

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TY SUI WONG, VICTOR NG ALIAS “TY SING LING”; ROQUE DEJUNGCO ALIAS “GERRY”; JOSE DELOS SANTOS ALIAS “PEPENG KOMANG”; ROMUAL...

G.R. No. L-32529. May 12, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by Victor Ng and Jose de los Santos from the decision of the Court of First Instance of Rizal, Branch V, Quezon City, in Criminal Case No. Q-7612, finding them guilty of Murder and imposing upon them the penalties of an indeterminate penalty from ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum with respect to Victor Ng, and reclusion perpetua to Jose de los Santos.

Victor Ng and Jose de los Santos, together with Roque Dejungco alias Gerry, Romualdo Carreon alias Omeng, Juanito Ang y Dejungco, Ty Sui Wong, John Doe and Peter Doe, were charged with Kidnapping with Murder before the Court of First Instance of Rizal, Quezon City Branch, as follows:

"That on or about the 21st day of December, 1966 in Quezon City, Philippines, the accused ROQUE DEJUNGCO, JOSE DE LOS SANTOS, ROMUALDO CARREON and JUANITO ANG, pursuant to a conspiracy previously had with their co-accused TY SUI WONG, VICTOR NG, JOHN DOE and PETER DOE, did, then and there, willfully, unlawfully and feloniously, by means of force and intimidation, at night time purposely sought to facilitate the commission of the crime, and with the use of a motor vehicle, kidnap one MARIANO LIM at the latter's residence at No. 36 Kanlaon, Quezon City, after which said accused, in further pursuing their conspiracy aforesaid, did, then and there employ personal violence upon the person of said MARIANO LIM, by then and there, with intent to kill, with evident premeditation, with treachery, by taking advantage of their superior strength, and in consideration of the price or reward given to them, and promised by, their co-accused TY SUI WONG, VICTOR NG, PETER DOE and JOHN DOE, attack, assault, and employ personal violence upon the person of MARIANO LIM, by stabbing the latter with a bladed weapon thereby inflicting upon the said MARIANO LIM serious and mortal wounds which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said MARIANO LIM in such amount as may be awarded them under the provisions of the civil code.

"CONTRARY TO LAW." (CFI Rollo, pp. 1-2).

Upon arraignment, Victor Ng, Roque Dejungco, Jose de los Santos, Romualdo Carreon and Juanito Ang pleaded not guilty on February 20, 1967,[1] while Ty Sui Wong also pleaded not guilty on April 14, 1967.[2] Thereafter, trial commenced on May 19, 1967, and ended on December 23, 1968 before Judge Honorato B. Masakayan, after which both the prosecution and the defense submitted their respective memoranda. Meanwhile, on January 4, 1968, upon motion to dismiss filed on December 26, 1967 by the counsel for accused Ty Sui Wong,[3] the Court of First Instance of Rizal issued an Order[4] discharging said accused Ty Sui Wong for failure of the prosecution

to establish a prima facie case against him.

On January 20, 1970, the afore-mentioned decision finding the accused guilty of murder, qualified by reward, was promulgated and each of said accused were sentenced as follows:

"(a) Jose de los Santos and Gerry Dejungco, for murder, without any modifying circumstance as already explained in noticing the existence of one mitigating circumstance, that of not having intended to commit so grave a wrong as that committed, offsetting the aggravating circumstance of treachery, to suffer reclusion perpetua.

"(b) Victor Ng, also for murder, with the mitigating circumstances of lack of intent to commit so grave a wrong as that committed and that of passion, without any aggravating circumstance to offset them, to suffer the penalty one degree lower than of the prescribed penalty of from reclusion temporal, maximum to death (Art. 64, par. 5, R.P.C.). Under the Indeterminate Sentence Law he is hereby sentenced to a prison term of from 10 years of prision mayor, as minimum to 17 years and 4 months of reclusion temporal, as maximum.

"(c) Romualdo Carreon, also for murder, but only as accomplice, as already explained, to suffer a penalty lower by one degree than that prescribed for the crime of murder, or prision mayor, medium to reclusion temporal medium. Pursuant to the Indeterminate Sentence Law, he should suffer an indeterminate penalty of from 10 years of prision mayor, as minimum to 17 years and 4 months of reclusion temporal, as maximum.

"(d) For Juanito Ang, for murder, but with the privilege mitigating circumstance of being only 16 years old (Art. 68, R.P.C.) to suffer the indeterminate penalty of from 10 years of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum.

"All the foregoing accused are furthermore sentenced to the accessory penalties prescribed by law, to indemnify the heirs of the deceased, jointly and severally, in the sum of P12,000 (People v. Pantoja) and in the order of precedence as to principals and accomplice as provided by law, without subsidiary imprisonment in case of insolvency, and to pay said heirs the sum of P50,000 as moral damages, likewise jointly and severally, with proportionate costs." (CFI Rollo, pp. 615-616).

From the above quoted judgment of conviction, accused Victor Ng, Jose de los Santos, Roque Dejungco and Romualdo Carreon appealed.[5] Roque Dejungco, however, withdrew his appeal before the records could be forwarded to the Supreme Court,[6] and Romualdo Carreon abandoned his appeal while the same was pending before the trial court, thus leaving Victor Ng and Jose de los Santos as the only appellants.[7] Accused Juanito Ang did not appeal and was committed to prison to serve his sentence on March 25, 1970.[8]

The following statement of facts contained in the brief of the Solicitor General are not disputed:

"Earlier that fateful day of December 21, 1966, which was the victim's 30th birthday, he and his mother Chua Yem, attended mass in a church at Libertad St., Pasay City, and thereafter, went driving around the metropolitan area in his jeep to see the different Christmas decorations put up by big business establishments during the Yuletide season. (tsn, pp. 26-29, Sept. 15, 1967, testimony of Chua Yem). The two finally arrived at their residence at 36 Kanlaon St. at about 11:00 o'clock that night. The mother alighted from the jeep, while waiting for the housemaid, Angelita Failona, to open the gate. (tsn, p. 31, *ibid.*; pp. 11-12, 15-18, 35, July 7, 1967, testimony of Failona). It was while the said maid was opening the gate that two men suddenly approached the victim from each side of the jeep. One of the two, positively identified as Juanito Ang, went to the left of the victim, placed a hand on the victim's mouth, poked a sharp-pointed instrument at the victim (see Exh. '0-5', p. 31, Rec. of Exhibits) and forced him to move aside from the driver's seat. The other man, also positively identified as Romualdo Carreon, went to the other side of the jeep, pulled the victim towards him, thus placing the victim between him and Ang. (tsn, pp. 16-18, 21-23, 73, July 7, 1967, testimony of Failona; pp. 31-33, Sept. 15, 1967, testimony of Chua Yem; pp. 10, 36, Aug. 25, 1967, testimony of Lim Chu Beng).

"Ang and Carreon were categorically identified at the trial by the mother, the brother and the maid as the same two persons who forcibly took Mariano Lim that night of December 21, 1966. (tsn, pp. 21-22, July 7, 1967, testimony of Failona, p. 72, July 7, 1967, testimony of Lim Chu Beng; pp. 36-37, Sept. 15, 1967, testimony of Chua Yem). Their identification was made easy because on the night in question, the vicinity of the family residence at Kanlaon St. was well lighted by two mercury lamps, one on a Meralco post 14 meters away and just across the street, and the other, hanging over the middle of the street, 8 meters from where the jeep was then parked. (tsn, pp. 34-35, July 7, 1967, testimony of Failona; pp. 6-9, Aug. 25, 1967, testimony of Lim Chu Beng; also, Exh. 'C', p. 4, Rec. of Exhibits).

"The mother shouted after his son while the maid ran back inside the house and informed a brother of the victim, Lim Chu Beng, then watching a television show, about what was happening outside. (tsn, pp. 23-24, July 7, 1967, testimony of Failona, pp. 65-68, July 7, 1967, testimony of Lim Chu Beng; p. 34, Sept. 15, 1967, testimony of Chua Yem). Lim Chu Beng immediately ran towards the gate of their house and saw two men in the jeep with his brother. He rushed towards them only to be met with a kick in the stomach, which sent him sprawling to the ground, by the man identified as Carreon. (tsn, pp. 68, 71-74, July 7, 1967, testimony of Lim Chu Beng; pp. 31, 35, Sept. 15, 1967, testimony of Chua Yem). The jeep with Ang at the steering wheel then backed out, shifted to forward gears and sped towards the direction of Dapitan Street. The mother and brother gave chase up to the corner of Kanlaon and Dapitan streets but their efforts proved to be a futile gesture. (tsn, p. 76-A, July 7, 1967, testimony of Lim Chu Beng; p. 37, Sept. 15, 1967, testimony of Chua Yem).

"Mother and son, together with the maid, proceeded to Precinct No. 1 of the Quezon City Police Department, hereinafter referred to simply as QCPD, to report the incident. The officer on duty assigned a man to accompany them to the headquarters of the said police department where the incident was entered in the police blotter as Case No. 14041 for robbery hold-up. (Exh. 'F'; also Exh. 'F-1'; tsn, pp. 10-11, August 25, 1967, testimony of Lim Chu Beng; pp. 38, 65-66, Sept. 15, 1967, testimony of Chua Yem; pp. 41-47, October 25, 1967, testimony of Pat. Ricardo Santos; pp. 10-12, Nov. 21, 1967, testimony of Det. Ruiz). Lim Chu Beng gave to the police a description of the two men who snatched his brother, the place where the latter worked (which was at Tong's Glassware at 226 Villalobos St., Quiapo, Manila) and the fact that his brother was a good friend of Ruby Ng, the daughter of the victim's employer, Ng Tong. (tsn, pp. 12, 16-18, Nov. 21, 1967, testimony of Det. Ruiz.)" (pp. 7-9)

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"In the early morning of December 22, 1966, at about 6:00 o'clock, Maria Abrogar, a cook in the household of Henrick Bratt of the Factor Compound, Parañaque, Rizal, saw at a dead end street inside the aforesaid compound, the inert body of a man whom she thought to be merely in a state of a deep drunken stupor. She informed Quirino Asido, gardener in the same household, of what she saw, urging him to go to the fellow and invite him for a cup of coffee. (tsn, pp. 15, 21-22, 25-26, May 19, 1967, testimony of Quirino Asido). On the insistence of Abrogar, Asido finally consented to do her bidding and went to the 'drunk' lying on the street. Instead, he found a man already dead, his mouth gagged with a handkerchief. (tsn p. 27, *ibid.*).

