

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICITO TAWAT AND LEO TAWAT, ACCUSED. FELICITO TAWAT, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.*G.R. No. 62871. May 25, 1984*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-62871/>**PER CURIAM:**

This is an automatic review of the decision of the Court of First Instance of Catanduanes, finding Felicito Tawat and Leo Tawat guilty of robbery with triple homicide, sentencing Felicito to death and Leo to an indeterminate penalty within the range of reclusion temporal and ordering them to pay solidarily damages of P32,000 to each set of heirs of the three victims, Bernarda Salvador, Lito Siao and Jose Magdaraog. (Crim. Case No. 927.) Leo did not appeal.

In the morning of January 23, 1980, Andrea Magdaraog-Siao and her nephew, Luis Magdaraog, who were residing in the barrio proper of Agban, Baras, Catanduanes, went to her hut located in Sitio Banog, a mountainous portion of Agban. They wanted to find out what happened to her mother, Bernarda Salvador Magdaraog, 79, and her two grandchildren who were staying with the old woman. The horrible and gory sight, which greeted them, beggars description (Exh. F).

Sprawled on the floor of the humble abode, four by two and a half meters, were the dead bodies of Bernarda, Andrea's son Lito Siao, 13, and Luis' brother Jose, 15, bathed in their own blood (Exh. B).

Bernarda had six stab wounds in the chest, two stab wounds in the abdomen (one gaping), a hack wound in the forehead, fractures on the left temple, mandible and ribs and a hack wound in the lower left leg, severing the bone with only a thread of skin remaining, or fourteen wounds in all (Exh. A).

Lito had eight stab, gaping wounds in the chest, which penetrated his lungs, six stab wounds in the neck, cutting the carotid arteries, and a hack wound in the head, fracturing the skull, fifteen wounds in all (Exh. A-1 and A-3, p. 202, Record).

Jose Magdaraog had three stab wounds in the chest which injured his lungs, a hack wound in the occipital region, fracturing the bone, and a stab wound which penetrated his heart, five serious wounds in all (Exh. A-2).

Bernarda was prostrate on the floor with her teeth showing. Her waist was slashed. She was naked from the waist down. The cloth-belt, where she kept her money, was missing. Also missing were a pig, four chickens, a mosquito net, three kettles, one frying pan and plates and spoons, all valued at P705.

The door of the hut was destroyed. The belongings were scattered on the floor. There was a black underwear with garter belt marked "Armin" and "No. 7" (Exh. D) which was later proven to have been worn by accused Felicito Tawat.

Who were the perpetrators of the dastardly misdeeds? They were Felicito Tawat, 23, and his first cousin, Leo Tawat, 16. At about three o'clock in the afternoon of the following day, January 23, 1980, they unexpectedly

arrived at the hut of Floro Ogalesco, 35, an abaca and rattan stripper, in the remote and isolated forest of Sitio Capiplan, Barrio Paraiso, San Miguel, Catanduanes.

Felicito, in the presence of Leo, confessed to Ogalesco that they were taking refuge in his secluded hut because the night before they had killed at Sitio Banog, Barrio Agban, Baras an old woman and two boys, one of whom was Andrea Siao's son.

Felicito recounted that they were drunk. As they passed Siao's hut, a dog barked. Felicito killed the dog. This provoked an old woman to shout at Felicito. He stabbed and killed her. The two boys shouted also. Felicito killed one while Leo killed the other.

They took the dead dog, chickens, pork and other belongings in the hut and proceeded to the house of Julio Tawat, father of Leo, in Barrio Agban. Then, they went to Sitio Calabiga, also in Barrio Agban, and from there they repaired to Capiplan. That was the story narrated in court by Ogalesco, linking Felicito and Leo to the robbery with triple homicide committed on the evening of January 22, 1980.

