

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PACIANO M. PLAZA, SOLOMON C. NAPAL, NARCISO C. NAPAL,
CIRILO C. NAPAL, TEODORO B. JABONITE, SATURNINO P. CALAMBA,
ELEONOR ...**

G.R. No. 69511. November 22, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In Criminal Case No. 609 of the defunct Court of First Instance of Surigao del Sur, PACIANO M. PLAZA, SOLOMON C. NAPAL, NARCISO C. NAPAL, CIRILO C. NAPAL, TEODORO B. JABONITE, SATURNINO P. CALAMBA, ELEONOR QUIÑONEZ and PATRICIO T. MARTINEZ were accused of murder said to have been committed as follows:

"That on or about 10:30 o'clock in the morning of April 14, 1977 in Barangay Gamut, Municipality of Tago, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, PACIANO M. PLAZA, SOLOMON C. NAPAL, NARCISO C. NAPAL, CIRILO C. NAPAL, TEODORO JABONITE, SATURNINO P. CALAMBA, ELEONOR QUIÑONEZ and PATRICIO T. MARTINEZ, conspiring, confederating and mutually helping one another, with intent to kill, with treachery, evident premeditation, with cruelty and taking advantage of superior strength, armed with sharp pointed bolos and iron bar, did then and there, willfully, unlawfully, and feloniously assault, attack, hack and stab, with the use of said bolos and iron bar, one JOSE CABRERA LUNA, SR., thereby hitting and inflicting upon the latter several wounds and injuries, as follows:

X X X X X X X X

which wounds or injuries caused the instantaneous death of the victim JOSE CABRERA LUNA, SR., to the damage and prejudice of his heirs in the following amount:

P 12,000.00 as indemnity;
P 200,000.00 as moral damages;
P 50,000.00 as exemplary damages;
P 30,000.00 as actual damages;
P 20,000.00 as litigation expenses; and
P 20,000.00 as reasonable Attorney's fees.

"CONTRARY TO LAW (Article 248 of the Revised Penal Code) with the qualifying circumstances of treachery and evident premeditation and with aggravating circumstances of cruelty, that the offense was committed in consideration of a reward, abuse or taking advantage of superior strength and that the act was committed with insult or in disregard of the respect due the victim on account of his age." (Expediente, pp. 365-367.)

Each of the eight accused entered a plea of not guilty during the arraignment on March 19, 1979. (Id., p. 395.)

After trial, the court rendered judgment as follows:

"Premises considered, this Court finds all the accused guilty, beyond reasonable doubt, of Murder as defined in Article 248 of the Revised Penal Code, for having conspired and treacherously killed Jose Luna Sr. With the aggravating circumstances of superior arm and strength and of cruelty for augmenting the sufferings of their victim by inflicting seven (7) stabbed wounds and eleven (11) incised wounds on the different vital parts of the body of Jose Luna, Sr. this Court hereby imposes upon each of the eight (8) accused, (Paciano Plaza, Solomon Napal, Cirilo Napal, Teodoro Jabonite, Eleonor Quiñonez, Saturnino Calamba and Patricio Martinez) except Narciso Napal who died on April 9, 1984, to suffer an imprisonment of RECLUSION PERPETUA; and they are hereby ordered to pay, jointly and severally, to the widow of Jose Luna, Sr. the sum of P12,000.00 by way of indemnity and to pay the cost. " (Id., pp. 701- 702.)

All of the accused except Narciso Napal who died before the rendition of the judgment, have appealed.

The evidence for the prosecution as summarized in the appellee's brief is as follows:

"In 1962, the late Jose Luna, Sr. acquired a coconut land in Barangay Gamut, Tago, Surigao del Sur. Jose Luna, Sr. and Lucena. M. Luna filed a complaint for Injunction and Damages against Federico Palma (Civil Case No. 411 [Exhibits "J", "J-1" & "J-3" inclusive]). Alberta Quiñonez, Magdalena Calamba Napal and the heirs of Melquiades Calamba (Exhibits "J-4-A" & "J-4-B") sought to intervene but they however failed to file their complaint or answer in intervention notwithstanding the order allowing them to do so. (tsn, pp. 9-10, 12-13, March 22, 1979; tsn, p. 3, July 25, 1979, AM Session).

"In June, 1976, appellant Paciano Plaza claimed the land and filed Civil Case No. 419 against Jose Luna, Sr. The trial court rendered an adverse decision which Paciano Plaza appealed to the appellate court (Exhibits "K-1", "K-1-A" and "K-1-B"; tsn, p. 15, March 20, 1979, AM Session; tsn, pp. 10-12, March 22, 1979).

