

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GUENDO NISHISHIMA (ALIAS GUIENDO NISIJIMA), DEFENDANT AND APPELLANT.

G.R. No. 35122. August 12, 1932

Ponente: PER CURIAM: This is an appeal from a decision of the Court of First Instance of Manila finding the defendant guilty of the murder of Gregorio Tolentino, with the presence of the aggravating circumstance of treachery, and sentencing him to suffer the penalty of death, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs. The defendant was tried on a plea of not guilty to the following information: "That on or about the 9th day of November, 1930,, in the City of Manila, Philippine Islands, the said accused, conspiring with and induced by others for a promise of reward offered by the latter, with evident premeditation and treachery, and under the cover of the night purposely sought, did then and there willfully, unlawfully, and feloniously assault, attack, hack, and wound with a bolo or sharp instrument, Gregorio Tolentino, who was then lying asleep in his house and dwelling located at No. 2541 Lico Street of said city, inflicting upon him the following physical injuries, to wit: incised wound on the left side of the neck involving the left common carotid artery, the left vagus and sympathetic nerves, the muscles and other tissues of the region ending into the fourth cervical vertebrae, and multiple incised and stab wounds on different parts of the body and hands, which were necessarily mortal, thus causing as a consequence thereof, the immediate death of said Gregorio Tolentino in the spot." The attorneys for the appellant make the following assignments of error: "1. The trial court erred in finding that the accused, impelled by the dictates of his conscience, spontaneously admitted that he was the author of the crime charged. "2. The trial court erred in not finding that the 'confession' upon which the sentence was based had been extorted from the accused by means of threats, intimidation, undue influence and violence. "3. The trial court erred in admitting said 'confession' (Exhibits O and P) in evidence. "4. The trial court erred in not holding that said 'confession', being admittedly false in many material respects, was false in all respects. "5. The trial court erred in finding that the bolo Exhibit B belonged to the accused. "6. The trial court erred in declaring that the wounds found on the fingers of the accused were caused by the bolo used by him in attacking the deceased. "7. The trial court erred in declaring that the drawers presented by the prosecution as evidence had been used by the accused."8. The trial court erred in not acquitting the accused, and in imposing upon him the death penalty." It appears from the evidence that the deceased Gregorio Tolentino was 66 years old and well-to-do. He was a widower without children. His nearest relative apparently was Adelaida Tolentino, a daughter of his first cousin. He lived at No. 2541 Calle Lico, in the District of Tondo, Manila. The following persons lived with him: Adelaida Tolentino and her husband, Juan Concepcion; Gervasia Francisco, sister of the deceased wife of Gregorio Tolentino; and Consuelo and Visitacion Francisco, daughters of Ciriaco Francisco, a brother-in-law of the deceased. All these persons went to Cavite on November 8, 1930 to attend a fiesta, and did not return until the next day. The deceased had the following servants and employees: Abundio Mejias, a servant; Vicente Rosada, a chauffeur; Juana Abrigana, a maidservant; Felisa Villanueva, a cook; and R. Siruisi, a Japanese gardener. They lived in the servants' quarters separate from the house of the deceased. The defendant is a Japanese gardener, who had lived in the Philippines for seventeen years. He had worked for the deceased as gardener for about two years. He left the service of the deceased about August 3, 1930. On Saturday evening, November 8, 1930, Gregorio Tolentino attended a ball at La Palma de Mallorca in Intramuros, Manila. He went home about 2 o'clock the next morning. The automobile of the deceased was driven by Vicente Rosada. The deceased was accompanied by his servant, Abundio Mejias. The yard of the deceased was surrounded by a wall, and the gate in the wall was fastened with a padlock. It does not appear who fastened the gate on the night in question. The deceased went up to his room, and retired. The servant and the chauffeur went to the garage, where the servants' quarters were. About 6 o'clock in the morning the chauffeur got up and started out to get his breakfast, but finding the gate locked he asked Mejias if he had

the key. Mejias said he did not have the key, and the chauffeur told him to ask the deceased for it. The muchacho said the door of the house was locked. The chauffeur then told him to climb up anywhere he could, and the muchacho climbed up on the iron bars over the kitchen window to the second story. After going to the bedroom of the deceased, the muchacho came out and said the old man was covered with blood. The chauffeur and the maidservant then climbed up in the same way, and after looking at the body of the deceased lying on the bed, they came down the stairs and went out through the door, which was opened by the maidservant. The chauffeur after telling the muchacho to break open the padlock on the gate drove to the Meisic police station and reported the crime. Two policemen went to the house of the deceased, and soon afterwards numerous detectives began to investigate the case. They were assisted by Dr. Sixto de los Angeles, chief of the department of legal medicine of the University of the Philippines, and Arcadio Laperal, chief clerk of the secret service division of the Manila police department. The body of the deceased was removed to the morgue for examination, which showed that the deceased had received eighteen wounds, seven of which were necessarily fatal. Nothing had been disturbed in the room, except that the keys which the deceased was known to keep under his pillow at night could not be found. The wardrobe and safe were then forced open by the detectives, but no sign of robbery was found. The detectives found in the safe a will executed by the deceased on October 22, 1930, wherein Adelaida Tolentino was instituted as his universal heir. The members of the household of the deceased and his servants and employees were taken to the secret service division for investigation. After being questioned, they were all immediately released except Vicente Rosada and Abundio Mejias, who were released on November 11th. Rosada told detective Sol Cruz that the only persons who had any grudge against the deceased were Ciriaco and Carlos Francisco and the accused; that the accused had been a gardener of the deceased until August 1930; that having been reprimanded by the deceased for keeping some of the neighbors' chickens that had entered the yard of the deceased, the accused was offended and left the service of the deceased. Acting on this information, the detectives Sol Cruz, Manalo, De los Santos, and Solis, accompanied by the chauffeur, Vicente Rosada, arrested the accused about 11 o'clock on the night of November 11th in the house of a Japanese gardener named Chumatzu, in La Loma, in the District of Tondo. Detective Sol Cruz noticed that the defendant had a wound on the middle finger of each hand and what appeared to be blood stains under the nail of the middle finger of the right hand. On the ground floor of the house, the detectives found a bolo, Exhibit B, in a box covered with a petate. Sol Cruz noticed near the point of the bolo what he took to be blood stains. When the bolo was found, the defendant was immediately asked who was the owner of it. He said it belonged to Chumatzu, and Chumatzu then and there stated that the bolo was his. The next morning Sol Cruz reported to Attorney Laperal of the secret service division what he had noticed under the nail of the accused. Laperal told Sol Cruz to take the defendant and the bolo, Exhibit B, to Dr. Angeles for examination. Other detectives were sent back to the house of the defendant to look for further clues. They found a pair of overalls, Exhibit C, hanging in the lower part of the house and a pair of drawers, Exhibit J, which had just been washed, on a mango tree about 10 meters from the house where the defendant had been arrested. These articles were also sent to Dr. Angeles for examination. When the drawers were found, Chumatzu explained that they had been found by him on a garbage dump near his house, and that he had washed them because they were stained with a yellowish substance. Doctor Angeles made a report on November 17th that the bolo, the overalls, and the drawers were stained with human blood. The detectives later got a khaki shirt from defendant's house, and this too was found by Dr. Angeles to have blood stains on it (report of November 24, 1930). The defendant admitted that the overalls and khaki shirt belonged to him. He explained that he had been engaged in collecting broken bottles for a glass factory in San Pedro Macati, and had cut his fingers on the glass and wiped the blood off on his overalls; that the khaki shirt was stained with blood in pulling it off. The accused was investigated as soon as he was taken to the secret service headquarters on the night of his arrest. He disclaimed any knowledge of the crime. There is a sharp conflict in the evidence as to what subsequently took place. The accused maintains that the detectives in an effort to make him admit that he had committed the crime told him that he had killed Gregorio Tolentino; that the detectives and policemen took turns in trying to force him to admit that he was guilty; that they kept this up all night without allowing him to sleep or to rest until 6 o'clock the next evening; that one of them struck him on the arms and in the face, but he continued to answer that he did not know anything about the murder; that when he went to the water closet, two detectives approached him and told him that if he did not confess they would beat him; that they then struck him on the hip bone and grabbed hold of his testicles; that in the afternoon he was very sleepy and while he

