

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JONATHAN BARLIS Y MERCADO, FERDINAND DOE AND EDUARDO DOE, ACCUSED. JONATHAN BARLIS Y MERCADO, ACCUSED-APPELLANT.

G.R. No. 101003. March 24, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

On 30 January 1990, Jonathan Barlis, accompanied by his uncle, Pfc. Patrocinio Mercado of the Northern Police District, surrendered to Pfc. Mariano Rivera at the Kamias police station, Quezon City. Jonathan admitted that he was with the group which was responsible for the killing on 20 January 1990 of Honorina Ballerda inside her house at No. 30, Masaya Street, Gulod, Novaliches, Quezon City, and that on the same occasion, one of his companions, "Buboy" (Eduardo Nining), took three men's watches while his other companion, Ferdie (Ferdinand Lopez) took some money which they later divided among themselves. Thereafter, assisted by Atty. Confesor B. Sansano, Chairman of the Legal Assistance Office of the IBP-Quezon City Chapter, Jonathan signed a sworn statement wherein he narrated in detail how the crime was committed and the extent of his participation therein.

On 6 February 1990, an information^[1] for robbery with homicide, docketed as Criminal Case No. Q-40-10283, was filed with the Regional Trial Court of Quezon City against Jonathan Barlis and his companions. Its accusatory portion reads as follows:

"That on or about the 20th day of January, 1990, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to gain and by means of violence and intimidation against person, did then and there wilfully, unlawfully and feloniously rob HONORINA BALLERDA Y CASADA, in the following manner, to wit: on the date and in the place aforementioned, the said accused pursuant to their conspiracy went to the house of said complainant-victim and once inside the house, rob, took and carted away victim's personal properties, to wit:

One (1) ladies gold necklace worth P1,500.00

One (1) ladies Seiko wrist watch worth P2,000.00

One (1) diamond stone worth P800.00

Cash money in the amount of P3,000.00

Assorted pieces of jewelry of undetermined value

in the total amount of P7,300.00 and assorted pieces of jewelry of undetermined amount, belonging to HONORINA BALLERDA Y CASADA, and on the occasion of said Robbery, the said accused pursuant to their conspiracy, with intent to kill and without any justifiable cause, attacked, assaulted and employed personal violence upon the person of HONORINA BALLERDA Y CASADA by stabbing her on the neck and upper chest, thereby inflicting upon her serious and mortal wounds which were the direct and immediate cause

of her untimely death, to the damage and prejudice of the heirs of the said victim in the amount aforementioned and in such amount as may be awarded to them under the provisions of the New Civil Code."

The case was assigned to Branch 88 of the said court.

Trial proceeded against Jonathan Barlis only because the two other accused remained at large.

The witnesses presented by the prosecution to establish its case were Adela Argate, who was the house helper and companion of the deceased victim, Pfc. Mariano Rivera, Atty. Confesor Sansano, Dr. Dario Gajardo, and Wilma Ballerda, the victim's daughter.

Adela Argate testified that at about 9:20 a.m. of 20 January 1990, Jonathan Barlis and his two other companions entered the house of Honorina Ballerda with the permission of the latter. Thereafter, while she was about to cook, Honorina called her and when she turned to face Honorina, she saw the latter being pushed ("ginigitgit") by Jonathan and one of his companions. Another companion, who was carrying an icepick, grabbed her (Adela), gagged and hogtied her, and brought her inside the bathroom. She observed that the volume of the radio was increased and that the two untied dogs inside the house were barking. She was able to free herself and when she went out of the bathroom, she noticed that Jonathan and his companions were no longer in the house. She then saw the body of Honorina sprawled on the floor with her face covered with blood. She went out of the house and asked their neighbors to call the police.[2]

She was able to identify Jonathan "because he is tall and had no hat." His companions were thin and young, but she failed to identify them because they were always looking down and were hiding behind Jonathan.[3] She further declared that she lost a wrist watch and less than P100.00 in cash during the incident.[4]

