

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NICOMEDES FABRO, FRANCISCO DIMALANTA, AMADO ALCALA,
WILLIAM HOGE AND “JOHN DOE,” ACCUSED, NICOMEDES FABRO,
ACCUSED-APPELLANT.**

G.R. No. 95089. August 11, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The 1987 Constitution guarantees persons undergoing custodial investigation the rights to remain silent and to have competent and independent counsel. These rights cannot be waived except in writing and in the presence of counsel. The Constitution impels strict compliance with these requirements because a confession of guilt given during such investigation constitutes formidable evidence against the accused on the principle that no one will knowingly, freely and deliberately admit authorship of a crime unless prompted by truth and conscience, particularly where the facts given could have been known only by appellant. On the other hand, any allegation of force, duress, undue influence or other forms of involuntariness in exacting such confession must be proven by clear, convincing and competent evidence by the defense. Otherwise, the confession's full probative value may be used to demonstrate the guilt of the accused beyond reasonable doubt.

Statement of the Case

These doctrines are applied by the Court in deciding this appeal from the Decision[1] of the Regional Trial Court of Olongapo City, Branch 72,[2] in Crim. Case No. 364-87, finding the accused guilty of murder and sentencing them to *reclusión perpetua*.

In an Information dated June 11, 1987, Second Assistant Fiscal of Olongapo City, Jesus P. Duranto, charged Nicomedes Fabro, Francisco Dimalanta, Amado Alcala, William Hoge and a certain “John Doe” with murder committed as follows:

That on or about the twelfth (12th) day of April 1987, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, accused Nicomedes Fabro armed with a gun, with intent to kill and with treachery, evident premeditation and in consideration of promise of reward, did then and there wilfully, unlawfully and feloniously assault, attack and shot (sic) therewith one Dionisio Joaquin and as a result thereof, the latter suffered shock and Hemorrhage Massive, Secondary to Gun Shot Wound which directly caused his death shortly thereafter.

CONTRARY TO LAW: With the qualifying circumstances of treachery, evident premeditation and reward.”[3]

On August 10, 1987, Dimalanta and Appellant Fabro, with the assistance of Counsel de oficio Romeo C. Alinea, pleaded not guilty. On September 8, 1987, Accused Alcala entered the same plea. The other two accused, William

Hoge and “John Doe,” were never arrested or arraigned.

In the course of the trial, both Accused Dimalanta and Alcala jumped bail.[4] Thus, only appellant was presented as witness by the defense.

On June 25, 1990, the trial court rendered its assailed Decision, the dispositive portion of which reads:

WHEREFORE, premised on all the foregoing consideration, the Court finds accused NICOMEDES FABRO, FRANCISCO DIMALANTA and AMADO ALCALA guilty beyond the shadow of a doubt of the crime of MURDER as charged in the information, with three aggravating circumstances and pursuant to Article 248, and hereby sentences them (to) the maximum penalty of death. However, with the abolition of death penalty, accused shall suffer reclusion perpetua, with costs against the accused. The Court orders the accused collectively to indemnify the heirs of Dionisio Joaquin (in) the sum of P30,000.00.”[5]

On June 29, 1990, a Notice of Appeal direct to the Supreme Court was filed in the trial court in view of the penalty imposed, *reclusión perpetua*. As Dimalanta and Alcala jumped bail during the proceedings before the court *a quo*, their appeal is deemed dismissed pursuant to Rule 124, Section 8 of the Rules of Court[6] and Supreme Court Administrative Circular 2-92.[7] Hence, only the appeal of Fabro will be ruled upon.7-A References to Dimalanta and Alcala in this Decision are made only to complete the narration of the case, and thus will affect only Fabro.

The FactsVersion of the Prosecution

The prosecution presented five witnesses: (1) Dr. Richard Patilano who conducted the autopsy on the remains of the victim; (2) Sgt. Felipe Bolina, the police investigator; (3) Anthony Beck, companion of the victim; (4) Conrado Joaquin, the victim’s father; and (5) Atty. Isagani Jungco, the IBP President (Zambales Chapter) who was presented as rebuttal witness. Among the documentary evidence submitted were the sworn statements of appellant, Beck, Dimalanta and Joaquin, and the joint affidavit of Sgts. Bolina and Lappay. The prosecution's version of the facts, as summarized by the Solicitor General in the Appellee’s Brief,[8] is as follows:

Sometime in the second week of April, 1987, a strike was held by workers on the premises of the Casa Blanca, located at Barrio Barretto, Olongapo City. Dionisio Joaquin, the victim, was one of organizers thereof. He sought the assistance of friends, among whom was Anthony Beck, a stevedore and resident of Olongapo City (pp. 28-31, TSN, May 24, 1988).

