

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BRIGIDO ENCIPIDO, CHARLITO MANATAD, JESUS RUBIO, RUDY
LUMARDA, JOSE CABAGERAN, EDDIE DE LA PEÑA, CRIS RAMIREZ,
AND JESUS O...**

G.R. No. 70091. December 29, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On March 30, 1982, Jose Lacumbes (hereinafter referred to as the DECEASED), a resident of Barangay Mabini in the Municipality of Tubajon, Surigao del Norte, was found killed by his wife and children near the hut in their farm in Sitio Capacohan in the same barangay. Post Mortem findings performed the following morning were:

- "1) Incised wound of the neck.
- 2) Eight [8] multiple stab wounds at the back; one [1] inch in length and two and a half [2½] inches in depth.
- 3) Removed right external ear.
- 4) Contusions left lumbar region.
- 5) Both hands tied at the back with rattan.

CAUSE OF DEATH: Hemorrhage, severe, secondary to incised wounds of the neck and multiple stab wounds at the back."

On February 2, 1983, in Criminal Case No. 14 of the Regional Trial Court, 10th Judicial Region, Branch 32 (the CASE BELOW), the following eight (8) persons: (1) Brigido ENCIPIDO, (2) Charlito MANATAD, (3) Eddie DE LA PENA (hereinafter referred to as APPELLANTS), (4) Jesus, Rubio, (5) Rudy Lumarda, (6) Jose Cabageran, (7) Cris Ramirez, and (8) Jesus or John Doe were charged with Murder for the death of the DECEASED. Only APPELLANTS were tried, the other five accused having remained at large.

A review of the prosecution evidence presented in the CASE BELOW can begin with the testimony of Felicisimo Alciso. This witness narrated that he went to the hut of the DECEASED in the afternoon of March 30, 1982, in order to get some chickens which the latter had promised him but that, before reaching the hut, he heard a gunshot. He stopped and saw that the DECEASED was being tied and subjected to fist blows. There were three persons who mauled the DECEASED, while others stayed at a distance. Then, somebody struck the DECEASED with the butt of a gun causing the latter to fall to the ground. He described that the hands of the DECEASED were tied at the back, ENCIPIDO was behind the DECEASED, while MANATAD and DE LA PEÑA were on the sides.[1] On orders of ENCIPIDO, also known as "Commander Tanga", DE LA PEÑA, also called "Agosto de la Peña", struck the DECEASED's neck with a bolo which almost severed the latter's head. Frightened, witness Alciso fled from the scene.

After learning from friends and neighbors that those who had killed the DECEASED were detained, Alciso went

to the jail to find out for himself if they were among the group responsible for the death of the DECEASED, and because "I was afraid that I will be the next one to be killed by them." He recognized APPELLANTS as among the suspects. When he asked DE LA PEÑA why he was in jail, the latter answered that it was because they were the ones who had beheaded the DECEASED. Alciso was unable to talk to ENCIPIDO and MANATAD.

Before Alciso, there was another prosecution witness presented, Armando Bagacay, whose testimony turned out to be hearsay but which nevertheless is reproduced here to complete the evidence for the prosecution. He testified that while he was massaging one of the accused, Rudy Lamarda, on March 10, 1982, the latter told him that his ailment was caused by witchcraft of the victim, Jose Lacumbes, and that he would seek the aid of the rebels to cut Lacumbes' head. Four days later, Bagacay met one of those originally indicted, Jesus Rubio, who confided to him that they would cut Lacumbes' neck for making Lumarda sick and for being responsible for all the witchcraft in the community. Subsequently, witness Bagacay heard of the death of Lacumbes at the hands of the rebels.

Two other prosecution witnesses supported the testimony of Alciso. Jorge Ortega, INP Station Commander of Loreto, Agusan del Norte, testified that when he had just arrived from Surigao City at about 2:30 o'clock P.M. of May 1, 1982, and while still at the wharf, he was met by ENCIPIDO, who introduced himself as "Commander Tanga", invited him (Ortega) for a drink so he could talk to the latter personally. Having accepted the invitation, the two proceeded to a store where ENCIPIDO's fourteen companions were already waiting. They introduced themselves as rebels and offered to help the municipal government. In the course of the conversation, ENCIPIDO and DE LA PENA disclosed to the Station Commander that they were the ones who had beheaded the DECEASED, killed a certain Benny and one Balaba, and who were responsible for all the killings in Dinagat Island.