The accused's confession to Ogalesco is in part corroborated by the sworn statement of Alejo Tawat, father of Felicito. Alejo declared that at about eight o'clock in the morning of January 23, 1980 he and his brother, Julio (father of Leo), went to their abaca plantation in Sitio Calabiga. He found Felicito and Leo cooking chickens in a kettle. He saw a mosquito net in the hut. A pig had been killed and was about to be cooked. (Nos. 11 and 12, Exh. C.)

After Felicito and Leo had finished eating, Alejo and Julio accompanied their sons to the forest of Capiplan. Alejo and Julio left them there and returned to Barrio J. M. Alberto, Baras.

From his neighbors, Alejo learned that the mother-in-law of Jovito Siao, his son Lito and his wife's nephew Jose were killed and that the pig, blanket, mosquito net, kettle and chickens of Jovito Siao were stolen (Nos. 15-17 and 22-23, Exh. C).

Any doubt as to the connection of Felicito with the robbery with triple homicide was removed by the finding at the scene of the crime of black shorts with belt (Exh. D). Luis Magdaraog testified that the shorts were worn by Felicito in the morning of January 22, 1980 (the crime was committed at night) when he gave cigarettes to Felicito and Leo (4 tsn October 8, 1981). Leo in his sworn statement confirmed that the shorts belonged to Felicito (No. 32, Exh. G).

Felicito relied on an alibi. He testified that he was in Mercedes, Camarines Norte from 1963 to October 1980. This claim is manifestly false because he was only seven years old in 1963. He finished the sixth grade at Barrio Agban, Baras in 1972 (Exh. I, p. 211, Rollo). His father saw him on January 22, 1980 at Barrio J.M. Alberto, Baras (No. 5, Exh. C; p. 46, Record; 26 tsn Oct. 6, 1982).

The trial court concluded that although there was no eyewitness testimony to the perpetration of the crime, nevertheless, the totality of the circum-stancial evidence is so overwhelming as to prove Felicito's guilt to a moral certainty.

Felicito was not immediately arrested. He, with Nestor Rojo and Jimmy Tarraya, committed another robbery with homicide and frustrated homicide on November 30, 1980 at Barrio Bugao, Bagamanoc, Catanduanes. Felicito stabbed to death with a dagger Jovita Lim, a storekeeper, while a companion got the loot of P110.

He was convicted and sentenced to death. This Court affirmed the judgment of conviction but commuted the death penalty to reclusion perpetua (People vs. Tawat, G. R. No. 62547, December 21, 1983).

In connection with that case, Felicito executed a confession on January 9, 1981 before the chief of police of

Bagamanoc, Catanduanes. Incidentally, he stated therein that he wanted to get out of Catanduanes because he was wanted by the police for the killing of three persons in Barrio Agban, Baras. He had hidden himself in the hut of Ogalesco in Capiian, San Miguel. (Nos. 13 and 18, Exh. H-6, p. 163, Record.)

Counsel de oficio contends that the trial court erred in relying on that admission of Felicito in his confession which he later repudiated. He argues that the confession during custodial interrogation cannot be admissible in evidence, as held in *Morales vs. Ponce Enrile*, G. R. No. 61016, April 26, 1983, 121 SCRA 538.

That admission was only alluded to in passing by the trial court. It was not the basis for Felicito's conviction in this case. His guilt was predicated on his confession to Ogalesco which was not taken during custodial interrogation. Ogalesco was not a peace officer.

While still a teenager, Felicito, who, as already stated, finished the elementary course in 1972, embarked on a criminal career. In 1975, he was charged in the Baras municipal court with theft of two cocks, alimbuyogon and balawon (Exh. J). He pleaded guilty. He was sentenced to 15 days' imprisonment (Exh. J-2).

He was suspected of being implicated in a case of murder and frustrated murder committed in December, 1979 in Tigaon, Camarines Sur (Exh. K and HH).