At about 6:00 P.M. on April 11, 1987, Joaquin and Beck were at Whisky Bar fronting the Casa Blanca, at Barrio Barretto, Olongapo City. They were conversing while resting at the veranda of said Whisky Bar, fronting the Casa Blanca where a picket was being conducted by their co-strikers. Both had fallen asleep, as they lacked sleep the previous nights, on a chair near each other with their feet resting on the veranda railings (pp. 39-46, *ibid.*).

Anthony Beck fell asleep at about 4:00 o'clock in the early morning of April 12, 1987. Shortly thereafter, at about 5:00 to 5:30 in the morning, he was awakened by gun report. Opening his eyes, he saw Joaquin dead, with a single bullet wound on the forehead. Blood was oozing from Joaquin's head. Seeing a man running away from where he and Joaquin were seated, Anthony Beck then gave chase. The fleeing man turned left on an alley and then right on another. Beck lost him at the second turn. He saw an old man who inquired why he was chasing the fleeing man. Beck told the old man of the shooting incident. Then and there the old man told Beck that the man he (Beck) was running after was “Badong,” later identified as the accused Nicomedes Fabro (pp. 54-62, *Ibid.*).

Police officers from the Olongapo Metrodiscom, led by Sgt. Felipe Bolina, proceeded to Fabro's residence at about noon that same day. They failed to apprehend Fabro as he was allegedly then asleep. The accused (Fabro) was surrendered by his sister to the CIS the following day (pp. 12-14, TSN, July 18, 1989).

At 6:00 o'clock that night, April 13, 1987, Fabro was interrogated by CIS personnel and grilled for about two (2) hours (pp. 16-19, supra).

At that juncture, CIS investigator Santiago requested Fabro to sign a document, which turned out to be his extra-judicial confession/admission (Exh. "F"). Accused Fabro (claims that he) was not allowed to read the document, neither were its contents read to him (pp. 24-26). A certain Atty. Isagani Jungco was however present when he signed the document (p. 28, supra; pp. 2-18, TSN, March 19, 1990).

While it appears from the transcript that co-accused Francisco Dimalanta executed an extra-judicial statement (confession) (pp. 24-25, TSN, Feb. 2, 1988), Dimalanta himself was never presented in court as defense witness, as both accused Dimalanta and Alcala jumped bail during trial."

Version of the Defense

The defense presented its only witness in the person of the appellant. No documentary evidence was submitted. The counter-statement of facts, as narrated in the six-page Brief for the Appellants,[9] reads as follows:

"The version of the defense as testified to by Nicomedes Fabro was that at two o'clock in the morning of April 12, 1987, he stopped ferrying passengers and slept on a sofa at the Whiskey River Club, located on a terrace of said club. When he laid down and rested at the sofa, there was also another person who was seated on the sofa and was more or less one arm's length away from him. The man was then asleep but (Fabro) only knew his face but not his name. While sleeping, he was awakened by the shout of one of his companion saying "may binaril, may binaril." The shout was very loud and after shouting the man ran towards Olongapo City. Accused according to him was standing and looking at the bloodied person who was more or less two arms length away from him. The bloodied person was at the balcony of the Whiskey River Club.

Accused was surrendered to the CIS by his sister on April 13, 1987. Nicomedes Fabro claimed that he was made to sign a document without allowing him to read the contents. According to accused Fabro, investigator Santiago told him that if he will not sign the document something will happen to him. Atty. Isagani Jungco was present when he signed his name, however, the document was already prepared and ready for signature."

Trial Court's Findings

In its Decision, the trial court leaned towards the version of the prosecution:[10]

From the evidence presented by the prosecution, both testimonial and documentary, the Court finds these facts to be indubitable. That in the early morning of April 12, 1987, between 5:00 and 5:30, the deceased Dionisio Joaquin who was sleeping side by side with Anthony Beck on the terrace of the Whiskey Bar, opposite Casa Blanca, Barrio Barretto, Olongapo City, was shot in the head at close range by accused Nicomedes Fabro. The deceased was bleeding with blood oozing from the forehead when found by some Olongapo police and Sgt. Bolina, a PC soldier who arrived at the scene. The deceased was found on a chair, his feet raised on the veranda with his head inclined back.

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Anthony Beck who was asleep side by side with the deceased was awakened by a shot and even heard the "kalansing" of the bullet, chased the person whom he saw running away after the shot was fired. He testified that when he was chasing the man he did not yet know his name but he could identify him. Beck made the identification when accused Fabro was mixed with other people getting clearance at 164th PC Company Office. Beck positively identified the accused when he testified in Court.