"In October, 1976, Paciano Plaza filed a criminal case for qualified theft entitled 'People versus Jose Luna, Bonifacio Jordan, Josefino Moring, Angel Avila, and Carmelito Luna (Exhibits "I", "I-1", to "I-6-A", inclusive) with Magdalena Napal, Cresencia C. Jabonite and Paciano M. Plaza as witnesses with the Municipal Court of Tago, Surigao del Sur (tsn, pp. 5-6, March 22, 1979, AM Session; tsn, pp. 5-6, July 25, 1979, AM Session).

"At around 2:00 P.M. of January 8, 1977, the late Jose Luna, Sr. and Danilo Luna reported to Vicentito Elizalde that they were harassed by Paciano Plaza at Gamut, Tago at 1:00 in the afternoon. Vicentito Elizalde sought the assistance of the Tandag PC Command and the District Commander of 413th Company gave him three PC Sergeants (Sgt. Bayeta, Sgt. Avieja and Sgt. Abadejos) as escorts. When they reached Gamut at approximately 3:00 o'clock in the afternoon, the late Jose Luna, Sr. and Paciano Plaza were pacified and went home on separate vehicles. Crisanto Menion, the tenant and overseer of Paciano Plaza, was seriously roughed up by the Lunas. Junior Luna, who remained seated where the harvested coconuts were piled, was unperturbed by the incident as he continued eating coconut meat therefrom (tsn, pp. 5-6, May 14, 1979; tsn, p. 62, March 21, 1979).

"Because of the incident, Jose Luna, Sr. filed on January 10, 1977, a light threats complaint against Paciano Plaza. In turn, Paciano Plaza wanted Vicentito Elizalde to file a less serious physical injuries case duly supported by a medical certificate against Jose Luna, Sr. and his children for Crisanto Menion but he refused. Vicentito Elizalde refused to entertain the complaint of Mr. Menion for he already finished typing the original grave threats complaint of Jose Luna, Sr. which was reduced to otherlight threats upon order of Judge Pretextato Montenegro. (Exhibits "F", "F-1" to "F-4", inclusive; "V", "W", & "X"). As a consequence of Vicentito Elizalde's refusal to entertain the complaint of Mr. Menion, Paciano Plaza filed an administrative case against him which was later dismissed by the Napolcom on the basis of Paciano Plaza's own affidavit of desistance. It was Sgt. Carlos D. Espenido instead who filed the less serious physical injuries complaint with the Municipal Court of Tago, Surigao del Sur (Exhibits "H", "H-1" to "H-6", "H-5-A" & "H-5-B", inclusive;

Exhibit "EE"; tsn, pp. 63-65, March 21, 1979; tsn, pp. 3-4, March 22, 1979; tsn, pp. 6-11, 30-32, 57-58, May 14, 1979; tsn, pp. 6-7, July 25, 1979, AM Session).

"On or before February 7, 1977, Lt. Col. Leopoldo Sison invited Paciano Plaza and Jose Luna, Sr. to the PC headquarters for a confrontation regarding their PACLAP land dispute in Gamut. Likewise, Eleonor Quiñonez, Alberta Quiñonez, Magdalena Napal and Federico Palma were required by radio message to appear before PC Commander to shed light on the land conflict between Paciano Plaza and Jose Luna, Sr. The message was drafted by Major Odelon C. Asis (Exhibit "10-Plaza"; tsn, pp. 76-77, March 22, 1979). Because of said intervention by the PC Command, Paciano Plaza sent telegrams dated February 7 and 8, 1977 to President Ferdinand E. Marcos and Minister Ponce Enrile denouncing Col. Leopoldo Sison, PC Surigao del Sur, which telegraphic message reads:

'ALLOW ME TO BRING TO YOUR ATTENTION MR. PRESIDENT ACTS OF INTERVENTION BY COL. LEOPOLDO SISON PC SURIGAO DEL SUR OVER CIVIL CASE NUMBER 419 PACIANO PLAZA PLAINTIFF VERSUS JOSE LUNA DEFENDANT NOW PENDING IN CFI TANDAG. EVEN AS HE KNEW THAT SAID CIVIL CASE IS NOW PENDING BETWEEN PARTIES SAID PROVINCIAL COMMANDER ARROGATING UNTO HIMSELF WHAT IS PURELY JUDICIAL FUNCTION BY SUMMONING PARTIES AND BY INDIRECTLY TELLING ME TO WITHDRAW MY POSSESSION OVER COCONUT LANDS STOP WHEN I SAID I WILL NOT UNTIL ORDER BY THE COURT YOU WILL SEE THERE IS TROUBLE BECAUSE IT IS THERE WHEN I WILL DECIDE AN ACT THUS COERCED ME AND ANTICIPATING TROUBLE STOP PROVINCIAL COMMANDER'S ACTUATION MR PRESIDENT IN CONTRAVENTION WITH YOUR PRONOUNCEMENT THAT CIVILIAN AUTHORITY IS STILL SUPREME STOP I HAVE TO CORRECT THE WRONG DONE TO ME'

