PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS FELICIANO, ACCUSED-APPELLANT.

G.R. No. 136258. October 10, 2001

Ponente: VITUG, J.

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VITUG, J.:

From being the subject of moral condemnation, the "Kiss of Judas" appears to attain a different dimension in criminal procedure. Indeed, by entering into an "unholy" contract with an accused, so that the latter might betray his partner in crime in exchange for an acquittal, the State demonstrates how far its efforts could go to vindicate crime. That the State should agree to become a party to setting up a premium on "treachery," and that it should reward conduct from which an honorable man would ordinarily recoil with aversion, paradoxically illustrates the perceived necessity of such kind of an arrangement in criminal procedure.[1] It is this doggedness of purpose on the part of the State which herein accused-appellant, in one of his assignment of errors, decries -

> "The trial court [has] erred in discharging accused Rodel de la Cruz to be the state witness against co-accused Carlos Feliciano despite strong objections from the defense."[2]

The accused-appellant, Carlos Feliciano, was a security guard detailed by the Atlantic Security Agency at the Kingsmen building, also popularly known in the small community as the hub of four disco pubs located on four floors of the edifice, in Kalibo, Aklan. He was assigned to the "Superstar" disco pub and his duties ranged from refusing entry to dubious characters to making certain that no customer would leave without first paying his bill. Rodel de la Cruz, a security guard from another agency, the Rheaza Security Agency, was stationed at the parking lot of the same building. In keeping with the nocturnal business hours of the establishments at Kingsmen, the two security guards would report for duty at 7:00 in the evening until the wee hours of the next morning or when the last customer would have by then left the premises. In the early morning of 05 June 1995, Feliciano and de la Cruz centrally figured in the investigation over the grisly death of an unidentified woman whose body was found sprawled in Barangay New Buswang, Kalibo, Aklan.

Finding a dead body at 5:30 in the morning in nearby Barangay Buswang was big news to the small community of Kalibo. The radio news about an unidentified lifeless female lying in the Sampaton Funeral Parlor caught the curiosity of Rosalie Ricarto. The dead woman, so described as wearing a red jacket emblazoned with the words "El-Hassan, Kingdom of Saudi Arabia" and maong pants, fit the description of Teresita Fuentes. Rosalie, a rice retailer, shared a stall with Teresita, a vendor of spices, condiments and fruits, at the Yambing Building. Rosalie last saw Teresita on the afternoon of 04 June 1995. Teresita, who regularly went to Iloilo twice a week to buy goods to sell, was scheduled to leave the following morning of 05 June 1995. According to Rosalie, Teresita, who normally would take the 2:00 a.m. trip to Iloilo, should already be back at Kalibo by about 4:00 p.m. of the same day. But Teresita did not return that afternoon. Rosalie said that Teresita wore pieces of jewelry - a necklace, a pair of earrings, a bracelet, four rings and a Seiko wristwatch - all of which, except for the timepiece, were eventually recovered. Anna Liza Pronton Fuentes, the daughter of Teresita, was able to identify the bag recovered by Myca Banson from the crime scene, as well as all its contents, to be those belonging to her mother. Likewise,

recovered at the crime scene were twelve P100.00 bills, seven P5.00 bills and the broken windshield of the tricycle owned by Ruben Barte. Turned over to the police by the manager of the Superstar Disco Club was the sum of P1,000.00.

The autopsy report showed that whoever bludgeoned the hapless Teresita Fuentes to death had used a blunt instrument, inflicting twelve different wounds on her head and face. The cause of death was noted to be severe hemorrhage secondary to lacerated wounds and skull fracture.

