

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS, CHAW YAW SHUN ALIAS GEORGE CHUA, VICTORIO ALVAREZ, DIONISIO CARASIG, AND JOHN DOES, ACCUSED, CHAW YA SHUN ALIAS GEORGE CHUA...*G.R. No. L-19590. April 25, 1968*

Ponente: ANGELES, J.

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At about 5:00 o'clock in the morning of July 15, 1959, the lifeless body of Hector Crisostomo, then an officer of the Presidential Fact Finding Committee charged with the apprehension of dollar smugglers, was found in his Borg-ward sedan car at Lias Road, Marilao, Bulacan.

Upon the advice of the NBI medico-legal officer, the cadaver was brought to the Funeraria Quiogue, Manila, for autopsy. Examination of the corpse revealed that the deceased suffered three gunshot wounds on the head: One, at the right temple, at a point above the external auditory meatus right, the entrance wound directed from right to left; another, at the pre-auricular region left, above the external auditory meatus left, directed from left to right; and the last, at the temporal region, scalp, left, at a point on the above left external auditory meatus, directed from left to right. The cause of death was shock, severe, secondary to multiple gunshot wounds on the head.

In the course of the investigation to apprehend the perpetrators of the crime, Capt. Dionisio Carasig, also a member of the Presidential Fact Finding Committee working with the deceased, intimated to the PC authorities that the recent car deal of Crisostomo with Victorio Alvarez may possibly have some connection with the killing. With that clue, an intensive investigation was pursued by the police agencies, the Bulacan PC, the Marilao police, and the NBI agents joining hands together. Fingerprint experts and photographers of the NBI examined the car where the body of the victim was found, but no clear fingerprints could be detected. Upon an inspection of the car, some specimen evidence were found, such as, one (1) cartridge case caliber .25; one (1) unfired bullet, caliber .25; one (1) slug, caliber .25; two (2) metal jacketed bullets retrieved from the head of the victim, caliber .25; and a bag.

Upon an examination of the bag, the investigators found a Philippine Trust Co's check in the amount of P1,000.00, drawn by Victorio Alvarez in favor of Crisostomo, together with a receipt signed by the deceased acknowledging payment by Alvarez in the amount stated in the check, with a further statement of an unpaid balance of "P24,500.00.

Suspecting that Alvarez may have something to do with the killing, the authorities picked him up for questioning. Alvarez was taken to the Criminal Investigation Section of the PC for fingerprinting and paraffin test for gun powder residue. The result of the test, as contained in the report of Crispin Garcia, chief chemistry section of the PC, showed the presence of gun powder residue on both hands of Alvarez.

On August 4, 1959, a complaint for murder was filed by Capt. Rafael Yapdiangco of the PC before the Justice of

the Peace Court of Malolos, Bulacan, against Victorio Alvarez and two John Does. The victim named in the complaint was Hector Crisostomo.

Victorio Alvarez was arrested on August 19, 1959. Immediately after his arrest, Alvarez was investigated. He made a tape-recorded statement before Lt. Bautista “and Major Santiago of the CIS at Camp Crame, admitting that he alone shot and killed Crisostomo near Manga Avenue, Manila. (Vide question 68, Exhibit L, statement of Alvarez, August 21; 1959.)

On August 20, 1959, Alvarez executed a handwritten statement in narrative form before the CIS in the office of the PC Alabang headquarters (Exhibit G). In this statement, he affirmed that a certain Johnny was the one who shot and killed Crisostomo in Marilao, Bulacan, On the same day, Alvarez made another statement in the form of questions and answers repeating substantially the facts contained in his handwritten statement. (Exhibit F.)

Still on the next day, August 21, 1959, Alvarez executed another statement before Capt. Rafael Yapdiangco of the PC (Exhibit L), wherein Alvarez again admitted that he was the only one who shot and killed Crisostomo at barrio Lias, Marilao, Bulacan, In this statement, Alvarez gave a detailed narration of the participation of George Chua in the commission of the crime, as follows: “At around 8:00 o'clock P.M. (July 14) the Borgward sedan car driven by Capt. Crisostomo was approaching our car within a distance enough to call his attention. Johnny extended his arm and called Capt. Crisostomo. Capt. Crisostomo’s attention was attracted and he cut in and parked his car in front of the Oldsmobile where we were riding. When his car was properly parked, Capt. Carasig and George Chua approached Capt. Crisostomo, and finally they got in; Capt. Carasig first then followed by George Chua. After a few minutes conversation, the car driven by Capt. Crisostomo with Capt. Carasig and George in it, left and we followed. They passed Taft Avenue towards Isaac Peral to Otis, turned left towards Nagtahan bridge, turned right to Santa Mesa Boulevard, turned left to Santol, turned left to Pararle St., turned left to Benito St.,” ... and then we proceeded “towards Bulacan.”

