

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EPIFANIO O. VALERIO, JR., AND DOMINGO ELEPAÑO, RESPONDENTS.

G.R. No. L-41146. February 25, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For automatic review is the death sentence imposed on accused-appellants Epifanio O. VALERIO, Jr. and Domingo ELEPAÑO by the Circuit Criminal Court, Seventh Judicial District, Pasig, Rizal, in Criminal Case No. 1363-Cavite, entitled "People of the Philippines vs. Amador Castro y Crisostomo (convicted), Epifanio O. Valerio, Jr. and Domingo Elepaño", for Murder.

The case revolves around a plot of murder of an eight-year old boy for insurance. The persistence in the criminal design was evident from the fact that when the insured eight-year-old waif disappeared, another hapless substitute, whose name is unknown to this day, was taken to replace the first intended victim.

At the outset, some undisputed facts relative to the "dramatis personae" must be stated.

Accused Epifanio O. VALERIO, Jr., 30, married, BSE Graduate, major in history, ex-high school teacher, started to work with the Cardinal Life Insurance Corporation, Dagupan City, as sub-agent in October, 1972. He and his family are residents of Carail, Dagupan City, but admittedly they visit Bo. Tamayo, San Carlos City, where Valerio's mother-in-law resides, four to five times a year especially during the harvest season.

Self-confessed and convicted accused Amador Castro, 25, businessman, pig dealer, who finished schooling up to Grade VI, is married to Estrella Yanga of Bo. Tamayo, San Carlos City, with whom he has three children, namely, Marilou, 6, George, 4 and Ernesto, almost 2 years old.

Accused Domingo ELEPAÑO, 42, married to the elder sister of Amador Castro, who has not finished Grade V, is a driver by occupation and resident of Bo. Tamayo, San Carlos City.

The evidence for the prosecution as against VALERIO consisted mainly in the testimony of self-confessed and convicted accused Amador Castro, who described the details of the morbid scheme, as well as the testimonies of Dr. Pedro Romero, Herminigildo Solar, Dr. Prospero Cabanayan and Generoso Dangca. Their respective narrations may be woven together, as follows:

Sometime in August 1972, Amador Castro brought home a boy whom he met in a Pantranco bus during a flood. "I will live with you to take care of the cows" said the boy.[1]

On November 8, 1972, accused VALERIO, one Celestino de la Cruz and Amador Castro, while at the latter's yard at Bo. Tamayo, San Carlos City, conferred about obtaining life insurance on the boy living with Castro, who would be subsequently killed so that the policy proceeds could be "divided 50-50".[2]

In accordance with the aforementioned plan, and upon instructions of VALERIO, Castro had the boy baptized as "Amador Castro, Jr." at the San Carlos City Roman Catholic Church with Celestino de la Cruz as "ninong".

VALERIO waited outside the church during the ceremony.[3]

On November 17, 1972, accused VALERIO accompanied the spouses Amador Castro and the boy "Amador Castro, Jr." to the office of the Cardinal Life Insurance Corporation at Dagupan City.

Pedro Romero, 64, married, physician, resident of Dagupan City, and alternate doctor of the Cardinal Life Insurance Corporation declared that he examined an eight-year-old boy, standard in size, 4 feet and 3/4 inches in height and weighing 68 lbs. by the name of "Amador Castro, Jr." on whose behalf an application for life insurance had been filed. Dr. Romero identified the Medical Report[4] he prepared in respect of the applicant.[5]

Herminigildo Solar, 36, married, insurance agent of Cardinal Life Insurance Corporation and Branch Manager of Standard Insurance Corporation, a sister company, identified the Application for Life Insurance[6] made by Castro in the amount of P20,000.00 on behalf of "Amador Castro, Jr.," which was based on a draft made by VALERIO. He identified the thumbmark of "Amador Castro, Jr.,"[7] which was affixed in his presence and that of Dr. Romero. Witness Solar testified that the application was approved with the issuance, on January 12, 1973, of Insurance Policy No. 7277[8] in the amount of P20,000.00 in favor of "Amador Castro, Jr." with Amador Castro, Sr. and Estrella Castro indicated therein as father and mother and beneficiaries. Said policy was issued upon the execution of a letter of acceptance and payment of premium of P202.60.[9]

For the payment of the first quarter premium of P150.00, de la Cruz, VALERIO and Castro contributed P50.00 each. For the 2nd quarter premium of P143.00, VALERIO gave P45.00 while de la Cruz gave P50.00.[10] The balance could have been shouldered by Castro.

On January 16, 1973, the insured boy left the Castro household after losing money, through gambling, given to him by Castro's wife to buy something. Castro then informed De la Cruz and VALERIO about the departure of the boy but the latter told him "easy ka lang, steady ka lang, we will substitute a boy for him". VALERIO then gave Amador Castro a boy, who began staying with the Castros beginning March 6, 1973. Thereafter, VALERIO, Castro and De la Cruz planned the killing of the new boy at Lido Beach, Cavite. VALERIO and de la Cruz told Castro that if the plan were to be executed in Pangasinan, they would be "mabubuko".[11]

On March 13, 1973, Castro, his wife, their three children, the new boy, VALERIO, De la Cruz and accused Domingo ELEPAÑO, as driver of the jeep, went to Lido Beach in Cavite. According to Castro's testimony on the witness stand, he, VALERIO, and De la Cruz together with the new boy went swimming. When they reached a depth of four feet, Celestino de la Cruz who was at the back of the boy hit the latter's head with a piece of iron. Castro was at the left side of the boy while VALERIO was at the boy's right side. De la Cruz then held the boy by the neck and submerged him in water. VALERIO and Castro left De la Cruz and the boy in the water. Upon instructions of De la Cruz, Castro reported the new boy's "loss" to the life saver in Lido Beach. Later, the life saver found the new boy, who was brought to the Bautista Hospital at Cavite City. The boy was pronounced lifeless and was not examined anymore. The cadaver was thereafter brought to Funeraria Popular, Manila, where it was examined by NBI agents.[12]