"Asido forthwith went to the Municipal Building of Parañaque, Rizal, to report his ghastly discovery and the police department of that town immediately responded by sending two policemen to accompany Asido back to the scene to investigate. (tsn, pp. 41-42, *ibid.*). One of these policemen, Lorenzo Gabriel, described the dead man as around 35 years of age, wearing dark gray pants and a T-Shirt. (tsn, pp. 76-77, May 19, 1967, testimony of Lorenzo Gabriel). Rizal Assistant Provincial Fiscal Bienvenido Reyes later joined the investigation upon being informed of the matter and conducted his own inquest. Preliminary findings showed that the dead man had a stab wound on his chest. (tsn, pp. 87-88, *ibid.*). Thereafter, the body was brought to the Funeraria Quiogue for examination by the proper medico-legal officer. (tsn, p. 90, *ibid.*).

"On December 23, 1966, at about 11:30 o'clock in the morning and after a futile wait for the body to be identified, Dr. Ernesto Brion of the National Bureau of Investigation performed an autopsy on the cadaver of

the dead man. (tsn, pp. 52, 60, 68, Oct. 25, 1967, testimony of Dr. Brion). The Necropsy Report prepared by him and marked as Exhibit 'G' at the trial contained the following findings:

'Paller, conjunctivae and integument. No evidence of beginning putrefaction. Ant bites abundant, all over integument. Mouth gagged with handkerchief, knotted at nape. Blood oozing from mouth. Stab wound, chest left, anterior, 2.0 cm. at level of 3rd intercostal space, 1.5 cm. from anterior median line, running downwards and slightly laterally, edges clean cut, extremities sharp, directed backwards, medially and almost horizontally, thru the 3rd intercostal space and grazing the upper border of 4th rib, into left thoracic cavity, then into the pericardial cavity, perforating the pulmonary vein, left superior, and puncturing the hylus of lung left and small bronchi, with an approximate depth of 12.00 cms. Trachea-bronchial tree contains blood, Hemopericardium, 150 cc. Hemothorax, left side, 960 cc. liquid and clotting blood, Paller, brain and other visceral organs. Stomach contains partly digested rice particles mixed with blood.

'Cause of death: Stab wound of left chest.' (See p. 10, Rec. of Exhibits.)

"Before performing his post-mortem examination, Dr. Brion took pictures of the deceased as well as his fingerprints for possible identification. (tsn, pp. 56-60, 68-69, Oct. 25, 1967, *ibid.*; Exhs. 'I', 'I-1' to 'I-3', 'I-3-a'; also, Exh 'I-4', pp. 13-14, Rec. of Exhibits). According to the doctor, the wound could have been caused by a sharp-pointed instrument such as a dagger, fan knife or such similar instruments (tsn, p. 64, Oct. 25, 1967) and the death blow must have been delivered with the assailant holding the death weapon with his right hand, the victim to his left, with both of them either sitting or standing together. (tsn, pp. 66-67, *ibid.*). The body could have been dead for more than one day when he conducted the autopsy. (tsn, p. 61, *ibid.*).

"The body was to remain unidentified until January 20, 1967, when a brother of the dead man, Camilo Lim, after hearing a radio broadcast about the unidentified body at the Funeraria Quiogue, went to the said funeral parlor and identified the dead man as his brother, Mariano Lim, who had been forcibly taken away from in front of the family residence at 36 Kanlaon St., Quezon City, on the night of December 21, 1966. (tsn, pp. 53-55, 69-70, 71-73, *ibid.*, Exhs. 'H' and 'H-1', pp. 11-12, Rec. of Exhibits; also, tsn, pp. 12-13, July 7, 1967, testimony of Lim Chu Bang; pp. 36-38, Nov. 21, 1967, testimony of Det. Godofredo Ruiz)." (pp. 4-6).

The following facts, according to the trial court, established beyond doubt the criminal culpability of the appellants Victor Ng and Jose de los Santos, and their other co-accused, thus:

"Assigned to the case as reported to the Quezon City Police Headquarters and entered as Case No. 14041 for robbery hold-up (Exhibit F) Det. Godofredo Ruiz interviewed first the complainant, Lim Cho Beng, from whom he got a description of the hold-up men, and information as to where Mariano worked and his having a girl friend named Ruby Ng, the daughter of the owner of Tong's Glassware at Villalobos Street, Quiapo, Manila, where the victim worked. He then went to the glassware store to interview Ruby Ng and her father, but he received no information of value in the solution of the case. On December 24, 1966, Det. Ruiz went again to the residence of Mariano Lim, this time to interview his father Lim Hok, Chua Yam, the mother, and Angelita Faylona, the housemaid. It was then that he learned that one evening in September or October, 1966, one Victor Ng and his father, Ty Sui Wong, both armed, together with two other companions, went to the Lim residence looking for Mariano, but when informed that Mariano was still out, Ty Sui Wong told Mariano's father to tell his son (Mariano) to keep away from Ruby Ng, otherwise he would be liquidated. Det. Ruiz also learned in the course of his interview with those in the Lim family residence and those in the glassware store at Quiapo, Manila, that shortly before December 21, 1966, Victor Ng and Mariano Lim figured in an encounter in front of the Tong's Glassware Store in which Mariano was mauled. From these incidents, Det. Ruiz marked Victor Ng as a suspect, into whose personal circumstances and background he was thus prompted to make

proper inquiries from the Bureau of Immigration where he got his photograph. From Caloocan City Treasurer's Office he also learned that Victor Ng was the Manager of Starlite Manufacturing Co. at Kangkong, Quezon City.

"From then on, Det. Ruiz tried to contact Victor Ng and was able to do so only on February 6, 1967 at the latter's factory compound. He had brought along with him to the compound a Chinese-speaking companion, and during that meeting, this companion informed Det. Ruiz that he heard Victor Ng, speaking in Chinese, telling the Chinese persons in the factory that he would try to escape. This prompted the detective to call for assistance from his headquarters, and the timely arrival of reinforcement foiled Ng's escape attempt, although Ng had already managed to get out of the compound. Victor Ng was then brought to the Detective Bureau of Quezon City Police Department. In the presence of the Chief of the Detective Bureau, Mr. Arcilla of the Manila Times, Mr. Tan of the Fookien Times, and Mr. Lim of the Greater East Asia Newspaper, he was interrogated about the slaying of Mariano Lim. Victor Ng at first stood firm in his denial of any knowledge about the killing, but when confronted with a picture of the dead man taken by the NBI during the autopsy, he looked aghast with fear and remained speechless. In a short while, however, Victor Ng broke down with an admission that he had something to do with the crime. Det. Ruiz then asked Victor Ng if he was willing to give a written statement, and receiving an affirmative answer, he took down Ng's statement after reminding him of his constitutional rights as shown in the statement itself (Exhibit M). The statement consists of three pages in the form of questions and answers in Tagalog, the language he preferred to speak in, duly and voluntarily signed by him after reading it, in the presence of the detective and other witnesses. Det. Ruiz then brought Victor Ng to Fiscal Solano for the verification of his statement. Again Victor Ng was asked to read his statement, which he did, even making corrections therein, and thereafter asked to sign it if the contents were true. Victor Ng signed voluntarily on all the pages of his statement.

"In the course of the interrogation of Victor Ng, as well as in his signed statement (Exhibit M), he confessed to having contacted his classmate, Gerry Dejungco, to play a leading role in the commission of the crime he wanted committed, and that it was Dejungco who arranged for the execution of the hideous plot upon Ng's offer to pay the sum of P2,000 for the job. With Dejungco's name thus mentioned, his apprehension quickly followed, at about 1:00 a.m. of the next day, February 7, 1967. Upon being investigated, Dejungco also confessed and named Jose de los Santos and Juanito Ang as confederates. Apprehension of these two was also effected without loss of time, the former in the early morning of the same day in his residence at 235 Miguelin, Sampaloc, Manila, the latter in Welfareville, later in the day at 10:00 o'clock a.m., De los Santos and Ang also signed their respective confessions on the same day. The only remaining confederate named in the confession of De los Santos and Ang still to be apprehended and questioned by that time was Romualdo Carreon. He voluntarily appeared at the QCPD Headquarters on February 13, 1967, accompanied by Ernesto Lorenzo and Benjamin Gardiola upon being informed by his father that Det. Ruiz had been looking for him for questioning about this case. On the same day, Carreon made and signed his confession. Thus, in the re-enactment of the crime on February 7, 1967, immediately after confessions have been taken down as aforesaid, only Carreon was not there to take part.

"In his signed confession (Exhibit N) Dejungco gave the most compact account of the plan for the killing of Mariano Lim, as well as its actual execution, as follows:

'Q: Do you know personally the cause of his death?

A: Yes, sir. . . . This is the story. In November 1966, I met Mr. Victor Ng at a Chinese Club somewhere at Pasay City. He informed (me) that he had again a quarrel with Mariano Lim Cho Kuan. I told him if I could do any help to him. He told me 'You see Gerry I know you from childhood and I am cognizant that you know hoodlums at Sampaloc . . . You make a preparation to contact two people who can liquidate Mariano . . . and I'll answer for the expenses'. . . After five days, I met him again in the same place, and told me that he will be

leaving for Zamboanga and Cebu City, and further told me that if he will leave by the 15th of December 1966, and if he will arrive on the 23rd of December, 1966, he doesn't want to see Mariano alive. So I contacted two people by the name of JUANITO ANG alias Johnny, he is my cousin and one Pepeng Komang, alias JOSE DE LOS SANTOS, alias JOSE VILLANUEVA. I told these two people about the plan of Victor Ng, and they told me that they are ready at my disposal.'

"The confession of Dejungco was taken down after the usual preliminary interrogations during which he admitted his participation in the dastardly crime. As in the case of Victor Ng, he was reminded of his constitutional rights before he gave his statement, allowed to read, and even correct, said statement before signing it, which he did voluntarily before Fiscal Solano who also asked Dejungco before the latter affixed his signature, to read again his statement and to sign it if the same was true.

"The statement of Jose de los Santos alias 'Pepeng Komang' (Exhibit K) was taken before Pat. Marcos Viñas on the same morning of his apprehension, February 7, 1967, at about 6:30 a.m. In its most important part his confession reads as follows:

'04. T: Anong pagkakasala ang ibig mong sabihin?

S: Pagpatay sa isang tao.

05. T: Ano ang pangalan ng taong napatay na iyong sinasabi?

S: Mariano daw po.

06. T: Papaano mo nalaman na Mariano ang pangalan ng napatay na tao?

S: Sinabi ho sa akin ni Gerry.

07. T: Sino ba itong si Gerry?

S: Siya po. (Affiant pointing to the person of ROQUE DEJUNGCO Y CHAN, alias Gerry, 25 yrs. old, single, native Manila and residing at 235 Miguelin St., Sampaloc, Manila).

08. T: Ano ang kaugnayan nitong si Gerry o Roque Dejungco sa pagkamatay ni Mariano?

S: Kasama po siya sa pagpatay bilang pangalawang mastermind. Siya ang bilang boss namin sapagkat siya ang nag-uutos.

