

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO CAVITE, AUGUSTO SAN JUAN, ERNESTO VILLAR, JULIAN TANTEO, LU-NA ECHANEZ

G.R. No. 86784. November 08, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

At about 6 o'clock in the morning of February 13, 1986 a report was received at the INP Headquarters at Pili, Camarines Sur, of a killing at Bagong Sirang, Pili, Camarines Sur.[1] An investigating team was forthwith dispatched to the reported crime site, composed of 1) P/Sgt. Bayani Ombao; 2) P/Cpl. Rey Torres; 3) P/Cpl. Rogelio Temporal; 4) P/Cpl. Rogelio de la Cruz; and 5) Pat. Efren Badong.[2]

At Bagong Sirang the team came upon the lifeless body of Pedro Nacional, Jr. lying in front of his house, his hands bound, wounded in several parts of the body.[3] The team found at the scene, and took possession of, the rope with which Nacional had been bound; a bamboo pole and a piece of wood (which appeared to have been used as weapons); and a telescope.[4] The report of the autopsy conducted on February 13, 1986 by the Municipal Health Officer of Pili, Dr. Angeles L.I. Federis,[5] disclosed that Pedro Nacional, Jr. had died due to "HEMORRHAGE, SEVERE, SECONDARY TO GUNSHOT WOUND, MULTIPLE FRACTURE, INCISED WOUND," said injuries being more particularly described as follows:

- "1. Wound, gunshot (entrance right side face, in front right ear Lobe 0.1 cm. in diameter, oval in shape running diagonally to right zygomatic prominence exit 0.3 cm. in diameter right.
2. Fracture, complete, neck, femur right
3. Incised wound, 2.5 inches length, 0.3 cm. depth, 0.2 cm-width, front parietal area, right.
4. Fracture, depressed, occipital area.
5. Contusion & hematoma, upper forehead, right.
6. Contusion & hematoma, upper and lower eyelid, right
7. Depressed fracture, forehead, right.
8. Fracture, zygomatic bone, right."

Acting on leads apparently obtained through preliminary inquiries at the scene of the crime, the police officers brought in and investigated Eduardo Cavite y Tadiran (53 years of age) and Augusto San Juan y Cavite (25 years old) on February 13, 1986. Another suspect, Ernesto Villar y Benavente (18 years old), was questioned, also at the police station, on February 15, 1986.

It appears that Eduardo Cavite and Augusto San Juan (and their families) used to occupy a portion of land owned in common by Pedro Nacional, Jr. and his brother, Municipal Trial Court Judge Jose Nacional. Cavite and San

Juan however had to vacate the premises sometime on January 11, 1986 on request of Judge Nacional on account of suspicions by Pedro Nacional, Jr. that Augusto San Juan had stolen his goat and had been stoning his house.[6]

The victim's gun, which had been used in killing him, and a telescope also belonging to him, were recovered by a police team on February 15, 1986. They were inside a plastic bag buried some one hundred meters from the house of Jose San Jose;[7] these things were apparently placed there by Benito San Jose after they had been given to him by his father, Jose San Jose; and the latter had, in turn, allegedly gotten them from his other son, Pedro San Jose.[8] Information about these facts had been given to the police officers by Pedro San Jose;[9] and it was Ernesto Villar who led the policemen, at their request, to the house of Pedro San Jose to look for and retrieve said articles, the gun and the telescope.[10]

Cavite, San Juan and Villar, gave written statements -- answers in response to questions of the police investigator -- which were later presented in evidence at their trial as Exhibits A, B and C, respectively. The statements were typewritten in English, and each opened with the following question and answer, viz.:

"APPRAISAL: Mr. * * *, I would like to inform you that you are under investigation for your involvement in the commission of an offense. Under our New Constitution, you have the right to remain silent and be entitled to the assistance of a counsel of your own choice. Is this clearly understood by you?

ANSWER: Yes, sir."

The statements bore the right thumbmark of the affiants[11] except the third, which was signed by Ernesto Villar.[12] All three documents were signed by Atty. Jaime Contreras, identified as "counsel for the accused," and were subscribed and sworn to before Jesus O. Bolayon, Clerk of Court I of the Municipal Trial Court of Pili, who incorporated the following certification in each affidavit, to wit:

"CERTIFICATION

I HEREBY CERTIFY that I personally examined the affiant ***, duly assisted by his counsel during my examination, Atty. Jaime E. Contreras, and I am satisfied that he voluntarily executed and understood his declaration.

