

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JUANITO CALIXTRO Y BERNARDO, APOLINARIO MARTINEZ Y
SEBOLLEÑO, PETRONILO MERCADO Y SANTOS, ALBERTO KATIGBAK
Y DIMAANO AND J...**

G.R. No. L-32794. July 15, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a case of robbery in band with homicide. Strangely enough the two persons who were killed were not robbery victims, innocent by-standers or mere strangers; they were members of the band. The amount stolen was the paltry sum of P150.00.

In Criminal Case No. CCC-VIII-29(70)-Batangas, of the defunct Circuit Criminal Court, of the Eighth Judicial District, accused JUANITO CALIXTRO y BERNARDO, APOLINARIO MARTINEZ y SEBOLLEÑO, JUAN MERCADO y LORSANO, ALBERTO KATIGBAK y DIMAANO and PETRONILO MERCADO y SANTOS were arraigned and pleaded not guilty to the following charge:

"That on or about the 16th day of February, 1970, in the afternoon in the Municipality of San Luis, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with their other companions namely, Pio Cuevas and Alberto Obrador who had since died because of the resistance put up initially by one Julian Agojo, a security guard of the Rural Bank of San Luis, Batangas, all armed with assorted unlicensed firearms, conspiring and confederating together, acting in common accord and mutually aiding one another, with intent of gain and against the consent of the owner thereof, by means of violence against and intimidation of persons, did then and there wilfully, unlawfully and feloniously, at gunpoint, take, rob and carry away cash money in the total amount of P150.00 belonging to the said rural bank, to the damage and prejudice of the said owner in the aforementioned amount of P150.00; that on the same occasion and in pursuance of their conspiracy, the said accused, with intent to kill, treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and hit with the said firearms the said Pio Cuevas and Julian Agojo, thereby inflicting upon the former several gunshot wounds causing hemorrhage which directly caused his death and upon the latter injuries in the different parts of his body, requiring medical attendance and preventing him from performing his customary work for a period of more than nine (9) days, but less than thirty (30) days.

"That the aggravating circumstance of the use of a motor vehicle in the commission of the crime was further present."

After trial the court a quo rendered the following judgment:

"IN THE LIGHT OF THE FOREGOING CIRCUMSTANCES, the court finds defendants Juanito Calixtro y Bernardo, Apolinario Martinez y Sebolleño, Petronilo Mercado y Santos, Alberto Katigbak y Dimaano and Juan Mercado y Lorsano guilty beyond reasonable doubt as Principals in the crime of Robbery in Band with Homicide, aggravated by the circumstances of use of a motor vehicle, craft, disguise, and use of unlicensed

firearms. In the absence of any other modifying circumstances, the court sentences each of the said defendants to Death, to jointly and severally indemnify the heirs of deceased victim Pio Cuevas in the sum of P12,000.00, to jointly and severally indemnify the heirs of deceased victim Alberto Obrador in the sum of P12,000.00, and to pay the costs."

The case is now before Us on automatic review because of the imposition of the death penalty.

The People's version of the facts is as follows:

"At about 2:00 o'clock in the afternoon of February 16, 1970, a jeep with seven men on board stopped in front of the Rural Bank of San Luis, located at San Luis, Batangas. Six men alighted therefrom while one man was left behind the steering wheel of the parked jeep (pp. 91-92, T.s.n., April 30, 1970; pp. 8, 16, T.s.n., April 14, 1970). Of the six who alighted, three proceeded to the bank and the rest took positions in front of the bank (pp. 93-94, T.s.n. April 23, 1970; pp. 15-16, T.s.n., April 14, 1970). The men who stood in front of the bank were Alberto Katigbak, Petronilo Mercado and Apolinario Martinez (pp. 102-103, T.s.n., April 14, 1970).