— underscoring provided, Exhibits "15" & "15-A" Plaza —

"Five (5) days before April 14, 1977 at 9:00 in the morning, Generoso Repiso, a truck helper of Fel Matabilas, son-in-law of Paciano Plaza for less than two months, reported for work but the house of Paciano Plaza was closed. Being thirsty, he went inside the unlocked door of the kitchen and drank water from a white frigidaire. He saw Paciano Plaza going downstairs telling Solomon Napal to kill 'Pi-ang' before the end of that week. Paciano Plaza, accord-ing to Generoso Repiso, assured Solomon Napal and Cirilo Napal to take care of them so that they will not be imprisoned.

"At 11:00 in the morning of April 14, 1977, Neil Plaza, also engaged in hauling logs with a firm different from Felomino Matabilas and with his own separate set of employees, requested Generoso Repiso (Fel's employee) to accompany him to go to Tago to advise the culprits not to sign any affidavit and inform him (Generoso) that Jose Pi-ang was already dead. Generoso saw Eleonor Quiñonez on April 14, 1977 when the latter peeped but Eleonor never spoke to him nor acknowledged his presence. Although Magdalena Napal was never introduced to Generoso, she readily told the latter while he was eating on April 15, 1977 that 'Good, if Mano Saning will help us especially that all my children are involved.' Gene-roso Repiso saw the women folks of the culprits for a fleeting moment because they peeped twice through the partition. On the 16th of April, 1977, he saw a child bringing food to the prisoners who informed him that he received instruction from Mrs. 'Dadang' Plaza to tell anyone inquiring about the food that the same came from the family of the prisoners (tsn, pp. 7-19, 25-30, July 23, 1979, AM Session).

"As to the manner of the commission of the crime, the prosecution presented Sofio and Nemejias Adante, who testified that at around 10:00 in the morning of April 14, 1977, while they (Sofio and Nemejias) were climbing coconut trees for the late Jose Luna, Sr., who was gathering and piling the coconuts below, they saw Solomon Napal hit Jose Luna, Sr. at the head with an iron bar. The other five accused later identified inside the courtroom as Cirilo Napal, Narciso Napal, Saturnino Calamba, Patricio Martinez and Teodoro Jabonite armed with bolos followed Jose Luna, Sr. who was moving backwards. Jose Luna, Sr. tripped and fell down. The five stabbed him several times while Solomon Napal rode on him who also stabbed him with the iron bar. Nobody was around other than the Adantes within the vicinity of the crime scene. The Luna children only proceeded to

the crime scene after they (Adantes) hid behind the house of Junio Yu. The Adantes came out of hiding after half an hour when PC soldiers arrived (tsn, pp. 46-51, 56-57, 66-67, March 16, 1979; tsn, pp. 10, 15-19, 31-32, 35-37, 45-47, 5, 54, March 20, 1979).

"At noontime of April 14, 1977, the Tandag PC Command received a report of the killing at Gamut, Surigao del Sur. Major Odelon Asis, then OIC of the Surigao del Sur Constabulary Command asked Sgt. Carlos D. Espenido to join in the investigation then ongoing at Gamut, Tago. Arriving more or less at 11:30 at the crime scene, Sgt. Carlos D. Espenido saw several people and some PC soldiers (Sgt. Bayeta, Sgt. Consad and four others) and INP officers headed by the Station Commander of Tago. The other PC soldiers were members of the 413th PC Command headed by Captain Meycauyan Cabugatan. The PC officers gathered from witnesses that the persons responsible for the killing were Solomon Napal, Cirilo Napal, Teodoro Jabonite, Saturnino Calamba, Narciso Napal, Eleonor Quiñonez, and Patricio Martinez. Major Asis ordered a manhunt for the suspects. Then the Station Commander of Tago Vicentito Elizalde came and reported to Major Asis that Solomon Napal voluntarily surrendered to him together with the big sharp pointed bolo he used in stabbing Jose Luna, Sr. Solomon Napal showed Vicentito Elizalde an injury at his forearm he sustained from Jose Luna, Sr. After he (Elizalde) entrusted Solomon Napal to Pfc Esquiada, he ordered for a doctor to examine the cadaver of Jose Luna, Sr (tsn, pp. 18-27, March 22, 1979; tsn, pp. 11-16, 32, May 14, 1979, PM Session).

