to suffer the penalty of DEATH, to indemnify the heirs of the deceased NBI agents Antonio Dayao and Rogelio Domingo, the amount of P12,000.00 each; to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages, jointly and severally; and to pay their proportionate share of the costs."

"In Criminal Cases Nos. CCC-VII-726 & 727-Cavite, the accused Mamerto Mendoza is hereby ACQUITTED, for insufficiency of evidence, with costs de officio."

The said accused were also found guilty in the Robbery case (CCC-VII-726-Cavite), from which they did not appeal.[22]

For his part, Mario Salazar, also put up the defense of alibi in both cases, and claimed that he was in Olongapo City at the time of the commission of the offense. He averred that he was maltreated by the NBI agents into signing the confession where he admitted having been with the group of Nardong Putik.[23] The trial Court, however, did not give credence to his testimony and convicted him in both cases.

In its Decision in Criminal Case No. CCC-VII-727-Cavite, the trial Court sentenced Salazar as follows:

"In Criminal Case No. CCC-VII--727-Cavite, the Court finds the accused Mario Salazar, GUILTY, beyond reasonable doubt, of the crime of Kidnapping with Murder with Direct Assault upon agents of a Person in Authority, under Article 267 of the Revised Penal Code, in relation to Article 248, 148 and 48 thereto, as charged in the Second Amended Information and hereby sentences him to suffer the penalty of DEATH, to indemnify the heirs of the NBI agents Rogelio Domingo and Antonio Dayao, the amount of P12,000.00 each, jointly and severally with his co-accused Restituto Jimenez, Pedro Naval and Macario Francisco; to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages; and to pay his proportionate share of the costs."

Appellants Jimenez, Naval and Francisco assign the following errors:

1. "That the trial Court erred in convicting herein appellants based on extrajudicial confessions which are preponderantly inadmissible in evidence."
2. "That the trial Court erred in not giving credence to corroborative witnesses presented by herein appellants to corroborate their defense."

Appellant Mario Salazar, in turn, alleges:

1. "That the trial Court erred in convicting herein appellant based on extra-judicial confession which is preponderantly inadmissible in evidence."

During the pendency of the appeal, Macario Francisco with five other inmates, among whom was accused Mario Salazar, escaped from the New Bilibid Prisons on October 7, 1975.[24] The five inmates were subsequently recaptured, but Macario Francisco has remained at large up to the present. Restituto R. Jimenez died on June 28, 1978 of undetermined cause at the New Bilibid Prisons Hospital at Muntinlupa, Metro Manila.[25] This Court, in its Resolution of September 14, 1979, dismissed the case against Restituto R. Jimenez, but only in so far as his

criminal liability is concerned.[26]

It should be noted that the prosecution was unable to present a single eyewitness to the slaying of the two NBI agents. Conviction of herein appellants was based on their extra-judicial confessions,[27] which, however, they repudiated during the trial alleging that the same were obtained by torture and violence perpetrated upon their persons, hence, inadmissible. Incidentally, the investigations in these cases were conducted by agents other than those who were in the raiding team, members of the latter not having been allowed to participate in the investigation of any of the accused.[28]

As a basic principle, it is not necessary that an eyewitness should testify on having seen the accused commit the crime, for an accused may be held liable under his own confession.[29] This presupposes a voluntary confession. An extrajudicial confession corroborated by proof of corpus delicti suffices to convict.[30] This is precisely the reason why the trial Court should carefully look into the circumstances under which a confession has been given, for unless given freely, it should be rejected.[31] In the case at bar, the trial Court found that the accused gave their confessions freely. The evidence on record supports this conclusion as will be shown hereunder.