On 02 August 1995, an Information was filed against Rodel de la Cruz and Carlos Feliciano -

> "That on or about the 5[th] day of June 1995, in the early morning, in Barangay New Buswang, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, while armed with a handgun, by means of force and violence, and with intent of gain and without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal, rob and carry away cash money in the amount of TEN THOUSAND PESOS (P10,000.00), Philippine currency, more or less, belonging to TERESITA FUENTES Y OSORIO, to the damage and prejudice of the owner in the aforesaid amount; that by reason or in the occasion of said robbery, and for the purpose of enabling the accused to take, steal and carry away the aforesaid amount, the above-named accused with intent to kill and conspiring with one another, did then and there willfully, unlawfully and feloniously and with evident premeditation and under the cover of darkness, treacherously attack, assault and wound TERESITA FUENTES Y OSORIO, thereby inflicting upon her mortal wounds, to wit:
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> - Lacerated wound about 1 ¼ inches in length left chin.
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> - Lacerated wound about 1 inch in length left lower lip.
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> - Fracture of the left mandible.
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> - Fracture of the left upper lateral incisor and the left upper canine.
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> - Lacerated wound about 1 ¼ inches in length and about 1 ½ in depth left face.
>
> - Punctured wound ½ in diameter and about 1½ inches in depth mid-portion base nose bridge left.
>
> - Lacerated wound about 2 inches in length and about 1½ inches in depth left cheek.
>
> - Lacerated wound about 1 inch in length left ear medially.
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> - Lacerated wound about ½ inch in length left face near the left ear.
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> - Lacerated wound about 1 ½ in length below the left eyebrow.
>
> - Punctured wound about 1 inch in diameter and about 5 inches in depth left parietal
>
> - Skull fracture occiput right.
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> "as per autopsy report of Dr. Agrelita D. Fernandez, of the Rural Health Unit, Kalibo, Aklan, hereto attached and forming an integral part hereof which wounds directly caused the death of said TERESITA FUENTES Y OSORIO.
>
> "That as a result of the criminal acts of the accused, the heirs of the victim suffered actual and compensatory damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS."[3]

The prosecution sought the discharge of accused Rodel de la Cruz so that the latter could testify against his co-accused Carlos Feliciano. Pending resolution by the trial court on the motion, Carlos Feliciano and Rodel de la

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Cruz were arraigned on 08 February 1996. The two accused entered a plea of not guilty. On 18 June 1996, the court a quo granted the motion of the prosecution and the name of Rodel de la Cruz, an accused turned state witness, was forthwith stricken off from the Information.[4]

A detailed account of the incident presented at the trial by the prosecution was narrated by the Office of the Solicitor General.