Prospero Cabanayan, 42, married, physician, medico-legal officer of the National Bureau of Investigation, a Quezon City resident, declared that Amador Castro identified the body of "Amador Castro, Jr." when it was brought for autopsy at the morgue. Before proceeding to autopsy, he supervised the taking of photographs[13] of the boy. The witness identified Necropsy Report No. N-73-746,[14] which he had accomplished and confirmed the following postmortem findings:

"Body embalmed.

Sand particles enmeshed among scalp hair.

Hematoma, scalp, fronto-parietal region, 5.0 x 4.0 cms.

Tracheal mucosa, congested, lumen, contains some sand particles.
Subpleural and sub-epicardial petechial hemorrhages of varying sizes, moderate in number.
Lungs, voluminous, soggy, congested. Cut-sections tranude moderate amount of pinkish froth.
Hemorrhage, meningeal, subdural, parietal lobe, left, occipital lobe, moderate, bilateral.
Brain and other visceral organs, con-gested.
Stomach, full of undigested cooked rice and other food particles and a few sand particles.

* * * * *

CAUSE OF DEATH: Asphyxia by submersion in water; hemorrhage, meningeal, traumatic, contri-butory. * *

* "

Dr. Cabanayan also identified the diagram of the victim's scalp[15] showing hematoma on the brain-portion of the skull measuring 5 x 4 cms., which was possibly caused by the use of wood or iron. Consi-dering the tender age of the victim, said force re-sulted in meningeal hemorrhage on the occipital part as shown in the photograph of the cross-section of the victim's brain.[16] He opined that hematoma causing hemorrhage in the brain preceded submersion in water resulting in the eventual drowning of the victim. The victim was most probably alive before being submerged because he was able to aspire some water together with some sand particles. Dr. Cabanayan thus concluded that the cause of death was asphyxia by submersion in water, hemorrhage, meningeal, traumatic, contributory.[17]

Generoso Dangca, 41, married, fingerprint tech-nician of the NBI and resident of Pamplona, Parañaque, Rizal, identified Dactyloscopic Report - FP Case No. 73-50[18] that he had prepared on the cadaver of the boy "Amador Castro, Jr.", upon Dr. Cabanayan's request, for ascertainment of the boy's identity. Witness Dangca also identified the enlarged photograph[19] he took of the right thumb mark of "Amador Castro, Jr." from records of Cardinal Life Insurance Corpo-ration as well as the enlarged photograph of the right thumb mark of the boy's cadaver.[20] Upon a comparison of Exhibits "I-1" and "I-2", the witness concluded that the thumbmarks were not those of the same person. Based on statistics, witness Dangca opined that no two persons have the same fingerprints and that fingerprints on cadavers remain unchanged even if soaked in water.[21]

At the Funeraria Popular, VALERIO, De la Cruz and Castro stood vigil until the boy was buried on March 15, 1973. For funeral expenses in the total amount of P500.00, VALERIO contributed P100.00 and De la Cruz P150.00. The two told Castro, "its up to you then about the amount you will share and we will have the accounting after the burial".[22]

Thereafter, Castro filed a death claim on the insurance of "Amador Castro, Jr.", which was denied because the fingerprints of the boy insured were different from the boy who was killed.[23]

On April 17, 1973, Amador Castro executed a Statement[24] before NBI agents Cirilo Dulog and Esteban Libit. It should be noted that in said Statement, Castro averred, among others, that the boy who died by "drowning" was his son "Amador Castro, Jr." Castro also stated that in connection with the death claim he filed the following papers - Certificate of the Local Civil Registrar Juanito G. de Vera of San Carlos City dated March 19, 1973, Joint Affidavit of Domingo ELEPAÑO and Benigno de Leon dated March 19, 1973 before aforementioned Local Civil Registrar (attesting personal knowledge that claimant Castro was the son of spouses Florentino and Filomena Castro of Bo. Tamayo, San Carlos City), Marriage Contract of Amador Castro and Estrella Castro dated November 7, 1966, Affidavit of Dionisio Castro and Roberto de Leon dated April 4, 1966 before Asst. Provincial Fiscal Romulo Resultan, Memorandum No. 2150 of Parish of Sto. Domingo de Guzman, San Carlos City, Certificate of Death, Certificate of Chief of Police dated March 31, 1973, Statement of Ricardo del Rosario, dated March 27, 1973, and the Statement of the attend-ing physician Ma. Lucita Atis of Bautista Hospital.

On April 25, 1973, Amador Castro executed another Statement before NBI agents Libit, Dulog and Pagdonsolan.[25] Therein, Amador Castro related essentially the same de-tails he testified to in open Court, categorically implicating accused VALERIO. In said Statement, Castro narrated that sometime in November 1972, VALERIO pro-posed the insurance on the boy Castro had picked up at the Pantranco bus, who would be killed later so that they could collect the insurance proceeds. In the same Statement, Exhibit "1", Castro also implicated accused Domingo ELEPAÑO (not De la Cruz as he had narrated in open Court) as the one who hit the boy slightly on the head with a piece of iron so it would not be detected and that he (Castro) held the boy by the neck and submerged him in the water until the boy stopped moving. Castro further alleged that he dis-closed their plan to accused ELEPAÑO while they were on the way to Cavite and promised the latter P2,000.00 upon collection of the insurance proceeds. Castro, however, repudiated in open Court all portions of his Statement implicating ELEPAÑO.