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Beck testified that Dionisio Joaquin was an organizer of a labor organization and that the latter invited the former to support the strikers.

Sgt. Bolina thru his investigation learned the identity of the man who was running away from the scene of the crime as Nicomedes Fabro. Upon learning the identity of the suspect, Bolina went to the parents of Fabro whom he knew personally and requested that Fabro be surrendered to him. Bolina learned later that the suspect was surrendered to the CIS. After the CIS investigation, Nicomedes Fabro gave his confession in the presence of Atty. Isagani Jungco who was called to assist the suspect. In his confession, Fabro implicated Francisco Dimalanta and Amado Alcala.

From reliable information received by Sgt. Bolina and the other policemen, they learned the identity of two other suspects, namely: Francisco Dimalanta and Amado Alcala. From unconfirmed reports these two Dimalanta and Alcala participated in the killing of Dionisio Joaquin. The confession of Fabro confirmed that indeed Dimalanta and Alcala were his co-conspirator.

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xxxx (Sgt.) Lappay testified that he was present during the investigation of Fabro. Fabro in his presence admitted his participation and pointed to Francisco Dimalanta and Amado Alcala and one Ernesto de Guzman. It was in early morning of April 14, 1987 that de Guzman and Dimalanta were apprehended along Rizal Extension, they being neighbors. Alcala was arrested at above street.”

After analyzing and weighing all the pieces of testimonial and documentary evidence, the trial court declined to give credence to the uncorroborated claim of appellant that he was asleep at the terrace of the Whiskey Club at the time of the incident. The court a quo also rejected his contention that he was coerced into signing a confession, since the solitary verbal “threat” allegedly made by the investigator was vague and not backed up by the use of actual physical force. After considering the presence of the counsel (Atty. Jungco) who assisted the appellant (and his co-accused) during the custodial investigation as well as in the execution of their respective sworn statements, the lower court admitted in evidence their extrajudicial confessions.

The confession of Appellant Fabro was summarized by the lower court, thus:

In the confession of Nicomedes Fabro he narrated how Francisco Dimalanta offered him P10,000.00 to kill a man, how the gun was given him and how they observed the movements of the victim to the time of the killing. While Nicomedes Fabro did the actual shooting, accused Alcala and Dimalanta were present awaiting the outcome of the shooting.

The confession of Dimalanta coincided in all material points with the confession of Fabro. Dimalanta narrated how he was promised the amount P10,000 by a certain Bill Hoge and how he was paid of P5,000.00 as initial payment and the balance to be paid after the killing is accomplished. The P5,000.00 initial payment was shared by the three accused.”

From the foregoing, the trial court established the existence of conspiracy among the three accused. The trial court further found the testimony of Beck unbiased, truthful and credible.

Finally, the court below held that the commission of the crime was attended by the aggravating circumstances of treachery, evident premeditation and consideration of price or reward.

Assignment of Errors

Appellant interposes the present appeal, faulting the trial court:

I

“For not considering the defense of alibi when there is doubt as to the identity of the suspect.

II

For not considering the admissions and confessions as inadmissible as violative of the Constitution.

III

For not considering the statements and testimonies of prosecution witnesses as hearsay.

IV

For presuming that conspiracy exists.”

The Court’s Ruling

The appeal is not meritorious. In view of the incriminatory nature of appellant’s confession, the Court will tackle the second assigned error ahead of the first.

First Issue: Admissibility of Appellant’s Confession

A confession is defined in jurisprudence as a declaration made voluntarily and without compulsion or inducement by a person, stating or acknowledging that he has committed or participated in the commission of a crime.[11] But before it can be admitted in evidence, several requirements have to be satisfied.

Article III, Section 12 of the 1987 Constitution, which came into effect on February 2, 1987, requires that:

“(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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(3) Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him.”

Moreover, Article III, Section 17 of the Constitution guaranteeing the right of the accused against self-incrimination, provides:

“SEC.17. No person shall be compelled to be a witness against himself.”