Of the three men who proceeded to the bank, the first to enter the bank was Pio Cuevas, then Chief of Police of San Antonio, Quezon. He wore a PC uniform and was armed with a carbine (pp. 6, 12, 14, T.s.n., April 23, 1970). He was followed by Juanito Calixtro and Juan Mercado who were both in civilian attire and were armed with short firearms (pp. 6, 12, 14-15, T.s.n., April 14, 1970; pp. 88-89, T.s.n., April 20, 1970; pp. 104-105, T.s.n., April 23, 1970). As Cuevas entered, he told the security guard of the bank, Julian Agojo, that the Lieutenant, at the same time pointing to Calixtro, was going to apply for a loan. Agojo then instructed them to proceed to the manager of the bank. Calixtro proceeded directly to the cashier's table. Cuevas, however, instead of following Calixtro, immediately grabbed the service carbine of Agojo which rested on the wall near the door and poked the same at the latter shouting in a loud voice in the vernacular, 'dapa kayo, holdup ito, mamamatay kayo.' (pp. 9-11, T.s.n., April 4, 1970; pp. 89, 91-92, T.s.n., April 20, 1970; pp. 96-98, T.s.n., April 23, 1970; p. 11, T.s.n., April 24, 1970). At this juncture, Dionisio Aquino, bank manager who saw what had transpired, ran inside the bank vault to hide (pp. 86-92, T.s.n., April 20, 1970). So did Modesta Punzalan, bank cashier (p. 12, T.s.n., April 24, 1970). Meanwhile Juan Mercado poked a gun at one of the clients of the bank (p. 12, T.s.n., April 14, 1970). As Agojo grappled with Cuevas for the possession of the carbine, some shots which were not fired by Cuevas or Agojo were heard from outside and inside the bank (pp. 11-12, T.s.n., April 14, 1970; p. 98, T.s.n., April 20, 1970; p. 100, T.s.n., April 23, 1970; p. 13, T.s.n., April 24, 1970). At this juncture, Atty. Antonio de Sagun, bank counsel, who witnessed what transpired ran behind the vault door to hide (p. 11, T.s.n., April 4, 1970). After the firing, both Aquino and De Sagun peeped from where they were hiding and saw Calixtro take money from the cashier's table. They also saw Cuevas and Agojo still grappling for the possession of the carbine (p. 13, T.s.n., April 14, 1970; pp. 100-101, T.s.n., April 20, 1970). The money taken from the cashier's table amounted to P150.00 (p. 101, T.s.n., April 20, 1970; pp. 16-19, T.s.n., April 24, 1970). While Agojo was grappling with Cuevas, the former was wounded on the chin, left elbow, both palms and on his right breast (p. 106, T.s.n., April 23, 1970). As Agojo continued to struggle with Cuevas for the carbine, Cuevas shouted to his companions for help and another burst of shots were fired. This time Alberto Katigbak, Apolinario Martinez and Petronilo Mercado who were deployed outside the bank were seen firing towards the direction of the bank while Juanito Calixtro and Juan Mercado were shooting at Agojo as he grappled with Cuevas. Cuevas, apparently hit, jerked, loosened his hold on the carbine, enabling Agojo to wrest it from Cuevas (pp. 101-105, T.s.n., April 23, 1970). Cuevas, at that time, was near the door, facing the interior of the bank with his back towards the street and was moving backwards towards the latter. Thereupon, Cuevas ran out towards the jeep in a staggering manner, his back smeared with blood (p. 17, T.s.n., April 14, 1970; pp. 106-107, T.s.n., April 23, 1970). As Agojo tried to chase Cuevas, the latter's companions namely, Katigbak, Martinez and Petronilo Mercado fired at Agojo. The latter fell flat on the ground and in a supine position, exchanged shots with the fleeing robbers (pp. 19-20, T.s.n., April 14, 1970; p. 108, T.s.n., April 23, 1970; pp. 158-159, T.s.n., April 14, 1970). Cuevas and his companions then boarded their jeep which sped northward (p. 20, T.s.n., April 14, 1970; p. 107, T.s.n., April 20, 1970; p. 106, T.s.n., April 23, 1970).

Thereafter, Dionisio Aquino, Antonio de Sagun, Mario Kaibigan, Julian Agojo and Alfredo Rojas boarded a volkswagen car and gave chase (pp. 21-22, T.s.n., April 14, 1970; pp. 110-111, T.s.n., April 20, 1970; pp. 108-109, T.s.n., April 23, 1970). The jeep which Cuevas and his companions rode was finally sighted at Lemery, Batangas, near the BTCO station. On reaching a dead end street, it stopped. Its occupants, alighting scampered in different directions leaving behind, Obrador, who fell dead from the vehicle. On the other hand, the trailing volkswagen also stopped. Agojo fired his carbine in the air to attract attention and to call policemen to come to their aid (pp. 25-26, T.s.n., April 14, 1970; pp. 110-114, T.s.n., April 20, 1970; pp. 109-110, T.s.n., April 23, 1970). Policemen from Lemery, Batangas and PC men arrived. Cuevas and his five other companions were later, apprehended (p. 27, T.s.n., April 14, 1970; pp. 113-114, T.s.n., April 20, 1970). Juan Mercado was nabbed in a pig sty near the public market of Lemery, Batangas. He readily admitted that he was the driver of the group who held up a bank (p. 4, T.s.n., May 29, 1970). Petronilo Mercado and Martinez were arrested in the house of one Manuel Mitra in Lemery, Batangas. Petronilo Mercado, who then carried a .45 caliber pistol, surrendered the firearm to Mitra who in turn delivered it to Mayor Mariano Venturanza of Lemery, Batangas (pp. 4-6, T.s.n., May 27, 1970; pp. 5-6, T.s.n., June 18, 1970; pp. 10-11, T.s.n., Sept. 1, 1970). Calixtro was apprehended at the backyard of the house of Mitra (p. 4, 47, T.s.n., May 27, 1970). Katigbak was caught in the house of an auto-mechanic in the vicinity (p. 5, T.s.n., May 27, 1970). Cuevas and Juan Mercado were brought by Leoncio Razon, Acting Chief of Police of Lemery, Batangas, to the Lemery Emergency Hospital for treatment (pp. 84, 91, T.s.n., April 24, 1970). Martinez, Calixtro, Petronilo Mercado and Katigbak were brought to the municipal jail and were investigated (p. 5, T.s.n., May 27, 1970).