I FURTHER CERTIFY that, believing (thinking) that this statement may be used against the affiant, I explained to him his rights under the Constitution to remain silent and be assisted by counsel of his own choice, examined his body for signs of violence or torture, and translated to him this statement in the Bicol dialect which he uses and fully understands, and to all these the affiant, * * *, affirmed his statement to be true, correct and voluntary.

* * *."

In his affidavit,[13] Eduardo Cavite stated the following, among other things:

** On or about 9:00 o'clock A.M., February 11, 1980, Pedro San Jose and Ramon San Jose, both residing at Binanuaanan, Pili, Camarines Sur, went to my house to get his plow which was brought to my house sometime on December, 1985 for repair. And, on that same date and time, I asked help from them about my problem with regards to the non-payment of Atty. Pedro P. Nacional to me and to Augusto San Juan for the installation of water pump at his ricefield and construction of his farm house (camarin).

* *. Pedro San Jose and Ramon San Jose told me to leave it to them because they do something provided that it will not reach to the hearing of others * *.

* *. So far as I know, they (Pedro and Ramon San Jose) are NPA * *.

* *. On or about 8:00 o'clock P.M., February 12, 1986, Pedro San Jose and Ramon San Jose approached me

and so with Augusto San Juan at the back of Mr. Antero Tagum's house while we were preparing foods on the occasion of the religious celebration commonly known as 'PASYON' which was being done yearly and told us to go with them to the house of Pedro P. Nacional, Jr.

* *. While we were on our way to the house of Atty. Pedro P. Nacional, Jr., I saw six of their companions who were already waiting for us whose names are not known to me and then we all proceed to the house of Pedro P. Nacional, Jr.

* *. Upon our arrival near the house of Atty. Pedro P. Nacional, Jr., Pedro San Jose told me and so with Augusto San Juan to just wait outside and then said Pedro San Jose pushed the door forcibly of the house of said Pedro Nacional, Jr. and immediately they all entered the said house. A little later, I just heard the voice of Pedro Nacional, Jr. as if being mauled inside the house and a few minutes later, I saw Pedro Nacional, Jr. whose both hands and feet were hog tied was being dragged out of the house by Pedro San Jose and Ramon San Jose.

* *. Pedro San Jose and Ramon San Jose and some of their companions who were armed with boloes and some with a piece of wood hacked and struck Pedro Nacional, Jr. causing him wound on the different parts of his body. And after that, I just heard 3 gunshots, but I did not see to whom it was shot and then they all ran away * *.

* *. (Before they entered the house) They were all wearing black mask * *. I was just standing near the house and I was surprised because I have no knowledge that their intention was to kill Pedro Nacional, Jr.

* * *."

On the other hand, the following declarations are contained in the affidavit of Augusto San Juan,[14] to wit:

" * *. That on or about 9:00 o'clock A.M., sometime in the month of December, 1985 Ramon and Pedro both surnames San Jose of barangay Binanuaanan, Pili, Camarines Sur went to the residence of Eduardo Cavite at Bagong Sirang, Pili, C.S. and let his plow brought for repair.

* *. (While there) I overheard Eduardo Cavite telling to Pedro San Jose, if there are NPA in barangay Binanuaanan?

* *. According to Eduardo Cavite he will sought for assistance from the NPA in order to kill Pedro Nacional.

* *. (After more or less two months * * Pedro San Jose and Ramon San Jose went back) at Bagong Sirang * * together with MAXIMINO SAN JOSE, CEZAR MONING, ESCO BETCHAYDA, PEDRO BIAG and two others whose names I do not know * *.

* *. They (then) went to the residence of Pedro Nacional together with Eduardo Cavite and myself * *.

* *. (We arrived at the house of Pedro Nacional at about) 8:00 o'clock in the evening February 12, 1986.