“Q.- Were you constantly following the car of Capt. Crisostomo?

A.— Yes, sir, ...

Q.— Where in-Bulacan did you go?

A.— Approximately one hundred meters before the road junction leading to Marilao poblacion where we stopped.

Q.- What happened then?

A.- Upon arrival there at approximately 10:00 p.m., the Oldsmobile stopped at the back of the white sedan. Then we all alighted from the Oldsmobile and transferred to the white sedan. Our position inside the white sedan is that beside Capt. Crisostomo who was on the wheel was George Chua. Behind George Chua, Capt. Carasig, behind the seat at the back extreme right, next to the left at center is me and to my left is Johnny.”

Q.- What did you talked about?

A.- George Chua started the talking by telling Capt. Crisostomo to please turn over the documents to them (documents consisting of names of persons connected with the dollar syndicate, the modus operandi and activities) and then followed discussion, Chua telling Crisostomo to turn over to us the papers, and forget everything, then Capt. Crisostomo replied, I told you that I do not have time to discuss that matter, and then Capt. Carasig said, Capt. we are business partners, and I am engaged in this business too, for my sake, turn over the paper to them or to me, that will save the government from exposing the whole activities, then Capt. Crisostomo replied it is too late already, I have no time to discuss the matter; then George Chua drew his revolver. When we saw George Chua drew his revolver, we did the same thing. ...

Q.- What happened next?

A.- When Capt. Crisostomo saw us drew our guns, he showed a sign of fighting back. George Chua gave a signal and I fired a shot at Capt. Crisostomo on his right temple, then Capt. Crisostomo showed a sign of fighting back so Johnny held the left shoulder of Capt. Crisostomo while Capt. Carasig held his right shoulder, then I fired again, hitting him at the back of the head, George Chua after the first shot, opened the door and went out and then I fired the third shot on his left temple and Capt. Crisostomo snapped dead. ..."

Alvarez further declared that he was trusted by George Chua and was chosen to be the trigger-man; that Chua promised to pay him P35,000.00 plus P400.00 a month for killing Crisostomo; that Chua was engaged in the business of dollar smuggling.

On September 1, 1959, the complaint was amended by including Chaw Yaw Shun alias George Chua and Lim Bun Ping alias Johnny Yao, together with Victorio Alvarez and two John Does.

On the basis of Alvarez' confessions, and with him as guide, the CIS agents proceeded to Chua's residence at 1834 M. H. del Pilar, Malate, Manila. Upon arrival at the house, they were received by Chua's wife. Inquiring for Chua, the CIS agents were told by the wife that her husband was not at home.

In the evening of August 24, 1959, George Chua, accompanied by his lawyer, Jose Uy, surrendered to General Isagani Campo of the PC at the D & E restaurant in Quezon City, in the presence of newspaper reporters and photographers. Immediately thereafter, George Chua was taken to Camp Crame and was investigated by Capt. Yapdiangco and other CIS agents for three hours, after which he was allowed to sleep. The next day, August 25, 1959, Chua was again investigated by the CIS agents. The investigation was reduced to writing. Believing that Chua was not telling the truth, because he would not admit participation in the crime, the investigator destroyed the statements. To quote from Capt. Yapdiangco's testimony:

"Q.— Will you please tell the court from what time George Chua was interrogated on August 24, 1959?

A.— Well, as far as I remember, from that time when General Campo turned over to us Mr. Chua, he was interviewed by us for about three hours. After that, we allowed him to sleep. We also slept. But the following morning the 25th, naturally, we had to interview him again.

Q.- During those interviews that you have made as well as your companions on August 24 and 25, did you attempt to make it in writing?

A.— Well, there was an attempt to put it in writing, but it was destroyed.

Q.— Will you tell us the reason why you have to discontinue the written interrogation?