Briefly, the extrajudicial confessions of appellants state:

Statement of Pedro Naval, resident of Tondo, Manila taken on February 13, 1971:[32] At around 6:00 o'clock in the evening of February 9, 1971, a friend of his, Tito, went to their house at Tondo, Manila, and told him that they would go to Cavite the following morning because they were asked to go by Maca. They proceeded to Tabon, Kawit, Cavite, the following morning, February 10, passed by the house of a certain Lloring, then went to the house of Maca, after which they proceeded to the fields where Nardong Putik was, who was then with two men in PC fatigue uniform. There were twelve of them in all including Boy and Nardo whom they fetched from their respective houses. They waited for the arrival of the NBI agents, who would raid the marijuana plantation which was under the protection of Nardong Putik. When a runner announced the arrival of the agents, Nardo grouped them into three teams. The group of Nardo walked towards the direction where the NBI agents were, and after ten minutes came back with the two agents. Then they all walked towards the creek pushing with their firearms the NBI agents, whose hands were raised behind their nape. The two other groups joined them behind bilang alalay. Pedro Naval was carrying a .22 cal. paltik. Along the way, the agents were made to lie flat on their stomachs while the group divested them of their shirts, wallet, ring and other belongings. They were made to stand and walk again and when they reached the creek, Nardo commanded: Dispatsahin na iyan at nakakaabala sa ating pag-atras ang mga iyan. Then he told the two agents, who were pleading for their lives, to kneel. Nardo retorted: Amanos lang tayo, pare. Pinerhuisiyo ninyo ako. Then, Maca hit the tall agent, after which successive shots rang out. The two men in PC uniform kicked the lifeless bodies of the agents into the creek. Then Boy arrived and still fired his armalite at the two agents who were already dead. Pedro Naval claimed that he did not fire at the two agents.

Pedro Naval testified that he was boxed repeatedly, given karate blows and hit with the butt of the gun on his thigh, back, legs and fist while being interrogated regarding the two NBI agents killed in Cavite.[33] He named Benjamin Salvo, Federico Opinion, Levy de la Paz, a certain Salvador, Doming, Lito and Ramon as the NBI men who maltreated him. And yet, he did not file charges against those persons allegedly because he had no money to spend for the litigation.[34] We note, too, that Pedro Naval initialed the corrections in several pages of his Statement, and asked that he be detained at the NBI because of fear of liquidation for having squealed.

Statement of Macario Francisco, resident of Malagasang II, Imus, Cavite, dated February 15, 1971:[35] At about 6:00 o'clock in the morning of February 10, 1971, Tito and Pedring (referring to Pedro Naval), whom he asked to be fetched by Mario Salazar because he wanted to talk to them about a marijuana deal, arrived at his house. Then Rene and Peles, Nardong Putik's men, came and inquired where Nardo was. He answered that Nardo, his cousin,

might be in Malagasang Primero. Peles left and after thirty minutes returned with Nardo and Ubod, a former policeman of Kawit. Nardo asked them to go with him because he wanted to get (huhulihin natin) some CIS agents. They went with Nardo, and at the plantation near the river, they met a group composed of Doming, Jaime, Boy Lozada, Boy Aguinaldo and an unidentified person. Then Nardo divided them into three groups. The group of Nardo left, the group of Doming went down the river, while their group remained. After about ten minutes, the group of Doming returned with two captives. Then they walked towards the direction where Nardo's group went and caught up with them at General Trias, Cavite. When asked what to do with the two captives, Nardo replied, *Dispatsahin na iyan at nakaabala sa ating pag-atras ana mga iyan*. The two agents were told to kneel and were shot from about six yards away notwithstanding their pleas for mercy. He participated in shooting them with his armalite. After the shooting, the agents were kicked into the creek by Boy Lozada and Boy Aguinaldo. Ubod again fired his armalite at them. Macario Francisco also mentioned the individuals in the group who appropriated the firearms and the belongings of the two agents. After the shooting, they dispersed.