* *. ** Pedro San Jose acting as leader immediately pushed the main door and forcibly entered inside, then suddenly smashed a piece of wood against the head of Pedro Nacional and at the same time hacked him hitting on his left hand. **

* *. Ramon San Jose, Maximino San Jose and there companions helped each other tying the left and right hand of Pedro Nacional encluding his two feet * *.

* *. (At the same time) Pedro San Jose were looking for a gun inside the cartoon box where he found it one revolver and suddenly shot Pedro Nacional for three times.

* *. Ramon San Jose and his companions tied up Edna Nacional (wife of the late Pedro Nacional) thereafter, we left already the place after confirming it that Pedro Nacional was already dead * *.

* *. Pedro Cavite and myself were only made to guide them in the house of Pedro Nacional, wherein what we did is only to watch them while they were in the course of killing the victim **.

And Ernesto Villar's written statement[15] includes the following answers, to wit:

* *. Before the incident happened (on or about 8:00 o'clock in the evening of February 12, 1986) I went to the store of a certain Ramirez for purposes of buying cigarettes, but I was called by Pedro San Jose and told me to enter his house and while inside, I saw Augusto San Juan, Eduardo Cavite, Nestor Rull, Julian Tanteo, Luna Echanez and moment later Eduardo Privaldos arrived. While I was inside Pedro San Jose told me to go with them to Bagong Sirang for unknown purpose, but before we proceed to Bagong Sirang, Augusto San Juan and Eduardo Cavite were the first who left said house and proceed to Bagong Sirang **.

* *. After a few minutes we followed them and proceed to Bagong Sirang.

* *. We proceed to the house of Eduardo Cavite wherein upon our arrival said Eduardo Cavite and Augusto San Juan were already inside and while there the latter told Pedro San Jose that he must be the first one to enter the house of Pedro Nacional, Jr. which according to them if they will be the first one to enter said house they might be identified.

* *. Pedro San Jose immediately entered by force the said house and then we followed him, but Luna Echanez, Augusto San Juan and Eduardo Cavite were left outside.

* *. Pedro San Jose pointed Pedro Nacional, Jr. with a bolo and all of the sudden struck him with a piece of wood several times on the head and so with the others causing him wounds. After that Pedro San Jose and Julian Tanteo tied up Pedro Nacional with a plastic rope on both hands and was brought outside by dragging, but before Pedro Nacional, Jr. was dragged outside, Pedro San Jose ordered Nestor Rull and Eduarco Privaldos to tie up Edna San Juan who was at the bedroom **.

* *. Nestor Rull pointed Edna San Juan on the neck with a knife while Pedro Privaldos was also tying up both hands and feet of Edna San Juan with a plastic rope.

* *. I was just standing the door of the bedroom because I was amazed that their intentions was to kill Pedro Nacional, Jr. and I was also threatened that if I will not go with them something will happened to me, and because they are also my friends I went with them.

* *. A moment later, I just heard from Augusto San Juan advising us to look for the firearm of Pedro Nacional and then Julian Tanteo went up and begun looking for the said firearm together with Nestor Rull and Eduardo Privaldos by scattering the assorted clothes and moment later said Julian Taneo found the said firearm inside a cartoon box including one telescope.

* *. Julian Tanteo gave the firearm and the telescope to Pedro San Jose.

* *. We (then) went outside the house and while outside Augusto San Juan told Pedro San Jose to shoot Pedro Nacional, Jr. with the said firearm while the same was lying prostrate on the ground whose head profusely bleeding which according to Augusto San Juan the NPA would be the suspect of the killing **.

* *. (Pedro San Jose did shoot Pedro Nacional, Jr.) One time at his face **.

* *. (As to who inflicted the "excised wound on the head" of Pedro Nacional) I don't know, but I believed from the group who brought Pedro Nacional outside the house **.

* *. We left the place and proceeded to Binanuaanan while Eduardo Cavite was left at Bagong Sirang **.

* *. (During the incident, the group) covered their faces with mask."