The other prosecution witness, Mariano Espina, the Municipal Mayor of Loreto, testified that in the evening of that same day of May 1, 1982, Station Commander Jorge Ortega informed him that "Commander Tanga" and his men wanted to pay him a courtesy call. They arrived at about 8:00 in the evening at his house. They introduced themselves and placed their sidearms on a table as a sign of goodwill. At the time, there were about 2 policemen and 3 CHDF men outside the house but no arrests were made, nor were firearms confiscated, as a sign of reciprocal goodwill. "Commander Tanga" then confided to the Mayor his mission to cooperate with his administration as they had heard that he was a good Mayor. He also informed the Mayor that he had been a member of the NPA since he was 13 years old; that he had already killed many people, including the DECEASED, so that the latter could no longer harm other people with his witchcraft. For his part, DE LA PEÑA brought out a sharp-pointed knife and tried to test its sharpness, admitted having cut the neck of the DECEASED, and even showed the latter's ear, dried by that time.

The foregoing testimonies were buttressed from a most unexpected source. DE LA PEÑA, to the surprise of APPELLANTS' common counsel, testified in open Court that, although he belonged to the group of "Commander Tanga", the latter, MANATAD and a third individual merely forced him to join, threatening to kill him if he refused; that he was with the group from March 28, 1982; that he was present on March 30, 1982 when "Commander Tanga" and MANATAD killed the DECEASED but that he was merely standing by; that the duo were the first ones apprehended, and after them he was also arrested by the CHDF.

In their defense, ENCIPIDO and MANATAD denied having killed the victim and interposed the defense of alibi. ENCIPIDO claimed that on March 30, 1982, he was sawing lumber from morning till 3:00 P.M. at Barangay Boa for a certain Norberto Bukid. After working he rested in Bukid's house and did not leave the place. He further testified that he did not know the DECEASED nor the Station Commander, nor the Municipal Mayor except when he surrendered his .45 caliber pistol to the latter on May 2, 1982 after which he was arrested. He decided to

surrender his pistol because he was afraid he might be apprehended for having an unlicensed firearm. MANATAD and DE LA PEÑA were also placed in jail with him. Thereafter, with seven others, he was taken to PC headquarters at Surigao City where they were severely maltreated and he was forced to sign an affidavit admitting that he is "Commander Tanga" responsible for the killing of the DECEASED and other persons. He denied having admitted to the Station Commander and to the Municipal Mayor his identity as "Commander Tanga" or that he had killed the DECEASED and other persons besides.

MANATAD, for his part, also denied all imputations against him, stating that he only came to know ENCIPIDO in jail; that he did not know the DECEASED nor who killed him; that during the whole day of March 30, 1982, he was plowing the field tenanted by his mother-in-law at Barangay Malinao; that he started plowing early in the morning and stop-ped at about 5:00 o'clock P.M. after which he stayed home. Barangay Captain Sergio Peniones partially corroborated MANATAD's testimony by stating that he saw MANATAD plowing the field in the morning of March 30, 1982. MANATAD's wife, Bienvenida Edusma, also testified that her husband stayed home after 5:00 o'clock P.M. of that day as he was tired after the day's work; that, in fact, she quarreled with her husband because he refused to accompany her in bringing their sick child to Tubajon so that she went alone carrying the child even though she was then seven months pregnant.

In a Decision promulgated by the Trial Court on December 5, 1984, APPELLANTS were found guilty of Murder and sentenced to reclusion perpetua, to pay damages to the heirs of the DECEASED in the amount of P12,000.00 and to pay 3/8 of the costs.

On behalf of APPELLANTS, counsel de officio filed a Motion for Reconsideration before the Trial Court on December 26, 1984, which the latter denied for having been filed more than fifteen (15) days after the promulgation date of December 5, 1984. A Notice of Appeal filed before the then Intermediate Appellate Court was allowed as an appeal, not from the judgment but from the Order denying the Motion for Reconsideration. The penalty imposed by the Trial Court being reclusion perpetua, the appeal was indorsed to this instance, which we accepted in the interest of substantial justice.

