

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO DIMAANO Y DELA CRUZ, DANILO BORJA Y ABESAMIS, CALIXTO SORIO Y ESPINA, RODELIO UPANA Y CATALYO, AND JOHN DOE (AT LARGE),...

G.R. No. 95231. June 15, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision* of the Regional Trial Court, Branch 124, Kaloocan City, dated October 31, 1989, in Criminal Case No. C-29560, finding appellants Danilo Dimaano, Danilo Borja, Calixto Sorio and Rodelio Upana guilty beyond reasonable doubt of the crime of robbery with homicide and multiple frustrated homicide committed as follows:

“That on or about the 30th day of September, 1987 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent of gain and being then armed with firearms and bladed weapons, respectively, and with the use of violence and intimidation upon the persons of ADOLFO FERRER Y TIONG, ELIZABETH BATARA Y CORIA, EDNA ALARCON Y CALAGOS and CESAR ALARCON, did then and there willfully, unlawfully and feloniously take, rob and carry away the following articles, to wit:

Cash money.....

one (1) wristwatch marked

P4,000.00

Raymund Weil.....

one (1) gold ring

with diamond stones.....

5,000.00

30,000.00

one (1) gold ring.....

20,000.00

one (1) colored TV.....

12,000.00

one (1) Betamax Machine.....
9,000.00
one(1) Betamax Tape Rewinder.....
400.00
one (1) Stereo Componet.....
10,000.00
one (1) Radio Cassette Tape.....
6,000.00
one (1) Camera
6,000.00
one (1) Camera marked Polaroid
2,000.00
assorted Jewelries.....
50,000.00
one (1) hair dryer.....
1,000.00
one (1) reading glass.....
800.00
one (1) air rifle.....
3,000.00
four (4) betamax tapes
600.00

with the total amount of P159,800.00; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the aforementioned articles, the herein accused in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously and with intent to kill, attack and stab said victims ADOLFO FERRER Y TIONG, ELIZABETH BATARA Y CORIA, EDNA ALARCON Y CALAGOS AND CESAR ALARCON Y CALAGOS, thereby inflicting upon said ADOLFO FERRER Y TIONG serious physical injuries which caused his death; whereas ELIZABETH BATARA Y CORIA, EDNA ALARCON Y CALAGOS and CESAR ALARCON Y CALAGOS sustained serious physical injuries which could have resulted in their death were it not for the timely medical attendance given to them at the MCU Hospital, this City.” (Original Records, pp. 2-3).

Upon arraignment, the appellants, assisted by Atty. Benjamin A. Opena, counsel de oficio, entered a plea of not guilty (Ibid., p. 16). Trial thereupon ensued.

At the trial, the prosecution presented as its witnesses Elizabeth Batara, Edna Alarcon, Cesar Alarcon, Pat. Efren Vego, Pat. Mario Pablo, Pat. Domingo Placido, Mrs. Annabelle Ferrer, Pat. Joven Dela Piedra, Dr. Mariano B.

Cueva, Jr., Norman Santos, Sgt. Norberto Susara and Sgt. Oscar R. Vargas, the last - named as a rebuttal witness.