In the course of the investigation, Villar also identified the "firearm used in killing Pedro Nacional, Jr. and the

telescope taken from his house,"[16] which had been found by the police, buried, at the place to which they had been guided by Villar.[17]

The three (3) affidavits are substantially identical in their narration of the assault on Pedro Nacional, Jr. They all state that -

- 1) it was Pedro San Jose who forcibly shoved open the door of Pedro Nacional's house;
- 2) once inside, Pedro and his companions assaulted Pedro Nacional, hitting him with pieces of wood;
- 3) then they bound Pedro Nacional hand and foot and dragged him outside the house; and finally,
- 4) Pedro Nacional was shot in the face, and according to two of the affiants (San Juan and Villar), the shooting was done by Pedro San Jose.

It is noteworthy that in their affidavits, all three (3) suspects attempted to exculpate themselves. Eduardo Cavite claims that he "was just standing near the house and ** was surprised because ** (he had) no knowledge that ** (his companions') intention was to kill Pedro Nacional, Jr." Augusto San Juan asserts that he and Cavite "were only made to guide *** (the killers and robbers to) the house of Pedro Nacional, wherein what ** (they) did is only to watch them while they were in the course of killing the victim **." And Ernesto Villar alleges that he "was just standing (at) the door of the bedroom because ** (he) was amazed that ** (his companions') intention was to kill Pedro Nacional, Jr., and ** (he) was also threatened that if ** (he) will not go with them something will happen to ** (him), and because they are also ** (his) friends ** (he) went with them."

Another circumstance worthy of note is that the three (3) suspects were all represented by the same attorney during their custodial investigation, Atty. Jaime Contreras. At that time, Atty. Contreras was the Election Registrar of Pili, Camarines Sur.[18] According to him, on February 15, 1986, on request of a police officer, Pat. Torres, he had gone to the Pili police station to extend legal assistance to a person under investigation, and had there met said person, Ernesto Villar; on presenting himself to Villar, the latter had asked that he "assist him in connection with the investigation," and he (Contreras) had agreed "only for purposes of giving their statement;"[19] being "conversant with the Morada and Miranda doctrine wherein lawyers' services is retained," he had "inquired from ** (Villar) whether he was being forced or threatened or promised by having any reward so that he could give his statement" and on receiving the latter's reply that "he will give voluntarily his statement," had further cautioned him that "he will not be forced to answer if he do not want to answer," after which Villar did proceed to give his statement by question and answer in the manner set out in his affidavit, Exhibit C, which statement he had afterwards himself signed.[20]

According to Contreras, too, he had also been "summoned at the Police Station to assist ** (other) affiants in their statements," these being Eduardo Cavite and Augusto San Juan, and had represented them at the custodial investigation in more or less the same manner that he had, Ernesto Villar.[21]

On complaint of the Station Commander of the Pili Police Force,[22] and after examination of the witnesses presented, Pili Municipal Trial Judge Alfredo A. Cabral ordered the arrest of Eduardo Cavite, Augusto San Juan, Pedro San Jose, Ernesto Villar, Julian Tanteo, Luna Echanez, Eduardo Privaldos and Nestor Rull.[23]

A preliminary investigation was thereafter conducted in due course by Municipal Trial Judge Alfredo A. Cabral. Submitted to Judge Cabral, aside from the sworn statements given to the police by Eduardo Cavite, Augusto San Juan and Ernesto Villar, were the affidavits of other persons who were personally examined by His Honor on the basis thereof, namely: Edna C. San Juan, "common-law wife" of the deceased, the only eyewitness (apart from the accused themselves) to the crime;[24] Jose P. Nacional (a brother of the deceased);[25] Freddie Lusano;[26] Pat.

Efren Badong;[27] P/Cpl. Mamerto Federis;[28] Pfc. Rey Torres.[29] The accused also presented their own counter-affidavits,[30] and the affidavits of their witnesses.[31]

In their counter-affidavits, Cavite, Villar and San Juan repudiated the statements earlier given by them to the police. Cavite says that he does "not know a certain Atty. Jaime Contreras," that when he was investigated "every one in the police station ** were all policemen," and "the contents of ** (his) alleged sworn statements given ** on February 13, 1986 are not true and unvoluntarily signed **, hence, the same (should) be disregarded." Villar claims he was forced to sign his own affidavit but "that such statements were not true and voluntarily given **." For his part, Augusto San Juan asserts that the statement given by him to the police was extracted through torture, and he was retracting the same.

