

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHN AMET BAELO Y GUINTIVANO @ "TOTONG";
ACCUSED-APPELLANT.

G.R. No. 101314. July 01, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an Information filed with the Regional Trial Court (RTC) of Pasig, Metro Manila, on 18 October 1990, accused John Amet Baello @ "Totong" was charged with the crime of Robbery with Homicide. The accusatory portion of the information reads as follows:

"That on or about the 10th day of October, 1990 in the Municipality of Pasig, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one @ 'Jerry'; whose true identity and present whereabouts is still unknown, and mutually helping and aiding with one another, with intent to gain, without the knowledge and consent of the owner thereof, entered the house of one Eustaquio Borja y Reyes thru the window at the second floor of the said house, an opening not intended for ingress or egress, and once inside the same, did then and there willfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

One (1) 20" colored

television set marked

'Sharp' worth P11,269.00

One (1) stereo cassette

recorder colored black

worth 2,500.00

One (1) camera worth 1,000.00

Assorted jewelries (sic)

of still undetermined

amount _____

P14,769.00

belonging to Eustaquio Borja y Reyes, to the damage and prejudice of the owner thereof in the total amount of P14,769.00; and that by reason and on the occasion of the robbery, the above-named accused, with intent to kill, armed with bladed instrument, did then and there willfully, unlawfully and feloniously stab one Veronica Borja y Ramos on the vital parts of her body, thereby inflicting upon her mortal wounds which were the direct and immediate cause of her death thereafter."[1]

The case was docketed as Criminal Case No. 84253 and was raffled off to Branch 156 of the said court.

At his arraignment on 13 November 1990, the accused entered a plea of not guilty.[2] Trial on the merits commenced on 18 December 1990.

After due trial, the RTC promulgated its decision[3] on 19 July 1991 finding the accused guilty as charged. The adjudicatory portion thereof reads as follows:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused JOHN AMET BAELLO y Guintivano @ 'TOTONG' guilty beyond reasonable doubt of the crime of 'robbery with homicide' under Article 294 (1) of the Revised Penal Code with the aggravating circumstance of unlawful entry and hereby sentences said accused to suffer the penalty of reclusion perpetua with all its accessory penalties, to indemnify the heirs of Veronica Borja y Ramos in the amount of P50,000.00, to pay the sum of P50,000.00 by way of reparation of the stolen cassette, camera and assorted jewelries (sic), to pay the further sum of P41,672.00 by way of reimbursement of the burial and other related expenses and the additional sum of P20,000.00 and P10,000.00 as moral and exemplary damages, respectively, all without subsidiary imprisonment in case of insolvency and to pay the costs.

In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment."

From this adverse decision, the accused interposed an appeal which this Court accepted in a resolution dated 30 September 1991.[5]

The factual antecedents of this case, as culled from the records, are as follows:

On 10 October 1990, at about five 5:00 o'clock in the morning, Barangay Captain Eustaquio R. Borja awoke to find out that the front door of his residence at No. 164 Evangelista Street, Barangay Santolan, Pasig, Metro-Manila, was open and that their television set in the sala was missing. Eustaquio told his wife about what he saw and together they proceeded upstairs to the second floor to check on their 22-year old daughter, Veronica Borja. They noticed that the door to her room was open. Upon entering the room, they were shocked to find the bloodied corpse of their daughter lying in bed. The window of her room was open. Eustaquio instructed his wife not to touch the body while he summoned the authorities. He proceeded to the Barangay Hall from where he called the police. The couple later discovered that a cassette player, a camera, and various pieces of jewelry in their daughter's cabinet, all worth about P50,000.00, were likewise missing.[6]

On the same day, P/Capt. Florante F. Baltazar, Medico-Legal Officer of the PC/INP Crime Laboratory Services, performed an autopsy on the body of the victim. He concluded that the cause of death was "cardio-respiratory arrest due to shock and hemorrhage secondary to multiple stab wounds." [7] He stated in his autopsy report that the victim suffered a total of four stab wounds; that the stab wound inflicted on the victim's neck, which severed her jugular vein, was a fatal one; and that at the time of the autopsy (3:25 p.m.), the victim had been dead for more or less ten to twelve hours.[8]