In an Information filed on June 26, 1973, the Provincial Fiscal of Cavite charged Amador Castro and VALERIO with the crime of Murder alleging the aggra-vating circumstances of treachery and evident preme-ditation.

Upon arraignment on July 19, 1973, VALERIO pleaded not guilty. Accused Amador Castro entered a plea of guilty and was sentenced by the trial Court as follows:

"WHEREFORE, in view of the voluntary and spontaneous con-fession of guilt made by the accused Amador Castro, the Court hereby finds him guilty, beyond reasonable doubt of the crime of Murder as defined in Article 248 of the Revised Penal Code, as charged in the Information, and hereby sentences him to suffer the penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to TWENTY (20) YEARS of reclusion temporal as maximum; to indemnify the heirs of the victim in the amount of P12,000.00; to pay the amount of P5,000.00 as moral damages plus another P5,000.00 as exemplary damages; and to pay the costs."[26]

Trial proceeded with respect to VALERIO. After he had begun presenting Dr. Juan Lomibao as his first witness, herein accused Domingo ELEPAÑO was apprehended.

On April 24, 1974, the Provincial Fiscal of Cavite filed an Amended Information including accused ELEPAÑO.

At this juncture, it must be stated that a re-investigation was conducted by the Fiscal relative to the participation of Celestino de la Cruz but due to insufficiency of evidence and absence of corroborative witnesses, he was not included in the Information.[27]

After ELEPAÑO's plea of not guilty,[28] the trial Court conducted separate trials for him and VALERIO upon the latter's petition.[29]

VALERIO's defense

In his defense, accused VALERIO alleged that on or about November 16, 1972 while he was at the "para-dahan" area at San Carlos City riding in a public vehicle bound for Bo. Tamayo, Amador Castro approach-ed him and introduced himself. The latter inquired about insurance. The following day, Castro, his wife and son ("Amador Castro, Jr.") went to his wife's residence and continued to talk about their desire to get insurance for themselves. VALERIO then accom-panied the CASTROS to the office of the Cardinal Life Insurance Corporation at Dagupan City and intro-duced them to Mr. Solar, the Branch Manager. VALERIO did not know whether said application was approved. He was interested only in commissions earned.

VALERIO denied that he was with Amador Castro at Lido Beach, Cavite, on March 13, 1973. His alibi was that he was confined from March 12-14, 1973 at the San Carlos City Medical and Surgical Clinic under the care and treatment of Dr. Juan Lomibao for "influenza" and submitted a Medical Certificate[30] in proof thereof.

VALERIO further denied knowing Castro's wife, co-accused ELEPAÑO whom he allegedly met only in Court, and Celestino de la Cruz.

VALERIO claimed that Castro implicated him because he told the Insurance Manager (two weeks after the claim was filed) that the dead boy was not the alleged insured son of Amador Castro. Prior to March 13, 1973, Castro also had a grudge against VALERIO because the former stopped paying premiums to the latter and VALERIO complained to the Manager on the matter. VALERIO further declared that on May 26, 1973, while Castro and VALERIO were sharing the same cell at the NBI, Castro quarrelled with him when he (VALERIO) found a piece of paper,[31] which was a purported letter of Amador Castro to accused ELEPAÑO stating that "June" (VALERIO) had nothing to do with the drowning of the boy.[32] However, upon verification by the NBI as ordered by the trial Court, said letter was found not to have been written by Amador Castro.[33] In fact, it was signed "Amor C. Castro".[34]

Juan C. Lomibao, married, practicing physician, resident of San Carlos City, testified that he knew accused VALERIO, a townmate. He identified the Medical Certificate[35] he issued on September 13, 1973 upon VALERIO's request. He testified that VALERIO was confined at the San Carlos Medical and Surgical Clinic from March 12 to 14, 1973 for influenza. (The Medical Certificate, however, merely states that VALERIO was "advised to stay in bed till fully recovered"). Witness Lomibao stated that he usually does not confine patients suffering from high fever but when he saw VALERIO's weak appearance he advised bed-rest. He also identified VALERIO's patient's record.[36]

The evidence vs. ELEPAÑO

The prosecution was also banking on Amador Castro for its evidence against accused ELEPAÑO based on the Statement he executed on April 25, 1973.[37] In the course of his testimony, however, although Castro reiterated that VALERIO, De la Cruz, the boy and he went to the water, he emphasized that when the boy was killed, ELEPAÑO was under the jeep fixing something that was out of order. This was a complete turnabout from his Statement of April 25, 1973, Exhibit "1", wherein he pointed to ELEPAÑO as the one who had clubbed the boy on the head. Faced with that development, the prosecution presented Amador Castro as a hostile witness. Continuing, Castro then averred that he did not mention the name of Celestino de la Cruz in his Statement of April 25, 1973, Exhibit "1", because the latter had a brother-in-law, Felix Lubenias, connected with the NBI and that said De la Cruz promised to pay him P3,000.00 and support his family. De la Cruz allegedly failed to comply with his promise. He then declared that it was only the NBI agents who had mentioned the name of ELEPAÑO stressing "this ELEPAÑO I am stating now has no fault." Thus, as events developed, Amador Castro denied all his declarations in his Statement of April 25, 1973, Exhibit "1", implicating ELEPAÑO. Castro further averred that he prepared the affidavit signed by accused ELEPAÑO and Benigno de Leon but that the latter two did not know that the boy was purposely killed. He also denied having promised to pay ELEPAÑO and De Leon P2,000.00 upon collection of the insurance proceeds.[38]

Refuting Castro's disavowals, Esteban Libit, 44, NBI agent, testified that he took the statement of Castro on April 25, 1973 in the form of questions and answers. He affirmed that he propounded questions Nos. 29-31, 32, 36-39, 41, 42 and 46, which all refer to ELEPAÑO's participation in the crime charged.