"Assisted by Sgt. Casaña, Sgt. Pablito Bayeta arrested Cirilo Napal, Saturnino Calamba and Teodoro Jabonite at the house of Eleonor Quiñonez. They (Sgt. Casaña and Sgt. Bayeta) turned over the three suspects to Sgt. Espenido and Major Asis. It was Sgt. Espenido who did all the investigation of the suspects in the case (tsn, pp. 6-12, May 15, 1979).

"Solomon Napal, Cirilo Napal and Teodoro Jabonite were brought to the office of Sgt. Carlos D. Espenido past 11:00 or 11:45 AM of April 14, 1977 and he interrogated them by taking notes of their answers to his question. He finished his interrogation of the three suspects at around 4:00 o'clock. On the following day, April 15, 1977, he again investigated the three suspects and typed their affidavits based on the handwritten notes he took down earlier. Major Aquino was present. He finalized his investigation at past 4:00 P. M. of April 15, 1977 with the execution of their extrajudicial statements where they admitted their participation in the commission of the crime and pointed to Paciano Plaza as the one who ordered the killing of Jose Luna, Sr. (Exhibits "G-13", "G-13-A", "G-13-B", "G-17", "G-17-A", "G-17-B", "G-21", "G-21-B"). He brought the affidavits to Fiscal Murillo who ratified the same more or less 30 minutes later (tsn, pp. 49-50, March 22, 1979; tsn, pp. 20-28, 30-35, 37-38, May 14, 1979). Sgt. Espenido dated the complaint April 14, 1977 to coincide with the date of the killing although he completed the affidavits on April 15-16, 1977 (Exhibit "13" — Plaza/Exhibit "14" - 7 accused to Exhibit "13-B" — Plaza/Exhibit "14-B" - 7 accused; tsn, pp. 58-61, May 14, 1979). Although Major Odelon Asis turned over Eleonor Quiñonez to him, Sgt. Espenido did not take down his affidavit (tsn, pp. 43-44, May 14, 1979).

"Judge Pretextato Montenegro, testifying for the prosecution said that a complaint for murder dated April 14, 1977 signed by Sgt. Carlos D. Espenido was filed with the Municipal Court of Tago. It was supported by the affidavits of Solomon Napal, Cirilo Napal, Teodoro Jabonite, Patricio T. Martinez, Jose Luna, Jr. and Nemejias Adante (Exhibits "G-1" to "G-8" inclusive; "G-11" to "G-14" inclusive; "G-17", "G-18", "G-20" to "G-22", "G-25", "G-26", "G-28"). During the preliminary examination, Paciano Plaza was inside the room of Judge Montenegro. When he heard that he was being implicated as the mastermind of the killing of Jose Luna, Sr., he vehemently objected saying: 'Judge, this is the product of force and intimidation extended by the PC.' The judge admonished him not to interfere with the proceedings as his presence was only at his discretion. Upon his order, Cirilo Napal raised his shirt and Judge Montenegro saw bluish discoloration centrally but diagonally located in his abdomen. The scar of Solomon Napal on the forearm was also shown to him. Likewise, Teodoro Jabonite complained of deafness because he was manhandled by the PC on his head. He saw the injuries of the other accused after they signed and swore to before him the searching questions. Paciano Plaza filed a motion for reconsideration of the order finding a prima facie case against him. He allowed Paciano Plaza to post bail

because the evidence of guilt against him was not very strong (Exhibit "5" — Plaza).

"During the first stage of preliminary investigation, all the accused were not represented by counsel.