As Cuevas was breathing irregularly and bleeding profusely from his wound (pp. 84-89, T.s.n., April 24, 1970; pp. 11-13, T.s.n., May 12, 1970), Chief of Police Razon, in the presence of Dr. Jose Abjelina, Chief of the Lemery Emergency Hospital, took the ante-mortem statement of Cuevas who thumbmarked it. Dr. Abjelina signed the document as a witness (pp. 85-88, T.s.n., April 24, 1970; p. 14, T.s.n., May 12, 1970). Verbatim, the ante-mortem statement is as follows:

T. Ano ang iyong pangalan?

S. Pio Cuevas.

T. Bakit ka narito sa Lemery Emergency Hospital?

S. Ako po ay nabaril.

T. Sino ang bumaril sa iyo?

S. Mga kasama ko po.

T. Sino ang pangalan nila?

S. Hindi ko alam ang pangalan nila. Sila ay taga Lipa City.

T. Bakit kayo magkasama-sama?

S. Kami po ay nagkatagpo-tagpo sa Calamba.

T. Ano ang pakiramdam mo sa tama ng baril sa iyo?

S. Masama ang lasa ko.

T. Ilan kayong magkakasama dito?

S. Anim (6) po.

T. Bakit naman kayo naparito?

S.

Sinabi po sa akin na sila ay maglooban sa banko.' (Exhibit "M", p. 93, Record)

The ante-mortem statement was recorded in the police blotter of Lemery, Batangas (pp. 90-91, T.s.n., April 24, 1970). After Cuevas was given first aid at the Lemery Emergency Hospital, he was taken to the Batangas Provincial Hospital (p. 4, T.s.n., April 30, 1970).

Meanwhile, Jose de Ramon, Chief of Police of San Luis, Batangas, who was notified of the bank robbery, conducted, that same afternoon, an ocular investigation of the bank premises. He retrieved five (5) empty carbine shells, one (1) empty .45 caliber shell, one (1) empty .38 caliber shell, one (1) empty .22 caliber shell and one (1) deformed slug (pp. 29, 33, T.s.n., June 2, 1970). He also recovered a Pershing cap near the guard's table (p. 40, T.s.n., Ibid.). He turned over these items to Lt. Edgardo Toco of the Philippine Constabulary detachment at Majayjay, Lemery, Batangas, who was also conducting an investigation of the same incident (pp. 35-36, T.s.n., Ibid.). All the empty bullet shells were found by De Ramon outside the bank building. No shell was found inside the premises of the bank. The said five empty carbine shells were found 5 meters away from the bank door (pp. 56-57, T.s.n., Ibid.). The carbine taken by Agojo from Cuevas was given to De Ramon who in turn gave it to Lt. Toco (pp. 8-9, T.s.n., May 27, 1970; p. 68, T.s.n., June 2, 1970). Razon on the other hand, gave Lt. Toco the PC uniform taken from Cuevas (p. 21, T.s.n., May 27, 1970) and the wallet of Calixtro which contained the latter's residence certificate, firearm license, ID card and driver's license (pp. 24, 30, T.s.n., Ibid.). Lt. Toco did not conduct a paraffin test because he had to attend to the investigation of the incident first and no one among the appellants admitted having fired a gun (pp. 86-87, T.s.n., May 28, 1970). The walls and ceiling of the bank, a glass window and desk top inside the bank, were punctured with bullet holes (p. 6, T.s.n., May 27, 1970; p. 55, T.s.n., June 20, 1970; Exhibits B-1-B3, C1-C3, D1-D2, E1, F1, H, pp. 41-47, Record).

A medico-legal certificate prepared by Dr. Lauro Arreglado Jr., of the Batangas Provincial Hospital, who conducted an examination on Cuevas, disclosed the following findings:

'1. Wound, gunshot, thru and thru with POX 0.6 x 0.4 cms. with abrasions superiorly just below the angle of the right scapula and slightly lateral to the mid-scapular line penetrating right chest cavity directed anteriorly to the left slightly downward traversing the mediastenum and left chest cavity lacerating left dome of diaphragm with POX 1 cm. x 1-1/4 cm. at the level of the 7th interspace along anterior axillary line fracturing 7th rib left side with severe hemothorax bilateral. Presence of sutured wound 2 cms. long with 3 stitches extending medially and slightly downwards from POX.

'2. Wound lacerated 1-1/2 inches L-shaped left part aureular area.

'3. Abrasions dorsum right hand.