Similarly, Cirilo Dulong, 35, married, lawyer, NBI agent, identified the Statement of Amador Castro on April 17, 1973[39] taken by him and agent Libit. The witness asserted that Castro signed said statement freely and voluntarily after he was informed of his rights contrary to Castro's allegation that it was taken by force. Dulong stated that he had no knowledge of any complaint filed against him in connection with said statement.

The witness also identified the Statement of Castro taken on April 25, 1973, Exhibit "1", which, he maintained,

was voluntarily signed by Castro in his presence and by agents Libit and Pagdonsolan. He was not aware of any complaint filed in connection therewith. Dulog also identified the incriminatory statements of Castro against VALERIO in Exhibit "1" specifically the answers to questions nos. 6, 7, 8, 9, 10.[40]

Accused ELEPAÑO's version is that on March 11, 1973, Amador Castro and his compadre Celestino de la Cruz hired him for P50.00 to drive a PUJ (passenger) type of jeep, but registered as owner, to Cavite City. The following day, March 12, 1973, Castro and his wife, their three children and Celestino de la Cruz started their trip from Bo. Tamayo. Upon reaching San Carlos City, they stopped and Castro alighted from the jeep and went somewhere. After sometime, Castro came back in the company of VALERIO and a boy. When they reached Bulacan, De la Cruz alighted and Castro instructed him to proceed to Quezon City. VALERIO and the boy alighted at Muñoz Market while the rest of the passengers proceeded to Castro's uncle at Roosevelt Avenue arriving there at around 4:00 in the afternoon. The next day, March 13, 1973, Castro told him that they would fetch Celestino at BBB Bulacan. VALERIO and the boy were fetched in front of Pantranco. They then proceeded to Lido Beach reaching said place at around 10:00 in the morning. All his companions went swimming but he remained in the jeep parked 80 meters away. ELEPAÑO watched the things and worked under the jeep fixing one of its parts. He averred that from a distance of 80 meters he actually saw VALERIO take off his clothes and swim away from the shore with Castro and the rest of the family.[41] When ELEPAÑO was in front of the jeep, Castro approached him asking about the boy. Later, Castro's wife informed him of the drowning of the boy whom he did not know. VALERIO and De la Cruz rode with ELEPAÑO as they followed the service car which took the cadaver to the hospital.

ELEPAÑO further declared that the Castros, De la Cruz and VALERIO took charge of the funeral arrangements of the boy. He went inside the funeral parlor for a short time and waited in the jeep later. That afternoon he went home to Pangasinan in the same jeep.

ELEPAÑO denied participation in the commission of the crime and explained his implication by Castro as due to the fact that on March 20, 1973, he beat Castro when the latter intervened in his quarrel with his wife who was jealous of his "querida" by the name of Macaria Panilo. He denied ever giving a wreath for the dead boy. ELEPAÑO, however, admitted having executed an affidavit jointly with Benigno de Leon, Exhibit "B".[42]

To bolster the contention that ELEPAÑO had beaten Castro, Lt. Pedro Posadas, 64, married, police lieu-tenant of San Carlos City Police Department testified that on March 20, 1973, while he was at the City Hall as officer of the day, Amador Castro arrived sporting an injury on the right forehead as well as a contusion of the left cheek and reported that his brother-in-law ELEPAÑO mauled him due to his intervention in a quarrel between his sister and ELEPAÑO. He did not, however, record the incident upon the request of Castro's father who interceded and said that he will try to pacify the children. Posadas allegedly acceded to said request although he was aware that he was violating a rule.[43]

On July 31, 1975, the trial Court, disbelieving the respective alibi of VALERIO and ELEPAÑO, convicted them as follows:

"WHEREFORE, finding the accused, Epifanio Valerio and Domingo Elepaño, BOTH GUILTY, beyond reasonable doubt of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences each one of them to suffer the penalty of DEATH, to indemnify the heirs of the victim the amount of P12,000.00; to pay moral damages in the amount of P5,000.00 and another P5,000.00 as exemplary damages; and to pay their proportionate share of the costs."[44]

Hence, this mandatory review.

Accused VALERIO interposed the following assignments of error:

- 1) The trial court erred in not holding that the evidence for the prosecution does not constitute proof beyond reasonable doubt to support the guilt of the defendant-appellant Epifanio Valerio, Jr. of the crime of murder;
- 2) The trial court erred in not recognizing the defense of alibi invoked by defendant-appellant Epifanio Valerio, Jr.;
- 3) The trial court erred in imposing the death penalty on the defendant Epifanio Valerio, Jr. without making any finding as to the qualifying and aggravating circumstances that may have attended the crime;
- 4) The trial court erred in not acquitting the defendant-appellant Epifanio Valerio, Jr. of the crime for which he was charged.