was dozing, a policeman approached him and after asking him what he was doing jerked him up by the hair of the head; that about 6 o'clock in the evening Sergeant Sol Cruz, accompanied by two or three policemen, came and told him to admit his guilt, to which he replied "How am I going to confess if I do not know anything about it?"; that an American then approached him and said: "Admit that you killed him. This sergeant is a goodman. If you do not admit that you killed Gregorio Tolentino, we are going to apply electricity to you, and you will die"; that he then heard the sound of an electric motor; that he answered that he had not killed Gregorio Tolentino and did not know anything about it; that after the American went away, the sergeant again told him to confess that he was guilty, but he declared that he knew nothing about the crime; that Sol Cruz then said: "You had better admit that you killed him; we know that you killed him; you had better admit it"; that he replied "I cannot admit it, because I did not kill him"; that Sol Cruz then said: "Admit that you are guilty although you did not kill him, because after all the offense committed is not yours, but Ciriaco's and his son's"; that since he did not agree to what Sol Cruz proposed, the latter said: "If you do not admit that you were the murderer, we are going to apply electricity to you"; that he then said: "Although I did not kill Tolentino, since you require me to admit that I was the person that killed him, and since you say that after all I am not the true assassin but Ciriaco and his son, I am going to admit it." Sol Cruz denied having maltreated the accused, but admits that he was constantly urged to tell the truth, to admit that he killed Gregorio Tolentino. According to Sol Cruz the defendant then related the facts as to the murder as set forth in Exhibit O. The defendant on the other hand maintains that he merely assented to the statements of the detective. The defendant then admitted to Laperal that he had killed Gregorio Tolentino, and Exhibit O according to the detectives was prepared in the following manner: Laperal asked the questions in English, and Sol Cruz translated them into Tagalog. Fortunato Salva wrote the questions in English on a typewriter. The defendant answered them in Tagalog. Fortunato Salva translated the answers into English, and wrote them on the typewriter. Not content with Exhibit O, the detectives the next day told the defendant to write in Japanese what he had related the night before. It took the defendant three and a half hours to write Exhibit P. The defendant was taken by the police to the scene of the crime and told to reenact the commission of the murder. The alleged admissions of the accused, which form the basis of his conviction in the lower court, are set forth in Exhibit O, which reads as follows: "Q. Are you willing to make a free and voluntary statement and to truthfully answer all questions asked you, without fear of punishment, promise of immunity or hope of reward, knowing that this statement may be used against you in any court in the Philippine Islands?—A. Yes, sir. "Q. Please state your name and other personal circumstances.—A. Guiendo Nisijima, aged 41; residence, Cemetery Tambunting; Manila; occupation, a gardener, but at present not employed; birthplace, Wakayamakeng, Kobe, Japan; single."Q. Do you know Gregorio Tolentino who lives at No. 2541 Lico, Tondo, Manila?—A. Yes, sir. "Q. How did you happen to know him?—A. Because I had worked for him as gardener for about two years, and only on the 3d or 4th of September, 1930, that I left his services. "Q. Why did you leave his services?—A. Because one day Mr. Tolentino came to me and told me: 'come here, why do you steal the bananas.' I told him I do not steal, but Mr. Tolentino insisted, and because of this, I decided to leave his services on the above-mentioned date. "Q. Did Mr. Tolentino pay you all your wages due?—A. Not yet, at the time I left, but when I went to his house about the 1st of October, 1930, he paid me for the three days I worked for him in the month of September, 1930. "Q. At the time you left did you have any ill-feeling against Mr. Tolentino?—A. Yes, sir, but it was not really ill-feeling, but something like shame, because I was ashamed to myself and to the others that they will say that I stole the bananas. "Q. From that time, October 1st, until about November 8th, have you gone back to the house of Mr. Tolentino for any purpose whatsoever?—A. No sir. "Q. From November 8th up to the present have you ever been in the house of Mr. Tolentino?—A. Yes sir, about 1 o'clock in the morning of Sunday, November 9th, 1930, I went to the house of Mr. Tolentino. I found that the gate was closed and thinking that it was locked as usual, I climbed over the fence and proceeded toward the garage. A dog barked and I threw a piece of bread to him and he stopped barking, and so I went to the garage and there I found that the automobile of Mr. Tolentino has not arrived yet. So, I went near a mango tree near the gate and posting myself near the wall I waited. "Q. What was your intention in going there and waiting?—A. I went there for the purpose of killing Mr. Gregorio Tolentino. "Q. Why did you want to kill Mr. Gregorio Tolentino?—A. Because on Friday morning (November 7th, 1930) at about 8 o'clock, I went to the house of 'Akong' (Ciriaco Francisco) at Calle Lico, number of which I do not know. While I was there Akong told me: 'Shima, mamayang gabi, mga alas 7, ikao ay pumarito dito at ang anak kong si Carlito ay nanrito na at saka tayong tatlo

magusap' (Shima, this evening come here at about 7 o'clock and ray son Carlito will be here and we three could have a talk together). At 7 o'clock of that night, November 7th, I returned to the house of Akong and there I had a conference with Akong and Carlito, the son of Akong (Carlos Francisco). Akong and Carlito then began io plan the killing of Gregorio Tolentino. I heard Akong telling his son, Carlito: 'Carlito, I think that we better do away with theold man, Gorio (Gregorio Tolentino); Shima will take care of that,' and turning to me, he said: 'is it not so, Shima?' I answered: 'yes.' Then Carlito addressed me and told me: 'Go ahead, Shima, do it; my father will take care of you; he will pay you for your work.' I asked Carlito how much his father will pay me. He answered: 'Not to worry, because I will be given much money, inasmuch as when Gregorio Tolentino is dead already, they will have much money.' Saturday morning, about 8.30 o'clock, I passed by the house of Akong in going to a Chinese store. to buy cigarettes. Akong was in his window and he told me: 'Shima, you are ready, ha, tonight you will go there, I answered: 'Yes.' Then I went home and got a knife or rather a small bolo and began to sharpen it by using a sharpening stone. Then I waited until night time: Sometime after 12 o'clock in the midnight of Saturday, I started for the house of Gregorio Tolentino, arriving there at about 12.30 a. m., November 9th. The street was deserted and there were no people. I immediately climbed over the fence near the gate as I have described to you before. "Q. Were there any people in the house of Gregorio Tolentino at that time?—A. No, sir, the house was deserted, there were no persons. "Q. How did you know there were no persons in the house?—A. Because Ciriaco Francisco and Carlito told me when we had our conference in the evening of Friday, November 7th, that I should not do the killing on that evening, but to wait for the next day, Saturday, as all the people in the house, companions of Gregorio Tolentino, would be away to attend the fiesta in Cavite. "Q. When you went to that place what was your intention?—A. My only intention was to kill the old man, Gregorio Tolentino, as per agreement had with Ciriaco and Carlito. "Q. How did you expect to accomplish your intention?— A. The first thing I did was to get the knife which I sharpened that morning and putting it in my waist, I started for Tolentino's house. I also provided myself with bread which I was to use to fix the dogs. Because as you know on that Friday night which we had a conference, Akong and Carlito instructed me to get bread and they gave me a powder which they instructed me to sprinkle on the bread so as to fix the dogs and to leave me alone. "Q. Did you follow these instructions and fix the dogs?—, A. Yes, sir, because when I got down from the fence the dogs started to bark and when I threw the piece of bread with the powder on, the dogs ate it and stopped barking. "Q. You stated that you found the automobile of Mr. Tolentino not in the garage and you supposed that he has not arrived yet, and so you waited; how long did you wait before Mr. Tolentino arrive?—A. I waited there for about an hour and a half. "Q. When Mr. Tolentino arrived wltat did you do?—A. I continued to wait until he retired to bed. "Q. How long did you have to wait before Mr. Tolentino went to bed?—A. I waited for about an hour. "Q. Then at the end of the hour which you had waited, what happened ?—A. When I noticed that the old man must have been asleep I went around the building to find a suitable place for me to climb up. It was then that I remembered a ladder which is used in the grounds there and so I went and looked for it and having found it I brought it and placed it on the azotea and climbed up to the azotea. Then I proceeded to the sala of the house and entered Gregorio Tolentino's room thru the door leading to the sala. This door was closed, but not locked. I know this very well because many a time when I was working there I used to go up and get orders from my master when he is in that room. "Q. Once in the room what did you do?—A. I then approached IVtr. Tolentino on his bed to feel that he was fast asleep, and when I noticed that he was soundly asleep, I turned on the light and I approached the bed and yanked the right hand corner of the mosquito bar nearest the head to clear the space and give me the free use of my arms. Then I began to hack him with my small bolo until he died. When I was sure that he was already dead I looked for his keys and when I found them under his pillows I took hold of them and threw them out of the window. I went down the main stairs and was intending to leave the building thru that way and I remembered that I have left the step ladder on the wall of the azotea. So I went up again and going to the azotea came down thru the same ladder I used in going up. I returned the ladder to the place where I took it and putting on again the overalls which I removed before going up, I passed on the left side of the building and climbing the fence went out of the street again. I then went home and after washing my hands and removing my blood stained drawers, I went up and slept. The small bolo I used I just threw it aside somewhere in the house and paid no more attention to it. "Q. Did you go back again to the house or near the house of Gregorio Tolentino on that morning?—A. Yes, sir, I just passed there in front to find out what is going on and I saw many people already assembling in front of the house. While I was passing in front of the house of Akong,