APPELLANTS raise the following Assignments of Error:

"A

"The lower Court erred in giving credence to the hearsay testimonies of prosecution witnesses Mariano Espina and George Ortega basing therefrom its findings of conviction;

"B

"The lower Court erred in giving credence to the incredible and hearsay testimony of Felicisimo Alciso, the alleged eyewitness;

"C

"The lower Court erred in appreciating the so-called judicial admission of accused Eddie de la Peña as against his co-accused Brigido Encipido and Charlito Manatad;

"D

"The lower Court erred in convicting appellants' Brigido Encipido and Charlito Manatad;

"E

"The lower Court erred in refusing to give due course to appellants' motion for reconsideration holding that it was filed out of time when its judgment accordingly has become final;

"F

"The lower Court erred in convicting appellant Eddie de la Peña."

The evidence against APPELLANTS, taken "en conjunto" justifies the finding of guilt beyond reasonable doubt.

1. Eyewitness Felicisimo Alciso positively identified APPELLANTS as among the group who led the DECEASED out of his hut, with his hands tied behind his back, and thereafter mauled him and hacked his neck in the afternoon of March 30, 1982. The autopsy findings, particularly, the "incised wound of the neck", "contusions left lumbar region" and "both hands tied at the back with rattan" confirm his description of what he had witnessed.

The defense contends, however, that said witness could not have recognized APPELLANTS.

It is true that at the start of his testimony, he had stated that he did not recognize the assailants. Thus:

"Q.

Who were the persons who mauled Jose Lacumbes during that time?

"A.

I saw that there were three of them but I could not recognize them; and there were some other persons who were staying from a distance.[2]

That testimony, however, referred to the early stage of the incident when the victim was being mauled. Subsequently, in respect of the killing itself, the witness declared:

"Fiscal Sandangal:

"Could you not recognize the three persons who killed Jose Lacumbes?

"Witness:

"I could recognize the three persons who killed Jose Lacumbes."[3]

Then he described specifically:

"Q.

What else did you see, if any?

"A.

I saw that somebody was beating Jose Lacumbes with the use of a gun, and when Jose Lacumbes fell down, Commander Tanga commanded Eddie de la Peña to cut the head of the victim, but the head was not severed from the body."[4]

After pointing to the APPELLANTS, in the Courtroom, and replying to a question by the Court, Alciso further explained:

"Court:

(addressing to the witness) When did you know the accused by their names?

"WITNESS:

In the jail, your Honor. Before I met them in the jail, I already recognize their faces but I just do not know their names. Later on, I already know their names."[5]

The defense further claims that Alciso could not have recognized the assailants because he was at a distance of 80

to 90 meters away from the scene of the crime. In another instance, however, he said that the place of the killing was about "20 arms length" from the hut of the DECEASED, while he was also about the same distance from the hut at that time. The distances stated were merely his estimates and can be moderately exact or moderately inexact specially with provincial folk. The important fact is that even from where he was, he witnessed the incident and his description of it was corroborated by the admission of APPELLANTS themselves and supported by the autopsy findings on the cadaver. As this Court ruled in *People vs. Hamtig, et al.*[6], "the credibility of the testimony of a witness is not affected by some flaws and inconsistencies in minor details, if as regards the main incident, the identities of the malefactors, the testimonies appear to be consistent with each other."

And although it was admittedly the first time that Alciso saw the malefactors, it does not necessarily follow that he could not have recognized their faces. Persons observing a startling occurrence would strive to know the ones involved specially where as in this case the DECEASED was not unknown to Alciso.

Next, it is argued that Alciso's testimony that he went to the jail to verify the identity of the malefactors is not worthy of credence. Concededly, that actuation was unusual. However, as the witness explained, he did so because he feared that he may be the next one to be killed. And the fact that he asked DE LA PEÑA why the latter was in jail does not necessarily lead to the conclusion, as alleged, that he had not witnessed the occurrence. A friendly question was more likely to evoke a candid answer.