Macario Francisco declared that he was also kicked, boxed, burned with lighted cigarette on his back and that two wires connected to a battery were short circuited through his body to make him admit his participation in the killing of the two NBI agents. Like his co-accused, however, he did not file charges against the NBI agents who maltreated him because he wanted to be transferred first from the NBI detention cell to the Provincial jail. But when he got transferred his lawyer told him to wait for the termination of the case before filing any complaint.[36]

Statement of Mario Salazar, resident of Tabon, Kawit, Cavite, taken on October 15, 1971:[37] On February 10, 1971 at about 7:00 o'clock in the morning. Tito Jimenez and Pedring Naval arrived at their house in Tabon, Kawit, Cavite. They asked him to go with them to Maca's house at Malagasang Segundo, Imus, Cavite. They saw Mamerto Mendoza in the house of Maca. The latter told them that they were called by Nardong Putik because there were CIS agents in the marijuana plantation. They went to the place where Nardo was and saw Boy Aguinaldo, Doming, Jaime, Encabo, Mario Villanueva, Boy Ilosada, Ubod, Rene and Peles there. They were divided into three groups. His group headed by Macario Francisco went ahead going towards the marijuana plantation. He carried a .45 cal. firearm with magazine. The group of Nardo followed. When they arrived at the plantation, Encabo called them and told them that they caught two men. Then they proceeded to the place where Nardo was. The two men were being investigated by Nardo, Maca and Encabo. Then Nardo told his men to tie the hands of the agents, after which they walked towards Barrio Navarro. Upon arrival at the place, the two men were brought near the creek and Nardo commanded, *Birahin na iyan baka matagalan tayo sa oras*. He saw Ubod, Rene and Maca point their guns at the two who were kneeling down and pleading that their lives be spared. He turned his back. Then he heard shots. When he faced them again, he saw Boy Aguinaldo and Rene pushing with their feet the bodies of the two slain agents until they fell into the creek. Then they all left. He and Tito separated from the group in Kawit, Cavite, and proceeded home to Tabon.

Mario Salazar, who filed a separate Brief, stated that he was also abused by the NBI agents; that he was boxed, kicked and hit with their guns which caused his left rib and left clavicle to be broken; that he was unable to submit to medical examination to show the injuries he received because when his wife, accompanied by a lawyer came to the NBI office, they were informed that he was not there;[38] that he wrote Judge Villaluz of the Circuit Criminal Court of Pasig, Rizal, to apprise him of his (Mario) condition at the NBI detention cell; that at the trial at the Circuit Criminal Court, Judge Villaluz ordered the NBI agents to bring him to the hospital after he showed his injuries to the Court.

The presumption of law is in favor of the spontaneity and voluntariness of the statement given by an accused, and the confessant carries the burden of convincing the trial Judge that his admissions are involuntary or untrue.[39] The confessions aforementioned are replete with details that could not have been concocted by the authorities.

Macario Francisco and Mario Salazar named the group members individually, their residences, and the type of firearm each was carrying. Macario described the height of some of them as well as some of their distinctive features. He identified the group members who had appropriated for themselves the personal effects of the two agents. He could tell that Nardo belonged to the Igesia ni Cristo and where he was residing, while Mario Salazar mentioned Nardo's red Impala, the name of his wife and common law wife. Macario Francisco even identified the plantation owner as Iling, the Barrio Captain of Sabang, who shared his msarijuana sales with Nardo. It was Iling who complained to Nardo that the NBI was molesting him (pineperwhisyo). Macario Francisco agreed to help the NBI trace the where-abouts of Nardo. Pedro Naval and Macario Francisco even asked for NBI protection.

Appellants aver that the NBI's superior facilities could have enabled them to fill in the details. It might be true that the NBI has records on file concerning appellants because of other charges filed against them, but these records could only relate to their background and to the circumstances of the other offenses charged. The NBI could not have possibly provided the true sequence of events leading to the killing of the two agents. Only appellants could have known those details. A detailed confession bears the earmarks of voluntariness.[40] The confession of appellants, particularly of Mario Salazar and Pedro Naval, are exonerative in nature as they point to other members of the group as the triggermen. The exculpatory tone of admission of the crime and the abundance of details negate violence and mal-treatment in obtaining a confession.[41] A guilty person seldom admits his guilt fully and completely. He has a tendency to explain away his conduct or minimize his fault or crime or shift the blame to others.[42]