Akong was at the window and he told me: 'everything is alright now, he is now settled.' I told him: 'yes, he is well fixed now.' "Q. To whom did Akong refer when he said 'he is now settled?'—A. He refers to Gregorio Tolentino. "Q. Was this the only conversation between you and Akong on that Sunday morning of the murder?—A. No, sir. Because I asked him about the payment and he told me to wait for a while as there is no money yet; that after perhaps everything is settled, they will have plenty of money. I told them: 'you better watch out, if you don't give me money, something will happen.' Akong told me: 'don't you worry, you will get money alright.'"Q. You stated that after killing Gregorio Tolentino you looked for his keys and threw them far away. Why did you do this?—A. Because Akong (Giriaco Francisco) told me to get the keys which the old man keeps under his pillow and to throw them far away so that when Tolentino's other nephews arrive in the house, they cannot open any of the places where the old man keep his valuables, including money, jewelry and others."Q. While you were killing the old man, Gregorio Tolentino, did you see anything lying under his bed, besides the keys?—A. I saw a small revolver. "Q. You are employed by Akong (Ciriaco Francisco) to take care of his fighting roosters, is it not so?—A. Yes, sir, I am taking care three of his fighting roosters. "Q. When you were arrested yesterday, at about 11.30 p. m., a detective asked you if the fighting roosters in your house belong to Akong (Ciriaco Francisco), you said: 'no, they did not.' Why did you say this?—A. Because Akong instructed me not to say anything which will show his connection with me, and he even told me that if anything happen, that I should say nothing, but say: 'I do not know, I do not know.' "Q. When you went to the house of Tolentino to kill him what weapons did you take along with you?—A. Just the small bolo which I told you I used in killing him. "Q. You stated that you left your house at about a little after 12 o'clock midnight. Did you inform your wife that you are going out?—A. No, sir, it was when I went out all of my companions in the house were asleep. My querida, Pedro and his wife all were asleep, and in order not to leave the door open I closed it behind me and placed a chair against it so that it would not open while I was away, and when I returned at about a little before 4 o'clock, I just pushed the door a little, removed the chair and entered. I found all my companions still asleep. "Q. I am showing you these two photographs. Can you tell us who the person represented there was ?—A. Yes, sir, this is Gregorio Tolentino. "Q. I am showing you this photograph which represents a number of wounds in the body of Gregorio Tolentino. Can you tell us how these wounds were inflicted and who inflicted them?—A. The wounds pictured in the body were the wounds inflicted by me when I killed Gregorio Tolentino on the early morning of November 9, 1930. The wound on the right side of the neck cutting the jaw and the lobe of the right ear was the first wound I inflicted, and the wound on the left side of the neck was the second and the other wounds in the body were immediately following the first two wounds. "Q. I am showing you photograph marked No. 8 and ask you if you know the house represented in this photograph?—A. Yes, sir, I know this house represented in this picture. This is the house of Gregorio Tolentino and the window thru which the person could be seen standing is the window of the room where Gregorio Tolentino was sleeping and where I killed him. "Q. In this photograph No. 4, you will notice that the pillow appears to have been cut. Can you explain to us how this happened?—A. Because when I inflicted the first wound I have done it with such force that after the wound was inflicted the knife cut thru the pillow. "Q. We notice that the rattan of the bed of Gregorio Tolentino presents cuts made by a sharp instrument. Can you tell us how this happened?—A. This happened because I was in a hurry to finish the job and I was already perspiring and I remember that two of the stabs which I gave the body missed and my bolo buried into the blanket, mat and may be the rattan of the bed. I remember that this occurred twice. "Q. You stated that there are three fighting roosters belonging to Ciriaco Francisco, of which you take care. Do you get any compensation for taking care of these three roosters?—A. No, sir, but should any of these roosters take part in a fight and win, I will get money from Akong (Ciriaco Francisco). That is our agreement. "Q. Do you have any ill-feeling against Ciriaco Francisco?—A. No, sir. "Q. Do you know if Ciriaco Francisco has any ill-feeling against you ?—A. Not that I know of."Q. Do you have any ill-feeling against Carlos Francisco?—A. No, sir."Q. Do you know if Carlos Francisco has any reason to have any ill-feeling against you?—A. Not that I know of. "Q. Have you seen Ciriaco Francisco and Carlos Francisco at any time on this date?—A. Yes, sir, I saw them when they were lined up with other persons and they were the ones I pointed out. The first one I pointed out is the one named Carlito (Carlos Francisco); the second one is his father, Akong (Ciriaco Francisco). "Q. How long have you been in the Philippine Islands?— A. More than seventeen years. "Q. Can you speak and read the Tagalog dialect or any other Philippine dialect?—A. I speak and understand Tagalog very well, but I cannot read or write, and I do not know, understand or speak any of the dialects or read or write any of these dialects. "Q. Do you know the status of the

relationship existing between Gregorio Tolentino and Ciriaco Francisco and his son, Carlos Francisco?—A. I know that Ciriaco and Carlos Francisco are not in good terms with Gregorio Tolentino, because I remember that one time about a year ago while I was working near a window of the house, I heard Gregorio Tolentino and Ciriaco Francisco quarreling about something. They appeared to be very hot in their exchange of words. I was informed that Carlito also is in bad term with Gregorio Tolentino and as a matter of fact I have never seen Carlito go to the house of Gregorio Tolentino even on the occasions when there are parties held and many people are invited. "Q. This morning in the secret service blood was noticed in the middle finger of your right hand, as a result of which you were sent to the department of legal medicine of the University of the Philippines for further examination. Can you tell us now if what was found in your finger was really blood, and if so why was it found there?—A. This is because at the time I killed Gregorio Tolentino blood was all over my hands and fingers, and in my haste I was not able to wash my hands very well, so the blood remained in the middle finger of my right hand. "Q. We notice that you have cuts on your right and on your left middle fingers. Can you tell us where you received these cuts?—A. In my haste to inflict as many wounds as possible sometimes my bolo will slip and strike me in the finger. Once I dropped the bolo and when I picked it up again I received this cut on the right middle finger. "Q. While you were in the department of the legal medicine this morning, a small bolo, and a pair of white drawers with a few blood stains and a pair of overalls with blood stains also on the inside were shown to you. Do you recognize those articles and can you tell us now to whom they belong?—A. The bolo, the pair of white drawers and the pair of overalls are all my property. I had them on when I killed Gregorio Tolentino and the bolo was the one I used in killing Gregorio Tolentino in the early morning of November 9, 1930. "Q. Since when have you been in the office of the secret service?—A. Since about 12 o'clock last night, November 11, 1930. "Q. During all the time that you stayed here, have you received any treatment about which you have any complaint to make from anyone in the secret service?—A. What I can say is this: 'From the time I arrived here up to the present time I have not received any treatment whatsoever of which I can complain. Even the tip of my finger was not touched in a manner that is improper or abusive. I have been given food and otherwise have no cause for complaint.' "Q. Why do you make this statement then as no one is forcing you to do so?—A. Because I have killed the man and I want to feel easy about it after I have unburdened my feelings. "Q. Is all that you have stated herein the truth and nothing but the truth and are you willing to sign this statement after it was read by me to you in Tagalog?—A. Yes, sir, I will sign it in Japanese character, because I do not know how to sign my name in ordinary writing." The record is incomplete as to Exhibit P. This document is written in Japanese characters. The words represented thereby, however, are not Japanese but Tagalog. Exhibit P was first translated into Tagalog by a Japanese, Juhe Nakamura, in the secret service office, and it was later translated into Tagalog again by the same man in court (Exhibits P-5 and P-6), but no translation into English or Spanish is attached to the record. Exhibits P-3 and P-4 are versions prepared by the detectives, which were translated into English, Exhibits P-3-a and P-4-a. Exhibit P-3-a reads as follows: "November 13th, 1930 "Friday morning about 8 o'clock I went to the house of Ciriaco. He told me this evening at 7 o'clock to go to their house. Akong and Carlito had a conversation and told me that I will take care of it. On Saturday night I went there at 12.30. I looked into the garage the car was not there. The dog, barked. I gave bread. I hid myself near the wall. They came home at 1.30. I climbed the azotea by means of the ladder. I went straight inside. I looked in it was quiet. I yanked the mosquito net and folded it up. Stabbed him. After that I threw the keys outside. I went down the main stairs. I remembered the ladder on the wall of the azotea. I went up. I washed my hands. Afterward I went home passing on the right hand side of the fence. I went straight home at about 4 o'clock. I went to bed. The knife I carried thrust on my waist. I removed my drawers and khaki suit. The drawers are full of blood. The clothings of Tolentino I threw out. The whetting stone, the knife are here in the office. Also the can is here. Akong did not give me money. He said I will take care of it, I will give you. "(Sgd.) GENZO NISHIJIMA "13th November "Sunday morning I went to their house. Ciriaco was asking me. He was whispering to me, you have killed him already. He was whispering to me. It is finished I answered, it is finished already. Akong and Carlito told me to go to the house of Tolentino and there is nobody there they have all gone to Cavite." It will be observed at the outset that the defendant was prosecuted on the theory that he was hired by Ciriaco and Carlos Francisco to murder Gregorio Tolentino, but that theory was abandoned, and the fiscal did not include them in the information or file any action against them. The trial court said: "La acusacion sostiene que en su comision concurrieron las circunstancias cualificativas del delito de asesinato de promesa remuneratoria, premeditation conocida