At 6:00 p.m., the police were able to recover the missing television set from the house of Eugenio Tagifa (or Tadifa), the husband of the accused's sister.[9] Tagifa was brought to the police station for questioning. On 11 October 1990 at 10:55 a.m., Tagifa executed a "Sinumpaang Salaysay" wherein he pointed to the accused as the person who had placed the television set under the stairs of his house.[10]

On 13 October 1990 at 5:30 p.m., the accused was captured in Bangkal, Makati by elements of the Intelligence and Special Operations Unit (ISOU) of the Pasig Police and brought to the police station.[11] He made an oral admission of his participation in the commission of the crime.[12] He was then endorsed to the Criminal

Investigation Division (CID) for formal investigation.[13]

The accused was asked if he could understand, read and write Tagalog, and he replied that he could.[14] The accused was likewise asked if he could afford the services of counsel; he answered that he could not.[15] Upon being asked if he was willing to avail of the services of Atty. Eber Generoso of the Public Attorney's Office (PAO), the accused replied in the affirmative.[16] Atty. Generoso then brought the accused away from the police investigators so that the two of them could talk privately.[17] Atty. Generoso inquired from the accused whether or not he had any participation in the crime and told him that if he had none, he must not make any admission or statement as this would be prejudicial to him. The accused, however, said, "Attorney, aaminin ko na ho total ginawa ko naman." The accused then told Atty. Generoso that he was the one who took the television set but denied having killed Veronica Borja.[18] Afterwards, the police started the formal investigation of the accused in the presence of Atty. Generoso. The accused gave his statement before the police and this was reduced into writing and marked at the trial as Exhibit "L." Atty. Generoso read the statement to the accused and then let the accused read it himself.[19] The accused then signed Exhibit "L," after which Atty. Generoso also signed the same.

The body of the said document reads as follows:

"Tanong: Ikaw ba ay marunong sumulat at umunawa ng Wikang Tagalog na atin gagamitin sa pagsisyasat na ito?

Sagot: Opo.

Pasubali: Bago ko simulan and imbestigasyong ito, nais kong ipabatid sa iyo na ikaw bilang isang mamayang Pilipino alinsunod sa ating Binagong Saligang Batas ay may mga karapatan, gaya ng mga sumusunod:

Na, karapatan mong manatiling tahimik at huwag sagutin and alin man aking mga katanungan;

(Sgd.) (Sgd.)

Atty. Eber Generoso John Amet Baello

Na, karapatan mo ring kumuha ng isang piling abogado na maaring tumulong sa iyo sa oras ng imbestigasgong ito;

(Sgd.) (Sgd.)

Atty. Eber Generoso John Amet Baello

Na, kung ikaw ay wala pang isang piling abogado, ikaw ay bibigyan para sa iyong kapakanan ng libre;

(Sgd.) (Sgd.)

Atty. Eber Generoso John Amet Baello

Na, ikaw ay muli kong pinalahanan na ang lahat ng iyong sasabihin dito ay maaaring gamitin pabor O' laban sa iyong panig;

(Sgd.) (Sgd.)

Atty. Eber Generoso John Amet Baello

01. t: Kung gayon ay turan mong muli ang iyong tunay na pangalan, edad, katayuan sa buhay at iba pang maaaring pagkakakilanlan sa iyo?

s: JOHN AMET BAELLO y GUINTIVANO, 20 anyos, binata, figthing (sic) cock caretaker, tubong Liganes,

Ili-Ilo (sic) at nakatira sa may Nr. 145-B Interior, Evangelista St., Santolan, Pasig, MM.

02. t: John Amet G Baello, ipinakikilala ko sa iyo si Atty. Eber Generoso na abogado ng CLAO, at siya ang siyang tutulong sa iyo, nais mo ba siyang maging abogado mo?

s: Opo.