Pfc. Mariano Rivera testified that he investigated Jonathan who then voluntarily gave his confession, with the assistance of Atty. Confesor Sansano of the IBP-Quezon City Chapter, after he was duly apprised of his constitutional rights in Tagalog. He identified the extrajudicial confession (Exhibit "B"), which is in the form of a sworn statement or "salaysay," and the advice to Jonathan of his constitutional rights (Exhibit "A").[5] Atty. Sansano's testimony corroborated that of Rivera.[6] The pertinent part of the extrajudicial confession reads as follows:

"T.3 - Alam mo na ba ngayon ang dahilan kung bakit tayo naririto at nagbibigay ng salaysay?

S - Dahil ho sa nasangkot ako sa pagnanakaw at pagpatay sa loob ng bahay ni Aling Nena sa Masaya St. corner Nenita, RP Shooters, Gulod, Novaliches, Quezon City.

T.4 - Kailan nangyari ang sinasabi mong iyan? Natatandaan mo pa?

S - A beinte ho ng Enero 1990, mga alas-9:00 ng umaga.

T.5 - Meron ka bang kasama nang maganap ang pangyayaring iyan?

S - Meron ho, sina FERDIE at BUBOY na mga taga Sta. Lucia din.

T.6 - Alam mo ba kung anong buong pangalan nina FERDIE at BUBOY?

S - Si FERDIE ho ay FERDINAND LOPEZ at si BUBOY ay si EDUARDO NINING.

T.7 - Ang sabi mo ay nasangkot ka sa pagnanakaw at pagpatay sa bahay ni Aling Nena, sino naman and napatay at ninakawan doon?

S - Si Aling Nena ho ang napatay doon at ninakawan.

T.8 - Sino ang pumatay kay Aling Nena?

S - Si FERDIE ho, pinagsasaksak ho ng tres?kantos.

T.9 - Nakita mo ba ng sinaksak ni FERDIE si Aling Nena?

S - Oho, marami ho, hindi ko matandaan, pero nakita kong sinaksak niya sa leeg si Aling NENA.

T.10 - Ano naman ang dahilan at sinaksak ni FERDIE si Aling NENA?

S - Hoholdapin ho sana namin, pero nanlaban at sumigaw.

T.11 - Isalaysay mo nga ang buong pangyayari kung paano napatay si Aling NENA at napagnakawan.

S - Gipit ho kasi ang girlfriend kong si Cristy at kailangang-kailangan niya ang pera kaya ipinasangla sa akin yun kanyang Crown Video Home Service. Ngayon, dahil ho sa bagong galing ako sa trangkaso, isinama ko sina FERDIE at BUBOY para salisi kami sa pagbuhat dahil sa mabigat yung VHS. Pagkakatok namin ay pinapasok kami ni Aling NENA. Inaalok ko sa kanya na isangla o ibenta na yung dala naming VHS. Tumanggi siya at wala daw pera. Yun namang VHS na nakalagay sa dala naming bag ay nakabukas at nakapatong sa ibabaw ng ref. Nang ayaw niyang tanggapin ay isinara ko na yung zipper ng bag at bubuhatin ko na. Sinenyasan ko sina Ferdie na aalis na kami pero bigla na lang pinagsasaksak ni FERDIE yung matanda. Pumalag pa si Aling Nena at sumigaw habang sinasaksak ni FERDIE. Hanggang sa bumagsak si Aling NENA ay pumapalag siya. Nabigla ako. Umakyat ako sa itaas ng bahay at naghalughog. Sumunod din sa akin si FERDIE at naghalughog. Wala naman akong nakuha.

T.12 - Si FERDIE, meron ba siyang nakuha habang naghalughog din sa itaas ng bahay?

S - Meron akong nakitang ibinulsa niya na galing sa aparador, hindi ko lang alam kung ano iyon.

T.13 - Ano pa ang alam mong nakuha ni FERDIE sa bahay na iyon?