Elizabeth Batara, then 34 years old and a bank teller, testified that on September 30, 1987, at about 7:30 o'clock in the evening, she heard the sound of a car's horn outside the gate of her house located at 4405 corner Malantis and Palosapis Streets, Amparo Subdivision, Novaliches, Caloocan City (TSN, Hearing of December 8, 1987, pp. 4-5). Being familiar with the car's horn as that of Adolfo Ferrer whom she was expecting to come to her house as they had just talked over the phone, she gave the key of the gate to her housemaid Edna Alarcon (TSN, Hearing of December 9, 1987, p. 34. TSN, Hearing of December 8, 1987, p. 6). When Edna opened the gate, four (4) persons whom she later identified as Calixto Sorio, Rodelio Upana, Danilo Dimaano and Danilo Borja came in, and one of them, Borja, approached her and poked a gun at her neck as well as covered her mouth with his left palm. Borja told her to just follow his order and then dragged her to the living room near the sofa. Thereupon, she saw Dimaano tie the hands of Edna and those of Edna's brother, Cesar, behind their back. Dimaano likewise placed masking tapes on the eyes and mouth of Edna and Cesar. Both Edna and Cesar were at the time beside her. Dimaano also tied her hands behind her back, and a masking tape was placed on her mouth and then she was dragged to the master's bedroom. She saw Borja, Upana and Sorio ransacking said master's bedroom Dimaano joined the three (3) appellants in ransacking the place. Soria asked her where she kept her money, and when she told him that she had no money, he slapped and kicked her, causing her to fall to the floor. The four appellants brought out of the master's bedroom her colored TV set, her Betamax machine, her hair dryer, her jewelry, her two (2) cameras, her watch, her air rifle and her cash of P150.00. She heard one of the appellants shouting "ipasok mo yang asawa." Borja and Dimaano immediately went out of the house, and brought Adolfo Ferrer inside the house. Ferrer's hands were tied behind his back and his eyes were covered with masking tape. As Ferrer passed by her, she heard him pleading for his life. The four appellants, however, ignored the pleas, and brought him to the bedroom. Borja and Dimaano went back to the place where she was and placed masking tape over her eyes. She was then pushed to the bed. Thereafter, she heard the groans of Ferrer who was then at the bathroom. After she heard somebody open the door of the master's bedroom, a pillow was thrust on her face, and she was stabbed in her neck. A little later, there was silence. Then she heard voices of several people. Her neighbor, a certain Aling Belen, entered her room and helped her. She was then rushed to the MCU Hospital, together with Edna and Cesar where she was confined for seven (7) days. A medical certificate (Exhibit "G") was issued to her upon her discharged from confinement. In connection with the said confinement, she spent a total of P30,000.00 (TSN, Hearing of December 8, 1987, pp. 9-19, 21).

On October 16 and 19, 1987, she executed sworn statements before Sgt. Susara and Pfc. Jacinto Lascano, respectively, in connection with this case (Ibid., p. 20). Likewise, she had occasion to identify the four appellants at the Caloocan City Police Station on the latter date (TSN, Hearing of December 9, 1987, p. 62).

Edna Alarcon, then 21 years old and a housemaid of Elizabeth Batara, testified that on September 30, 1987, at about 7:00 o'clock in the evening, she heard a car's horn while she was inside the house of her employer, Elizabeth Batara. She went to Elizabeth, who was then at the guestroom (bedroom), to get the key of the gate (TSN, Hearing of December 15, 1987, pp. 79-80, 104-105). After she opened the gate, a man whom she later identified as Danilo Dimaano suddenly came out of the car, and chased her until she was overtaken at the sala (living room). Dimaano poked a gun at her neck, and forced her to sit in the sala. On orders of Dimaano, she looked for her brother, Cesar, whom she found inside the container where they kept their dirty clothes. She brought Cesar to the sala. While at the sala, Dimaano and his companions whom she later identified as Calixto Sorio, Danilo Borja and Rodelio Upana tied her hands and those of Cesar behind their back. She then saw her employer, Elizabeth, being dragged by Boria to the sala near the sofa where they were at the time. Thereafter, the appellants covered her eyes and mouth and those of her brother, Cesar, with masking tape, and brought her along with Cesar to her room. She knew this because she bumped the double bed which was inside her room. After a