Note: Patient died of severe hemorrhage at 7:00 a.m. February 18, 1970, in this hospital' (pp. 4-11, T.s.n., April

24, 1970; Exhibit "D", p. 130, Record).

The death certificate showed that Cuevas died at 7:00 o'clock in the morning of February 18, 1970, of severe hemorrhage due to gunshot wound, chest, traversing pleural cavities (Exhibit "P", p. 129, Record).

On February 16, 1970, Dr. Antonio G. Mangubat, Municipal Health Officer of San Luis, Batangas, treated Julian Agojo. A medical certificate issued by such doctor on the same date showed the following findings:

'Found the following lesion on February 16, 1970 at 7:00 P.M.—

- Lacerated wound 1/2 inch, subcutaneous, lower jaw.
- Abrasion, multiple left elbow.
- Abrasion, left thumb, inner portion palm.
- Contusion, right hand.
- Abrasion, right chest above and below the right nipple.

Healing time - 7-9 days barring complication' (Exhibit "Q", p. 150, Record)

Two wounds found on Agojo would heal in 7 to 9 days, barring complication, even without medical treatment (p. 5, T.s.n., May 12, 1970). Wounds 1 and 3 were caused by a blunt instrument while wounds 2, 4 and 5 were caused by friction against a rough surface (pp. 4-5, T.s.n., Ibid.)" (Brief, pp. 5-15).

Juanito Calixtro is represented in this appeal by his counsel de parte, Atty. Conrado D. Manzano. Appellants Apolinario Martinez, Petronilo Mercado, Juan Mercado and Alberto Katigbak are represented by their counsel de oficio, Atty. Dominador P. Padilla.

Appellant Calixtro makes the following assignment of errors:

"I. THE TRIAL COURT ERRED IN DISMISSING DEFENDANT-APPELLANT JUANITO CALIXTRO'S CLAIM THAT HE WENT WITH DECEASED PIO CUEVAS ONLY TO COLLECT THE AMOUNT WHICH THE LATTER-OWED THE DREAMER'S CLUB IN CALAMBA, LAGUNA.

"II. THE TRIAL COURT ERRED IN PRACTICALLY HOLDING THAT DEFENDANT-APPELLANT JUANITO CALIXTRO CARRIED AND FIRED INSIDE A BANK A GUN AND THE ONE WHO TOOK THE MONEY FROM THE DRAWER OF THE BANK'S CASHIER MRS. MODESTA PUNZALAN AND THAT THE BANK WAS ROBBED IN THE AMOUNT OF ONE HUNDRED FIFTY PESOS (P150.00).

"III. THE TRIAL COURT ERRED IN HOLDING THAT DECEASED PIO CUEVAS WAS SHOT AND KILLED BY ONE OF HIS COMPANIONS.

"IV. THE TRIAL COURT ERRED IN HOLDING THAT DECEASED PIO CUEVAS EXECUTED A DYING DECLARATION (ANTE-MORTEM STATEMENT) EXHIBIT "M" AND IN GIVING IT MUCH WEIGHT AND VALUE AGAINST DEFENDANT-APPELLANT.

"V. THE TRIAL COURT ERRED IN HOLDING DEFENDANT-APPELLANT JUANITO CALIXTRO RESPONSIBLE FOR ROBBERY AND FOR THE DEATH OF PIO CUEVAS AND INJURIES SUSTAINED BY JULIAN AGOJO AND THAT THE CRIME COMMITTED IS ROBBERY IN BAND WITH HOMICIDE AND LESS SERIOUS PHYSICAL INJURIES.

"VI. THE TRIAL COURT ERRED IN NOT ACQUITTING DEFENDANT-APPELLANT JUANITO CALIXTRO FOR LACK OF SUFFICIENT EVIDENCE.

"VII. THE TRIAL COURT ERRED IN SENTENCING DEFENDANT-APPELLANT JUANITO CALIXTRO

TO DEATH." (Brief, pp. 1-3.)

The other appellants assign the following errors:

"I. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE PRINCIPAL PROSECUTION WITNESSES, MORE PARTICULARLY, ANTONIO DE SAGUN, JULIAN AGOJO, DIONISIO AQUINO, AND MODESTA PUNZALAN.

"II. THE TRIAL COURT ERRED IN NOT HOLDING THAT DECEASED PIO CUEVAS WAS SHOT AND KILLED BY JULIAN AGOJO.

"III. THE TRIAL COURT ERRED IN GIVING CREDENCE TO PIO CUEVAS' ALLEGED ANTE-MORTEM STATEMENT, EXH. "M".

"IV. THE TRIAL COURT ERRED IN HOLDING ALL THE ACCUSED CRIMINALLY AND CIVILLY LIABLE FOR THE DEATH OF ALBERTO OBRADOR.

"V. THE TRIAL COURT ERRED IN HOLDING THAT THE CRIME CHARGED WAS COMMITTED BY A BAND.