> "In the early morning of June 5, 1995, before 2 o'clock, appellant went to the guard post of Dela Cruz to tell the latter to assist him in going after a customer who did not pay the bill. It was not the first time that they had to run after a non-paying customer. Dela Cruz thus accompanied appellant who rented for the purpose a tricycle from its driver, Ruben Barte, who stayed behind. Appellant initially drove but about twenty meters past Kingsmen Building, he asked Dela Cruz to take over while he stayed inside the passenger sidecar of the tricycle. Somewhere between the Ceres and Libacao terminals, appellant alighted from the tricycle after instructing Dela Cruz to stop and wait for him. Appellant subsequently informed Dela Cruz that they shall wait there for the customer they were after. About a half hour later, however, appellant decided to leave the place, apparently because the person he was looking for was nowhere in sight. As they passed Banga, New Washington crossing, they saw a woman walking alone. Appellant waved at her, giving Dela Cruz the impression that they knew each other. Dela Cruz stopped the vehicle, as he was told by appellant, who then jumped out. Drawing his service gun, appellant suddenly held the woman by the neck and at the same time poked his gun at her face. He dragged her towards the tricycle and ordered her to board it. The woman would later be identified as Teresita Fuentes. Dela Cruz was shocked with what appellant did and was at a loss on what to do. Still stricken with panic, Dela Cruz asked appellant what was going on and said he was leaving as he did not want to be part of whatever plans appellant had. Appellant retorted that Dela Cruz was already involved. Dela Cruz was about to alight from the tricycle when appellant poked his gun at him and ordered him to drive. Thinking that appellant was in a position to easily shoot him, Dela Cruz did as he was ordered.
>
> "Appellant then instructed Dela Cruz to drive back to the public market. When they reached the junction of Toting Reyes and Roxas Avenues, appellant told Dela Cruz to turn right at Rizal Memorial College of Arts and Trade (RMCAT). They noticed at this point that another tricycle, which came from the direction of Kingsmen Building, was following them. This prompted appellant to order Dela Cruz to turn left at Magdalena Village instead and to drive faster. During the ride, appellant held Fuentes, who was crouching, by her hair, pressing her head down. He also kicked her and struck her head with the butt of his gun whenever she struggled. Dela Cruz asked appellant to stop hurting Fuentes and to have pity but his entreaties fell on deaf ears. Appellant even threatened to shoot Dela Cruz if he does not stop complaining.
>
> "When they reached New Buswang, they noticed that the other tricycle they saw earlier was still trailing them by about 15 meters. As they approached Magdalena Village after passing Camp Martelino, Fuentes struggled so appellant hit her again. Dela Cruz told appellant to desist from striking her. Appellant did not take kindly to the unsolicited advice and fired his gun in the air. Seeing an opportunity for escape, Dela Cruz suddenly swerved the tricycle towards Magdalena Village until the vehicle toppled over. When the tricycle was lifted from its fallen state, Dela Cruz immediately jumped out of it and ran towards a feeder road leading to the Cooperative Rural Bank. He was resting at the back of the bank for a few minutes when appellant also arrived. Enraged, Dela Cruz this time drew his service firearm and aimed it at appellant, demanding from the latter an explanation why he had to involve him (Dela Cruz). With an assurance that he would own up the responsibility for everything that had happened, appellant was able to calm Dela Cruz down. After returning his service gun to the holster, Dela Cruz headed back to the road. Behind him following was appellant. Then, they saw Barte, from whom appellant rented the tricycle earlier, trying to start the engine thereof. It turned out that it was Barte who was in the other tricycle, driven by Ramon Yael. Appellant assured Barte that he will pay for all the damages of the rented tricycle.
>
> "Meanwhile, Dela Cruz went back to Kingsmen Building aboard Yael's tricycle to look for his dancer

girlfriend, Myka (or Mika) Banzon (or Vanson), but she was not there. Dela Cruz, with Yael in his tricycle, were about to go to Banzon's boarding house when appellant approached them, insisting that Yael take him first to Magdalena Village. Afraid of appellant, Yael agreed. When they got there, particularly where Barte's tricycle turned over earlier, appellant walked towards a mango tree. Curious, Dela Cruz followed him. Dela Cruz saw appellant hitting Fuentes on the head with his gun. She was lying down face up, groaning. Dela Cruz admonished and pushed appellant away, telling him to have pity on Fuentes. Since he did not want to get involved further nor did he want to see any more of what appellant was up to, Dela Cruz walked back to the tricycle. He took a last look back and saw appellant getting something from the pocket of Fuentes and putting it inside the pocket of his chaleco. Soon enough, appellant caught up with Dela Cruz and Yael as they were about to leave and they all went back to Kingsmen Building.

"Dela Cruz finally found Banzon at the third floor of the building and informed her that he was going to bring her home already. She passed by the ladies' room while he stood watch outside. Appellant arrived and told Dela Cruz and Banzon that they had to talk inside the ladies' room. He was giving Dela Cruz and Banzon P600.00 each, but they declined to accept the money. Appellant threatened Dela Cruz not to squeal whatever he knows or appellant will kill him and his family. When appellant insisted in giving the money, Dela Cruz took it only to place it on the sink, then, he and Banzon left.

"Dela Cruz and Banzon were leaving for her boarding house aboard Yael's tricycle when appellant caught up with them again and ordered Yael to first take him to Ceres terminal. As they passed the Tumbokan Memorial Hospital, they came across Barte driving his tricycle. After signaling for Barte to stop, appellant gave him money. Dela Cruz and Banzon quickly transferred to Barte's tricycle since Yael still had to take appellant to the terminal. In the course of the transfer to the other tricycle, appellant placed something inside the pocket of Dela Cruz who thought nothing of it as he was in a hurry to go home. In Banzon's boarding house, Dela Cruz found out that what appellant had put in his pocket was a blood-stained necklace wrapped in a piece of paper. Banzon also showed him a bag she found at the place where Barte's tricycle turned turtle. Dela Cruz planned to return the necklace and the bag the next day.