"During the second stage of preliminary investigation, the other accused (Solomon Napal, Cirilo Napal, Teodoro Jabonite) denied the authenticity of their affidavits on the ground of fraud, duress and intimidation. Thus, Judge Montenegro issued an order dated July 18, 1977 recommending the exclusion of Paciano Plaza from the criminal complaint (Exhibit "4" — Plaza) and recommending also that the other accused be allowed to plead to lesser offense as only Solomon Napal admitted the killing. It was only at the second stage of the preliminary investigation, that they were represented by counsel de parte. Atty. Jose Zafra requested in a motion dated April 22, 1977 for the physical examination of Saturnino Calamba, Teodoro Jabonite, Eleonor Quiñonez, Cirilo Napal and Solomon Napal to support the claim of the 4 accused that they were maltreated and coerced by the PC soldiers on April 14 and 15, 1977 into signing their extrajudicial confessions. The motion was filed eight (8) days after their maltreatment and was granted thirteen (13) days thereafter. (Exhibits "G-9", "G-10", "G-15", "G-19", "G-23", "G-27", "G-28", pp. 15, 16, 25, 30, 36, 40, 41, Records; pp. 6-13, 17-20, 26-29, 32-35, 38, 39, Records; tsn, pp. 109-112, 114-118, March 21, 1979 in the morning; tsn, pp. 4-5, 7, 18-27, 31, March 21, 1979 at 2:30 in the afternoon; Exhibit "2" — Plaza/Exhibit "F-3"/Exhibit "3" for 7 accused; Exhibit "2-A" — Plaza/Exhibit "F-4"/ Exhibit "3-A" for the 7 accused; Exhibit "3"-Plaza/Exhibit "4-A" — for the 7 accused; Exhibit "3-B", Plaza/Exhibit "4-B" for 7 accused; Exhibit "3-C" — Plaza/Exhibit "4-C" — for the 7 accused; Exhibit "3-D" — Plaza/Exhibit "4-D" for the 7 accused; Exhibit "3-E" — Plaza/Exhibit "3-E" for the 7 accused; Exhibit "4" — Plaza/Exhibit "4" for the 7 accused; tsn, pp. 27-28, March 21, 1979 at 2:30 in the afternoon; Exhibit "6" — Plaza/Exhibit "6" for 7 accused; Exhibit "6-B" — Plaza/Exhibit "6-B" for 7 accused; Exhibit "7" — Plaza/Exhibit "7" for the 7 accused; Exhibit "7-A" — Plaza/Exhibit "7-A" for 7 accused; Exhibit "7-B" — Plaza/Exhibit "7-B" for the 7 accused; Exhibit "8" — Plaza/Exhibit "8" for the 7 accused; Exhibit "8-A" — Plaza/Exhibit "8-A" for the 7 accused to Exhibit "11-B" — Plaza/Exhibit "11-B" for the 7 accused; tsn, pp. 43-47, March 21, 1979 at 2:30 P. M. Session). (Pp. 10-23.)

Appellant Paciano M. Plaza filed a separate brief prepared by Atty. Hilario G. DaviIde, Jr.

Plaza was not at the scene of the incident. In fact, according to the trial court, "not even the shadow of Mr. Paciano Plaza was seen by the eyewitnesses during that morning of April 14, 1977 nor was his presence borne out by the testimonies of any of the other witnesses." But Plaza was convicted because according to the trial court "several circumstances were proved to show that Paciano Plaza was the mastermind or the principal by inducement." The trial court said:

"With the troubles and grudges between Paciano Plaza and Jose Luna and the filing of cases against one and the other, the foregoing actuations and utterances, clearly manifest intent of Paciano Plaza to kill and the motive to do away with Jose Luna and which impelled him to order the killing through Solomon Napal and Cirilo Napal, together with their uncle Eleonor Quiñonez, brother Narciso Napal, uncle Teodoro Jabonite, cousin Saturnino Calamba and friend Patricio Martinez, nephew of Eleonor Quiñonez. They conspired and helped, a result of his orders, one another stabbed Jose Luna to death.

"That Paciano Plaza ordered or induced the killing of Jose Luna is further indicated in the following affidavits of confession of the two brothers Solomon Napal and that of Cirilo Napal. During the custodial interrogation Solomon Napal confessed to have killed Jose Luna because he was ordered by Paciano Plaza. In the preliminary investigation before the Municipal Court at Tago, in addition to Solomon Napal's answers to the searching questions propounded by the Judge, Solomon Napal still admitted that he killed Jose Luna on orders of Paciano Plaza by pointing to him (Paciano Plaza) in the presence of Judge Montenegro. During the trial proper or hearing on the merits of this case, the same Solomon Napal maintained that he killed Jose Luna. He, however, modified or recanted by testifying that he was not ordered by Paciano Plaza." (Expediente, p. 696.)

Plaza contends that the trial court erred in admitting the statements of his co-accused against him and in giving

credence to the testimony of Generoso Repiso who said that in the morning of April 9, 1977 he heard Plaza ask Solomon Napal, "Why is it that until now you did not kill Pi-ang when I have commanded you a long time ago?" and that Solomon answered, "There was no chance yet Mano" to which Plaza replied, "Beginning today you have to kill Pi-ang before the end of the week."

The Solicitor General agrees with appellant Plaza. He says:

"The prosecution sought to establish the participation of appellant Paciano Plaza in the killing of Jose Luna, Sr. through the extra-judicial confessions/statements of Solomon Napal and his brother Cirilo Napal given on April 15, 1977 to Sgt. Carlos D. Espenido of the Surigao del Sur Constabulary Command.

"In the statement of Solomon Napal it is made to appear that Paciano Plaza ordered the killing of Jose Luna, Sr., thus:

'xxx xxx xxx

Q Why did you kill Jose Luna, Sr.?

A Because of the order of Saning Plaza.