A.— Because what he was telling us we believe it was not true." (tsn pp. 34-35, Vol. 22)

In spite of knowledge on the part of Capt. Yapdiangco that a complaint against George Chua had already been filed in court, nevertheless, in view of the insistent denial by Chua of any participation in the crime, at about midnight on August 26, 1959, Capt. Yapdiangco brought him to the PC headquarters in Alabang, Rizal, where he was investigated in the presence of several CIS agents. Chua made a written statement. (Exhibit R) In his confession, Chua stated the following: That he ordered the killing of Capt. Crisostomo; that the plot to kill Crisostomo was hatched up in his house at 1834 M.H. del Pilar, Malate, Manila, on July 13, 1959, in the presence of Lim Bon Pin alias Johnny Yao and Victorio Alvarez; that he (Chua) and Johnny hired Alvarez to kill Crisostomo for "P35,000.00 because his partners in Hongkong, Yao Chiong and Tay Seng got angry at him, because the \$132,000,100 entrusted to a lady who was leaving for Hongkong, was confiscated by the local authorities at the airport between June 15 and 25, 1959; that his partner, Yao Chung who was in Hongkong, called

him through overseas telephone on June 29, 1959, at eleven o'clock in the morning, and told him to do something for him and to finish Capt. Crisostomo; that Capt. Crisostomo was killed on July 14, 1959, at about ten o'clock at Marilao, Bulacan, and that Victorio Alvarez killed him with a .25 caliber pistol by shooting him on the head two times; that when Capt. Crisostomo was driving his car, Alvarez was seated at the rear, and a Filipino whose name he does not know, was seated on the front seat beside Crisostomo when Alvarez shot Crisostomo; that after Capt. Crisostomo was shot by Alvarez, the latter drove the small car to barrio Lias, Marilao, Bulacan, turning right, while he (Chua) in another car, drove the Filipino further away and dropped him at a bridge, and he (Chua) returned to pick up Alvarez, and both of them returned to Manila in the Oldsmobile car; that upon reaching Manila, Alvarez was dropped at the Quezon Bridge where Alvarez threw his pistol, caliber .25, and he (Chua) returned to his house; that he (Chua) actually gave the amount of "P35,000.00 to Johnny in his house, but does not know whether Johnny gave money to Alvarez.

On August 28, 1959, while George Chua was detained in the provincial jail of Bulacan, he asked the warden to summon the provincial fiscal of Bulacan, because he wanted to give a statement. The assistant provincial fiscal, Pascual K. Kiliathko, interviewed George Chua in the provincial jail on August 29, 1959. The interview was reduced to writing in the form of questions and answers (Exhibit VW) the pertinent portions of which are the following:

"Q.— I understand from you that you sent for me?

A.- Yes, sir.

Q.- Are you ready to give the statement voluntarily and willingly?

A.- Yes, sir.

Q.— Now, Mr. George Chua, will you please state your name and other personal circumstances?

A.— (Witness does so, and said) because I am accused of murder.

Q.- What is this murder charge that you have just stated?

A.— I was implicated by Alvarez to be one of those responsible for the killing of Crisostomo.

Q.- Now, Mr. Chua, what is it that you would like to state, you stated that you sent for me to give a statement, what is that statement you would like to give?

A.— Because I want to report to you that I was maltreated by the CIS agents and forced to sign a statement.

Q.— You stated that you were maltreated before, how were you maltreated?

A.- First I was taken to the 5th PC Co. at 12:00 o'clock midnight at Alabang, Rizal, on August 25, 1959, and there I was handcuffed, but before I was handcuffed, I was ordered to take off my clothes and then I was handcuffed again and blindfolded me by wrapping a towel all around my face and my head and some of the agents turned my head seven or eight times.

Q.- Now, is there something more that you still like to disclose, before I ask you to sign this statement?

A.— Yes, sir, I want to inform you that they also applied electric shock to my body and while doing so, they forced me to answer the way they designed, two hours later they forced me to lie down on the ground, then a stout agent sat on my stomach and another agent sat on my legs, and then I almost lost consciousness."

On March 24, 1960, the assistant provincial fiscal filed an information for murder against Victorio Alvarez, Dionisio Carasig, Chaw Yaw Shun alias George Chua and two John Does, alleging that said accused, acting in

conspiracy, with the attendant qualifying and generic aggravating circumstances of treachery, evident premeditation, abuse of superior strength, use of motor vehicle, nocturnity and by a band, killed Hector Crisostomo.

Upon arraignment, Victorio Alvarez, Chaw Yaw Shun alias George Chua and Dionisio Carasig entered a plea of not guilty.

After a trial, Dionisio Carasig was acquitted on reasonable doubt; Victorio Alvarez and Chaw Yaw Shun alias George Chua were found guilty of the offense as charged and sentenced to suffer reclusion perpetua, to indemnify the heirs of Hector Crisostomo in the sum of P6,000.00, and to pay the proportionate costs. Both appealed from the decision.

On September 6, 1962, Alvarez filed a motion to withdraw his appeal which he reiterated in another motion on October 1, 1962. On October 24, 1962, Alvarez' motion was granted.