03. t: Bibigyan ko muna kayo ng ilang minuto para kayo mag-usap ni Atty. Generoso upang maintindihan mo ang ibibigay mong salaysay. Sige magusap muna kayo (at this juncture this prober allowing the affiant and the Attorney to talk).

04. t: G. Baello, nais kong ipbatid (sic) sa iyo na ikaw ay nasasngkot (sic) sa kasong Robbery with Homicide and Rape, ano ang masasabi mo tungkol dito?

s: Robbery po lamang ang alam ko.

05. t: Saan at kailan naman nangyari itong sinasabi mong Robbery kung iyong natatandaan?

s: Sa bahay po ni Bgy. Captain Borja sa may Santolan, Pasig, MM.

06. t: Anong oras ninyo ba naman ginawa itong sinasabi mong nakawan?

s: Mga humigit kumulang alas 4:00 ng mdaling (sic) araw ika-10 ng Oktubre 1990.

07. t: Sino O' sino-sino ba naman ang kasama mo ng nakawan ninyo ang bahay ni Bgy. Capt. Borja?

s: Si Alias GERRY po lamang dalawa.

08. t: Papaano naman ninyo pinagnakawan ang bahay nina Bgy. Capt. Borja?

s: Kami po nitong si Gerry ay nagdaan sa may bintana ng second floor ng bahay sa may harap ng basketball court.

09. t: Ano-ano ba naman ang kinuha ninyo sa loob ng bahay nina Bgy. Capt. (sic) Borja?

s: Ang kinuha ko po ay isang television, pero hindi ko po alam kung ano ang mga kinuha ni GERRY.

10. t: Mayroon akong ipapakita sa iyong isang television, ano ang masasabi mo tungkol dito (declarant at this juncture this prober pointing a colored Television set marked Sharp in the course of investigation).

s: Iyan po ang television na aking ninakaw sa bahay nina Capt. Borja (at this juncture suspect/declarant was pointing to a colored TV Sharp placed on top of the investigating room in the course of investigation).

11. t: G. Baello, nais kong ipa-alam sa iyo na sa bahay na inyong pinag-nakawan ay mayroon napatay na si Veronica Borja na anak na babae nuong may-ari ng bahay, alam mo ba kung sino ang pumatay dito?

s: Opo, si GERRY po na aking kasama nang magnakaw kami.

12. t: Papaano mo naman nasiguro na itong si Gerry ang pumatay kay Veronica?

s: Dahil po sa siya lamang ang naiwan sa itaas ng bahay.

13. t: Nasaan ba naman itong Veronica Borja ng pasukin ninyo ang bahay nina Bgy. Capt. Borja?

s: Siya po ay nakiya (sic) ko sa isang kuwarto sa itaas ng bahay.

14. t: Papaano ba naman pinatay ni Berry (sic) si Veronica Borja kung nalalaman mo?

s: Hindi ko po nakita dahil sa nauna akong umalis sa kanya.

15. t: Bukod sa inyong dalawa ni Gerry, mayroon pa bang ibang taong pumasok sa bahay nina Bgy. Capt. Borja?

s: Wala na po, kaming dalawa lamang.

16. t: Nalaman mo ba kung saan ma-aaring matagpuan itong si Gerry?

s: Sa may Nueva Ecija po, pero hindi ko alam kung saang lugar duon.

17. t: Wala na muna akong itatanong sa iyo may nais ka pa bang idadagdag O' babawasin sa iyong salaysay?

s: Wala na po muna.

18. t: Ikaw ba ay tinakot, sinaktan, binayaran O' pinangakuan upang magbigay ng iyong salaysay dito?

s: Hindi po, kusang loob ko po ito lahat.