"In the evening of June 5, 1995, Dela Cruz reported for work. Appellant asked him for the necklace so that he could pawn it. Dela Cruz, however, was unable to give the necklace back because in the morning of June 6, 1995, the police raided the boarding house of Banzon. Among those confiscated by the police was his wallet where he placed the necklace. The police invited Dela Cruz to the police station to shed light on what he knew about a murder committed in Magdalena Village. The police had earlier confirmed an anonymous call that a dead woman was found at New Buswang. Twelve 100-peso bills were found at the scene, as well as a broken windshield that was traced to the tricycle rented by Barte to appellant. The dead person was identified as Fuentes by her daughter, Analiza Fuentes Pronton. Thus, Dela Cruz revealed everything that appellant had done. The police asked Dela Cruz to go with them to Lalab, Bataan where appellant was arrested. Appellant was then brought to the Kalibo Police Station for investigation."[5]

Carlos Feliciano, in his testimony, denied the asseverations of state witness de la Cruz. He claimed that the accusations were motivated out of pure spite and revenge borne of the hostility between them due to work-related differences. An altercation arose between him and de la Cruz two months before the incident, on 06 April 1995, when a customer had complained to the Kingsmen Building manager that the toolbox of his tricycle, parked near the building, was missing. The manager then ordered Feliciano to go to the parking lot and summon de la Cruz. Feliciano reported back to say that he did not find de la Cruz in his designated post, a fact that de la Cruz later resented. The next incident happened the following month. On the evening of 01 May 1995, Myca Banson, the live-in girlfriend of de la Cruz, was to be "taken out" by a customer. Feliciano, upon orders of the management, refused de la Cruz entry within the premises of the pub house, in order to avoid any possible trouble, which culminated in a physical tussle between the two men and ended with de la Cruz aiming his gun at Feliciano. The third incident occurred when a motorcycle parked at the Kingsmen parking lot could not be located and de la Cruz

again was not at his post. Feliciano reported the matter to the manager and, two days later, de la Cruz was fired from work. Feliciano admitted having seen de la Cruz at about 9:30 on the evening of 04 June 1995 escorting Myca Banson to the pubhouse. De la Cruz stayed at the billiard house fronting Kingsmen, while waiting for Myca to finish work, often at 4:00 in the early morning of the next day. Feliciano said that he knew Ramon Barte, the driver, being a habitue of the Kingsmen premises. It was Barte who would often fetch Rodel de la Cruz and Myca Banson from work during early mornings.

The defense placed at the stand two additional witnesses. Eduardo Magsangya, a cigarette vendor at the Ceres terminal, testified that on the late evening of 04 June 1995, de la Cruz went to see him at the Ceres Terminal to inquire whether Teresita Fuentes had already arrived. Magsangya responded in the negative. De la Cruz returned to the terminal looking for Teresita four times that night. Magsangya knew Teresita as being a biweekly passenger of the 2:00 a.m. bus for Iloilo and de la Cruz as a security guard at Kingsmen where he would at times sell his wares. Jefferson Arafol, a pahinante of Ideal Trucking, testified that at approximately 2:30 on the early morning of 05 June 1995, he and truck driver "Oca," were transporting coconut lumber to Iloilo, when, at the vicinity of Magdalena Village, they spotted a tricycle running at high speed, eventually overtaking them. Its fast pace caused the vehicle to turn turtle. When Arafol approached, the tricycle driver, Rodel de la Cruz, pointed a gun at him and told him not to come any closer. Arafol was acquainted with Rodel de la Cruz and Carlos Feliciano because he frequented Kingsmen on Sundays after getting his salary. The pahinante saw two more persons with de la Cruz, one male and the other female. Arafol was certain that the male companion of de la Cruz was not Carlos Feliciano. While de la Cruz was pointing his gun at him, his male companion was dragging an unidentified woman towards the nearby mango tree.