y alevosia y la agravante generica de nocturnidad. Con arreglo a las pruebas la primera no puede darse por suficientemente establecida, porque la declaration del acusado al efecto de que Ciriaco Francisco y su hijo Carlos fueron los que le indujeron a consumir el crimen bajo la promesa de remunerarle con largueza, no ha sido corroborada por ninguna otra prueba. Sobre este extremo resulta inexplicable la actitud de la acusacion al no incluir en la querella, cual lo dispone, la ley, a los supuestos coautores del acusado si existiesen efectivamente pruebas razonables y convincentes contra ellos. No justificaria esta omision el plan o proposito, si hubiese, de incoar mas tarde contra ellos otra action criminal separada e independiente, porque semej ante procedimiento pugnaria abiertamente con el laudable proposito de la Ley No. 2709 que requiere que todos los culpables de una infracci6n sean incluidos en una sola querella." If the accused did not commit the crime in consideration of a promise of reward, then no satisfactory motive for the commission of the crime was adduced. That the accused had a grudge against his former master because of the trifling incident of the neighbors' chickens, as testified to by the chauffeur, Vicente Rosada, and murdered Gregorio Tolentino for that reason deserves no serious consideration. Furthermore we are not favorably impressed by the testimony of Vicente Rosada. His story to the effect that he sent Abundio Mejias to get the key to the gate in order that he might go out and get his breakfast, when his master had been in bed less than three hours strikes us as highly improbable. That he should tell the muchacho to climb up to the second story instead of calling to his master or trying to awaken him, if he thought that he was asleep, seems rather suspicious. It is to be noted that Abundio Mejias was not called as a witness, although according to Rosada he, Mejias, accompanied Gregorio Tolentino to and from the ball on the night of the murder, and was the first person to discover the dead body of the deceased. Whatever be the truth as to defendant's charges of maltreatment by the detectives and policemen before he confessed or assented to the statement attributed to him in Exhibit O, we are constrained to believe after mature reflection that the statements therein contained are not the voluntary statements of the accused, but the words of the detectives put in the mouth of the accused pursuant to their preconceived theory as to the commission of the crime. Exhibit O contains so many statements of fact that are admittedly untrue, as well as others that are inherently improbable, that we cannot believe it to be the voluntary confession of the accused. To mention a few of such statements, The 'matter of fact way in which Ciriaco and Carlos Francisco proposed to the accused the murder of Gregorio Tolentino, and the readiness with which he agreed to commit the crime are certainly most improbable, if not incredible, and likewise the conversation of the accused from the street with Ciriaco and Carlos the next morning, and that he turned on the electric light when he entered the bedroom of the deceased. The window of this bedroom faced the garage where the servants slept, and the defendant knew that the chauffeur and the houseboy had come home only an hour before. Even more improbable is the statement that after having consummated the murder the accused went down the main stairs, but remembering that he had left the ladder leaning against the azotea, he went upstairs again and descended by the ladder. It should be stated here that according to the theory of the prosecution the clothes of the accused, especially his drawers, were bespattered with blood, and his hands and bolo were covered with blood, but not a blood stain was found on the stairs. According to Exhibit O, the accused stopped and washed his hands on the azotea, then went down and put on his overalls, which he had taken off before climbing up the ladder; but according to the evidence the overalls were precisely the garment that had the most blood stains. It appears from Exhibit O that the defendant got the keys from under the pillow of the deceased and threw them out of the window in accordance with the instructions of Ciriaco and Carlos Francisco. Eighteen secret service men searched the grounds, but were unable to find the keys. The detectives searched the wardrobe without finding the keys, taking out everything piece by piece, but long after the accused was arrested and held incomunicado the keys were found by detective Llorente in a drawer of the wardrobe that had been previously searched in the most thorough manner. According to Exhibit O, the defendant in killing Gregorio Tolentino wounded himself on the middle finger of each hand. That seems most improbable, to say the least. As already stated, the accused is a Japanese gardener. The testimony of the detectives is conflicting as to his ability to speak Tagalog correctly. We may safely assume that even if he spoke Tagalog fluently his language was ungrammatical. How then can we believe that the long and well rounded sentences in Exhibit O are the language of the defendant? Our attention has been particularly attracted by the following question and answer: "Q. During all the time that you stayed here, have you received any treatment about which you have any complaint to make from anyone in the secret service?—A. What I can say is this: 'From the time I arrived here up to the present time I have not received any treatment whatsoever of which I can complain. Even the tip of my finger

was not touched in a manner that is improper or abusive. I have been given food and otherwise have no cause for complaint." According to one of the investigators, those are the exact words of the accused. We do not hesitate to say that the accused was utterly unable to make any such statement. Perhaps the best proof that the statements in Exhibit O are not the defendant's is the document marked Exhibit P, a translation of which made by the detectives is Exhibit P-3-a. The defendant was told to write in Japanese an account of the crime, that is, to retell what he is supposed to have told the detectives the night before. It took the defendant three and a half hours to prepare Exhibit P, consisting of one and a quarter pages. If we assume that Exhibit P-3-a is a correct translation of Exhibit P, it completely refutes the contention that the story contained in Exhibit O is the story of the accused. Exhibit P is made up of detached sentences. It is clearly an effort of the writer to recall what was said the night before. It should be borne in mind that when the accused is supposed to have made the admissions attributed to him, he was confined in the secret service division, and was not allowed to communicate with anybody on the outside, much less any attorney. The detectives did not call a Japanese interpreter when they were investigating the accused or before having him sign Exhibit O. They only called an interpreter to translate Exhibit P. This interpreter admitted that his knowledge of Tagalog was very limited and that he could not speak it. Fortunato Salva, who translated defendant's answer from Tagalog to English was not called as a witness. Section 4 of Act No. 619 provides that no confession of any person charged with crime shall be received as evidence against him by any court of justice unless it be first shown to the satisfaction of the court that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or of promises or offers of reward or leniency. Act No. 619 was repealed by the Administrative Code, and section 4 of said Act was not reproduced in the Administrative Code; but the repeal of section 4 of Act No. 619 did not impair the general rule of jurisprudence to the effect that a confession improperly obtained by the means or under the conditions stated in that section is not competent evidence against an accused person. (U. S. vs. Zara, 42 Phil., 308, 316.) "Involuntary confessions are uniformly held inadmissible as evidence—by some courts on the ground that a confession so obtained is unreliable, and by some, on the ground of humanitarian principles which abhor all forms of torture or unfairness towards the accused in criminal proceedings. If it be satisfactorily shown that the confession was involuntary, it stands discredited in the eyes of the law and is as a thing which never existed." (U. S. vs. De los Santos, 24 Phil., 329; Moran, *The Law of Evidence in the Philippine Islands*, page 89.) For the reasons hereinabove stated, we are of the opinion that the confessions in question were not competent evidence. The trial court found that the defendant's admissions were corroborated by other evidence, that is, the blood stained garments, the bolo, and the blood under the defendant's finger nail, and defendant's attempt to remove it. The defendant admitted that the overalls and the khaki shirt belonged to him, but in our opinion he satisfactorily accounted for the blood stains found thereon. If the defendant had murdered Gregorio Tolentino, and contrary to Exhibit O had been wearing the overalls at the time, they would have been drenched with blood, because the left carotid artery of the deceased was cut, and according to Dr. Angeles the blood must have spurted out for a distance of a meter. The accused denied that the drawers and bolo were his. Chumatzu without hesitation stated that they belonged to him. The defendant admitted that the overalls were his, and they being the garments with the most blood stains, there was no reason for him to deny the ownership of the drawers if they in fact belonged to him. The querida of the defendant testified that he never used drawers like those offered in evidence. No attempt was made to conceal the articles of clothing in question. The prosecution attempted to prove by the chauffeur, Vicente Rosada, that the bolo in question belonged to the accused, but his testimony was evasive and unconvincing. As to the blood on the bolo, Sol Cruz said he noticed dark stains near the point. Doctor Angeles could not state on what part of the bolo he found the particles of blood. He said it was where the surface was uneven. It could not therefore have been near the point. He admitted that the quantity of blood found was "muy insignificante", and we are not convinced that it was sufficient to justify a finding that it was human blood, beyond the possibility of error. The prosecution presented expert testimony to prove that the bolo had been washed, to offset the fact that only a minute quantity of blood at most was found on the bolo and not even a stain on the sheath, notwithstanding the contention of the prosecution that the accused had cut a carotid artery and inflicted seventeen other wounds with this bolo. We doubt if it could be determined with certainty that the bolo had been stained with blood and then washed. It may be observed here that in the case of a small stain on the shirt of Vicente Rosada, Dr. Angeles sent the shirt to the Bureau of Science for examination, principally because the stain was very small. But even if a minute quantity of human blood was found on the bolo, that fact is not necessarily

inconsistent with the innocence of the accused. In the first place there is no satisfactory evidence that the bolo in question belonged to the accused. The only evidence to that effect is the evasive testimony of the chauffeur. It might be remarked here that the relations between the defendant and the chauffeur were strained at the time when they were working for Gregorio Tolentino. The chauffeur says that the accused bore him ill, but that he felt no resentment towards the accused. In the second place, if the bolo belonged to the accused, the blood found thereon may have come from the cuts on his fingers, which he received in collecting broken bottles for sale. If the defendant had some dirt and particles of blood under his finger nail, that may easily be accounted for by the fact that the defendant's fingers had been bleeding. Because the defendant tried to remove the dirt under his finger nail when Laperal's attention was called to it, the trial court inferred that that was evidence of guilty knowledge. The inference does not seem to us justified. Defendant's action may have been entirely innocent. Before the trial Adolfo A. Scheerer was appointed attorney de oficio of the accused, who had no attorney to represent him. When Scheerer went to the secret service headquarters to confer with the accused, the chief clerk informed him that the accused had already confessed. Scheerer speaks Japanese. After he had put a few questions to the accused, Scheerer turned to the chief clerk and said that the accused denied any knowledge of the crime. Scheerer was the first person from the outside to whom the accused was permitted to speak since he had been arrested. When Scheerer told the chief clerk that the accused would not admit that he had anything to do with the crime, the chief clerk asked the accused why he had admitted that he was guilty. The accused replied: "Because they were going to put me under the electric current." For the foregoing reasons, we find that the guilt of the accused has not been proved beyond a reasonable doubt and he is acquitted, with the costs de oficio. The accused will be immediately released from custody. So ordered. Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, and Vickers, JJ. & CONCURRING BUTTE, J.

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PER CURIAM:

This is an appeal from a decision of the Court of First Instance of Manila finding the defendant guilty of the murder of Gregorio Tolentino, with the presence of the aggravating circumstance of treachery, and sentencing him to suffer the penalty of death, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

The defendant was tried on a plea of not guilty to the following information:

"That on or about the 9th day of November, 1930., in the City of Manila, Philippine Islands, the said accused, conspiring with and induced by others for a promise of reward offered by the latter, with evident premeditation and treachery, and under the cover of the night purposely sought, did then and there willfully, unlawfully, and feloniously assault, attack, hack, and wound with a bolo or sharp instrument, Gregorio Tolentino, who was then lying asleep in his house and dwelling located at No. 2541 Lico Street of said city, inflicting upon him the following physical injuries, to wit: incised wound on the left side of the neck involving the left common carotid artery, the left vagus and sympathetic nerves, the muscles and other tissues of the region ending into the fourth cervical vertebrae, and multiple incised and stab wounds on different parts of the body and hands, which were necessarily mortal, thus causing as a consequence thereof, the immediate death of said Gregorio Tolentino in the spot."