(Sgd.) John Baello

19. t: Handa mo bang panumpaan at lagdaan ang iyong salaysay bilang patotoo sa lahat ng iyong mga sinasabi dito?

s: Opo.

x ----- wakas ng Salaysay ni
-----x

15 Oktubre 1990

Pasig, Metro-Manila

Pinabasa, pina-unawa (Sgd.)

at Pinapirmahan John Amet Baello

ni : (Sgd.) Atty. Eber Generoso"

On the other hand, the defense presented only two witnesses, viz.: the accused, testifying pro se, and his mother, Anita Baello.

The version of the accused is as follows:

He was born in Leganes, Iloilo but resides with his mother at No. 145 Evangelista Street, Santolan, Pasig, Metro Manila. He only reached the fourth grade of elementary school. He was at the house of his cousin after having watched a movie when the police came. They handcuffed him and then brought him to the Pasig Police Headquarters. He was immediately detained and not subjected to any investigation. Afterwards, he was mauled inside the jail by Antonio Gabriel, the nephew of Capt. Borja, and two of Gabriel's companions. These persons beat him up by kicking and punching his stomach and back, and striking his back and buttocks with a "baston." He was unable to recall the day when his statement was taken down, though he remembers it was in the afternoon. On that particular afternoon, he was taken downstairs and told that he would be given a lawyer to assist and defend him. However, Atty. Generoso, the lawyer assigned to him, simply sat down and stared at him without doing anything. Atty. Generoso told him that he would be going somewhere and then left for about an hour. When Atty. Generoso came back, the statement was already typewritten and Atty. Generoso merely signed it after which the accused was asked to sign, which he did as he was promised that he would be released after signing.

While he was downstairs, a policeman asked him to carry a television set. At first, the accused refused to do so,

but then the policeman shouted at him. Since he got scared, he carried the television set. His picture was then taken and presented as Exhibit "O-6" by the prosecution. All the time downstairs, the police only asked him for his name, age, civil status and nothing more.[20]

Anita Baello testified thus: When she visited her son, the accused, in jail a week after his arrest, she saw contusions on his body; he complained to her of chest pains because of the beatings he had received. She visited her son every other day and when she visited him sometime in the first week of January 1991, he told her that he could not bear anymore the beatings he received from Antonio Gabriel. Their lawyer then wrote a letter to the jail warden and after that, her son was not hurt anymore. When she visited him later, she was surprised to see Gabriel in the same cell with her son; the latter told her that he was not able to sleep for three nights because he was being pricked with a needle, so she complained to the police after which her son was separated from Gabriel.[21]

In his brief,[22] the accused submits the following assignment of errors:

"1

THE LOWER COURT ERRED IN HOLDING THAT ACCUSED-APPELLANT WAS FULLY AND DULY ASSISTED BY A COUNSEL ENGAGED BY HIM AND IN FUTHER [sic]' HOLDING THAT HIS EXTRA-JUDICIAL CONFESSION DURING CUSTODIAL INVESTIGATION IS ADMISSIBLE IN EVIDENCE

2

THE LOWER COURT ERRED IN FINDING THAT CONSPIRACY EXISTS IN THE COMMISSION OF THE CRIME

3

THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION NAMELY, EUGENIO TAGIFA AND PRUDENCIO BAGASINA FOR IN TRUTH AND IN FACT THESE WERE INCONSISTENT, HIGHLY IMPROBABLE AND EXAGGERATED

4

THE LOWER COURT ERRED IN HOLDING ACCUSED-APPELLANT GUILTY AND CONVICTING HIM OF THE CRIME CHARGE [sic] CONSIDERING THAT HIS GUILT WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT"

In his first assigned error, the accused maintains that he was not "fully and duly assisted by a counsel engaged by him." Hence, his extra-judicial confession is constitutionally infirm and inadmissible in evidence.