In jurisprudence, no confession can be admitted in evidence unless it is given:

1. Freely and voluntarily, without compulsion, inducement or trickery;[12]
2. Knowingly based on an effective communication to the individual under custodial investigation of his constitutional rights;[13] and
3. Intelligently with full appreciation of its importance and comprehension of its consequences.[14]

Once admitted, the confession must inspire credibility or be one which the normal experience of mankind can accept as being within the realm of probability.[15]

A confession meeting all the foregoing requisites constitutes evidence of a high order since it is supported by the strong presumption that no person of normal mind will knowingly, freely and deliberately confess that he is the perpetrator of a crime unless prompted by truth and conscience.[16] When all these requirements are met and the confession is admitted in evidence, the burden of proof that it was obtained by undue pressure, threat or intimidation rests upon the accused.[17]

Admittedly, the case of the prosecution hinges on appellant’s confession. The defense maintains that the same is

inadmissible for the following reasons: (1) appellant's confession was extracted under threat and intimidation; (2) the lawyer's (Atty. Jungco's) participation was only as a witness during the signing of the prepared confession and not during the investigation or interrogation itself; and (3) appellant was made to sign the confession without having read it and without the presence of counsel.

As proof thereof, the defense quotes appellant's statements during direct examination:[18]

Q

And what did (CIS Investigator) Santiago tell you if he told you anything?

A

Santiago told me that if I will not sign it, something will happen to me.

Q

But you will admit before this Court that before you affixed your signature, the document was shown to you by Santiago, did he not?

A

No more, I was just made to sign.

Q

Do you want to impress the Court that you just affixed your signature without you being allowed to read the documents or the investigator Santiago did not even read unto you the contents of the documents?

A

No sir."

Such uncorroborated and anemic allegations are insufficient to render appellant's confession inadmissible. Rather, they appear to be a mere subterfuge designed to impute constitutional infirmity to the conduct of the custodial interrogation.

The more credible evidence is the rebuttal testimony of Atty. Jungco showing adherence to the constitutional requirements. Atty. Jungco testified that after he apprised appellant of his constitutional rights to be silent and to have counsel during the investigation, the latter waived them in his (Atty. Jungco's) presence. Thus:[19]

ATTY. DE DIOS:

Q

Atty. Jungco, I would like to bring your attention to April 13, 1987, do you remember having been called to assist an accused detained at the CIS Office, Camp Maquinaya, Olongapo City?

A

Yes, I was then the President of the IBP of Zambales-Olongapo Chapter and the CIS people approached me if I will help them in the waiver, to be present when waiver will be signed by the person before the CIS,

Q

Waiver of what?

A

Waiver of the right to counsel and the presence of counsel during the taking of his investigation.

Q

To refresh your memory, Atty. Jungco, I am showing you a statement which has been marked as Exhibit F for the prosecution, please go over this before I ask my question.

A

(Witness going over the document handed to him) I recognize this statement.

Q

Can you explain what is this Pagpapatunay wherein you are a witness to that?

A

I was present when Nicomedes Fabro during the time that I was there signed his waiver of the right to have counsel at the time of the taking of his testimony.

Q

Now, it is the waiver of the accused to counsel, will you please tell the Court if you advised him of his rights and effect of such waiver?

A

Before he signed this waiver, I apprised him of his rights under the Constitution, that is, the right to be silent, the right to counsel and that any statement that he will make in any investigation may be used for or against him in any court of law and after that, I asked him if despite his right to have counsel present during the taking of his testimony, he still waives that right to counsel and he said 'Yes' and he signed that statement there. As a matter of fact, in this Pagpapatunay, the last sentence 'Pumirma ako x x x x sa harapan ni Atty. Isagani Jungco, IBP President.' (Sgd) Nicomedes Fabro.

Q

Atty. Jungco, was that advice given in Tagalog or in English?

A

It was given in Tagalog and in English.

Q

Did he understand your admonition or your reminders concerning his right?

A

He understood because he said 'Yes'.

Q

Thank you. Atty. Jungco, at the last page and this is the end of his confession, there is a signature of Nicomedes Fabro, were you present when he signed the last page of his testimony?

A

At the time that he signed this, I was there present because I was talking then with their Chief there which is I think Capt. Flores and before I left, this statement was completed.

ATTY. DE DIOS:

Q

Thank you. Atty. Jungco, when you signed this first page and when Nicomedes Fabro signed this waiver, do you remember whether or not there was already a statement prepared?

A

At the time that he signed this, the investigation has not yet began because precisely, I was asked to be present because of the waiver. And after he signed his waiver and I signed it also in his presence, I was talking with Capt. Flores and they were taking his testimony at that time.

Then, afterwards, before I left."

This adherence to the Constitution is further confirmed by the confession itself. It starts off with a Pasubali[20] wherein appellant was informed of his constitutional rights and a Pagpapatunay which confirmed that he understood said rights. Both parts also serve as a written proof of appellant's waiver in fulfillment of the requirements of the Constitution.

As pointed out by the Solicitor General, the testimony of Atty. Jungco was replete with details as to how he informed and warned appellant of the consequences of the waiver of his right to counsel. Thus, he argues that there is no room for doubt that appellant was indeed assisted by counsel when he waived his right to counsel during the time that his statement was taken, and not only at the time he signed it as claimed by appellant.