S - Ang alam ko lang ay tatlong relos na panlalaki, isa lang ang natatandaan ko na SEIKO automatic na stainless, saka mga barya. Sa tindahan yata niya nakuha iyon dahil si FERDIE ang pumasok sa tindahan.

T.14 - Si BUBOY naman, ano ang alam mong ginawa niya.

S - Itinali ho yung katulong at dinala yata sa CR.

T.15 - Ayon sa salaysay ni REGINO FLORENCIO, yung asawa ng biktimgang si NENA, nawalan din sila ng mga alahas, meron ba kayong nakuhang mga alahas kina NENA?

S - Wala ho.

T.16 - Sa tantiya mo, mga gaano kayo katagal sa loob ng bahay nina NENA nang umagang mangyari iyon?

S - Mga kinse minutos lang ho siguro.

T.17 - Ang ibig mo bang sabihin, sa buong panahong iyon, wala kang nakuhang pera o alahas at mamahaling bagay?

S - Wala ho, kasi pagdating namin sa Blumentritt, si FERDIE lang ang naglabas ng pera. Si Buboy ay inabot sa akin yung tatlong relos.

T.18 - Paano naman kayo nakarating sa Blumentritt?

S - Nang paalis na kami ay una-una lang. Una si Buboy, pangalawa si Ferdie at ako ang huli. Naglakad lang kami hangang sa sakayan. Pagdating sa Quirino Highway ay sumakay kaming tatlo sa jeep na papuntang Blumentritt. Pagdating doon sa may Avenida ay naghati-hati na lang kami sa kalye habang naglalakad. Nakaparte kaming tatlo ng tigpo-four hundred pesos. Naghiwalay na kami at yung dalawa ay pupunta daw sila sa Alfonso, Cavite. Isinasama nila ako, pero hindi ako sumama. Tumuloy ako sa bahay ng tiyuhin ko sa may

Grotto. Pero pagkaraan ng may ilang araw ay nagpagala ako sa Maynila, at bumalik ako sa tiyuhin ko ng January 23, 1990. Hindi na ako mapakali.

x x x

(Signed)

JONATHAN M. BARLIS

Nagsasalaysay

NILAGDAAN SA HARAP NINA:

(Unsigned) (Unsigned)

1. Cristina A. Lopez 2. Luzvimenda M. Barlis

ASSISTED BY:

(Signed)

ATTY. CONFESSOR SANSANO

SUBSCRIBED AND SWORN to before me this 30[th] day of January 1990 at Quezon City, Philippines.

(Signed)

ASST. CITY PROSECUTOR"

Dr. Dario L. Gajardo, Medico-Legal Officer of the PC/INP Crime Laboratory Service at Camp Crime, conducted an autopsy on the body of Honorina Ballerda. He testified that he found thirty-four stab wounds caused by a pointed instrument, such as an icepick, located mainly on the neck and front of the body. Sixteen of these stab wounds were fatal.[7]

Wilma Ballerda testified that in connection with the untimely death of her mother, she spent P15,900.00 for the funeral services, P3,900.00 for burial services, which excluded that for the lot, and P3,725.00 for the mass, flowers, and food during the wake. She hired the services of a lawyer for P20,000.00.[8]

The witnesses for the defense were accused Jonathan Barlis, Cristina Lopez, Rizaldy Reyes, Hernando Angeles, Joselito Gatdula, and the accused's uncle, Pfc. Patrocino Mercado. The accused's testimony is summarized by the trial court as follows:

"That on January 20, 1990 at around 9 o'clock in the morning, accused Barlis was on his way to Grotto, San Jose, Bulacan when he met his co-accused Ferdinand Lopez and Eduardo Nining; that the two requested him to accompany them to Ballerda's place in order to pawn their VHS to the latter; that he accompanied them but immediately went to Bulacan after talking to Honorina Ballerda at the latter's store and when said Ballerda allowed the two to enter her house; that he did not stay long at Grotto, San Jose, Bulacan and went back to Novaliches; that he learned, upon reaching home, that police authorities are looking for him; that since he does not know what to do, he went back to Bulacan and stayed there until January 30, 1990 when police officers, one of whom is his uncle (Pfc. Patrocino Mercado), went thereat and fetch him to act as a witness against Ferdinand Lopez and Eduardo Nining; that he actually aided police operatives in tracking them although said Lopez was able to escape from the police officers; that he was brought to the Quezon City Police Station where he was investigated and told to sign a paper (his salaysay), that he signed the same since Pfc. Mariano Rivera was in a hurry to get a lawyer; that they (accused Barlis and Pfc. Rivera) went to the office of a lawyer who signed the document without asking any question from him; that he was brought back to the police station where he was detained." [9]

Cristina Lopez, Jonathan's girlfriend, testified that she and Jonathan's mother accompanied Jonathan when he surrendered to the police in Quezon City and when he was brought to the Office of the IBP-Quezon City Chapter. However, she and Jonathan's mother were not allowed to go inside the said office.[10]

Rizaldy Reyes, Hernando Angeles, and Joselito Gatdula tried to corroborate Jonathan's alibi. Rizaldy claimed that he and Jonathan were on board the same passenger jeepney when he went to work at about 9:00 a.m. on 20 January 1990. Jonathan told him that he was going to Grotto, San Jose, Bulacan.[11] Hernando declared that he only saw Ferdinand Lopez and Eduardo Nining coming out from the house of Honorina Ballerda at about 9:00 a.m. to 9:20 a.m. of the said date.[12] Joselito testified that he and Jonathan were on the same passenger jeepney bound for Grotto, San Jose, Bulacan, before 9:30 a.m. of that date.[13]

Pfc. Patrocinio Mercado, Jonathan's uncle and a member of the Quezon City Police, testified that on 30 January 1990, he and Jonathan's mother went to Grotto, San Jose, Bulacan, to see Jonathan. The latter told him of his intention to surrender because he is innocent. They brought Jonathan to the Quezon City Police Station where an investigator helped Jonathan to be a witness in the case. He was not with Jonathan inside the investigation room. After the investigation, he discovered that Jonathan had executed a sworn statement and had been included in the charge. He asked Jonathan if he was assisted by a lawyer when he executed the sworn statement to which Jonathan answered that he was.[14]

On 4 April 1991, the trial court promulgated its decision[15] finding Jonathan Barlis guilty beyond reasonable doubt of the crime of robbery with homicide and sentencing him "to suffer the penalty of RECLUSION PERPETUA ... to pay the heirs of Honorina Ballerda the amount of Fifty Thousand Pesos (P50,000.00) by virtue of the former's death and Ten Thousand Pesos (P10,000.00) by way of moral damages" and to restore to the victim's heirs one lady's gold necklace, one Seiko wrist watch, one diamond stone, or their equivalent value of P4,300.00 if restoration cannot be done, and cash worth P3,000.00.[16]

The trial court found that there was a conspiracy among Jonathan and his companions in the commission of the crime and convicted the former on the basis of the circumstantial evidence and his extrajudicial confession, thus:

"While the prosecution did not show any real evidence to establish the killing of the victim and the taking of personal properties at her residence, nonetheless, the attending circumstances of the instant case are indicative of accused[s] participation in the commission of the offense charge[d]. There is no dispute that movables were lost and the victim died of stab wounds on January 20, 1990. Such occurrence transpired after accused went inside the house of Ballerda, gagged their victim and tied Adela Argate. These facts are conclusive upon him since he did not advance any denial. His defense of alibi cannot prevail over his positive identification by Argate.

The acts of gagging their victims, tying and carrying Argate to the bathroom, and increasing the volume of the radio manifest a clear case of conspiracy. For this purpose, the Honorable Supreme Court held that:

'Direct proof is not essential to establish conspiracy. Since by its nature, conspiracy is planned in utmost secrecy, it can rarely be proved by direct evidence. Consequently, the presence and concurrence of minds which is involved in conspiracy, may be inferred from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole.