The case before Us concerns the appeal of George Chua.

The evidence relied upon by the Solicitor General in sustaining the conviction of the appellant, as cited in the brief are:

The several confessions of Alvarez, which are self-contradicting and the confession of the appellant; testimonial evidence that Capt. Yapdiangco and other CIS agents went to the house of Chua, and not finding him there, they told the wife of Chua that they were looking for her husband; that on the next day, Capt. Yapdiangco secured a warrant to search the house of Chua, and they found "a calling card of Victorio Alvarez and a sort of a telephone directory index marked exhibits H and H-1"; that Alvarez made a re-enactment of the crime; that George Chua, accompanied by his lawyer, surrendered to General Isagani Campo; that during the investigation of Chua, "Capt. Calderon asked Chua why he was implicated by Victorio Alvarez. At first he denied any participation in the killing of Capt. Crisostomo. But when Alvarez was brought before him, the former told him, 'George I have already confessed the truth. Do not tell a lie. Please tell the truth, George.' At this instance, Chua countered: 'I did not kill him. You killed him.' Alvarez told him again: 'Now, tell the truth.' Chua, however, kept silent." (The foregoing incident testified to by CIS agents, does not appear in any signed statement of Chua, although it is claimed that the confrontation had taken place during Chua's interrogation by the CIS agents, and neither does it appear in any of the several statements of Alvarez); that "early in the morning on August 26, 1959, Capt. Rafael Yapdiangco brought George Chua to Alabang PC headquarters for the purpose of taking down his statement. The reason of Capt. Yap-diango in investigating Chua in Alabang instead of at Camp Crame was explained by him thus:

"... Your Honor, the reason why the investigation of George Chua whose true name is Chaw Yaw Shun was made at Alabang is that there were so many newspapermen in the CIS building and it seems to confuse us in our manner of investigation, even now and then, they interfere, thus obstructing our investigation, so we made it a point to bring Mr. Chua to Alabang so that more or less, we will be in a position to investigate him thoroughly.";

that "After their arrival at Alabang, Capt. Yapdiangco in the presence of Agent Ricardo Chavez and some other agents, personally investigated George Chua. According to Capt. Yapdiangco, Chua voluntarily submitted himself to the investigation and agreed that his confession be made in writing." (Then follows the quoted confession of Chua.)

There is no evidence, oral or documentary, adduced by the prosecution, other than the several confessions of Alvarez, the confession of Chua, and the testimony of Arturo Cayetano, that would tend to prove any overt act of

Chua indicating some connection between him and the other accused establishing a common criminal design to commit the crime.

With regard to Arturo Cayetano, this witness declared that between 7:00 and 8:00 o'clock in the evening of July 14, 1959, he saw an Oldsmobile car parked at the corner of Isaac Peral and Florida streets, Manila, while he was at the opposite side of the street under a waiting shed; that after a while, he was attracted by one of the occupants of the Oldsmobile car who was waving his hand in the act of stopping another car coming from behind; that the latter car stopped and parked in front of the former car; that later on, he saw two persons, whom he identified in court as Dionisio Carasig and George Chua, approach the car that had just stopped, board it, and then the car left and moved away towards Taft Avenue, Manila.

The weakness of the testimony is apparent from the failure of the witness to identify the driver or occupant of the car into which Carasig and Chua entered. In the brief of the appellee, no reference whatsoever is made to the testimony of Cayetano, for the obvious reason that it is irrelevant and immaterial, as it would not in any way connect the appellant with the commission of the crime committed in Marilao, Bulacan, about which fact there is not a scintilla of evidence showing that the appellant was ever seen thereat on the night of July 14, 1959.

At the trial, George Chua repudiated his confession and denied any participation in the commission of the crime. With reference to his confession, he declared thus: "When he was investigated by the CIS agents at Alabang PC headquarters on August 26, 1959, his eyes were 'tied' (blindfolded) with a wet towel for about six (6) hours and the bandage was removed only at around 6:30 to 7:00 o'clock in the morning of said date, but he cannot remember who tied his eyes; that some agents used electric shock on his body for two (2) hours simultaneously on his left upper back, left ear and knees; that the wire connected to his body is cranked; that he was forced to lie down after which an agent sat on his stomach and another sat on his leg; that he was ordered to undress, and remove his shoes and socks, then they applied the electric shock; that he signed his confession under threat, the agents telling him that if he did not sign the statement, he will be killed and his body will be thrown away; that nobody read to him the written statement; that he was not allowed to read his confession, and to save his life, he just signed it.