The attorneys for the appellant make the following assignments of error:

- "1. The trial court erred in finding that the accused, impelled by the dictates of his conscience, spontaneously admitted that he was the author of the crime charged.
- "2. The trial court erred in not finding that the 'confession' upon which the sentence was based had been extorted from the accused by means of threats, intimidation, undue influence and violence.

"3. The trial court erred in admitting said 'confession' (Exhibits O and P) in evidence.

"4. The trial court erred in not holding that said 'confession', being admittedly false in many material respects, was false in all respects.

"5. The trial court erred in finding that the bolo Exhibit B belonged to the accused.

"6. The trial court erred in declaring that the wounds found on the fingers of the accused were caused by the bolo used by him in attacking the deceased.

"7. The trial court erred in declaring that the drawers presented by the prosecution as evidence had been used by the accused.

"8. The trial court erred in not acquitting the accused, and in imposing upon him the death penalty."

It appears from the evidence that the deceased Gregorio Tolentino was 66 years old and well-to-do. He was a widower without children. His nearest relative apparently was Adelaida Tolentino, a daughter of his first cousin. He lived at No. 2541 Calle Lico, in the District of Tondo, Manila. The following persons lived with him: Adelaida Tolentino and her husband, Juan Concepcion; Gervasia Francisco, sister of the deceased wife of Gregorio Tolentino; and Consuelo and Visitacion Francisco, daughters of Ciriaco Francisco, a brother-in-law of the deceased. All these persons went to Cavite on November 8, 1930 to attend a fiesta, and did not return until the next day.

The deceased had the following servants and employees: Abundio Mejias, a servant; Vicente Rosada, a chauffeur; Juana Abrigana, a maidservant; Felisa Villanueva, a cook; and R. Siruisi, a Japanese gardener. They lived in the servants' quarters separate from the house of the deceased.

The defendant is a Japanese gardener, who had lived in the Philippines for seventeen years. He had worked for the deceased as gardener for about two years. He left the service of the deceased about August 3, 1930.

On Saturday evening, November 8, 1930, Gregorio Tolentino attended a ball at La Palma de Mallorca in Intramuros, Manila. He went home about 2 o'clock the next morning. The automobile of the deceased was driven by Vicente Rosada. The deceased was accompanied by his servant, Abundio Mejias. The yard of the deceased was surrounded by a wall, and the gate in the wall was fastened with a padlock. It does not appear who fastened the gate on the night in question. The deceased went up to his room, and retired. The servant and the chauffeur went to the garage, where the servants' quarters were. About 6 o'clock in the morning the chauffeur got up and started out to get his breakfast, but finding the gate locked he asked Mejias if he had the key. Mejias said he did not have the key, and the chauffeur told him to ask the deceased for it. The muchacho said the door of the house was locked. The chauffeur then told him to climb up anywhere he could, and the muchacho climbed up on the iron bars over the kitchen window to the second story. After going to the bedroom of the deceased, the muchacho came out and said the old man was covered with blood. The chauffeur and the maidservant then climbed up in the same way, and after looking at the body of the deceased lying on the bed, they came down the stairs and went out through the door, which was opened by the maidservant. The chauffeur after telling the muchacho to break open the padlock on the gate drove to the Meisic police station and reported the crime.

Two policemen went to the house of the deceased, and soon afterwards numerous detectives began to investigate the case. They were assisted by Dr. Sixto de los Angeles, chief of the department of legal medicine of the University of the Philippines, and Arcadio Laperal, chief clerk of the secret service division of the Manila police department.

The body of the deceased was removed to the morgue for examination, which showed that the deceased had

received eighteen wounds, seven of which were necessarily fatal. Nothing had been disturbed in the room, except that the keys which the deceased was known to keep under his pillow at night could not be found. The wardrobe and safe were then forced open by the detectives, but no sign of robbery was found. The detectives found in the safe a will executed by the deceased on October 22, 1930, wherein Adelaida Tolentino was instituted as his universal heir.

The members of the household of the deceased and his servants and employees were taken to the secret service division for investigation. After being questioned, they were all immediately released except Vicente Rosada and Abundio Mejias, who were released on November 11th. Rosada told detective Sol Cruz that the only persons who had any grudge against the deceased were Ciriaco and Carlos Francisco and the accused; that the accused had been a gardener of the deceased until August 1930; that having been reprimanded by the deceased for keeping some of the neighbors' chickens that had entered the yard of the deceased, the accused was offended and left the service of the deceased. Acting on this information, the detectives Sol Cruz, Manalo, De los Santos, and Solis, accompanied by the chauffeur, Vicente Rosada, arrested the accused about 11 o'clock on the night of November 11th in the house of a Japanese gardener named Chumatzu, in La Loma, in the District of Tondo. Detective Sol Cruz noticed that the defendant had a wound on the middle finger of each hand and what appeared to be blood stains under the nail of the middle finger of the right hand. On the ground floor of the house, the detectives found a bolo, Exhibit B, in a box covered with a petate. Sol Cruz noticed near the point of the bolo what he took to be blood stains. When the bolo was found, the defendant was immediately asked who was the owner of it. He said it belonged to Chumatzu, and Chumatzu then and there stated that the bolo was his.

The next morning Sol Cruz reported to Attorney Laperal of the secret service division what he had noticed under the nail of the accused. Laperal told Sol Cruz to take the defendant and the bolo, Exhibit B, to Dr. Angeles for examination. Other detectives were sent back to the house of the defendant to look for further clues. They found a pair of overalls, Exhibit C, hanging in the lower part of the house and a pair of drawers, Exhibit J, which had just been washed, on a mango tree about 10 meters from the house where the defendant had been arrested. These articles were also sent to Dr. Angeles for examination. When the drawers were found, Chumatzu explained that they had been found by him on a garbage dump near his house, and that he had washed them because they were stained with a yellowish substance.

Doctor Angeles made a report on November 17th that the bolo, the overalls, and the drawers were stained with human blood. The detectives later got a khaki shirt from defendant's house, and this too was found by Dr. Angeles to have blood stains on it (report of November 24, 1930). The defendant admitted that the overalls and khaki shirt belonged to him. He explained that he had been engaged in collecting broken bottles for a glass factory in San Pedro Macati, and had cut his fingers on the glass and wiped the blood off on his overalls; that the khaki shirt was stained with blood in pulling it off.

The accused was investigated as soon as he was taken to the secret service headquarters on the night of his arrest. He disclaimed any knowledge of the crime. There is a sharp conflict in the evidence as to what subsequently took place. The accused maintains that the detectives in an effort to make him admit that he had committed the crime told him that he had killed Gregorio Tolentino; that the detectives and policemen took turns in trying to force him to admit that he was guilty; that they kept this up all night without allowing him to sleep or to rest until 6 o'clock the next evening; that one of them struck him on the arms and in the face, but he continued to answer that he did not know anything about the murder; that when he went to the water closet, two detectives approached him and told him that if he did not confess they would beat him; that they then struck him on the hip bone and grabbed hold of his testicles; that in the afternoon he was very sleepy and while he was dozing, a policeman approached him and after asking him what he was doing jerked him up by the hair of the head; that about 6 o'clock in the

evening Sergeant Sol Cruz, accompanied by two or three policemen, came and told him to admit his guilt, to which he replied "How am I going to confess if I do not know anything about it?"; that an American then approached him and said: "Admit that you killed him. This sergeant is a goodman. If you do not admit that you killed Gregorio Tolentino, we are going to apply electricity to you, and you will die"; that he then heard the sound of an electric motor; that he answered that he had not killed Gregorio Tolentino and did not know anything about it; that after the American went away, the sergeant again told him to confess that he was guilty, but he declared that he knew nothing about the crime; that Sol Cruz then said: "You had better admit that you killed him; we know that you killed him; you had better admit it"; that he replied "I cannot admit it, because I did not kill him"; that Sol Cruz then said: "Admit that you are guilty although you did not kill him, because after all the offense committed is not yours, but Ciriaco's and his son's"; that since he did not agree to what Sol Cruz proposed, the latter said: "If you do not admit that you were the murderer, we are going to apply electricity to you"; that he then said: "Although I did not kill Tolentino, since you require me to admit that I was the person that killed him, and since you say that after all I am not the true assassin but Ciriaco and his son, I am going to admit it."

Sol Cruz denied having maltreated the accused, but admits that he was constantly urged to tell the truth, to admit that he killed Gregorio Tolentino.

According to Sol Cruz the defendant then related the facts as to the murder as set forth in Exhibit O. The defendant on the other hand maintains that he merely assented to the statements of the detective. The defendant then admitted to Laperal that he had killed Gregorio Tolentino, and Exhibit O according to the detectives was prepared in the following manner: Laperal asked the questions in English, and Sol Cruz translated them into Tagalog. Fortunato Salva wrote the questions in English on a typewriter. The defendant answered them in Tagalog. Fortunato Salva translated the answers into English, and wrote them on the typewriter.

Not content with Exhibit O, the detectives the next day told the defendant to write in Japanese what he had related the night before. It took the defendant three and a half hours to write Exhibit P.