When the trial concluded, the Regional Trial Court of Kalibo, Aklan, found for the prosecution and pronounced accused Carlos Feliciano guilty beyond reasonable doubt of the crime of Robbery with Homicide and sentenced him to suffer the extreme penalty of death -

> "WHEREFORE, finding the accused CARLOS FELICIANO Y MARCELINO guilty beyond reasonable doubt as principal by direct participation of the crime of Robbery with Homicide defined and penalized under paragraph 1 of Article 294 x x x, with three aggravating circumstances, the court hereby imposes upon the said accused the supreme penalty of DEATH and to indemnify the heirs of Teresita Fuentes the sum of P50,000.00.
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> "The caliber .38 revolver Squires Bingham with SN # 14223 (Exhibit J) used by Feliciano is hereby forfeited and confiscated in favor of the government to be disposed in accordance with law.
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> "Costs against the accused."[6]

In an automatic review before this tribunal, appellant Carlos Feliciano raised the following assignment of errors -

> "I.
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> "THE TRIAL COURT ERRED IN DISCHARGING THE ACCUSED RODEL DE LA CRUZ TO BE THE STATE WITNESS AGAINST CO-ACCUSED CARLOS FELICIANO DESPITE STRONG OBJECTIONS FROM THE DEFENSE.
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> "II.
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> "THE TRIAL COURT ERRED IN RELYING HEAVILY ON THE WELL-REHEARSED TESTIMONY OF PROSECUTION WITNESSES.
>
> "III.
>
> "THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT CARLOS FELICIANO FOR

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THE CRIME CHARGED IN THE INFORMATION DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM."[7]

The Court is inclined to agree with appellant that state witness Rodel de la Cruz appears to be far from being the inculpable young man who has simply been an unwitting and reluctant accomplice to a gruesome crime. Several incidents militate against his innocence. The events, related by him, make tenuous the purported threat and intimidation exerted by appellant over him.

The behavior of Rodel de la Cruz during and immediately after the crime could not be that of a threatened, frightened man. If he indeed wanted to escape, he had in his possession his own service gun, and he was in control of the tricycle. He had enough advantage and chances to escape, if he really wanted to, from Feliciano who was at that time engrossed at restraining a struggling victim. In fact, it was de la Cruz who was caught in the possession of the dead woman's necklace. Another damning evidence against de la Cruz was the letter introduced by police inspector Winnie Jereza, Chief of Intelligence of the Philippine National Police of Kalibo, Aklan, who, after taking the witness stand for the prosecution, testified for the defense. The letter, dated 02 June 1995, came from one Roger R. Zaradulla, proprietor of the Rheaza Security Agency, addressed to SPO3 Gregorio F. Ingenerio of the Kalibo Police Station, to the effect that the detail order of Rodel de la Cruz to the Kingsmen Disco pub had expired as of 31 May 1995. According to Zaradulla, de la Cruz was nowhere to be found and his whereabouts were unknown. Apprehensive that de la Cruz had gone on AWOL without first surrendering to the agency the firearm issued to him, Zaradulla sought the arrest of de la Cruz by the police.

The evident attempt, nevertheless, of the accused turned state witness to mitigate his own culpability did not adversely affect his discharge nor did it render completely weightless the evidentiary value of his testimony.

The rules of procedure allowing the discharge of an accused to instead be a witness for the state[8] is not a home grown innovation but is one with a long and interesting history. It has its origins in the common law of ancient England where faithful performance of such an agreement with the Crown could entitle a criminal offender to an equitable right to a recommendation for executive clemency. The practice, soon recognized through widespread statutory enactments in other jurisdictions, finally has found its way to our own criminal procedure in a short and compact military General Order No. 58 issued in 1900. Its adoption highlights the emphasis placed by the new system on the presumption of innocence in favor of the accused, on the requirement that the State must first establish its case beyond a reasonable doubt before an accused can be called upon to defend himself, and on the proscription against compelling an accused to be a witness against himself as well as against drawing inferences of guilt from his silence.[9] Underlying the rule is the deep-lying intent of the State not to let a crime that has been committed go unpunished by allowing an accused who appears not to be the most guilty to testify, in exchange for an outright acquittal, against a more guilty co-accused. It is aimed at achieving the greater purpose of securing the conviction of the most guilty and the greatest number among the accused for an offense committed.[10]