brief silence, a person made her lie on the bed face up, and stabbed her right shoulder. Then she heard the groans of Cesar. When she sensed that she was already alone in the room, she called for Cesar. She was able to do so as the masking tape on her mouth got loose when somebody splashed her with water. Cesar rushed to her and removed the masking tape from her face and untied her hands. She and Cesar went out of the house through the kitchen door. When she realized that the accused had already left, she went to their neighbors to ask for help. She and Cesar went back inside the house, together with their neighbors, and opened the masters bedroom where they found Elizabeth with her hands tied behind her back and bathed in her own blood. They removed the wire tying Elizabeth's hands and the masking tape on her face. They then wrapped a blanket around Elizabeth. The neighbors forcibly opened the bathroom and found Ferrer lying on the bathroom floor bathed in his own blood. After removing the wire tied around his hands and the masking tape from his mouth and eyes, they realized that Ferrer was already dead. Thereafter, she herself was brought to the MCU Hospital, together with Elizabeth and Cesar, where she was confined for several days. A medical certificate was issued to her upon her discharge from confinement (Ibid., pp. 80-95, 99).

On October 16 and 19, 1987, she executed sworn statements in connection with this case before the Caloocan City Police authorities (Ibid., p. 101). Likewise, on the latter date, she identified the four (4) appellants among the eight (8) prisoners detained at the Caloocan City Police Headquarters (Ibid., p. 119).

In the course of her testimony, she identified the following as properties of her employer, Elizabeth Batara: a) radio cassette (Exhibit "AA"), b) camera (Exhibit "BB"), c) hair dryer (Exhibit "CC"), d) a pair of eyeglasses with a case (Exhibit "DD"), and e) three betamax tapes (Exhibit "EE"). (TSN, Hearing of March 7, 1988, pp. 293-297).

Cesar Alarcon, then 9 years of age, testified that on September 30, 1987, at about 7:30 o'clock in the evening, while he was at the sala of his sister's (Edna's) employer, Elizabeth Batara, he saw a man whom he later identified as Danilo Dimaano poke a gun at her sister, Edna, who was then at the gate. He ran to the guestroom and told Elizabeth about the men at the gate whom he later identified, aside from Dimaano, as Rodelio Upana, Calixto Soria and Danilo Borja. When Elizabeth ignored him, he hid himself inside the container of dirty clothes in the guestroom. After a few minutes, he went out of the guestroom. While at the sala, together with Edna and Elizabeth, his hands were tied with a piece of wire by Dimaano. He was then brought to the room of Edna where he was stabbed repeatedly. Thereafter, he began to free himself with the use of his teeth and was able to get rid of the wire tying his hands. He then freed his sister, Edna, who was also in the same room where he was. After ascertaining that the appellants had already left, he and Edna went to their neighbors for help. They went back inside the house, together with their neighbors. Thereafter, he was brought to the hospital, together with Edna and Elizabeth, where he was confined for five (5) days (TSN, Hearing of December 16, 1987, pp. 116-129, 136).

On October 16 and 19, 1987, he executed sworn statements in connection with this case before the police (Ibid., pp. 130-131).

Pat. Efren Vego, a member of the Anti-Narcotics Unit of the Quezon City Police Station, presented before the trial court some of the items allegedly recovered from the appellants by the Anti-Narcotics Unit of the Quezon City Police Station. Among them were the following: 1) a portable radio-cassette tape (Exhibit "AA"), 2) a camera (Exhibit "BB"), 3) a hair dryer (Exhibit "CC"), 4) eyeglasses with a case (Exhibit "DD"), and 5) three betamax tapes (Exhibit "EE"). (TSN, Hearing of January 5, 1988, pp. 150-153). He stated that the aforementioned items were identified by Elizabeth Batara as her belongings a few days after this case was filed with the inquest fiscal (Ibid., p. 161). In addition, P/Col. Pablo Agacer, his commanding officer, entrusted to him in the first week of October several items such as two wallets (Exhibit "FF"), a wrist watch (Exhibit "GG") and a wedding ring (Exhibit "HH"), which were subsequently identified by the wife of Adolfo Ferrer, Annabelle Tolentino-Ferrer, as

her late husband's belongings (Ibid., pp. 157-159).