09. T: Ano ang ibig mong sabihin ng salitang 'namin'?

S: Ang ibig ko pong sabihin ay ako, si Omeng na ang tunay na pangalan ay Romeo Carreon at Juanito Ang.

10. T: Ano naman ang kaugnayan mo sa pagkamatay ni Mariano?

S: Kasama po ako sa pagpatay kay Mariano.

11. T: Bakit nasabi mo na pangalawang mastermind si Gerry o Roque Dejungco, sa pagpatay kay Mariano. Mayroon pa bang pangunang mastermind?

S: Dahil po ang pangunang mastermind bale ay si VIC.

12. T: Sino itong Vic na sinasabi mo?

S: Siya po. (Affiant pointing to the person of VICTOR NG alias Victor Ty with Chinese name of Ty Sing Ling).

13. T: Kaylan ka nakasama sa pagpatay kay Mariano?

S: Bago po magpasko ng Diciembre 1966 hinde ko po matandaan ang petsa.

14. T: Saan ninyo pinatay si Mariano?

S: Sa Parañaque, Rizal po.

15. T: Sino-sino ang kasama mo ng patayin ninyo si Mariano?

S: Si Gerry, si Juanito Ang, si Jose de los Santos at Omeng o Romeo Carreon.

16. T: Isalaysay mo nga ang buong pangyayari sa pagkapatay ninyo kay Mariano?

S: Ganito po ang pangyayari niyan. Nuon pong Nobiembre 1966 ay nasabi sa akin ni Gerry na may bibirahin tao kami. Sabi niya ay ipinapapatay ni Vic na kaibigan ni Gerry. Sabi ni Gerry sa akin ay sumama daw ako. Sabi niya ay magbabayad daw si Vic ng halagang limang libo para mapatay si Mariano. Pumayag naman ako dahil sa nademonyo na ako sa sinabi ng aking kumpare.

17. T: Sinong kumpare ito?

S: Gerry po, iyong anak ko ay inaanak niya.

18. T: Ituloy mo ang salaysay mo?

S: Nasabi din niya sa akin kung sino-sino ang kasama namin. Sabi niya ay si Omeng at Juanito pati siya ay kasama. Pagkatapos ng mga tatlong araw pagkasabi sa akin ni Gerry ang balak na pagpatay kay Mariano ay nagkita-kita kaming apat sa bahay ni Omeng. Kaming apat ngayon ay nagpunta sa Quiapo sa Villalobos sa glass store na pinagtatrabahuhan ni Mariano. Kaya kami ay nagpunta doon ay pinamumukhaan sa amin ni Gerry itong si Mariano. Nuong araw na iyon una kong nakita si Mariano.

19. T: Anong oras mo unang nakita si Mariano?

S: Mga alas 8:30 ng gabi po.

20. T: Ituloy mo ang salaysay mo?

S: Matapos naming makita at mamukhaan si Mariano ay naghiwahiwalay na kami.

21. T: Kailan uli kayo nagkita tungkol sa bagay na isinasalaysay mo?

S: Sila Vic po at Gerry ay madalas magkita pa pero ako ay nito na lang na gabi ng kunin na si Mariano sa bahay niya sa Quezon City uli nakasama.'

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25. T: Ituloy mo ang iyong salaysay?

S: Sumakay nga po ako ng jeep at sa unahan ako umupo duon sa kanan. Napagusapan namin kung saan bibirahin o papatayin si Mariano at sabi ni Juanito ay alam niya kung saan. Nagpaikot-ikot muna kami sa bandang Pasay at Dewey Blvd. Matapos ang isang oras humigit-kumulang ay nakarating kami ng Parañaque at sa isang kalye sa may gawaan ng Canada Dry ay kumunan kami. Hindi ko lang alam ang kalye. Mga isang daan metro buhat sa pinaglikuan namin ay inihinto ni Juanito ang jeep. Bumaba si Omeng at inilipat namin si Mariano sa harap na upuan tapos pinagitnaan namin ni Juanito at ako. Ang ginawa ni Omeng ay tinalian ang bibig ng isang panyo na galing kay Juanito si Mariano. Matapos talian sa bibig ay hinawakan ni Omeng at Gerry ang dalawang kamay ni Mariano buhat sa likuran. Nuon po ay nasa loob pa ng jeep si Mariano. Ang ginawa ko ay tinanong ko kung saan ang puso ni Mariano at sumagot ang isa sa amin na sa kaliwa aniya. Ang ginawa ko ay iniakbay ko ang kaliwang kamay ko kay Mariano at sinaksak ko ng minsan sa bandang kaliwang dibdib.

26. T: Nasaang gawi mo si Mariano ng saksakin siya?

S: Nasa kaliwa ko siya. Nakaupo kaming pareho sa unahang upuan ng jeep. Si Juanito naman ay nasa kaliwa ni Mariano.

27. T: Ano pa ang nangyari?

S: Ang ginawa namin ni Omeng ay binuhat namin si Mariano at itinapon namin sa tabi ng daan mga dalawang metro ang layo sa daan. Nagpaandar uli si Juanito ng jeep at nagmaneobra para bumalik kami sa aming pinasukan. Tumuloy kaming pabalik sa Pasay at pagdating sa Pasay ay bumaba na ako pero bago ako bumaba ay binigyan niya ako ng sampung piso ni Gerry. Balak ni Juanito ay ibenta ang jeep at sabi ko ay sa parteng iyon ay ayaw ko na kaya bumaba na ako. Sila naman ay tumuloy na patungong Maynila. Mga alas-3 o alas-2:30 ng umaga nuon din ay sumakay ako sa isang jeep pabalik sa Quiapo at umuwi na ako sa amin. Pagkatapos ng dalawang araw ay nagkita kami ni Gerry, Omeng at Juanito sa aming lugar sa Miguelin sa bahay nila Omeng at napagusapan naming ang tungkol sa ibibigay sa amin. Nabanggit duon ni Gerry na limang libo ang ibibigay ni Victor Ng sa amin pero ang naibigay lang nitong magbigayan na ay umabot lang sa dalawang libong piso. Wala pa aniya ni Gerry si Victor Ng at nasa Cebu City pa kaya naghintay kami.

Pagkatapos ng isang linggo ay nagpunta si Gerry sa bahay namin at dala niya ang otso sientos sinkuenta pesos bilang bayad daw ni Victor sa amin. Ang limang daan ay ibinigay sa akin. Ang natira ay napunta sa kanila nila Omeng at Juanito. Pagkatapos ng limang araw ay nagkita uli kami ni Gerry at sabi niya ay binigyan daw siya uli ng tres sientos pesos ni Victor. Napunta sa akin duon ay isang daan at ang iba ay sa kanila. Pagkatapos ng siyam na araw buhat nuong pangalawang pagbibigay ng pera ay binigyan uli ni Vic ng tres sientos pero wala nang napunta sa akin duon. Bali ang napagnatian namin ay umaabot sa kulang na dalawang libo at sabi ni Gerry ay

tumatawad daw si Victor sa usapang limang libo. Iyon namang kakulangan sa dalawang libo ay napunta na siguro kay Gerry.'

"Also before Pat. Marcos Vinas, Juanito Ang gave his statement (Exhibit L) at about 1:20 p.m. of the same day of his arrest on February 7, 1967, the most revealing part of which reads:

'11. T: Isalaysay ma nga ang buong pangyayari sa pagkapatay ninyo sa isang lalaki na iyong sinasabi?

S: Ako po ay umiskapo buhat sa Welfareville nuong ika-13 ng Disyembre 1966 at umuwi ako sa amin sa Miguelin. Mga dalawang araw pa lang na ako ay nakalalabas ay naikuwento sa akin ni Gerry na aking pinsan na may papatayin daw sila na isang intsik na may atraso sa kay Gerry. Nuong a-19 ng Disyembre gabi nuon mga alas-7 pasado ay sinabi sa akin ni Romeo Carreon na itutuloy na ang balak nila. Sila ay ang tatlo nina Gerry, Jose de los Santos at Romeo Carreon. Kinaumagahan ay pumunta ako sa bahay nina Romeo sa Arevalo at sinabi niya sa akin na pumaltos daw ang lakad nila. Ang ibig sabihin niya ay sila nina Jose de los Santos, Gerry Dejungco at Romeo. Nuong a-21 ng Disyembre gabi rin mga alas-9 ay kagagaling ko lang sa inuman sa may Constancia. Pauwi na ako noon ng dumaan ako kina Romeo uli para makipagusap. Nadatnan ko sina Romeo, Jose at Gerry na nag-uusap. Ang paksa ng usapan ay tungkol sa papatayin nilang intsik. Dahil po sa kalasingan ko ay nakisabat na ako sa usapan. Sinabi ko na sasama na rin ako sa lakad nila. Pagkatapos ng mga 20 minutos na kami ay naguusap ay napagkayarian na si Jose ang papatay sa intsik at ako ang magmamaneho ng jeep. Sinabi sa akin na ang intsik na papatayin ay may jeep at ako nga ang magmamaneho ng jeep. * * * * * Sumakay siya sa jeep. Lumabas na uli kami pabalik sa gawing Maynila. Hindi pa kami masyadong nakalalayo ay tinanong ko si Romeo, Gerry at Jose kung may nakuha silang pera. Sabi sa akin ay mayroon nubenta pesos na nasa kay Gerry na. Nuong malapit na kami sa gawaan ng Darigold ay iniabot sa akin ni Gerry ang bente pesos. Tumuloy na kami ng rotunda ng Baclaran. Pagdating duon ay sabi nila Gerry at si Jose at Romeo na lilipat na sila ng jeep na de pasahero kaya bumaba na sila, at nasabi ko pa na akin na lang ang jeep. Ang sagot nila ay sa akin ng buong buo ang jeep. Kumaliwa na akong patungong Dewey at tumuloy ako ng Maynila. Nagdaan ako ng may Ayala. Tumuloy sa amin sa di kalayuan sa amin sa Miguelin. Ipinarada ko doon ang jeep na may mga kalahating oras at umuwi ako para magpalit ng damit dahil sa may dugo ang manggas ng aking polo. Naglibot-libot ako sa may lugar namin at naalala ko na ang ipinanaksak ni Jose sa intsik ay nasa compartment ng jeep. Ang ginawa ko ay kinuha ko at inihagis ko sa may kanto ng Arevalo at M. de la Fuente. Tumuloy pa ako ng Sta. Mesa at sa kanto ng Sta. Mesa at De la Fuente ay ipinarada ko ang jeep sa may restaurant at nagalmusal na ako. Mag-aalas 5:30 media na nuon ng umaga. Pagkaalmusal ko ay umikot uli ako dala ang jeep at may nasalubong akong isang batang nagtitinda ng diaryo at bumili ako ng Manila Times. Pagtingin ko ay nakita ko ang balita na: 'Chinese Trader Kidnapped'. Binasa ko at nalaman ko na alarmado na ang jeep. Natakot ako ngayon. Dineretso ko ang Economia patungong España at tumawid ako ng España. Kinaliwa ko sa P. Florentino ang jeep at di kalayuan sa sine Trabaho ay ipinarada ko ang jeep paharap sa UST sa kaliwa ng P. Florentino. Pinunasan ko ng basahan na nakuha ko sa jeep ang talsik ng dugo sa salamin at itinaapon ko ang basahan sa di kalayuan ng jeep. Naglakad na lang akong patungong España at umuwi na ako sa Miguelin. Mga alas 10 ng umaga ding iyon ay pumunta ako sa bahay ni Romeo at ipinakita ko ang diaryo na may balita. Nagtawa lang si Romeo tapos ay bumalik na ako sa amin at natulog na ako. Nuong bisperas ng pasko ay nagkita kami ni Gerry sa tapat ng bahay namin at tinanong niya ako kung ako ay may pera at sabi ko wala at binigyan niya ako ng limang piso. Bukod duon ay wala na akong naging pera buhat sa kanila at pagkalipas ng dalawang araw ay nabasa ko sa Manila Times na nakuha na ang jeep ng mga pulis. Ibinalita ko uli kay Romeo at sabi niya hindi bale. Nuong 27 ng Disyembre umaga ay ipinahuli ako ng aking Tatay sa Manila Police at dinala ako sa Precinto 2 at nuong 29 ng Disyembre 1966 ay ibinalik ako sa

Welfareville.'