The Constitution further requires that the counsel be independent; thus, he cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to that of the accused. Atty. Jungco does not fall under any of said enumeration. Nor is there any evidence that he had any interest adverse to that of the accused.[21] The indelible fact is that he was president of the Zambales Chapter of the Integrated Bar of the Philippines, and not a lackey of the lawmen.

Doubts that Atty. Jungco's assistance to appellant was not independent since he was engaged by the CIS Investigators are further dispelled by the fact that he was sent[22] to the CIS Office by Sgt. Bolina who personally knew appellant's parents and was a friend of his brother-in-law.[23] He took the trouble to ensure that a lawyer was present during the taking of appellant's statement, even though he (Bolina) would not be there. Ineluctably, appellant, by his uncorroborated, puerile and matter-of-fact claim, failed to overcome the presumption that Atty. Jungco regularly performed his official duty as an officer of the court in giving assistance to persons undergoing custodial interrogation.[24] Upon the other hand, the overwhelming evidence is that he did perform such duty faithfully.

After the prosecution has shown that the confession was obtained in accordance with the aforesaid constitutional guarantee, the burden of proving that undue pressure or duress was used to obtain it rests on the accused.[25] In *Antillon vs. Barcelon*,[26] the Court imposed a high degree of proof to overthrow the presumption of truth in the recitals contained in a public instrument executed with all the legal formalities.

In *People vs. Pia*,[27] the Court held that where the accused failed to present credible evidence of compulsion or duress or violence on their persons, e.g., where they failed to complain to the officers who administered the oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim, their confession should be considered

voluntary.[28]

Appellant has miserably failed to present any convincing evidence to prove the use of force or intimidation on his person to secure his confession. The records show that appellant's confession was sworn and subscribed to before Fiscal Jesus Dorante, to whom he could have and should have voiced his objection, if any. Quite the contrary, Fiscal Dorante certified that he personally examined appellant and was convinced that the latter gave his statement freely and voluntarily and that he understood the contents of his confession. Appellant's failure to voice out his complaints is tantamount to a manifestation that indeed he waived his right to counsel in the presence of Atty. Jungco in accordance with the Constitution.[29] His assertion on appeal that he was intimidated into giving said confession rings hollow and too late.[30]

This claim is further belied by appellant's lack of complaint, or even any mention thereof, to his sister and relatives who visited him at Camp Maquinaya where he was detained for one year.[31] This reinforces the trial court's ruling.

Perhaps the most telling indication that appellant's confession was voluntary is the fact that said confession contained exculpatory claims[32] (Question Nos. 5, 7, 8 and 9) and facts that only the appellant could have known (Question Nos. 5,6,7,8, 9, 14, 15, 17, 20 and 29).[33]

Thus, we can only affirm the following findings of the trial court:

Neither can the Court accept that accused Nicomedes Fabro was only forced into giving a confession. The Court cannot even for a while believe that he was only forced to give his statement when the accused himself stated that he was not even once hurt by any of the CIS investigators. In (fact), he was even told to rest.

Atty. Alinea:

Q

And immediately after your sister left, your interrogation by the CIS agents started, that is correct or it is not?

A

No, sir I was asked to clean.

Q

What portion or portions of the CIS headquarters were you ordered to clean?

A

The ceilings.

Q

And after cleaning the ceiling of the CIS headquarters, what was the next order to you?

A

They asked me to rest.

(TSN, July 18, 1989, pp. 15-16.)

Q

And after cleaning the car of Capt. Flores, what was your next chore or activity?

A

I cooked food for them.

Q

And these activities became routinary and ordinary for how many days?

A

I stayed there for a year and that was the routinary work I did. (TSN, July 18, 1989, p. 23)'

The only alleged threat to him was that 'Santiago told me that if I will not sign it something will happen to me.' (TSN, July 18, 1989, p. 26). Nothing was mentioned about actual physical force used on accused.[34] x x x"

We hold that appellant's confession was properly admitted by the trial court as part of the prosecution evidence.

Second Issue: Defense of "Alibi" vs. Positive Identification

The defense argues that, although alibi is the weakest defense, easily fabricated and concocted, nevertheless it gains strength when there is doubt as to the identity of the suspect. Although appellant admitted that he was sleeping next to the victim when the latter was shot, he claims that Witness Beck could not have seen the face of the person running away from the crime scene since it was still dark at that time. Beck had just awakened, so it would have taken some time before his eyes could have adjusted. Thus, the defense speculates that the identification of appellant by Beck was "coached and suggested" by the investigators who fetched him and prepared his second statement.