For his part, the accused ELEPAÑO contended that:

- 1) The lower court erred in finding the appellant Domingo Elepaño criminally liable for the death of the unknown boy who was killed at the Lido Beach in Cavite on March 13, 1973 by Amador Castro, Epifanio Valerio, Jr. and Celestino de la Cruz;
- 2) The lower court erred in finding the appellant Domingo Elepaño guilty beyond reasonable doubt of the murder and imposing on him the death penalty and the obligation to indemnify the heirs of the unidentified deceased in the amount of P22,000.00.

The principal issues for consideration, therefore, are:

- 1) Whether or not the trial Court erred in giving due credence to the evidence of the prosecution thereby discrediting the defense of alibi presented by both accused-appellants Valerio and Elepaño;
- 2) Whether or not the trial Court 4 erred in imposing the death penalty without making any finding on qualifying and aggravating circumstances;
- 3) Whether or not the trial Court erred in imposing on accused-appellants the obligation to indemnify the heirs of the unidentified deceased.

VALERIO's culpability

The evidence supports VALERIO's conviction. From inception to execution, his active participation was evident. He authored the idea of securing insurance on the boy's life, killing him and thereafter collecting the insurance proceeds. VALERIO instructed Castro to have the boy baptized as said papers may be needed later for collection purposes. VALERIO accompanied Castro and the boy to the Cardinal Life Insurance Corporation to apply for the policy. Castro patterned his application for life insurance after a draft that VALERIO had prepared. These were the categorical declarations of Solar, the Insurance Manager. VALERIO contributed his share in the payment of insurance premiums for the first and for the second quarters. When the insured boy did not return to the Castro household, VALERIO told Castro to look for another boy, and to go "easy lang" with the evidence showing that VALERIO supplied Castro with a substitute. It was also VALERIO who suggested that the crime be consummated in Lido Beach, Cavite, instead of in Pangasinan so that plans would not miscarry ("mabubuko").

VALERIO was with Castro and the boy when the latter was taken swimming to deeper waters. Those were the categorical testimonies of Castro and ELEPAÑO. According to ELEPAÑO, VALERIO also assisted in funeral arrangements. VALERIO was at the vigil of the boy until the latter was buried. VALERIO contributed P100.00 for burial expenses.

VALERIO, however, assails the reliability of prosecution witness Amador Castro in that his testimony in Court exculpating ELEPAÑO conflicts with his extrajudicial confession executed on April 25, 1973, Exhibit "1", implicating the same ELEPAÑO. As observed by the Solicitor General, Castro's about-face in respect of

ELEPAÑO should not come as a complete surprise considering their close kinship by affinity. Nonetheless, it does not follow that Castro's declarations in respect of VALERIO are unworthy of credence. Part of a confession may be accepted and the rest rejected (*People vs. Solana*, 116 Phil. 383 [1962]). Portions of the testimony of a witness deemed worthy of belief may be credited (*People vs. Mabuyo*, 63 SCRA 532 [1975]). Except for ELEPAÑO's participation, Amador Castro related in Court essentially the same details embodied in his Statement taken on April 25, 1973 as regards VALERIO's participation in the criminal scheme. In his direct testimony, Amador Castro averred that VALERIO was in the water with the boy and himself when the boy's head was struck by an iron rod. The post-mortem findings confirmed this blow on the head. Moreover, accused ELEPAÑO also testified that VALERIO rode with the group on the day of the incident and that he actually saw VALERIO go into the water with the others.[45] VALERIO's identity and participation have thus been convincingly established.

VALERIO, however, cites inconsistencies in the testimonies of Castro and ELEPAÑO as follows:

- 1) The testimony of Castro that the proceeds of insurance were to be divided 50-50 is incredible as the proceeds of P20,000.00 cannot be divided 50-50;
- 2) The testimony of the accused Elepaño that he saw Valerio with the boy on the day of the incident conflicts with the testimony of Castro that the boy stayed with him, which shows that the prosecution failed to prove that Valerio gave Castro a substitute boy;
- 3) The owner-type of jeep cannot accommodate 9 passengers, namely, spouses Castro and their children, Valerio & the boy, de la Cruz and the driver-accused Elepaño;
- 4) Castro's testimony that Valerio left after the boy was killed conflicts with Elepaño's testimony that he saw Valerio at the funeral parlor;
- 5) The quarrel as between Valerio and Castro is not clear.

As pointed out by the Solicitor General, however, there is nothing incredible about "dividing 50-50" the proceeds of P20,000.00 among three persons. It basically meant an equal division. As regards the type of jeep used, accused ELEPAÑO testified quite clearly that what he drove was a PUJ type of jeep (passenger) but registered as owner. The accommodation of 9 passengers in said jeep was, therefore, not impossible.[46] But even admitting that the testimonies of Castro and ELEPAÑO conflict in some aspects, said discrepancies are minor and do not destroy the probative value of said testimonies on material and crucial points.[47]

That VALERIO had disclosed to Insurance Manager Solar that "Amador Castro, Jr." was not the son of Amador Castro two weeks after the filing of the death claim does not bolster VALERIO's protestations of innocence. As aptly observed by the Solicitor General, VALERIO knew by then that the insurance scheme had failed. The boy's body had been autopsied while it was at the funeral parlor, and a fingerprint examination was made on March 15, 1973 or two days after the boy's death.[48] The discrepancy in fingerprints of the insured boy and the boy who died had surfaced so that VALERIO's aforesaid disclosure to the Insurance Manager was superfluous.