The records of the case, however, clearly belie this allegation of the accused. While it is true that Atty. Generoso was not initially his counsel of choice, the fact remains that after the accused was asked if he could afford the services of counsel and he answered in the negative, he was informed that he would be provided with one -- Atty. Generoso of the PAO -- to assist him during the investigation. He then voluntarily accepted the services of Atty. Generoso. This was in compliance with paragraph (1), Section 12, Article III of the Constitution which provides that:

"Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

Apropos is the case of *People vs. Parojinog*. [23] Parojinog was arrested for triple murder. Before the start of the

investigation, the police apprised Parojinog of his constitutional right to counsel of his own choice and told him that if he did not have one, a certain Atty. Fernando Fuentes III of the Citizens Legal Assistance Office (CLAO) would be engaged to assist him. He agreed to have Atty. Fuentes as his lawyer. Atty. Fuentes assisted Parojinog during the entire investigation after which Parojinog signed his extra-judicial confession. Atty. Fuentes also signed the document. Later on, Parojinog assailed the confession, contending that Atty. Fuentes was not his counsel of choice. This Court refuted him thus:

"Anent his claim that Atty. Fuentes was not his choice, Section 12(1) of Article III of the 1987 Constitution provides:

‘Sec. 12(1). -- Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.’

It is very clear from the aforequoted provision that a person under investigation for the commission of an offense may choose his own counsel but if he cannot afford the services of counsel, he must be provided with one. While the initial choice of the lawyer in the latter case is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. In the instant case, the records show that no objection was voiced by the accused throughout the entire proceedings of the investigation and afterwards when he subscribed to its veracity before City Prosecutor Luzminda V. Uy. Thus, he apparently acquiesced to the choice of the investigators. He complained for the first time that Atty. Fuentes was not his choice only during trial. Thus, it was too late."

Likewise, in *People vs. Masongsong*,^[24] we dismissed a similar plaint in this wise:

"To accept the appellant's contention that he was in effect denied justice since the counsel assigned to him was not really his choice is ridiculous. As correctly stated by the Solicitor General, every lawyer is presumed to have knowledge of the law as well as the training in procedure sufficient to enable him to protect his client. Furthermore, the accused was given sufficient time to choose his own counsel had he opted to so. His failure, therefore, to request for another counsel negates his claim of denial of the right to choose his lawyer."

And in *People vs. Pinzon*,^[25] this Court made the following disquisition:

"There is no merit in the above argument. We agree with the Solicitor General's view that:

`x x x the entire process of custodial investigation was conducted in the manner required by the Constitution. Atty. Saldivar informed appellant of the latter's right to remain silent, as anything he says in said investigation could be used against him. Appellant was likewise informed of his right to counsel and that if he could not afford to pay [for] the services of one, he could avail of the free legal services of the CLAO, which offer appellant accepted. By said acceptance, Atty. Saldivar became appellant's counsel of choice, and the fact that appellant had no previous acquaintance with Atty. Saldivar did not render null and void appellant's otherwise valid extra-judicial confession. Atty. Saldivar was present from the time appellant's statements were taken up to the time appellant affixed his signature thereon. In fact, Atty. Saldivar's signature appears on the statement. Plainly, the admission in evidence of appellant's sworn statement does not suffer from any constitutional infirmity."

Exhibit "L" completely belies the allegation that the accused was not fully assisted by Atty. Generoso during the investigation. Said document discloses that the accused was informed of his constitutional rights by Atty. Generoso in extenso. Atty. Generoso conferred with the accused, warned the latter of the consequences of his confession and even advised him not to make any; however, the accused insisted on going ahead with his confession, although he only confessed to the robbery.

It was only after the said conference that the accused gave a statement. After it was completed, Atty. Generoso again explained to him the contents and the adverse effects of his confession, but the accused found himself at ease with his conscience by voluntarily affixing his signature therein. If, indeed, he had any objections to his statement, he should not have signed Exhibit "L," or he should have at least voiced out such objections to Atty. Generoso. Atty. Generoso, as an officer of the PAO, would not have affixed his signature in the extra-judicial confession as counsel for the accused had he known of any infirmity in its execution.[26] If he did so, he would have been remiss in the performance of his duty and unfaithful to his office. But there must be convincing proof of that for he has in his favor the presumption of regularity in the performance of his duty.