There is nothing strange either in Alciso's not having mentioned the culprits by name in his sworn statement taken more than three months after the incident, having referred to them merely as "five persons". As is well known "an affidavit is not prepared by the affiant himself. Omissions and misunderstandings are not infrequent, particularly under circumstances of hurry and impatience." [7]

ENCIPIDO and DE LA PEÑA verbally acknowledged their guilt before Static Commander Ortega and Municipal Mayor Espina when they individual-ly boasted that they had killed the DECEASED so that the latter could no longer harm other people with his witchcraft. They admitted that they had beheaded the DECEASED. DE LA PEÑA even showed the Mayor the DECEASED's dried ear which he had severed. Further, while in jail, DE LA PEÑA also admitted to Alciso, when the latter asked him the reason for their confinement, that it was because they were the ones who had beheaded the DECEASED. These oral confessions indicating complicity in the commission of the crime with which they are charged are admissible in evidence against the declarants ENCIPIDO and DE LA PENA pursuant to Sections 22[8] and 29[9] of the Rules of Court. It is the fact that admissions were made by APPELLANTS and against their own interest which gives them their evidentiary value.[10]

It is also to be noted that APPELLANTS' extrajudicial confessions were independently made without collusion, are identical with each other in their material respects and confirmatory of the other. They are, therefore, also admissible as circumstantial evidence against their co-accused implicated therein to show the probability of the latter's actual participation in the commission of the crime.[11] They are also admissible as corroborative evidence against the others, it being clear from other facts and circumstances presented that persons other than the declarants themselves participated in the commission of the crime charged and proved.[12] They are what is commonly known as interlocking confessions and constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof.

And while it may be, that ENCIPIDO's written statement before the PC on May 6, 1982 confessing to the killing of the DECEASED was not presented at the trial, no presumption of wilful suppression of evidence may be levelled against the prosecution on account of its non-production. Apparently, for the prosecution, it was not important or necessary to bolster up its case.

The argument that the testimonies of Station Commander Ortega, Mayor Espina, and Alciso as to the extrajudicial admissions made to them respectively by ENCIPIDO and/or DE LA PEÑA constitute hearsay, and thus inadmissible, is not well taken. Oral confessions may be proved by any competent witness by whom they were heard, the same as any other fact:

"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)."[13]

ENCIPIDO's and DE LA PEÑA's extrajudicial acknowledgments of guilt to the Municipal Mayor and the INP Station Commander are not necessarily incredible for, in their minds, they were not "confessing" but bragging of their exploits in the belief that they were saving the community from the witchcraft of the DECEASED and the evil doings of sonic people. There is no proof whatsoever that the extrajudicial admissions in question were coerced or concocted by those officials, who are responsible public officers and presumed to have regularly performed their functions and against whose impartiality nothing has been proven. The fact that no arrests were made by them immediately after the disclosures do not necessarily belie their testimonies since the spirit of "reciprocal goodwill" pervaded the encounters. Arrests were made, however, the day after, or on May 2, 1982.

APPELLANTS had the opportunity during the trial to refute their Verbal admissions as in fact, they denied having made them, but their denials do not ring with truth in the face of other inculpatory evidence.

3. The additional incriminating evidence was furnished by DE LA PEÑA who, in open Court, under oath, testified that he belonged to "Commander Tanga's" group, was with them since two days before the incident, and that he was with ENCIPIDO and MANATAD when they killed the DECEASED. DE LA PEÑA's declaration confirms the existence of the group, their responsibility for the killing and, at the very least, his presence during the commission of the crime.