At the conclusion of the preliminary investigation the Municipal Trial Judge issued a resolution dated April 23, 1986 containing a finding of probable cause to bind over all the accused for trial for murder, rejecting the defense of alibi of the accused, and denying bail to all the accused except as regards Jose San Jose and Benito San Jose, whose participation in the felony was categorized as that only of accessories.[32]

The Provincial Fiscal, however, was of the view that the felony actually committed was robbery with homicide and accordingly filed an information dated May 29, 1986 charging all the accused with this crime, aggravated by treachery, evident premeditation and abuse of superior strength. All the accused were indicted as principals except for Jose San Jose and Benito San Jose who were accused as accessories.

Trial commenced on August 21, 1986 after the accused all entered a plea of not guilty on arraignment on July 31, 1986. Only five (5) of the ten indicted were actually tried. Jose San Jose, Benito San Jose, and Nestor Rull were never apprehended.[33] Eduardo Privaldos and Pedro San Jose - -who had submitted their counter-affidavits at the preliminary investigation[34] -- broke out of jail in the early morning of July 7, 1986 and have remained at large since.[35]

No eyewitness was presented by the prosecution. The victim's "common-law wife," Edna San Juan, never took the witness stand. The prosecution suggests that she left Pili, and stayed away from the trial, because of fear. In its memorandum in the proceedings a quo,[36] the prosecution made the following observations:

" * *. Edna San Juan, a native of Bulacan and a complete stranger in Pili * *, was ever conscious of the fact that one of the accused, Nestor Rull, was at large. Her initial determination to stay in Bicol and testify **, however, soon vanished when she learned that the two other accused who were detained at the Tinañgis Penal Farm, namely, Pedro San Jose and Eduardo Privaldos, escaped from the said institution. Thus, she left for Manila without any forwarding address."

Nevertheless, in its Decision promulgated on December 29, 1988,[37] the Trial Court found that the guilt of the accused as co-conspirators in the crime charged had been established beyond reasonable doubt by "the totality of the contents of Exh. A, B, C,[38] together with the recovered evidence, Exh. E[39] and F,[40] (and) the flight of the accused Pedro San Jose and Eduardo Privaldos **." [41] It accordingly sentenced "each of them to suffer the penalty of RECLUSION PERPETUA, with the accessories of the law, and to indemnify the heirs of Pedro P. Nacional, Jr., in the amount of not less than SIX THOUSAND (P6, 000.00)Pesos."

The Trial Court opined that the prosecution had substantially complied with the constitutional requirements governing custodial investigations vis a vis Cavite, San Juan and Villar; that the police officers, the Clerk of Court of the Pili Municipal Trial Court, and Atty. Jaime Contreras -- who all testified to the regularity and propriety of the custodial interrogation -- had "no improper or evil motive to testify falsely against the accused;" and declared as undeserving of belief the protestations of Cavite and Villar anent the irregularity in the taking of their sworn statements as well as the "uniform defense of alibi put up by the accused **."

The five convicted accused seasonably appealed; and in this Court they impute the following errors to the Trial Court:

- 1) "convicting ** Julian Tanteo and Luna Echanez on the basis of the sworn statements of their co-accused Cavite, San Juan and Villar marked Exhibits A, B, and C and its submarkings;"
- 2) "convicting ** Eduardo Cavite, Augusto San Juan and Ernesto Villar based on collateral evidences of witnesses and sworn statements denied by them;" and
- 3) not holding that the "prosecution evidence is weak and not sufficient basis to establish the guilt of accused beyond reasonable doubt."

As may be noted from the facts -- which have been related at some length to the end that the nature and extent of the evidence may be more precisely disclosed, analyzed and appreciated -- there is no eyewitness testimony adduced by the prosecution regarding the acts done by the five accused-appellants during the occurrence in question. The only evidence of the prosecution on the matter consists of the sworn statements or affidavits given in question-and-answer form to the police by Eduardo Cavite, Augusto San Juan and Ernesto Villar,[42] and what may be considered as the corroborative testimony of the police officers relative to the subsequent discovery and taking of possession of the pistol and the telescope allegedly asported from the victim, Pedro Nacional, Jr.[43]