Appellants named some agents who allegedly subjected them to cruel and painful punishment to compel them to sign the confessions, yet they did not file charges against these agents. They attribute the non-filing of the suits to their poverty and inability to afford the expenses of litigation. That is no valid reason. They could have availed of the facilities being offered by the government to poor litigants. They could have com-plained to the proper authorities just as Mario Salazar did. Moreover, NBI agents Federico Opinion and Eligio Songco denied the alleged maltreatment of the appellants.[43] Appellants also failed to submit to physical examination to show the injuries they allegedly sustained when they were tortured. Only Mario Salazar was physically examined by Dr. Benjamin C. Guerra of the Philippine General Hospital[44] when he complained to Judge Onofre Villaluz, upon being arraigned on October 26, 1971, that he was abused as a consequence of which he sustained injuries in various parts of his body. The medical certificate issued by Dr. Guerra on October 28, 1971 showed that Salazar had contusions on his right shoulder and his left thigh. Upon an investigation conducted by the NBI, however, it was shown that said contusions were inflicted by Mario himself with the aid of another inmate, Reynaldo Francisco.[45] They were found to be fresh wounds inflicted only about four days before, when the statement allegedly taken by force and intimidation was signed two weeks before or on October 15, 1971. This belies the claim of appellant Salazar that his medical certificate stands un rebutted. Moreover, in a face to face confrontation with witnesses Reynaldo Francisco and Angelico Najar, Mario Salazar broke down and admitted having inflicted contusions and abrasions on himself with a broken hanger he found inside the cell and with the help of Reynaldo Francisco.[46] All three of them executed separate sworn statements attesting to the self-infliction by Salazar of the injuries on himself,[47] with a photographic reenactment of the incident.[48]

Appellants further contend that their confessions are inadmissible in evidence because they are filled with inconsistencies, such as, to which group Mario Salazar was with, with what Mario Salazar and Nardong Putik were armed, who took the personal properties of the victims, and who shot the victims. There are, indeed, contradictions relating to these matters, but they refer to inconsequential details. When extra-judicial confessions of two accused contain inconsistent details, the admissions need not be considered as in-voluntary.[49] In fact, these inconsistencies could be considered as additional proof that the confessions are voluntary. If, as claimed by appellants, these statements were prepared by the NBI agents themselves and signed by appellants under duress,

then, these confessions would have been as perfectly tight as the agents could have made them to preclude any possibility of escape from the clutches of the law.

With respect to the specific individuals who shot the victims, Macario Francisco admitted that he, Boy Aguinaldo and Ubod did it.[50] Mario Salazar merely declared that Maca, Rene and Ubod pointed their guns at the two NBI agents. He did not see who shot the agents because he turned his back.[51] Pedro Naval stated that he saw Maca hit the tall agent, then successive shots rang out. He said he saw Maca, Nardong Putik and the two PC clad men fire at the agents.[52] As all of them were armed with various kinds of guns, except Restituto Jimenez who carried a balisong, confusion as to the identity of the triggermen could easily ensue as Nardong Putik did not specify who among them would execute his order to kill the agents. It should be noted that Macario Francisco admitted that he was one of those who shot the victims and Pedro Naval saw him do it. At any rate, there can be no iota of doubt that the accused, as a band, acted concertedly in furtherance of the same criminal intent. Their criminal responsibility as perpetrators of the murder and robbery here prosecuted is beyond question. As to who shot whom need not be pinpointed. Some took a direct part in the actual commission of the crimes, others cooperated in the same by their presence and by means of acts without which the crimes would not have been perpetrated. Those who were not active participants made no effort to prevent the commission. All are, therefore, equally guilty as principals irrespective of the individual participation of each in the felonious act.[53]

In sum and substance, the extrajudicial confessions of the accused having been voluntary, and corroborated as they are with incontrovertible proof of corpus delicti, the same are sufficient to support conviction. The fact of death of the two agents was established by the post mortem findings and Court testimony of the Senior Medical Expert of the NBI, as well as the photographs of the victims taken on the spot.[54]