If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent were in fact connected and cooperative, indicating closeness of personal association and concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. That would be termed as implied conspiracy. (*Orodió v. CA*, September 13, 1988, GR 57519).'

Accused likewise questions the admissibility of his 'salaysay' by proving that the same was executed by him without the assistance of counsel. Testimonies to this effect lack credence. His uncle and his own witness, Pfc. Patrocino Mercado, admitted that such 'salaysay' was taken regularly and with the constitutional requisite of assistance [of] counsel. While the constitutional presumption of innocence should be upheld, such presumption cannot rise above the regularity in the performance of police duties and lawyer's function when the latter evidence is strong."^[17]

Jonathan Barlis (hereinafter appellant) appealed the judgment to this Court. In his brief, he contends that the trial court erred:

- "1. X X X IN NOT CONSIDERING THE DEFENSE OF ALIBI RAISED BY THE ACCUSED.
2. X X X IN GIVING CREDENCE TO THE STATEMENT (EXHIBIT "B") OF THE ACCUSED.
3. X X X IN ADJUDGING THE ACCUSED AS CIVILLY LIABLE.
4. X X X IN CONVICTING THE ACCUSED JONATHAN BARLIS OF THE CRIME OF ROBBERY WITH HOMICIDE."^[18]

We shall take up these assigned errors seriatim.

In the first assignment of error, the appellant asserts that the trial court erred in rejecting his strongly corroborated alibi and in convicting him on the basis of the weak circumstantial evidence of the prosecution. He argues that even the trial court recognized the weakness of the prosecution's evidence when it stated in its decision that "[w]hile the prosecution did not show any real evidence to establish the killing of the victim and the taking of personal properties at her residence, nonetheless, the attending circumstances of the instant case are indicative of accused[s] participation in the commission of the offense charge[d]." He also assails the credibility of Adela Argate whose statements on the identity of the malefactors before the police which investigated the crime in the afternoon of 20 January 1990 (Exhibit "2")^[19] were inconsistent with her declaration given in court and who could not have seen the malefactors because, as she testified, the house was dark. Finally, he attacks the "seeming suppression of evidence by the prosecution when it did not present in evidence Exhibit "2."

The appellant's defense of alibi was rightly rejected by the trial court not only because it was belied by his sworn statement (Exhibit "B") but also because he was positively identified by Adela Argate. The appellant admitted in his sworn statement that he was one of three persons who entered the house of Honorina with the intention of robbing her although he denied that he killed her;^[20] that after the victim was killed, he searched the house for things which he could take with him but was unsuccessful; however, his companion, Ferdie, took three men's watches. He also admitted that they divided the loot among themselves and each of them got P400.00 in cash.^[21]

Adela Argate positively identified the appellant as one of the three persons who entered the house of the victim. Contrary to the appellant's claim, there was sufficient illumination inside the house when they entered it. The lights were turned off by the appellant and his companions only after they consummated the crime and before they left the house.^[22] She also identified him as one of two persons who pushed ("ginigitit") the victim. We have ruled time and again that alibi is a weak defense and cannot prevail over the positive identification of the accused.^[23]

The appellant's claim that the prosecution suppressed evidence is without merit. It was not necessary for the prosecution to present Adela Aragate's statement before the police authorities since Adela Argate was herself presented as a witness and the prosecution had explained that it opted not to present such statement because the same was not sworn to before any officer authorized to administer oaths.^[24] Moreover, the defense had access to a copy of such statement and even marked it as its Exhibit "2." The presumption that evidence willfully

suppressed would be adverse if produced[25] does not apply where the evidence is available to the accused.[26] Furthermore, the defense did not comply with Section 13, Rule 132 of the Rules of Court[27] in attempting to impeach Adela's credibility by evidence of a prior inconsistent statement (Exhibit "2"). In this case, while Adela was cross-examined by the counsel for the appellant, she was never confronted regarding her alleged inconsistent statements in Exhibit "2."