"In the case of Romualdo Carreon, his statement (Exhibit J) was given before Det. Pablo C. Pascual on the same day he presented himself on February 13, 1967, at the QCPD headquarters quoted in its more significant parts as follows:

'15. T: Paano mo nakilala si Mariano Lim at ang kanyang jeep?

S: Itinuro po sa akin ni Gerry noong Disiembre 10, 1966, nang magkasama kami sa Maynila at makita niya na magdaan sa Avenida Rizal.

16. T: Ano ang kulay ng jeep ni Mariano Lim?

S: Kulay pula po, pero hindi ko matandaan ang numero ng plaka.

17. T: Ng magdaan ba ang jeep sa Avenida Rizal at ituro sa iyo ni Gerry ay sino ang may dala ng jeep?

S: Ang nagmamaneho po ay isang lalaki at kasama sa jeep si Mariano Lim.

18. T: Bukod sa sampong piso na naibigay sa iyo ni Gerry ikaw ba ay nakatanggap ng salapi o ano mang gantimpala sa ginawa ninyong pagpatay na ito?

S: Noon pong Disiembre 22, 1966, ay binigyan ako ni Gerry ng dalawang daang piso (P200.00).

19. T: Matapos na maibigay sa iyo ni Gerry ang dalawang daang piso, ano ang sinabi sa iyo?

S: Ang sabi niya ay iyon ang aking kaparte sa pagkakapatay namin kay Mariano Lim, at si Jose raw ay binigyan na niya ng limang daang piso (P500.00) at si Juanito ay hindi pa kundi iyon lang beinte pesos (P20.00). Makalipas ang bagong taon ay binigyan pa ako uli ng isang daang piso ni Gerry.

20. T: Sinabi ba sa iyo ni Gerry kung Sino ang nagbigay ng pera?

S: Sinabi po at ang sabi ay si Victor Ng.

21. T: Ang mga kasama mong pumatay kay Mariano Lim, nasaan ngayon?

S: Ayan po sila (Affiant pointing to the persons of ROQUE DEJUNGCO y CHAN alias 'GERRY', JOSE DE LOS SANTOS alias 'PEPE', and JUANITO ANG y DEJUNGCO, who were all inside the Bureau).

22. T: Nasaan ngayon si Victor Ng na iyong sinasabi na siyang nagbigay ng pera?

S: Siya po. (Affiant pointing to the person of VICTOR NG alias TY SING LING who is inside the Bureau).

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Pagdating namin sa Mayon ay nakita ko sina Gerry at Jose na nakatayo sa Mayon sa pagitan ng Dapitan at Piy Margal. Tinigilan ni Juanito ang dalawa at sumakay naman ang dalawa sa likod ng jeep. Kami ay nagpatuloy nang pagtakbo at duon kami dumaan sa Mayon, dumaan kami sa España, pagdating sa Rotonda at patungo kaming Maynila. Nakarating kami sa Roxas Boulevard, tapos hanggang sa may Stonehill sa Pasay City. Pagdating sa isang kanto na malapit sa Stonehill ay bumaba kaming dalawa ni Gerry at sina Juanito at Jose ay pumasok sa nasabing kanto na kasama si Mariano Lim. Nang makababa na kami ni Gerry ay sinabi sa akin ni Gerry na 'YAYARIIN NATIN IYANG SI MARIANO'. Kami ay naghanap muna ni Gerry ng mabibilihan ng sigarilyo. Samantalang kami ay naghahanap ay dumating sina Juanito at Jose na kasama si Mariano Lim na sakay din ng jeep. Sumakay uli kami ni Gerry sa likod ng jeep dahil sa si Jose na ang nakaupo sa harapan ng dati kong inuupuan. Kami ay nagtuloy sa Parañaque. Samantalang kami ay nasa daan pa ay nagtanong si Jose sa amin kung nasaan ang tusok. Ang sagot ni Juanito ay wala sa akin. Sabi ni Jose sa akin, 'NASA IYO BA' ang sagot ko 'WALA. Nang makarating kami sa may tapat ng opisina ng MERALCO sa Parañaque, ipinahinto ni Gerry ang jeep kay Juanito at siya ay bumaba. Sabi ni Gerry ay 'SANDALI LANG AT MANGHIHIRAM AKO NG TUSOK SA AKING KUMPA'. Makalipas ang sinco minutos ay bumalik si Gerry at sabi sa amin ay wala pa ang kanyang kumpare. Kami ay nagbalik sa may Roxas Blvd. at nagpaikot-ikot muna. Nang makalipas ang mga trenta minutos ay bumalik na kami sa may opisina ng Meralco sa Parañaque. Bumaba uli si Gerry at nagpunta sa bahay ng kanyang kumpare. Nang bumalik si Gerry ay dala na niya ang isang kutsilyo at ibinigay kay Jose. Tapos ay nagpatuloy kami sa pagtakbo na patungong kabayanan ng Parañaque. Sa isang kalye roon na hindi ko alam ang pangalan ay iniliko ni Juanito ang jeep. Tapos ay itinigil ang jeep sa pagdating sa dulo pagkat Dead End na. Sabi sa akin ni Juanito ay talian ko na ang bibig. Ang ginawa ko ay kinuha ko ang panyo ni Gerry at tinalian ko ang bibig ni Mariano. Tapos ay hinawakan ko ang kanang kamay ni Mariano. Tapos ay tinanong ni Jose kay Juanito kung saan ang puso. Ang sagot ni Juanito ay 'AYWAN HINDI KO ALAM'. Tapos ay iniakbay ni Jose ang kanyang kaliwang kamay sa balikat ni Mariano Lim at biglang sinaksak sa dibdib. Makalipas ang dalawang minuto ay inilagay o itinatap ni Juanito ang kanyang isang daliri sa ilong ni Mariano Lim at pagkatapos ay sinabi niyang 'PATAY NA'. Tapos ay bumaba na si Jose at binuhat niya ang intsik o si Mariano Lim at ibinaba sa tabi ng kalye na may damo. Tapos ay sumakay siya uli at umalis na kami sa lugar na iyon.'" (CFI Rollo, pp. 578-590).

The foregoing facts were established by the testimonial evidence of the prosecution through the testimonies of Quirino Acido, Patrolman Lorenzo Gabriel, Angelita Faylona, Lim Cho Beng, Chua Yem, Dr. Ernesto G. Brion, Chief of NBI Medico-Legal Office, Lim Hoc, Sgt. Ricardo Santos, QCPD, Pat. Pablo Pascual, QCPD, Det. Godofredo Ruiz, QCPD, and by the documentary evidence of the prosecution, Exhibits "A" to "P" and "P-1", inclusive.

Both Victor Ng and Jose de los Santos interposed the defense of alibi. Victor Ng stated that he was in Zamboanga on the night of the killing, having left Manila on December 15, 1966, returning only on December 22, 1966, or the day following the incident in question. Appellant Jose de los Santos also claimed that at about 8:00 o'clock p.m. of December 21, 1966, he went directly to his home after his work as a driver of a passenger jeepney plying the Balic-Balic-Quiapo Line; that he had supper with his father, Roman Santos, while his wife, Amelia Santos, took care of their son who was then sick; that after supper, he took care of his son and put him to sleep; that he read some comic magazines and then went to sleep at about 9:00 p.m.; that at about 4:30 a.m., of December 22, 1966, he was awakened by his wife and he immediately left for work. He stated that from December 21, 1966 up to February 7, 1967, he had been driving his passenger jeepney along the afore-mentioned line.

In impugning his extrajudicial confession, Victor Ng testified that he was arrested in the afternoon of February 6, 1967 at Barrio Kangkong, Quezon City, and brought to the hills near the Capitol Golf Club, Quezon City, where he was allegedly asked to confess to the killing of Mariano Lim, and when he refused to do so, two of the officers maltreated him by boxing him on his stomach, after which he was brought to Precinct 5, of the Quezon City

Police Department at Project 4, Quirino District, and later to the police headquarters; that he was brought again to the Capitol Golf Club where he was maltreated when he refused to admit that he ordered the killing of Mariano Lim; that they also stripped him of his clothes and put ice on his body and then put him in a jeep which they drove around the golf club, and in spite of the maltreatment he refused to admit that he ordered the killing; that at about 11:00 p.m. of February 6, 1967, he was brought to the Quezon City Police Department Detective Bureau where reporters took his pictures. Later, he was brought inside a room where he was again stripped of his clothes, made to lie down on a bench with his face upward, and tied thereto; that they put pepper in his eyes and nose, covered his face with a rug and poured water into his nose and mouth. He admitted that he did not recognize the persons who maltreated him because his face was covered. Afterwards, he was brought to the office of Major Ernesto San Diego who told him that if he made the desired admission he will be released and used as a state witness. In view of this assurance to him and allegedly because of the beatings which he could no longer endure, he decided to make the admission they wanted him to make.

At about 2:30 a.m. on February 7, 1967, he signed a statement marked Exhibit "M", although he never read the statement, and without having been investigated or questioned by Det. Ruiz of the Detective Bureau.