Pat. Mario Pablo, a member of the Anti-Narcotics Unit of the Quezon City Police Station, testified that on September 30, 1987, at about 6:30 o'clock in the evening, while at the office of the Anti-Narcotics Unit, together with Patrolmen Valiente, Buenaveles, Salamat, Carreon, Placido, Lanuza and Cpl. Vargas, an informant called by phone and informed the desk officer, Cpl. Vargas, that a robbery was about to be committed at Amparo Village. After Pat. Valiente briefed the policemen, including him, who were present about the said robbery, they boarded two jeeps and a car and proceeded to Quirino Highway, Novaliches, near the gate of the Lagro Subdivision. Upon reaching the place at about 7:30 o'clock in the evening, the policemen positioned themselves on both sides of the highway. The information was that a Galant car, greenish gray in color, with Plate No. PCA-278, was going to be used in the robbery. After several minutes, the aforementioned car was seen passing by. The policemen gave chase until they cornered the said car in front of the Novaliches church. The four men inside the car were ordered to alight. They were subsequently identified as appellants Dimaano, Borja, Sorio and Upana. After having been frisked, a hand grenade, two guns and a fan knife were found in the possession of the appellants. A radio cassette, a hair dryer, cassette tapes and a reading glass were likewise found inside the said car (TSN, Hearing of January 27, 1988, pp. 177-185, 187, 198).

Pat. Domingo Placido, also a member of the Anti-Narcotics Unit of the Quezon City Police Station and a member of the team which apprehended the appellants, substantially corroborated the testimony of Pat. Pablo. In addition, he testified that while they were already at the office of the Anti-Narcotics Unit, one of the appellants, Sorio, admitted having killed someone at Amparo Subdivision, Caloocan City (Ibid., pp. 213-214).

Mrs. Annabelle Ferrer, widow of the late Adolfo Ferrer, testified that on September 30, 1987, at about 7:00 o'clock in the morning, she helped her husband, Adolfo Ferrer, prepare his things before reporting for work. She arranged his clothes, jewelry consisting of his wedding ring, a wrist watch and another gold ring, his three gold Parker ballpens, his two wallets, with the one containing at least P2,000.00 and the other, \$300.00. At around 7:45 o'clock in the morning, Adolfo left for office and she saw him ride in his car, which was a Galant four-door Sedan with Plate No. ZI PCA 278, with one of the appellants, Borja, seated in the front seat (TSN, Hearing of February 16, 1988, pp. 221-225, 250-251).

At about 10:00 o'clock in the evening, while in her residence of 56 Esteban Abada, Loyola Heights, Quezon City, she received a telephone call from somebody who identified herself as a certain Elizabeth Batara, informing her that Adolfo was already dead and that if she wanted to see him she should proceed at 4405 Malanting St. She immediately contacted her brother, Dr. Arturo Tolentino, Jr. and informed the latter about what Batara had told her. She likewise called Honey Boy Palanca, her husband's employer, and informed him about the matter. At around 11:30 o'clock in the evening, she received a telephone call from Honey Boy Palanca, confirming the death of her husband (Ibid., p. 226-230).

In the course of her testimony, she presented a receipt (Exhibit "KK") from International Funeral Homes, evidencing the amount of P49,700.00 which she paid for the funeral services of her late husband (Ibid., p. 235). She likewise declared that she suffered moral damages as a result of Adolfo's death (Ibid., p. 236).

Pat. Joven Dela Piedra, a member of the Caloocan City Police Station, testified that on October 19, 1987, he took the extra-judicial statements of appellants Borja, Sorio and Upana at the Caloocan City Police Station. He admitted, however, that the said appellants were not assisted by counsel when he took their extra-judicial statements (TSN, Hearing of February 23, 1988, pp. 264, 270, 278, 280).

Dr. Mariano B. Cueva, Jr., chief of the Medico-Legal Division of the National Bureau of Investigation, testified that he was the one who conducted the autopsy on the corpse of Adolfo Ferrer and he found three (3) stab wounds

on the body of the victim, the most fatal of which was the one inflicted on the left chest. Said stab wound were caused by a single bladed stabbing instrument like a dagger, a kitchen knife or a fan knife. He further declared that the cause of Ferrer's death was hemorrhage secondary to stab wounds (TSN, Hearing of March 28, 1988, pp. 315, 318-321).