In his second assignment of error, the appellant contends that the trial court erred in giving credence to his sworn statement or "salaysay" (Exhibit "B") which was taken without the assistance of a lawyer in violation of Section 12(1), Article 3 of the 1987 Constitution. He alleges that he surrendered to the police only to help them find the real culprits, that Pfc. Rivera misled him into signing the sworn statement by telling him not to worry, and that he was brought to the Office of the IBP-Quezon City Chapter where Atty. Sansano signed the document without conferring with him. Furthermore, he questions the fact that the names of his girlfriend, Cristina Lopez, and his mother, Luzviminda Barlis, appear as witnesses in Exhibit "B-1" although they had not signed it.

We are not persuaded. It was the appellant's uncle who surrendered him to Pfc. Rivera, his uncle's colleague. Before he was questioned, he was duly informed and advised in Tagalog, a language he speaks and understands, of his constitutional rights to remain silent and to have a competent and independent counsel, preferably of his own choice.[28] He voluntarily agreed to be assisted by no less than the Chairman of the Legal Aid Assistance Office of the IBP-Quezon City Chapter, Atty. Confesor Sansano. The latter affirmed in court that he assisted the appellant during the investigation. A lawyer is an officer of the court and upon his shoulders lies the responsibility to see to it that protection has been accorded the rights of the accused and that no injustice to him has been committed.[29] He has in his favor the presumption of regularity in the performance of his duties. This presumption was not rebutted in this case. With the presence of Atty. Sansano, we believe that the rights of the appellant were duly protected.

The failure of the mother and the girlfriend of the appellant to sign as witnesses to the taking of his sworn statement is of no moment for the Constitution does not require the presence of witnesses during custodial investigation. What is required is the assistance of counsel, which can even be waived. As held in *People vs. Layuso*,[30] what is sought to be protected by the Constitution is the compulsory disclosure of incriminating facts. The right is guaranteed merely to preclude the slightest coercion as would lead the accused to admit something false, not to prevent him from freely and voluntarily telling the truth.

The last two assigned errors, being interrelated, shall be discussed jointly.

The information alleged that the appellant took one ladies' gold necklace, one ladies' Seiko watch, one diamond stone worth P800.00, cash in the amount of P3,000.00, and assorted pieces of jewelry of undetermined value, "all belonging to the victim." However, the only evidence of such taking is the appellant's sworn statement wherein he admitted that his companions took three men's watches and about P1,200.00 in cash which they divided among themselves. Adela Argate, for her part, testified that she lost one ladies' watch and less than P100.00 in cash. The Office of the Solicitor General in the Brief for the Appellee agrees with the appellant that it was an error for the trial court to order the restitution of (a) one ladies' gold necklace, (b) one Seiko wrist watch, (c) one diamond stone and (d) cash in the amount of P3,000.00, since there was no proof of loss thereof. It maintains, however, that it was proved that witness Adela Argate lost her wrist watch and cash of less than P100.00, which fact was not disputed by the appellant; hence "the element of unlawful taking of property was amply established." [31]

To sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proved as conclusively as any other essential element of the crime.[32] The taking with intent to gain of personal property belonging to another, by means of violence against or intimidation of any person, or using force upon things are

the essential elements of robbery.[33] There is robbery with homicide when by reason or on occasion of a robbery with the use of violence against or intimidation of person, the crime of homicide shall have been committed.[34]