Appellant Jose de los Santos also claimed that he signed Exhibit "K" under duress. Thus, he testified that after his arrest at 3:00 a.m. on February 7, 1967 by the police authorities, he was boxed and kicked inside the police headquarters when he refused to acknowledge that he knew Victor Ng as well as Gerry Dejungco. When he denied killing Mariano Lim, a policeman hit his legs, thighs and chest until he became dizzy. Thereafter, he was placed inside a room where he was asked if he admits having killed Mariano Lim, and told: "Hindi ka pala tatagal, dito sa amin hindi maaaring hindi aamin", to which statement he kept silent. Afterwards, he was asked his name, age, date of birth, occupation and the names of his wife and parents. Thereafter, he was returned to his detention cell. In the morning of February 7, 1967, he was brought into a room and was presented with a typewritten statement which contained his admission that he was the one who killed Mariano Lim. When he refused to sign it he was boxed on the mouth and then the man sitting beside him held his right hand and forced him to sign the statement. After signing the statement, Exhibit "K", he and his co-accused, Roque Dejungco, were taken to Kanlaon St., Quezon City, by several policemen where the two of them, as well as their co-accused Juanito Ang, were told to re-enact the crime from its inception at Kanlaon St. to its consummation at Parañaque. In the process, pictures were taken.

On cross-examination, he admitted making corrections on his statement and signing the same twice after reading it, once before the police investigators and again before Fiscal Solano, in the presence of three policemen, and that even before December 21, 1966, he already knew Romualdo Carreon and Juanito Ang. He alleged that before he and his co-accused signed their respective statements, they never spoke with each other regarding this case.

It is worthy to note that any doubt whatsoever as to the guilt of appellants' co-accused had already been dispelled by the fact that, as heretofore stated, Juanito Ang did not appeal, Roque Dejungco withdrew his appeal, and Romualdo Carreon abandoned his appeal, from the judgment of conviction meted against them by the trial court. They are currently serving their corresponding sentences. Hence, the present appeal concerns only the cases of the accused Victor Ng and Jose de los Santos.

In his brief, counsel for appellant Victor Ng contends that the lower court erred:

- (1) In not finding that the alleged confession of herein defendant-appellant Victor Ng is inadmissible for having been secured through promise of immunity aside from the use of force, threat and intimidation;
- (2) In considering the alleged confession of Roque Dejungco as having interlocked with the alleged confession of defendant-appellant Victor Ng;

- (3) In finding that defendant-appellant Victor Ng induced his co-accused, for a reward, to commit the crime;
- (4) In finding that defendant-appellant Victor Ng was motivated by jealousy and intense hate in inducing the commission of the crime; and
- (5) In not acquitting defendant-appellant Victor Ng at least on the ground of reasonable doubt.

Likewise, in his brief, counsel for appellant Jose de los Santos contends that the lower court erred:

- (1) In finding that the confession --- the sole and main evidence here -- of appellant was given voluntarily;
- (2) In discarding the alibi of herein appellant; and
- (3) In convicting appellant.

To begin with, the police investigators would not have known of the participation of Gerry Dejungco in the crime, were this fact not revealed for the first time to them by appellant Victor Ng when he was investigated by Det. Godofredo Ruiz on the night of February 6, 1967. In turn, it was Gerry Dejungco who revealed to the police authorities on the early morning of February 7, 1967 the role played in the commission of the crime by appellant Jose de los Santos and Juanito Ang. Finally, it was Jose de los Santos who, when interrogated by the police, also revealed in detail the participation of the accused, including Romualdo Carreon, in the commission of the crime. Indeed, while Juanito Ang and Romualdo Carreon were positively identified by the mother, brother and maid of the victim as the persons whom they saw taking away forcibly Mariano Lim on the night of December 21, 1966, these witnesses did not know of the names of the kidnappers or their whereabouts. The solution of the case were supplied principally by the confession of Victor Ng. And it is only from the narration of facts contained in their interlocking confessions that the Court could piece together the various pieces that make up the whole fabric of the criminal conspiracy and its cold-blooded execution.

From the interlocking confessions of the accused, it appears that Victor Ng harbored such bitter hatred against the victim, Mariano Lim, whom he considered as his rival for the affections of Ruby Ng. Not only was Mariano Lim preferred for outings and picnics by Ruby Ng, but he had also become the business associate of Ruby's father. This turn of events generated not only jealousy but spawned the subsequent incidents of violence. Thus, prior to the incident of December 21, 1966, Victor Ng had at least two violent encounters with Mariano Lim. The first was in September, 1966 and the second was in October of the same year. As testified to by the victim's mother, Chua Yam, his father, Lim Hok, and their housemaid Victor Ng, his father, Ty Sui Wong, two brothers and two other companions who were then armed, proceeded to the residence of Mariano Lim at Kanlaon St. in September, 1966 looking for Mariano. They only left the place when they found that Mariano was out. The incident was repeated in October, 1966 when Victor Ng and his companions, who were again armed, went to Lim's residence looking for Mariano. Unable to find Mariano who was then out, Victor Ng's group left, but not before they told the father of Mariano to tell his son to stay away from Ruby Ng, otherwise he will be liquidated. Victor Ng related this October, 1966 incident, thus:

"09. T: Kailan mo huling nakita si Mariano Lim Cho Kuan?

S: Nuong Octubre 1966 nuong kami ay nagaway.

10. T: Saan kayo nagaway?

S: Sa Villalobos St., Quiapo, Manila.

11. T: Bakit kayo nagaway?

S: Kasi si Ruby Ng, anak nang mayari ng Tong's Glassware sa Villalobos, ay tumawag sa akin at sabi niya ay magsini kami. . niyaya ako maglabas, kung meron akong panahon. Sabi ko meron akong panahon. . tapos si Mariano Lim ay tawag sa akin sa telepono dahil sa narinig niya ang usapan namin tungkol sa date. . sabi niya sa telepono. . ginalit niya ako. . minura ako marami siya sabi sa akin. 'Kailan kasal ninyo ni Ruby,' sagot ko 'Ano ang pakialam mo. . Sabi niya para handa ako pambile regalo. Kami away sa telepono. Sabi ko sa kanya babae aya sa akin ano gawa ko. Hanggang sa kaming dalawa ay away sa telepono. Tapos nuon ang tatay ko ay agaw sa telepono at nakipagusap kay Mariano. . nagaway din sila para naghamon si Mariano sa Tatay ko. Punta kayo dito sa Quiapo. . sabi ni Mariano, kung hini kayo punta dito ako punta diyan. Kaya gawa namin ng ama ko at kapatid ko si Jaime Ng ay punta kami sa Villalobos pero wala na si Mariano. . sabi nanay ni Ruby wala na si Mariano uwi na. Kaya kami magaama paalam na.

12. T: Pagkagaling ninyo sa Villalobos. . saan kayo nagtuloy?

S: Nagtuloy kaming magaama sa No. 36 Kanlaon St., Q.C., sa bahay nila Mariano. Pagdating doon kami katok. . labas ang Tatay ni Mariano at usap sila ng tatay ko. Ang dinig ko sa usap nila sabi Tatay ko 'Ako si TY SUI WONG sagot Tatay ni Mariano sino Ty Sui Wong, sagot Tatay ko. Kapatid ako ni Ty Liong Kue. Tapos usap sila uli. Sabi tatay ko. . bakit pati matanda na ako. . bakit hamon ang anak mong away. . Ikaw alaga sa anak mong mabuti sabi Tatay ko sa Tatay ni Mariano. Tapos alis na kami.

13. T: Saan kayo nagtuloy pagkagaling ninyo sa Kanlaon, Q.C.?

S: Tuloy kami uli sa Villalobos, dahil galit ang tatay ko. Nakita ko si Mariano nakasakay sa taxi merong siyang kasama. Nuong aalis na ang taxi. . hinarang ko ang taxi binuksan ko ang pinto. . pinababa ko si Mariano. . pero bunot siya baril ang akin ginawa ay hawak ko siya. . tapos suntok ko siya. . nagpasa siya sa baril niya dito sa kasama niya. . tapos alis kasama niya. . Suntukan kami. . napunit ang damit niya. Iyon mga tao sa Villalobos hinila kami para pumasok sa Tong's Enterprises. Pinaayos kami ng magulang ni Ruby. . si Mariano hingi patawad sa amin. Tapos shake hands kami." (Exhibit "M").

It was only the timely arrival of Dr. Agustin Ng, the brother of Ruby Ng, which prevented further harm on Mariano Lim.

It was precisely on the basis of these prior incidents that Det. Ruiz started his inquiries about Victor Ng. This culminated, as stated heretofore in the solution of the murder case. For it has been shown that after those violent encounters with the victim, Victor Ng contacted his former classmate, Roque "Gerry" Dejungco to whom he offered P5,000.00 provided he and his men could maul Mariano Lim and prevent him from visiting Ruby Ng. Victor Ng told Dejungco that he (Ng) was leaving for Zamboanga and Cebu City on December 15, 1966, and in the words of Dejungco: "* * * if he (Victor Ng) will arrive on the 23rd of December 1966, he doesn't want to see Mariano Lim alive." (Exhibit "N"). Dejungco contacted his cousin, Juanito Ang, his "compadre" Jose de los Santos and Romualdo Carreon, all neighbors of his in Sampaloc, Manila. The plot was first conceived in November, 1966 (see Exhibits "K" and "N") and the first attempt to kill the victim was made on December 19, 1966, but something went wrong and the conspirators were not able to realize their plan (Exhibit "L"). But on the night of December 21, 1966, on the very natal day of Mariano Lim, Ang and Carreon were able to grab Mariano Lim from his jeep and forced him to go with them. They fled with their victim towards Mayon Street where they picked up De los Santos and Dejungco who had been waiting for them. The five proceeded to Parañaque, Rizal, passing Quezon Blvd. Extension, then turning left at Manuel de la Fuente Street, Manila, turning right on Sta. Mesa Blvd., then to Nagtahan bridge and continuing towards Parañaque. In the process of snatching Mariano Lim, Ang must have lost the sharp pointed instrument which he used in intimidating the victim (Exhibit "0-5"),

compelling Dejungco to go to the house of his "compadre" to borrow a sharp pointed weapon. It was the wife of his "compadre", Teodora Maravilla, who, apparently ignorant of Dejungco's real purpose, gave him a knife on the latter's pretext that they needed the knife to repair their jeep. Returning to his companions, the four with their victim proceeded towards the Factor Compound at the entrance of which Dejungco alighted, leaving his three companions to finish the job. At the end of the street inside the compound, Juanito Ang stopped the vehicle. Carreon then gagged the victim with a handkerchief and held him by his hands. It was at that instance when De los Santos pulled out the knife given to him earlier by Dejungco and after asking his companions where the heart of the victim was located, placed his left arm around Mariano's shoulder and plunged the knife on the left chest of the victim. Afterwards, he (De los Santos) and Carreon lifted the body from the jeep and drop it on the ground. Carreon, Ang and De los Santos left the compound and after picking up Dejungco proceeded on their separate ways. They met several times afterwards to share and divide the money given by Victor Ng. Of the P2,000.00 actually paid by Victor Ng, De los Santos got P600.00 (Exhibit "K"), Carreon P200.00 (Exhibit "J") and Ang a measly sum of P25.00 (Exhibit "K") with the balance presumably kept by Gerry Dejungco.