Corroborating appellant's claim of maltreatment, Dr. Jose Eustaquio, a private physician, declared that when he examined Chua on August 26, 1959, at the instance of the latter's lawyer, he noticed some contusion on his left upper back, at the nape of the neck and in the middle term called linear abrasions also in the left upper back. His finding, however, was not put in writing. Dr. Eustaquio examined Chua for the second time on August 27, 1959, and this time he put his findings in writing (Exh. 19-Chua, Vol. 1). Being asked about the meaning of "multiple scratches likeline" mentioned in his medical certificate, he said, it means linear abrasions, the cause of which he could not determine. When he was pressed to explain the contents of his certificate, he said these scratches could have been caused by wires, rough stones, pointed objects or similar instruments applied by other persons; that the "reddish discoloration of the nape of the neck" which is a "contusion" may have been caused by so called trauma or in common parlance, a blow that may cause injury either by fist or objects; that the "reddish discoloration at the left upper back which is medial of shoulder blade is the same as the injury on the neck which may have been caused by any kind of objects, such as fist or hand blow; that the "pinhead spot on the left leg and multiple scratches like-line", could have been caused by a pointed object applied to the skin, but he does not know whether electrical shocking apparatus introduced in the body could have produced the same, (tsn pp. 149-195, Vol. 1)

In this appeal; the appellant assails the admission of his confession, contending that it is not admissible, because it was obtained thru force, threat and intimidation.

In passing upon the weight and admissibility of a confession, the court may take into consideration the circumstances and conditions under which it was obtained (People vs, Lauas, 58 Phil. 742), and may consider

claims that a statement was taken in circumstances which violate the standard of voluntariness — a standard grounded in the policies of privileged self-incrimination. (Davis vs. State of North Carolina, 16 L. ed. 86) .

As narrated hereinabove, immediately upon Chua's surrender on August 24, 1959, Capt. Yapdiangco and several CIS agents interrogated him for three hours. The next morning, August 25, 1959, Chua was again interrogated. The interrogation was reduced to writing. But, because Chua would not admit his guilt, the investigators considered him a liar, and so they destroyed his written statement. Persisting in their attempt, to obtain a confession, at midnight on August 26, 1959, Chua was brought to Alabang, Rizal, within the jurisdiction of the 3rd PC zone, for investigation, instead of taking him to the 1st PC zone in Bulacan where the crime was committed. According to Capt. Yapdiangco, George Chua voluntarily submitted himself to an investigation and agreed that his confession be made in writing. To quote from appellee's brief, p. 17:

“After their arrival at Alabang, Capt. Yapdiangco, in the presence of agents Ricardo Chavez and other agents, . . . Chua voluntarily submitted himself to the investigation and agreed that his confession be made in writing.”
To quote from appellee's brief, p. 17:

In the light of the foregoing testimony of Capt. Yapdiangco, it is food for thought to ask: What made Chua become a “dove”, when during all the time he was being investigated at Camp Crame, he had demonstrated an attitude of belligerency by refusing to admit participation in the crime? Was the sudden transformation the result of some spiritual persuasion that moved the conscience of the suspect to admit his guilt, or was it due to an overbearing pressure which finally subdued his will power? The observation made by his Honor, the late Manuel M. Mejia, the first trial judge in the case, would seem to have answered the riddle. Thus:

“.. Notwithstanding the fact that he surrendered or was surrendered to General Campo at the D & E Restaurant in the evening of 24 August 1959, and was supposed to be confined at the CIS building Camp Crame, Quezon City, and notwithstanding the prosecution's claim that defendant Chua executed his alleged confession, Exhibit M, voluntarily, the CIS agents had to take him to Alabang, Rizal, approximately 20 kilometers away from Quezon City. Now, it may be asked, if defendant Chua were really willing to execute a confession, why should the CIS agents have to take him to Alabang? Could not such a confession be taken right in the CIS building in Quezon City, where they have all the facilities? And if the confession, Exhibit N, had really been voluntarily given by defendant Chua, as claimed by the prosecution, why would it take the CIS several hours in an isolated place in Alabang, Rizal, to extract from him a 3-page confession? ..”

Of course, Captain Yapdiangco explained that the reason why appellant was investigated in Alabang, Rizal, was because of the presence of newspapermen in the CIS building at Camp Crame, Quezon City, who interfered in their manner of investigation. His Honor, Judge Manuel M. Mejia, did not accord credence to the explanation. Indeed, it is clear that it was only a pretext, considering that, as admitted by the witness, the newspapermen are not always present in their office at Camp Crame. (tsn. p. 62, Vol. 1)

The appellant claimed that he was maltreated and intimidated by the investigators at Alabang, hitting his head, boxing him, applying electric shock to his body, sitting on his stomach and legs, and required him to sign the confession under threat of death.