These arguments do not inspire belief. Beck claimed that he saw appellant running away from the scene of the shooting. In answer to the trial judge's clarificatory questions during the cross-examination, the witness replied that, when he opened his eyes after hearing the gun report, he saw a person who immediately ran away.[35] Beck testified that he saw appellant's face while chasing the latter, although he did not catch up with appellant.[36] Therefore, from the time he was awakened until he lost the appellant during the chase, Beck saw appellant's face. Subsequently, in open court, he pointed to appellant as the man he had chased. This fact was not lost on the defense; thus, the defense claimed that, considering the time of the incident (5:00 to 5:30 a.m. in mid-April), there would have been insufficient daylight to permit clear and positive identification of the culprit by the witness.

The defense claims that this "weak" identification by Beck strengthened appellant's "alibi," which is actually and more accurately a denial in view of appellant's admission that he was at the scene of the crime. However, giving it a different name does not increase its probative value. A denial, like other defenses, remains subject to the strength of the prosecution evidence which is independently assessed. When the evidence for the prosecution convincingly connects the crime and the culprit, the probative value of the denial is negligible. Otherwise, credibility of testimonies and their evidentiary weight come into play. The well-settled rule is that the assessment by the trial court of credibility and weight of evidence is accorded the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of substance which would have affected the result of the case.

Beck's testimony that appellant was the man he chased contravenes the contention that appellant was sleeping one arm's length away from the victim; that appellant was only awakened by shouts that somebody was shot; and that he stayed at the crime scene for a time during the investigation. Moreover, the denial is directly contravened by his confession that he shot the victim.

In light of this confession, the denial is actually a belated retraction of said confession. The rule in this jurisdiction is that repudiation and recantation of confessions which have been obtained in accordance with the Constitution are looked upon with disfavor as unreliable.[37] They have negligible probative weight.

Thus, we agree with the trial court that appellant's denial is totally unconvincing. Appellant's uncorroborated testimony is: (1) that he just happened to be asleep at the terrace of the Whiskey Bar; (2) that appellant who resided nearby, for no explainable reason, elected to sleep on the same veranda during the very same night that the victim was shot; (3) that he was awakened only by the shouting of people and not by the sound of the gunshot; (4) and finally, that he stayed at the scene of the crime for about 30 minutes without anybody noticing that he was there at all.[38]

Third Issue: Alleged Hearsay Evidence

The defense claims that the identification of appellant was hearsay because appellant's name was allegedly given to Witness Beck by a certain Eduardo Ragonton who, however, was not presented as a witness. We cannot sustain this. The fact remains that Witness Beck was able to identify appellant in open court because he had seen the latter's face that fateful night.[39] While Beck may not have known the name of the appellant, he was certain about the latter's identity. Indeed, appellant's name which was supplied by another person to Witness Beck may be considered hearsay; but appellant's identity which the said witness personally knew is not.

Fourth Issue: Existence of Conspiracy

The defense raises this issue without elaborating further or offering any evidence in support thereof.

We are not persuaded. In fact, the conspiracy between appellant and his co-accused appears indubitable. The decision of the trial court states that:

From reliable information received by Sgt. Bolina and other policemen, they learned the identity of two other suspects, namely: Francisco Dimalanta and Amado Alcala. From unconfirmed reports these two (,) Dimalanta and Alcala(,) participated in the killing of Dionisio Joaquin. The confession of Fabro confirmed that indeed Dimalanta and Alcala were his co-conspirators."

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"In the confession of Nicomedes Fabro he narrated how Francisco Dimalanta offered him P10,000.00 to kill a man, how the gun was given him and how they observed the movements of the victim to the time of the killing. While Nicomedes Fabro did the actual shooting, accused Alcala and Dimalanta were present awaiting the outcome of the shooting."[40]

The said decision further elaborates:

"The confession of Dimalanta coincided in all material points with the confession of Fabro. Dimalanta narrated how he was promised the amount of P10,000.00 by a certain Bill Hoge and how he was paid P5,000.00 initial payment was shared by the three accused."[41]

The acts of the accused show that they were animated by the same purpose and were united in their execution. When, by their acts, two or more persons proceed toward the accomplishment of the same unlawful object -- each doing a part so that their acts though apparently independent were in fact connected, indicating a closeness of formal association and a concurrence of sentiment -- conspiracy may be inferred.[42]

From appellant's confession, it is clear that Dimalanta offered him money to kill Joaquin; that, together with Alcala, they observed the movements of the victim; that prior to the shooting, they had attempted to kill the victim at the D & E Fast Food Restaurant; and that at the time of the shooting, on April 12, 1987, Dimalanta and Alcala

were at or near the scene of the crime, acting as lookouts and awaiting the outcome of the killing.[43]