True, DE LA PEÑA exculpated himself by stating that he was only forced to join the group and was merely standing by when the killing occurred. A statement involving guilt does not, however, lose its character as a confession from the fact that it was accompanied by statements of an exculpatory nature,[14] it being "the natural tendency of every transgressor, with perhaps very rare exceptions, to acquit himself while he can do so from all liability that might arise from his act, or at least mitigate it in the eyes of the law and those of his fellowmen".[15] Like other evidence, it must be weighed, believed, or disbelieved in whole or in part, as reason may decide. Herein, the exculpatory statement has been proven false by Alciso's credible account that upon ENCIPIDO's orders, DE LA PEÑA hacked the DECEASED's neck with a bolo which almost severed the latter's head, which testimony is confirmed by the autopsy finding of "incised wound on the neck". It was likewise proven false by DE LA PEÑA's own extrajudicial admission to the Municipal Mayor that he had hacked the DECEASED's neck and severed his ear, which is buttressed by the post mortem finding of "removed right external ear".

DE LA PEÑA's judicial admission is admissible not only against him but against his co-accused ENCIPIDO and MANATAD as well. The general rule that the confession of an accused may be given in evidence against him but that it is not competent evidence against his co-accused, admits of exceptions. Thus, this Court has held that where several accused are tried together for the same complaint, the testimony lawfully given by one during the trial implicating the others is competent evidence against the latter.[16] "The extrajudicial admission or

confession of a co-conspirator out of court is different from the testimony given by a co-accused during trial. The first is admissible against the declarant alone, but the second is perfectly admissible against his co-accused"[17], who had the right and opportunity to cross-examine the declarant. In this case, counsel de officio had such opportunity to cross-examine DE LA PEÑA but did not avail of it because in his own words:

"Atty. Moleta:

I would like to inform the Honorable Court that I am in quandary. It is my duty as counsel-de-oficio to be candid to this Honorable Court. The witness has not actually followed what I intimated to him to be the nature of his testimony.[18]

In other words, the reason counsel refrained from cross examination was not because he was not given the opportunity to do so but because DE LA PEÑA did not follow counsel's bidding as to the nature of his testimony. The coached testimony failed but the truth prevailed. Besides, defense counsel could have presented rebuttal evidence to overcome DE LA PEÑA's testimony if he had chosen to do so but did not.

Thus, MANATAD's direct participation in the commission of the crime with which he is charged has been established by DE LA PEÑA's declaration in open Court that "Commander Tanga and Charlito Manatad killed a certain person," and the corroborative testimony of Alciso, who categorically testified that MANATAD was on one side of the DECEASED, DE LA PEÑA on the other and ENCIPIDO at the back when they perpetrated the offense with which they are charged. In MANATAD's respect, therefore, it is not necessary to invoke "conspiracy" to support his conviction.

The defense of alibi separately interposed by ENCIPIDO and MANATAD cannot prevail positive identification by eyewitness Alciso, by ENCIPIDO's verbal acknowledgments of guilt, and by DE LA PEÑA's judicial and extrajudicial admission/confession, which are interlocking and admissible as against themselves and as against the others whom they also implicated. Neither were ENCIPIDO and MANATAD able to prove that they were at some place for such a period of time that it was im-possible for them to have been at the scene of the crime at the time of its commission. Barangay Boa where ENCIPIDO was allegedly sawing lumber was approximately 60 kilometers away[19], and Barangay Malinao where MANATAD was supposedly plowing the field, about 12 kilometers[20], from Barangay Mabini, Tubajon, Surigao where the incident occurred.

In the last analysis, the core issue addresses itself to the credibility of witnesses, a matter that the Trial Court had unequalled competence to consider and decide since it was in a vantage position to observe the conduct and demeanor of the witnesses of both sides while testifying, an opportunity not afforded to Appellate Courts. Its findings as to credibility should not be disturbed and are entitled to great weight unless there is some fact of record that has been overlooked or the significance of which has been misconstrued[21], which exceptions we find absent herein.

The last assigned error delving on the refusal of the Trial Court to give due course to appellants' Motion for Reconsideration on the ground that the judgment had become final is no longer of any consequence since all the grounds therefor have been elevated to and considered by this Court on appeal.

In fine, the threads of evidence woven together establish APPELLANTS' guilt to a moral certainty.

WHEREFORE, the judgment appealed from is hereby affirmed except as to the civil indemnity, which is hereby increased to P30,000.00 in accordance with recent jurisprudence. With proportionate costs.

SO ORDERED.

Feria, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, Paras, and Feliciano, JJ., concur.

Teehankee, C.J., reserves his votes.