Immediately apparent, however, is that the three sworn statements are not confessions. The Rules of Court define a confession as the "declaration of an accused expressly acknowledging his guilt of the offense charged." [44] None of the three (3) affidavits contains any acknowledgment of "guilt of the offense charged" on the part of the affiants. Not one of them acknowledged having laid a hand on the victim or assisted in inflicting any injury on him, or having taken, or assisted in the taking of any property from him. On the contrary, they all disclaimed any participation in the offense or even knowledge of any intention or plan to kill or rob Pedro Nacional, Jr. In his affidavit, for example, Eduardo Cavite declared that he "was just standing near the house and ** was surprised because ** (he had) no knowledge that ** (his companions') intention was to kill Pedro Nacional, Jr." Augusto San Juan said that he and Cavite "were only made to guide *** (the killers and robbers to) the house of Pedro Nacional, wherein what ** (they) did is only to watch them while they were in the course of killing the victim **." And Ernesto Villar said that he "was just standing at the door of the bedroom because ** (he) was amazed that ** (his companions') intention was to kill Pedro Nacional, Jr., and ** (he) was also threatened that if ** (he) will not go with them something will happen to ** (him), and because they are also ** (his) friends ** (he) went with them." [45]

The most that perhaps may be said about the affidavits, as evidence against the affiants, is that they are admissions that the latter were in fact at the scene as the crime was being perpetrated. This is of no help to the prosecution's cause -- in so far as concerns implication of the affiants themselves in the killing of Pedro Nacional, Jr. -- for the affidavits fasten responsibility therefor directly and exclusively on persons other than the affiants who, as repeatedly stated, explicitly deny any participation therein, or even prior awareness that the crime would be committed. Worse, those affidavits are categorically rejected and repudiated by their supposed authors who variously asserted, also under oath, that the declarations attributed to them were false and extracted under duress. Moreover, it is impermissible to pick the affidavits apart, lending credence only to the portions seen as incriminatory, while disregarding as false and unacceptable those supportive of innocence, absent, as here, any circumstance which would logically justify such dismemberment. But this, it would appear, is what the Trial Court did; with no further explanation than an advertence to the "totality" of the contents of said affidavits and the recovered physical evidence -- it in effect hung a finding of conspiracy against appellants Cavite, San Juan and Villar on those portions of the affidavits that would lend themselves to an inference of such circumstance and

ignored their exculpatory parts. This is manifest error because said statements each considered in complete context, or "in totality" as it were, recount nothing more culpable than that the affiants were unwilling, or unwitting, witnesses to a crime in the planning and commission of which they had no conscious involvement. Such finding of conspiracy thus lacking any clear or sufficient basis where those affiants are concerned, a verdict of guilt against them, as to whom there is no other evidence to contradict their claim of never having laid a hand on the victim, cannot be allowed to stand.

Nor, it goes without saying, may the flight of the other suspects or the concealment of the victim's firearm and telescope, be considered as incriminatory circumstances against any of the present appellants, although they may be considered confirmatory of the affiants' story of the commission of the crime by Pedro San Jose and others. "The rights of a party cannot be prejudiced by an act, declaration, or omission of another **." [46] *Res inter alios acta alteri nocere non debet*.

As to the two other appellants, Luna Echaney and Julio Tanteo, the affidavits of Cavite et al. are for the most part innocuous, and are in truth hearsay as to Echaney and Tanteo, no opportunity having been accorded to them to cross-examine the affiants, and were properly and seasonably objected to as such. There is thus no evidence of the participation of Echaney and Tanteo in the crime.

What has thus far been stated makes it largely unnecessary to deal with the question of whether or not there has been here any violation of the constitutional rights of suspects under custodial investigation, in particular, of the right to counsel as set forth in the present Bill of Rights and explained and developed in fairly recent jurisprudence. It must be observed, however, that while the Court is not prepared, on the basis of the record, to hold that what is required of police investigators by the guarantees of the right to counsel was not substantially complied with, there is at least some reason to reiterate here the apprehensions expressed and admonitions given in its recent rulings [47] concerning what it termed the "perfunctory * * pro-forma" and "stereotyped" compliance with the prescribed norms, particularly by way of giving the requisite advisories to suspects about their right to counsel. Specifically, what emerges from the prosecution's evidence of the circumstances surrounding the custodial investigation of the three affiants, Cavite, et al., suggests that the counsel who assisted them -- the same for all three as it turned out -- was less their free choice, as he should have been, than the arbitrary one of their investigators. However, as already stated, a deeper inquiry into this aspect of the case would not change the conclusions already reached on other grounds concerning the merits of this appeal.