"VI. THE TRIAL COURT ERRED IN HOLDING THAT ALL THE ACCUSED ARE GUILTY OF THE CRIME OF ROBBERY IN BAND WITH HOMICIDE, AS DEFINED AND PUNISHED UNDER PAR. 1, ART. 294, REVISED PENAL CODE.

"VII. THE TRIAL COURT ERRED IN HOLDING THAT THE CRIME CHARGED WAS COMMITTED BY ALL THE ACCUSED IN CONSPIRACY WITH ONE ANOTHER.

"VIII. THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF DEFENSE WITNESSES.

"IX. THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED, AT LEAST ON THE GROUND OF REASONABLE DOUBT." (Brief, pp. 1-2.)

Each of the appellants admitted riding on the same jeep which stopped in front of the Rural Bank of San Luis in the afternoon of February 16, 1970. However, none of them admitted participation in a conspiracy to rob the bank.

Juanito Calixtro was 29 years old when he testified on June 19, 1970. He was the manager of a night club. On February 15, 1970, Pio Cuevas who was known as "Chief" tabled a hostess but could not pay his bill at morning's end of the following day. Cuevas promised to return to settle his bill and in fact did so. But he did not bring cash. Instead he asked Calixtro to go with him to the cattle market in Batangas. Calixtro rode in a jeep with Cuevas but the driver was another person. On the way to Batangas, the group met Apolinario Martinez who invited them to eat breakfast. Cuevas and the driver accepted the invitation but Calixtro declined and remained seated in the jeep. Later, in Lipa, three more persons boarded the jeep. They were Juan Mercado, Petronilo Mercado and Alberto Katigbak. From Lipa the group went to the bank in San Luis. Cuevas alighted from the jeep, put on a uniform and then told Calixtro, "let us go down manager, you better come with me, I am going to borrow money from this place and pay you my account, so that you can go back to Calamba." (T.S.N., June 19, 1970, p. 10.) Inside the bank he saw Cuevas and a security guard wresting for the possession of the former's gun. Shots rang out and the group fled. Cuevas had been shot and also Obrador, the driver of the jeep.

Apolinario Martinez was 33 years old when he testified on June 24, 1970. He said that he was a resident of Sta. Cruz, Marinduque, but he had known Pio Cuevas for about seven months because his brother Atty. Pedro Martinez, Jr. was the lawyer for Cuevas in a case for murder. On February 16, 1970, he was in Calamba, Laguna, to collect P2,200.00 from a debtor, Brigido Gonzales. He was unable to see Gonzales so he decided to go to San

Juan, Batangas, to visit his children by his previous wife. While he was waiting for transportation Cuevas arrived in a jeep with two persons. He ate breakfast with Cuevas who told him that he had to pay Calixtro's bill so they would first go to Batangas to borrow money and later they would proceed to Lucena to meet Atty. Martinez who was sickly and persuade him to withdraw as counsel for Cuevas. When they reached Lipa, Petronilo Mercado joined the group and a little later also Juan Mercado. In Taal still another person joined the group. He was Alberto Katigbak. The rest of his testimony is mostly about the incident at the Rural Bank of San Luis.

Petronilo Mercado was 31 years old when he testified on June 23 and 24, 1970. He said that at about 1:00 p.m. on February 16, 1970, he was in front of his house in Lipa waiting for a bus bound for Lemery. His ultimate destination was San Luis to take up something with his compadre Totoy Diokno. While waiting for a bus Obrador, the driver of a jeep, passed by and asked, "Pete, where are you bound for?" When he said, "San Luis" he was asked to join the group and he did. In front of the Sea Breeze in Butong, Cuevas called Alberto Katigbak who also boarded the jeep. The jeep proceeded to San Luis and stopped in front of the bank. (There followed the robbery.)

Juan Mercado was 35 years old when he testified on July 3, 1970. On February 16, 1970, at about 11:00 a.m. he had just alighted from a jeep in Lipa City when Pio Cuevas, Chief of Police of San Antonio, Quezon, arrived in a jeep. He was asked to drive the jeep because according to Cuevas he had a sleepless night. Cuevas told him the destination was San Luis to follow-up a case involving a jeep. He acceded to Cuevas' request. Also aboard the jeep were Alberto Obrador, Petronilo Mercado, Apolinario Martinez and one who was addressed manager of a nightclub. When they reached Butong [Taal] Alberto Katigbak boarded the jeep. They proceeded on their way and upon reaching a junction he was ordered to turn around. When the jeep stopped Cuevas and Juanito Calixtro alighted. Later Calixtro came running and said that Cuevas and a rural bank guard were quarreling. Suddenly he heard gun fire. He looked towards the bank and saw Cuevas with his hands raised. The guard aimed a gun at Cuevas and fired. He drove the jeep towards the bank to pick-up Cuevas and they proceeded to Lemery.