Yap, J., see dissenting opinion.

[1] T.s.n., June 20, 1983, p. 51.

[2] *ibid.*, p. 30.

[3] *ibid.*, pp. 30-31.

[4] *ibid.*, p. 35.

[5] *ibid.*, p. 33.

[6] 29 SCRA 14 (1969).

[7] *People vs. Mori*, 55 SCRA 382 (1974).

[8] SEC. 22. Admissions of a party. - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

[9] SEC. 29. Confession. - The declaration of an accused expressly acknowledging his guilt of the offense charged, may be given in evidence against him.

[10] *U.S. vs. Corrales*, 28 Phil. 362, 366 (1914).

[11] *People vs. Domondon*, 43 SCRA 486 (1972).

[12] *People vs. Aquino*, 57 SCRA 43 (1974).

[13] cited in *People vs. Tawat*, 129 SCRA 431 (1984).

[14] *Bortimore vs. State*, 25 Wyo., 452; 162 Pac. 766.

[15] *People vs. Layos*, 60 Phil. 760 (1934).

[16] *People vs. Gumaling*, 61 Phil. 165 (1935); *U.S. vs. Macamay*, 36 Phil. 893 (1917); *People vs. Borromeo*, 60 Phil. 691 (1934).

[17] *People vs. Mabassa*, 65 Phil. 538 (1938).

[18] T.s.n., December 1, 1983, p. 136.

[19] T.s.n., September 27, 1983, p. 98.

[20] T.s.n., December 1, 1983, p. 149.

[21] *People vs. Ancheta*, 60 SCRA 333 (1974); *People vs. Caoile*, 61 SCRA 73 (1974).

DISSENTING OPINION

YAP, J.:

I disagree with the majority opinion. This dissent will not alter the results, but there are two points I wish to stress.

Firstly, it was prejudicial error for the trial court, in a joint trial of the accused, to use the testimony of one of the accused against the other accused, where the latter had no opportunity to cross-examine the former because all of the accused were represented by one and the same counsel de oficio.

In the instant case, Eddie de la Pena, one of the co-accused, testified in court that, under threat of being killed, he was forced to join the group of the accused Brigido Encepido, alias Commander Tanga, on March 25, 1982; that the group forcibly took him along with them; and that he was present when they killed Jose Lacumbes on March 30, 1982. The trial court held that the testimony of De la Pena was admissible not only against him, but also against the other co-accused. The court cited the doctrine that "if a defendant testifies as a witness in a joint trial against him and his co-accused and admits his guilt and at the same time implicating the co-accused, the testimony is admissible against the latter who may cross-examine him (U.S. v. Macamay, 36 Phil. 893; People v. Nakpil, 52 Phil. 985; People v. Tundia, L-2576, May 25, 1951)."

The trial court, in the first place, erred in applying the above doctrine since the accused Eddie de la Pena, in his testimony, did not admit his guilt. In other words, his declaration was not an admission against interest, but is merely an exculpatory statement. It was purely a self-serving statement, throwing the blame for the offense on the other co-accused; hence, it should not have been admitted as evidence against them.

Moreover, under the doctrine cited by the trial court, the testimony of an accused is admissible against his co-accused who may cross-examine him. In the case at bar, the other co-accused, Brigido Encepido and Charlito Manatad did not have the opportunity to cross-examine Eddie de la Pena. They were all represented by the same lawyer de oficio. Counsel de oficio could not and did not cross-examine his own client, Eddie de la Pena, who was not a mere witness but also an accused testifying in his own behalf. Thus, when it became apparent that the interest of one accused was in conflict with the interest of the other two co-accused, it should have been immediately obvious to the trial court that the three accused could not be represented by one and the same counsel. The trial court should have suspended the trial and appointed another counsel de oficio to represent the accused De la Pena or the other co-accused in order to provide the latter the opportunity to cross-examine the former. Unfortunately, this was not done. Hence, for the trial court to have considered the testimony of De la Pena against his co-accused was a serious prejudicial error.