As shown above, the only evidence of the taking of the personal property of the victim is the extrajudicial confession of the appellant. Under Section 3, Rule 133 of the Rules of Court, "an extrajudicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti." Corpus delicti is the body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man or the charred remains of a house burned down. In a derivative sense, it means the substantial fact that a crime was committed.[35] It is made up of two elements: (a) that a certain result has been proved, for example, a man has died or a building has been burned; and (b) that some person is criminally responsible for the act.[36] Section 3, Rule 133 does not mean that every element of the crime charged must be clearly established by independent evidence apart from the confession. It means merely that there should be some evidence tending to show the commission of the crime apart from the confession. Otherwise, utility of the confession as a species of proof would vanish if it were necessary, in addition to the confession, to adduce other evidence sufficient to justify conviction independently of such confession.[37] Otherwise stated, the other evidence need not, independently of the confession, establish the corpus delicti beyond a reasonable doubt.[38]

The prosecution failed to corroborate the extrajudicial confession of the appellant on the robbery with evidence of corpus delicti. In short, the robbery was not conclusively proved. The instant case should be distinguished from *People vs. Mones*.^[39] In *Mones*, the four accused who were charged with robbery with homicide executed separate confessions of the crime charged. Their confessions were also corroborated by the testimony of a witness. We held therein:

"[W]here the accusation of robbery fails, but multiple homicide or murder is proved, the accused must be sentenced for the several separate offenses of homicide or murder (*U.S. vs. Lahoylahoy and Madanlog*, 38 Phil., 330); and in this case, if the proof should be held insufficient as to the robbery, the result would be, under the Revised Penal Code, that each of the accused would be sentenced for the four murders committed by them. In view of this fact we are constrained to sustain the conviction for robbery with homicide, upon the concurrent confessions of each of the four accused to the effect that robbery was the purpose of the crime and that P100 in money were taken from the trunk of Manuel Mico. As to the moral basis of this fact we entertain no doubt whatever, although there is no independent evidence, apart from the confessions that robbery was committed. In thus sustaining the trial court in its finding of robbery we do not wish to be understood as declaring that this appreciation could prevail if the prosecution consisted of a charge of robbery only, or if the conclusion reached were in fact unfavorable to the accused."^[40]

In *Mones*, the conviction of the four accused for robbery with homicide is sustainable under the doctrine of interlocking confessions: "extra-judicial 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."^[41] Clearly, the doctrine is inapplicable here for we only have the solitary confession of the appellant.

The Office of the Solicitor General, as earlier observed, concedes that there was no proof of robbery. It argues, however, that such is not fatal because the un rebutted fact remains that Adela Argate lost a wrist watch and cash of less than P100.00 on the occasion of the robbery. We cannot sustain this proposition because of the rule enumerated in *United States vs. Lahoylahoy*,^[42] to wit:

"To permit a defendant to be convicted upon a charge of robbing one person when the proof shows that he robbed an entirely different person, when the first was not present, is violative of the rudimentary principles of pleading; and in addition, is subject to the criticism that the defendant is thereby placed in a position where he

could not be protected from a future prosecution by a plea of former conviction or acquittal. If we should convict or acquit these defendants to-day of the robbery which is alleged to have been committed upon the property of Roman Estriba, it is perfectly clear that they could be prosecuted tomorrow for robbery committed upon the property of Juana; and the plea of former jeopardy would be of no avail."

The death of the victim has been sufficiently established by evidence independent of the appellant's extrajudicial confession, namely, the un rebutted testimonies of prosecution witnesses Adela Argate, Dr. Dario Gajardo, and Wilma Ballerda.

Finally, we agree with the trial court that the conspiracy among the appellant and his two companions was proved beyond reasonable doubt by circumstantial evidence.

Since the alleged robbery was not conclusively proved in this case, the appellant could only be convicted of homicide under Article 249 of the Revised Penal Code. The penalty prescribed therefor is reclusion temporal.