Alberto Katigbak was 34 years old when he testified on July 24, 1970. On February 16, 1970, he was at the Sea Breeze Resort in Butong, Taal. At about 1:00 p.m. he decided to go home and while waiting for a tricycle he was offered a lift by Pio Cuevas to go to Taal. He boarded the jeep which went to the poblacion of San Luis. There Cuevas and Calixtro entered the rural bank. (There follows a narration of the incident.)

It can be seen from the foregoing that all of the appellants claim ignorance of any plan to rob the Rural Bank of San Luis, deny participation in the robbery and assert that each of them was a mere accidental by-stander. The version of the appellants is simply too crude to be convincing.

We have a situation where several persons bound for various places located in different directions all happened to ride the same vehicle and then found themselves at a common destination - the Rural Bank of San Luis. To top it all, the jeep must have been jam-packed for it carried seven men who were all adults.

From the totality of the evidence there is no doubt that each of the appellants conspired and participated in the perpetration of the crime charged. The evidence for the prosecution describing minutely the different steps in the commission of the crime from the entry of Cuevas, Calixtro and Juan Mercado into the bank, the shout, the grappling for the guard's gun, the hasty departure, the pursuit and the apprehension of the appellants in Lemery all point to a common plan, a unity of purpose and a concerted action.

Several details remain to be considered.

- Did Pio Cuevas execute a dying declaration? The appellants claim that Cuevas' declaration cannot be considered as an ante-mortem statement for a number of reasons.

It is said that the declaration was not authenticated by the signature of Cuevas. However, the record shows that Cuevas affixed his thumbmark thereto. In fact, an ante-mortem statement needs no signature or thumbmark.

It is said that the wound sustained by Cuevas was so serious as to cause him to lose consciousness immediately and render him incapable of giving any statement. In fact, Cuevas and his cohorts were able to flee from San Luis to Lemery where they were apprehended. Acting Chief of Police Leoncio Razon of Lemery, Batangas, who brought Cuevas and Juan Mercado to the Lemery Emergency Hospital and took the declaration testified that Cuevas answered in a clear manner. This was corroborated by Dr. Jose Abjelina of the said hospital who signed the declaration as a witness. In fact also, Cuevas died on February 18, 1970, or two days after he was shot (Exh. P, certificate of death).

Dr. Lauro Arreglado, Jr. who said that in 5 or 10 minutes from the infliction of the injury Cuevas could no longer talk intelligently and coherently was merely giving an opinion. Dr. Arreglado was a resident physician at the Batangas Provincial Hospital where Cuevas was transferred and later died. He was not present when Cuevas gave the statement and his opinion cannot prevail over the positive testimony of Chief of Police Razon and Dr. Abjelina.

It is said that the statement was not made under a consciousness of impending death. Suffice it to say, it is not necessary for the declarant to state expressly that he expected to die. It is sufficient if the factual circumstances point to such belief on the part of the person making the declaration. In the case at bar, Cuevas sustained a serious injury which turned out to be fatal; when the declaration was made he was breathing irregularly and bleeding profusely; and he said, "Masama ang lasa ko."

Finally, it is said that Inocencia and Flora Cuevas, widow and daughter, respectively, of Pio testified that he confided to them it was a guard who shot him. Their testimony cannot prevail over that of disinterested witnesses. For what it may be worth, their testimony shows that contrary to the claim of the appellants, Cuevas was able to talk before he died on February 18, 1970.

- Who killed Cuevas? The trial court found that Cuevas was shot and killed by one of his companions. The appellants claim that it was Julian Agojo, the bank guard, who shot Cuevas.

The conclusion of the court a quo is supported by the evidence on record. It was Cuevas himself in his ante mortem statement who pointed to the appellants as the culprits.

"T. Ano ang iyong pangalan?

S. Pio Cuevas.

T. Bakit ka narito sa Lemery Emergency Hospital?

S. Ako po ay nabaril.

T. Sino ang bumaril sa iyo?

S. Mga kasama ko po.

T. Sino ang pangalan nila?

S. Hindi ko alam ang pangalan nila. Sila ay taga Lipa City.

T. Bakit kayo magkasama-sama?

S. Kami po ay nagkatagpo-tagpo sa Calamba.

T. Ano ang pakiramdam mo sa tama ng baril sa iyo?

S. Masama ang lasa ko.

T. Ilan kayong magkakasama dito?

S. Anim (6) po.

T. Bakit naman kayo naparito?

S. Sinabi po sa akin na sila ay maglooban sa banko."

It should be stated that when Cuevas said that he did not know the names of his companions, he meant to say he did not know who of them shot him. From the testimony of the appellants it is clear that except for Petronilo Mercado who was offered a ride by Obrador, each of them had previously known Cuevas.

That Julian Agojo did not shoot Cuevas is shown by his testimony that Calixtro and Juan Mercado were firing at him as he grappled with Cuevas. He also identified Petronilo Mercado, Katigbak and Martinez who were outside but firing in the direction of the bank. Thus Agojo testified:

"FISCAL ENDAYA:

Q

What was this unusual incident that you made mention that happened in the San Luis Rural Bank on February 16, 1970?