The accused likewise assails what he perceives to be "a pre-conditioned (sic) of the mind on the part of the investigator as well as the counsel that an admission was about to take place and for that the accused must be assisted only in this aspect." [27] He then labors under a misconception. In *People vs. Layuso*, [28] we stated:

"This Court denounces in the strongest terms possible the widespread misconception that the presence of a lawyer under the 'right to counsel' provision of the Constitution is intended to stop an accused from saying anything which might incriminate him. The right to counsel is intended to preclude the slightest coercion as would lead the accused to admit something false. The lawyer, however, should never prevent an accused from freely and voluntarily telling the truth. Whether it is an extra-judicial statement or testimony in open court, the purpose is always the ascertainment of truth."

The accused jointly discusses the remaining assigned errors. He contends that there was no evidence of conspiracy with respect to the crime of robbery with homicide, and faults the trial court for giving full credence to the testimonies of prosecution witnesses Eugenio Tagifa (his brother-in-law) and Prudencio Bagasina. He alleges that Eugenio Tagifa testified against him because the former was threatened with arrest and prosecution.[29] The accused likewise impugns the testimony of Prudencio Bagasina as "inconsistent, highly improbable and exaggerated."

These contentions are as hollow as those offered to support the first assignment of error.

Anent his claim of lack of evidence of conspiracy for the crime of robbery with homicide, the accused has absolutely nothing but vague conclusions in between which is the theory, which he fears to openly express, that since he confessed only to robbery and that since it was only Jerry, his companion, who killed Veronica Borja, he could only be held liable for robbery but not for robbery with homicide. Indeed, the accused deliberately and carefully confined his participation to the robbery, and the prosecution had no direct evidence that the accused took part in the killing of Veronica. But the accused is not thereby absolved from any liability for her death. Once conspiracy is established between the accused and Jerry in the commission of the crime of robbery, the accused would be equally culpable for homicide committed by Jerry on the occasion of the robbery, unless the former proved that he endeavored to prevent Jerry from committing homicide. In *People vs. de la Cruz*, [30] we said: "The rule is likewise settled that when homicide takes place as a consequence or on the occasion of a robbery, all those who took part in the robbery are guilty as principals of the crime of robbery with homicide unless proof is presented that the accused tried to prevent the killing." Accused offered no such proof.

The conspiracy to commit the crime of robbery was sufficiently and convincingly established in this case. As admitted by the accused in his sworn statement, he and Jerry had a prior agreement to commit robbery in the house of Eustaquio Borja. Together they went to the latter's house at 4:00 o'clock in the morning of 10 October 1990, entered the house through the window at the second floor, and once inside, he got the television set while Jerry got the other items, and then, together again, they left the house with their loot. These acts taken as a whole are more than sufficient to establish a common design between Jerry and the accused to commit robbery; such acts eloquently showed nothing less than a joint purpose and design, and a community of interest which

established beyond doubt the existence of a conspiracy.[31] It is axiomatic that direct proof is not essential to prove conspiracy; it may be shown by acts and circumstances from which may logically be inferred the existence of a common design[32] or may be deduced from the mode and manner in which the offense is perpetrated.[33]

Accused's claim that his brother-in-law, Eugenio Tagifa, testified against him because "he was intimidated with arrest and prosecution" is purely conjectural. It is to be noted that the accused does not, in the main, dispute the prosecution's evidence that he was the one who placed the television set under the stairs of Tagifa's house and that he was seen carrying it on his shoulders in the early morning of 10 October 1990. All that the accused could do was to raise a feeble and unsubstantiated denial.

On the witness stand, Tagifa identified the sworn statement he executed on 11 October 1990 (Exhibit "A") and openly admitted that it was the accused who brought the television set, thus:

"Q Who brought the TV set under your stairs if you were not the one?

A My brother in law, sir.

Q Could you identify him, Mr. witness?

A Yes, sir.

Q Will you point to him now?