As heretofore stated, appellants Victor Ng and Jose de los Santos now attempt to impugn those facts. The main thrust of their strategy is to undermine the probative force of their extrajudicial confessions. We find their arguments unpersuasive.

Apart from the presumption of law which favors the spontaneity and voluntariness of a statement given by the defendant in a criminal case, which the appellants have not been able to overcome,[9] the record convincingly shows that the extrajudicial confessions of appellants Victor Ng (Exhibit "M") and Jose de Los Santos (Exhibit "K") were given voluntarily and that they reflected the truth.

One. - As stated heretofore, the confessions of Jose de los Santos and Victor Ng, as well as those of their co-accused Juanito Ang and Roque Dejungco, are replete with small and intimate details that only the appellants and their co-accused could have known of. For instance, the police could not have known that Victor Ng came to know the deceased Mariano Lim when they were schoolmates at the Chiang Kai Shek High School, or that this appellant and Roque Dejungco were also classmates at the Philippine Chin Hua School. As a matter of fact, the police investigators would not have known of the participation of Roque Dejungco had this fact not been revealed by Victor Ng, much less could they have been aware of the names of Juanito Ang, Romualdo Carreon and Jose de los Santos, since it was Roque Dejungco who revealed the role of these persons in the commission of the crime. Neither could the police been aware that Juanito Ang is a first cousin of Roque Dejungco, nor of the fact that appellant De los Santos is Dejungco's "compadre"; or that Juanito Ang was an escapee from the Welfareville institution in Mandaluyong, Rizal and that he had since been recommitted to the same institution. Would the police have known that De los Santos and Dejungco went to a bordello at Pasay City right after the killing had this not been related to them? Roque Dejungco, by withdrawing his appeal, confirmed his guilt and the recital of facts contained in his confession (Exhibit "N"). It could not be contended, therefore, that Dejungco's narration therein of the participation of his first cousin, Juanito Ang, and his "compadre", Jose de los Santos, in the commission of the crime was due to duress or maltreatment. While Victor Ng, Carreon and Ang denied on the witness stand that they ever read their respective statements even up to the time they testified in court, yet no explanation had been given why the same declarants could identify Exhibits "J", "L" and "M" as their very statements which they were allegedly forced to sign on the basis of the recitals of facts written therein. This Court has held in various decisions that when the confessions of the accused contained details that the police could not have possibly supplied or invented and which facts only the declarant could have known, such circumstances would be a strong indication that those confessions were freely made and not due to duress and intimidation.[10]

Two. - The two appellants and their three co-accused admitted that they made certain corrections and/or additions

in their respective extrajudicial statements. For instance, Victor Ng made corrections on the second and third pages of his statement. On the second page of Exhibit "M", he admitted having pointed to Roque, alias Gerry Dejungco, as the person to whom he induced, for the sum of P2,000.00, to get some men to maul Mariano Lim and to prevent him from going to Quiapo or to see Ruby Ng. He even wrote the words "siya si Jerry" (referring to Roque Dejungco) and the date when he supposedly left for Cebu, Davao and Zamboanga City in 1966. On the third page, he corrected the name of the street of the building where he gave money to Gerry Dejungco. These corrections were all initialed by him. All the pages were signed by him both in Chinese characters and in the ordinary manner. The three-page statement of Jose de los Santos also contains his corrections. Thus, on the first page, he corrected the name written therein by inserting the phrase "De los" so that the name therein would read "Jose de los Santos y Casire; that in his answer to the question as to who were his companions in killing Mariano Lim, he crossed out the name of Victor Ng, leaving only the names of Gerry, Juanito Ang, and Omeng or Romeo Carreon; that in connection with the amount which was promised by Victor Ng for the purpose of liquidating Mariano Lim, he crossed out the words "dalawang libo" and wrote therein the words "limang libo"; and that when asked who was his "kumpadre", he mentioned "Gerry po" and added in his handwriting the following words: "iyong anak ay inaanak niya".

Three. - Both Victor Ng and Roque Dejungco signed their confessions both in English and Chinese characters on each and every page of their statements.

Four. - Not one of the appellants or their co-accused had himself examined medically, much less requested for such medical examination.[11] At the trial, not one of the five accused could indicate which part of his body had been injured. The circumstance that they were under detention is no impediment to such examination, since long before the trial, they were already represented by their respective counsels to whom they could freely communicate such alleged maltreatment. It must be noted that the present counsel of the appellants appeared in behalf of said accused as early as February 20, 1967, the date when they presented a motion for the release of Victor Ng on bail.

On this matter, the Solicitor General made the following observations:

"It should be noted that Victor Ng was arrested by the police while he was in the company of some friends. Thus, his family immediately came to know of his apprehension. When we consider that this appellant comes from a moneyed family, we can safely assume that his parents immediately took steps, including the hiring of a competent lawyer, to see to it that nothing untoward happened to him. In fact, they did retain the services of Atty. Crispulo Ilumen who eventually became one of his defense counsel. This fact alone should militate against any claim that he was maltreated and we reject any contention that Atty. Ilumen made no efforts to visit him in his cell for such is not the behavior of a lawyer hired to protect the interest of his client. Surely, among the first steps Atty. Ilumen took was to arrange a meeting with his client. We also reject any claim that the police would have dared refuse this privilege and right of a lawyer; otherwise, Atty. Ilumen would have raised Cain. The fact that Atty. Ilumen in the course of the long trial of this case never mentioned such a rude treatment on the part of the police only means that he was really allowed to see Victor Ng. And having conferred with the latter, Atty. Ilumen could not have failed to notice the condition of his client or, Victor Ng himself would have revealed the injuries resulting from his maltreatment to his lawyer. Yet, up to now, no criminal and/or administrative charges have been lodged against the police who had a hand in the solution of this crime.

"In the case of Romualdo Carreon, his personal safety and interest were amply protected from the very start by two uncles, Ernesto Lorenzo and Benjamin Cardiola, the latter a law clerk in the office of Atty. Jaime Nuevas, his counsel at the trial. Certainly, Gardiola knew the rights of his nephew. The fact that no claims of

maltreatment were ever raised before the trial should be significant when we take note of the aggressive nature of Atty. Nuevas as borne out by the records of this case.

"The above discussion likewise disposes of Victor Ng's claim that he could not get a medical certificate because he was not allowed visitors to his cell. This is too naive and absurd for even a gullible mind to accept. It is clearly an afterthought designed, although feebly, to place his investigators in a bad light.

"This appellant further claims that a medical examination would have been useless, arguing that 'it has been physically and scientifically recognized that certain forms of maltreatment or torture, such as use of electric shock, setting or hitting the stomach, water cure, etc., do not usually manifest external injury on the body of the person maltreated' * * *. This argument is misleading. Victor Ng testified that part of his alleged maltreatment consisted of being hit in the stomach, chest and back and pepper being poured in his eyes and nose * * *. 'Mercilessly mauled' is the term he uses in his brief. Considering the length of time he claims he was given the third degree, from the time of his arrest which he says was at 1:30 p.m. up to 11:00 p.m. of February 6, 1967, if he was 'mercilessly mauled,' surely even a cursory examination by a physician would have revealed the injuries he suffered, particularly, those on his chest and back. Moreover, it is likewise not true that all injuries on the stomach cannot be detected. The slightest of pressure made on the abdomen of a person severely maltreated will cause that person to shout in pain. Again, the pouring of pepper in the eyes of the accused would have caused not only the reddening but also swelling of the eyes. All these could have been discovered by a competent physician." (pp. 32-34).

Five. - It is important to note that up to the present time, no formal charges of any nature whatsoever have been instituted against those who allegedly maltreated them. Indeed, there appears to be no serious and sustained effort to even identify their alleged tormentors, and such failure further shows that their claims of maltreatment which were first made by them sometime in January, 1968, were a mere afterthought.[12] Appellants have shown no plausible reason why the investigators should have maltreated them and falsely implicated them in the crime, considering that the police investigators did not know the victim or any of the appellants or any members of their families before this case was instituted. As pointed out by the Solicitor General Victor Ng was arrested by the police while he was in company of his friends, and as a matter of fact he immediately secured the services of one Atty. Crispulo Ilumen to defend him. He has never claimed that he was not able to confer with either Atty. Ilumen or Atty. Dakila Castro.

Six. - The presence of statements in the declarations of Victor Ng minimizing his role in the commission of the crime is another indication that his afore-mentioned extrajudicial statement was rendered of his free accord. For it is precisely this attempt to minimize his criminal responsibility, among others, which has been considered by the trial court as a potent circumstance which demonstrates the voluntariness of the confession.[13] This Court had observed that "those parts of the confession which would avoid or lessen the declarant's criminal liability could have come only from the mouth of one who stood to benefit from the qualifications or avoidance of the admission." [14]

Seven. - When Victor Ng and Roque Dejungco were made to confront each other, each pointed to the other as his confederate. No gesture of any protest, much less any word of denial emanated from the lips of either of the two, which would have been the natural and instinctive reaction of an innocent man. Where an accused made an extrajudicial confession implicating his co-defendant, who was present when the said confession was being taken and who did not protest or remonstrate, the said confession may be given in evidence against the said co-defendant.[15]

Eight. - The re-enactment of the crime by appellant Jose de los Santos, together with Juanito Ang and Roque Dejungco, tallies exactly with the manner the killing was performed, as described, among others, in the statement of De los Santos.[16] While it is true that De los Santos attempted to impugn the spontaneity or the voluntariness

of his statement, the same is unworthy of credence since it would have been highly improbable for the police to have forced him to do so in the presence of several reporters. Victor Ng admits that the reporters were around and as a matter of fact the police allowed the reporters to take his pictures after he had come for the second time from the Capitol Golf Club. De los Santos admitted the presence of the reporters during the investigation. The presence, during the entire interrogation and at the re-enactment of the crime by the said accused, of several newspapermen representing the Manila Times, the Great Asia Newspaper and the Fookien Times, renders it highly improbable that the investigation, as well as the re-enactment by the afore-mentioned accused were done under duress. A careful examination of the facial expressions of the accused appearing on the photographs of the re-enactment (Exhibits "0-9" to "0-17") indicate that they were acting voluntarily.

Nine. - The post-mortem findings of Dr. Ernesto Brion of the National Bureau of Investigation regarding the location and direction of the wounds of the deceased, as well as the probable position of the killer at the time of the infliction of the injuries, coincide with the description of the actual killing, as related in the extrajudicial confessions of Carreon, Ang and appellant De los Santos.