A

The bank was robbed, sir.

Q

How did you know that the bank was robbed?

A

When it was about 2:00 o'clock in the afternoon of that date, a jeep stopped in front of the bank with men on board the jeep.

Q

What happened when you saw the said jeep stopped or parked in front of the bank?

A

When the jeep had stopped in front of the bank, I saw six (6) men alighted from the same, sir, and there was another one left behind the wheel of the jeep.

Q

Can you mention to this Honorable Court who were those men that alighted from the jeep that parked?

A

Yes, sir.

Q

If they are in Court can you point to them?

A

Yes, sir.

Q

Where are they?

A

One of them is there. (Witness pointing to a person and identified him as Katigbak) Martinez. (Witness pointing to the man beside Katigbak and identified him as Martinez) That is the other, (Witness pointing to the third man seated who when asked his name identified himself as—)

COURT:

Will you step down the witness stand and point to those persons.

(Witness went down the witness stand and pointed to a person and that person pointed to identified himself as Alberto Katigbak. Witness pointed to another person and the person pointed to when asked his name identified himself as Apolinario Martinez. Witness pointed to another person and the person pointed to when asked his name identified himself as Juan Mercado. Witness pointed to another person who when asked his name identified himself as Petronilo Mercado. Witness pointed to another person who when asked his name identified himself as Juanito Calixtro)

FISCAL ENDAYA:

Q

You stated that they all alighted from that jeep parked in front of the San Luis Rural Bank in that afternoon, had there been someone left in said jeep when these persons alighted?

A

There are still two not here, sir.

Q

When these six men alighted from the jeep what happened?

A

Three of them after alighting proceeded to the bank and the last three followed the three ahead of them and stayed in front of the bank.

Q

In what particular place of the bank where you then when you saw these six men alight from the said jeep?

A

I was at the door of the bank, sir.

Q

Were you inside the bank or outside the bank?

A

I was still inside the bank, sir.

Q

How were you able to see these six (6) men alight from the jeep inside the bank?

A

The door of the bank is made of glass and the persons outside can be seen through that glass, sir.

Q

Who among these six men did enter the said bank?

ATTY. CAEDO:

No basis, Your Honor.

FISCAL ENDAYA:

This is just but a follow up question.

COURT:

May answer.

WITNESS:

A

The first one who entered the bank was the one in PC uniform and followed by a stout person whom they called lieutenant, sir, and the third to enter the bank was a thin one.

FISCAL ENDAYA:

Q

The man whom you said to be in PC uniform is he here in court?

A

He is not here, sir.

Q

Will you please identify who the two companions of the man in PC uniform who entered the bank?

A

That one is the one referred to as the lieutenant, sir, Juanito Calixtro, sir. (Witness pointing to accused Juanito Calixtro) And that one, Juan Mercado. (Witness pointing to accused Juan Mercado)

Q

Who among the three who entered the bank was able to enter first?

A

The one in PC uniform sir.

Q

Then followed by whom?

A

Followed by Juanito Calixtro, sir. And the last to enter was Juan Mercado.

Q

What happened when these three whom you mentioned had entered the bank?

A

I accosted the one in PC uniform after the three had gained entrance, sir and I asked them as to what they want.

Q

Who among the three did you ask what they wanted?

A

The one in PC uniform, sir.

Q

What was the answer, if any?

A

And his reply to me was the lieutenant was going to file a loan and he even pointed to me the lieutenant.

Q

What did you notice in his person when you were talking to this man in PC uniform?

A

The one in PC uniform was carrying his carbine, sir.

Q

What did he say to you, if any?

A

The lieutenant was going to file a loan.

Q

What was your answer then?

A

I instructed them to proceed to the desk of the manager and talk with him, sir.

Q

After having answered him what happened next?

A

The one referred to as the lieutenant proceeded on his way to the table of the cashier and I also instructed the one in PC uniform to follow him but instead of following him he grabbed the carbine which was resting then on the wall beside the table of the security guard, sir.

Q

How far was this carbine you were referring to from you when it was grabbed by the man in PC uniform?

A

More or less a distance of half a meter, sir.

Q

What did you do when the said carbine was grabbed by the man you mentioned?

A

After he had taken hold of the carbine he poked the same at me and uttered the following statements 'hold up ito, dapa kayo, papatayin namin kayo.'

FISCAL ENDAYA:

Q In what manner were the said words spoken?

A It was said in a very loud voice, sir.

Q

When those words were spoken what was he doing—no, was this said gun of yours being held?

COURT:

He said he pointed the gun at him while making the utterance.

FISCAL ENDAYA:

Q

What did you do next?

A

I pretended to lie flat on the ground but instead of doing so I grabbed the carbine and I did what I know, sir.

(Witness standing with his left hand extended fully with closed fist)

FISCAL ENDAYA:

Your Honor please, for purposes of demonstration may the witness be allowed to take hold of a real carbine to see what really did happen, Your Honor.