As already noted, for another robo con homicidio committed on November 30, 1980 (subsequent to the instant case), he was convicted and the judgment was affirmed in *People vs. Tawat*, G. R. No. 62547, December 21, 1983, *supra*, where the death penalty was commuted to reclusion perpetua.

The crime in this case may be mitigated by drunkenness but it was aggravated by dwelling, abuse of superiority, despoblado and disregard of sex and old age in the case of the 79-year-old woman victim. The second and third homicides may be also regarded as an additional aggravating circumstance (*People vs. Pedroso*, L-32997, July 30, 1982, 115 SCRA 599, 609).

We agree with the learned trial judge that the guilt of the accused was established beyond reasonable doubt. The testimony of Ogalesco on Felicito's oral confession is competent evidence.

"The declaration of an accused expressly acknowledging his guilt of the offense charged, may be given in evidence against him" (Sec. 29, Rule 130, Rules of Court). What Felicito told Ogalesco may in a sense be also regarded as part of the *res gestae*.

The rule is that "any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood all of it. An oral confession need not be repeated verbatim, but in such case it must be given in its substance." (23 C.J.S. 196.)

"Proof of the contents of an oral extrajudicial confession may be made by the testimony of a person who testifies that he was present, heard, understood, and remembers the substance of the conversation or statement made by the accused." (Underhill's Criminal Evidence, 4th Ed., Niblack, sec. 278, p. 551.)

In *U. S. vs. Corrales*, 28 Phil. 362, a malversation case, Jose Corrales, clerk of the Court of First Instance, received on June 6, 1913 P321.88 from a man named Melliza as payment of the fine and costs imposed on Melliza. Corrales did not issue any receipt but merely gave Melliza a copy of the judgment of conviction with a note at the bottom: "Multas y costas pagadas".

A week later, or on June 13, the auditor examined Corrales' accounts. The sum paid by Melliza was not turned over to him. On June 14, an information for misappropriation was filed against Corrales. In the afternoon of that day, Corrales went to the auditor's house and confessed to him that he placed that amount of P321.88 in the office safe only in the afternoon of June 13 after the auditor's examination.

On the witness stand, the accused claimed that the amount had always been in the drawer for personal funds in his office safe. This testimony was contradicted by the auditor who testified on Corrales' confession that he placed the amount only in the afternoon of June 13. Corrales' counsel assailed the admissibility of the auditor's testimony.

It was held that the auditor's testimony was admissible and properly taken into consideration by the trial court.

Judge Graciano P. Gayapa, Jr. acted correctly in imposing the death penalty. In the annals of criminal law, no one deserved the death penalty more than Felicito Tawat. Society must protect itself against a dangerous criminal like him "by taking his life in retribution for his offense and as an example and warning to others". "In these days of rampant criminality, it should have a salutary effect upon the criminally minded to know that the courts do not shirk their disagreeable duty to impose the death penalty in cases where the law so requires" (People vs. Carillo and Raquenio, 85 Phil. 611, 635).

Justice Montemayor says: "We have no quarrel with the trial judge or with anyone else, layman or jurist as to the wisdom or folly of the death penalty. Today, there are quite a number of people who honestly believe that the supreme penalty is either morally wrong or unwise or ineffective.

"However, as long as that penalty remains in the statute books, and as long as our criminal law provides for its imposition in certain cases, it is the duty of judicial officers to respect and apply the law regardless of their private opinions" (People vs. Limaco, 88 Phil. 35, 43).

WHEREFORE, the trial court's judgment is affirmed with the slight modification that Felicito Tawat is also ordered to pay the heirs of Bernarda Magdaraog the value of the articles taken in the sum of P705. No costs.

SO ORDERED.

Makasiar, Aquino, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., votes for the imposition of the penalty of reclusion perpetua. Accordingly, in the absence of the necessary ten votes for the death sentence to validly imposed, Felicito Tawat is sentenced to reclusion perpetua.

Teehankee, Relova, and De La Fuente, JJ., no part.

Concepcion, Jr., J., on leave.

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