The claim merits serious consideration.

It appears that after Chua's investigation on August 26, 1959, he was examined by Dr. Eustaquio Bautista, a private medical practitioner, and by doctors Arsenio Anastacio and Miguel Zarraga of the PC.

Dr. Eustaquio in his examination of Chua on August 27, 1959, as stated" in his report, found "multiple scratch likeline on the left upper back; reddish discoloration at nape of neck; reddish discoloration at left upper back just medial of the shoulder blade; multiple pinhead reddish spots on left leg and multiple scratches likeline; 3

scratches likeline on right leg" which according to the doctor could not have been self-inflicted because of the location of the injuries.

On the other hand, upon an examination of Chua on August 27, 1959, by Dr. Anastacio, he found "7 linear reddish marks varying in length — 1/4 x 3/4 inch, 7 in number pinhead in size skin eruptions reddish with some healed are noted on the outer half of the left shoulder, upper part of the left arm and upper part of the left back. Similar eruptions appear on the upper part of the right back, both legs and thighs. Linear reddish mark about 1 inch is noted on the antero-lateral aspect of the left thighs. Three small reddish marks are noted on the junction of the upper and middle thirds lateral aspect of the right leg. The abovementioned linear reddish marks represent scratch marks." (Exh. 3-Chua, p. 135[^] Vol. 1)

Upon examination conducted by Dr. Miguel Zarraga, at about 10:00 a.m. on August 27, 1959, he found that "over the left shoulder area, upper back, and upper arm are seen a number of superficial abrasions of various sizes from 0.6 to 1.5 cm. long in various stage of healing, some reddish, some covered with brownish scab; there are observed similar superficial marks over the right upper back, and both legs and thighs. An abrasion measuring 2.2 cm. is seen on the antero-lateral portion of the left thigh. On the right leg at about the junction of the upper and middle thirds are three small abrasions lateral to another one which subject claims had already - been there for sometime now, the exact number of days he does not remember." (Exh. 4-Chua, Vol. 1)

These findings of the three doctors, yielded one significant indication, the existence of "reddish marks and scratch abrasions" on appellant's body. True, that Dr. Arsenio Anastacio made a remark in his medical certificate (Exh. 3-Chua) that there is "no sign of physical injury externally which can be appreciated at the time of his examination", and Major Miguel Zarraga declared that "the abdomen revealed no external manifestation of any injury, nor is there any area of tenderness in the whole body" of the appellant, these remarks, however, do not detract from the fact, physically and scientifically recognized, that some forms of torture do not usually manifest external injury, on the body of the person maltreated. For instance, sitting on the stomach and the use of electric shock, which incidentally are among appellant's complaints, do not necessarily produce external physical injury. Dr. Anastacio said:

"Q.- You have long experience in medical practice, as a general rule, if blows are given in the abdomen, do they leave external sign?

A- Not all. (tsn p. 405, Exh. KKK, p. 390-415, Vol. 1)

On the same point, Dr. Zarraga said:

"Q.— In your experience, did you Doctor have come across to a person given blows in the abdomen without leaving any external mark?

A.- I have many cases, some of them leave signs and some of them do not leave any external injury.

Q.-Have you come across a person who died in traffic accident where the wheel passed over the abdomen without leaving any mark of external injury?

A,-I remember very well a man in Camp Murphy whereby a young child was ran over by wheel and she sustained serious internal injuries without any external injuries," (tsn pp. 424-425, Exh. LLL, Vol. I, JP Marilao.)

And as regards the use of electric shock, Dr. Zarraga's findings that "there are no external manifestation to indicate the application of electric current of such duration to almost cause death as alleged", does not negate the application of this form of torture for according to him, the use of electricity with wire on the body of a person does not always leave any mark thereon. On cross-examination, he said:

Q.- You also admit Doctor that electricity from 6 volts battery applied with wire will not leave any mark?

A.- I admit that.” (tsn p. 525, Exh. LLL, Vol. I, JP Marilao)

Testifying further on this point, and confronted with a quotation from a medical book, Dr. Zarraga said:

“Q- 1 will just read to you a certain portion of this book on page 201, and I quote: ‘the autopsy of a person . . . dead and lying near an electric machine or wire may reveal a severe cardiac, which could account for said death even without contact with the current. It may be very difficult to define in such a case if the death was due to the disease or electric current if no electric current marks are present You agree with that Doctor?