Aggravating Circumstances

The trial court held that the following circumstances attended the killing:

1. The crime was committed in consideration of a price. Dimalanta was promised P10,000.00 by Hoge to look for a killer. P5,000.00 was actually paid. In turn Dimalanta secured the services of the triggerman, Fabro in exchange for money. Alcala was paid for his participation in the plan.
2. With evident premeditation, the accused directly aiming the gun at a (sic) close range; and
3. Treachery, by shooting the helpless victim while asleep to insure its execution without risk to the killer.”[44]

That the crime was committed in consideration of a price has been satisfactorily shown by appellant’s confession. From the confession also, evident premeditation is manifest from the fact that on April 10, 1987, appellant was approached and hired by Dimalanta to kill the victim; that the appellant clung to his determination to kill the victim even after an unsuccessful first attempt on April 11, 1987 at the D & E Fast Food Restaurant; and that a sufficient lapse of time had passed giving the appellant a chance to reflect upon the consequences of his act.

In U.S. vs. Manalinde,[45] the Court held that the aggravating circumstances of evident premeditation and offer of money, reward or promise are not incompatible and may be appreciated together, one being independent of the other.

Treachery is shown by the fact that appellant, after several days of observing the movements of the victim, shot the latter while he was asleep.[46] The means of execution (1) gave the person attacked no opportunity to defend himself or to retaliate; and (2) showed that such method was deliberately or consciously adopted.[47]

Although all three circumstances (price, premeditation and treachery) were proven, only one will be appreciated to qualify the killing to murder and the two others can be used only as generic aggravating circumstances.

However, the mitigating circumstance of voluntary surrender should also be appreciated in appellant’s favor, as he surrendered to the CIS in Camp Maquinaya on April 13, 1987, thus, offsetting one generic aggravating circumstance. Accordingly, the proper penalty is *reclusión perpetua*.

WHEREFORE, the assailed Decision is hereby AFFIRMED with slight modification, i.e., the indemnity is INCREASED to P50,000.00 in line with current jurisprudence.[48]
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 50-57.

[2] Presided by Judge Esther Nobles Bans.

[3] Rollo, p. 8.

[4] Decision, p. 2; Rollo, p. 72.

[5] Ibid, p. 8; Rollo, p. 57.

[6] “SEC. 8. Dismissal of appeal for abandonment or failure to prosecute. - x x x x.

The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes

from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal.”

[7] “ADMINISTRATIVE CIRCULAR NO. 2-92 TO: ALL REGIONAL TRIAL COURT PRESIDING JUDGES, THE INTEGRATED BAR OF THE PHILIPPINES, THE NATIONAL PROSECUTION SERVICE, DEPARTMENT OF JUSTICE: CANCELLATION OF BAIL BOND OF ACCUSED CONVICTED OF CAPITAL OFFENSE IN THE REGIONAL TRIAL COURT

Strict observance by all concerned is enjoined with the following policies and guidelines laid down in the Resolution of the Court promulgated on October 15, 1991 in G.R. No. 92560 entitled ‘People v. Ricardo C. Cortez,’ relative to the application of Section 3, Rule 114 of the 1985 Rules on Criminal Procedure, to wit:

The basic governing principle on the right of the accused to bail is laid down in Section 3 of Rule 114 of the 1985 Rules on Criminal Procedure, as amended, x x x.

Pursuant to the aforecited provision, an accused who is charged with a capital offense or an offense punishable by *reclusión perpetua*, shall no longer be entitled to bail as a matter of right even if he appeals the case to this Court since his conviction clearly imports that the evidence of his guilt of the offense charged is strong.

Hence, for the guidance of the bench and bar with respect to future as well as pending cases before the trial courts, this Court en banc lays down the following policies concerning the effectivity of the bail of the accused, to wit:

xxx xxx xxx

(3) When an accused is charged with a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusión perpetua* and is out on bail and after trial is convicted by the trial court of the offense charged, his bond shall be cancelled and the accused shall be placed in confinement pending resolution of his appeal.

As to criminal cases covered under the third rule abovesaid, which are now pending appeal before this Court where the accused is still on provisional liberty, the following rules are laid down:

1) This Court shall order the bondsmen to surrender the accused within ten (10) days from notice to the court of origin. The bondsmen thereupon, shall inform this Court of the fact of surrender, after which, the cancellation of the bond shall be ordered by this Court;

2) The RTC shall order the transmittal of the accused to the National Bureau of Prisons thru the Philippine National Police as the accused shall remain under confinement pending resolution of his appeal;

3) If the accused-appellant is not surrendered within the aforesaid period of ten (10) days, his bond shall be forfeited and an order of arrest shall be issued by this Court. The appeal taken by the accused shall also be dismissed under Section 8, Rule 124 of the Revised Rules of Court as he shall be deemed to have jumped his bail.”