Norman Santos, a medical record clerk of MCU Hospital, presented before the trial court the medical records of Elizabeth Batara, Edna and Cesar Alarcon.

Sgt. Norberto Susara, officer-in-charge of the Homicide Section of the Caloocan City Police Station, testified that he conducted the investigation of appellant Danilo Dimaano at the office of the Investigation Division of the Caloocan City Police Station. He admitted, however, that Dimaano was not assisted by counsel when the said investigation was conducted (TSN, Hearing of May 2, 1988, pp. 339-340, 344).

Sgt. Oscar R. Vargas, formerly assigned to the Anti-Narcotics Unit of the Quezon City Police Station, testified that he was the one who made the entries in the police blotter (Exhibits "FFF" and "FFF-1") of the Anti-Narcotics Unit of the Quezon City Police Station, showing that the appellants were apprehended on September 30, 1987, at about 8:45 o'clock in the evening in front of the Novaliches church (TSN, Hearing of June 5, 1989, pp. 648-651).

On the other hand, the defense presented appellants Danilo Dimaano, Calixto Sorio, Rodelio Upana and Danilo Borja, who are all presently detained at the New Bilibid Prisons, Muntinlupa, Metro Manila.

Danilo Dimaano claimed that he was detained at Narcotics Division of the Quezon City Police Station at about 6:00 o'clock in the evening of September 30, 1987 for alleged illegal possession of marijuana. He denied, therefore, that he was one of the four men who robbed the house of Elizabeth Batara, killed Adolfo Ferrer and wounded three persons at Amparo Subdivision at 7:30 o'clock in the evening of September 30, 1987 (TSN, Hearing of June 14, 1988, pp. 376-378).

Calixto Sorio stated that he was arrested by Quezon City policemen at his residence in Bago Bantay, Quezon City at 12:00 o'clock midnight of September 29, 1987. He denied having participated in any way in the commission of robbery/slaying at 7:30 o'clock in the evening of September 30, 1987 at the residence of Elizabeth Batara as he was then under detention (TSN, Hearing of July 4, 1988, pp. 410-413).

Rodelio Upana likewise denied having participated in the commission of the said robbery/slaying. He stressed that he was earlier arrested by the Quezon City police at 6:00 o'clock in the evening of September 28, 1987 at the back of the Munoz Market. He was still under detention during the alleged occurrence of the robbery/slaying incident (TSN, Hearing of February 6, 1989, pp. 491-493).

Danilo Borja testified that on September 30, 1987, at about 5:30 o'clock in the afternoon, he drove Adolfo Ferrer to Timog Avenue corner EDSA from the latter's office at La Tondena Distillery located at Echague, Quiapo, Manila. They arrived at Timog Avenue corner EDSA at about 6:00 o'clock in the evening. When he was about to alight from the car, somebody poked a gun at him. The man announced that it was a hold-up. Thereupon, the man and his two other companions boarded the car after dragging Ferrer to the backseat. He was then forced to drive the car to a place at Amparo Subdivision where the armed men entered a house. Ferrer was brought inside the said house. Thereafter, the men came out of the house bringing with them several things contained in a sack. He was again forced to drive the car towards Novaliches where the Quezon City policemen arrested him, together with the three armed men (TSN, Hearing of April 25, 1989, pp. 546-553).