In the face of this overwhelming evidence and the clear and positive identification of accused VALERIO by Castro and ELEPAÑO, VALERIO's alibi cannot be sustained.[49] Well-entrenched is the rule that to establish an alibi, the accused should show that it was impossible for him to have been at the place where the crime was committed at the time of its commission. VALERIO's alibi hinges on the testimony of Dr. Juan Lomibao that VALERIO was "confined" at the San Carlos Medical and Surgical Clinic, San Carlos City, from March 12-14, 1973 for influenza and high fever. Significantly, Dr. Lomibao did not testify that VALERIO was incapacitated and bed-ridden when he went to the clinic for treatment. The Medical Certificate merely stated that VALERIO was "advised to stay in bed till fully recovered in order to facilitate recovery and to avoid relapse". The Patient's

Record dated March 12, 1973 merely "advised confine-ment" and "bed-rest". It was not, therefore, impossible for VALERIO to have been in Lido Beach, Cavite, on March 13, 1973 when the crime was committed. His fever then was down to 38 degrees, Exhibit "5". In *People vs. Limbo*[50] we ruled that the defense of alibi must be clearly and satisfactorily proven, and when it is shown that the accused was ill with fever, but was able to walk around and it was not physically impossible for him to be at the place of incident, said defense is ineffectual. It is of judicial notice that the estimated hours of travel from San Carlos City to Cavite is approximately seven hours. In the case of *People vs. Mesias*,[51] this Court did not consider it impossible for an accused to reach the place of the incident which could be negotiated in a matter of nine to ten hours by boat. For, indeed, alibi is a weak defense and it crumbles when the accused is positively identified as the perpetrator of the crime.[52]

ELEPAÑO's complicity.

But in so far as ELEPAÑO is concerned, we find the evidence of the prosecution insufficient to establish his guilt beyond reasonable doubt. The only evidence linking him to the crime is found in Castro's Statement given to the NBI on April 25, 1973, Exhibit "1". Castro, however, repudiated under oath and in open Court his said Statement in so far as ELEPAÑO is concerned and stressed that ELEPAÑO had nothing to do with the killing.[53] That repudiation results in the wiping out of crucial threads of evidence linking ELEPAÑO to the conspiracy, namely, that Castro had told ELEPAÑO on the way from Pangasinan to Cavite of the plan to kill the boy; that he promised ELEPAÑO P2,000.00 upon collection of the insurance proceeds[54] ; and that ELEPAÑO had clubbed the boy on the head with a piece of iron at sea.[55] No other prosecution witness testified on ELEPAÑO's participation in the conspiratorial criminal scheme. VALERIO declared that he did not know ELEPAÑO. What the evidence establishes merely is that ELEPAÑO was hired to drive the jeep used in transporting the Castros, VALERIO, and the boy to Lido Beach Resort at Cavite City, and that he was paid by Castro for the trip from Pangasinan to Cavite and back to Pangasinan. The circumstances that ELEPAÑO had sent a wreath for the dead boy and that he was present at the funeral parlor[56] do not necessarily lead to the inference that he, too, was part of the conspiracy.

Under the circumstances, well-settled is the rule that extrajudicial statements of an accused implicating a co-accused cannot be utilized against the latter unless repeated in open Court.[57] A written extrajudicial statement of a person who was not presented as a witness to be cross-examined on his supposed statement is not admissible in evidence[58] under the principle of "res inter alios alteri nocere non debet".[59] As this Court, speaking through Chief Justice Fernando, held in *People vs. Lavarias*, 23 SCRA 1301 (1968),

"The decision appealed from would thus predicate a conviction on affidavits executed by two alleged eyewitnesses who thereafter repudiated the same. Independently of the motives, that must have occasioned such a change of heart, the conviction of appellant cannot be sustained. The constitutional rights guaranteed the accused stands in the way of the affirmance of the appealed decision. It is elementary that in all criminal prosecutions, there is a presumption of innocence in his favor and he has the right to the confrontation of witnesses."

It should also be observed that in praying for the conviction of ELEPAÑO, the Solicitor General in his Brief cites facts and circumstances pointing to the criminal liability of ELEPAÑO.[60] However, in his Counterstatement of Facts, doubt is created as to the identity of the person who struck the boy on the head as shown by pertinent portions quoted hereunder:

"Celestino de la Cruz or accused Domingo Elepaño was behind the boy; Amador Castro was at the left while Epifanio Valerio, Jr. at the right side. x x Celestino de la Cruz or accused Domingo Elepaño hit the boy on the head with a piece of iron x x "[61]

Said statements are indicative that the Solicitor General himself is in doubt as to ELEPAÑO's complicity in the offense. In the face of such reasonable doubt, conviction cannot be sustained.

VALERIO's contention that the lower Court erred in imposing the death penalty without making any finding on qualifying and aggravating circumstances is not well taken. The Information alleged the aggravating circumstances of evident premeditation and treachery. While, admittedly, the decision of the trial Court does not specifically discuss the said circumstances in the body nor in the dispositive portion of its judgment, it is obvious that they were taken into consideration by the trial Court in imposing the death penalty. Moreover, such omission may not invalidate the Decision. For in an appeal of a criminal case, the same is thrown open for a complete review of all errors, by commission or omission, as may be imputable to the trial Court.[62]

Treachery, as alleged in the Information, must be considered qualifying and must be appreciated against the accused. The killing of a child is murder even if the manner of attack was not shown.[63] The qualifying circumstances of treachery or "alevosia" exists in the commission of the crime of murder when an adult person illegally attacks a child of tender years and causes his death.[64]

The evidence adduced also establishes the aggravating circumstance of evident premeditation. The rule is settled that evident premeditation is satisfactorily established if it is proved that the accused had deliberately planned to commit the crime and had persistently and continuously followed it notwithstanding that he had ample and sufficient time to allow his conscience to overcome the determination of his will, if he had desired it, after meditation and reflection. It contemplates cold and deep meditation and tenacious persistence in the accomplishment of the criminal act.[65] In the case at bar, from the time the insurance was taken in November, 1972, and even after the boy insured got lost, the culprits did not relent in the pursuit of their scheme for money culminating in the killing of the substitute boy and the filing of a death claim with the Cardinal Life Insurance Corporation.