COURT:

Go ahead. Let us clarify this.

Q

Did you actually hit the floor of the bank or you only made that move as a subterfuge to draw attention away from Cuevas?

A

I just pretended that I will lie down on the ground, Your Honor. I made a move as if I was going to lie flat on the ground but instead I grabbed the carbine, which Cuevas was holding then, with my left hand.

FISCAL ENDAYA:

Q

At the time that you pretended to be ducking how many guns or carbine was or were in the possession of the man in PC uniform?

A

Two, sir.

Q

At that moment, that Cuevas or the said man in PC uniform was talking to you where was the third man?

A

He was at the living room of the bank where the receiving room was then, sir. He was at the receiving room of the bank.

Q

In relation to your place where was the distance where he was?

A

More or less a distance of three meters, sir.

Q

How about Calixtro?

A

Calixtro was near the table of our cashier, sir.

Q

When you were able to grab the carbine held by the man in PC uniform what happened next?

A

There was firing from inside and outside of the bank, sir.

Q

While there was gunshot heard by you, do you remember if anything was uttered by the man in PC uniform?

A

Yes, sir.

Q

What did he utter?

A

He was asking for help from his companions, sir.

Q

At that precise moment when he called for help what was happening?

A

There were more shots fired after his calling for help from his companions, sir, at us.

Q

Did you notice anything in the person of Cuevas when there were volley of shots?

A

Yes, sir.

Q

What was it?

A

After he had asked for help from his companions and when more shots were being fired I saw him jerked and that was the time when I was lucky enough to wrest from him the second carbine and then when he was running away I saw the back part of his clothes wet with blood, sir.

Q

Can you identify or still remember the three men who were left outside the bank?

A

Yes, sir.

Q

In what—In relation to the main entrance of the bank where were these three men situated?

ATTY. DE JESUS:

When?

FISCAL ENDAYA:

Upon alighting from their jeep.

WITNESS:

A

In front of the bank, sir. They deploy themselves in front of the bank.

FISCAL ENDAYA:

Q

Were you able to identify them while they were outside the bank?

A

Yes, sir.

Q

Will you please point to this Honorable Court who were these men if they are here?

A

Yes, sir, they are here.

Q

Please point to them?

A

That one in blue.

Q

What is his name?

A

Alberto Katigbak, sir. (Witness pointing to accused Alberto Katigbak) Apolinario Martinez. (Witness pointing to accused Apolinario Martinez) and last Petronilo Mercado. (Witness pointing to accused Petronilo Mercado.)

Q

What were they doing when they were outside the bank?

A

They were firing towards the bank, sir.

Q

While they were firing where was Cuevas, the man in PC uniform?

A

At that precise moment, we were grappling, sir." (T.S.N., April 23, 1970, pp. 91-103)

- Who killed Obrador? The trial court inferentially held that Obrador was killed by one or some of the appellants when it sentenced them "to jointly and severally indemnify the heirs of the deceased victim Alberto Obrador in the sum of P12,000.00." But the appellants have a point when they claim that they should not be held liable for the death of Obrador. The information does not charge them for the death of Obrador nor were they tried thereon.

Parenthetically, there is much ado on the question of who killed Cuevas and Obrador because if they were killed by security guard Julian Agojo, the appellants can at best be guilty of robbery in band only, a crime which does not carry the death penalty.

- Did the appellants commit robbery in band with homicide considering that Cuevas was one of them and not a robbery victim, an innocent by-stander or a stranger? The answer is Yes because Article 294 (1) of the Revised Penal Code says so.

In *People vs. Mangulabnan*, 99 Phil. 992 (1956), this Court held:

"Article 294, No. 1, of the Revised Penal Code, which defines the special, single and indivisible crime of robbery with homicide . . ., but this English version of the Code is a poor translation of the prevailing Spanish text of said paragraph, which reads as follows:

'1. Con la pena de reclusion perpetua a muerte, cuando con motivo o con ocasion del robo resultare homicidio.'

"We see, therefore, that in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (Decision of the Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's Penal Code, p. 267 and 259-260, respectively). This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident (Decision of September 9, 1886; October 22, 1907; April 30, 1910 and July 14, 1917), provided that the homicide be produced by reason or on occasion of the robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration (Decision of January 12, 1889 - see Cuello Calon'sCodigo Penal, pp. 501-502)." (At pp. 998-999.)

In the light of the foregoing, the trial court correctly held that the appellants committed robbery in band with homicide aggravated by craft and the use of a motor vehicle which is punishable by death. However, We cannot impose the death penalty for lack of the necessary number of votes. We have to reduce the penalty to reclusion perpetua.

WHEREFORE, the judgment of the trial court is modified in that the appellants shall suffer the penalty of reclusion perpetua and they shall jointly and severally indemnify the heirs of Pio Cuevas only the sum of P12,000.00, and to pay the costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

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