Giving more weight to the evidence presented by the prosecution, the trial court rendered a decision, finding the appellants guilty as charged, the dispositive portion of which reads as follows:

“WHEREFORE, in view of the foregoing, this Court finds the accused DANILO DIMAANO Y DELA CRUZ, DANILO BORJA Y ABESAMIS, CALIXTO SORIO Y ESPINA and RODELIO UPANA Y CATALYO, GUILTY beyond reasonable doubt of Robbery with Homicide and Multiple Frustrated Homicide, and taking into consideration the presence of the aggravating circumstances of dwelling and of the use of superior strength, and the absence of any appreciable mitigating circumstance, hereby sentences each of the accused to suffer imprisonment of RECLUSION PERPETUA. This Court directs the said four accused to return to Mrs. Annabelle Ferrer the wedding ring, the wrist watch, and the cash of deceased Adolfo Ferrer to his widow, Annabelle Ferrer, and if unable to do so, to reimburse the latter the amount of P37,000.00, the value of this missing articles. This Court likewise directs the four accused to return to the victim Elizabeth Batara a Sony colored TV set; a Betamax machine, a Betamax rewinder; a stereo set; a Cannon camera; assorted jewelries and an air rifle, and if unable to do so, to reimburse Elizabeth Batara the total amount of P90,400.00 representing the value of these missing articles.

“This Court further directs the said four accused to indemnify Annabelle Ferrer the amount of P49,700.00 which represents the amount spent incurred (sic) for the funeral of Adolfo Ferrer; and Elizabeth Batara the amount of P30,000.00 representing the expense incurred in the hospitalization Of Elizabeth Batara, Edna Alarcon and Cesar Alarcon; and to pay the costs.

“The accused are entitled to full credit of their preventive imprisonment pursuant to Article 29 of the Revised Penal Code, as amended, provided the conditions enumerated therein have been complied with.” (Rollo, pp. 48-49).

In this appeal, the appellants raised the following as assignment of errors:

I

“THE LOWER COURT ERRED IN NOT ACQUITTING THE APPELLANTS DESPITE ITS FINDING THAT ON THE BASIS OF THE POLICE BLOTTER (EXHIBITS ‘FFF’ AND ‘FFF-1’), THE APPELLANTS WERE APPREHENDED BY THE QUEZON CITY POLICE ON ‘SEPTEMBER 30, 1987 AT 8:45 IN THE EVENING FOR ILLEGAL POSSESSION OF FIREARMS DEADLY WEAPON’ AND NOT FOR ‘ROBBERY WITH HOMICIDE AND MULTIPLE FRUSTRATED HOMICIDE’ FOR WHICH THEY HAVE BEEN CHARGED AND CONVICTED.

II

“THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PAT. MARIO PABLO AND PAT. DOMINGO PLACIDO THAT ‘THEY FOUND INSIDE THE CAR WHERE THE FOUR ACCUSED WERE ARRESTED, A RADIO CASSETTE (EXHIBIT ‘AA’); A POLAROID CAMERA (EXHIBIT ‘BB’); A HAIR DRYER (EXHIBIT ‘CC’); AN EYEGLASS (EXHIBIT ‘DD’); A WALLET (EXHIBIT ‘FF’); AND A WATCH (EXHIBIT ‘GG’).

III

“THE LOWER COURT ERRED IN NOT HOLDING THAT THE CONFRONTATION APRANGED BY THE CALOOCAN CITY POLICE BETWEEN THE PRIVATE COMPLAINANT AND HER WITNESSES AND THE APPELLANTS, WHEREIN THE LATTER WERE PRESENTED TO THE FORMER FOR PURPOSES OF IDENTIFICATION, WAS VIOLATIVE OF THE CONSTITUTIONAL RIGHT OF THE APPELLANTS TO BE REPRESENTED BY COUNSEL IN ALL STAGES OF THE INVESTIGATION.

IV

“THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI SET UP BY EACH OF THE APPELLANTS DESPITE THE FACT THAT THE EVIDENCE OF GUILT IS WEAK, DOUBTFUL, UNCONVINCING, UNRELIABLE AND UNSATISFACTORY.

V

“THE PROSECUTION AND THE LOWER COURT ERRED IN HOLDING THAT THERE IS SUCH A CRIME AS ‘ROBBERY WITH HOMICIDE AND MULTIPLE FRUSTRATED HOMICIDE.’” (Rollo, pp. 65-66).