A.— I agree with the condition that those who died of cardiac as a result of small shock may really die without indication externally, (tsn pp. 426-427, Vol. I, JP Marilao)

Q.- And the abrasion you mentioned in Exh. R could that have been produced by minor or sharp object?

A.-Yes, sir, in fact I mentioned that in my statement."

From the foregoing facts and circumstances set forth, it is clear that the mere absence of external injury in appellant's body does not destroy or rule out appellant's claim of maltreatment by the use of other scientific modes or forms of torture. Appellant's injuries, certified by a private physician and constabulary doctors, were telltales corroboration of the charge of torture and maltreatment.

It is now settled that a confession which is induced or extorted by torturing the accused or by personal violence or abuse directed against the accused for the purpose of obtaining a confession, is an involuntary one and is not admissible in evidence against him, unless found to be true. (People vs. Tipay, 70 Phil. 615.)

Appellee argues, however, conceding that the confession was involuntary, that it is nevertheless admissible because the facts stated in the confession have been corroborated by other evidence.

A review of the evidence, however, showed that other than the confession, there is no other evidence which proves the truth of the facts stated in the confession. On the contrary, analyzing the confession of Chua, it will be noticed that it is replete with improbabilities and falsities in its material and substantial parts.

1.— While in Chua's confession there appears a statement that the order to kill was given to him by his partners in Hongkong, Yao Chung and Tay Seng, thru the overseas telephone on June 29, 1959, at 11:00 a.m., the records of the Bureau of Telecommunications which in July 1959 was the only agency operating an overseas telephone system between Hongkong and Manila, failed to disclose any such telephone conversation between Yao Chung and appellant Chua. (Exhibit 17-Chua, and testimony of radio technician, pp. 471-481, bail hearing before Judge Mejia).

2.— In Chua's confession, it is said that the plot to kill Crisostomo was hatched up in Chua's residence at 1834 M. H. del Pilar, Malate Manila, on the night of July 13, 1959, with Alvarez and Lim Bon Ping alias Johnny Yao, but the records of the Bureau of Immigration show that said Lim Bong Ping had re-entered Manila in November 1958 and had left by Philippine Air Lines plane for Hongkong on December 7, 1958 (Exhs. 13, 14 and 15). And there is, no showing that he had re-entered the Philippines after his departure for abroad on December 7, 1958. That Lim Bong Ping was not in Manila in July 1959, is further shown by the sworn declarations of members of the staff of the Philippine Consulate General in San Francisco, California, that Lim Bong Ping alias Johnny Yao left San Francisco, California on 30 April 1958, and returned thereto on 24 December 1958, where he had been living constantly ever since. (Exhs. 5, 5-a and 6, 6-a.—) And this fact was corroborated by the sworn statements of Mrs. Pilar R. Guerrero, Philippine Consulate employee in San Francisco, and Enrique Herbosa, a Filipino student in California. (Exhs. 7 and 7-a.)

3.— In Chua's confession, it is said that Alvarez killed Crisostomo in consideration of P35,000.00. This is illogical and unbelievable. As his Honor, the late Judge Manuel M. Mejia, the first trial judge in the case, said in his order granting bail to appellant, "If Alvarez had really killed Crisostomo in consideration of a reward promised to him by Chua, it would seem to be unnatural and illogical for Chua, to have gone along with Alvarez in the actual killing of Crisostomo on the night of July 14, 1959. On the other hand, it is said by Alvarez in his tape-recorded statement that his motive in killing the deceased Crisostomo was to retrieve a rubber check which he had issued to Crisostomo in connection with his purchase from the latter of a Ford Fairlane car for P20,500.00 (Exh. LL, pp. 13, 28, tsn. Oct. 31, 1959)." Indeed, the foregoing facts would show that it was Alvarez who had a motive to kill Crisostomo. In fact, he withdrew his appeal.

4.— It is also said in the confession that Crisostomo was shot on the head while driving the car. This is incredible, because in that situation, the car would have gone out of control or would have been involved in an accident which did not happen.

5.- And as a result of the incident discussed in the preceeding number, if it were true, evidently the authorities would have found bloodstains in the car which is not present.

6.— The statement in the confession that Chua was with the group that killed Crisostomo at Lias road, Marilao, is impeached by the testimony of Paulino Antonio, a witness for the prosecution, who declared that it was only Alvarez whom he saw at the vicinity of the crime on the night of July 14, 1959.