The defendant was taken by the police to the scene of the crime and told to reenact the commission of the murder.

The alleged admissions of the accused, which form the basis of his conviction in the lower court, are set forth in Exhibit O, which reads as follows:

"Q. Are you willing to make a free and voluntary statement and to truthfully answer all questions asked you, without fear of punishment, promise of immunity or hope of reward, knowing that this statement may be used against you in any court in the Philippine Islands?—A. Yes, sir.

"Q. Please state your name and other personal circumstances.—A. Guiendo Nisijima, aged 41; residence, Cemetery Tambunting; Manila; occupation, a gardener, but at present not employed; birthplace, Wakayamakeng, Kobe, Japan; single.

"Q. Do you know Gregorio Tolentino who lives at No. 2541 Lico, Tondo, Manila?—A. Yes, sir.

"Q. How did you happen to know him?—A. Because I had worked for him as gardener for about two years, and only on the 3d or 4th of September, 1930, that I left his services.

"Q. Why did you leave his services?—A. Because one day Mr. Tolentino came to me and told me: 'come here, why do you steal the bananas.' I told him I do not steal, but Mr. Tolentino insisted, and because of this, I decided to leave his services on the above-mentioned date.

"Q. Did Mr. Tolentino pay you all your wages due?—A. Not yet, at the time I left, but when I went to his house about the 1st of October, 1930, he paid me for the three days I worked for him in the month of September, 1930.

"Q. At the time you left did you have any ill-feeling against Mr. Tolentino?—A. Yes, sir, but it was not really ill-feeling, but something like shame, because I was ashamed to myself and to the others that they will say that I stole the bananas.

"Q. From that time, October 1st, until about November 8th, have you gone back to the house of Mr. Tolentino for any purpose whatsoever?—A. No sir.

"Q. From November 8th up to the present have you ever been in the house of Mr. Tolentino?—A. Yes sir, about 1 o'clock in the morning of Sunday, November 9th, 1930, I went to the house of Mr. Tolentino. I found that the gate was closed and thinking that it was locked as usual, I climbed over the fence and proceeded toward the garage. A dog barked and I threw a piece of bread to him and he stopped barking, and so I went to the garage and there I found that the automobile of Mr. Tolentino has not arrived yet. So, I went near a mango tree near the gate and posting myself near the wall I waited.

"Q. What was your intention in going there and waiting?—A. I went there for the purpose of .killing Mr. Gregorio Tolentino.

"Q. Why did you want to kill Mr. Gregorio Tolentino ?— A. Because on Friday morning (November 7th, 1930) at about 8 o'clock, I went to the house of 'Akong' (Ciriaco Francisco) at Calle Lico, number of which I do not know. While I was there Akong told me: 'Shima, mamayang gabi, mga alas 7, ikao ay pumarito dito at ang anak kong si Carlito ay nanrito na at saka tayong tatlo magusap' (Shima, this evening come here at about 7 o'clock and ray son Carlito will be here and we three could have a talk together). At 7 o'clock of that night, November 7th, I returned to the house of Akong and there I had a conference with Akong and Carlito, the son of Akong (Carlos Francisco). Akong and Carlito then began io plan the killing of Gregorio Tolentino. I heard Akong telling his son, Carlito: 'Carlito, I think that we better do away with theold man, Gorio (Gregorio Tolentino); Shima will take care of that,' and turning to me, he said: 'is it not so, Shima?' I answered: 'yes.' Then Carlito addressed me and told me: 'Go ahead, Shima, do it; my father will take care of you; he will pay you for your work.' I asked Carlito how much his father will pay me. He answered: 'Not to worry, because I will be given much money, inasmuch as when Gregorio Tolentino is dead already, they will have much money.' Saturday morning, about 8.30 o'clock, I passed by the house of Akong in going to a Chinese store. to buy cigarettes. Akong was in his window and he told me: 'Shima, you are ready, ha, tonight you will go there, I answered: 'Yes.' Then I went home and got a knife or rather a small bolo and began to sharpen it by using a sharpening stone. Then I waited until night time: Sometime after 12 o'clock in the midnight of Saturday, I started for the house of Gregorio Tolentino, arriving there at about 12.30 a. m., November 9th. The street was deserted and there were no people. I immediately climbed over the fence near the gate as I have described to you before.

"Q. Were there any people in the house of Gregorio Tolentino at that time?—A. No, sir, the house was deserted, there were no persons.

"Q. How did you know there were no persons in the house?—A. Because Ciriaco Francisco and Carlito told me when we had our conference in the evening of Friday, November 7th, that I should not do the killing on that evening, but to wait for the next day, Saturday, as all the people in the house, companions of Gregorio Tolentino, would be away to attend the fiesta in Cavite.

"Q. When you went to that place what was your intention?—A. My only intention was to kill the old man, Gregorio Tolentino, as per agreement had with Ciriaco and Carlito.

"Q. How did you expect to accomplish your intention?— A. The first thing I did was to get the knife which I sharpened that morning and putting it in my waist, I started for Tolentino's house. I also provided myself with bread which I was to use to fix the dogs. Because as you know on that Friday night which we had a conference, Akong and Carlito instructed me to get bread and they gave me a powder which they instructed me to sprinkle on the bread so as to fix the dogs and to leave me alone.

"Q. Did you follow these instructions and fix the dogs?—A. Yes, sir, because when I got down from the fence the dogs started to bark and when I threw the piece of bread with the powder on, the dogs ate it and stopped barking.

"Q. You stated that you found the automobile of Mr. Tolentino not in the garage and you supposed that he has not arrived yet, and so you waited; how long did you wait before Mr. Tolentino arrive?—A. I waited there for about an hour and a half.

"Q. When Mr. Tolentino arrived what did you do?—A. I continued to wait until he retired to bed.

"Q. How long did you have to wait before Mr. Tolentino went to bed?—A. I waited for about an hour.

"Q. Then at the end of the hour which you had waited, what happened?—A. When I noticed that the old man must have been asleep I went around the building to find a suitable place for me to climb up. It was then that I remembered a ladder which is used in the grounds there and so I went and looked for it and having found it I brought it and placed it on the azotea and climbed up to the azotea. Then I proceeded to the sala of the house and entered Gregorio Tolentino's room thru the door leading to the sala. This door was closed, but not locked. I know this very well because many a time when I was working there I used to go up and get orders from my master when he is in that room.

"Q. Once in the room what did you do?—A. I then approached IVtr. Tolentino on his bed to feel that he was fast asleep, and when I noticed that he was soundly asleep, I turned on the light and I approached the bed and yanked the right hand corner of the mosquito bar nearest the head to clear the space and give me the free use of my arms. Then I began to hack him with my small bolo until he died. When I was sure that he was already dead I looked for his keys and when I found them under his pillows I took hold of them and threw them out of the window. I went down the main stairs and was intending to leave the building thru that way and I remembered that I have left the step ladder on the wall of the azotea. So I went up again and going to the azotea came down thru the same ladder I used in going up. I returned the ladder to the place where I took it and putting on again the overalls which I removed before going up, I passed on the left side of the building and climbing the fence went out of the street again. I then went home and after washing my hands and removing my blood stained drawers, I went up and slept. The small bolo I used I just threw it aside somewhere in the house and paid no more attention to it.

"Q. Did you go back again to the house or near the house of Gregorio Tolentino on that morning?—A. Yes, sir, I just passed there in front to find out what is going on and I saw many people already assembling in front of the house. While I was passing in front of the house of Akong, Akong was at the window and he told me: 'everything is alright now, he is now settled.' I told him: 'yes, he is well fixed now.'

"Q. To whom did Akong refer when he said 'he is now settled'?—A. He refers to Gregorio Tolentino.

"Q. Was this the only conversation between you and Akong on that Sunday morning of the murder?—A. No, sir. Because I asked him about the payment and he told me to wait for a while as there is no money yet; that after perhaps everything is settled, they will have plenty of money. I told them: 'you better watch out, if you don't give me money, something will happen.' Akong told me: 'don't you worry, you will get money alright.'

"Q. You stated that after killing Gregorio Tolentino you looked for his keys and threw them far away. Why did you do this?—A. Because Akong (Giriaco Francisco) told me to get the keys which the old man keeps under his pillow and to throw them far away so that when Tolentino's other nephews arrive in the house, they cannot open any of the places where the old man keep his valuables, including money, jewelry and others.

"Q. While you were killing the old man, Gregorio Tolentino, did you see anything lying under his bed, besides the keys?—A. I saw a small revolver.

"Q. You are employed by Akong (Ciriaco Francisco) to take care of his fighting roosters, is it not so?—A. Yes,

sir, I am taking care three of his fighting roosters.

"Q. When you were arrested yesterday, at about 11.30 p. m., a detective asked you if the fighting roosters in your house belong to Akong (Ciriaco Francisco), you said: 'no, they did not.' Why did you say this?—A. Because Akong instructed me not to say anything which will show his connection with me, and he even told me that if anything happen, that I should say nothing, but say: 'I do not know, I do not know.'

"Q. When you went to the house of Tolentino to kill him what weapons did you take along with you?—A. Just the small bolo which I told you I used in killing him.

"Q. You stated that you left your house at about a little after 12 o'clock midnight. Did you inform your wife that you are going out?—A. No, sir, it was when I went out all of my companions in the house were asleep. My querida, Pedro and his wife all were asleep, and in order not to leave the door open I closed it behind me and placed a chair against it so that it would not open while I was away, and when I returned at about a little before 4 o'clock, I just pushed the door a little, removed the chair and entered. I found all my companions still asleep.