Q Where were you ordered by Saning Plaza to kill Jose Luna, Sr.?

A Here in Tandag, Surigao del Sur.

Q In what place in Tandag?

A In the residence of Saning Plaza.

Q

Why were you ordered to kill Jose Luna, Sr. by Saning Plaza?

A Because they have land conflict situated at Gamut, Tago, Surigao del Sur.

Q In this land conflict of Saning Plaza and Jose Luna, Sr. do they have clashes already?

A Nearly, some of them were almost killed because of the incident in January 1977.

Q Why did you also obey the orders of Saning Plaza to kill Jose Luna, Sr.?

A Because he seriously oppressed my mother and that we will be given a reward should we kill Jose Luna, Sr.

Q What kind of oppression do you intent to impart?

A We were continuously attacked by him.

Q

Did you have a companion when you come to agree to the killing of Jose Luna, Sr.?

A My brother, Cirilo Napal.

Q Who will give you the reward the moment Jose Luna, Sr. is killed?

A Saning Plaza.

Q Why were you ordered by Saning Plaza right in his residence?

A Because we were called from Gamut, Tago.

'xxx xxx xxx

"and in the statement of Cirilo Napal, thus:

'xxx xxx xxx

Q Why did you kill Jose Sr.?

A

Because of the order of Saning Plaza.

Q Where did Saning Plaza ordered you to kill Jose Luna, Sr.?

A In his house at Tandag, Surigao del Sur.

Q Who is the other person whom Saning Plaza ordered to kill Jose Luna, Sr.?

A The two of us, my brother Solomon Napal.

Q How far were you when Saning Plaza ordered that Jose Luna, Sr. be killed?

A We were near, sir.

Q Why is it that you were in the house of Saning Plaza during that time?

A Because we were called by him.

Q

When did Saning Plaza ordered you?

A That was during the month of February 1977 at 10:00 more or less.

Q Do you know the reason why Saning Plaza wanted Jose Luna, Sr. killed?

A What I knew is that they have a land con-flict.

'xxx xxx xxx

"We submit that as against appellant Paciano Plaza the statements of the Napal brothers including the above-quoted portions are inadmissible under the doctrine 'res inter alios acta alteri nocere non debet' which means that a transaction between two persons ought not to operate to the prejudice of a third person. And, the philosophy behind the maxim is that:

'on a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him. (Stark on Evidence, (3d ed.) pp. 58-59; Best on Evidence, (12[th] ed.) p. 430.'

"It may be argued, however, that the information charges conspiracy against all the accused including Paciano Plaza and hence the extra-judicial confessions of the Napal brothers may constitute an exception as having been made by co-conspirators. But, we submit, in order that the admission of a conspirator may be received in evidence against his co-conspirator, it is necessary that (a) the conspiracy first be proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy.

"Independent evidence of conspiracy must first be given before the admission of a conspirator may be received against his co-conspirator. In this case, there is absolutely no evidence adduced by the prosecution to establish conspiracy among Plaza and the Napal brothers in the killing of Jose Luna, Sr. other than the latter's statements. It is submitted, therefore, that while the confessions/admissions of the Napal brothers may be received against them they are not, however, admissible against their co-defendant Plaza as to whom said statements are hearsay evidence for he (Plaza) had no opportunity to cross-examine them (the Napal brothers).

"In short, the extra-judicial confessions/statements of the Napal brothers are inadmissible against Plaza first, because as earlier stated they lack the indispensable requisite of corroboration by other evidence and, second, because during the trial the Napal brothers not only denied that their co-accused Plaza participated in the killing of Luna but went on to repudiate their statements as having been extracted from them through the use of force, violation and intimidation." (Brief, pp. 43-47.)

Furthermore, according to the Solicitor General, the extra-judicial confessions of Solomon Napal, Cirilo Napal, Patricio Martinez and Teodoro Jabonite appear to have been extracted from them through force and intimidation and are thus inadmissible as evidence. (Id., p. 47.)

As to Repiso, the Solicitor General dismisses his testimony thus: "We submit that the testimony of Repiso does not deserve credence" and he mentions a number of contradictions and improbabilities in support thereof. (Id., pp.

61-68.)

In the light of the foregoing, and pursuant to the Solicitor General's recommendation, We issued a resolution on October 23, 1985, reversing the judgment of the trial court in respect of Paciano Plaza, acquitted him of the crime charge and ordered his immediate release.

Five of Plaza's surviving co-accused executed extra-judicial confessions, namely: Solomon Napal, Cirilo Napal, Teodoro Jabonite, Eleonor Quiñonez and Patricio Martinez. Saturnino Calamba, the sixth surviving co-accused, did not execute an extra-judicial confession.