The finding of the court that there was conspiracy among the accused, notwithstanding the fact that on the same evidence, the court found one defendant not guilty, but sufficient to convict the two others, on the court's finding and conclusion "As regards the testimony of Arturo Cayetano, the court is inclined to give a margin of error in his identifying Carasig on the night in question . . .," is indeed, somewhat illogical -

"Since in the instant case, the widow appears also to be a star witness of the prosecution whose testimony was given much weight in pinning liability on appellants, we wonder whether this could be consistent and would be true to logic and fairness if it would hold that on the strength of the same testimony which was discredited by the court, insofar as one of the appellants' co-accused in the same case is concerned would reach a verdict of conviction against said appellants. (People vs. Aquino, et al., H3789, June 30, 1960, 67 Of. Gaz. No. 51, 9180)

Aside from the foregoing consideration, conspiracy must be proved by independent evidence other than the confession. The admissibility of a confession by one accused against the other in the same case, must relate to statements made by one conspirator during the pendency of the unlawful enterprise (or during its existence) and in furtherance of its objects, and not to a confession made, as in this case, long after the conspiracy had been brought to an end. (People vs. Nakpil, 52 Phil., 985; People vs. Yatco, et al., 51 Of. Gaz. No. 12, 6187) Conspiracy, must be real and not presumptive. (U.S. vs. Figueras, 2 Phil. 491) It must be proved as the crime itself, independent from the confession. But in the case at bar, the trial court admitted the conflicting confession of Alvarez which are not binding on the appellant for being hearsay, aside from having been repudiated by Alvarez himself during the trial. There is, therefore, no inter-locking confession so to say, for there being no independent evidence establishing an overt act of appellant Chua connected to the crime, conspiracy must necessarily be discarded. The appellant maintains that the trial court erred in not appreciating his defense of alibi. The evidence shows that the appellant, even from the very beginning of his interrogation by the CIS agents upon his surrender on August 24, 1959, has consistently claimed that on the night of July 14, 1959, when Crisostomo was killed at Marilao, Bulacan, he was at No. 2, Salud St., Pasay City, playing mahjong. Capt. Yapdiangco corroborated this fact. Thus

—
"Q.— What were the things which you fear he was not answering your interrogation which you consider is not

true?

A.- I remember he was declaring to us that on that day, on the evening of 14th of July 1959, he was in the mahjong game."

While Chua was being interrogated at the CIS, Camp Crame, Quezon City, on August 24, 1959, other agents of the CIS particularly Agent Mariano Belen and Lt. Bautista, on the same date, were busy checking up on Chua's movements or whereabouts on July 14, 1959, and they were informed that on the night of July 14, 1959, Chua was indeed playing mahjong at No. 2, Salud St., Pasay City. To this effect is the testimony of agent Belen:

"Q.- Do you remember having gone with Lt. Bautista to a certain club house in Pasay on August 24, 1959?

A.— I remember, sir. Q.— Do you remember where that club house is? A.- No. 2, Salud St., Pasay City. Q.- What was the purpose, in going with Lt. Bautista to that club house at Salud St.; Pasay City? A.- To verify the allegation of Mr. Peter Lim that at said club house, George Chua was playing mahjong on the night of July 14, 1959.

Q.— Because of that information imparted to you by Peter Lim, you went direct to Salud St.?

A.— Yes, sir, in the afternoon of the same date.

Q.— Whom did you interrogate upon your arrival in the clubhouse?

A.— We interrogated Ong Kong Pay.

Q.— What was the answer of Ong Kong Pay?

A.— That Mr. George Chua was there and practically playing mahjong one week from July 8 to 14, 1959."

The foregoing facts were also corroborated by the testimonies of Ng Yu (tsn, p. 1024); Ong Kong Pay (tsn, p. 1245) and Peter Lim (tsn p. 1295);

As further proof of the fact that Chua was playing mahjong at Salud St., on the night of July 14, 1959, the record shows that agent Belen of the CIS was given a notebook by Ong Kong Pay in-charge of the clubhouse, on August 24, 1959, wherein accused George Chua was listed as one of the players thereat on the date in question. However, it appears that the prosecution had lost the notebook. Whether it was really lost by the CIS or deliberately suppressed, the presumption of its truth has basis in law.

All the foregoing indubitably show that the defense of alibi of the appellant could not have been merely a concoction, as the testimonies of the witnesses clearly showed that Chua was really playing mahjong at Salud St., Pasay City, on the date in question.

Upon the foregoing considerations, the Court finds that the guilt of the appellant Chaw Yaw Shun alias George Chua has not been established beyond reasonable doubt, and he is hereby acquitted of the offense charged with costs de oficio. The bail bond posted by the accused for his provisional liberty is hereby cancelled.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Fernando, JJ., concur.

Accused-appellant acquitted.

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