7-A Per Administrative Circular No. 2-92, the trial court should not have allowed the appeal of *dimalanta* and *Alcala* since they jumped bail prior to such appeal.

[8] Rollo, pp. 89-92.

[9] Rollo, pp. 66.

[10] Decision, pp. 2-4; Rollo, pp. 72-74.

[11] *People vs. Januario*, G.R. No. 98252, February 7, 1997, p. 34; and *U.S. vs. Corrales*, 28 Phil 362, 363 (1914).

[12] *People vs. Caguioa*, 95 SCRA 2, 9-12, January 17, 1980;

- [13] *People vs. Januario*, supra, p. 32; and *People vs. De la Cruz*, 224 SCRA 506, 526-527, July 6, 1993.
- [14] *People vs. Caguioa*, supra.
- [15] *People vs. Pascual*, 80 SCRA 1, 16, October 28, 1977.
- [16] *U.S. vs. De los Santos*, 24 Phil. 329, 358 (1913).
- [17] *People vs. Saligan*, 101 SCRA 264, 277, November 21, 1980.
- [18] TSN, July 18, 1989, p. 26.
- [19] TSN, March 19, 1990, pp. 3-14.
- [20] Exh. "F," Records, pp. 233-234.
- [21] *People vs. Bandula*, 232 SCRA 566, 576, May 27, 1994.
- [22] TSN, January 11, 1988, p. 95.
- [23] TSN, November 10, 1987, pp. 42 and 44.
- [24] *People vs. Barlis*, 231 SCRA 427, 441, March 24, 1994.
- [25] *People vs. Saligan*, supra, p. 277.
- [26] 27 Phil. 148, 151 (1917).
- [27] 145 SCRA 581, 586, November 14, 1986.
- [28] Cf. *People vs. Villanueva*, 128 SCRA 488, 501, April 2, 1984; *People vs. Urgel*, 134 SCRA 483, 491, February 25, 1985; and *People vs. Toledo*, 140 SCRA 259, 267-268, November 22, 1986.
- [29] *People vs. Luvendino*, 211 SCRA 36, 49, July 3, 1992.
- [30] *People vs. Remollo*, 227 SCRA 375, 377, October 22, 1993.
- [31] TSN, October 24, 1989, pp. 316-317.
- [32] *People vs. Alvarez*, 201 SCRA 364, 377, September 5, 1991; and *People vs. Oracoy*, 224 SCRA 506, 768, July 27, 1993.
- [33] *People vs. Damaso*, 190 SCRA 595, 608-609, October 18, 1990.
- [34] Rollo, p. 75.
- [35] Ibid., p. 53.
- [36] TSN, May 24, 1988, p. 35.
- [37] *People vs. Oracoy*, supra, p. 767; *People vs. Logronio*, 214 SCRA 519, 530, October 13, 1992; and *People vs. Del Pilar*, 188 SCRA 37, 44-45, July 28, 1990.
- [38] Rollo, p. 53-54.
- [39] Supra, Footnote no. 36.
- [40] RTC Decision, p.7; Rollo, p. 56.
- [41] Ibid.

[42] *People vs. Azugue*, G.R. No. 110098, February 26, 1997, pp. 16-17; *People vs. Layno*, G.R. No. 110833, November 21, 1996, pp. 17-19; and *People vs. Isleta*, G.R. No. 114971, November 19, 1996, pp. 11-12.

[43] Exhibit “F”, records, pp. 241-244.

[44] Decision, p. 7; Rollo, p. 77.

[45] 14 Phil. 77, 82 (1909).

[46] *People vs. Miranda*, 90 Phil 91, 93-95 (1951); *People vs. Azuque*, *supra*, p. 17; and *People vs. Layno*, *supra*, pp. 19-20.

[47] *People vs. Mallari*, 212 SCRA 777, 784, August 21, 1992; *People vs. Mabubay*, 185 SCRA 675, 680, May 24, 1990; and *People vs. Samonte*, 64 SCRA 319, 325-326, June 11, 1975.

[48] *People vs. Abalos*, 258 SCRA 523, 534, July 9, 1996; *People vs. Porras*, 255 SCRA 514, 531, March 29, 1996; *People vs. Panlilio*, 255 SCRA 497, 503, March 29, 1996.

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