A Yes, sir. (witness pointing to a person who identified himself as John Amet Baello, the accused in this case)."[34]

The due execution of Tagifa's sworn statement was not put in doubt during his cross-examination by the counsel for the defense. The impression then that Tagifa leaves us is that he was telling the truth. The trial court, which was obviously in a better position to decide the question of his credibility, having heard him and observed his deportment and manner of testifying, gave full faith and credit to Tagifa's testimony. We accord it the highest respect, especially considering that we find no fact or circumstance of value in the said testimony that it had overlooked or misappreciated and which if considered, may alter the result.[35]

Prudencio Bagasina's testimony deserves a separate treatment. He had the temerity to testify in open court that he was just brought to the police station and then made to sign a prepared statement, which was marked as Exhibit "P." He denied having been investigated at all. In the said sworn statement, he declared that in the early morning of 10 October 1990, he saw the accused along Daang Kalabaw at Santolan, Pasig, Metro Manila, carrying a television set -- the same television set identified by Tagifa. The trial court immediately perceived that he was lying through his teeth and held him in contempt, thus:

"COURT:

The witness is hereby cited in contempt for making untruthful statements until further orders from this Court. Send him to the provincial jail, for twenty-four hours. Let the hearing be continued on another date."[36]

In short, the trial court gave full faith and credit to Bagasina's sworn statement. We find no compelling reason to disagree with the trial court.

The aggravating circumstance of unlawful entry[37] was properly appreciated against the accused as he and his companion, Jerry, had entered the Borja residence through the second-floor window, a way not intended for ingress. The evidence likewise shows that the aggravating circumstance of nocturnity[38] was present in the commission of the crime as the darkness was taken advantage of by the malefactors and such circumstance facilitated their evil designs.

WHEREFORE, the judgment of conviction of the Regional Trial Court of Pasig (Branch 156), Metro Manila in Criminal Case No. 84253 is hereby AFFIRMED in toto. Costs against the accused-appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

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

[2] OR, 8.

[3] Id., 152-161; Rollo, op. cit., 16-25. Per Judge Martin S. Villarama, Jr.

[4] OR, 161; Rollo, 25.

[5] Rollo, 26.

[6] TSN, 30 January 1991, 2-11.

[7] Exhibit "E."

[8] TSN, 8 February 1991, 4-7.

[9] Exhibit "K."

[10] Exhibit "A."

[11] Exhibit "K."

[12] TSN, 26 February 1991, 8.

[13] Id., 4.

[14] TSN, 11 March 1991, 15.

[15] Id., 16.

[16] Id.

[17] TSN, 3 May 1991, 4.

[18] TSN, 3 May 1991, 12.

[19] Id., 18.

[20] TSN, 28 May 1991, 2-10.

[21] TSN, 3 June 1991, 2-15.

[22] Rollo, 49, et. seq.

[23] 203 SCRA 673 [1991].

[24] 174 SCRA 39 [1989].

[25] 206 SCRA 93 [1992].

[26] See *People vs. Aquino*, 186 SCRA 851, 860 [1990].

[27] Appellant's Brief, 12-13.

[28] 175 SCRA 47 [1989].

[29] Appellant's Brief, *op. cit.*, 18.

[30] G.R. No. 102063, 20 January 1993, citing *People vs. Garillo*, 84 SCRA 537 [1978] and *People vs. Bernales*, 94 SCRA 604 [1979].

[31] *People vs. Lunar*, 45 SCRA 119 [1972]; *People vs. Custodio*, 47 SCRA 289 [1972].

[32] *People vs. Tingson*, 47 SCRA 243 [1972].

[33] *People vs. Alonzo*, 73 SCRA 484 [1976].

[34] TSN, 18 December 1990, 5-6.

[35] *People vs. Garcia*, 89 SCRA 440 [1979]; *People vs. Bautista*, 92 SCRA 465 [1979]; *People vs. Florida*, G.R. No. 90254, 24 September 1992.

[36] TSN, 3 April 1991, 11.

[37] Article 14(18), Revised Penal Code.

[38] Article 14(6), *Id.*

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