Lastly, it is claimed that there is no basis for the civil indemnity, "no person having come forward to testify as to the moral and consequential damages he suffered as a result of the crime which should be indemnified. The amount is, therefore, purely speculative." The contention is not well taken. In deciding every criminal case, the civil responsibility incurred by the accused, consequent upon his criminal liability, must be declared because every person criminally liable is also civilly liable.[66] The minimum indemnity in Murder cases, which is P12,000.00,[67] as well as the amount of moral damages, may be adjudicated even without proof of pecuniary loss, the assessment of moral damages being "left to the discretion of the Court, according to the circumstances of each case".[68]

Considering that the aggravating circumstance of treachery qualified the crime and in the absence of any mitigating circumstance to neutralize the generic aggravating circumstance of evident premeditation, the accused, EPIFANIO O. VALERIO, JR., merits the capital punishment imposed by the trial Court. However, for lack of the necessary votes, the same is modified to reclusion perpetua.

WHEREFORE, the judgment with respect to the accused EPIFANIO O. VALERIO, JR. is affirmed, but for lack of necessary votes, the death penalty is commuted to reclusion perpetua.

The accused DOMINGO ELEPAÑO is acquitted due to insufficiency of evidence and on the ground of reasonable doubt and his immediate release from confinement is ordered, unless he is lawfully held for another offense.

With proportionate costs against the accused Epifanio O. Valerio, Jr.

SO ORDERED.

Fernando, C.J., Teehankee, Fernandez, Guerrero, De Castro, Plana, and Escolin, JJ., concur.

Barredo, J., concurs in the opinion of Justice Aquino.

Makasiar, J., death should be imposed on appellant Valerio, Jr., and appellant Elepaño is guilty at least as an accomplice as pointed out by Justice Aquino.

Aquino, J., see attached concurring and dissenting opinion.

Concepcion, Jr., J., for reclusion perpetua.

Abad Santos, J., The crime is heinous and Epifanio O. Valerio has served sentence for less than 10 years. He votes for death.

Ericta, J., votes for death.

[1] T.s.n., Dec. 4, 1973, p. 13, Castro.

[2] Ibid, pp. 14-15.

[3] Statement of Castro on April 25, 1973.

[4] Exhibit "A", Folder of Exhibits.

[5] T.s.n., Nov. 8, 1973, pp. 2-10, 30-31.

[6] Exhibit "B", Folder of Exhibits.

[7] Exhibit "B-1", Folder of Exhibits.

[8] Exhibit "C", supra.

[9] T.s.n., Nov. 8, 1973, pp. 10-30.

[10] T.s.n., Dec. 4, 1973, pp. 20-21.

[11] Ibid, pp. 32-33, 37.

[12] Ibid, pp. 37-45.

[13] Exhibits "G", "G-1", "G-2".

[14] Exhibit "F", Folder of Exhibits.

[15] Exhibit "F-1", supra.

[16] Exhibit "G-2", supra.

[17] T.s.n., Dec. 4, 1973, pp. 1-10.

[18] Exhibit "H"

[19] Exhibit "I-1".

[20] Exhibit "I-2".

[21] T.s.n., Dec. 10, 1973, pp. 10-12.

[22] Ibid., pp. 47-48.

[23] Ibid., p. 51.

[24] Exhibit "2", pp. 372-382, Original Records.

- [25] Exhibit "1", pp. 213-218, Ibid.
- [26] pp. 46-47, Original Records.
- [27] T.s.n., May 20, 1974, p. 25.
- [28] p. 188, Original Records.
- [29] p. 274, Ibid.
- [30] Exhibit "4".
- [31] Exhibit "3", Folder of Exhibits.
- [32] T.s.n., Jan. 6, 1975, p. 14.
- [33] pp. 326-327, Original Records.
- [34] T.s.n., March 11, 1975, pp. 231; April 19, 1975, pp. 2-4.
- [35] Exhibit "4", p. 369, Original Records.
- [36] Exhibit "5", p. 370, Original Records; T.s.n., March 19, 1976, pp. 2-18.
- [37] Exhibit "1".
- [38] T.s.n., May 20, 1974, pp. 2-37.
- [39] Exhibit "2"
- [40] T.s.n., April 29, 1975, pp. 2-8.
- [41] T.s.n., Feb. 14, 1975, p. 20.
- [42] T.s.n., Feb. 14, 1975, pp. 2-18; March 17, 1975, pp. 3-35.
- [43] T.s.n., April 3, 1975, pp. 3-7.
- [44] p. 409, Original Records.
- [45] T.s.n., Feb. 14, 1975, p. 20.
- [46] T.s.n., March 7, 1975, p. 35.
- [47] People vs. Mahinay, 80 SCRA 274, 1977; People vs. Yu, 80 SCRA 382, 1977.
- [48] Exhibit "J-1", Folder of Exhibits.
- [49] People vs. Mahinay, *supra*; People vs. Arcamo, July 24, 1981.
- [50] 49 Phil. 94, 1926.

[51] 8 SCRA 737, 1963.