Ten. - Juanito Ang did not appeal from this judgment, while Roque Dejungco and Romualdo Carreon withdrew their appeals, a fact which is indicative of the correctness of the finding of guilt with respect to said accused. While this circumstance alone would have no bearing on the guilt or innocence of the herein appellants, taken in conjunction with the other circumstances already enumerated it assumes importance. It indicates that the confessions of guilt of Ang, Dejungco and Carreon were, therefore, given freely and voluntarily. Such circumstances further render unworthy of credence the claims of Victor Ng and Jose de los Santos that their declarations were secured through duress or violence.

In this regard, the trial judge (now Justice Pacifico P. de Castro of the Court of Appeals) made the following important observations:

"The background of the killing as just depicted through the testimony of eye-witnesses provides the solid foundation upon which the confessions of the accused could be made to stand firm, with a convincing ring of truth, even as against the allegation of maltreatment and intimidation supposedly administered to the accused to extract their confessions' and in the case of Victor Ng, also a promise of immunity, to which claim of maltreatment and promise of immunity, however, the Court finds itself unable to give credence.

"A thorough examination of the records yielded no evidence of the alleged maltreatment other than the self-serving and naturally biased testimony of the accused themselves. As against the presumption of voluntariness of a confession, as well as that of regularity in the performance of official duties, no more than having the accused's own words to back up such claim of violence can induce the Court to discard their confessions as involuntary. The alleged circumstance that quite a long period of time expired from their apprehension to their making admission of their participation in the commission of the crime which the defense has tried to seize upon as indicating the employment of pressure to extract the confession, seems to the Court as indicating more the contrary, for if the police investigators were bent on using force to obtain at all cost, a confession from each of the accused, it would not take them long to attain this end.

"On the other hand, certain circumstances, constantly recognized as indicative of voluntariness of the confession have been duly established by the evidence. Thus, the confessions are remarkably abundant with details which the declarants alone could have supplied willingly out of a desire to make a clean breast of the offense imputed to them. * * *.

"Likewise, not only were the accused asked to read their confessions before signing before the subscribing officer, Assistant Fiscal Antonio Solano, which they did, but they also made some corrections therein. The act

of making corrections, specially when same refer to intimate details of which the declarant alone has knowledge can only mean that the declarant had given his full volition to the making of the confession.

"In the case of Victor Ng, he admitted to having proposed, with a promise of reward, only the mauling of the victim not his liquidation, just to discourage him from continuing with his courtship or intimate association with Ruby Ng. If the investigators were hell-bent on extracting a confession that would suit their purpose, they would not have been content with less than an admission of an intent to kill the victim. That Ng's confession was only for inflicting harm, short of death itself, is a strong, convincing proof that he was allowed to make his statement free from undue pressure or intimidation * * *. Indeed, Victor Ng appears to come from a moneyed family which is engaged in business and therefore with sufficient resources to retain a lawyer whose legal services could be made available at any time in case of need. That need arose when Ng was allegedly tortured for then a complaint should have been filed in Court or registered with higher police authorities if Victor Ng had really undergone the ordeal in the hands of the police investigators. That there was no such complaint of any sort nor a medical certificate to show infliction of violence, is therefore surprising if it was true that the alleged misdeeds had actually occurred specially against one who, in his claim of innocence, would feel undeservedly punished and thus seriously aggrieved. The failure to reveal to responsible officials, such as Fiscal Solano before whom he was brought for the verification of his statement that he was maltreated is a circumstance tending to disprove the alleged maltreatment.

"* * * A confession that Ng never intended, much less plotted, the victim's liquidation, but only his being mauled, would not produce the desired solution of the crime. Hence, the confession of Victor Ng could not have been the result of violence or maltreatment, but of his own free will and volition. The absence of a confession of Ty Sui Wong, father of Victor Ng, the first one to be named as accused in the information attests also to the non-use of violence, else Ty Sui Wong who could even be the more logical suspect as the mastermind for being the one, rather than his son Victor, who was in a better position to make the monetary reward in such amount as to afford greater inducement to commit the killing, would have also, perhaps with more reason, been forced to confess. The evidence, however, is bereft of any intimation that he made any confession * * *." (Italics supplied.)

Besides, how could this claim of appellant Victor Ng that his alleged confession was secured through force and violence square with his claim that his confession was obtained under promise of immunity? Even in the latter case, it does not clearly appear from the evidence that Victor Ng was ever promised immunity. Det. Ruiz, to whom the case was assigned, testified that he was not sure if the Chief of the Detective Bureau, Major Ernesto San Diego, ever promised to Victor Ng that he will be utilized as a state witness if he would "tell the whole truth". Assuming that Major San Diego made such a promise, the promise of immunity by one who is not a prosecuting officer and who is in no position to comply with such promise, is not a ground for objecting to the admissibility of the confession made under such circumstances. A man as intelligent and as educated as appellant Victor Ng was obviously aware that only the prosecuting officer and not the police can decide definitely who will be utilized as a state witness. As this Court observed in *People v. de Torres*:^[17] "If the idea was to condone the murder, what was the reason for taking a confession of the killing, or any confession at all? Promise of immunity by one who is not a prosecuting officer who could honor or comply with his promise," (the promise was made by a PC investigator) "is no ground for objecting the admissibility of the confession. Appellant cannot plausibly pretend immaturity to be so easily duped by his investigators. * * *".

In resume, the presence of details in the confessions which only the declarant could have known, coupled with the circumstance that the appellants even corrected and added some details in their respective statements; the presence of corrections or notations made by the declarants themselves on their respective confessions; their failure to complain of their alleged maltreatment to the fiscal before whom they swore under oath their declarations, or to any other competent governmental authority; or the fact that they did not file any criminal or

administrative charges against their alleged torturers; the circumstance that when they were made to confront each other, each pointed to the other as his companion in the crime, without any protest or denial of the person indicated; the absence of any evil motive on the part of the investigators, considering that some of the suspects, including the father of Victor Ng, were never made to execute any confession; their inability, during the trial, to indicate any mark of violence on their bodies or to request for a medical examination of their bodies, much less produce any medical testimony to corroborate their claims of maltreatment; their re-enactment of the crime in the presence of reporters; and the circumstance that many of the statements in said confessions are confirmed by the indisputable facts, render the claim of appellants of duress in the execution of their confessions as totally unworthy of credence.

A careful perusal of the statements of Victor Ng, Roque Dejungco, Jose de los Santos, Romualdo Carreon and Juanito Ang shows that they interlock in most material points. As between Victor Ng and Roque Dejungco (Exhibits "M" and "N"), there is harmony in most material points, to wit: the plot to harm the victim; the suggestion by Victor Ng that Dejungco contact his goons in Sampaloc to do the job; the inducement by Victor Ng to Roque Dejungco and his co-accused, through price or reward, for the elimination of Mariano Lim, which was the primary consideration for Dejungco and his companions to commit the crime; the plan of Victor Ng to establish an alibi by going to Cebu and Zamboanga City and staying there for several days while the crime is being committed in Manila; the telephone call of Dejungco to Victor Ng upon his return, informing him that the job was already done; and the delivery to Dejungco by Victor Ng of the total sum of P2,000.00 at the Gocheco Bldg., C. M. Recto St., Manila. While Victor Ng says that the price money of P2,000.00 was paid before the killing or prior to his departure for Zamboanga City on December 15, 1966, Dejungco states that the payment was made upon Victor's return. However, both coincide on the amount actually paid. In the cases of Carreon, De los Santos, Ang and Dejungco (Exhibits "J", "K", "L" and "N" respectively), there is also no question that they synchronize or interlock in various material points. They all agree on the ghastly details of the crime -- thus, the fact that they were contacted by Roque Dejungco, alias "Gerry", upon the instigation of Victor Ng who promised that he will pay them if they kill Mariano Lim; their meeting in preparation for the job which included their trip to Villalobos, Quiapo to familiarize themselves with the face of their intended victim; the killing itself which began with the forcible taking of Mariano Lim from Kanlaon Street by Ang and Carreon; the trip to Mayon Street where the two confederates picked up De los Santos and Dejungco; their bringing of the victim to Parañaque where he was stabbed to death by De los Santos; the dumping of the body of the deceased on the road; and, finally, their subsequent meeting to divide the money given them by Victor Ng.

Since *People v. Badilla*,^[18] the rule which has been reiterated by this Court in various cases is that extrajudicial confessions, independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime.^[19]

Inasmuch as there is no proof of collusion among the declarants, their confessions should, therefore, be read together to form a complete picture of the commission of the crime and considered collectively as corroborative or confirmatory of the evidence apart from the confessions themselves.

On the basis thereof, it is, therefore, evident that only appellant Victor Ng knew the victim, with a motive, strong and compelling enough to warrant the latter's elimination, and that it was he who induced his co-accused to commit the crime in question because all of the said accused admit that they killed the deceased in consideration of the sum of money promised them by Victor Ng. There can be no doubt, also, that it was appellant Jose de los Santos who inflicted the fatal blow upon the victim. Hence, both are liable for the crime committed, the first, as a principal by inducement, and the second, as one by direct participation.

The court a quo found that accused-appellant Victor Ng did not intend to commit so grave a wrong as that actually committed. Thus, it said:

"* * * The Court considers important the fact that his confession was not for the killing of the deceased but only for his mauling or acts short of doing away with him, his purpose being merely to stop him from seeing, or pursuing his courtship of the object of his own suit, Ruby Ng. For it is precisely this virtual exculpatory tenor, or at least minimizing effect on his liability, among others, that has induced the Court to give full credence to his confession. * * *"[20]

We are inclined to disagree with the aforestated finding of the trial court. The confession of Victor Ng should not be taken independently of those of his co-accused, as it is natural and to be expected that he would make therein statements and denials tending to minimize his participation in the crime. In order to get a clear picture of the events that led to the murder of the victim, it is necessary that the statements and admissions made by all the accused be taken together. The fact that not one of the other co-accused of appellant Victor Ng made mention of, or even intimated the fact that the agreement or intent was merely to frighten Mariano Lim in order to force him to desist from his suit of Ruby Ng, strikes Us as significant. On the contrary, all their statements point to the fact that the original intent was to kill, and not merely to maul or threaten Mariano Lim. The detailed narration of the incident leading to the death of the victim given by each of the other accused reveals that the original purpose was to kill, that there was never any disagreement among them with respect to this matter, and thus, their movements toward the fulfillment of such purpose were smooth and concerted. This, Roque Dejungco y Chan gave the following statements:

"11. Q: Do you know personally the cause of his death?