The aggravating circumstance of dwelling^[43] was proved in this case and may be appreciated against the appellant. This is offset, however, by the mitigating circumstance of voluntary surrender.^[44] The applicable period of reclusion temporal is therefore the medium period or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.^[45] Since he is entitled to the benefits of the Indeterminate Sentence Law,^[46] the penalty to be imposed upon him shall be one whose minimum shall be within the range of prision mayor and whose maximum shall be within the range of the prescribed penalty taking into account the modifying circumstances.^[47]

The award of moral damages in the amount of P10,000.00 is proper under Article 2206(3) of the Civil Code considering that Wilma Ballerda, the only child of the victim, testified that she was shocked and could not sleep for several nights when she learned of her mother's death.^[48]

WHEREFORE, the appealed decision is MODIFIED as follows: appellant JONATHAN BARLIS Y MERCADO is hereby found guilty beyond reasonable doubt of the crime of Homicide under Article 249 of the Revised Penal Code, and, applying the Indeterminate Sentence Law, is hereby sentenced to suffer an indeterminate penalty ranging from ten (10) years of prision mayor as minimum to sixteen (16) years of reclusion temporal as maximum. The appellant is ordered to pay the heirs of Honorina Ballerda the sum of P50,000.00 as indemnity and P10,000.00 as moral damages. Costs against the appellant.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Records (OR), 1-2; Rollo, 3-4.

[2] TSN, 15 March 1990, 5-8.

[3] Id., 5-6.

[4] Id., 10.

[5] TSN, 19 March 1990, 4-5.

[6] TSN, 22 March 1990, 5.

[7] TSN, 24 July 1990, 5-7.

[8] TSN, 31 July 1990, 5-10.

[9] OR, 172-173.

[10] TSN, 17 August 1990, 3-4.

[11] TSN, 20 August 1990, 2.

[12] TSN, 20 August 1990, 8.

[13] TSN, 22 August 1990, 3.

[14] Id., 5-6.

[15] OR, 171-175. Per Judge Tirso D.C. Velasco.

[16] OR, 174-175.

[17] OR, 173-174.

[18] Rollo, 62.

[19] OR, 139-140.

[20] "T.10 - Ano naman ang dahilan at sinaksak ni FERDIE si Aling NENA?

S - Hoholdapin ho sana namin, pero nanlaban at sumigaw."

[21] Exhibit "B-1," T.18.

[22] TSN, 15 March 1990, 8.

[23] People vs. Lee, 204 SCRA 900 [1991]; People vs. Devaras, 205 SCRA 676 [1992]; People vs. De la Cruz, 207 SCRA 632 [1992]; People vs. Florida, 214 SCRA 227 [1992].

[24] TSN, 22 August 1990, 7.

[25] Section 3 (e), Rule 131, Rules of Court.

[26] People vs. Casinillo, 213 SCRA 777 [1992].

[27] Said section reads: "SEC. 13. How witness impeached by evidence of inconsistent statements. -- Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them."

[28] Section 12 (1), Article III, 1987 Constitution.

[29] People vs. Alvarez, 201 SCRA 364 [1991].

[30] 175 SCRA 47 [1989].

[31] Rollo, 152.

[32] People vs. Martinado, 214 SCRA 712 [1992]; People vs. De la Cruz, 217 SCRA 283 [1993].

[33] Article 293, Revised Penal Code.

[34] Article 294 (1), Id.

[35] BLACK'S LAW DICTIONARY 310 (5th ed. 1979).

[36] 7 (Part 2) VICENTE J. FRANCISCO, THE REVISED RULES OF COURT, 694 (1973 ed.).

[37] People vs. Bantagan, 54 Phil. 834 [1930]. See also, People vs. Mones, 58 Phil. 46 [1933].

[38] FRANCISCO, op. cit., 699.

[39] Supra at footnote no. 37.

[40] Id. at 59.

[41] People vs. Molleda, 86 SCRA 667, 701 [1978].

[42] 38 Phil. 330, 334-335 [1918].

[43] Article 14 (3), Revised Penal Code.

[44] Article 13 (7), Id.

[45] Article 64 (4), in relation to Article 77, Id. See 1 RAMON C. AQUINO, THE REVISED PENAL CODE, 712 (1987 ed.).

[46] Act No. 4103, as amended.

[47] Article 61 (3), Revised Penal Code.

[48] TSN, 31 July 1990, 7.

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