- [52] People vs. Trawon, 103 SCRA 170, 1981.
- [53] T.s.n., May 29, 1974, p. 63, Castro; T.s.n., May 20, 1974, pp. 12, 15-19.
- [54] Exhibit "A-4-c".

- [55] Exhibit "A-3-c."
- [56] Exhibits "C-1", "C-2".
- [57] People vs. Fraga, 109 Phil. 241, 1960, citing People vs. Izon, et al., 104 Phil. 690, 1958, and other cases.
- [58] People vs. Clores, 100 SCRA 227, 1980.
- [59] People vs. Alegre, 94 SCRA 109, 1979.
- [60] Pp. 15-18, Brief of Solicitor General.
- [61] Pp. 4-5, Ibid.
- [62] People vs. Agbot, G.R. No. L-37641, July 31, 1981.
- [63] Aquino, The Revised Penal Code, Vol. I, p. 36 citing People vs. Laggui, 34 O.G. 1708, 1936.
- [64] U.S. vs. Lansangan, 27 Phil. 474; see also People vs. Ludday, 61 Phil. 216, 1935; U.S. vs. Baul, 39 Phil. 846.
- [65] People vs. Tan, 73 SCRA 288, 1976; People vs. Celestino, 96 SCRA 489, 1980; People vs. Hanasan, 29 SCRA 534, 1969.
- [66] U.S. vs. Guysayco, 13 Phil. 292, 1909; People vs. Ursua, 60 Phil. 252, 1934.
- [67] Resayaga vs. People, 54 SCRA 350, citing People vs. Pantoja, 25 SCRA 468, 1968.
- [68] Art. 2216, civil code; Heirs of Castro vs. Bustos 27 SCRA 327, 1969.

CONCURRING AND DISSENTING

AQUINO, J.:

The crime committed by the accused was kidnapping with murder, a complex crime: a crime against life and liberty of which the nameless boy was the victim.

I concur in the judgement convicting Epifanio O. Valerio of murder. Although death by electrocution is the just retribution for his misdeed, he should be penalized with reclusion perpetua because the most guilty among accused, Amador Castro, was sentenced only to reclusion temporal and Celestino de la cruz was not even penalized.

As to Domingo Elepaño, he should at least be convicted as an accomplice and sentenced to an indeterminate penalty of ten years of prision mayor as minimum to seventeen years of reclusion temporal as maximum. As pointed out by the Solicitor General, the following circumstances show Elepaño's complicity in the commission of the crime:

1. As early as March 11, 1973, Elepaño consented to the request of Amador Castro, his brother-in-law and Castro's compadre Celestino de la Cruz, made to him at San Carlos City (Pangasinan), to drive them the next day to Lido Beach Resort, Cavite.
2. On March 12, 1973, Elepaño drove the jeep that transported "the boy" and the other accused from San Carlos City in Pangasinan to Quezon City and on March 13, to Lido Beach in Cavite. This is undisputed. Elepaño admits these facts.
3. Elepaño's passengers in the jeep, as they left Barrio Tamayo, San Carlos City, were Amador Castro and his

wife Estrella Castro and their three children: Marilou, George and Ernesting, and Celestino de la Cruz.

4. Elepaño stopped the jeep on reaching the City of San Carlos, where Amador Castro alighted. The after more or less an hour, Castro came back with accused Calerio and "the boy" who also boarded the jeep which proceeded to Quezon City where they arrived about four o'clock in the afternoon.

5. In front of Muñoz Market in Quezon City, Valerio and "the boy" alighted from the jeep driven by Elepaño.

6. On the night of March 12, 1973, after the long trip from Pangasinan, Elepaño ate and slept with Amador Castro and others in the house of Amador Castro's uncle at the corner of Roosevelt and Del Pilar Streets, San Francisco del Monte, Quezon City.

7. Before proceeding to Lido Beach on March 13, Elepaño fetched Celestino de la Cruz and picked up accused Valerio and "the boy" who were already waiting in front of the Pantranco bus station.

8. In the morning of March 13 Elepaño went swimming with his co-accused and "the boy" at Lido Beach, a prelude to killing "the boy" while in the water. Elepaño was a party to the killing which was made to appear as a case of drowning.

9. In the Sworn statement of Amador Castro dated April 25, 1973 (Exh. A, A-1 to A-5), Elepaño was identified as the person who hit the boy's head from behind with an iron bar that was taken from the jeep. On autopsy of the boy's body, NBI's medico-legal officer, Dr. Prospero Cabayanan, declared that the cause of death was force applied on the head of the victim (hematoma in the scalp).

10. Estrella Castro, the wife of Amador Castro, was twice investigated by the National Bureau of Investigation (NBI) and she gave signed statements. She mentioned Elepaño as the companion of her husband while taking a bath at Lido Beach at the time "the boy" was drowned. She implicated Elepaño although there was no ill feeling between her and Elepaño, as the latter admitted under cross-examination.

11. Elepaño even sent wreaths for the boy while lying in state at Funeraria Popular as shown by the picture marked Exh. C. Elepaño was present when the picture (Exh. C) was taken. The wreaths bore the dedication; "Alay ni Domingo Elepaño" (Exh. C-1 and C-2). Of course, Elepaño in court tries to deny that fact, saying "When I left, I did not give those flowers." But the point is that only Elepaño would send those wreaths since he had not yet quarrelled with his brother-in-law Amador Castro in a family quarrel that occurred on March 20, 1973, as Elepaño himself said so. The victim lay in state at Funeraria Popular from March 13 to 15, 1973.

The foregoing established facts and circumstances prove beyond reasonable doubt that Elepaño conspired with his co-accused in the murder of "the boy."

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