In this jurisdiction, it is the trial court judge who has the exclusive responsibility of ensuring that the conditions prescribed by the rules exist.[11] This grant is not one of arbitrary discretion but rather a sound judicial prerogative to be exercised with due regard to the proper and correct dispensation of criminal justice.[12] But that there would be the possibility of error on the part of the judge is understandable. A trial judge cannot be expected or required to inform himself with absolute certainty at the outset of the trial as to everything which may develop in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint.[13] If that were possible, the judge would conveniently rely on large part upon the suggestion and the information furnished by the prosecuting officer in coming to the conclusion as to the "necessity for the testimony" of the accused whose discharge is requested, as to the "availability of other direct or corroborative evidence," and as to who among the accused is the "most guilty," and so the like.[14] Then, there would be little

need for the formality of a trial.[15] Thus, here, even while one might be convinced that state witness Rodel de la Cruz would, on the basis of evidence ultimately submitted, appear to be equally as, and not less than, guilty in conspiracy with appellant Carlos Feliciano, the hands of the State are now stayed and the Court must assure the exemption of the witness from punishment.

It is widely accepted that the discharge of an accused to become a state witness has the same effect as an acquittal. The impropriety of the discharge would not have any effect on the competency and quality of the testimony, nor would it have the consequence of withdrawing his immunity from prosecution.[16] A discharge, if granted at the stage where jeopardy has already attached, is equivalent to an acquittal, such that further prosecution would be tantamount to the state reneging on its part of the agreement and unconstitutionally placing the state witness in double jeopardy. The rule, of course, is not always irreversible. In an instance where the discharged accused fails to fulfill his part of the bargain and refuses to testify against his co-accused, the benefit of his discharge can be withdrawn and he can again be prosecuted for the same offense.

In US vs. de Guzman,[17] one of the earlier cases discussing this issue, Justice Carson had occasion to briefly touch on the immunity clauses in the Acts of the United States Congress and some States. In Wisconsin, the immunity clause contained a proviso providing that persons committing perjury when called upon to testify could be punished therefor.[18] Oklahoma law suffered from the absence of any reservation; thus observed Justice Carson -

> "x x x. We have no such reservation in our constitutional provision; and, as before said, if we should follow the precedents, when the witness does not speak the truth, the State would be left without redress, although the witness had violated the purpose and spirit of the constitution. We cannot believe that it was the purpose of the intelligent and justice-loving people of Oklahoma, when they voted for the adoption of the constitution, to grant immunity to any man, based upon a lie, or, in other words, that they intended that the commission of perjury should atone for an offense already committed. It is a familiar rule of common law, common sense, and common justice that a legal right cannot be based upon fraud. We therefore hold that the witness who claims immunity on account of self-incriminatory testimony which he had been compelled to give must act in good faith with the State, and must make truthful replies to the questions which are propounded to him, and which he had been compelled to answer, and that any material concealment or suppression of the truth on his part will deprive him of the immunity provided by the constitution; and the witness must testify to something which, if true, would tend to criminate him. This immunity is only granted to those who earn it by testifying in good faith. In our judgment any other construction would be an insult to and a libel upon the intelligence of the people of Oklahoma, an outrage on law, and a prostitution of justice."[19]