Plaza's brief and that of the other appellants impugn the extra-judicial confessions of Solomon Napal, Cirilo Napal, Teodoro Jabonite and Patricio Martinez. The briefs are silent in respect of the extra-judicial confession of Eleonor Quiñonez. With regard to the former, it is claimed that the extra-judicial confessions were obtained through force, violence and intimidation. And as stated above, the Solicitor General agrees with this claim. In fact, the Solicitor General says that even that of Eleonor Quiñonez was obtained by the same means. This official states:

"There is in this case a definitely continuing and prolonged investigation conducted under an unwholesome and terrifying atmosphere. A prolonged interrogation of an accused who is ignorant of his rights like the herein accused who are all farmers and illiterates, and who has been cut off from the moral support of friends and relatives is not infrequently an effective technique of terror (*Blackburn v. Alabama* (1960) 361 US 199, 4 L Ed 2d 242, 248, 80 S Ct 274). When interrogation of suspects is so long combined, with such a purpose, and under such circumstances as to make the entire proceedings an effective instrument for extorting unwilling admission of guilt, due process precludes the use of the confession thus obtained (*Culombe v. Connecticut* (1961) 367 US 568, 6 L Ed 2d 1037, 1076, 81 S Ct 1860). As stated by the US Supreme Court in *Watts v. Indiana* (1949) 338 US 49, 93 Ed 1801, 1806, 69 S Ct 1347, 1350:

'A confession . . . must be the expression of a free choice. A statement to be voluntary of course need not be volunteered. But if it is the product of sustained pressure by the police it does not issue from a free choice . . . To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process.'

"In *Ashcraft v. Tennessee* (1944) 322 US 143, 154, 88 L Ed 1192, 1199, 66 S Ct 921, the US Supreme Court set aside a conviction where the circumstance in which the confession was given was 'so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear.'

"In reversing another conviction, the Court observed:

'In resolving the issue all the circumstances attendant upon the confession must be taken into account. Physical maltreatment is but one such circumstance, albeit a circumstance which by itself weights heavily. But other circumstances may combine to produce an effect as impellingly conceive as the deliberate use of the third degree.' (*Reck v. Pate* (1961) 367 US 433, 6 L Ed 2d 948, 81 S Ct 1541).

"The accused were detained at the PC barracks. They were not assisted by counsel. At the second stage of preliminary investigation they repudiated before Judge Pretextato A. Montenegro their respective extra-judicial statements and the judge was prompted to find thus:

'After a careful and judicious perusal of the facts and evidences adduced in the preliminary investigation, it is the considered findings of this Court that there is not clear and convincing evidence of the alleged participation of Paciano Plaza to the crime charged. The pivotal ground upon which this finding is based is that the implication of Plaza was not anchored on the testimony of an independent witness. A witness who could testify

that he was present at the time the induction was conceived and/or agreed or made known to the co-conspirator for implementation. Moreover, in the preliminary investigation these witnesses for the defense disowned and repudiated their testimonies taken by the PC investigators due to actual force, intimidation and threats, prevailing during the time of their investigation and detention.

'The prosecution's at the very start was not able to present an independent witness who could testify that the actual perpetrators and the alleged inductors had, at one time, come to agree to kill the victim. Records has nowhere shown than to have agreed to the killing, thus conspiracy is wanting in the case at bar. For, to consider conspiracy as attendant in a given case, the same must be proved convincingly and clearly as the crime itself.'

All these indicate clearly that the atmosphere created during their continued confinement at the PC barracks was of coercion or fear. It was only at the second stage of preliminary investigation that such an atmosphere was dispelled and accused completely regained their free individual will with the representation of a counsel of their own choice, Atty. Jose Zafra. If they did not reject their confessions before Fiscal Murillo it was because they were still smarting from the fear of a repetition of maltreatment. And, during the trial before the lower court, they again repudiated their statements.

"One can hardly erase the impression of the words having been put in the accused's mouth. The late Justice Douglas stressed that 'Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of [constitutional rights].' (Haley vs. State of Ohio, 332 US 596). (Brief, pp. 55-59.)

It should be stated, however, that Solomon Napal, despite disclaimer of his extra-judicial confession, admitted during the trial that he killed Jose Luna but justified the same as an act of self-defense.

We have a situation where the evidence against what the Solicitor General calls the "Calambas" is testimonial only because the documentary evidence consisting of the extra-judicial confessions has to be excluded. [The appellants have been labelled as the "Calambas" because the middle name of the Napals is Calamba; Jabonite is a brother-in-law of Calamba; Quiñonez is married to a Calamba who is the mother of the Napals; and Martinez is a nephew of Quiñonez.]