Pedro Naval and Macario Francisco aver that they were denied their right to counsel during custodial interrogation thus infringing Section 20, Article IV of the 1973 Constitution, which grants for the first time to a person under investigation for the commission of an offense the right to remain silent and to counsel, and to be informed of such right, thereby rendering inadmissible as evidence any confession obtained in violation of such right. Factually, however, this contention is inaccurate for the respective Statements[55] will show that before they were taken, the accused were informed of their right to remain silent and to counsel and the possibility of the use of their statements in other proceedings. But even if the contrary were true, considering that the confessions were obtained in 1971, this Court has held that Sec. 20, Article IV of the 1973 Constitution is prospective in effect and does not apply to a confession obtained before the ratification of the New Constitution on January 17, 1973.[56] Confessions made after arrest prior to the effectivity of the 1973 Constitution are valid[57] although the requisites of Section 20 of Article IV were not observed.

The defense of alibi, on which appellants rely, can be given credence only when there is no clear evidence of the presence and participation of the defendants in the crime charged against them, and it is impossible for them to be physically present at the scene of the crime at the time it was committed.[58] The places where appellants claimed to have been at the time of the commission of the crime (Pedro Naval in Tondo, Manila; Macario Francisco in Navotas, Rizal) are all within a few hours drive from Cavite where the incident took place. It was not physically impossible for them to have been at the scene of the crime, considering the distances of the places where they claimed to have been, and the availability of numerous vehicles plying in these places. And, in respect of Mario Salazar, who alleged that he was in Olongapo City, he himself stated that he shuttled between Olongapo City and Cavite. In fact, in his Statements,[59] he gave his residence as Tabon, Kawit, Cavite. The trial Court did not give credence to the testimonies of the corroborative witnesses of Macario Francisco and Pedro Naval because they were biased. On the other hand, Mario Salazar was unable to present a single witness, even a biased one, to corroborate his defense that he was in Olongapo City at the time of the incident. Alibi is a weak defense because

of the ease of fabricating it and the difficulty of rebutting the same. It becomes more so if uncorroborated and worse if it could have been corroborated by other persons mentioned by the accused but were not presented.[60]

The crime committed is Murder with Direct Assault upon Agents of a Person in Authority. It is not the complex crime of Kidnapping with Murder, kidnapping not having been a necessary means to commit the murder.[61] The NBI agents were taken by the accused solely for the purpose of killing them and not for detaining them illegally for any length of time or for the purpose of obtaining ransom for their release.[62] The main purpose of the accused was to kill the agents, their forcible taking having been only incidental to the killing. It was not the purpose of the accused to commit the crime of Illegal Detention.[63]

The penalty would still be capital, the killing having been qualified by treachery and attended by the aggravating circumstance of evident premeditation. While band (cuadrilla) is also present, it is deemed absorbed by treachery.[64] No mitigating circumstances exist.

Appellants should be convicted of two complex crimes of Murder with Direct Assault because there were two victims killed by means of separate acts. Hence, two death penalties should be imposed upon each of the appellants.

WHEREFORE, the trial Court's judgment is modified in that appellants Pedro Naval, Macario Francisco and Mario Salazar are hereby found guilty of two complex crimes of Murder with Direct Assault upon Agents of a Person in Authority and are each sentenced to suffer two death penalties. The appealed judgment is affirmed in all other respects. As to Restituto Jimenez, his death in prison on June 28, 1978 extinguished his criminal liability.

With proportionate costs.

SO ORDERED.

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

Fernando, C.J., did not take part.

[1] pp. 85-102, Rollo.

[2] Exhibits "C", "G", "E" and "F".

[3] Exhibit "G", pp. 163-170, CFI Record.

[4] p. 288, Vol. II, CFI Record.

[5] Exhibit "G", p. 165, CFI Record.

[6] Ibid.

[7] Ibid.

[8] *ibid.*

[9] Exhibits "G-10", "G-10-A" and "G-10-B"

[10] Exhibits "A", "A-1" to "B-1", pp. 143-154, Vol. I, CFI Record.

[11] Exhibit "G", *ibid.*

[12] Exhibit "H", p. 173, Vol. I, CFI Record.