Despite an obvious attempt to downgrade his own participation in the crime, state witness de la Cruz, nevertheless, did not renege from his agreement to give a good account of the crime, enough to indeed substantiate the conviction of his co-accused, now appellant Carlos Feliciano, by the trial court. On significant points, the damaging testimony of de la Cruz against appellant was corroborated by Ruben Barte and Ramon Yael. On the night of the incident, Feliciano hired his vehicle and drove it himself while De la Cruz was seated on its passenger seat. When the two did not return at the appointed time, Barte asked Ramon Yael, another tricycle driver who happened to be at the Kingsmen parking area, to accompany him to look for them. Myca Banson decided to come with them. After a while, the trio spotted Barte's tricycle being driven by de la Cruz, and followed it. Barte testified how the first tricycle turned turtle at the junction towards Magdalena Village. When the tricycle tilted, he saw a person in red falling from the vehicle, while another person who was in white, lifted the first person. When the first tricycle precariously lurched, its occupants hurriedly abandoned the vehicle. The obfuscating foliage, however, blocked his view so Barte was not able to identify who was with appellant and de la Cruz nor ascertain where the two men were later headed. When the three of them approached the overturned tricycle they found no one. Near the vehicle, they saw an abandoned bag which Myca Banson hastily retrieved.

While Barte struggled to turn his vehicle upright, Myca left with Ramon Yael. Later, while riding his vehicle on his way back, Ruben Barte was forced to stop because its engine stalled. While inspecting the tricycle engine, appellant and de la Cruz approached him, and the former told him not to worry as he would pay for the damages. After a while, at the parking lot of the Kingsmen Building, appellant told him to take his vehicle to a dark place where he wiped off the blood from the tricycle's seats. When they met again several hours later, appellant gave him P450.00 for the damages sustained by the vehicle. Much later, Yael handed him another P250.00 given by appellant as additional payment. Ruben Barte kept quiet about the incident because appellant warned him against reporting the matter to anyone. Ramon Yael corroborated the testimony of Barte, adding that while they were chasing appellant and de la Cruz, one of the two fired a gun in the air, constraining them to decrease their speed. Militating against the unbiased nature of the testimony of these two witnesses was their admission of having willingly accepted the blood money which appellant gave them that could well qualify them as being themselves accessories to the crime.[20]

Appellant Carlos Feliciano was not able to sufficiently dispute his participation therein. Neither his blanket denial nor his alibi, both inherently weak defenses, was amply proved.

Article 294(1) of the Revised Penal Code as amended by Republic Act No. 7659, provides -

> "1. The penalty of reclusion perpetua to death [shall be imposed], when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson." (Italics supplied.)

Given the evidence in this case, heretofore narrated, the Court is not convinced that the prosecution has succeeded in establishing beyond reasonable doubt any of the aggravating circumstances alleged in the information that can warrant the imposition of the maximum of the penalty prescribed by law. Evidence is wanting that appellant has especially sought nighttime to perpetrate the crime or that the criminal act has been preceded, required in evident premeditation, by cool thought and reflection. Not only is treachery an aggravating circumstance merely applicable to crimes against persons but neither also has the mode of attack on the victim of the robbery been shown to have been consciously adopted.

WHEREFORE, the judgment of the court a quo is AFFIRMED except insofar as it imposed on appellant Carlos Feliciano the penalty of death which is hereby reduced to reclusion perpetua. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Mendoza, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Kapunan, and Panganiban, JJ., on official leave.

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[1] US vs. Abanzado, 37 Phil. 658.

[2] Rollo, p. 84.

[3] Rollo, pp. 7-8.

[4] See Amended Information, Rollo, pp. 9-10.

[5] Rollo, pp. 142-149.

[6] Decision, Rollo, p. 48.

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[7] Brief for Accused-Appellant, Rollo, p. 84.

[8] Section 9, Rule 119, of the Rules of Court provides:

Sec. 9. - Discharge of accused to be state witness. - When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of its proposed state witness at a hearing in support of the discharge.

[9] U.S. vs. de Guzman, 30 Phil. 416.

[10] People vs. Bayona, 108 Phil. 104.

[11] US vs. Abanzado, 37 Phil. 658; People vs. De Atras, 28 SCRA 389.

[12] Ibid.

[13] People vs. Court of Appeals, 131 SCRA 107; Lugtu vs. Court of Appeals, 183 SCRA 388.

[14] Ibid.

[15] Ibid.

[16] Flores vs. Sandiganbayan, 124 SCRA 109.

[17] 30 Phil. 416.

[18] Under Philippine law no such reservation is made.

[19] At pp. 424-425.

[20] People vs. Moros Amajul, 111 Phil. 254.

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