"Q. I am showing you these two photographs. Can you tell us who the person represented there was ?—A. Yes, sir, this is Gregorio Tolentino.

"Q. I am showing you this photograph which represents a number of wounds in the body of Gregorio Tolentino. Can you tell us how these wounds were inflicted and who inflicted them?—A. The wounds pictured in the body were the wounds inflicted by me when I killed Gregorio Tolentino on the early morning of November 9, 1930. The wound on the right side of the neck cutting the jaw and the lobe of the right ear was the first wound I inflicted, and the wound on the left side of the neck was the second and the other wounds in the body were immediately following the first two wounds.

"Q. I am showing you photograph marked No. 8 and ask you if you know the house represented in this photograph?—A. Yes, sir, I know this house represented in this picture. This is the house of Gregorio Tolentino and the window thru which the person could be seen standing is the window of the room where Gregorio Tolentino was sleeping and where I killed him.

"Q. In this photograph No. 4, you will notice that the pillow appears to have been cut. Can you explain to us how this happened?—A. Because when I inflicted the first wound I have done it with such force that after the wound was inflicted the knife cut thru the pillow.

"Q. We notice that the rattan of the bed of Gregorio Tolentino presents cuts made by a sharp instrument. Can you tell us how this happened?—A. This happened because I was in a hurry to finish the job and I was already perspiring and I remember that two of the stabs which I gave the body missed and my bolo buried into the blanket, mat and may be the rattan of the bed. I remember that this occurred twice.

"Q. You stated that there are three fighting roosters belonging to Ciriaco Francisco, of which you take care. Do you get any compensation for taking care of these three roosters?—A. No, sir, but should any of these roosters take part in a fight and win, I will get money from Akong (Ciriaco Francisco). That is our agreement.

"Q. Do you have any ill-feeling against Ciriaco Francisco?—A. No, sir.

"Q. Do you know if Ciriaco Francisco has any ill-feeling against you ?—A. Not that I know of.

"Q. Do you have any ill-feeling against Carlos Francisco?—A. No, sir.

"Q. Do you know if Carlos Francisco has any reason to have any ill-feeling against you?—A. Not that I know of.

"Q. Have you seen Ciriaco Francisco and Carlos Francisco at any time on this date?—A. Yes, sir, I saw them when they were lined up with other persons and they were the ones I pointed out. The first one I pointed out is

the one named Carlito (Carlos Francisco); the second one is his father, Akong (Ciriaco Francisco).

"Q. How long have you been in the Philippine Islands?— A. More than seventeen years.

"Q. Can you speak and read the Tagalog dialect or any other Philippine dialect?—A. I speak and understand Tagalog very well, but I cannot read or write, and I do not know, understand or speak any of the dialects or read or write any of these dialects.

"Q. Do you know the status of the relationship existing between Gregorio Tolentino and Ciriaco Francisco and his son, Carlos Francisco?—A. I know that Ciriaco and Carlos Francisco are not in good terms with Gregorio Tolentino, because I remember that one time about a year ago while I was working near a window of the house, I heard Gregorio Tolentino and Ciriaco Francisco quarreling about something. They appeared to be very hot in their exchange of words. I was informed that Carlito also is in bad term with Gregorio Tolentino and as a matter of fact I have never seen Carlito go to the house of Gregorio Tolentino even on the occasions when there are parties held and many people are invited.

"Q. This morning in the secret service blood was noticed in the middle finger of your right hand, as a result of which you were sent to the department of legal medicine of the University of the Philippines for further examination. Can you tell us now if what was found in your finger was really blood, and if so why was it found there?—A. This is because at the time I killed Gregorio Tolentino blood was all over my hands and fingers, and in my haste I was not able to wash my hands very well, so the blood remained in the middle finger of my right hand.

"Q. We notice that you have cuts on your right and on your left middle fingers. Can you tell us where you received these cuts?—A. In my haste to inflict as many wounds as possible sometimes my bolo will slip and strike me in the finger. Once I dropped the bolo and when I picked it up again I received this cut on the right middle finger.

"Q. While you were in the department of the legal medicine this morning, a small bolo, and a pair of white drawers with a few blood stains and a pair of overalls with blood stains also on the inside were shown to you. Do you recognize those articles and can you tell us now to whom they belong?—A. The bolo, the pair of white drawers and the pair of overalls are all my property. I had them on when I killed Gregorio Tolentino and the bolo was the one I used in killing Gregorio Tolentino in the early morning of November 9, 1930.

"Q. Since when have you been in the office of the secret service?—A. Since about 12 o'clock last night, November 11, 1930.

"Q. During all the time that you stayed here, have you received any treatment about which you have any complaint to make from anyone in the secret service?—A. What I can say is this: 'From the time I arrived here up to the present time I have not received any treatment whatsoever of which I can complain. Even the tip of my finger was not touched in a manner that is improper or abusive. I have been given food and otherwise have no cause for complaint.'

"Q. Why do you make this statement then as no one is forcing you to do so?—A. Because I have killed the man and I want to feel easy about it after I have unburdened my feelings.

"Q. Is all that you have stated herein the truth and nothing but the truth and are you willing to sign this statement after it was read by me to you in Tagalog?— A. Yes, sir, I will sign it in Japanese character, because I do not know how to sign my name in ordinary writing."

The record is incomplete as to Exhibit P. This document is written in Japanese characters. The words represented thereby, however, are not Japanese but Tagalog. Exhibit P was first translated into Tagalog by a Japanese, Juhe Nakamura, in the secret service office, and it was later translated into Tagalog again by the same man in court (Exhibits P-5 and P-6), but no translation into English or Spanish is attached to the record.

Exhibits P-3 and P—4 are versions prepared by the detectives, which were translated into English, Exhibits P-3-a and P-4-a. Exhibit P-3-a reads as follows:

"November 13th, 1930

"Friday morning about 8 o'clock I went to the house of Ciriaco. He told me this evening at 7 o'clock to go to their house. Akong and Carlito had a conversation and told me that I will take care of it. On Saturday night I went there at 12.30. I looked into the garage the car was not there. The dog, barked. I gave bread. I hid myself near the wall. They came home at 1.30. I climbed the azotea by means of the ladder. I went straight inside. I looked in it was quiet. I yanked the mosquito net and folded it up. Stabbed him. After that I threw the keys outside. I went down the main stairs. I remembered the ladder on the wall of the azotea. I went up. I washed my hands. Afterward I went home passing on the right hand side of the fence. I went straight home at about 4 o'clock. I went to bed. The knife I carried thrust on my waist. I removed my drawers and khaki suit. The drawers are full of blood. The clothings of Tolentino I threw out. The whetting stone, the knife are here in the office. Also the can is here. Akong did not give me money. He said I will take care of it, I will give you.

"(Sgd.) GENZO NISHIJIMA

"13th November

"Sunday morning I went to their house. Ciriaco was asking me. He was whispering to me, you have killed him already. He was whispering to me. It is finished I answered, it is finished already. Akong and Carlito told me to go to the house of Tolentino and there is nobody there they have all gone to Cavite."

It will be observed at the outset that the defendant was prosecuted on the theory that he was hired by Ciriaco and Carlos Francisco to murder Gregorio Tolentino, but that theory was abandoned, and the fiscal did not include them in the information or file any action against them. The trial court said:

"La acusacion sostiene que en su comision concurren las circunstancias cualificativas del delito de asesinato de promesa remuneratoria, premeditation conocida y alevosia y la agravante generica de nocturnidad. Con arreglo a las pruebas la primera no puede darse por suficientemente establecida, porque la declaration del acusado al efecto de que Ciriaco Francisco y su hijo Carlos fueron los que le indujeron a consumar el crimen bajo la promesa de remunerarle con largueza, no ha sido corroborada por ninguna otra prueba. Sobre este extremo resulta inexplicable la actitud de la acusacion al no incluir en la querella, cual lo dispone, la ley, a los supuestos coautores del acusado si existiesen efectivamente pruebas razonables y convincentes contra ellos. No justificaria esta omision el plan o proposito, si hubiese, de incoar mas tarde contra ellos otra action criminal separada e independiente, porque semej ante procedimiento pugnaria abiertamente con el laudable proposito de la Ley No. 2709 que requiere que todos los culpables de una infracci6n sean incluidos en una sola querella."

If the accused did not commit the crime in consideration of a promise of reward, then no satisfactory motive for the commission of the crime was adduced. That the accused had a grudge against his former master because of the trifling incident of the neighbors' chickens, as testified to by the chauffeur, Vicente Rosada, and murdered Gregorio Tolentino for that reason deserves no serious consideration. Furthermore we are not favorably impressed by the testimony of Vicente Rosada. His story to the effect that he sent Abundio Mejias to get the key to the gate in order that he might go out and get his breakfast, when his master had been in bed less than three hours strikes us as highly improbable. That he should tell the muchacho to climb up to the second story instead of calling to his master or trying to awaken him, if he thought that he was asleep, seems rather suspicious. It is to be noted that Abundio Mejias was not called as a witness, although according to Rosada he, Mejias, accompanied Gregorio Tolentino to and from the ball on the night of the murder, and was the first person to discover the dead body of the deceased.

Whatever be the truth as to defendant's charges of maltreatment by the detectives and policemen before he

confessed or assented to the statement attributed to him in Exhibit O, we are constrained to believe after mature reflection that the statements therein contained are not the voluntary statements of the accused, but the words of the detectives put in the mouth of the accused pursuant to their preconceived theory as to the commission of the crime. Exhibit O contains so many statements of fact that are admittedly untrue, as well as others that are inherently improbable, that we cannot believe it to be the voluntary confession of the accused.