- [13] Exhibit "C", p. 158; Exhibit "G", 166, CFI Record.
- [14] Exhibit "C", pp. 157-158, CFI Record.
- [15] Exhibits "C", "H", pp. 158,175, Vol. I, CFI Record.
- [16] Exhibit "H", p. 173, CFI Record.
- [17] Exhibit "G". p. 167, CFI Record.
- [18] Exhibits "C" and "G", pp. 158, 168, Vol. I, CFI Record.
- [19] pp. 299-300, t.s.n., August 12, 1971.
- [20] p. 436, t.s.n., September 22, 1971.
- [21] Exhibits "C", "G" and "H".
- [22] p. 104, Rollo.
- [23] Exhibits "E", "F", Vol. II, pp. 105-112; 117-120, CFI Record.
- [24] pp. 291-297, Rollo.
- [25] pp. 323-324, Rollo.
- [26] p. 337, Ibid.
- [27] Exhibits "C" & "G" taken on February 1971; Exhibits "E" & "F" taken on October, 1971.
- [28] p. 12, t.s.n., September 28, 1971.
- [29] People vs. Dorado, 30 SCRA 53 (1969).
- [30] People vs. Narciso, 23 SCRA 844 (1968).
- [31] People vs. Ordonio, 68 SCRA 397 (1975).
- [32] Exhibit "C", pp. 155-162, Vol. I, CFI Record.
- [33] pp. 10, 29, 34, t.s.n., August 13, 1971.
- [34] pp. 11-12, t.s.n., August 13, 1971.
- [35] Exhibit "G", pp. 163-170, CFI Record.
- [36] pp. 18, 19, t.s.n., September 24, 1971.
- [37] Exhibit "E", pp. 105-112, Vol. II, CFI Record.
- [38] p. 13, t.s.n., August 25, 1972.
- [39] People vs. Ramos, 94 SCRA 842 (1979).
- [40] People vs. Ventura, 80 SCRA 515 (1977).
- [41] People vs. Estero, 91 SCRA 93 (1979).
- [42] People vs. Francisco, 74 SCRA 158 (1976).
- [43] pp. 2-5, 10, t.s.n., September 28, 1971.

- [44] Exhibit "1", p. 17, Vol. II, CFI Record.
- [45] pp. 3-15, Vol. II, CFI Record.
- [46] p. 5, Vol. II, CFI Record.
- [47] pp. 7-14, Vol. II, CFI Record.
- [48] pp. 31-45, Vol. II, CFI Record.
- [49] *People vs. Navasca*, 76 SCRA 70 (1977).
- [50] Exhibit "G", pp. 166-167, Vol. I, CFI Record.
- [51] Exhibit "E", p. 109, Vol. II, CFI Record.
- [52] Exhibit "C", p. 4, Vol. I, CFI Record.
- [53] *U.S. vs. Ancheta, et al.*, 1 Phil. 165 (1902); (see *People vs. Cabiling*, 74 SCRA 285 [1976]; *People vs. Ong*, 62 SCRA 174 [1975]; *People vs. Aguel*, 97 SCRA 795 [1980]).
- [54] Exhibits "G-10", "G-10-A", "G-10-B".
- [55] Exhibits "C", "G", "E" & "F".
- [56] *Magtoto vs. Manguera*, 63 SCRA 4 (1975); *Cudiamat vs. People*, 84 SCRA 248 (1978); *People vs. Page*, 77 SCRA 348 (1977).
- [57] *People vs. Feliciano*, 58 SCRA 383 (1974).
- [58] *People vs. Tanchico*, 93 SCRA 575 (1979).
- [59] Exhibits "E" and "F".
- [60] *People vs. Brios*, 37 SCRA 336 (1971).
- [61] See *Parulan vs. Rodas, et al.*, 78 Phil. 855 (1947); *People vs. Parulan*, 88 Phil. 615 (1951).
- [62] See *People vs. Camo, et al.*, 91 Phil. 240 (1952); *People vs. Ong*, 62 SCRA 174 (1975).
- [63] See *U.S. vs. Ancheta*, 1 Phil. 165 (1902).
- [64] *People vs. Mori*, 55 SCRA 382; *People vs. Sangalang*, 58 SCRA 737.

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