WHEREFORE, for lack of evidence sufficient in law to warrant its verdict of conviction, the appealed Decision is REVERSED, and all the accused-appellants are ACQUITTED, with costs de oficio.

SO ORDERED.

Cruz, Feliciano, Griño-Aquino, and Medialdea, JJ., concur.

* Originally charged and arrested; escaped from custody before arraignment but after having submitted counter-affidavits at the preliminary investigation (Original Record, p. 80; see footnotes 29 and 33, *infra*)

** Impleaded as accused in the information but never apprehended (Decision of Court a quo, p. 3; Original Record, p. 390, 392)

[1] TSN, Feb. 27, 1987, pp. 19-21

[2] *Id.*, pp. 3, 12, 21

[3] *Id.*, p. 5; Exhs. M and M-1

- [4] Id., pp. 6, 8; Exh. G; SEE also, Rollo, p. 77
- [5] Exh, K
- [6] SEE Original record., pp. 12, 11, 44
- [7] Rollo, pp. 47, 52: Appellant's Brief, pp. 2, 7
- [8] Rollo, p. 47, Appellant's Brief, p. 2
- [9] Original Record, pp. 17,35-36 (Sworn declarations of Pat. Efren A. Badong on Feb. 17, 1986 and Feb. 21, 1986)
- [10] Rollo, p. 52: Appellant's Brief, p. 7
- [11] At the foot thereof (second page) and on the left hand margin of the first page
- [12] At the foot thereof (third page) and on the left hand margin of the first and second pages
- [13] Exh. A
- [14] Exh. B
- [15] Exh. C
- [16] Original Record, p. 20
- [17] Footnote 9, supra
- [18] TSN, July 17,1987, p. 4
- [19] Id., pp. 5-7
- [20] Id., pp. 7-16
- [21] Id., pp. 16-17
- [22] Original record, p. 1. The complaint was later amended to include two other defendants: Jose San Jose and his son, Benito San Jose (Original record, p. 58)
- [23] Id., p. 34
- [24] Original record, pp. 8-10, 21, 22-29, 30
- [25] Id., p. 11
- [26] Id., p.16
- [27] Id., pp. 17, 35-36
- [28] Id., pp.31-32
- [29] Id., p. 33
- [30] Id., pp. 43-44 (Counter-Affidavit of Eduardo Cavite); 45 (Ernesto Villar); 46 (Eduardo Privaldos); 47 (Julian Tanteo); 48 (Luna Echanez); 49 (Pedro San Jose); 50 (Augusto San Juan)
- [31] Id., pp. 51 (Elias Baracina); 52 (Vicente Buenavente); 53 (Jose Bandola); 54 (Luis Benavente); 55 (Norberto Bermido, Sr.)

[32] Id., pp. 66-70

[33] SEE TSN, Feb. 27, 1987, p. 2. The Fiscal expresses the belief that Rull "left Pili following the night of the murder on February 12, 1986."

[34] SEE footnote 29, supra

[35] Original Record, p. 78; Rollo, pp. 74-75

[36] Id., p. 382, 387

[37] Written by Hon. Nilo A. Malanyaon, presiding over Branch 32 of the RTC at Cadlan, Pili, Camarines Sur

[38] The affidavits of Cavite, San Juan and Villar, respectively, supra

[39] The gun used in the killing

[40] The telescope supposedly taken from the slain victim

[41] Rollo, pp. 32, 38

[42] SEE pages 2-6, supra

[43] SEE footnotes 9,16, 38 and 39 and related text, supra

[44] Sec. 29, Rule 130

[45] SEE page 6, supra

[46] SEC. 28, Rule 130, Rules of Court

[47] People vs. Newman, 163 SCRA 419; cited, together with People vs. Galit, 135 SCRA 465, in People vs. Repe, 175 SCRA 422; see also People vs. Saludar, 188 SCRA 189

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