A: Yes, sir . . . This is the story . . . On November 1966, I met Mr. Victor Ng at a Chinese Club somewhere at Pasay City. He informed (me) that he had again a quarrel with Mariano Lim Cho Kuan. I told him if I could do any help to him. He told me 'You see Gerry, I know you from childhood and I am cognizant that you know hoodlums at Sampaloc . . . You make a preparation to contact two people who can liquidate Mariano. . . and I'll answer for the expenses.' After five days, I met him again in the same place, and told me that he will be leaving for Zamboanga and Cebu City, and further told me that if he will leave by the 15th of December 1966, and that if he will arrive on the 23rd of December 1966, he don't (sic) want to see Mariano alive. So I contacted two people by the name of JUANITO ANG alias Johnny, he is my cousin and one Pepeng Komang, alias JOSE DELOS SANTOS, alias JOSE VILLANUEVA. I told these two people about the plan of Victor Ng, and they told me that they are ready at my disposal. * * *

12. Q: When Victor Ng arrived from Zamboanga City, did you inform Victor Ng about the killing of Mariano Lim Cho Kuan?

A: I called up Victor Ng by phone and informed him that Mariano was already finished. Victor Ng told me that I should wait at the ground floor of the Gocheco Bldg. at Magdalena St., so I proceeded to the said place, and he handed to me an amount of P1,000.00. I received this amount before Christmas, and I received again from him P500.00 before New Year . . . and on mid-January 1967 I again received from Victor Ng another P500.00 . . . * * *"[21]

Similarly, Romualdo Carreon declared that Roque Dejungco y Chan, alias Gerry, told him that "Yayariin natin iyang si Mariano." [22] Likewise, accused-appellant Jose de los Santos made substantially similar statements, thus:

"16. T: Isalaysay mo nga ang buong pangyayari sa pagkapatay ninyo kay Mariano?

S: Ganito po ang pangyayari niyan. Nuon pong Nobiembre 1966 ay nasabi sa akin ni Gerry na may bibirahin tao kami. Sabi niya ay ipinapapatay ni Vic na kaibigan ni Gerry. Sabi ni Gerry sa akin ay sumama daw ako. Sabi niya ay magbabayad daw si Vic ng halagang limang libo para mapatay si Mariano. Pumayag naman ako dahil sa nademonyo na ako sa sinabi ng aking kumpare." [23]

In addition, an examination of the statement given by Juanito Ang reveals that the group was made to understand from the beginning by Roque Dejungco, alias Gerry, who was acting for Victor Ng, that Mariano Lim was to be killed.

In the face of the foregoing declarations made by the other accused, which harmonize on all material aspects, it is difficult to perceive how the lone allegation of accused Victor Ng, the mastermind of the crime, that he did not intend to have the victim killed, but merely "frightened", can be given credence.

The court a quo was convinced of Victor Ng's lack of intent to kill Mariano Lim by the facts that they did not have a ready weapon and had to borrow one from Dejungco's "compadre", and the smallness of the amount actually received as consideration for the crime, which was only P2,000.00, as compared to that promised, which was P5,000.00. These in themselves are not convincing factors. Had the intent been merely to frighten the victim, no weapon, and a deadly one at that, would have been necessary. The direct participants in the crime, by means of their superiority in strength and number, could have effectively frightened Mariano Lim from pursuing his suit of Ruby Ng. The fact that a pointed knife, about eight (8) inches in length and one-half (1/2) inch in width, was obtained and actually used, indicates a contrary intent. Moreover, the manner in which the weapon was wielded clearly shows that there was no doubt at all in the minds of the assailants that they were to slay Mariano Lim. Thus, it required only a single stab wound, purposely intended to be fatal, to kill him. This was testified to by Romualdo Carreon, in the following manner:

"* * *Sabi sa akin ni Juanito ay talian ko na ang bibig. Ang ginawa ko ay kinuha ko ang panyo ni Gerry at tinalian ko ang bibig ni Mariano. Tapos ay hinawakan ko ang kanang kamay ni Mariano. Tapos ay tinanong ni Jose kay Juanito kung saan ang puso. Ang sagot ni Juanito ay "AYWAN HINDI KO ALAM." Tapos ay iniakbay ni Jose ang kanyang kaliwang kamay sa balikat ni Mariano Lim at biglang sinaksak sa dibdib. Makalipas ang dalawang minuto ay inilagay o itinatapat ni Juanito ang kanyang isang daliri sa ilong ni Mariano Lim at pagkatapos ay sinabi niyang "PATAY NA". Tapos ay bumaba na si Jose at binuhat niya ang intsik o si Mariano Lim at ibinaba sa tabi ng kalye na may damo. Tapos ay sumakay siya uli at umalis na kami sa lugar na iyon. * * *"[24]

Had the intent been merely to scare Lim, the accused could have merely mauled or beaten him up, but this they did not do. The intention to kill, a mental process, may be inferred from the nature of the weapon used, the place of the wound, the seriousness thereof, and the persistence to kill the victim.[25]

The fact that the amount actually paid was merely P2,000.00 and not P5,000.00, as promised, does not at all prove that there was no intent to kill. The records disclose that Victor Ng was paying in installments, and there is no indication that he did not intend to pay the full amount agreed upon. Furthermore, if the agreement was merely to scare Mariano Lim off his suit of Ruby Ng, it is doubtful if the direct participants would have committed the capital crime of murder, with its graver consequences, if they thought the price was incommensurate.

All the foregoing factors, in addition to the fact that none of the other accused claimed a lesser intent, convince Us that Victor Ng, contrary to his claim, intended Mariano Lim to be killed. Courts need not believe confessions in their entirety.[26] There is absolutely nothing in the records to support his allegation except his own statements, which are self-serving and cannot be given credence in the face of all the overwhelming evidence, primarily the confessions of the other accused, pointing to the true nature of his guilt. While We are cognizant of the rule that

an extra-judicial confession is, generally, evidence only against the person making it, it is nevertheless true that the same may serve as corroborative evidence when it is clear from the other facts and circumstances that other persons had participated in the perpetration of the crime.[27] Moreover, in the absence of collusion among the declarants, their confessions should be read together in order to form a complete picture of the whole situation and considered as corroborative of what evidence there is apart from the confessions themselves.[28]

The foregoing considerations likewise indicate that the mitigating circumstance of lack of intent to commit so grave a wrong cannot be appreciated in favor of appellant Jose de los Santos.

It is contended by the Solicitor General that appellants should be convicted of the complex crime of kidnapping with murder. It is asserted that when a person kidnaps the victim for no other purpose than to kill him but only after he detains him for a considerable length of time, taking him from one city or town to another city or town, and finally to a deserted place in still another town where he kills him, as in the case at bar, the offense committed is serious illegal detention with murder punishable either under Article 248 or Article 267, paragraph 3, of the Revised Penal Code, in relation to Article 48 thereof. There is no question, however, that the clear manifest intention of the appellants was to kill the victim, the kidnapping of the victim merely incidental to the principal purpose. It seems evident that the weight of authority is in favor of the proposition that where a victim was taken from one place to another solely for the purpose of killing him and not for detaining him for a length of time or for the purpose of obtaining a ransom for his release, the crime committed is murder, and not the complex crime of kidnapping with murder.[29] We find that such principle is applicable to this case.

The circumstance of treachery cannot be applied to Victor Ng since he was not actually present when the crime was committed, having actually left to his co-accused the means or methods for the commission of the crime. Since the evidence, however, disclose that he induced the others to commit the crime for a price or promise of reward, he is a principal by induction. As observed by the trial court, the circumstance of evident premeditation is absorbed by the circumstance of reward or promise which qualifies the crime as murder. He should, therefore, suffer the penalty of reclusion perpetua. Considering that the penalty imposed upon Roque Dejungco y Chan which is reclusion perpetua is now final, it would seem but fair that Jose de los Santos be meted the same penalty, considering that the latter was a mere follower of the former.

WHEREFORE, with the foregoing modification, the judgment of the court a quo is hereby AFFIRMED.

Fernando, (Chairman), Barredo, Concepcion, Jr., and Santos, JJ., concur.

Aquino, J., see his brief concurrence.

[1] CFI Rollo, p. 10.

[2] Ibid., pp. 76 & 77.

[3] Ibid., pp. 181-186.

[4] Ibid., pp. 195-197.

[5] Ibid., pp. 630, 648 & 652.

[6] Ibid., pp. 664-666.

[7] See CFI Resolution of February 4, 1972, the explanation of Carreon's counsel dated February 10, 1972, and the Resolution of February 22, 1972, accepting the explanation.

- [8] CFI Rollo, p. 627.
- [9] *People v. Garcia*, 101 Phil. 615.
- [10] *People v. Tiongson, et al.*, 116 Phil. 749; *People v. Cloma*, 115 Phil. 1; *People v. Padua*, 114 Phil. 1123; and *People v. Pagulayan, et al.*, 110 Phil. 402.
- [11] *People v. Yakan Labak*, 109 Phil. 904.
- [12] *People v. Dela Cruz*, 88 Phil. 29; *People v. Ijad*, 3 SCRA 387.
- [13] *People v. Cruz*, L-11870, October 16, 1951.
- [14] *People v. Mejares*, 90 Phil. 102, 105.
- [15] *People v. Amajul*, 1 SCRA 682.
- [16] See Exhibits "O", "O-1" to "o-17".
- [17] 1 SCRA 371, 374. Italics supplied.
- [18] 48 Phil. 718, 726.
- [19] *People v. Lumahang*, G.R. No. L-6357, May 7, 1954; *People v. Condemena*, 23 SCRA 910; *People v. Pareja*, 3 SCRA 693, 700; *People v. Provo*, 37 SCRA 19, 33; *People v. Domondon*, 43 SCRA 486, 491.
- [20] CFI Decision, pp. 36-37; Rollo, pp. 77-78.
- [21] Exhibit "N". Italics supplied.
- [22] Exhibit "J".
- [23] Exhibit "K". Italics supplied.
- [24] Exhibit "J".
- [25] *People v. Raquinino*, 17 SCRA 914.
- [26] *People v. Villanueva*, 5 SCRA 672.
- [27] *People v. Argana*, 10 SCRA 311; *People v. Sta. Maria*, 15 SCRA 222; *People v. Domondon*, supra; *People v. Aquino*, 57 SCRA 43.
- [28] *People v. Pareja*, 30 SCRA 693; *People v. Domondon*, supra; *People v. Aquino*, supra.
- [29] *People v. Ong*, 62 SCRA 174. See also *U.S. v. Nicolas Ancheta, et al.*, 1 Phil. 165; *People v. Quinto, et al.*, 82 Phil. 467; *People v. Juan Bulatao*, 82 Phil. 753; *People v. Alejandro Mendiola, et al.*, 82 Phil. 740; *People v. Francisco Moreno*, 85 Phil. 731; *People v. Gaudencio Villapa, et al.*, 91 Phil. 189; *People v. Eligio Camo, et al.*, 91 Phil. 240; *People v. Sacayanan*, 110 Phil. 588.

CONCURRING OPINION

AQUINO, J.:

I concur in the finding that Victor Ng, as the mastermind, and Jose de los Santos, as the executioner, are guilty of murder only. But I dissent as to the imposable penalty, which should be death, because evident premeditation can be appreciated as to both appellants (U.S. vs. Manalinde, 14 Phil. 77; U.S. vs. Alim, 38 Phil. 1).

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