In the first two assigned errors, the appellants contend that on the basis of the police blotter, they were arrested for the crimes of illegal possession of firearms and illegal possession of deadly weapons and not for the crime for which they have been charged and convicted (Rollo, pp. 66-67). As a matter of fact, the said police blotter never made mention about the articles (Exhibits “AA”, “BB”, “CC”, “DD”, “FF” and “GG” allegedly recovered from the appellants at the time they were apprehended (Rollo, p. 69). Thus, the trial court should not have given credence to the subsequent testimony of Pat. Mario Pablo and Pat. Domingo Placido to the effect that the said articles were recovered from the appellants.

The contention is without merit.

Like an affidavit, an entry in the police blotter is taken ex-parte. Hence, in the same manner, it could be just as incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertains to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter. In this light, the entry in the police blotter is inferior to the testimony of Pat. Mario Pablo and that of Pat. Domingo Placido given in open court (*People v. Solis*, 195 SCRA 405 [1991]; *Ford v. Court of Appeals*, 186 SCRA 21 [1990]).

Anent the allegation of the appellants that their identification by the private complainants at the police headquarters in the absence of their counsel violated their constitutional right to counsel, suffice it to say that the right to counsel attaches upon the start of an investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused. At such point or state, the person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation for the commission of an offense (*Gamboa v. Cruz*, 162 SCRA 642 [1988]).

In the instant case, when the appellants were identified by the complainants at the police line-up, the former had not yet been held to answer for the criminal offense for which they have been charged and convicted. The police could not have, therefore, violated their right to counsel as the confrontation between the State and them had not yet begun. As held in the case of *Gamboa v. Cruz* (supra), police line-up is not part of the custodial inquest, hence, the appellants were not yet entitled, at such stage, to counsel.

The appellants also faulted the trial court in not giving credence to the defense of alibi set up by each of them, saying that the defense of alibi assumes importance and acquires commensurate strength when the evidence of guilt is weak, doubtful, unconvincing, unreliable and unsatisfactory, and, therefore, may be given credence (Rollo, pp. 72-73). This contention, however, must fail in the face of the positive identification of the appellants as the perpetrators of the crime by Elizabeth Batara, Edna Alarcon and Cesar Alarcon (*People v. Solis*, supra). Their

identification was not difficult as the garage, the living room and the dining room of Batará's house were all lighted at the time that the crime in question was committed by the appellants (TSN, Hearing of December 9, 1987, p. 55).

Moreover, the appellants have not shown any ill motive on the part of private complainants to fabricate charges against them. It is well-settled that when there is no evidence to show that the witnesses for the prosecution were actuated by improper motive, their identification of the appellants as the offenders should be given full faith and credit (*People v. Gonzales, Jr.*, 182 SCRA 393 [1990]).

However, the trial court appears to have erred in the designation of the crime as robbery with homicide and multiple frustrated homicide. As held in the case of *People v. Repuela* (183 SCRA 244 [1990]), there exists no offense of robbery with homicide and frustrated homicide because "homicide", as the term is used by Article 294, paragraph (1) of the Revised Penal Code, is meant in its generic sense, that is, any act that results in death. Any other act producing a result short of death is embraced by "homicide", assuming that death occurs at the same time. If no death supervenes, the accused should be held liable for robbery and frustrated or attempted homicide or murder (provided there was intent to kill), and not the complex crime of robbery with homicide.

PREMISES CONSIDERED, the decision appealed from is hereby **AFFIRMED**, with the modification that the appellants are held guilty of the offense of robbery with homicide as defined in Article 294, paragraph (1) of the Revised Penal Code, and are hereby **ORDERED TO PAY** the sum of P50,000 as indemnity for the death of Adolfo Ferrer.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Nocon, J., on leave.

* Penned by Judge Rene Victoriano

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