Furthermore, the version of the killing given by De la Pena did not jibe with the version given by the principal prosecution witness, Felicisimo Alciso, who claimed that he saw the killing, nor with the autopsy report. Testifying on cross-examination, De la Pena stated:[1]

"Q:

How did they kill him?

A:

They beat him; Commander Tanga kicked him; then, they shot him."

But the autopsy report[2] showed that the deceased had no bullet wounds but only stab wounds and incised wounds.

Secondly, it was grave error for the trial court to consider as evidence against the accused the supposed

extrajudicial oral confession or admission of guilt by the accused, where there were vital discrepancies in the testimonies of the witnesses who were presented by the prosecution to establish the same. Police Commander Jorge Ortega testified that Brigido Encepido told him that he was the one who beheaded Jose Lacumbes.[3] Mayor Mariano Espina, on the other hand, testified that Eddie de la Pena told him that he was the one who beheaded the deceased Jose Lacumbes.[4] There was, therefore, a conflict between the version of Espina and that of Ortega on the oral confession of the accused. Apparently, the trial court did not notice this vital discrepancy. In fact, the court also overlooked another obviously untrue statement of Mayor Espina when he testified categorically that the accused Eddie de la Pena not only admitted to him that he cut off the two ears of the deceased and, in fact, showed him the two ears, already dried up, which he carried in his pocket.[5] This testimony is obviously false because the autopsy showed that only one ear of the deceased was cut off. The autopsy also showed that the neck of the deceased was hacked with a bolo, and yet, Mayor Espina, in his testimony, recounted vividly how, in his presence, Eddie de la Pena brought out a sharp pointed knife which according to him, he used in cutting "little by little" the neck of the deceased.[6] These material discrepancies in the testimonies of Mayor Espina, as well as the conflicting versions between his testimony and that of Police Commander Ortega, were simply overlooked by the trial court. These discrepancies cast a serious doubt on their testimonies that the accused orally confessed or admitted their guilt to them. Such doubt should be resolved in favor of the accused.

Without the testimonies of Mayor Espina and Police Commander Jorge Ortega and that of the accused Eddie de la Pena, the only testimony that remains to support the judgment of the trial court is that of Felicisimo Alciso who claimed to have witnessed the killing. However, the testimony of this witness suffers from some serious flaws which raise grave doubts as to its value. Hence, his testimony alone cannot be used as the sole basis for convicting the accused.

(1) In his testimony, Felicisimo Alciso at first said that he could not recognize the person who killed the deceased Jose Lacumbes, but later, upon prodding by the prosecutor, he changed his testimony and said he could recognize three of them and pointed to the three accused who were present in court and who were the only ones in custody, the other accused being at large and were never tried.

(2) He testified that he came to know the names of the killers when he visited them in jail after they were caught on May 2, 1982. His testimony regarding this visit strains one's credulity. According to him, he asked Eddie de la Pena why he was inside the jail; and the latter answered that he was inside the jail because they were the ones who beheaded Jose Lacumbes. Why De la Pena should volunteer to confess his crime to a perfect stranger is incredible. It is also rather hard to believe that Felicisimo Alciso, after being supposedly told by a friend that he would be the next one to be killed by the accused, would have the temerity to visit them in jail.

(3) Felicisimo Alciso executed an affidavit on July 13, 1982 in which he declared that he witnessed the killing of Jose Lacumbes on March 30, 1982, but did not identify who the killers were, although at the time when he executed the affidavit, he was already supposed to know who the killers were, having visited them in jail shortly after their apprehension on May 2, 1982.

In the light of all the above, it cannot be said that the evidence presented by the prosecution is convincing enough and sufficient to establish the guilt of the accused with moral certainty.

It is true that the accused Encepido and Manatad, relying on alibi as their defense, may have a weak case. But their conviction should rest on the strength of the evidence of the prosecution, and not on the weakness of the defense.

The accused should, therefore, be acquitted since their guilt has not been established beyond reasonable doubt.

[1] T.s.n., December 1, 1983, p. 143.

[2] Rollo, p. 16.

[3] T.s.n., August 1, 1983, p. 77.

[4] T.s.n., July 20, 1983, p. 58.

[5] Ibid., p. 69.

[6] Ibid., p. 58.

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