To mention a few of such statements, The 'matter of fact way in which Ciriaco and Carlos Francisco proposed to the accused the murder of Gregorio Tolentino, and the readiness with which he agreed to commit the crime are certainly most improbable, if not incredible, and likewise the conversation of the accused from the street with Ciriaco and Carlos the next morning, and that he turned on the electric light when he entered the bedroom of the deceased. The window of this bedroom faced the garage where the servants slept, and the defendant knew that the chauffeur and the houseboy had come home only an hour before. Even more improbable is the statement that after having consummated the murder the accused went down the main stairs, but remembering that he had left the ladder leaning against the azotea, he went upstairs again and descended by the ladder. It should be stated here that according to the theory of the prosecution the clothes of the accused, especially his drawers, were bespattered with blood, and his hands and bolo were covered with blood, but not a blood stain was found on the stairs.

According to Exhibit O, the accused stopped and washed his hands on the azotea, then went down and put on his overalls, which he had taken off before climbing up the ladder; but according to the evidence the overalls were precisely the garment that had the most blood stains. It appears from Exhibit O that the defendant got the keys from under the pillow of the deceased and threw them out of the window in accordance with the instructions of Ciriaco and Carlos Francisco. Eighteen secret service men searched the grounds, but were unable to find the keys. The detectives searched the wardrobe without finding the keys, taking out everything piece by piece, but long after the accused was arrested and held incomunicado the keys were found by detective Llorente in a drawer of the wardrobe that had been previously searched in the most thorough manner.

According to Exhibit O, the defendant in killing Gregorio Tolentino wounded himself on the middle finger of each hand. That seems most improbable, to say the least.

As already stated, the accused is a Japanese gardener. The testimony of the detectives is conflicting as to his ability to speak Tagalog correctly. We may safely assume that even if he spoke Tagalog fluently his language was ungrammatical. How then can we believe that the long and well rounded sentences in Exhibit O are the language of the defendant? Our attention has been particularly attracted by the following question and answer:

"Q. During all the time that you stayed here, have you received any treatment about which you have any complaint to make from anyone in the secret service?—A. What I can say is this: 'From the time I arrived here up to the present time I have not received any treatment whatsoever of which I can complain. Even the tip of my finger was not touched in a manner that is improper or abusive. I have been given food and otherwise have no cause for complaint.'"

According to one of the investigators, those are the exact words of the accused. We do not hesitate to say that the accused was utterly unable to make any such statement.

Perhaps the best proof that the statements in Exhibit O are not the defendant's is the document marked Exhibit P, a translation of which made by the detectives is Exhibit P-3-a. The defendant was told to write in Japanese an account of the crime, that is, to retell what he is supposed to have told the detectives the night before. It took the defendant three and a half hours to prepare Exhibit P, consisting of one and a quarter pages. If we assume that Exhibit P-3-a is a correct translation of Exhibit P, it completely refutes the contention that the story contained in Exhibit O is the story of the accused. Exhibit P is made up of detached sentences. It is clearly an effort of the

writer to recall what was said the night before.

It should be borne in mind that when the accused is supposed to have made the admissions attributed to him, he was confined in the secret service division, and was not allowed to communicate with anybody on the outside, much less any attorney. The detectives did not call a Japanese interpreter when they were investigating the accused or before having him sign Exhibit O. They only called an interpreter to translate Exhibit P. This interpreter admitted that his knowledge of Tagalog was very limited and that he could not speak it. Fortunato Salva, who translated defendant's answer from Tagalog to English was not called as a witness.

Section 4 of Act No. 619 provides that no confession of any person charged with crime shall be received as evidence against him by any court of justice unless it be first shown to the satisfaction of the court that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or of promises or offers of reward or leniency.

Act No. 619 was repealed by the Administrative Code, and section 4 of said Act was not reproduced in the Administrative Code; but the repeal of section 4 of Act No. 619 did not impair the general rule of jurisprudence to the effect that a confession improperly obtained by the means or under the conditions stated in that section is not competent evidence against an accused person. (U. S. vs. Zara, 42 Phil., 308, 316.)

"Involuntary confessions are uniformly held inadmissible as evidence—by some courts on the ground that a confession so obtained is unreliable, and by some, on the ground of humanitarian principles which abhor all forms of torture or unfairness towards the accused in criminal proceedings. If it be satisfactorily shown that the confession was involuntary, it stands discredited in the eyes of the law and is as a thing which never existed." (U. S. vs. De los Santos, 24 Phil., 329; Moran, *The Law of Evidence in the Philippine Islands*, page 89.)

For the reasons hereinabove stated, we are of the opinion that the confessions in question were not competent evidence.

The trial court found that the defendant's admissions were corroborated by other evidence, that is, the blood stained garments, the bolo, and the blood under the defendant's finger nail, and defendant's attempt to remove it.

The defendant admitted that the overalls and the khaki shirt belonged to him, but in our opinion he satisfactorily accounted for the blood stains found thereon. If the defendant had murdered Gregorio Tolentino, and contrary to Exhibit O had been wearing the overalls at the time, they would have been drenched with blood, because the left carotid artery of the deceased was cut, and according to Dr. Angeles the blood must have spurted out for a distance of a meter.

The accused denied that the drawers and bolo were his. Chumatzu without hesitation stated that they belonged to him. The defendant admitted that the overalls were his, and they being the garments with the most blood stains, there was no reason for him to deny the ownership of the drawers if they in fact belonged to him. The querida of the defendant testified that he never used drawers like those offered in evidence. No attempt was made to conceal the articles of clothing in question.

The prosecution attempted to prove by the chauffeur, Vicente Rosada, that the bolo in question belonged to the accused, but his testimony was evasive and unconvincing.

As to the blood on the bolo, Sol Cruz said he noticed dark stains near the point. Doctor Angeles could not state on what part of the bolo he found the particles of blood. He said it was where the surface was uneven. It could not therefore have been near the point. He admitted that the quantity of blood found was "muy insignificante", and we are not convinced that it was sufficient to justify a finding that it was human blood, beyond the possibility of error. The prosecution presented expert testimony to prove that the bolo had been washed, to offset the fact that

only a minute quantity of blood at most was found on the bolo and not even a stain on the sheath, notwithstanding the contention of the prosecution that the accused had cut a carotid artery and inflicted seventeen other wounds with this bolo. We doubt if it could be determined with certainty that the bolo had been stained with blood and then washed. It may be observed here that in the case of a small stain on the shirt of Vicente Rosada, Dr. Angeles sent the shirt to the Bureau of Science for examination, principally because the stain was very small. But even if a minute quantity of human blood was found on the bolo, that fact is not necessarily inconsistent with the innocence of the accused. In the first place there is no satisfactory evidence that the bolo in question belonged to the accused. The only evidence to that effect is the evasive testimony of the chauffeur. It might be remarked here that the relations between the defendant and the chauffeur were strained at the time when they were working for Gregorio Tolentino. The chauffeur says that the accused bore him

ill will, but that he felt no resentment towards the accused. In the second place, if the bolo belonged to the accused, the blood found thereon may have come from the cuts on his fingers, which he received in collecting broken bottles for sale.

If the defendant had some dirt and particles of blood under his finger nail, that may easily be accounted for by the fact that the defendant's fingers had been bleeding. Because the defendant tried to remove the dirt under his finger nail when Laperal's attention was called to it, the trial court inferred that that was evidence of guilty knowledge. The inference does not seem to us justified. Defendant's action may have been entirely innocent.

Before the trial Adolfo A. Scheerer was appointed attorney de oficio of the accused, who had no attorney to represent him. When Scheerer went to the secret service headquarters to confer with the accused, the chief clerk informed him that the accused had already confessed. Scheerer speaks Japanese. After he had put a few questions to the accused, Scheerer turned to the chief clerk and said that the accused denied any knowledge of the crime. Scheerer was the first person from the outside to whom the accused was permitted to speak since he had been arrested. When Scheerer told the chief clerk that the accused would not admit that he had anything to do with the crime, the chief clerk asked the accused why he had admitted that he was guilty. The accused replied: "Because they were going to put me under the electric current."

For the foregoing reasons, we find that the guilt of the accused has not been proved beyond a reasonable doubt and he is acquitted, with the costs de oficio. The accused will be immediately released from custody. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, and Vickers, JJ.

CONCURRING

BUTTE, J.

The records of this court reek with confessions obtained by officers of the law from accused persons under arrest and held *incomunicado*. In all the cases that have come to my knowledge, where conviction was sought on the basis of such confessions, the accused at the trial repudiated such confessions and asserted, under oath, that they were obtained by intimidation, or threats, or various forms of physical abuse, or promises of leniency. It is, to be sure, much easier for the Government to obtain a conviction by obtaining a confession from the accused than to go through all the onerous and painstaking steps of gathering other competent evidence that would lead to conviction. In all the cases that have come to my notice, these confessions were taken from men of humble station in life and of a comparatively low degree of intelligence, and most of them apparently too poor to employ counsel and too friendless to have any one advise them of their rights. Apart from the fact that involuntary confessions

will be declared incompetent and are therefore utterly futile, it is high time to put a stop to these practices which are a blot on our Philippine civilization.

There is no accepted test of civilization. It is not wealth, or the degree of comfort, or the length of the span of life, or the increase of knowledge—all such tests would be disputed. May it not be suggested that as true a test as any is the degree to which justice is carried out, the degree to which men are sensitive as to wrong-doing and desirous to right it?

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