The "Calarnbas" consist of the following: (1) Solomon Napal, (2) Cirilo Napal, (3) Teodoro Jabonite, (4) Saturnino Calamba, (5) Eleonor Quiñonez and (6) Patricio Martinez.

The eye-witnesses to the killing of Jose Luna were Sofio Adante, a 57-year old farmer and Nemejias Adante also a farmer, 27 years old and son of Sofio.

These two witnesses had been hired by Jose Luna to harvest his coconuts on April 14, 1977. While they were in the process of dropping the coconuts to the ground where Luna gathered and place them in a mound, they saw Luna who was attacked and killed by six (6) persons, namely: Solomon Napal, Narciso Napal, Cirilo Napal, Saturnino Calamba, Eleonor Quiñonez and Teodoro Jabonite.

To be noted is the fact that Narciso Napal died before the promulgation of the trial court's decision. To be noted also is the fact that the Adantes did not mention Patricio Martinez as one of the assailants of Luna. And since the only evidence against Patricio Martinez is his extra-judicial confession which is inadmissible, he has to be acquitted. Moreover this appellant had testified that at the time of the incident he was elsewhere — in a ricefield in Kinabhangon.

Solomon Napal admitted having killed Jose Luna but he claimed self-defense.

According to Solomon on the day and time of the incident he was berated by Luna for pasturing his carabao in the

latter's land and that Luna "immediately thrust his bolo to me" so that he had to hit back with an iron bar. Solomon's version was corroborated by Leandra Cale who claimed she saw the incident but did not report it to the authorities.

Solomon has not discharged the burden of proving his claim by clear and convincing evidence. His testimony is self-serving and that of Leandra Cale is unworthy of credence because she made no report of the incident to the authorities at the proper time. Upon the other hand, the Adantes positively stated that it was Solomon who attacked the deceased.

The rest of the "Calambas" interposed the defense of alibi.

Cirilo Napal and Teodoro Jabonite claimed that they were making copra at Aswang about one kilometer from Gamut. Saturnino Calamba said that he was in bed because he was sick with malaria and fever. Eleonor Quiñonez asserted that he was in Canugas, about four kilometers from Gamut, where he made copra with Celso Bacala. But the alibi of these persons cannot prevail over the positive identification of the Adantes. It is to be noted that the Adantes were truthful witnesses for despite the fact that Patricio Martinez executed an extra-judicial confession (coerced from him as stated above) they did not name him as a member of the six-man group who attacked Jose Luna.

The information charged murder qualified by treachery and evident premeditation. But according to the Solicitor General:

"The qualifying circumstance of treachery cannot be appreciated in this case because of the presence of provocation on the part of the deceased. As held in *People vs. Manlapaz*, 55 SCRA 598, the element of sudden unprovoked attack is therefore lacking.

"Moreover, in order to appreciate 'alevosia', it must clearly appear that the method of assault adopted by the aggressors was deliberately chosen with a special view to the accomplishment of the act without risk to themselves. Thus, *alevosia* cannot be appreciated against the Calambas, where the crime was the result of a casual encounter and the Calambas had no time to reflect on the method of executing the crime (*People vs. Bado*, 128 SCRA 38).

"Neither is there evident premeditation because there is no proof that the Calambas had planned the killing of Jose Luna, Sr. that April 11, 1977." (Brief, pp. 78-79.)

But We cannot agree with the Solicitor General that there was no abuse of superiority. He argues that superiority "can be considered only where the accused deliberately used excessive force out of proportion to the means of defense available to the person attacked (*People vs. Cabiling*, 74 SCRA 285; *People vs. Bello*, 10 SCRA 298)." It is manifest from the facts in this case that there was abuse of superiority because the "Calambas" simultaneously attacked the deceased in such a manner as to weaken his defense.

In the light of the foregoing, the crime committed is homicide with the aggravating circumstance of abuse of superior strength.

WHEREFORE, judgment is hereby rendered:

(1) Acquitting PACIANO PLAZA and PATRICIO MARTINEZ for insufficiency of the evidence against them; and

(2) Modifying the judgment of the court a quo in that SOLOMON NAPAL, CIRILO NAPAL, TEODORO JABONITE, SATURNINO CALAMBA and ELEONOR QUIÑONEZ are found guilty of homicide only and each of them is sentenced to suffer an indeterminate penalty of 6 years and 1 day of prison mayor as minimum to 18 years of reclusion temporal as maximum; to pay solidarity the heirs of the deceased indemnity in the

amount of P30, 000 00; and to pay a proportionate share of the costs.

SO ORDERED.

Concepcion, Jr., (Chairman), Escolin, Cuevas, and Alampay, JJ., concur.

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